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FINANCIAL LAW ENFORCEMENT ACTS IN POLAND

Eugeniusz Ruskowski

University of Bialystok, Bialystok, Poland

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The subject. The paper is devoted to the classification of financial law enforcement acts issued in Poland.

The purpose of the paper is a typological analysis of the financial law enforcement acts in Poland depending on the subjects who issues such acts.

The methodology. General scientific methods as analysis, synthesis, induction, deduction, comparison were used. The system method made it possible to regularize a set of financial law enforcement acts, taking into account the subjects of law enforcement in Poland. The functional approach made it possible to identify the types of financial law enforcement acts, depending on their role in the system of law enforcement in Poland.

The main results and scope of their application. The definition of the financial law enforcement act is proposed. Classification of subjects of financial law enforcement in Poland is carried out, their powers are covered and characteristics of the individual legal acts issued by them are al-located. The proposed qualitative analysis of law enforcement acts adopted in Poland may be-come a starting point for research in the field of financial law theory and comparative law.

Conclusions. A financial law enforcement act is an act issued on the basis of the current rules of financial law by the authorized bodies, establishing or determining – in respect of an individual addressee – the rights and (or) obligations in a particular case in the field of public finance, or preparing their establishment or determination.

The subjects applying the norms of financial law, can be divided into: bodies of financial ad-ministration, the courts (primarily administrative courts) and quasi-judicial bodies (e.g. the Commission, considering cases of violation of discipline of public finance). The first group of bodies issues decisions and orders (financial and legal acts), the bodies of the second group issue court decisions and court orders, the bodies of the third group issue decisions.

The role of administrative courts in the financial law enforcement is significant. Significant number of financial cases, particularly concerning individual interpretations, in the total number of cases considered by such courts is an evidence.

1. The essence of the application of financial law

The application of financial law is a process that ends with a power decision on the rights or obligations in the field of public Finance on individual issues, as well as the preparation of such a decision, regardless of its name and characteristics. The content this can be, for example, decisions on the granting of subsidies, cancellation of the budgetary commitments for renewal of the term of appeal in tax matters etc. From the point of view of form, these are: decisions, rulings, judicial decisions, findings of commissions in cases of violation of public Finance, acts of supervision).

The process of application of financial law related to the adoption of power decisions in accordance with the law cannot be identified with the process of compliance with the law or subordination to the law (implementation of the law). Compliance with the law is informed behaviour in accordance with the law; subordination to the law is behaviour, albeit in accordance with the law, but without awareness of its correctness. Therefore, the subject of the application of

financial law is, for example, the tax authority that makes a decision on the additional tax, while the taxpayer performing its duties is the subject of the law (or observing the right).

The essence of the application of financial law is predetermined by various factors related to the current legislation. Thus, sometimes the legal provisions provide for their application subject to their individual clarification (for example, determination of the amount of tax, the appointment of subsidies, benefits in the payment of budget debt, etc.), or give the authorities the opportunity to recall the obligation imposed (for example, by sending tax notifications), and sometimes make it possible to resolve the dispute and determine its consequences, the amount of punishment, to react otherwise [1].

From the methodological and technical sides, the process of applying the rules of financial law can be considered as a model of implementation (alternately or in an arbitrary queue) of the following actions: a) establishment of the actual state of things, b) determination of the content of the legal norm in terms of the actual state of things, C) sub-sumption, that is summing up the actual situation under the current legal norm, d) determination of the legal consequences (this fact in the light of the rule used, e) execution of the decision.

Below are a few phenomena that demonstrate the specifics of the application of financial law and related to the controversial nature of some institutions and scientific views:

1) General and individual acts of interpretation of tax rules are Special in financial law. Through such acts, the tax authorities determine the possible legal consequences of the actual situation (actual or potential) for tax purposes. Disputes in the field of individual acts of interpretation of tax rules are resolved by administrative courts. In recent years, the number of such acts exceeds 30 thousand per year, of which about 30% are appealed to the administrative courts.

2) the role of administrative courts in the application of financial law is Significant, as evidenced by the significant number of financial cases, including on issues of individual interpretation, in the total number of cases considered by such courts.

3) the role of financial control acts in the application of financial law is Ambiguous [2, pp. 118-129]. From a formal point of view, the so-called classical acts of financial control are material and technical actions, therefore, do not create the rights and obligations of controlling and controlled entities, and therefore are not acts of application of law. On the other hand, as a rule, control procedures are accompanied by legal regulation, and the control proceedings provide for a variety of powers and obligations of controlling and controlled entities (for example, initiation of control proceedings, collection of evidence, appeal against the results of control, etc.) and even specific penalties for their non-compliance, which allows them to be integrated, at least in part, into the logic of the processes of application of financial law.

The above observations point to the fact that the traditional law enforcement formula is often insufficient for financial law, and experts increasingly point to the existence of acts close to the application of law, or quasi-enforcement of financial and legal acts.

2. Subject-subject classification of acts of application of financial law.

2.1. Financial and legal acts of the financial administration.

Subjects applying financial law can be divided into: financial administration bodies, courts (mainly administrative courts) and quasi-judicial bodies (e.g. commissions dealing with cases of violation of the discipline of public Finance) [3]. From the point of view of the subject matter of the individual legal act or its form: the first group of bodies makes decisions and decisions (financial and legal acts), the second group-court decisions and decisions, the third group – decisions. Special attention should also be paid to the acts of supervision often adopted by special bodies of financial administration (for example, regional clearing houses). Some connection with the process of application of financial law are also General and individual acts of interpretation of the rules of tax law, as well as the rules on business fees.

The concept of an individual financial and legal act is derived from an administrative act and therefore it is sometimes considered that a financial and legal act is a type of administrative act relating in content to public Finance. Therefore, a financial and legal act is an act issued on the basis of the current rules of financial law by the authorized bodies, establishing or determining – in respect of an individual addressee – the rights and (or) obligations in a particular case in the field of public Finance, or preparing their establishment or determination. The above understanding is associated with the division of financial and legal acts into substantive acts related to specific rights and obligations in the field of public funds transfer and preparatory (formal) acts indirectly leading to such movement (for example, the restoration of the deadline for filing a complaint in a financial case). From a legal point of view, it is also important to divide financial and legal acts into law-making and declarative (declarative) acts. First serve for the establishment of new financial rights and duties, without which there are no specific arrangements which would be necessary for the taxpayer on the individual case (for example, the definition of land tax), while the second only confirm (sometimes the expression is used – reminiscent of) the rights and duties, regulated by law (for example, the decision on the amount of property tax an LLC). In formal terms, financial and legal acts are usually in the form of a decision. This at the same time testifies to the essence and consequences of this act, expressing its importance, the possibility of judicial control, etc. Based on judicial practice, the essence of the financial and legal act is evidenced not by its name, but by its content. Thus, decisions are those acts that have four characteristics: the definition of the addressee, an indication of the legal basis, the definition of financial rights/obligations and the signature of the official. The correctness of these elements also affects the entry into force (validity) of the decision.

2.2. Court decisions.

Among the acts of application of financial law, it is difficult even to overestimate the importance of court decisions. A small role among them is played by the jurisprudence of the Supreme Court (after the abolition of the Institute of emergency audit), the limited importance of acts of the General courts, dealing mainly with cases of financial crimes, criminal and criminal-financial offenses. Thus, the burden of applying financial law rests primarily with the administrative courts.

Since 1 January 2004, these courts have functioned as two-instance courts: the provincial administrative courts as the first instance and the Supreme administrative court as the court of appeal. Their activities are regulated by: the law of 25 July 2002 "on the construction of administrative courts"; the law of 30 August 2002" on proceedings in administrative courts", as well as the law of 30 August 2002 – "Provisions on the enactment of the Law on the construction of administrative courts and the Law on proceedings in administrative courts". During the period of mass reforms of the public system, it is worth paying attention to the "classical", exemplary nature of the reform of administrative justice carried out in 1999-2003.the Reform began with the definition of a General concept and a comprehensive discussion on the possibilities of its normative settlement. Its enacting laws were adopted with a delay of almost one and a half years, which was used not only to adapt to the new legislation, but also for the intensive selection of judicial personnel and the establishment of organizational structures and technical infrastructure of administrative justice.

In accordance with article 3 of the law on proceedings in administrative courts, administrative courts exercise control over the activities of public administration, applying measures determined by law. Control of administrative courts over the activities of public administration covers the issuance of decisions on complaints against: a) administrative decisions, b) decisions made in the course of administrative proceedings, but subject to appeal, or ending the proceedings, as well as decisions deciding the case on the merits, C) decisions made in the Executive and security proceedings, subject to appeal, d) other acts or actions in the field of public administration relating to legal powers or duties, except for certain acts or actions, e) written acts of interpretation of the provisions of tax law issued in individual cases; preliminary conclusions and refusals to provide preliminary conclusions; e) acts of local self-government bodies and local bodies of government administration; g) other acts

of local self-government bodies and their associations adopted in the field of public administration; h) acts of supervision over the activities of local self-government bodies; and) inaction or duration of proceedings in cases determined by law. The administrative courts also adjudicate cases in which the provisions of special laws provide for judicial control and apply the measures provided for in those laws. However, there are some exceptions to the principle of universal judicial and administrative control. With regard to financial law, it is particularly worth noting the inadmissibility of appealing to the administrative court criminal-financial and criminal Treasury cases, as well as (with some exceptions) decisions in the field of state orders. The competence of administrative courts on certain issues in the field of public fees and subsidies is also controversial.

Anyone who has a legal interest in the case, as well as – under certain conditions – a public organization, within 30 days from the date of receipt of the appealed decision, through the decision-making body can file a complaint to the Voivodeship administrative court. A complaint can be filed only after the administrative appeal measures have been exhausted. Several other terms and rules of appeal are provided for the Prosecutor, the Commissioner for civil rights protection and the Commissioner for children's rights protection.

The administrative court may grant, deny or refuse to accept a complaint. Under certain conditions, judicial proceedings may be terminated.

According to the logic of legal provisions, it follows that the body whose decisions are subject to appeal has no possibility to file a complaint to the administrative court of first instance. However, as one of the parties, he may file an appeal with the Supreme court of appeal in compliance with the statutory conditions. A complaint to the administrative court, with some exceptions, must be made by a lawyer or legal counsel.

The HAC is also empowered to make decisions to clarify the legal provisions whose application has caused controversy in the practice of administrative courts, as well as decisions on the resolution of legal issues that raise serious doubts about the legality of the decision on a particular judicial and administrative case, as well as resolve disputes on competence between certain legal bodies.

2.3. Decisions of quasi-judicial financial bodies (on the example of the Commission on cases of violation of discipline of public Finance).

A significant role in the application of financial law is played by special bodies, which – because of the similarity of many aspects of their activities with the courts – can be called quasi-judicial. Their example in Poland is the Commission on cases of violation of discipline of public Finance. It should be emphasized here that in different countries courts often deal with violations of financial discipline [4, s. 309]. Sometimes these are special financial courts, and during the discussion on improving the model of liability for violation of the discipline of public Finance in Poland there is a wish to form a financial justice (to transform the commissions into financial courts).

Although the term "public Finance discipline" is often used in Polish law, there is no legal definition of it. The legislator focuses only on liability for violation of the discipline of public Finance, which is the subject of a separate law [5]. Violation of the discipline of public Finance, we believe, is the Commission in this area of an illegal act by a certain entity, entailing the onset of legal responsibility. For example, it is not sufficient to establish that a particular entity (e.g. Voight) committed unanticipated budget of the municipality - rural districts – expenditure of funds (action in the field of discipline of public Finance). If the size of the spent budgetary funds not exceeding a specified low amount (3899,78 PLN), the act does not constitute breach of discipline of public finances. Therefore, to determine the responsibility for violation of the discipline of public Finance, the essential is a set of provisions of the law (and possibly other laws), which affects the allocation of doctrinal signs of violation of the discipline of public Finance.

Responsibility for violation of the discipline of public Finance shall be subject to: persons who are members of the body executing the budget or financial plan of the unit of the public Finance sector (hereinafter: SPF) (including voit, mayor, President of the city) or the governing body to which public funds are transferred for use or disposal; heads of SPF units, employees of SPF, who are entrusted with the performance of certain duties by a separate law or on its basis; entities outside the SPF, which are entrusted for use or disposal of public funds. The rules on liability also apply to certain persons in case of violation of discipline in the field of state (public) orders, as well as the use of funds received from the EU or other States.

From a substantive point of view, the above law defines the types of acts to violate the discipline of public Finance. This is a very broad list (which includes 18 articles of the law), which is numerus clausus, and means that the acts not listed in it do not violate the discipline of public Finance. Changes in this list are made on the basis of the law, the last significant changes it has undergone in the course of the so-called "big novelization" of August 19, 2011. This implies the need to verify each time the actual situation with the current legal norm (that is, to make a previously specified act of sub-sum).

Acts that violate the discipline of public Finance are doctrinally divided into several types [4, ss. 87-95; 6, s. 79; 7, s. 435]. We believe that the most close to the content of the law and at the same time reflecting the diversity of the discipline of public finances is the classification proposed by M. Wynajem. In his opinion, violations of the discipline of public Finance include actions related to the collection of public funds, changes in the budget and financial plan, the expenditure of public funds, the adoption and execution of budget obligations, the duties of inventory, preparation of budget statements, placement of state orders, licensing of construction works and services, management control and internal audit [8, p. 336-337]. This list should be supplemented by the non-implementation or inadequate implementation of preliminary controls.

Articles 19-30 of the above-mentioned Law of 17 December 2004 define the rules of liability for violation of the discipline of public Finance. In the Polish doctrine of financial law it is believed that this is an administrative responsibility, with elements of criminal liability (due to the factor of guilt). Based on the criteria laid down in the law, it can be recognized that the most important principles of liability for violation of the discipline of public Finance include the following:

- non-application of the provisions of the law (with one exception) to the determination, establishment, collection or payment of customs duties and arrears on taxes and fees specified in the Tax order, which constitute the budget revenues of the state or municipality, including interest for delay, as well as to the provision of benefits and exemptions for such arrears (art.);
- responsibility is borne by the person who committed the act violating the discipline of public Finance and described in the law in force at the time of its Commission (there is no violation without a clear indication of it in the law);
- responsibility is borne by the person who can be charged at the time of the violation, as well as the person who gave the order to commit such an act. A person who, due to a mental illness or other disorder of mental functions, could not understand the meaning of the act or control his / her behavior, which, however, does not apply to cases of entering himself / herself into a drunken state or receiving drug intoxication as a result of his / her own actions, is not considered a violator;
- if the provisions of the law have changed since the Commission of the act, a more lenient law is applied to the offender;
- responsibility for violation of discipline of public Finance is interconnected with other types of responsibility. In the situation when criminal, financial or administrative proceedings are carried out in respect of the same act, proceedings on violation of the discipline of public finances are suspended. It is terminated if the offender is convicted of a crime, financial crime, administrative or financial misdemeanour, which is simultaneously a violation of the discipline of public Finance;

- an act or omission whose financial consequences do not exceed the minimum amount is not a violation of the discipline of public Finance. This amount is the average monthly salary in the national economy for the previous year, announced by the Chairman of the Main statistical office (for 2015 this amount was 2899.78 PLN, equivalent to 700 euros);

– not incur liability for a breach of discipline of public finances, in the case of acts undertaken for the sole purpose to limit the consequences of unforeseen life circumstances;

- there is no liability for violation of the discipline of public Finance, the degree of danger to public Finance is negligible. When assessing the degree of danger of such a violation, the severity of the violated obligations, the method and circumstances of their violation, as well as the consequences of the violation are taken into account. If this is the consequences of a financial nature – is a substantial amount of damage; if the violation does not entail financial consequences, the significance of the violated obligations as well as the manner and conditions of the violation are taken into account, for example, violation of the principle of fair competition or the principle of equality;

- the person who has received the corresponding order from the chief and has declared the objection concerning legality of the last is not responsible for violation of discipline of public Finance. In this case, it is the responsibility of the person who signed the order or gave him any other way.

Punishments for violation of discipline of public Finance are:

- warning;
- reprimand;
- monetary fine;
- prohibition to fill positions related to the disposal of funds.

A warning is issued if the degree of harm in violation of the discipline of public Finance is negligible. Reprimand is used when the degree of danger of the act to public finances is significant; its application causes regulated by certain rules consequences arising from a negative or condemning assessment of the act. Monetary fines are assigned in the amount from 0.25 to 3 sizes of monthly wages of the offender; in case of impossibility to apply this formula: in the amount of from 0.25 to 5 installed average wages. Such punishment may be imposed in the event of a breach of discipline, if the degree of its danger to public finances is significant. It is mandatory to appoint it in the presence of one of the circumstances specified in article 34a of the above law (for example, if budget commitments are made or budget expenditures are made in a significant amount in the absence of appropriate authority or in excess of authority). Punishment in the form of a ban to hold positions related to the order of funds shall be imposed for a period of 1 to 5 years. Punishment is imposed in case of gross violation of discipline of public Finance, can also be imposed in case of relapse. The prohibition consists in the prohibition to fill the positions provided by the law (for example, chief, Deputy chief, chief accountant, Treasurer). However, passive suffrage is not limited to the right to be elected to the positions of Voight, mayor and President of the city.

2.4. Other acts of application of financial law.

Acts of financial supervision - a special form of intervention legally defined bodies in the activities of controlled entities. They are often regulated in conjunction with financial control institutions, which requires special attention in distinguishing between these forms of administration. An example of this is the supervision and control over the financial activities of municipalities carried out by regional clearing houses. The rules of control and supervision are regulated by the Law of October 7, 1992 on regional clearing houses . The main powers of supervision are linked to the provisions of part C. 1 and 2 article 171 of the Constitution of the Republic of Poland. providing that the activities of local governments are subject to supervision in terms of its legality; Supervisory bodies over the activities of municipalities are the Chairman of the Council of Ministers and magistrates, and in the field of financial Affairs - the regional chambers of accounts (RRP). It follows from the

constitutional provisions that both the scope of control powers and the legal forms of supervision should be based on the law. Nor are provided By the law on the RRP in articles 11 and 12.

In the field of supervision, the subject competence of the RRP includes resolutions and orders adopted by the bodies of municipalities on the following issues::

- procedures for budget approval and changes;

- execution of the budget and its changes;

- adoption of obligations affecting the amount of public debt of municipalities, as well as the provision of loans;

- principles of granting and amount of subsidies from the local budget;

- taxes and local fees, which are subject to the provisions of the Tax Ordinance;

- exemption from liability (absolutorium);

- long-term financial forecast and its changes.

The main measure of the Supervisory response of the RRP is to establish the invalidity of the decision or order. In the event of a minor violation of a right in a decision or order, the Chamber shall limit itself to stating that fact. Among the special measures of Supervisory response can be listed:

- determination by the chamber before the end of February of the budget year of parameters of the local budget, in case of its non-acceptance till January 31 of the same year;

- determination by the chamber of the parameters of the local budget in case of non-compliance with the rules provided by Art. 242-244 of the Law of August 27, 2009 on public Finance;

- in case of failure to eliminate illegal provisions in the act on the budget, previously invalidated in whole or in part, the chamber Board independently determines in whole or in part the parameters of the local budget;

– on the basis of the law on public Finance, in the case of non-development by the municipality of the program of correction of the budget or the absence of a positive conclusion of the RRP for this program-the parameters of the local budget is determined by the chamber.

Based on the basic laws on local self-government, municipalities are obliged to submit to the Supervisory authorities the adopted resolutions and orders [10]. Supervisory bodies have the right to take appropriate measures of Supervisory response within 30 days from the date of receipt of the acts subject to supervision. The Executive body of the municipality may file a complaint against the act of supervision in the administrative court within 30 days from the date of its receipt in due course. The administrative court within 30 days from the date of receipt of the complaint is obliged to appoint a court session. In case of failure to comply with the deadline for the issuance of the act of supervision, the chamber has the right to file a complaint to the administrative court on the act of the municipality subject to supervision.

The debatable issue in the sphere of application of financial law is the General and individual acts of interpretation of tax law. 14a of The tax order the Minister of Finance has the competence to make so-called "General acts of interpretation" on his own initiative because on request, as well as to give General explanations of the provisions of tax law regarding the application of these rules (the so-called "tax explanations") [11; 12]. The essence of both institutions (General interpretations and tax explanations) is to ensure the uniformity of application of the provisions of tax law by the tax authorities. Thus, despite the fact that in the understanding of most representatives of science, they are not formally acts of the application of tax law (including financial law) [13, p. 171-174; 14, s. 45], their essential connection with the application process is obvious.

The doctrine reflects a slightly different approach to individual acts of interpretation of tax law. Some authors believe that these acts are close to acts of application of law, in other words, are acts of quasi-law enforcement [13, s. 185]. On the basis of article 14b and article 14-j of the Tax Ordinance, the Director of the national Treasury administration (KAS) or other persons in accordance with their competence: the mayor, the mayor (President of town), the mayor or the Marshal of the Voivodeship, - formulate individual case interpretation of the provisions of tax law (so-called "individual interpretation"). Individual interpretations relate primarily to the assessment of the position of the applicant and the possible indication of its correctness or viciousness [15, p. 67] . As a rule, a person acting in accordance with the interpretation received cannot therefore have any negative legal consequences.

In cases of public charges to which the provisions of the Tax Order (within the General and individual tax interpretations) do not apply, individual acts of interpretation of the rules on business fees may be applied. The basis for their removal is part 1 of the Art. 10 of the law on freedom of economic activity , on the basis of which an entrepreneur may submit to the competent public administration authority an application for a written interpretation regarding the scope and method of application of the provisions that provide for the obligation of the entrepreneur to pay a public fee, as well as social or medical contributions. A statement of interpretation may be submitted by the entrepreneur or his / her representative to the first instance body authorized to implement the monetary obligation (e.g. ZUS – social insurance Office - in cases of interpretation of the rules establishing social insurance and health insurance contributions; Marshal of the Voivodeship – in cases of interpretation of the legal norms on payment for processing of waste into a new product (opłata produktowa), etc.).

2. Conclusion.

A financial and legal act is an act issued on the basis of the current rules of financial law by the authorized bodies, establishing or determining – in respect of an individual addressee – the rights and (or) obligations in a particular case in the field of public Finance, or preparing their establishment or determination.

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INFORMATION ABOUT AUTHOR

Eugeniusz Ruskowski – Doctor of Law, Prof. zw.,
Head, Department of Public Finances and Financial Law
University of Bialystok
1, Mickiewicza ul., Białystok, 15-213, Poland
e-mail: eugen@list.pl
ORCID: 0000-0002-6571-4480

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