SUPREME COURT
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ACA EUROPE

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Administrative Sanctions in European law

Ljubljana, 23–24 March 2017

Answers to questionnaire: Hungary

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Questionnaire

The topic that was selected for this Seminar, "***Administrative Sanctions in European Law***", aims to address both theoretical and practical questions regarding the application of administrative sanctions at the national level, by administrative authorities and judges.

As the superposition of three different legal orders (ECHR, EU and national legal orders) may lead to potential tensions, and poses numerous questions, whenever national administrative authorities and courts deal with administrative sanctions, the Seminar will also focus on how, at the European level, the Courts have addressed the concern.

We will discuss the applicability of the European Convention of Human Rights (ECHR) and case law developed by the European Court of Human Rights (ECtHR) on Art. 6, as well as its definition of a "criminal charge". We will also analyze the jurisprudence of the Court of Justice of the European Union (CJEU), which also addresses the question as to whether certain administrative sanctions can be considered "criminal charges".

By definition, the ECtHR stipulates that criminal charges must satisfy certain criteria, irrespective of how they are classified at the national level: the latter is merely a starting point. Said criteria are outlined in the case *Engel and Others v. the Netherlands*, §§ 82-83:

1. *Classification in domestic law:*

If domestic law classifies an offence as "criminal", then this will be decisive. Otherwise, the Court will look behind the national classification and examine the substantive reality of the procedure in question;

2. *Nature of the offence:*

In evaluating the second criteria, which is considered to be more important (*Jussila v. Finland* [GC], § 38), the following factors can be taken into consideration:

- whether the legal rule in question is directed solely at a specific group or is of a generally binding character (*Bendenoun v. France*, § 47);

- whether the proceedings are instituted by a public body with statutory powers of enforcement (*Benham v. the United Kingdom*, § 56);
- whether the legal rule has a punitive or deterrent purpose (*Öztürk v. Germany*, § 53; *Bendenoun v. France*, § 47);
- whether the imposition of any penalty is dependent upon a finding of guilt (*Benham v. the United Kingdom*, § 56);
- how comparable procedures are classified in other Council of Europe member States (*Öztürk v. Germany*, § 53).

3. *Severity of the penalty that the person concerned risks incurring:*

The third criterion is determined by reference to the maximum potential penalty for which the relevant law provides (*Campbell and Fell v. the United Kingdom*, § 72; *Demicoli v. Malta*, § 34).

The second and third criteria for the applicability of Article 6 that are laid down in the case *Engel and Others v. the Netherlands* are alternative and not necessarily cumulative. It suffices that the offence in question can by its nature be regarded as "criminal" from the point of view of the ECHR, or that its sanction belongs in general to the "criminal" sphere - by its nature and degree of severity (*Lutz v. Germany*, § 55; *Öztürk v. Germany*, § 54). The fact that an offence is not punishable by imprisonment however is not in itself decisive, since the relative lack of seriousness of the penalty at stake cannot divest an offence of its inherently criminal character (ibid., § 53; *Nicoleta Gheorghe v. Romania*, § 26).

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The questionnaire we are asking you to complete, at a maximum of 12 pages, should reflect the main issues at stake at the national level, both from a practical and a judicial point of view. The questions were formulated in such a way as to allow you to address the issues and take into account the case law of the ECtHR and the CJEU. However, should there be relevant points that have not been captured by the questionnaire, please feel free to add a comment in **Part IV**.

If you have any questions regarding the questionnaire, please contact Mr. Rajko Knez at the following address: *rajko.knez@um.si*.

The completed questionnaire should be sent by **Monday, February 6th, 2017** to the same e-mail address.

Part I – The notion of administrative sanctions

I-Q1 – *Are the definitions of administrative sanctions (sanctions for minor offenses) and criminal sanctions precisely regulated at the national level? How is the notion of "administrative sanctions" defined in your administrative practice and case law? How does it differ from the notion of "criminal sanctions"? Is the principle of legality (i.e. the necessity of a legislative act, "no crime without law", etc.) of the incrimination applicable to administrative sanctions?*

Ancillary questions:

With respect to the above question, does your administrative practice and jurisprudence follow ECHR case law (Cases Engel, 5101/71, 5354/72, 5102/71, 5370/72, [1976] ECHR 3, 5100/71, (1976), Jussila, 73053/01, Grande Stevens, 18640/10, 18647/19, 18663/10 in 18698/10)? Do you also apply the approach of the CJEU (for instance in the case Schindler Holding, T-138/07)? Are the ECtHR and CJEU jurisprudence (including EU Charter on Fundamental Rights) applied at the same time?

Is there any statutory-based solution given in this respect by the national legislator or by the administrative authorities?

Do you have examples in practice or case law where the jurisprudence of the EU law is found to be compatible with jurisprudence of the ECtHR (for instance, cases C-210/00 Käserei Champignon Hofmeister GmbH or C-489/10, Łukasz Marcin Bonda). Do the teachings of the CJEU, and in particular its definition of administrative and criminal sanctions, fit within the framework of ECtHR decisions?

How is the EU law requirement -according to which sanctions need to have a deterrent effect- applicable?

What distinction does your national legal system make between administrative sanctions and other administrative measures to restore compliance with the law? (e.g.: the closure of an exploitation of a waste management facility that was operating without a license v. an administrative fine?)

There is no general definition of administrative sanctions in Hungarian administrative law. There are two types of administrative sanctions: sanctions for misdemeanors (or minor offences) and sectoral sanctions. Both types are regulated in statutory laws. Misdemeanors are regulated in Act II of 2012 on Misdemeanors (definition, substantial and procedural rules are given). Sectoral sanctions are regulated in various sectoral statutory laws (Acts of Parliament, Government Decrees, Ministerial Decrees, Local Government Decrees etc.), but no general definition of sectoral sanctions is stipulated.

Criminal law is founded on two basic categories, criminal offence, and criminal sanctions which cannot be parted from each other. The Hungarian criminal law rests on the dichotomy of criminal offences by the gravity into felonies (more serious offences) and misdemeanours and on the dualism of criminal sanctions that can be either penalties or preventive measures. Criminal offences are differentiated from regulatory offences, the gravity which doesn't reach criminal level. This type of unlawful conduct constitutes a category of administrative law.

The administrative sanction is the coercive measure or penalty imposed by administrative bodies (regulators) on anti-administrative behaviour, for example any behaviour disturbing the public order or the public administration.

Substantive sanction is the penalty imposed on the violation of substantive law, through decision on the merit. Other administrative sanctions shall be marked off, as the sanctioning instruments of constraint such as enforcing measures applied during the procedure, on-the-spot disciplinary measures, or fines for delay in the procedure.

Generally speaking, administrative sanctions are individual authoritative acts of administrative bodies. They are imposed as consequences of infringements, cause some disadvantage to the offender, and enforced by administrative bodies or courts.

The literature of the discipline classifies administrative sanctions into two groups: enforcement measures and penalties. Enforcement measures targeting for the restoration of a certain legal state have the aim to realise rights and obligations in the future, with a preventive purpose. Contrary to that, penalty is a sanction imposed for an unlawful act committed in the past aiming for a proportionate repression. Among these sanctions there are action-type sanctions of mixed character which show the features of both types of enforcement. Administrative sanctions show a colourful picture in written law according to their aim, sort and level.

I-Q2 - *Are procedural requirements regarding administrative sanctions equally or similarly regulated in the case of criminal sanctions (how far-reaching is the principle of legality, what is the role of the principle of proportionality)?*

Ancillary questions:

With respect to the above question, does your national law offer any regulatory solutions and what is the role of direct applicability of the jurisprudence of the ECtHR and the CJEU?

What are the administrative procedural requirements that are the closest to the ones applicable to criminal sanctions (e.g.: mandatory representation or assistance by an attorney (Cf. "Salduz-doctrine" Salduz v. Turkey, 36391/02), legal help, procedural time limits (including "reasonable time"), the possibility of requiring an oral hearing, burden of proof, competence of courts, legal remedies, application of the principles of reasonability, equality, presumption of innocence, prescription/prohibition of retroactivity, the principle of « retroactivity in mitius », the prohibition of self-incrimination, the principle of the right to appeal, etc.)?

The law regulating the general rules of administrative proceedings.
The new Act on proceedings passed in 2004 formed and forms an integral part of the codification process that tends to provide an efficient and citizen-friendly public administration by developing the structure of the state, a more appropriate operation of state authorities and providing citizens' rights to a greater extent.

Sectoral administrative sanctions are under the scope of Act CXL of 2004 on the general Rules of Administrative Procedures and Services (Administrative Procedural Code, Ket.), therefore all general procedural requirements stipulated by Ket. apply to sanction procedures.
Several principles also defined in the Fundamental Law of Hungary shall prevail in administrative proceedings. According to this the Fundamental Law lists many of these principles which are not repeated in Ket. The principles of administrative proceedings are primarily the administrative authority and the customer– some of them are other persons participating in the proceeding – for whom the conduct to be followed and other rules are drafted in the course of the proceeding.

These provisions cover the topics mentioned in the question: they are regulated as major principles and clients' rights, e. g. procedural time limits, the possibility of requiring an oral hearing, right to appeal and other remedies, including judicial review. However, there is no mandatory representation or assistance by an attorney, because representation is only optional for the offender.
In order for the authority to make a decision on a sound basis and facts, it has to make sure whether the facts included in the customer's request and the evidence revealed are real.

The aim of evidence is that the authority states what has happened in the case as closely to reality as possible – it shall give the appropriate statutory definition of the statement of the facts – and make a lawful decision based on clarified facts.
According to the principle of ex officio the authority shall ascertain the relevant facts of the case in the decision-making process. If the information available is insufficient, the authority shall initiate an evidence procedure. In the proceedings of the authorities such evidence shall be admissible if it is suitable to facilitate the ascertainment of the relevant facts of the case. Ket. also lists the most frequent evidence as examples. According to this, evidence shall, in particular, mean the customer's statement, a document, a testimony, a memorandum of inspection, expert opinion, a memorandum drawn up in a regulatory inspection and physical evidence. The authority shall select the evidence deemed admissible at its own discretion. The authority may be required by law to base its resolution solely on certain specific means of evidence, furthermore, legislation may prescribe the use of certain specific means of evidence as mandatory, and that certain specific bodies have to be consulted beforehand. The authority shall assess each piece of evidence separately and in its totality, and establish the facts according to its conviction based on this assessment.

Regarding burden of proof, the administrative authority has wide discretional power to define relevance of proofs.

In addition, Ket. Section 94/A. states that in case of imposing an administrative fine, the authority shall decide having regard to all applicable circumstances on levying and on the amount of the penalty. Accordingly, the authority shall - unless otherwise provided for by law - weigh:

a) the damage resulting from the infringement, including the costs of measures taken for the prevention or mitigation, and for the clean up of such damage, and the benefits earned as a result of the infringement;
b) whether the damage resulting from the infringement can be reversed;
c) the amount of people affected by the infringement;

d) the duration of the infringement;
e) the frequency of the infringement, in the case of repeat offenders;
f) the offender's cooperation in the ensuing proceedings; and
g) the economic weight of the infringer.

In the field of misdemeanors, Misdemeanors Act serves as a Code for misdemeanor procedures and therefore defines the procedural principles and guarantees of these procedures. However, it does not stipulate the principle of fair trial, but regulates several guarantees, e. g. time limits and right to remedies, and presumption of innocence. On the other hands, the Act does not make representation or assistance by an attorney mandatory, it is only a possibility for the offender. Oral hearing is nor compulsory.

Regarding burden of proof, the misdemeanor authority or the court has wide discretional power to define relevance of proofs.

I-Q3 – *Have unwanted consequences ever accrued from the decision of the ECtHR (e.g.: Grande Stevens, No. 18640/10, 18647/19, 18663/10 in 18698/10) (such as decreasing the effectiveness of separated regimes – administrative and criminal- because the administrative sanction, which has the characteristic of criminal sanction, prevents criminal procedure; in line with the principle ne bis in idem)?*

Ancillary questions:

How is the principle ne bis in idem understood in your legal system, taking into account CJEU interpretation (case C-617/10, Fransson) and ECtHR interpretation of Art. 4 of Protocol No. 7 (ECHR (GC) Zolotoukhine/Russia, No. 14939/03)?

Are national courts faced with cases where individuals, subject of administrative sanctions, would like to exclude criminal sanctions and criminal procedures (including in other EU Member states) in order to avoid dual trial? Does your system accept double penalty for non-nationals? (e.g.: criminal punishment for a criminal offense and administrative expulsion at the end of (or during) the sentence (accompanied with a residence ban)?

Is it possible, in your legal system, that an individual be sanctioned with both - the administrative and the criminal sanction, and if so, does the criminal sanction take into account the administrative one (i.e. is the administrative sanction considered a part of the criminal sanction)? What role does the EU Charter of Fundamental Rights and the ECHR principle ne bis in idem *play in this respect?*

The Hungarian system accepts double penalty, it is possible that an individual be sanctioned with both sanction. Although Hungarian judges are obliged to apply not only national law, but the European Convention on Human Rights, the case-law of the European Court of Human Rights and European Union law as well, nonetheless for example tax fraud is often punished by both administrative penalties and criminal sanctions. Although this system is now being questioned by the European Court of Human Rights (ECHR) and the CJEU, the Hungarian courts don't take into account. Hungary is thus compelled to bring its legislations concerning tax fraud into harmony with the European Convention on Human Rights and the Charter of the Fundamental Rights of the European Union for VAT fraud.

Part II – The system of authorities competent to impose administrative sanctions

II-Q1 *– Is your legal system "unified" or "dual" when it comes to authorities competent to impose administrative sanctions? More specifically: Are the administrative authorities that are competent to adopt administrative sanctions only responsible for their enforcement? Or is it a system where administrative bodies are competent for both the enforcement and the regulation of certain areas of law? (e.g.: in areas like competition or financial transactions, are the authorities that are competent for the regulation of these areas also competent to adopt administrative sanctions in case the rules are not respected?) Or is it a third, mixed, system in which both solutions coexist? And finally, at enforcement level, can the official who discovers an infringement impose an administrative sanction?*

The Hungarian system is a mixed one. Regulatory powers are basically conferred to the Parliament who adopts acts and the Government who adopts decrees. Decrees can be also adopted by Members of the Government (Prime Minister and Ministers), the National Bank, some independent regulatory bodies, and local governments. These bodies – except for the Parliament – theoretically can regulate end enforce administrative sanctions as well. As a matter of fact, enforcement powers regarding sanctions are entitled to territorial bodies e. g. district offices and local governments but not central agencies.

An official who discovers infringement can impose an administrative sanction. In the field of sectoral sanctions, due to the Ket., if permitted by an act or municipal decree, in the case of infringements where an administrative penalty may be fined, the authority can impose an instant fine if the offender acknowledges the infringement in full to the officer.

Regarding misdemeanors only some authorities (an officer of the authority) can impose instant fine, e. g. police officer. The Misdemeanor Act defines the conditions of the instant fine e. g. if the offender acknowledges the infringement.

II-Q2 *– Does your legal system allow for only one, or several levels of jurisdiction in procedures regarding administrative sanctions? What role is given to the national courts (and to the highest administrative court if it is competent to decide issues of fact and not only issues of law, like a court of cassation) when deciding on*

administrative sanctions? Do courts only have a supervisory role (i.e. a judicial review, a competence to annul) or are they also competent to reform or adopt (alone) the administrative sanctions?

Regarding sectoral sanctions courts (including Curia as highest body of Hungarian court system) play as forums for remedy: their function is judicial review of administrative decisions. They can decide only issues of law and they usually have only power of cassation. They have power of reformation if an Act of Parliament provides it to them.

According to Section 7 Article XXVIII of the Fundamental Law 'Every person shall have the right to seek legal remedy against any court, administrative or other official decision which violates his or her rights or lawful interests.' According to Ket. stipulates on the spheres of legal remedies in administrative proceedings. Legal remedies in connection with administrative decisions are: redress procedures upon request and ex officio review procedures of decisions.
Redress procedures available upon request are:
– appellate procedures;
– judicial review;
– reopening procedure;
– proceedings opened based on a resolution of the Constitutional Court.

Administrative decisions are reviewed ex officio:
– by the authority that has adopted the decision of its own motion;
– within the framework of oversight proceedings;
– upon prosecutor's intervention.
Resolutions of the authorities may be appealed independently. A ruling of an authority may be appealed independently if permitted by law; in other cases the right to pursue remedies against rulings may be exercised within the framework of remedies available against resolutions, or failing this against rulings for the termination of the proceedings.

Legal remedies upon request

The most important rules of appeal can be summarised as follows:

– The customer may appeal any first instance resolution. The right to appeal is not bound to specific titles; an appeal may be made for any reason that the person affected deems unjust. Submission of an appeal may be rendered subject to the obligation to state the reasons by an act. Moreover, an act may also provide that the appeal may only be submitted with respect to the decision contested, that the appeal must be factually related, and it must be based on any infringement or injury directly resulting from the decision,
– the resolution can only be challenged by an appeal against the resolution, or in the lack of this, the resolution on terminating the procedure, except when the resolution can be challenged by independent appeal (e.g. in cases of requests refused without examination, termination of the proceeding, or resolutions on suspending the proceeding),
– unless otherwise prescribed by an act or government decree, an appeal shall be lodged within fifteen days following the date of the delivery of the decision,
– the right conferred in the decision appealed may not be exercised and the appeal shall have a suspensory effect in terms of the implementation of the decision, except when the decision is enforceable under this Act notwithstanding any appeal, or if the authority has declared the decision enforceable, abolishing the suspensory effect of the appeal,
– the authority of first instance shall forward the appeal to the authority of appellate jurisdiction within eight days following the time limit for appeal – or within fifteen days where a special authority is required to participate – unless the authority has withdrawn or supplemented the appealed decision or made the requested amendment or correction, or if it dismisses the appeal without any examination as to its substance, and also if the appeal is withdrawn before being forwarded,
– the authority of the second instance shall either sustain, reverse, or annul the decision.
In the cases defined by law the authority of the second instance may not establish an obligation more severe than what has been adopted in the first instance decision under the right of deliberation. The authority of the second instance shall have powers, regardless of whether it is stated in the appeal or not, to prescribe a new deadline in the appellate procedure where it is deemed justified on account of the appellate procedure.

The detailed rules of judicial review are not drafted in Ket. but in the Code of Civil Procedure (Act III of 1952) and in the Act on Non-contentious Administrative Proceedings

In the field of misdemeanors courts play a double role. (1) Courts carry out sanctional powers on first instance regarding several misdemeanors defined in the Misdemeanor Act. Imprisonment can be imposed only by court, so imprisonment can be imposed only in the case of these misdemeanors. (2) On the other hand, courts make decisions on pleas submitted against decisions of misdemeanor authorities.

II-Q3 *– Is the court's judicial review of administrative sanctions based solely on the legality of the decision, or also on factual questions/circumstances? If there is certain discretion given to the administrative authorities? Can the courts review the discretion exercised by the administrative authorities too? (See CJEU C-510/11 P, Kone and others v. Commission, as well as Menarini, No. 43509/08 of the ECtHR).*

The principle of being subject to claim prevails in the trial, i.e. the extent of the judicial review is limited by the claim submitted by the applicant. The court – except for the violation of procedural rules not affecting the merits of the case – terminates the unlawful administrative resolution, and requires the administrative authority having made the resolution to initiate a new proceeding if necessary, and may change some administrative resolutions that are taxatively defined in the Civil Code of Procedure.

The competence of courts is based on the supervision of lawfulness. This means that the court can annul an unlawful decision in any case, but in certain categories of matters (in my estimation more than 50% of all cases, e.g. tax cases, public procurement, land registry cases) a court can also alter the contested administrative decision.

The parties must give the factual and legal grounds upon which a decision may be held unlawful. The court does not usually conduct any inquiry on its own initiative. The court changes discretionary administrative decisions when they can be declared unlawful. The higher court can change the lower instance judgement, or can modify the reasoning, as well.

The courts' judicial review is based on the legality of the decision. In case of the administrative authority's discretional power, an administrative decision shall be construed lawful by the court if the administrative body has appropriately ascertained the relevant facts of the case, complied with the relevant rules of procedure, the points of discretion can be identified, and the justification of the decision demonstrates causal relations as to the weighing of evidence. In this case the court cannot repeal the decision.

Part III – Specific questions

III-Q1 *- What kind of liability is provided by your national legal system for administrative sanctions: fault-based liability or strict liability? Does your legal system require a fault of the individual as a condition for the administrative sanction (See: CJEU C-210/00 Käserei Champignon Hofmeister GmbH)?*

Administrative sanction implies the liability of the subject of sanction for the violation of law. There are two reasons why liability criteria of administrative sanctions have become a controversial issue in Hungarian law. First, the prevailing attitude in sanctions is that administrative sanction is a so-called strict liability sanction which can be imposed regardless liability investigation, based on the fact of the violation, in order to constrain regulatory compliance. Secondly, the legislative approach, which puts the liability (positive and negative) criteria beyond the regulation, has flourished in the legislation of administrative sanctions even without the theoretical critics.

Hungarian regulation mostly sets incoherent and variant subjective liability criteria:

• positive liability criteria: accountability and negligence formulas
• negative liability criteria (causes for exemption).

According to the widespread practice of authorities the administrative fines and measures are strict liability sanctions. (Moreover, objective nature of the sanction is sometimes unlawfully interpreted by domestic practice of authorities. E.g. construction fine can also be imposed on persons who are not accountable for the violation of law, not only on the builder, but on the future, bona fide buyer of the real estate. The main principle of strict liability concept is that subjective liability (culpability, negligence) is rarely and inconsequently condition of the administrative sanctioning of a natural person in positive law.

a) Objective liability sanction is when the fact of offence is incontestably established: administrative fines and penalties are applied e.g. in the following areas: person and property protection, fire safety, health protection, construction, heritage protection, fish farming and fish protection.

b) Strict liability sanction: e.g. the regulation of wastewater fine contains special causes excluding unlawfulness so it cannot be considered purely objective. Sewage emission fine contains force majeure causes for exemption (excluding liability).

c) Subjective liability sanction: accountability is the condition of liability in the following administrative fines: animal health, agricultural land and soil protection and forest management. Due diligence liability mechanism is applied exceptionally for tax penalty and capital market supervision fine.

III-Q2 *– Is it the nature of the administrative act relevant for its judicial review? Is it possible that a judicial review is impeded by the nature of the decision leading to the administrative sanction (when, for example, the act is not considered an administrative act)?*

Judicial review is a general remedy in the case of an individual authoritative administrative act under the scope of Ket. These acts are adopted by administrative authorities. There are sanctions which are adopted not by administrative bodies and are not under the scope of Ket., e. g. an university dismisses a student. Regarding these decisions judicial review is allowed if a peculiar statute (e. g. Act of Parliament or a Government Decree) stipulates it.

Under the scope of Ket. an authority can adopt administrative ruling which is a non-substantive decision. Rulings can contain sanction, e. g. procedural fine which can be a subject of judicial review. But other sanctions cannot be appealed at the court e. g. when a person who disturbs the order of the hearing may be called to order by the chair of the hearing, and may be expelled.

III-Q3 *- What kind of non-financial (non-pecuniary) sanctions are known in your legal system (for instance, the prohibition to pursue one's business or certain professional activities, the deprivation of the ownership,*

the duty perform certain works, etc.)? More specifically, in matters of urban planning, can an order to restore the site to its original state lead to the demolition of a construction? (case of ECtHR Hamer/Belgium, No. 21861/03).

There are several types on non-financial sanctions in Hungarian administrative law e. g.:

- Prohibition to exercise a right, e. g. to run a business, exercise a professional activity. E. g. when a professional chamber dismisses a member, he or she cannot carry out his or her professional in the field of regulated profession e. g. construction planners, attorney, physicians. A license can be withdrawn, too (e. g. driving license as a consequence of infringement of regulation on driving a vehicle).
- Personal freedom can be limited e. g. imprisonment in case of some misdemeanors.
- Duty to perform certain works can be ordered, e. g. demolition of a construction can be ordered if the building is dangerous to human life.
- There are mild sanctions, e. g. warning in case of misdemeanors when the infringement is not very serious and the aim of the sanction can be fulfilled this way.
- Regarding chambers and other public assemblies the governmental agency (e. g. minister) which performs legal supervision over it can adopt sanctions on the chamber e. g. appointing a commissioner in order to maintain or restore legal order at the organization.
- Administrative sanctions can encroach upon ownership rights as well e. g. confiscation of an asset which served as an instrument of an infringement can be a sanction regarding misdemeanors.

Ancillary questions:

When provided, do non-financial sanctions have to be in causal relation to the (administrative) offence?

Can the sanctions, which are administrative sanctions in their nature, be used in the private law sphere (e.g.: a person not respecting the duty of the alimony: could he/she be sanctioned with the deprivation of his/her car)?

In your legal system, can administrative sanctions encroach upon ownership rights (Art. 1 of the first protocol ECHR – for instance, freezing of assets, substantive financial penalties, etc.)?

***III-Q4** – Are there cases in your national system where the organization of the authorities competent to adopt administrative sanctions is based on EU law requirements? This question could, for instance, refer to the leniency program that exists in EU competition law, which allows for the severity of the administrative sanction to depend on the party's ability and willingness to produce evidence, and requires a system where the same authority that hears the case also adopts the sanctions.*

The Hungarian Competition Authority has a leniency policy. The proceeding competition council shall grant immunity from fines or reduce the fine imposed on undertakings that disclose to the Authority, in a manner specified by the Act on Competition, agreements or concerted practices between competitors which infringe Article 11 of the Act on Competition or Article 81 of the EC Treaty and which are aimed directly or indirectly at fixing purchase or selling prices, sharing of markets – including bid-rigging –, or at the allocation of production or sales quotas (hereinafter: cartel or infringement).

***III-Q5** – Have your national administrative authorities, or even courts, been faced with the request to apply the jurisprudence of the CJEU and to reopen/change already final administrative decisions on administrative sanctions? Do national rules of administrative procedure (or even rules on court reviews) allow such re-openings of cases?*

We have that kind of rules in the tax proceeding: Section 124/C
(1) If the Constitutional Court, the Curia or the Court of Justice of the European Union finds a legislation prescribing any tax liability unconstitutional, a municipal decree unlawful, or infringing upon any binding legislation of the European Union with retroactive effect to the time of promulgation of the decision and, in consequence, the taxpayer becomes eligible for a tax refund, the tax authority of the first instance shall pay the refund upon the taxpayers request in accordance

with the provisions of this Section, subject to the exceptions set out in the decision.

III-Q6 *– Is it possible for the administrative authorities and offenders to negotiate on an administrative sanction (in order to reach a deal), similar to "plea bargaining" in certain criminal procedures? If so, is this a general rule or is it only possible in specific cases? In case a deal is reached, what is its status when a court reviews the case? What is the position and role of the court in such cases?*

Due to the Ket., if permitted by peculiar legal regulation, the authority of the first instance may enter into an administrative agreement with the client (in case of an infringement: offender), in lieu of passing a resolution, with a view to a settlement in cases within its competence that is best suitable for the public and for the client alike. Therefore administrative agreement is a possibility regarding every sectoral administrative sanction under the scope of the Ket. but not in case of misdemeanors. Such sectoral provisions have been passed in the sector of environmental protection, consumer protection etc. In these cases the authority and the offender can make an agreement on instalment or other payment facilities regarding a fine or the offender can undertake the implementation of a public investment.

Part IV – Additional information (if needed)

In this section, you can add any information on the topic of administrative sanctions in your national legal system that you deem appropriate and that hasn't already been covered in this questionnaire.