



**Seminar organized by the Supreme Court of the Republic of Slovenia
and ACA-Europe**

Administrative Sanctions in European law

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Answers to questionnaire: Turkey



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SECTION 1

ANSWER 1: In the Turkish administrative law doctrine, administrative sanctions are defined as penalties imposed by the administration to administrative acts, relying on the authority granted by law, taking into account some principles of administrative law and criminal law, and without needing any judicial ruling. Administrative sanctions are administrative acts with penal aspects. In this sense, one of the two conspicuous features of an administrative sanction is that it is an administrative act, and the other one is that it is retributive. On the other hand, as the distinguishing feature of an administrative sanction is the will to impose a penalty, its purpose is not to impose a penalty for an unlawful act, and it is acknowledged that the coercive measures that coerce the relevant authority to implement the administrative decision cannot be characterized as administrative sanction. “Disciplinary actions are not considered within the concept of administrative sanction, as they originate from a statutory relationship, are not imposed to the general public and serve the purpose of maintaining the internal order of the administration, rather than penalizing. Since administrative sanctions have penal qualities, and in this sense, have aspects that concern the criminal law, it is clear that they are distinct from classical administrative acts in terms of their imposition by the administration and their judicial review. “In this framework, it is mandatory to comply with the principles right of defense, legality of penalties, compulsory penalties, individual criminal responsibility, and proportionality in the sphere of administrative sanctions. The principle of non bis in idem can be applied in a limited manner.

In the Turkish law, administrative sanctions are generally set forth in the Misdemeanor Law no. 5326. According to the law, a misdemeanor is defined as a misdeed for which an administrative sanction is required to be imposed. In the section titled general provisions in the Misdemeanor Law, the principles of criminal law required to be applied for administrative sanctions, which are basically administrative acts, are listed.

In the Turkish law, administrative sanctions consist of administrative fines and administrative measures, and the administrative measures are defined as the transfer of ownership to the public and other measures set forth in the relevant laws. Article 3 of the Misdemeanor Law no. 5326 contains a provision that the provisions concerning the remedy for administrative sanction decisions, and if no contrary provision exists in the other laws, the other general provisions shall be applied for all acts that require an administrative fine or the sanction of transferring ownership to the public. On the basis of these provisions, the Misdemeanor Law actually sets forth administrative measures, but consider these provisions outside the scope of its general provisions, and technically exclude their administrative sanction nature.

In Article 4 of the same Law titled “Legality”, it is stated that it can be explicitly defined in the law which acts constitute a misdemeanor, and the framework provision whose content is defined in terms of scope and conditions by the law can contain general and regulatory acts of the administration, but the type, duration and amount of the sanctions imposed for a misdemeanor can be determined only by law. Thus, absolute legality is applied

in terms of the type, duration and amount of the administrative sanctions in the Turkish law, but it is not applied when deciding which acts constitute a misdemeanor.

In the Turkish judicial rulings, it is observed that the judicial opinions regarding the judicial review of administrative sanctions are in accordance with the ECtHR opinions. Turkish judicial authorities pass judgments requiring that the assurances in Article 6 of the ECHR should be benefited in case of the administrative sanctions considered within the criminal sphere as we mentioned above by applying the criteria in the Engel decision.

On the other hand, administrative measures in the Turkish law are considered to fall within the sphere of administrative law, and are not within the scope of the assurances in Article 6 of the ECHR or of the general principles in the Misdemeanor Law.

Answer 2: The implementation of administrative sanctions and the rights held by those to whom the sanctions are imposed are described in the Misdemeanor Law no. 5326 mentioned above, and the procedural laws relating to these issues differ from classical administrative acts.

Answer 3: The ne bis in idem rule in the Turkish law is set forth in Article 15 of the Misdemeanor Law, and according to the provision in the 3rd paragraph of the same article, if an act is defined both as a misdemeanor and an offense, then a sanction can be imposed only for the offense. The provision continues as follows: However, in cases where it is not possible to impose a sanction for the offense, a sanction shall be imposed for the misdemeanor. In this framework, the Turkish law requires a trial only for the offense if the same act is defined both as a misdemeanor and an offense. This is the rule, but there are exceptions in some cases.

SECTION 2

Answer 1: In the Turkish law, the authority to impose administrative sanctions is vested in the administrative committee, authority or public officials explicitly indicated in the relevant law according to Article 22 of the Misdemeanor Law no. 5326. According to Article 23 of the Law, Public Prosecutors are also authorized to impose administrative sanctions in cases explicitly set forth in the laws. However, in order for a Public Prosecutor to make a decision for administrative sanction in the case where the investigated act is found to constitute a misdemeanor, the relevant public institution must have not made a decision for an administrative sanction. Criminal courts are also authorized to make a decision for an administrative sanction in the prosecution phase.

A mixed system is adopted in practice. In the regulated areas, the regulatory authorities regulate the area and also are vested with the authority to impose sanctions.

Nevertheless, the administrative sanctions required by laws shall be imposed by the competent administrations authorized by laws.

Answer 2: In the Turkish law, administrative sanctions consist of administrative fines and administrative measures, and the administrative measures are defined as the transfer of ownership to the public and other measures set forth in the relevant laws. Article 3 of the Misdemeanor Law no. 5326 contains a provision that the provisions concerning the remedy for administrative sanction decisions, and if no contrary provision exists in the other laws, the other general provisions shall be applied for all acts that require an administrative fine or the sanction of transferring ownership to the public. On the basis of these provisions, the Misdemeanor Law actually sets forth administrative measures, but consider these provisions outside the scope of its general provisions, and technically exclude their administrative sanction nature.

From the perspective of judicial review, administrative fines and sanctions for the transfer of ownership to the public are, as a rule, reviewed by criminal courts of peace in the judiciary, provided that no provision to the contrary exists in the special laws. Judicial review of administrative measures is directly carried out by administrative judicial authorities. According to the Law no. 5326, criminal courts of peace may reject the application or “abolish the decision for administrative sanction” on the grounds that it is unlawful. In the case that an application was made against an administrative fine imposed for misdemeanor for which the lower and upper limits of the fine is set forth in the law, criminal courts of peace may accept the application by altering the amount of the fine.

However, this applies to simple misdemeanors. Particularly, regulatory administrative fines are prescribed in the special laws where the administrative judiciary is designated as the judicial review authority. In this framework, in relation to administrative sanctions whose special laws designate the administrative judiciary as the competent authority, the authority of administrative courts is only limited to cancellation. They are not authorized to abate the penalty or impose a new sanction.

Answer 3: Authorities that conduct judicial review are authorized to review both in terms of legality and material facts.

SECTION 3

Answer 1: Considering the provision in Article 12 of the Misdemeanor Law no. 5326, which states that, in cases where no provision to the contrary exists in this Law, the provisions concerning the reasons for lawfulness and the reasons that eliminate culpability shall also be applied for the misdemeanors and the provision that the misdemeanors set forth in Article 9 of the said Law may, in cases where no explicit provision exists in the law, be committed both on purpose and negligently, there is no objective responsibility for misdemeanors, but rather responsibility for culpability is prescribed, and the cases of faultlessness are listed in the Law.

Answer 2: Judicial review of administrative sanctions is shaped on the basis of the nature of administrative sanctions, and no condition is interpreted to constitute an impediment to judicial review.

Answer 3: Non-monetary sanctions in the Turkish law include the transfer of ownership to the public and banning from profession or artisanship permanently, closing down the workplace, revocation of license, and banning of road, sea and air transport vehicles from traffic or navigation. In the case that the said sanctions are temporary, the action can be considered to fall within the sphere of administrative measures upon scrutinizing the will to penalize.

As a rule, administrative sanctions may not be imposed in the area of private law. On the basis of the example given in the question, the car of a person who has failed to pay his alimony debt can be seized, and a decision can be made for the sale of the car. However, this falls within the sphere of execution law, rather than administrative sanctions. These proceedings are carried out by the execution offices in the judicial organization of courts.

Answer 4: There is no such practice.

Answer 5: Republic of Turkey is not within the jurisdiction of the Court of Justice of the European Union (CJEU), but the relevant chamber of the Council of State makes assessments within the framework of the case law of the CJEU particularly in the area of Competition Law and consider the rulings by the CJEU as precedent.

Answer 6: In the area of Tax Law, the Tax Procedure Law no. 213 contains provisions on taxational misdemeanors, but there is no general rule in terms of other administrative sanctions.