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: Czech Republic

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Questionnaire

CZECH REPUBLIC

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?*

We would wish to explain basic facts about the applicable Czech legal terminology (and our English translation, used throughout this questionnaire) at the onset. The applicable Czech law uses the terms *administrative offence* [in Czech "*správní delikt*"], *administrative infraction* [přestupek] and *miscellaneous administrative offence* [in Czech "*jiný správní delikt*"].

Administrative offence is a general term that comprises both *administrative infractions* and *miscellaneous administrative offences*. The administrative infraction is an unlawful conduct based on fault, which (a) has violated or jeopardized certain social interests; (b) is as such specifically listed in the Administrative Infractions Act or another act, but (c) it is **not** a miscellaneous administrative offence or a criminal offence [§2(1) of the Act 200/1990 Coll., Administrative Infractions Act]. The **administrative infraction may be committed only by a natural person (i.e. not by a legal entity)**.

The miscellaneous administrative offences include any offences (other than administrative infractions) committed by legal entities, sole entrepreneurs or natural persons. With respect to the miscellaneous administrative offences, these are not included in any comprehensive regulation such as the Administrative Infractions Act. They are defined in various special acts, together with appropriate sanctions.

From the procedural point of view, the Code of Administrative Procedure [Act 500/2004 Coll.] applies as *lex generalis* to hearing all administrative offences unless a specific law provides otherwise. The Administrative Infractions Act is *lex specialis* for the administrative infractions listed therein but also *lex generalis* for those, listed in other laws. The Administrative Infractions Act may **not** be used for hearing any other administrative offences; these are heard under special laws, which regulate such offences specifically and – with respect to the general rules of procedure - the Code of Administrative Procedure applies as *lex generalis*.

In July 2017, a new Administrative Infractions Act is expected to come into force [Act 250/2016 Coll.] and unify the regulation for both administrative infractions and miscellaneous administrative offences, preserving only one category of administrative offences for both natural and legal persons. The rules, however, will not change substantially and the Act will maintain its role as *lex generalis* with an elaborated list of offences in a specific act and in various legislative pieces of administrative law.

Czech law does not contain any definition of an administrative sanction. In the literature, the administrative sanction is understood as a legal consequence, which comes into play as a result of committing an administrative offence. Every administrative sanction must be based on a primary legislative act (i.e. the Act of Parliament); there is no possibility for it to be introduced through a secondary or similar subordinated legislation. So, the principle *nulla poena sine lege* is observed.

According to the case law, administrative sanctioning is subject to similar principles that apply in the criminal procedure [the judgment of the Supreme Administrative Court (hereinafter referred to as "*the SAC"*) from 31. 5. 2007, No. 8 As 17/2007-135, No. 1338/2007 SAC Reports]. The court held that „*the difference between criminal offences sanctioned by courts and offences that are sanctioned by governmental authorities is in the discretion of the sovereign legislator; it does not derive from natural rights' principles; instead, it is an expression of the state´s criminal policy. From many cases in the past it could be deduced that trying to reduce the number of crimes lead to amendments of laws that decriminalized certain acts and moved them to the category of administrative infractions, and vice versa – increasing number of petty offences resulted in amendments that moved these into the category of crimes, heard before the court. Therefore it is not decisive, whether the positive law lists certain offensive action as a crime or an administrative offence*" [judgment of the SAC from 27. 10. 2004, no. 6 A 126/2002-27, no. 461/2005 Court Reports].

Nevertheless, the border between the administrative and criminal offences is not always clear because both systems use a similar definition of the offence. It is therefore up to the courts and governmental authorities to draw the borderline between these two categories. The gravity of the consequences caused by the perpetrator is usually the decisive factor. The recent developments of the criminal law show that the legislator tends to provide for more and more specific wording of the criminal offences. Therefore when the conditions in the Criminal Code are met, the criminal law should apply. In some circumstances, however, the criminal law does not lead to a stricter punishment than the administrative law as the latter imposes higher financial penalties.

To make things more complicated, not all administrative offences meet the Engel criteria. According to the settled case law, the full spectrum of the criminal principles does not apply to all administrative offences. As a result, the courts also have to determine the borderline between "administrative crimes" and other (minor) administrative offences. This is done on case-by-case basis as it is difficult to provide an appropriate general guidance, given the broad scope of administrative offences.

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?

Yes, the case law of administrative courts and the administrative authorities are consistent with the principles deferred from the ECtHR jurisprudence – namely with the judgment of the SAC from 20 January 2006, No. 4 As 2/2005-62, No. 847/2006 SAC Reports, concerning the violation of the right to a fair trial by rejecting to adduce evidence by interrogation of witnesses; judgment of the SAC from 4 December 2008, No. 9 As 7/2008-55, concerning applicability of the principle of retroactivity *in mitius* before the court hearing a lawsuit against a penalty and prohibition of driving for parking violation. In the latter judgment, the case law of both the ECtHR and CJEU was applied (*Berlusconi and others*, C-387/02, C-391/02 a C-403/02).

Similarly, in its judgment from 31 October, No. 5 Afs 9/2008-328, No. 1767/2009 SAC Reports, the SAC referred to jurisprudence of both ECtHR and CJEU in a case of penalizing for violation of both Czech and EU competition laws. The case concerned i. a. applicability of the principle *ne bis in idem* in the situation when a single action of an entity constitutes an offence under EU law and under Czech law as well. The SAC ruled that finding the defendant guilty for both offences is not a violation of the said principle, as the objects (interests) violated / jeopardized by the offences are different.

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

No such solution exists.

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?*

To date we have found no case law reflecting these cases.

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

This requirement stems from the national law as well, but is not expressed in a specific way. The Czech authorities are provided with very broad discretion to consider the facts and circumstances of each case - and to adjust the sanctions so as to achieve a fair and equitable result. This may result and in some areas results in less than sufficient sanctions or no punishment at all. Such practice, even though not compliant with the EU law, has not been disputed or brought to the Court of Justice.

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?)

In the Czech legal system, administrative sanctions mostly take form of a penalty, especially in case of *miscellaneous administrative offences*. Non-financial sanctions rather apply for the "administrative infractions" under the Administrative Infractions Act. This Act contains a catalogue of such sanctions (please see ***III-Q3*** below for more details**).** Certain other administrative measures are typical for the environmental law, e.g. *remedial measures* [in Czech "*nápravná opatření"*]under the Act 167/2008 Coll., on Prevention of Environmental Harm and on its Restoration, or *removal of consequences of unlawful interference* [in Czech "*odstranění následků neoprávněných zásahů*"] under the Act 114/1992 Coll., on Protection of Nature and Landscape. These measures are, however, not classified as administrative sanctions *per se*; although they represent potential adverse consequences of the unlawful behaviour. In addition, these measures may apply sometimes in situation, when there has not been any unlawful conduct. For example, the owners of certain property may be compensated for the restrictions, if they have **not** committed any offence and the measure has served public interest.

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)?*

Yes. Since the administrative regulation is fragmented, the principles of the criminal procedure are often applied on the basis of *analogia iuris* and *analogia legis*. However, no analogy may be used to the detriment of the accused. With respect to the principle of legality, please see the part I-Q1 above.

The legality of an imposed sanction as well as its proportionality may be subject to judicial review. Generally, if the sanction was unlawful (e. g. higher than the law provides for, or of a different type than the law permits), the court will set aside the administrative decision [§ 78(1) of the Act No. 150/2002 Coll., Code of Administrative Justice]. If the sanction has not been proportionate, the court may reduce the sanction but only upon a motion of the plaintiff [§ 78(2) of the Code of Administrative Justice].

This rule was further explained in the judgment from 3 April 2012, No. 1 Afs 1/2012-36, No. 2671/2012 SAC Reports: „*The Code of Administrative Justice empowers an administrative court to take into account the prospective of proportionality of the sanction only in a situation when the*

court is according to the § 78(2) of the cited act authorized upon a motion of the plaintiff to replace the discretion of the administrative authority and reduce the sanction, and at the same time the sanction is apparently unreasonable. The space for reflecting proportionality of the sanction according to § 78(1) of the Code of Administrative Justice [without a motion of the plaintiff] *would be given, only if the alleged unreasonability was in breach of law, i. e. if the administrative authority deviated from the legal framework for imposing the sanctions, its assessment of criteria for imposing a sanction lacked logic, the administrative authority did not consider all statutory criteria, the imposed sanction was destructive etc*."

Administrative sanctioning is, to a certain degree, affected by the principle of prohibition of *reformationis in peius*. However, this principle does **not** apply so broadly as in the criminal procedure. Although *reformationis in peius* applies in all stages of criminal proceedings, it is used only in appeal in the administrative proceedings according to the prevailing opinion. This means that renewal or other extraordinary relief proceedings may lead to more severe sanctions than originally imposed by the relevant authority.

The sanctioning is also subject to the principle of prescription of time, which imposes a time limitation on the investigation of an administrative offence. Generally, a period of **one year** applies for administrative infractions. This means that the administrative authority has one year from the moment of committing the offence to investigate, hear the case and issue a decision. This period is suspended by commencing the administrative infraction proceedings as well as by issuing a decision of guilt. The final decision must come into effect no later than **two years** since the offence was committed [§ 20(1,3) of the Administrative Infraction Act]. The statutory prescription must be taken into account *ex offo* (judgment of the SAC from 15 December 2005, No. 3 As 57/2004-39, No. 845/2006 SAC Reports).

Specific laws may provide for different prescription periods for administrative offences, e. g. 5 years (subjective period) and 10 years (objective period) [§ 22b (3) of the Act 143/2001 Coll., Competition Act]; 1 year (subjective lapse period) and 3 years (objective period in case of committing another administrative offence by a legal entity under the Act 101/2000 Coll., Data Protection Act.

In contrast to the criminal procedure, no accusatorial principle applies in hearing the administrative offences; the administrative authority is responsible for investigating the offence independently and on its initiative – so the inquisitorial principle applies.

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?

As mentioned above, the fragmented regulation does not provide for any general solution. The law, which attempts to address – in a consistent and systematic fashion - both material and procedural aspects of the administrative offences is the Administrative Infractions Act. This Act contains the rules and principles similar to the criminal law (for example that the sanctions must be stipulated by law at the time of imposing, the ban on retroactivity; retroactivity *in mitius* etc.). Otherwise, the general principles of administrative procedure, stipulated by the Code of Administrative Procedure, apply. The new Administrative Infractions Act that should enter into force in July 2017 is more elaborated and, to a large extent, resembles the Code of Criminal Procedure.

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.)?

Unlike in certain types of the criminal proceedings, legal representation is not mandatory in the proceedings concerning administrative offences. Nonetheless, it is occurring more frequently.

The SAC in its case law concluded that oral hearing is not a mandatory part of the proceedings before the administrative authority. *Even though the Engel criteria would be fulfilled by a specific administrative offence, the requirements of the Article 6 of the Convention would be met if an oral hearing were carried out (or provided for) at the stage of the judicial review. It is in particular an independent and unbiased court before which it is necessary to provide the accused with the possibility to acquaint the court with their case and present personally their defence before the court. The conclusion that guarantees under Article 6 of the Convention relate primarily to the phase of the judicial review of the administrative decisions has been reached earlier by the Constitutional Court in its judgment from 23 November 1999, No. Pl. ÚS 28/98, No. 2/2000 Coll.*" (Judgment of the SAC from 11 November 2004, No. 3 As 32/2004-53, No. 852/2006 SAC Reports).

The SAC in its case law also distinguished between the duty to cooperate with the administrative authority and the prohibition of self-incrimination. Having in mind the criminal nature of the procedure of hearing administrative infractions, the person accused of an administrative infraction does not have an obligation to cooperate on their prosecution for such offence. Therefore, he does not have to inform the administrative authority on changing his place of residence. It is nevertheless possible to assess differently the situations, in which the change of residence is a part of obstructions in the evidentiary proceedings and so it constitutes an abuse of right (judgment of the SAC from 30 May 2013, No. 6 As 13/2013-33).

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)?*

Case Grande Stevens has not been yet cited by administrative courts. Regarding the principle *ne bis in idem* the SAC referred to the case law of the ECtHR several times.

In the judgment of the SAC from 16 February 2005, No. A 6/2003-44, No. 1038/2007 SAC Reports, the SAC acknowledged the principle *ne bis in idem*, however, it reminded that the principle does not apply, if there are multiple interests of the society that have been violated by different acts.

Regarding disciplinary proceedings against executors [executor or bailiff (in Czech: "*exekutor*") is a person exercising an independent legal profession, upon which the state has transferred the competence to enforce judgments by e. g. recovering money], the SAC ruled that if an accused executor was acquitted in a criminal proceeding by a final and conclusive judgment for an act identical to the act, in which a disciplinary wrong is seen, the continuation of the disciplinary

proceedings would be in breach of the principle *ne bis in idem* based in Art. 4(1) of the Protocol 7 to the Convention [judgment of the SAC from 11 January 2012, No. 11 Kseo 1/2010-80]. Under this provision, any prosecution for a second crime (including an offence of criminal nature) would be prohibited, if such second criminal act was based on identical or in substantial features of identical act. The substance of the act is legally relevant action of the offender and the legally significant consequence caused by him [judgment from 11 January 2012, No. 1 As 125/2011].

It is not violation of this principle, if an administrative authority, when deciding on releasing the petitioner from completing the remainder of prohibition to perform his occupation, refers to sanctioned unlawful act committed by the petitioner during the serving of this sanction (judgment of the Regional Court in Hradec Králové from 23 September 2015, No. 52 A 62/2015-60).

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)?

The Czech courts do not hold firmly to the *Zolotoukhine* case in respect of the *ne bis in idem* principle, insisting on the concept of *crime in law* instead of *crime in fact*, proposed by the ECtHR. In this respect, Czech law is fragmented and the courts tend to follow the same principles that appear in the conclusions of the Grand Chamber judgment in the case of A and B v. Norway (applications nos. 24130/11 and 29758/11) concerning the conduct of dual or multiple proceedings, with the possibility of a combination of different penalties. In Czech case law, the principle of absorption of sanctions is emphasised.

The SAC in its recent case law came to the conclusion that the late-payment fine [in Czech "*penále*"], which is imposed for late payment of taxes, amounts to punishment in terms of criminal law. The articles 6 and 7 of the ECHR are therefore applicable to prescription of late-payment fine [resolution of the SAC from 24 November 2015, No. 4 Afs 210/2014-57, No. 3348/2016 SAC Reports]. More specifically, the SAC acknowledged the applicability of the principles of retroactivity *in mitius* and *ne bis in idem* regarding the prescription of late-payment fine. It stated, that although the late-payment fine is not classified into the criminal law, but into the tax law, its imposition has a criminal nature, because its aim is not to recover the evaded tax; however, to punish the offender substantially with the aim to deter him from a similar conduct in the future. In this resolution the SAC acknowledged the conclusions of the ECtHR in the case of *Lucky Dev v. Sweden* (application No. 7356/10), *Jussila v. Finnland*, and *Nykänen v. Finnland* (application No. 11828/11).

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)?

The national system makes no difference between the nationals and the non-nationals. The *ne bis in idem* principle is invoked more often in administrative matters where the legal regulation changes frequently and preconditions of multiple similar offences might be met so as to constitute jurisdiction of multiple administrative authorities. Nevertheless, there are also recent cases concerning various administrative measures that have not been considered crimes (from the *Engel* perspective) but merely additional or formal measures. Since the courts recognised many of these

crimes or criminal punishment (black mark record in the register of road offences, late-payment fines, fixed payments for the biofuels that have not been brought to the market) the *ne bis in idem principle* naturally came into consideration.

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?*

In general, this is not possible and either the criminal law or the administrative law applies exclusively. But we have yet to see the impact of the ECtHR judgment in the case of A and B v. Norway especially in tax matters on the decision-making of Czech courts and administrative authorities.

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?*

We believe that Czech law would usually prefer the second approach, i.e. that the administrative authorities (at least on national level) are, at the same time, responsible both for the regulation (i.e. secondary legislation) and the enforcement. This applies to municipalities, administrative authorities with broad jurisdiction, special authorities dedicated to investigate in specific regulated areas – so called inspectorates [in Czech: "*inspektorát*"] or to the police. Later on, if the sanction is not respected (fines are not paid), the seizure by an executor comes into play. The particular official who discovers an infringement is usually entitled to impose an administrative sanction if the matter falls within his jurisdiction (specialisation) and the law provides it is possible to settle the case on site. This is rather common to various minor offences (see below for administrative hearing on a ticket).

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?*

In principle, the cassation principle applies in the proceedings at the national administrative courts and the courts themselves cannot adopt the administrative sanctions. The SAC is entitled to hear cassation complaints challenging decisions of regional courts in matters of administrative justice, in which complainants seek the annulment of an administrative decision. The courts

would be authorized to replace the discretion of the administrative authority and reduce the sanction if the plaintiff so requires in his motion and if the sanction was manifestly unreasonable. However, in some areas the courts may impose sanctions. For example, the competence of the SAC comprises also the registration and dissolution of political parties and movements. By its judgment, the court may resolve on a dissolution of a political movement or party, which could be viewed as a sanction. The SAC is also called upon as the disciplinary court in matters of disciplinary offences of judges, state prosecutors and executors.

***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 judicial review is not restricted only to assessment of legality of the decision but it includes a review of the factual questions/circumstances as well. However, the plaintiff is responsible for presenting a sufficient reasoning and plausible arguments to contest successfully the administrative decision. The courts do not serve as a third level administrative authorities and should not carry out factual inspections or fact-finding missions. They review the discretion only if the administrative authority has overstepped its powers, and/or if its conclusions seem manifestly inappropriate.

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)?*

The Czech legal system uses both types. The fault-based liability applies principally to natural persons within the scope of the Administrative Infractions Act. Certain types of miscellaneous administrative offences committed by individual entrepreneurs also require fault. On the other hand, the strict (and in some cases also absolute liability) applies on legal entities. The latter type of liability makes easier the evidence proceedings and also speeds up the administrative proceedings.
Where strict liability applies, the fault may be taken into consideration only in relation to the decision on sanction and its materiality.
For fault-based liability – if applicable – negligence would generally be sufficient, the (wilful) intention would be required to establish a liability for an offence if expressly stipulated by law.

Case law: judgment of the SAC from 16 June 2016, no. 6 As 73/2016-40, [23] with reference to *Duhs v. Sweden*, No. 12995/87, ECtHR: "*Neither from the Convention nor from the Czech Charter of Fundamental Rights and Freedoms results that administrative sanctioning should rest on fault-based liability*."

***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)?*

Generally no. The administrative sanctions are imposed through a decision (a form of individual administrative act). Such decisions are reviewed within the general regime of § 65 of the Code of Administrative Justice, which applies also on any other judicial review of an administrative decision.
Administrative infractions for which a penalty up to 5 000 CZK (if a special law does not stipulate a higher one), may be tried in summary proceedings, the so called "administrative hearing on a ticket" (in Czech *blokové řízení*). No appeal would be admissible for a penalty, imposed in these proceedings.

***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).*

Non-pecuniary sanctions are typical for administrative infractions (which may be committed only by natural persons), whereas in the area of other administrative offences, these are rather exceptional.

Sanctioning for administrative infractions
Within the scope of the Administrative Infractions Act, the natural persons may be sanctioned with "admonition", "prohibition to undertake activities", "forfeiture of an asset" or "prohibition of residence".

Admonition (in Czech "*napomenutí*") is rather a means of educational and moral influence on the perpetrator; the tangible sanctioning includes only an obligation to reimburse costs of the proceedings.
Prohibition to undertake certain activities (in Czech "*zákaz činnosti*") may be imposed only if the offence was committed in course of (or in connection with) an activity that is performed in employment (or similar relationship) or it is pursued on the basis of a permission, consent or other form of authorization of a state authority. The sanction applies where interests protected by law were jeopardized or infringed in the course of performing qualified activities such as driving a vehicle [§ 125c(6) of the Act No. 361/2000 Coll., on Road Traffic], or providing medical services.
Forfeiture of an asset (in Czech "*propadnutí věci*") may be ordered when such an asset was used or intended to use for committing the offence or it was gained by the offence or acquired for another asset which was gained by the offence (§ 15 of the Administrative Infractions Act).
Prohibition of residence (in Czech "*zákaz pobytu*") is aimed to prevent the perpetrators from repeating the infractions by prohibiting them to stay in the territory of a municipality or its part. The sanction applies to infractions that violate public order.

Sanctioning for miscellaneous administrative offences
Miscellaneous administrative offences are mostly punished by penalties. It occurs exceptionally that special laws provide for non-financial sanctions, such as the prohibition to perform public procurements (§ 22a(4) of the Competition Act).

In urban planning, construction of a structure in breach of law would be an offence sanctioned by a penalty. However, in such a case, the zoning and planning authority may also order a removal of the structure, although – strictly speaking - the removal would, however, not be viewed as an administrative sanction. If the person does not comply with the order, the authority can remove it itself or engage an executor. The costs would be borne by the perpetrator (§ 129-131 of the Act

183/2006 Coll., Building Act). The main problem in this area resides in financial situation of the municipalities, which do not have enough funds and courage to enforce this sanction.
As the order to remove an illegal construction is not a sanction *stricto sensu*, the general rules of sanctioning procedure will not apply; so there are no prescription periods for the authorities to issue such order. Of course, there might be a discussion about proportionality of issuing such an order after a substantial time has elapsed from construction of the structure and where the authorities tacitly tolerated an unlawfully built structure. In any case, given the relative lack of enforcement, the case law on this subject is fairly scarce, so we cannot predict how the courts will decide in the future.

Other measures:
There exist certain other administrative measures, which (similarly to the above) would not be considered sanctions *stricto sensu*. These include (a) the *remedial measures* under the Act on Prevention of Environmental Harm and its Remedy, (b) *removal of consequences of unlawful interference* according to the Act on Protection of Nature and Landscape (see above in I-Q1), and (c) *seizure of unlawfully kept individuals of specially protected species* [in Czech "*odebrání nedovoleně držených jedinců zvláště chráněných druhů*"] according to the same act.

Protective treatment measures
Protective treatment measures [in Czech "*ochranná opatření"*] may be imposed only according to the Administrative Infractions Act, i.e. for an administrative infraction committed by a natural person. Their aim is rather preventive. There are two types of protective measures: *restrictive measures* [in Czech "*omezující opatření"*] and *seizure of an asset* [in Czech "*zabrání věci"*].
The purpose of the former is to prevent an offender from visiting certain places or events – typically facilities where alcoholic beverages are served, such as concert or sport events.
The latter measure, *seizure of an asset*, is imposed typically for infractions committed by persons who cannot be prosecuted due to age or mental disorder, or the asset does not belong to them. In any case, this protective measure may only be imposed if the safety of persons or property or other public interest so require.

Ancillary questions:

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

Yes, as mentioned above, the non-pecuniary sanction must be imposed in relation to the offence and only when conditions stipulated by law are met (please see above our description of the prohibition to undertake activities, forfeiture, prohibition of residence). When deciding on type and terms of the sanction, the authority must consider the gravity of the infraction, particularly the form of its committing and its consequences, the circumstances, the degree of fault, motives and the personality of the offender, and (if applicable) how he was sanctioned for the same act in a disciplinary proceedings (§ 12 of the Administrative Infractions Act).

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)?

The private-law obligations may be enforced only through civil law proceedings;. However, this applies with the exception of the material breach of alimony obligations). Such breach, lasting for more than four months, may amount to a criminal offence, prosecutable under the Czech Criminal Code.

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.)?

Yes, typically penalties. Their aim is first to punish the offender, but also to prevent him from repeating the offence and also discourage others from offending. Therefore the penalties can also be quite substantial, particularly in the competition law.
Last but not least, the Czech tax law recognizes penalty [in Czech "*pokuta*"] and late-payment fine [in Czech "*penále*"], both may be imposed simultaneously. The late-payment fine inflicts the property significantly and – according to the current case law of the SAC - it amounts to punishment in terms of criminal law (please see I-Q3 page 8).

***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 leniency program is applied in compliance with the EU standards and it is implemented by § 22ba of the Competition Act, which is modelled closely according to the EU law. EU law requirements are obviously applied frequently in sectors, where the appropriate EU law has been implemented (such as energy).

***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?*

To prevent such renewals, the SAC exercises its competence (and duty) to file a motion for preliminary ruling before the CJEU. Proceedings of hearing cassation complaints cannot be reopened [§ 114(2) Code of Administrative Justice].

Reopening of proceedings is possible before the Czech Constitutional Court if an international court (an authority whose decisions are binding for the Czech Republic according to international treaties; e.g. ECtHR) has found a violation of a human right or a fundamental freedom in the case that was formerly decided by the Constitutional Court (§§ 117 and 119 of the Act 182/1993 Coll., on the Constitutional Court). Consequently, the Constitutional Court can quash the previous decisions of the SAC and eventually of the regional court. The imposed sanction will then be subject to another judicial review but still within continuation of the original proceedings.

***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?*

To date, there is no such option except for the leniency procedure in the competition law, described above. A specific type of a deal on an administrative sanction is the so called *fixed penalty ticket*. It is imposed for minor offences punishable by fine only; it applies to most

administrative infractions, mainly in road traffic. Adopting a fixed penalty ticket is only possible when the administrative infraction is i. a. reliably ascertained and the accused is willing to pay the fine [§ 84(1) of the Administrative Infractions Act]. The fixed penalty ticket is therefore according to some interpretations considered a public law contract *sui generis*. Remedies are restricted to review hearing; appeal against such fine is inadmissible.

The new Administrative Infractions Act newly involves an institute of *settlement* between the accused and the injured in case the accused declares that he committed the infraction, compensated the loss inflicted as a result of the infraction to the injured and paid a certain amount designated to publicly beneficial purposes to the administrative authority. However, because this new Act has not come into force yet, it remains to be seen, how successfully this mechanism will be applied in practice.

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.

Thank you for your cooperation!