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Administrative Sanctions in European law

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Administrative Sanctions in European Law

Questionnaire

Answers by the Supreme Court of Estonia

Part I – The notion of administrative sanctions

I-Q1

The Estonian legal order has moved towards a strict distinction between penal and administrative law, a clear distinction is made between **administrative coercion, misdemeanours and criminal offences**. While penal law regulates the punishment of a person who has committed a misdemeanour or criminal offence for the purpose of directing them towards lawful behaviour; administrative law uses various coercive measures intended to keep the person from committing an act that will compromise public order, i.e. combat the risk, or terminate a breach that has been committed which violates public order, and bring the behaviour or a situation into compliance with the norms of public order (rectification of a breach of order).

Development of the regulation

The Code of Administrative Offences, which was in force in Estonia between 1992 and 2002[1], determined the acts to be punished by administrative law, as well as the officials and courts that could apply an administrative punishment and their competence, and the procedures to be undertaken in the case of breaches of administrative law. With the amendment that took place in 2002, a clear distinction was created between **applying administrative coercion in an administrative activity** and **processing a misdemeanour in offence proceedings**. These institutions were regulated according to different legal branches. The distinction between administrative coercions and offence proceedings continues to apply today, and there are not many Supreme Court cases in the field of administrative coercion.

Misdemeanours

In the Estonian legal order, **misdemeanours** are not part of administrative activities but belong to **the field of penal law**. Misdemeanours are contained in the Penal Code (PC)[2] and in other legislation, and a uniform theory of offences and a common system of sanctions apply both to misdemeanours and to criminal offences. For misdemeanours (previously administrative offences), the application of the general part of penal law also includes the application of the general principles of penal law (tort structure, provisions for determining the punishment, etc.). Penalties for misdemeanours are entered into the Criminal Records Database, and are processed in a separate misdemeanour procedure (see the Code of Misdemeanour Procedure, CMP)[3], not in administrative proceedings; also, misdemeanours are heard by the general court, and not by the administrative court. The right to conduct misdemeanour proceedings is held by different bodies that conduct extra-judicial proceedings (e.g. the Police and Border Guard Board, the Environmental Inspectorate, the local authorities) as well as by the court. The punishment for a misdemeanour is a fine or a detention. Only the court has the right to prescribe a detention (a short-term imprisonment). However, although a body conducting extra-judicial proceedings does

[1] In Estonian: https://www.riigiteataja.ee/akt/180485.
[2] In English: https://www.riigiteataja.ee/en/eli/528122016006/consolide.
[3] In English: https://www.riigiteataja.ee/en/eli/510012017003/consolide.

not have this right, it does have the right to choose whether to apply a fine for a misdemeanour itself, or to apply for the court to impose detention on the offender.

Pursuant to Section 3 (5) of the PC, if the act the person committed comprises the necessary elements of both a misdemeanour and a criminal offence, a person shall only be punished for the criminal offence. If no punishment is imposed for the criminal offence, the person may be punished for the misdemeanour. Pursuant to Section 3^1 of the CMP, the principle of mandatory misdemeanour proceedings applies, pursuant to which the body conducting the extra-judicial proceedings is required to commence and conduct the misdemeanour proceedings unless the act is of minor importance in the opinion of the body conducting the extra-judicial proceedings. The CMP also covers the presumption of innocence, respect for human dignity, ensuring the rights of the parties to the proceedings.

Generally, in the following answers to the questionnaire, we will not consider misdemeanour proceedings as administrative sanctions.

Administrative coercion

The institutions responsible for **administrative coercion** under Estonian law, pursuant to the Substitutive Enforcement and Penalty Payment Act (SEPA)[4], are responsible for the **substitutive enforcement** and the **application of a penalty payment** and for the **direct coercion** arising from the Law Enforcement Act (LEA)[5]**.** The SEPA regulates the right of the administrative body to motivate a person with a coercive measure to comply with an obligation imposed upon them by an administrative act. The administrative body shall make a written warning before the application of a coercive measure. "Substitutive enforcement" means that if the addressee does not perform the obligation imposed upon them by the precept, within the term prescribed in the warning, the competent administrative body may perform it themselves at the expense of the addressee or organise its performance by a third party. The penalty payment is a sum determined and indicated in the warning, which the addressee must pay if they do not perform the obligation imposed by the precept within the term prescribed in the warning.

The Administrative Procedure Act (APA)[6] is applicable when a coercive measure is applied. The **coercive measure is not deemed to be a punishment**. Administrative coercive measures can be applied by the bodies implementing national and administrative supervision measures (e.g. inspection and authorisation bodies) and the respective authorisations, as well as the maximum limits of the penalty payments, are specified in a large number of special laws, e.g. Taxation Act[7], Language Act[8], Personal Data Protection Act[9], Political Parties Act[10], etc.

The Supreme Court has repeatedly emphasised that **administrative coercion cannot be applied for punitive purposes.** For example, the Supreme Court *en banc* found, in Case No. **3-2-1-4-13**[11], that a penalty payment is not a punishment in the formal or material sense, and that the Constitution does not prohibit transferring the task of determining the penalty payments to

[4] In English: https://www.riigiteataja.ee/en/eli/522012015001/consolide.
[5] In English: https://www.riigiteataja.ee/en/eli/504012016003/consolide.
[6] In English: https://www.riigiteataja.ee/en/eli/530102013037/consolide.
[7] In English: https://www.riigiteataja.ee/en/eli/502012017008/consolide.
[8] In English: https://www.riigiteataja.ee/en/eli/512012016001/consolide.
[9] In English: https://www.riigiteataja.ee/en/eli/507032016001/consolide.
[10] In English: https://www.riigiteataja.ee/en/eli/513042015011/consolide.
[11] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-2-1-4-13.

persons under private law. The Administrative Law Chamber of the Supreme Court explained in Case No. **3-3-1-72-14**[12] that a coercive measure cannot be applied as punishment. Therefore, the administrative body must choose a coercive measure that forces the person to comply with the precept in a way that will damage the person as little as possible. A penalty payment may only be applied for the purpose of inducing a person to comply with the precept, and the administrative body cannot decide on multiple applications of the penalty payment in advance.

The application of an administrative coercion measure takes place according to the principle of legality – pursuant to the law and according to it. It must be formally and materially lawful. The formal lawfulness of the activity of the administrative body must be analysed with regard to whether the administrative body has followed the rules of competence, procedure and formal validity. For example, under the general material presumptions of a penalty payment, it must be checked whether:

a) there is an existing precept of the administrative body (an obligation has arisen for this addressee pursuant to the administrative act);
b) the addressee subject to the precept in force has been warned about the application of the coercive measure;
c) the addressee subject to the coercive measure has failed to comply with the precept by the date noted in the warning;
d) the precept and warning have been made known to the addressee;
e) there are no grounds that preclude the application of a penalty payment;
f) the rules of discretion and the principle of proportionality have been followed.

Some other institutions of administrative law, which have a nature somewhat similar to punishments, but have not been designated as such, can be considered applying administrative sanctions in this context – for example, the collection of environmental charges at an increased rate (5 to 1000 times higher, depending on the nature of the activity) if a person has discharged pollutants into the environment in quantities higher than those that are prescribed by their permit, or without the respective environmental permit (Sections 22-30 of the Environmental Charges Act[13]). According to the case law of the Administrative Law Chamber of the Supreme Court, the application of an increased environmental charge rate has a punitive nature, and the main purpose of the regulation is to compensate for the fact that, when discharging a pollutant into the environment without permission, the threat to the environment is significantly greater than in the case of the regulated environmental use that takes place pursuant to a permit; while also directing the person to apply for an environmental permit (Cases No. **3-3-1-72-15**[14] and **3-3-1-3-05**[15]). Upon the application of such increased charge rates, the Supreme Court has also deemed it necessary to check the proportionality of the size with that of the designated environmental charge.

The Supreme Court has repeatedly explained that the question of whether or not some coercive measures of the state can be deemed a punishment, for constitutional purposes, cannot solely be resolved on the basis of what is provided in the Penal Code. It is therefore necessary to check whether some national coercive measure that is not deemed a punishment in the formal penal law

[12] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-72-14.
[13] In English: https://www.riigiteataja.ee/en/eli/529122016005/consolide.
[14] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-72-15.
[15] In Estonian http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-3-05.

should still be deemed a punishment in substance, i.e. materially. Constitutional guarantees must also be ensured in the application of such coercive measures of the state, which have not been established as punishment in the formal penal law but which can materially be deemed punishment (e.g. the decision of the Supreme Court *en banc* in Case No. **3-4-1-16-10**[16]).

The Administrative Law Chamber of the Supreme Court found in Case No. **3-3-1-79-08**[17], which considered whether the sanctions system created in Estonia concerning the violation of the requirements of agricultural environmental support complied with the European Union law and was as efficient, proportionate and dissuasive as possible, that the **proportionality check** applied by the European Court of Justice (incl. pursuant to the decision of the European Court of Justice in Case C-210/00: *Käserei Champignon Hofmeister*) is by its nature similar to the control scheme of the proportionality principle implemented in the Estonian legal system, pursuant to which the measures must be suitable, necessary and moderate.

The Criminal Chamber of the Supreme Court has considered the ***ne bis in idem*** principle and the **application of the Engel criterion** (for example, in Case No. **3-1-1-21-06**[18]**)**, emphasising the position developed in case law that the area of protection of the fundamental right of *ne bis in idem* that arises from the constitution does not include just criminal offences, but also misdemeanours, and in certain cases also disciplinary breaches. In Case No. **3-1-1-88-02**[19], the Criminal Chamber of the Supreme Court again referred to the Engel criterion in a situation where the law deemed a certain behaviour of an imprisoned person a criminal offence, by finding that the prison administration was not justified in applying a disciplinary penalty on the imprisoned person for the acts comprising the necessary elements of a criminal offence, which by its gravity was comparable to a criminal penalty, as this would preclude the later punishment of the person pursuant to the criminal procedure for the same act, and would thereby mean an intervention in the administration of justice by the administrative bodies.

In the case of several environmental and other types of permits, the respective special legislation provides that the non-compliance with the permit or the requirements of the legislation, or a punishment for the respective violation is the basis for declaring the permit invalid (see e.g. Section 62 (2) 2) of the General Part of the Environmental Code Act[20]).

I-Q2

The application of administrative coercion measures is regulated **differently from penal law sanctions.** The reason for this is that the procedure for the application of administration coercion is by its nature an administrative procedure, where the requirements of having a lawyer representative, ensuring state legal aid, procedural time restrictions, etc., do not apply. **The APA is applied** when a coercive measure is administered and the **coercive measure is not deemed a punishment.** Chapter 2 of the SEPA prescribes the procedure for applying a coercive measure. Also, Section 16 of the SEPA establishes the **protection of the rights** of the addressee: an addressee may file an action, an application for initial legal protection; or a claim for compensation for damages with an administrative court. The decision of the administrative court may be appealed in the circuit court, and the decision of the latter may in turn be appealed in the

[16] In Estonian: http://www.riigikohus.ee/?id=11&tekst=222535860.
[17] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-79-08.
[18] In Estonian: http://www.riigikohus.ee/?id=11&tekst=222488270.
[19] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-1-1-88-02.
[20] In English: https://www.riigiteataja.ee/en/eli/529082016002/consolide.

Supreme Court. The filing of an action does not automatically suspend compliance with the precept or the application of the coercive measure; however, the court may decide to suspend the precept or coercive measure. The addressee also has the opportunity to apply for state legal aid as representation in the administrative proceedings, as well as in the administrative court proceedings, and the requirement of a reasonable duration of the proceedings applies to administrative proceedings as well as to administrative court proceedings (see e.g. the decision of the Administrative Law Chamber of the Supreme Court in Case No. **3-3-1-69-15**[21]). Additionally, the principle of investigation applies in administrative proceedings and in administrative court proceedings, pursuant to which an administrative body or court is obligated to ascertain the facts material to the matter dealt with and to gather evidence at its own initiative, if necessary.

One of the most important procedural rules when applying a coercive measure is **the person's right to be heard**. In Supreme Court case law, for example when a penalty payment is applied, it has been deemed necessary to hear the person first (see the decision in Case No. **3-3-1-72-14**, referred to above). The general rules of administrative procedure also apply in this respect. The hearing may take place in writing, as well as orally. Court proceedings may be carried out without organising an oral hearing only in limited cases (Section 131 of the Code of Administrative Court Procedure (CACP)[22]).

The Administrative Law Chamber of the Supreme Court considered the reliance on the **proportionality principle** when applying a coercive measure in Case No. **3-3-1-72-14**, where it specified that **the lawfulness of the application of a coercive measure does not depend on the lawfulness of the precept**, but merely on its validity. In administrative enforcement cases, the court generally only needs to check whether the **prerequisites** of the application of a coercive measure are fulfilled, whether the **type of coercive measure** and its **means of application** are **proportionate** and whether there are no circumstances that preclude the application of coercion. Thereby, the Administrative Law Chamber found in Case No. **3-3-1-31-15**[23] that the application of a penalty payment on a person who does not objectively have an opportunity to perform the prescribed act, is not proportionate. In Case No. **3-3-1-62-16**[24], the Administrative Law Chamber of the Supreme Court explained that the application of a penalty payment is a **discretionary decision,** and the **proportionality principle** must be taken into account when making such a decision. If the **obligations of the addressee arising from the precept are unclear**, this may in principle constitute a **good reason** for the failure to perform the precept, and in such a case the application of a penalty payment may not be proportionate.

I-Q3

In Case No. **3-1-1-10-14**[25], the Criminal Chamber of the Supreme Court explained that in its case law it has been guided by the position of the European Court of Human Rights when defining the principle of *ne bis in idem*. In this instance, the Supreme Court referred to the decision in the case of *Zolotoukhin/Russia*, among others.

[21] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-69-15.
[22] In English: https://www.riigiteataja.ee/en/eli/506042016001/consolide.
[23] In Estonian: http://www.riigikohus.ee/?id=11&tekst=222579301.
[24] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-62-16.
[25] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-1-1-10-14.

Pursuant to Section 4 (2) of the SEPA, **the imposition of a punishment does not preclude the application of a coercive measure in order to ensure compliance with a precept.** In the Estonian legal order, an administrative coercive measure is not deemed a punishment. At the same time, an administrative body, if it can choose between misdemeanour proceedings and administrative coercion, must use all of the opportunities in the administrative proceedings as well as the misdemeanour proceedings and prefer other measures to a punishment, which may for example also include determining a penalty payment. This can be applied multiple times.

In practice, the environmental charges at an increased rate mentioned above are also claimed, in addition to a punishment pursuant to criminal procedure, where this can be done in a single proceedings (Subsection 38^1 (2) of the Code of Criminal Procedure; e.g. the decision of the Criminal Chamber of the Supreme Court in Case No. **3-1-1-67-14**[26]). In current case law, this has not been deemed to be in conflict with the *ne bis in idem* principle.

At the same time, the Criminal Chamber of the Supreme Court has explained in Case No. **3-1-1-20-12**[27] that the material area of protection of the *ne bis in idem* fundamental right still does not only include criminal offences and misdemeanours, but in certain cases also disciplinary violations. Even if national law does not consider a certain violation of the law a criminal offence, and the punishment applied for that act a criminal punishment, depending on the nature of the violation or the nature of the punishment faced by the person that has committed the crime, it may constitute a criminal punishment for the purposes of the convention. It must therefore be checked whether a national means of coercion, which is not deemed a punishment under the formal penal law, must still be viewed as a punishment in the material sense, i.e. as a measure applied for a violation of the law, which has the nature and the purpose of a punishment and is grave enough to be comparable to a criminal punishment in the formal sense.

The Supreme Court has not referred to the decision in the case of *Grande Stevens* in its case law.

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

II-Q1

The administrative coercive measures, as well as the authorities competent for their application and the maximum limits for penalty payments are prescribed in legislation which is adopted by the Parliament (Riigikogu). The administrative bodies have the competence to apply coercive measures, but not the competence to develop or shape the legislative basis.

Pursuant to Section 6 of the SEPA, an administrative coercion measure is applied by the **administrative body that has issued the precept** (i.e. the administrative act that sets an obligation on the person to do the required act, or to refrain from a prohibited act) – the right to apply a coercive measure is held by the administrative body that was competent to issue the main administrative act from which the obligation being performed arose. The body carrying out **administrative supervision** has the competence to designate and apply a coercive measure if a **specific law** gives them such a right. The supervision over the compliance with the conditions of an activity licence or an environmental permit is generally exercised (incl. the issuing of precepts) by the same administrative body that has issued the respective permit (see e.g. Section 107 (2) of the Earth's Crust Act[28]).

[26] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-1-1-67-14.
[27] In Estonian: http://www.riigikohus.ee/?id=11&tekst=222544882.
[28] In Estonian: https://www.riigiteataja.ee/akt/110112016001.

In state supervision proceedings, the **police has an urgent competence**, i.e. if a competent law enforcement body cannot combat a significant or an especially great immediate danger, or remove a breach of order at the right time, the police shall apply urgent measures pursuant to the LEA. Pursuant to Section 23 (4) of LEA, in some cases such an urgent measure may also involve the application of a penalty payment, and in such a case the penalty payment is no longer applied by an administrative body that has established the main obligation, but by the police as the general law enforcement body. There may be other derogations allowable in the legislation as well: for example, if the court has determined a procedure for the communication between a child and a parent, and this has not been followed, the bailiff has the right to determine a penalty payment to ensure its performance. The Supreme Court *en banc* considered determining a penalty payment in enforcement procedure in its Case No. **3-2-1-4-13**[29]: namely when enforcing a court decision regulating the communication between a parent and a child, the bailiff may determine a penalty payment for the parent living with the child if that parent hinders the enforcement of the court's decision, i.e. hinders the parent not living with the child at the time from communicating with the child, or from communicating in the place and manner determined in the court judgment.

II-Q2

According to Section 16 of the SEPA, an addressee issued a coercive measure may file an action, an application for initial legal protection or a claim for compensation for damage with an administrative court, pursuant to the procedure provided by the CACP, if the addressee finds that the application of a coercive measure violates or may violate his or her rights. The submission of such a claim does not suspend the performance of the precept, or the application of the coercive measure, if the court does not decide otherwise. In the first instance, an administrative case shall be heard by the **administrative court**, in the instance of appeal by the **circuit court,** and at the level of cassation by the **Supreme Court**. When hearing an appeal in cassation, the Supreme Court is bound by the factual circumstances that were identified by the lower level courts, and will generally just assess the matters of law (Section 219 (1) – (3) of the CACP).

As it is considered the resolution of an **administrative dispute**, the administrative courts have all of their general powers in matters concerning administrative coercion. Pursuant to Section 5 (1) of the CACP, when granting an action the court may, in the operative part of the judgment:

1) annul the administrative act in part or in full;
2) order that an administrative act be made, or an administrative measure be undertaken;
3) prohibit the making of an administrative act, or the undertaking of an administrative measure;
4) award compensation for harm caused in a public law relationship;
5) issue an enforcement order requiring the elimination of the consequences of the administrative act or administrative measure;
6) ascertain that the administrative act is null and void, or that the administrative act or measure is unlawful, or ascertain that a fact exists which is of material importance in the public law relationship.

When granting a mandatory action, the court may order the respondent to either issue an administrative act or take an administrative measure; or to make a new decision concerning the issuing of an administrative act or the taking of an administrative measure (Section 41 (3) of the CACP). If, at the time of issuing an administrative act or performing an administrative operation,

[29] In Estonian: http://www.riigikohus.ee/?id=11&tekst=222567733.

the administrative body has used discretion, as a rule the court can only order the administrative body to come to make a new decision on the question. Making a precept of specific content is permissible only if, due to the circumstances of the case, the administrative body cannot refuse to issue an administrative act or perform an administrative operation on any condition when deciding on the case again (Section 6 (4) – (5) of the State Liability Act[30]).

II-Q3

In a dispute over the application of a coercive measure, the court will generally check whether the **prerequisites** were fulfilled when applying the coercive measure, whether the **type** and **rate** of the coercive measure were **proportionate** and were determined without **errors of discretion**, and that there are no **circumstances precluding** the application of the coercion (see the decision of the Administrative Law Chamber of the Supreme Court in Case No. **3-3-1-72-14**, referred to above). The judicial control of the right of discretion is regulated by Section 158 (3) of the CACP, pursuant to which, in assessing the lawfulness of an administrative act issued or an administrative measure taken as a result of the exercising of a discretionary power, the court also verifies the compliance of the administrative authority with the limits and objectives of the discretionary power, and with the other rules which govern the exercising of discretion. The court will not conduct a separate assessment of the expediency of a discretionary decision. When verifying the lawfulness of an administrative act or measure, the court will not engage in the exercising of the discretionary power in the place of the administrative authority (Sections 59 and 61 of the CACP).

The Supreme Court has, in its practice, not relied upon the decisions referred to in the question.

Part III – Specific questions

III-Q1

The question of fault-based liability versus strict liability, referred to in the question, does not arise in the case of applying an administrative coercive measure in the manner that it does in misdemeanour proceedings.

The Supreme Court *en banc* explained in Case No. **3-4-1-10-04**[31], with respect to the issue of distinguishing between a punishment and a non-punitive coercive measure, that even though by its nature a punishment is a restriction of a person's rights or freedoms, all restrictions of rights or freedoms are not considered a punishment, even if the reason for the restriction is a violation of the law. While the basis for the punishment is the immediate fault of the person, and the punishment is essentially a reproach expressed in the restriction, the basis for the application of a non-punitive coercive measure is not the fault of the person but a danger arising from the person, referred to by the acts committed.

An administrative coercive measure can only be applied to **induce a person to perform the obligation set by an administrative act.** Pursuant to Section 3 (3) of the SEPA, in order to ensure performance of an obligation, the mildest coercive measure and minimum degree of coercion expected to be the most effective are applied. The administrative body must also choose a coercive measure that will force the person to perform the obligation imposed upon them with the precept while damaging them as little as possible. The main prerequisite for the application

[30] In English: https://www.riigiteataja.ee/en/eli/507062016001/consolide.
[31] In Estonian: http://www.riigikohus.ee/?id=11&tekst=222475765.

of a coercive measure, pursuant to Section 2 (1) of the SEPA, is a situation where a person has failed to comply with the precept of the administrative body during the term noted in the precept warning issued by the administrative body. Nonetheless, the Supreme Court still takes the position that the application of a penalty payment on a person who does not objectively have the opportunity to perform the prescribed act is not proportionate (see Case No. **3-3-1-31-15**, referred to above).

For example, the law does not set the fault of the person as a prerequisite for claiming an environmental charge at the increased rate, as described above. The Supreme Court explained in Case No. **3-3-1-3-05**[32] that the size of the potential damage caused to the environment is not dependent on whether the discharging of the substances into the environment was caused intentionally or by negligence due to a failure to comply with the duty of care. Later, in Case No. **3-3-1-72-15** (referred to above), the Supreme Court did soften this position by noting that, when deciding on the proportionality of the final amount of an environmental charge, the dangerousness of the activity to the environment and the person's fault can be taken into account (in this case, the person had knowingly operated without an environmental permit, but at the same time they had started to apply for an environmental permit and the issuing of the permit had been delayed during the time period, in part at least, due to reasons arising from the administrative body).

III-Q2

The basis for applying an administrative coercive measure is a precept – **an administrative act** which imposes an obligation upon the person to carry out the required act or to refrain from the prohibited act. Its judicial control does not derogate from the regular control of an administrative act in administrative court proceedings. A situation cannot arise where the administrative act that forms the basis for applying an administrative coercive measure is not subject to the competence of an administrative court, or impairs the judicial control in some manner. Even if an administrative act has formal deficiencies, due to which it may not be identified as an administrative act at first glance, according to the Supreme Court's consistent case law the content of the document determines its character as an administrative act (see e.g. Case No. **3-3-1-18-13**[33]). Pursuant to Section 51 (1) of the APA, an administrative act is defined as an order, resolution, precept, directive or other legal act which is issued by an administrative authority upon the performance of its administrative functions, in order to regulate individual cases in public law relationships, and which is directed at the **creation, alteration or extinguishment of the rights and obligations of persons**. Documents which cannot be qualified as an administrative act can still be challenged in an administrative court, by applying for the identification of their unlawfulness, or for ordering the administrative body to decide on the matter again.

III-Q3

Non-punitive administrative sanctions (broadly interpreting the term "sanctions" used in the question) such as warnings, suspending, amending or declaring invalid of an alleviating administrative act (e.g. a permit), or performing an obligation instead of an obligated person (substitutive enforcement) are non-pecuniary, and may consist of the restriction of various rights or the setting of obligations upon a person.

[32] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-3-05.
[33] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-18-13.

For example, pursuant to Section 132 (1) of the Building Code[34], the Technical Regulatory Authority may require the owner of a building to inform the public of the dangers connected with the building or, at the owner's expense, inform the public of those dangers itself. Pursuant to Subsection (3) of the same provision, the law enforcement agency can decide on the **demolition of the construction work**, above all if the construction work does not conform with the requirements for construction work, and such a non-conformity entails a significant or a heightened danger, or if the unlawful building of the construction work has resulted in a permanent negative impact on the owner of the registered immovable or the owners of the adjacent registered immovables, and that impact is excessively burdensome and it is not possible to sufficiently avoid or to alleviate it.

An example of the restriction on the right of ownership with the application of administrative sanctions may be seen in Section 40 of the Money Laundering and Terrorist Financing Prevention Act[35], which enables the authorities to stop a transaction with a precept, or to establish a restriction on the transfer of the assets in an account for a period of up to 30 days (in certain cases, the deadline can be extended by 60 days). The permission of an administrative court is necessary for a longer restriction.

There are also connections with civil law, and more precisely with the enforcement procedure arising from a civil law relationship. Chapter 8^1 of the Code of Enforcement Procedure[36], which entered into force in March 2016, permits the court to take away the driver's licence of a person who is indebted for child support, or to suspend the validity of such a person's hunting permit, weapon permit and fishing permit with the claimant's consent and based on the bailiff's application.

If the term "sanctions" in the question is to be understood as also including misdemeanour proceedings then, in addition to the main punishment, it is also possible to apply several additional punishments. For example, Section 125 of the Traffic Act[37] provides the opportunity to withdraw a person's right to drive vehicles following a traffic offence; Section 49^1 of the PC allows a prohibition to engage in enterprise activities as an additional punishment in the case of certain types of offences; and Section 83 of the PC allows confiscating the object used to commit an offence, or the direct object of an offence. Also, a prohibition on business activities is established in Section 91 of the Bankruptcy Act[38], by which a person is prohibited, from declaring bankruptcy until the end of the bankruptcy proceedings, from beginning an undertaking or being a member of a management body of a legal person without the court's permission.

III-Q4

The situation where an administrative body may perform state supervision, as well as carry out misdemeanour proceedings, is common under Estonian law. In relation to the implementation of European Union law, the operating of administrative bodies has not been reorganised in this respect. For example, the **Estonian Competition Authority**, which was formed in 1993,

[34] In English: https://www.riigiteataja.ee/en/eli/529122016004/consolide.
[35] In English: https://www.riigiteataja.ee/en/eli/511072016001/consolide.
[36] In English: https://www.riigiteataja.ee/en/eli/528122016008/consolide.
[37] In English: https://www.riigiteataja.ee/en/eli/516022016004/consolide.
[38] In English: https://www.riigiteataja.ee/en/eli/504072016002/consolide.

exercises state supervision over compliance with the Competition Act (CA)[39] and pursuant to Section 54[1] of the CA may apply the specific state supervision measures provided for in LEA, such as questioning individuals and requiring documents, issuing invitations and compelling attendance, requiring identification, etc; the Competition Authority also conducts extra-judicial proceedings concerning the misdemeanours provided for in the Competition Act (Section 73[9] of the CA). The Competition Authority is also responsible for the implementation of Articles 101 and 102 of the Treaty for the Functioning of the European Union for the purposes of Article 35 of the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, and if necessary shall provide assistance to the European Commission for the exercising of the competition supervision and on-site controls.

In Estonia, **the leniency programme** shall not be carried out in cases of administrative coercion (in state supervision proceedings) but **only in criminal proceedings**. Estonia criminalised cartels, as well as other significant violations of the competition law, in 2001. Section 400 (1) of the PC determines punishable offences as agreements, decisions or concerted practices between undertakings which have as their objective or effect the restriction of competition. In 2010, the Penal Code, Code of Criminal Procedure and the Competition Act were amended in order to strengthen the fight against cartels and other significant violations of the competition law, and provisions implementing the leniency programmes were added to the CA.

III-Q5

The reopening of administrative court proceedings after a final decision is possible in review proceedings, by lodging a petition for review with the Supreme Court. Review of final court decisions is only possible in exceptional cases. Among them are, for instance, the fact that the court decision is based on a previous court decision, arbitration award or administrative act which has since been annulled or varied, or a declaration of unconstitutionality rendered in constitutional review proceedings in respect of the legislative act or a provision of such act, or the omission to issue a legislative act, which served as the basis for the court decision in the administrative matter under review (Section 240 (2) 6) – 7) of the CACP). On the other hand, Section 240 (5) of the CACP provides that review of a matter is excluded if the participant of the proceedings could, in earlier proceedings, have relied on the facts which would allow the review, in particular by making an objection or bringing an action, and also if the objection or action was dismissed. As with appeals in cassation, there is a leave of appeal system, so the Supreme Court only opens the proceedings on a petition for review if the facts submitted in that petition give reason to believe that a ground for review provided in the law is present (Section 244 (1) of the CACP). There is no explicit basis in the CACP for reopening proceedings based on a judgment of the CJEU. Considering the direct effect of EU law, though, a basis analogous to Section 240 (2) 7) would probably be found at least for the cases where the CJEU declares an act of an EU institution which served as the basis for the court decision void. There have not been any such administrative cases in the Supreme Court yet.

The bases for reopening administrative proceedings are wider than for the review of court decisions. According to Section 44 (1) 1) of the APA, an administrative authority shall resume administrative proceedings at the request of a person if the circumstances or legislative or procedural provisions which are the basis for issue of the administrative act which imposes

[39] In English: https://www.riigiteataja.ee/en/eli/519012015013/consolide.

permanent restrictions on the rights of the person who submits the application cease to exist. These provisions may include EU law provisions. In addition, the Administrative Law Chamber of the Supreme Court has stated that even if the reopening of the proceedings is not mandatory according to the law, the administrative authority may nevertheless reopen proceedings on a discretionary basis (Case No. **3-3-1-80-10**[40]). The reopening of the proceedings may lead to the repeal of the administrative act – easier if in favour of the person, on more restricted conditions (including the consideration of legal certainty) if to the detriment of the person (see Sections 64 – 67 of the APA). We are not aware of any such cases, but they may exist and not have reached the court.

III-Q6

There is no institute similar to "plea bargaining" provided for in administrative law for administrative sanctions. It is, of course, still possible that some form of negotiations may take place in practice, but only if an administrative authority has discretionary powers when deciding on administrative sanctions. Within the margins of discretion the authority must consider all relevant facts and legitimate interests (including, of course, the interests of a possible third party), and during the hearing of the opinions and objections of the participants in proceedings, the addressee of the sanctions obviously tries to convince the authority to be as lenient as possible. For instance, the possibility of postponing the application of a coercive measure at the reasoned request of the addressee of the coercive measure (Section 8 (2) of the SEPA) may be regarded as a form of negotiations. However, the authority needs to make and reason its final decision itself.

As for the administrative court procedure, there are specific provisions in the CACP concerning compromise. According to Section 154 (1) of the CACP, the parties may, until the concluding decision in respect of the action becomes final, conclude the proceedings by means of a compromise. If the compromise limits the rights of a third party, the third party must also agree to the compromise. The court does not approve a compromise if it is unlawful, if it impinges on the rights of a person who is not a participant of the proceedings or if it is impossible to perform the compromise. Throughout the entire proceedings, the court must take every action within its power to dispose of the matter or a part of the matter by way of compromise or other mutual arrangement of the participants of the proceedings, if this is reasonable in the assessment of the court. To achieve that, the court may, amongst other things, present a draft compromise to the participants of the proceedings, or to summons the participants to attend court in person, and to propose to the participants that they settle the dispute out of court, or to propose to conduct the conciliation proceedings (Section 154 (4) of the CACP). The court approves a compromise in a ruling by which it also terminates proceedings in the matter. The ruling which approves a compromise states the terms and conditions of the compromise (Section 155 (4) of the CACP). That ruling, like other decisions of the court, is binding for the parties.

[40] In Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-80-10.