SUPREME COURT
REPUBLIC OF SLOVENIA

ACA EUROPE

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

Administrative Sanctions in European law

Ljubljana, 23–24 March 2017

Answers to questionnaire: Lithuania

Seminar co-funded by the "Justice" programme of the European Union

ANSWERS TO THE QUESTIONNAIRE BY THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA

2 Zygimantu st., LT-01102 Vilnius, Lithuania,
tel. + 370 5 2791005, fax. +370 5 268 58 75, e-mail: info@lvat.lt

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

Administrative sanctions in European Law

Ljubljana, 23-24 March 2017

Questionnaire

Part I – The notion of administrative sanctions

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

Ancillary questions:

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

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

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

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

What distinction does your national legal system make between administrative sanctions and other administrative measures to restore compliance with the law? (e.g.: the closure of an

exploitation of a waste management facility that was operating without a license v. an administrative fine?)

General Remarks

First of all, one should note the peculiarity of the administrative sanctions system in Lithuania. The sanctions applied to the citizens and other natural persons are codified in one legal act – the Code on Administrative Offences. The provisions of the Code provide a rather detailed set of rules on how the choice among several types of remedies should be made. The Code sets out a combination of circumstances that must be regarded as aggravating or mitigating the liability. For example, if it is established that the person has made the violation for the first time this is considered as a background to choose a more lenient sanction.

Meanwhile, the sanctions applied to the economic operators are not codified. The sanctions and the rules concerning the choice of remedies are mostly distributed in various laws dealing with a particular sector of business activities. An exception to this rule is the respective provisions set out in the Law on Public Administration. Article 36(2) provides that the remedies for certain infringements of legal acts should be applied only as an *ultima ratio* measure. In addition to this, Article 36(4) establishes that no remedies should be applied to the economic operators during their first year of activities where these remedies would amount to the limitation of their activities, e.g. withdrawal or suspension of licenses or permits. In these cases a reasonable time limit (normally no less than one month) should be set for the economic operator to rectify the breaches. However, this rule does not apply in the sphere of taxes, customs or competition.

Thus, the Code of Administrative Offences, which was amended in January 2017, and specialised separate laws are the main administrative laws regulating the administrative field of law.

In the Republic of Lithuania, administrative and criminal law spheres are regulated separately. The main legislation in the field of criminal law is the Criminal Code.

Administrative sanctions, administrative penalties, and economic sanctions

With regard to the definition of the concept of "***administrative sanctions***", one should note that the national legal regulation does not provide for its precise meaning. Nevertheless, the notion of an administrative sanction is interpreted rather broadly in the case law of the administrative courts of Lithuania. The system entails an extensive lists of administrative penalties and enforcement measures in the field of public law infringements regulated by special legislation (separate laws regulating distinct spheres of economic activity). The administrative case law is mostly associated with the field of economic activity, thus, the most common administrative sanctions are economic fines, withdrawal of special granted rights and licences, confiscation of property etc.

It is also interesting to note that Lithuanian law also provides for a concept "***economic sanctions***". Both, administrative sanctions and other administrative measures restoring compliance with the law are considered economic sanctions under Lithuanian law to which the same principles of legal accountability apply. Regarding economic sanctions, the Constitutional Court of the Republic of Lithuania has stated that annulment of special licences, in particular, does not infringe the principles of the rule of law and justice (the Constitutional Court of the Republic of Lithuania ruling - 17 September 2008). It stated that the law provides for specific requirements that have to be respected and adhered to by entities and individuals on the

market, otherwise, economic sanctions may be imposed. Some offences may invoke the imposition of a fine only while others may invoke both, the imposition of a fine and an economic sanction, such as the annulment of a licence for a specific activity. The Court has noted that in a democratic state the legislator has the right and the obligation to prohibit certain activities that substantially harm the interests of persons, the society and the state (the rulings of the Constitutional Court of Lithuania – 8 May 2000, 10 June 2003, 29 December 2004, 10 November 2005). Notably, according to the principles of democracy and the rule of law, not only does the state aim to protect the interests and rights of persons and the society from infringements of the law and dangerous offences, but also manages to accomplish these goals effectively (the rulings of the Constitutional Court of Lithuania – 29 December 2004, 16 January 2006).

In this context, it should also be noted that the Code of Administrative Offences sets out a definition of "***administrative penalty***". According to the new Code of Administrative Offences, an administrative offence is a dangerous act or inaction which is prohibited by this code and meets the elements of the administrative offence punishable by an administrative penalty (Article 5 of the Code of Administrative Offences). An administrative penalty is a coercive measure of the state which is imposed on the offender according to the procedures of the Code.

Administrative penalties may be threefold (Articles 22, 23 of the Code of Administrative Offences). First, a warning is a formal written condemnation of an administrative offence committed by a person. Second, an administrative fine may be imposed on persons which is not less than 5 and not more than 6 000 euro. Third, community service is unremunerated community work which is imposed on an administrative offender as an alternative administrative penalty to the administrative fine or a part thereof. Additionally, in order to implement administrative penalties, administrative enforcement measures may be applied (Article 27 of the Code of Administrative Offences). They include the withdrawal of special granted rights, confiscation of property, an obligation to take part in various social programmes (such as alcohol and drug prevention, health care, social rehabilitation etc.) and a prohibition to attend events in public spaces.

Criminal Sanctions

The Criminal Code defines possible criminal sanctions in the Republic of Lithuania. First of all, criminal acts are divided into crimes and misdemeanours. A crime is a dangerous act (or omission) forbidden under the Criminal Code and punishable with a custodial sentence. Crimes can be committed with intent and through negligence. Premeditated crimes are divided into minor, less serious, serious and grave crimes. A misdemeanour, on the other hand, is a dangerous act (or omission) forbidden under the Criminal Code which is punishable by a non-custodial sentence, with the exception of arrest (Articles 10, 11 and 12 of the Criminal Code of Lithuania).

In terms of criminal sanctions, a criminal penalty shall be a coercive measure applied by the state, which is imposed by a court's judgement upon a person who has committed a crime or misdemeanour (Article 41 of the Criminal Code). Six specific types of penalties may be imposed on a person who commits a crime – community service, a fine, restriction of liberty, arrest, fixed-term imprisonment and life imprisonment. A person who commits a misdemeanour may be punished by community service, a fine and restriction of liberty or arrest.

Notably, the cases involving high financial penalties as administrative sanctions are considered equal to criminal cases in terms of human rights protection under the European Convention on

Human Rights. Thus a person or an entity that might be fined can invoke Article 6 of the Convention. Consequently, the court or a quasi-judicial authority must comply with all generally accepted principles of criminal procedure, such as the presumption of innocence, the right to defence etc. In the view of the possible substantive administrative sanctions which may be imposed by a public administrative body for violations of law, the process of such imposition may be equated to criminal proceedings in accordance with the meaning of the Convention. Therefore, public administrative bodies carrying out investigations and imposing sanctions on entities and persons must also comply with the fundamental principles of law applicable in criminal proceedings. Accordingly, the Supreme Administrative Court of Lithuania has applied the interpretation of the general principles of law provided by the European Court of Human Rights and the jurisprudence of the Supreme Court of Lithuania (the Supreme Administrative Court, case number A^{552}-2377/2012).

The Principle of Legality

The principle of legality is applicable to administrative sanctions in the Republic of Lithuania. According to this public law principle, the subjects of public administration must act within the limits of their assigned competence. The Supreme Administrative Court of Lithuania has stated that acting *ultra vires* or beyond one's legal power or authority provides reason to declare the act or its part thereof illegal (case numbers A^{662}-906/2009, A^{756}-1229/2010, A^{525}-2648/2013). The principle of legality requires that legal accountability is invoked only in cases when an action (or inaction) is regulated by law and according to the rules of the legal process. Only the person who has committed an illegal act can be held responsible (the Supreme Administrative Court of Lithuania, case number A^{556}-668/2009).

In the practice of the administrative courts of Lithuania a special regard is given to the case law of the courts of the European Union in terms of the applicability of the legality principle. Notably, the principle of legality is considered infringed when, among other instances, an entity receives a bigger sanction than is provided by law and the criteria for such application is not provided in the administrative decision (the Supreme Administrative Court of Lithuania, case number eA-2330-520/2016).

Additionally, according to the principle of legality, the administrative decision, adopted by a public administrative authority and imposing administrative responsibility on an entity, is considered valid until it is not annulled by the court or a higher administrative authority (the Supreme Administrative Court of Lithuania, case numbers A^{602}-151/2012, A^{602}-227/2012, A^{502}-1017/2014, A-1353-858/2016).

Deterring Effect of Sanctions

Regarding the deterring effect of administrative sanctions, it is required in each case of administrative accountability, according to the case law of the Supreme Administrative Court of Lithuania. Extremely low economic sanctions or exemption from payment of the fine would not reach the goal of the deterring effect. Thus, the assessment of the proportionality of penalties and fines in Lithuanian judicial practice includes the evaluation whether the said fines and penalties meet the criteria of deterrent effect (the Supreme Administrative Court, case numbers A^{552}-2016/2012, A^{520}-634/2013, A-741-552/2016).

In more detail, administrative accountability not only has the goal of punishing entities infringing administrative law but also ensure prevention of violation of law. The entity that has acted

illegally is being punished so that it does not repeat its illegal behaviour. The imposition of a fine that inflicts substantial financial consequences on an entity provides for a notice to other entities – the infringement of the same rules will result in administrative accountability. Thus, the amount of the fine is associated with the deterring effect of administrative sanctions (the Supreme Administrative Court, case numbers A[556]-572/2009, A-43-520/2016).

The Application of the ECtHR and the CJEU Jurisprudence by National Courts

The obligation of the courts to follow the case law of the European Union Court of Justice and the European Court of Human Rights may be derived from the Constitutional Act of the Republic of Lithuania on the Membership in the European Union. It states that the norms of European Union law shall be a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the European Union, the norms of European Union law shall be applied directly, while in the event of the collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania. The obligation to follow the European case law is also provided by the Law on Courts of the Republic of Lithuania.

In terms of special rules and practical examples regarding the jurisprudence of the EU law compatibility with the jurisprudence of the ECtHR, the situation is more practical and based on general principles rather than officially regulated. The courts base their decisions on national law and also both, the practice of the European Court of Justice and the European Court of Human Rights. Both case law can be used in the same national case for similar reasoning (for instance in terms of the right to a fair hearing and others) since the principles of the fundamental human rights, protected by both regimes, in particularly, the legal values are similar. For instance, the Supreme Administrative Court has referred to both the CJEU and the ECtHR in its recent case concerning the fine imposed on legal entity for the breach of competition rules (the Supreme Administrative Court, case number eA-2330-520/2016).

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

Ancillary questions:

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

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

General Remarks

The rules on the procedural requirements of sanctions provided by the special legal regulation are not uniform. In this respect it should be noted that mainly every law concerning the

application of procedural guarantees provides that the decision-maker should adhere to the principles of objectivity and proportionality (e.g. the Law on Competition, the Law on Alcohol Control, the Law on the Prohibition of Unfair Practices of Retailers, the Law on Advertising, the Law on Prohibition of Unfair Business-to-Consumer Commercial Practices, the Law on Electronic Communications, the Law on the State Control of Environment Protection etc.).

In addition to this, one should note that it is not unusual that certain laws are completely silent on the matter inasmuch as it concerns the choice among sanctions. Meanwhile, the executive provides for more detailed rules how the decision concerning respective remedy should be made. In this respect one should note the legal regulation in the sphere of competition. For example, the Rules on Penalties provide that the competent body should take into account the length of the period of the infringement, the direct and indirect income which was gained due to the infringement, whether the economic operator contributed to the investigation and disclosed all relevant information, was the first one to come forward before the state institutions etc. Even though these rules are based on the relevant provisions of the statutory law, it can be maintained that the executive indicates specifically how those rules should be applied.

In summary, it is true to say that in Lithuania the legal regulation on the matter is highly diverse. Having regard to this, one should not wonder that the judiciary is taking an active role while ruling on the disputed sanctions. Therefore, the principles of proportionality, objectivity and fairness have become indispensable tools in delivering justice. In this regard, a particular source of inspiration for developing the case-law concerning the procedural guarantees of the parties has been the case-law of the ECtHR. This is especially so where the administrative cases concern administrative sanctions that are close to criminal sanctions.

As it was mentioned above, the cases when administrative sanctions may involve high financial penalties are considered equal to criminal cases in terms of human rights protection under the European Convention on Human Rights. Thus a person or an entity that might be fined can invoke Article 6 of the Convention. Consequently, the court or a quasi-judicial authority must comply with all generally accepted principles of criminal procedure, such as the presumption of innocence, the right to defence etc.

In the view of the possible substantive administrative sanctions which may be imposed by a public administrative body for violations of law, the process of such imposition may be equated to criminal proceedings in accordance with the meaning of the Convention. Therefore, public administrative bodies carrying out investigations and imposing sanctions on entities and persons must also comply with the fundamental principles of law applicable in criminal proceedings. Accordingly, the Supreme Administrative Court of Lithuania has applied the interpretation of the general principles of law provided by the European Court of Human Rights and the jurisprudence of the Supreme Court of Lithuania (the Supreme Administrative Court, case number A552-2377/2012). In this regard, one should note the following:

(1) Principle of Legality

The law relating to the determination of liability and punishment cannot be interpreted broadly. According to the Constitution of the Republic of Lithuania, a penalty may be imposed or applied only on the basis of the law (Article 31 of the Constitution). A person can be held liable and punished only when the grounds for legal responsibility are clearly defined. Any doubt must be interpreted in favour of the person or the entity (the Supreme Administrative Court, case

number A[520]-2136/2012). For example, the Supreme Administrative Court of Lithuania has established that the law prohibited the use of alcohol beverages inside the vehicles; however, there were no precise sanctions for the breach of this prohibition. Based on this fact, the Court ruled that no person can be held liable for not complying with the rule banning the use of alcohol beverages inside the vehicles (the Supreme Administrative Court, case number N-62-4320/2009).

The application of the analogy of law is particularly exceptional in administrative and criminal law spheres. It is justified only to the extent that the scope of legal liability or application thereof is narrowed rather than broadened. Otherwise, the meaning of the legislation regulating legal responsibility would be distorted (the Supreme Administrative Court, case number A[520]-2136/2012).

(2) Principle of Proportionality

In terms of the principle of proportionality, the principles of justice and the rule of law imply that the sanctions and penalties established by the state must be proportionate to the committed offence. They must also meet the legitimate goals and universally important objectives. Sanctions and penalties cannot restrict the person or the entity more than it is necessary to achieve those objectives. The applicability of the principles of justice and the rule of law also means that a fair balance must be ensured between the aim of the objective and the means to achieve it. Thus, the sanctions and penalties must correspond to the committed offence. These principles ensure that manifestly disproportional sanctions are not imposed (the Supreme Administrative Court, case numbers A-505-662/2015, A-1125-822/2015, A-43-520/2016).

Additionally, the imposed sanctions must have a deterrent effect. Particularly low economic sanctions or exemptions from payment of the fine would not reach the goal of deterrence. Thus, the assessment of the proportionality of penalties in judicial practice also includes the evaluation whether a sanction meets the criterion of a deterrent effect (the Supreme Administrative Court, case numbers A[552]-2016/2012, A[520]-634/2013 A-741-552/2016).

The principle of proportionality also implies that the operators of the market must take certain precautions to avoid damage. In each such case, it is necessary to assess whether the measures taken by an entity or a person were appropriate and sufficient to achieve the goal – one shall answer the question whether the measures taken were appropriate and sufficient to avoid a particular infringement. The criterion of reasonability implies the need to verify whether an entity chose the specific measures properly. That is, whether in the context of the economic activities of the operating entity, one could reasonably expect such particular measures applied in order to ensure the compliance with the law (the Supreme Administrative Court, case numbers A[858]-351/2013, A[858]-468/2013).

(3) Nulla poena sine lege

The Constitution of Lithuania lays down the principle of *nulla poena sine lege* (Article 31(4) of the Constitution). It means that a punishment may only be imposed or applied on the basis of the law. The regulation of economic activity must, among other requirements, be clearly formulated and understandable in order for the entities and persons to implement their constitutional freedoms. Otherwise, the principle of legal certainty would be undermined (the Supreme Administrative Court, case number A[858]-141/2013).

Legal prohibitions and obligations for non-compliance followed by strict liability must be formulated unambiguously. Legal regulation must be understandable to all participants of legal relations. Such interpretation is in line with the general principles of criminal law, such as *nullum crimen, nulla poena sine lege*, meaning that there is no crime and no punishment without the law. The principle is also in line with the case law of the European Court of Human Rights, which states that the criminal law should not be broadly interpreted for the detriment of the defendant and the offence must be precisely defined by the law. In the practice of the European Court of Human Rights, the latter requirement is considered satisfied if a person knows and understands (from the text of a law or jurisprudence) what actions or omissions invoke his or her responsibility (the Supreme Administrative Court, case numbers A[822]-1600/2008, A[442]-841/2008, A[520]-2136/2012).

Economic sanctions (among others, fines) for breaches of regulation of economic activity can be attributed to administrative responsibility. Thus, they are closely associated with penalties for administrative offences while their size (strictness) can match criminal penalties (the Supreme Administrative Court, case numbers A[248]-749/2006, A[502]-1668/2012).

(4) Presumption of Innocence and In dubio pro reo

When deciding the facts and legal issues, the Supreme Administrative Court is guided by Article 31(1) of the Lithuanian Constitution. The article enshrines the presumption of innocence which is resulting in the principle of *in dubio pro reo,* according to which all doubts and uncertainties that cannot be clarified, shall be interpreted in favour of the accused person (the Supreme Administrative Court, case number A-2891-575/2016). This principle is also relied on by the European Union law, according to which, the application of administrative accountability (*inter alia* including violations of competition law) must be guided by the principle of the presumption of innocence when an entity or a person may be fined (the Supreme Administrative Court, case numbers A[858]-1516/2012, A[552]-2377/2012). *In dubio pro reo* principle is equally important when addressing both the factual circumstances of the case and regulatory uncertainty. In cases when the legislator has not met its obligation to ensure legal certainty, all doubts and uncertainties are to be interpreted in favour of the accused person (the Supreme Administrative Court, case numbers A[525]-1160/2014, A[858]-715/2014). This principle is also applied when the fact-finding questions are addressed. *In dubio pro reo* principle implies a duty on public administration to conduct comprehensive review of a situation. For instance, if a body of public administration does not examine the possible assumptions about a subject's activities and ramifications of communications, the responsibility of such subject cannot be reasonably established on the basis of *in dubio pro reo* principle (the Supreme Administrative Court, case number A[858]-1488/2011).

(5) Ne bis in idem

Please refer to the Answer provided for I-Q3 below.

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

Ancillary questions:

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

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

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

Article 31(5) of the Constitution of the Republic of Lithuania stipulates that no person may be punished for the same offence twice. This provision of the Constitution, as well as other parts of Article 31 of the Constitution, have the objective of the implementation of the principle of justice for criminal proceedings (the Constitutional Court of the Republic of Lithuania, the ruling of 10 February 2000). However, as the official constitutional doctrine explains, Article 31(5) also reflects the legal principle of *ne bis in idem* which means that a person cannot be punished twice for the same offence (the Constitutional Court of the Republic of Lithuania, the ruling of 8 June 2009), this constitutional principle is also applicable in cases of other offences (the Supreme Administrative Court, case number A-1441-502/2015). *Ne bis in idem* principle does not imply that an offence generally cannot evoke different types of legal liability. This principle does not preclude the application of other forms of liability which has the purpose other than punishment (for example, civil accountability), additionally, it does not preclude the punishment of different persons liable for the same offence or the punishment of the same person liable for different offences (the Supreme Administrative Court, case number A^{858}-2651/2011).

In more detail, the case law of administrative courts of Lithuania has repeatedly dealt with the question whether the *ne bis in idem* principle was not infringed by administrative responsibility of a legal person for violation of economic activity regulations when the infringement of an administrative offence was also found in relation to an employee who worked for the said legal entity. The guilt criterion of the legal entity is associated with the natural person acting on behalf of the legal person and its benefit or interest (the Supreme Administrative Court, case numbers A-1441-502/2015, A-775-143/2015).

When dealing with such cases, the administrative courts of Lithuania rely on the case law on the European Court of Human Rights and the European Court of Justice.

In terms of dual responsibility, Article 5(2) of the Code of Administrative Offences provides that a person may be held responsible for the commission of an offence that meets the characteristics laid down in this Code, if the committed offence does not incur criminal liability. In addition, the Constitutional Court of Lithuania has emphasized that the constitutional principle *ne bis in idem* does not allow to consider repeated administrative offences as a circumstance enabling the exchange of administrative accountability with criminal accountability only due to the fact that a person has been held liable under administrative law repeatedly (the Constitutional Court of Lithuania, ruling of 10 November 2005).

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?*

In terms of the authorities competent to impose administrative sanctions, the system in Lithuania is rather dual. In general, administrative authorities that are responsible for supervision of particular sphere of economic activities may be also competent to adopt administrative sanctions. However, the actual possibility to impose administrative sanctions in each particular case depends on specific legislation and competences attributed to different administrative authorities.

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?*

There are usually several levels of jurisdiction in procedures regarding administrative sanctions. In general, the system is twofold. Some specific spheres (such as taxes) require the pre-trial dispute resolution before a case can be evaluated judicially, other cases can be brought straight to the court. The court proceedings consist of the first instance and the appellate instance. The courts have broad competences. They may decide on both, the questions of facts and the issues of law. The courts have the supervisory role and they are also competent to reform or adopt the administrative sanctions imposed by an administrative authority.

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 of administrative sanctions is based on both, the legality of the decision and also on factual questions and circumstances. Administrative authorities have certain discretion attributed to them by different special laws and the administrative courts can review the discretion exercised by various administrative authorities.

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)?*

In general, strict liability for administrative sanctions provided by the special national laws prevails. However, according to Article 7 of the Code of Administrative Offences, a fault criterion is obligatory as a person is found guilty for an administrative offence if he or she has committed the infringement intentionally or negligently. Different special laws may impose administrative sanctions without finding the fault of a subject. For instance, the fault criterion is not required in competition cases (the Supreme Administrative Court, case number eA-2330-520/2016).

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)?*

The nature of an administrative act is relevant for its judicial review and it is possible that a judicial review is impeded by the nature of the decision leading to an administrative sanction. In particular, these are the cases when the administrative act is not a final act of a particular administrative procedure or in cases when such an act does not provide any legal consequences for a subject or does not legally oblige a subject.

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).*

Ancillary questions:

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

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

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

In order to implement administrative penalties, administrative enforcement measures may be applied (Article 27 of the Code of Administrative Offences). They include the withdrawal of special granted rights, confiscation of property, an obligation to take part in various social programmes (such as alcohol and drug prevention, health care, social rehabilitation etc.) and a prohibition to attend events in public spaces. Thus, administrative sanctions may encroach upon ownership rights under Lithuanian law.

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.*

Please refer to the Answer provided for I-Q2 above.

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?

Specific grounds for reopening of cases exist. Reopening of cases is allowed but only occurs in rather rare instances. Where the European Court of Justice issues a ruling, which interprets the law differently than national courts, it is possible for the national courts to reopen the case and adopt a new national ruling in accordance with the relevant CJEU decision. This, for instance, happened in the case of *UAB "Juvelta" v. VĮ "Lietuvos prabavimo rūmai"* (Case C‑ 481/12). Even though this case did not concern the imposition of administrative sanctions, following the line of arguments provided by the Court, it is tempting to think that the same methodology could be followed where a legal dispute concerns administrative liability.

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?*

Administrative court settlements or peace agreements are possible under Lithuanian law. According to Article 51 of the Law on Administrative Proceedings of Lithuania, at any stage of the proceedings the parties can end the proceedings by the means of a peace agreement, if the nature of the dispute allows it. Peace agreements must be consistent with the laws and other legal provisions, the public interest and be without prejudice to the interested parties' rights or legitimate interests. Peace agreements cannot be made in cases concerning the legality of normative administrative acts. The objective of the peace agreement must be of the same nature as the one stated in the initial complaint (application). Peace agreement can resolve the whole dispute or individual parts thereof. The Court shall take measures to reconcile the parties to the dispute only when the parties consent to begin the negotiations on a peace agreement.

In addition, some laws regulating economic activity and establishing specific offences for which administrative responsibility may be invoked, provide for the possibility of imposing a smaller penalty than the specified minimum of the law. It should be noted that according to the jurisprudence of the Constitutional Court of Lithuania, the legislator provided for the possibility to invoke liability which is less strict than the minimum penalty provided by law, notably, such a possibility is also accepted in cases of the application of other types of sanctions in the same specific area of economic activity. The court, even when dealing with cases, for instance, associated with a violation of law invoking a license cancellation, has to take into account the nature of the offence, the extent of mitigating circumstances, other significant factors and the principles of justice and reasonableness, to decide whether a penalty should or should not be applied because of certain very important circumstances it may be obviously disproportionate (inadequate) to the committed violation of law. In this sense, a court has the right to decide whether additional sanctioning is necessary and whether the disputed administrative act should be annulled or amended (the Constitutional Court of the Republic of Lithuania, the ruling of 21 January 2008). Different interpretation of the law would mean the infringement of the principles of proportionality and the rule of law. However, the exceptional non-applicability of a sanction provided by law is only possible when it is evidently disproportionate to the committed offence and consequently is unjust (the Supreme Administrative Court, case number A^{248}-1707/2008).

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.