



**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: Montenegro



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Questionnaire

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

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

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

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

1. Classification in domestic law:

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

2. Nature of the offence:

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

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

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

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

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

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

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”?*

Notification: *Please note that for the purpose of this Questionnaire, administrative sanctions will be considered as what is known in Montenegrin legislation as misdemeanor sanctions.*

Definitions of misdemeanor sanctions and criminal sanctions are precisely regulated at the national level by the Law on misdemeanors and Criminal Code of Montenegro.

First of all, the Law on misdemeanors has defined misdemeanor as an act that constitutes a violation of public order, and which is defined as a misdemeanour under the law or other piece of legislation and for which sanctions are provided. In addition, the Law prescribes that **misdemeanour sanctions are: penalties, warning measures, protective measures and corrective measures.**

The Law contains detailed provisions on each of the sanctions. Therefore, the types of penalties are: sentence of imprisonment; fine and a fine or a sentence of imprisonment. Instead of a term of imprisonment or a fine, the offender, provided he consents, may be sentenced to a penalty of community service.

The warning measures that may be imposed in accordance with the Law on misdemeanors are an Admonition and a Suspended Sentence.

Protection measures are: Seizure of items; Prohibition to practice a profession, business activity or duty; Suspension of driver's license; Mandatory alcohol addiction treatment; Mandatory drug addiction treatment; Mandatory psychiatric treatment and internment in a health care institution; Mandatory psychiatric outpatient treatment; Public announcement of decision; and Deportation of foreign nationals from Montenegro.

The following corrective measures may be imposed on juvenile offenders: Warning and guidance measures - reprimand and special obligations; Measures of intensive supervision: intensive supervision by parents, adoptive parents, or guardians, intensive supervision carried out by the social welfare authority and intensive supervision with daily stay in an appropriate juvenile correctional and educational facility and Referral to a non-institutional correctional facility.

The Criminal Code of Montenegro has defined criminal offence as an act which is established by law as a criminal offence, which is unlawful, and for which guilt was determined. In addition, the Criminal Code prescribes that **criminal sanctions shall include the following: punishments, warning measures, security measures, and correctional measures.**

In accordance with the Criminal Code, perpetrators may receive the following punishments: forty-year prison term; prison term; fine and community work.

Warning measures are: suspended sentence and judicial admonition.

Security measures are: mandatory psychiatric treatment and placement in a medical institution; mandatory psychiatric outpatient treatment; mandatory medical treatment of drug addiction; mandatory medical treatment of alcoholism; disqualification from a profession, activity or duty; driving prohibition; confiscation of objects; expulsion of a foreign national from the country and publication of the judgment.

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?

The principle of legality of the incrimination is applicable to misdemeanor sanctions. The Law on misdemeanors contains the principle of legality as one of the basic principles. It stipulates that no person may be given a misdemeanour sanction for an act that did not constitute a misdemeanour or for which a sanction was not provided under the law or other piece of legislation at the time when it was committed.

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?

Montenegrin courts in their judgments refer to the ECHR and they follow ECHR case law. In the last three years (2014, 2015, 2016) Montenegrin courts of all levels and jurisdictions referred to the ECHR in 370 judgments. However, the abovementioned judgments of the ECHR were not referred to. Since Montenegro is not a Member State of the European Union, there is no obligation for it to follow the CJEU jurisprudence. Therefore, Montenegrin courts more often refer to the ECtHR jurisprudence.

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

There are no statutory-based solutions given in this respect by the national legislator.

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?

There are no such examples in practice.

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

The Law on Misdemeanors prescribes that the general purpose of prescribing, imposing and applying misdemeanour sanctions is for the citizens to respect the legal system, to express public disapproval towards an offender for committing a misdemeanour, and to influence him/her and all other persons to refrain from committing misdemeanours in the future.

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?)

Misdemeanor courts are in charge for conducting misdemeanor proceeding and for imposing misdemeanor sanctions. The Law on Misdemeanors prescribes that the first instance misdemeanour proceedings shall be presided over by a single judge. The second instance court shall adjudicate in a three-judge panel.

In addition, in order to ensure the effectiveness of the procedure, the Misdemeanour Order is introduced by the Law on Misdemeanours. An authorized body shall issue a Misdemeanour Order if it is determined in any of the following ways that a misdemeanour that is within its jurisdiction has been committed: 1) Direct observation of an authorized officer while conducting inspection, supervision or review, as well as while performing an inspection of the official

records of a competent body; 2) On the basis of information obtained by means of supervision or measurement devices; 3) In the course inspecting documentation, premises and goods or through other legal means; 4) On the basis of the accused person's admission that he committed the misdemeanour, given before an authorized body at the scene or at another court or administrative proceeding. A Misdemeanour Order shall be issued when a penalty is prescribed in a fixed amount. A Misdemeanour Order may also be issued when a fine is prescribed in a range or when a fine is determined using a mathematical formula. Apart from a penalty, only a protective measure prohibiting the offender from driving a motor vehicle for the shortest provided length of time and a protective measure ordering seizure of items, as well as penalty points, may be imposed in a Misdemeanour Order. The accused may accept responsibility for a misdemeanour by paying the fine and fulfilling all other obligations set forth in the Misdemeanour Order within the specified deadline, or by notifying the authorized body that he accepts the sanction set forth in the in the Misdemeanour Order. In the event the accused accepts responsibility, the Misdemeanour Order shall become final and enforceable. The accused may submit a Petition for Court Adjudication of the Misdemeanour Order to the competent court no later than eight days from the date that he was served with the Order.

Administrative measures can be imposed by administrative inspectors in the course of the inspection control procedure. Inspection control shall be conducted with regard to compliance with law, other regulations and general rules, as well as for undertaking of administrative and other measures and actions in order to harmonize established irregularities with regulations. The aim of the inspection control is to remove spotted irregularities and to secure right implementation of law, other regulations and general acts. Inspection control is done by inspectors and is conducted in different administrative fields in accordance with different laws. Therefore, the Law on inspection control prescribes the principles of inspection control, manner and procedure for its conduct, obligations and authorizations of inspectors and other issues important for the conduct of inspection control. When in the inspection control procedure the violation of the Law or other regulation is determined or if it is determined that an action was not in compliance with prescribed standards or normative standards, Inspector shall be obliged to undertake following administrative measures and actions:

- 1) To order opening or closing of the facility or premises;
- 2) To order suspension of construction or execution of works;
- 3) To order demolition, removal of illegally started or fully constructed facilities and removal of such facility from certain area;
- 4) To order withdrawal of goods from trade, or putting of goods in trade;
- 5) To order withdrawal or destruction of things, goods and other products, as well as animals;
- 6) To prohibit the use of space, tools, equipment, plants, device, business and other facility, transportation and other means;
- 7) To prohibit disposition of cash funds available on account;
- 8) To prohibit production, use or trading of goods or provision of services;
- 9) To prohibit a movement of persons and facilities on a certain area, where there is a possibility to endanger life and health of physical entities;
- 10) To prohibit any activity jeopardizing the environment, property, or life and health of physical persons;
- 11) Until the decision of authorized body, to take away objects, equipment, tools and other things by which a punishable act was made;
- 12) To take away achieved property benefit, until the decision of authorized body;
- 13) To order and to undertake other measures providing the removal of determined irregularities in accordance with special regulations.

These measures and actions shall last until removal of irregularities for which they have been prescribed or until such circumstances exist.

Beside the Law on inspection control, which can be considered as a general law containing basic

principles of inspection control, there are special particular laws, as for example Consumer Protection Law. This Law prescribes that in addition to administrative measures determined by the Law on inspection control, authorised inspector will order trader to remove identified irregularities and determine deadline for that.

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)?*

The principle of legality is embedded in the Law on misdemeanors (see **I-Q1**). However, misdemeanors and misdemeanour sanctions may be prescribed by law, decree of the Government of Montenegro and decision of the local government unit. Misdemeanour sanctions may be prescribed only in accordance with the Law on misdemeanors.

The Criminal Code of Montenegro envisages that a punishment or other criminal sanction may only be imposed for an act which constituted a statutory criminal offence before the time of commission and for which punishment was authorized by law. This means that criminal offences and criminal sanctions may be prescribed only by law.

In respect to proportionality, the Law on Misdemeanors envisages General Rules for Determining the Sanction to be imposed. The court shall determine the level of the penalty to be imposed on the offender taking into account all mitigating and aggravating circumstances, and in particular the degree of severity of the offense and its consequences, the level of responsibility of the offender, his motives and the circumstances under which the misdemeanour was committed, the accused person's history, personal circumstances and demeanour after committing the misdemeanour, his financial situation, as well as other circumstances related to the character of the offender. If the misdemeanour committed is a repeat offense, the following, in particular, shall be taken into account: whether the previous misdemeanour was the same type as the new misdemeanour committed, whether both misdemeanours were committed with the same motive and the time elapsed since the offender was last convicted and punished for a misdemeanour. When determining the penalty, a previously imposed penalty may not be taken into account as an aggravating circumstance if more than two years have elapsed from the date the Misdemeanour Decision takes effect as final and legally binding.

Similarly, the Criminal Code prescribes special rules for determining the punishment. The court shall determine the punishment for the perpetrator of a criminal offence within the statutory limits for that particular offence taking into account the purpose of punishment and giving due consideration to any circumstances which result in lighter or more severe punishment (mitigating and aggravating circumstances) as well as the following, in particular: degree of culpability, motives for the commission of offence, degree of peril or injury to the protected good, circumstances under which the offence was committed, perpetrator's history, his personal situation, his behaviour after the commission of criminal offence, particularly his attitude towards the victim of the criminal offence as well as any other circumstances concerning the perpetrator's personality. In fixing a fine the court shall give particular consideration to the perpetrator's financial situation.

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?

The Constitution of Montenegro envisages that the law shall be in conformity with the

Constitution and confirmed international agreements, and other regulations shall be in conformity with the Constitution and the law. In addition, in accordance with the Constitution, the ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation.

The Law on Misdemeanors envisages two extraordinary legal remedies: Reopening Misdemeanour Proceedings and Petition for Protection of Legality. One of the reasons to reopen misdemeanour proceedings for the benefit of the defendant that were concluded with the rendering of a final and legally binding decision is if the establishment of the European Court for Human Rights or another court founded by international agreement, that human rights and fundamental freedoms were violated during the misdemeanour proceedings, and that the judicial decision was based on such violations, and that the committed violation may be remedied by reopening the proceedings.

Similarly, the request for protection of legality against final judicial decisions and against judicial proceedings that preceded such final decisions may be filed by the Supreme State Prosecutor's Office if it was established in the decision rendered by the European Court of Human Rights or by some other court set up in accordance with the ratified international agreement that human rights and fundamental freedoms were violated during the misdemeanour procedure and that judicial decision is founded on such violation, while the competent court did not allow the misdemeanour procedure to be reopened, or if the violation committed by judicial decision may be eliminated by quashing the decision or by overturning it, without reopening the proceedings.

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

The Constitution of Montenegro envisages the following principles that relate to misdemeanor proceedings as well as to criminal proceedings: More lenient law, Presumption of innocence, Ne bis in idem, Right to defense and Compensation of damage for illegal action. In more details, the Law on Misdemeanors contains the basic principles of the misdemeanor proceedings: Fair Conduct of Proceedings, The Right of Defence of the Accused, Ne Bis In Idem and Res Judicata, Principle of Truth and Fairness, Inadmissible Evidence and the Free Evaluation of Evidence, Instruction on Rights, Efficiency of Proceedings and Two-Instance Misdemeanour Proceedings. In addition, the Law contains provision saying that, if certain matters regarding misdemeanour proceedings are not regulated in this Law, the provisions of the Criminal Procedure Code shall apply accordingly to such matters.

I-Q3 – *Have unwanted consequences ever accrued from the decision of the Etch (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)?*

No unwanted consequences have accrued in this regard.

Ancillary questions:

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

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

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

The Constitution of Montenegro envisages that no one may be trialed or convicted twice for one and the same punishable act. The Law on Misdemeanors prescribes that no person may be retried for a misdemeanour that he was convicted or acquitted of committing by a final and legally binding judicial decision. In addition, the Law prescribes that a person, who, as a result of criminal proceedings and by a final and legally binding judgment, was convicted of a crime that also constitutes a misdemeanour, shall not be punished for the misdemeanour. If the criminal procedure has commenced against the misdemeanour offender for the criminal offence that has characteristic of the misdemeanour, the misdemeanour procedure cannot be commenced for such misdemeanour, and if the misdemeanour procedure has commenced it shall be suspended.

In addition, the Criminal Procedure Code prescribes that no person shall be tried again for a criminal offence s/he has already been convicted or acquitted of by a final judgment with the exception of cases provided for in the present Code. This exception is related to the repetition of the criminal procedure in line with this Code, as one of the extraordinary legal remedies.

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?*

Montenegrin system is unified. The Law on Misdemeanours prescribes that the authorised body that issued the Misdemeanour Order is responsible for enforcement and monitoring the enforcement of fines and other measures imposed in the Misdemeanour Order. In addition, courts shall enforce and monitor enforcement of fines, costs of procedure and other measures which they imposed in their decisions.

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?

The Misdemeanour Proceeding is two-instanced. An appeal may be filed against the first instance decision no later than eight days from the date the copy of the judicial decision was delivered. The Law on Courts establishes misdemeanour courts and high misdemeanour court. The High Misdemeanour Court shall decide on appeals lodged against decisions of misdemeanour courts, shall decide on the conflict of jurisdiction between misdemeanour courts and shall perform other duties prescribed by law.

A judicial decision may be contested by appeal on the grounds of: a serious violation of the provisions governing misdemeanour proceedings; incorrect application of the substantive law prescribing the misdemeanour in question; the factual situation being erroneously or incompletely established; a decision on the sanction, confiscation of material gain, award of costs of the misdemeanour proceedings and the property claim.

At the session of the Panel, the second instance court may: dismiss an appeal as belated or as inadmissible; dismiss an appeal as unfounded and reaffirm the decision of the first instance court; vacate the first instance decision and remand the case to the first instance court for *de novo* adjudication; modify the first instance decision.

In addition to appeal, there are also extraordinary legal remedies: Reopening Misdemeanour Proceedings and Petition for Protection of Legality.

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).

Please see the previous question.

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)?*

Montenegrin legal system requires a fault as a condition for the administrative sanction for natural person. The Law on Misdemeanour prescribes that a natural person, a legal entity, the responsible person in a legal entity and the responsible person in a state body, state administrative body and a local self-government body (hereinafter referred to as: the responsible person) and an entrepreneur may be liable for a misdemeanour only when that is stipulated in the law or other piece of legislation prescribing the misdemeanour. A natural person shall be liable for a misdemeanour if, at the time of committing the misdemeanour, he was mentally competent and committed the misdemeanour with intent or through negligence.

However, liability of legal entity is strict liability. A legal entity shall be held liable for a misdemeanour if the misdemeanour was committed as a result of an act or failure to perform due supervision by the management body or a responsible person, or the actions of another person authorized to act on behalf of the legal entity. A legal entity shall be held liable for a misdemeanour even when it is not possible to determine who the responsible person in the legal entity is or when the court establishes that legal or actual difficulties for determining the liability of the responsible person exist. A legal entity that is bankrupt shall be liable for a misdemeanour regardless of whether the misdemeanour was committed prior to the opening or in the course of the bankruptcy proceedings, however, no penalty may be imposed on it, but only the protective measure of confiscation of items and confiscation of material gain (asset forfeiture). A legal entity may receive a lesser penalty or be released from punishment for a misdemeanour if the misdemeanour was discovered and reported by the management body or other body of that legal entity.

A responsible person shall be held liable for a misdemeanour if he, acting with intent or due to negligence, committed the misdemeanour by acting or failing to perform due supervision.

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 the administrative act is not relevant for its judicial review.

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).*

Please see **I-Q1**.

Ancillary questions:

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

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)?

No, in the case provided, there is a procedure of enforced satisfaction of claims. In addition, in accordance with the Criminal Code of Montenegro, omission to provide maintenance (alimony) is a criminal offence. Therefore, anyone who does not provide maintenance for a person they are under duty to maintain under law, where such duty is laid down by an enforceable court decision or an enforcement settlement before a court of law or other competent body in the amount and in the manner specified by the decision or the settlement shall be punished by a fine or a prison term up to one year.

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.)?

The Law on Misdemeanours prescribes that no person may retain any material gain acquired by committing a misdemeanour. The gain shall be confiscated under the conditions stipulated in the Law and by means of a judicial decision establishing a misdemeanour was committed.

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.*

Since Montenegro is a candidate for a membership in the EU, it has to harmonise its legal system with *acquis communautaire*. Therefore, when drafting laws it is necessary to take into account relevant EU law requirements. For example, Montenegro has implemented EU regulations and directives related to the protection of consumers and protection of competition. In addition, one of the requirements for the improvement of the misdemeanour procedure was to make it more efficient and with that regard, Montenegro adopted new Law on Misdemeanor and it has introduced Misdemeanour Order.

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?*

Our administrative authorities and courts have not been faced with the request to apply the jurisprudence of the CJEU and to reopen/change already final administrative decisions on administrative sanctions.

In addition, please see I-Q2, first Ancillary Question.

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?

When misdemeanour proceedings are conducted for one misdemeanour or for more concurrent misdemeanours, the authorized petitioner may propose a plea agreement to the defendant and his defence counsel, or the defendant and his defence counsel may propose to the authorized petitioner that such an agreement be concluded. When the proposal is submitted, the parties to the proceedings and the defence counsel may negotiate the conditions for pleading guilty to a misdemeanour or to the misdemeanours the defendant is charged with.

The plea agreement shall be made in writing and may be submitted no later than by the completion of the first hearing for the holding of the trial (preliminary hearing) or summary examination. The plea agreement shall be submitted to the court.

However, a plea agreement cannot be entered into during the process of determining whether a domestic violence misdemeanour was committed.

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!