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Administrative Sanctions in European law

Ljubljana, 23–24 March 2017

Answers to questionnaire: Norway

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The Norwegian Answers to the 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?*

The Norwegian Public Administration Act sets out procedural requirements for administrative proceedings. Administrative sanctions are regulated by this act, but the act has until recently not provided tailored regulations for such sanctions. Normally important requirements and regulations for such sanctions are found in the specific act on which the relevant sanction is based. The general requirements for government intervention according to the Norwegian Constitution and the European Convention of Human Rights ("ECtHR") have supplemented these acts.[1]

The concept of administrative sanctions has traditionally not been precisely defined or systematically regulated under Norwegian law. In February 2016 the Norwegian government presented a proposal to an amendment of the Public Administration Act.[2] The objective of the bill is to establish a more systematic regulation of administrative sanctions. In addition to a general regulation of the most common types of administrative sanctions, the preparatory work also sets out guidelines for future legislation regarding such sanctions. The amendment act is adopted but the effective date has not yet been set.

When the amendment becomes effective the notion of "administrative sanction" will be statutory defined as a negative effect that an administrative body can impose on a party, as sanction of a violation of statutory law, administrative regulations or individual resolutions, and that is considered as penalty/criminal charges under the ECtHR.

[1] For the sake of completeness: The International Covenant on Civil and Political Rights of 16 December 1966 have also played a role here, but this convention will not be addressed further here.

[2] Prop. 62 L (2015-2016).

The notion of "criminal sanction" has on the other hand *traditionally* been defined as a negative effect the government inflicts on a person or entity because of an offence, with the purpose that the sanction is felt as a negative effect to the offender.

The interpretation of "criminal sanction" under the Norwegian Constitution is narrower than this general definition. As under the ECtHR we have no clear-cut definition of this notion. The starting point is whether the act on which the sanction is based, classifies the sanction as criminal. The application of the Constitution becomes, however, a bit blurry if the legislator has not classified the sanction as a criminal sanction. The Constitution is seen as legally limiting the legislative and executive powers, meaning that the courts can disregard the parliamentary classification of the sanction if the legislation is in contradiction with the Constitution. We have, however, no examples of a court overruling the parliamentary classification in this respect. We can nonetheless assume, based on inter alia the 2014 case referred to below, that the courts may use this competence if the parliament has not classified a sanction involving deprivation of liberty as a criminal sanction.

One of the reasons why the judicial review has been reserved is exactly administrative sanctions. From a Norwegian law perspective, such sanctions illustrate the problem with establishing a far-reaching constitutional definition of criminal sanction. If a sanction is deemed criminal under Article 96 of the Norwegian Constitution, such sanction can only be imposed in accordance with a judicial sentence by the courts. Case law has concluded that it is not satisfactorily under Article 96 that the party has the right to subsequently bring the government resolution to impose criminal sanction to courts for judicial review.[3] Consequently, if "criminal sanction" in this provision were to be interpreted in accordance with the ECtHR's definition of penalty/criminal charges, the concept of administrative sanctions would effectively become unconstitutional.

This can be illustrated by two Supreme Court cases. Before 2008 it was generally accepted that with respect to pecuniary sanctions the legislative classification should be decisive. In the case *Kobbvåglaks AS, Værøy Laksefarm AS og Larssen Seafood AS v. the Norwegian Ministry of Fisheries and Coastal Affairs* from 2008 the Supreme Court signalised a stricter scrutiny of the parliament's classification of pecuniary sanctions.[4]

Six years later the Supreme Court made a retreat in the 2014 case *Selsøyvik Havbruk AS v. the Norwegian Ministry of Trade, Industry and Fisheries*.[5] The court emphasised that even though administrative sanctions fall outside the notion of criminal sanctions under the Constitution, the affected party is safeguarded by the ECtHR. Also, administrative sanctions were considered as adequate alternatives to criminal sanctions in many situations, inter alia to reduce employment of criminal sanctions where appropriate.

Provided that the sanction is of pecuniary character and not classified as criminal by the parliament, the test according to the 2014 case is whether the legislator had reasonable grounds for leaving the government with authority to impose the relevant sanction. The person or entity against whom an administrative sanction is imposed, will however have a constitutional right in accordance with the Constitution Article 95 for judicial review by the courts.

[3] Retstidende 2008 page 478 para. 51 and Retstidende 2014 page 620 para 45.
[4] Retstidende 2008 page 478.
[5] Retstidende 2014 page 620.

This issue arose also in connection with a considerable modernisation and expansion of the Norwegian Constitution as to the protection of fundamental rights, carried out as part of the Constitution's bicentennial anniversary in May 2014. Numerous of the classic civil and political rights as prescribed by the major human rights conventions were taken into the Constitution itself. It was proposed in the preparatory work that "criminal sanction" in Article 96 of the Constitution should be defined in accordance with the ECtHR.[6] The proposal was rejected based on the same objections as presented above.[7]

The principle of legality applies to both criminal and administrative sanctions, and requires that such sanctions must have a satisfactorily basis in formal statutory law. For criminal sanctions this principle has been a part of the Constitution Article 96 since it was originally adopted in 1814. For other interventions by the government, including administrative sanctions, it has applied as a non-statutory constitutional principle. Following the amendments to the Constitution in 2014 mentioned above, the application of the principle outside criminal sanctions has also been codified, cf. Article 113.

The Supreme Court has interpreted the principle of legality in Article 96 more and more in accordance with the ECtHR Article 6. In the 2014 case *A v. the Prosecution Authority* the Supreme Court held that the Constitution requires the same clarity of the criminal legislation as the ECtHR Article 7.[8] We believe that the same standards apply for administrative sanctions, either by interpretation of the Constitution Article 113 in light of the ECtHR Article 7 or by direct application of the latter.

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?

As the definition of "administrative sanctions" is directly attached to the notion penalty/criminal charges in ECtHR, the mentioned case law will be of direct relevance.

The Norwegian view on the EEA Agreement is that procedural and criminal law falls outside its scope. Consequently CJEU jurisprudence is not directly relevant in this matter. The CJEU jurisprudence referred to in the question may however be of relevance indirectly following incorporation of EEA relevant directives or regulations that include provisions regarding administrative sanctions, but we have no clear examples in case law of this.

A more open question is whether for example the *EU Charter of Fundamental Rights* will have relevance after the mentioned constitutional amendments in 2014. [9] The preparatory

[6] Dokument 16 (2011-2012) page 132.
[7] Innst. 186 S (2013-2014), section 2.1.5.
[8] Retstidende 2014 page 238.
[9] See here Supreme Court Justice dr. juris Arnfinn Bårdsen: *Fundamental Rights in EEA Law – The Perspective of a National Supreme Court Justice*, para 38. Presentation made at EFTA Court spring seminar, Luxembourg

work to these amendments shows that the international human rights treaties were not the only source of inspiration. One also looked to the EU Charter of fundamental rights, both as to determining which rights and freedoms to include in the Constitution and as to the detailed structure and design. Consequently the case law on fundamental rights from the ECJ may be taken into consideration when interpreting the parallel provisions in the Norwegian Constitution, for example on the right to respect for private life or the general rule that the best interests of the child shall be a primary consideration. It goes without saying that any case law from the EFTA Court on corresponding fundamental rights within EEA law has similar relevance.

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

Yes, please see above.

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?

Please see above regarding the relevance of EU law and possible application in the future.

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

Please see above, this EU law principle does not apply.

However: Although there is no Norwegian law principle stating that administrative sanctions must have a deterrent effect, we cannot see how an administrative sanction without such effect will pass the judicial review in light of general administrative law requirements (e.g. the principle of proportionality) and the courts' full competence over administrative sanctions (please see below). Thus, sanctions must effectively have a deterrent effect.

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?)

The distinction between these two notions will follow from the definition in the amended Public Administration Act, referred to above. If e.g. the resolution is not considered as penalty under the ECtHR, it will not be an administrative sanction under Norwegian law.

As long as there is an intervention by the government, this intervention must have a statutory basis even though the administrative measure does not constitute criminal charges or punishment under the ECtHR. The core of the principle is when the government infringes upon legal rights of, or imposes legal obligations on, the individual The application of the

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12th of June 2015. Link: https://www.domstol.no/globalassets/upload/hret/artikler-og-foredrag/fundamental-rights-in-eea-law---bardsen-03062015.pdf

principle on interventions outside this core is not clear-cut.

Consequently, the choice of measures will at first depend on the powers vested the government in the relevant act. The preparatory work to the amendment act shows that the government must thereafter, after a broad assessment, find it necessary to impose the administrative sanction. This will require that less severe administrative measures are deemed inadequate reactions to the offence. If e.g. closure of the waste management facility is a disproportionate response to the offence in question, the resolution will be void.

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 parliament's classification of the sanction will normally be decisive, please see presentation above. As a consequence criminal sanctions and administrative sanctions are subject to two different procedural regimes.

On a general level we can observe the same types of procedural rights in the Public Administration Act and non-statutory administrative law principles, as we see in the Criminal Procedure Act. If the administrative sanction is brought before courts, the Civil Procedure Act will provide the party with further procedural rights. Also, the act on which the administrative sanction is based may provide tailored procedural rights for the party.

From this starting point some important nuances have to be made. *Firstly*, the Public Administration Act applies to the operations and activities of the government in general. Consequently, the procedural rights provided therein are not given with administrative sanctions specifically in mind, although these rights apply with greater extent when such sanctions are imposed. Further, given that all civil cases fall within the scope of the Civil Procedure Act, the procedural rights therein are not tailored for administrative sanctions. The opposite is naturally the case in the Criminal Procedure Act and criminal charges.

Secondly, the Criminal Procedure Act sets out a far more detailed regulation of the proceedings. Specific procedural rights regarding administrative sanctions must, on the other hand, often be inferred from more broadly formulated statutes and principles. The criminal proceedings therefore provide a more clear-cut catalogue of rights.

Thirdly, the process of imposing administrative sanctions has similarities to the inquisitorial system, with the government body as fact-finder with judicial power, whereas criminal proceedings will follow the accusatorial system. The implicated party will inter alia have the burden of initiating legal proceedings, as opposed to the situation in criminal cases. The significance of this should however not be exaggerated. The government has a responsibility to ensure that all sides of the case are properly investigated. Further, the combination of the right to appeal and to bring the administrative sanction before the courts for judicial review provides the party with the right to have the sanction reviewed in potentially five instances (two government bodies and three instances of court), all with full competence. Criminal sanctions can potentially be reviewed in three instances, including the Supreme Court with limited competence in the question of guilt.

The principle of legality will also apply to administrative sanctions. As previously mentioned, it will be applied with about the same strictness as for criminal sanctions. The same can be

said about the principle of proportionality, by which the sanction (either criminal or administrative) cannot be a disproportionate response to the offence in question.

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?

Please see above regarding regulatory solutions and the application of the CJEU.

According to the Norwegian Human Rights Act the jurisprudence of the ECtHR is directly applicable. To the extent that the procedural requirements under Norwegian law do not satisfy the standards set out in the ECtHR, the latter will prevail.

For the most part, however, we have seen that the national statutory requirements have been sufficiently flexible to allow the courts to expand rights by way of interpretation in light of the ECtHR, and by that in accordance with the ECtHR. For example has the ECtHR played a vital part of strengthening the adversarial principle and the principle of equality by way of interpretation.

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 competence of courts, the principle of equality and the adversarial principle have resemblances in the two tracks. The procedural time limits, including "reasonable time", are also quite similar under the two procedural regimes.

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)?*

No, this case has not itself caused unwanted consequences. The Grande Stevens case has been referred to in two decisions from the Oslo City Court and one decision from the Borgarting Appellate Court, but only to shed light on the understanding of "criminal charges" under the ECtHR.[10]

Ancillary questions:

How is the principle ne bis in idem understood in your legal system, taking into

[10] TOSLO-2015-29916, TOSLO-2015-64350 and LB-2015-160408.

account CJEU interpretation (case C-617/10, Fransson) and ECtHR interpretation of Art. 4 of Protocol No. 7 (ECHR (GC) Zolotoukhine/Russia, No. 14939/03)?

The principle *ne bis in idem* is a constitutional principle in Norway. In connection with the 2014 modernisation of the Constitution it was proposed to codify this principle in the Constitution.[11] It was ultimately decided not to codify it inter alia because it would have required defining "criminal sanctions" differently from the other constitutional provisions.[12]

A very relevant case in this context is the 2010 Supreme Court case of *A v. the Prosecution Authority.*[13] The party *A* had been imposed with a 30% tax penalty and regular criminal charges for filing an incorrect tax return. A central question in this case was whether there had been successive prosecutions, which would be contrary to Article 4 of Protocol No. 7, or parallel treatment, which was permissible to some extent. The court noted that Norwegian law had been adjusted to the *Zolotoukhine case*, according to which "*Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second 'offence' in so far as it arises from identical facts or facts which are substantially the same*".

The Supreme Court found that both sanctions in the specific case were criminal of character, that the penalty tax case was finally resolved and that the factual circumstances underlying the decision to impose tax penalties and the criminal prosecution had sufficient common features. Nonetheless, the Supreme Court found that the sanctions were sufficiently close in substance and in time, with reference to inter alia ECHR *Nilsson v. Sweden* (no. 73661/01). The two cases had their basis in the same factual circumstances – the lack of information on the tax return which had led to a deficient tax assessment. The criminal proceedings and the administrative proceedings had been conducted in parallel, and the proceedings had to a great extent been interconnected. The two sanctions were consequently considered to be legitimate complementary legal responses to the offence.

A thereafter filed an application against Norway lodged with the Court under Article 34 of the ECtHR, along with *B* (for *B*, not following a Supreme Court judgment on the merits). On 15 November 2016 the ECHR Grand Chamber (Nos. 24130/11 and 29758/11) confirmed that the Supreme Court's understanding of the principle *ne bis in idem* was correct. In addition the ECHR held:

> *"In the view of the Court, States should be able legitimately to choose complementary legal responses to socially offensive conduct (such as non-compliance with road-traffic regulations or non-payment/evasion of taxes) through different procedures forming a coherent whole so as to address different aspects of the social problem involved, provided that the accumulated legal responses do not represent an excessive burden for the individual concerned." (para 121)*

It is interesting to note that after the amendment to the Public Administration Act becomes effective, the relevant government body and the Prosecution Authority have a statutory duty to coordinate their proceedings where parallel treatment may be appropriate.[14]

Are national courts faced with cases where individuals, subject of administrative sanctions, would like to exclude criminal sanctions and criminal procedures (including in

[11] Dokument 16 (2011-2012) page 132.
[12] Innst. 186 S (2013-2014) section 2.1.5.
[13] Retstidende 2010 page 1121.
[14] Section 47 of the revised Public Administration Act and sections 71 c and 229, third paragraph, of the revised Criminal Procedure Act.

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)?

We are not familiar with cases that fit the description in the first question.

Expulsion is not considered an administrative or criminal sanction under Norwegian law, and it may be imposed in addition to criminal sanctions. Given that the definition of administrative sanction now has an explicit reference to the ECtHR, case law from the ECHR may in the future require a new assessment of these questions.

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?*

To the first question: Yes, it is possible. *To the second question*: Depending on inter alia the offence in question, the courts may take into account the administrative sanction when determining the criminal one. One of the objectives of the statutory duty to coordinate the administrative and criminal proceedings is to secure that the burden of the sanctions, assessed in concert, is appropriate. *To the third question*: Please see above earlier answers.

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?*

With respect to administrative sanctions, the ministries are *for the most part* responsible for adopting administrative regulations that supplement statutory regulations, whereas the underlying bodies are responsible for their enforcement. The ministries are normally the appellate body reviewing the resolution from the first instance. It is however a mixed system in which both solutions coexist.

There is no general prohibition against an official imposing the administrative sanction if he/she also discovered the relevant infringement. It has however been stressed in different contexts that officials in general should not serve different functions in administrative proceedings,[15] and it may be that such combination after a case-specific assessment is

[15] See for example Ot.prp. nr. 38 (1964-1965) page 39.

prohibited. This may particularly be possible in a case in which administrative sanctions are imposed.

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 party has a right of appeal over administrative sanctions. Consequently there are normally two levels of jurisdiction in the government in procedures regarding administrative sanctions.

As previously mentioned, the party also has the right to bring a case of administrative sanction to the courts. The competence of the courts was discussed in the preparatory work for the amendment to the Public Administration Act. Once the amendment becomes effective it will be clarified that the courts have full competence, meaning that it can review the procedural, factual and legal sides of the administrative sanction. This includes competence to review the discretion exercised by the government. The scrutiny over certain questions will however be conducted with some restraint, such as whether a sanction is more appropriate than the one imposed by the government.

The courts can reform the sanction, but they cannot adopt one alone.

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 courts have full competence and can also review the discretion exercised by the administrative authorities, please see answer above.

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)?*

This was also one of the issues addressed in the preparatory work to the amendment of the Public Administration Act.

The committee noted that administrative sanctions should generally be fault-based, with respect to both natural and legal persons. It is however assumed that within certain areas strict liability is appropriate for imposing reasonably minor fines. This will typically be areas in which there is a high frequency of offences combined with a strong need for enforcement. A prerequisite for such solution is normally that the type of offence itself strongly indicates

intent or negligence.

For natural persons, however, administrative sanctions should require that the relevant offence is made with intent or negligence. If this person has not acted within a commercial context, administrative sanctions are normally only applied to minor offences. If it is considered imposing administrative sanctions to a natural person for more serious offences, this will require more severely culpable actions/omissions.

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)?*

No, the judicial review is in principle the same for all administrative sanctions. The nature of the relevant act may however lead to some reservation in the review of the discretion exercised by the authorities, if the act regulates an area of law in which the courts traditionally have exercised judicial review with restraints.

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).*

The following are the most used non-pecuniary administrative sanctions under Norwegian law:

- Administrative loss of rights: Within many areas an authorisation or license from the government is required to carry out or continue with a certain type of business or activity. The government can retract such authorisation or license under certain conditions.
- Administrative seizure: The government can seize goods stemming from illegal activities and the likes, e.g. seizure of fish from illegal fishing.
- Loss of services from the government: The government can reject or limit a service the citizen/entity otherwise would have been entitled to, or resolve to temporarily withhold such service for a certain time period, as a consequence of the applicant's breach of duty of disclosure or other specifically given duties in connection with the application.
- Prohibition from activities not requiring governmental approval: Such sanction must often be imposed by the courts, but the government can to a certain extent also resolve such prohibition.
- Formal notice: The government can resolve to give a person or entity a formal notice as response to an offence. Such notice may be a prerequisite for a subsequent sanction or the only sanction the government can impose.

Most of these sanctions are not penalty/criminal charges under the ECtHR per se, but they may after a case-by-case assessment be considered as it.

Another known sanction under Norwegian law is an order from the government to cease illegal activities and restore the state of e.g. the property as it was before these illegal activities. Consequently it can be ordered to restore the site to its original state, which can

include a duty to demolish a construction. However, the authorities must assess inter alia whether the choice of sanction is proportionate to the offence in question.

The preparatory work to the Public Administration Act has considered this to be a regular administrative measure, and not an administrative sanction (i.e. not a penalty under the ECtHR). It was emphasised that the purpose is to correct the illegal activity and not to penalise the offence itself. Thus, this type of sanction does not fall within the stricter legal regime for administrative sanctions. The case of Hamer v. Belgium was not discussed.

Ancillary questions:

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

Yes.

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, not administrative sanctions.

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

Yes, several of the sanctions mentioned above may encroach upon ownership rights. The preparatory work stresses inter alia the significance of fault-based liability, as opposed to strict liability, in the assessment of whether there is a legitimate interference of ownership rights in accordance with Article 1 of the first protocol to the ECtHR.

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.*

EU competition law is considered EEA relevant and the Norwegian Competition Authority's competence is in accordance with EU law requirements. A leniency program as described in the question is provided for in the Competition Act.

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?*

We are not familiar with cases inquired about in the first question. There are rules of administrative procedure and civil procedure that allow for re-openings of cases, both by the

government and by the courts. The conditions set out in the relevant acts are quite specific and the chances of success are generally slim.

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?*

It is not possible to plea bargain or the likes on an administrative sanction. It is however not uncommon that the authorities and the party have informal conversations that may e.g. lead to a more appropriate sanction than the one originally resolved upon. It must be stressed that such amendments can only be made because the set of facts is considered more adequate after the conversations, and not on the basis of a quid pro quo.

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.