



**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: Serbia



Seminar co-funded by the “Justice” programme of the European Union

REPUBLIC OF SERBIA- ADMINISTRATIVE SANCTIONS

ANSWERS TO QUESTIONNAIRE

ADMINISTRATIVE SANCTIONS IN EUROPEAN LAW

Part I – The notion of administrative sanctions

I-Q1

a) The notion of administrative sanctions is precisely regulated by the Misdemeanor Law.

Administrative sanctions that are prescribed are as follows:

- Penalties
- Penalty points
- Admonition
- Precautionary measures
- Re-education measures

Administrative penalties that are prescribed are as follows:

- Imprisonment
- Fine
- Community service

The purpose of misdemeanor sanctions is defined by Article 5 paragraph 2 of the Misdemeanor Law “the purpose of prescribing, imposing, and enforcement of misdemeanor sanctions is that the citizens respect the legal system and that nobody commits a misdemeanor in the future”.

b) The notion of criminal sanctions is precisely regulated by the Criminal Code.

Criminal sanctions that are prescribed are as follows:

- Punishment
- Caution
- Security measures
- Re-education measures/Rehabilitation measures

Types of penalties that are prescribed are as follows:

- A prison sentence
- Fine

- Community service
- Penalty points including motoring disqualification

Article 42 of the Criminal Code prescribes the general purpose of criminal sanctions (Article 4, paragraph 2), the purpose of punishment is:

- 1) to prevent an offender from committing criminal offences and deter them from future commission of criminal offences;
- 2) to deter others from commission of criminal offences;
- 3) to express social condemnation of the criminal offence, enhance moral strength and reinforce the obligation to respect the law.

Article 3 of the Misdemeanor Law defines the legality in prescribing sanctions and administrative sanctions, so it is prescribed that:

No one may be punished for a misdemeanor or other misdemeanor sanctions may be applied against him/her, if such an act, before it was committed, was not stipulated as a misdemeanor by a law, or by a regulation based on a law, and for which it was not prescribed, by a law or other regulation based on a law, by what type and degree of sanction the misdemeanor offender may be punished.

Ancillary questions:

Republic of Serbia is member of the Council of Europe since 03 April 2003 and it signed European Convention of Human Rights and it is obliged to follow Case Law of the European Court of Human Rights in Strasbourg.

Considering the fact that the Republic of Serbia is not still member of the European Union, we are not under the jurisdiction of the Court of Justice of the European Union. However, we are very interested in following case law through relevant Case Law Data Base available on the official website presentation.

Article 142 paragraph 2 of the Constitution of the Republic of Serbia prescribes that courts are separated and independent in their work and they shall perform their duties in accordance with the Constitution, Law and other general acts, when stipulated by the Law, generally accepted

rules of international law and ratified international contracts, therefore in accordance with the above mentioned the Case Law of the European Court of Human Rights in Strasbourg.

It is based on the Constitution of the Republic of Serbia.

The preventive purpose (the purpose of a deterrent effect) of criminal and misdemeanor punishment is prescribed by the Criminal Code and Misdemeanor Law.

The purpose of an administrative sanction is determined by Article 5 of the Misdemeanor Law. For instance, as administrative fine a monetary fine has purpose determined by the purpose of administrative sanction, and in acting of administrative authorities there is application of various types of measures:

- Interim measures, which purpose is to remove or prevent harmful effects in case there is a danger of occurrence of irreparable damage to the parties to which actions or acts, which are a subject of the procedure, directly refer to;
- Administrative measures - for instance those imposed by the Commission for the Protection of Competition aimed at protection of the competition – to determine for market participant the obligation of the amount payable of a maximum of 10% of the total annual income, for instance to eliminate competition infringement;

According to the Competition Law there is a procedural penalty measure which shall be imposed in the amount between 500 EUR and 5,000 EUR per day, for each day of such conduct, contrary to the Commission for the protection of the competition in such a procedure, or if it fails to comply with these orders. Procedural penalty may not exceed 10% of the total annual revenue calculated in accordance with Article 7 hereof.

Measures for protection of competition, as well as procedural penalty measure have the punitive character, but their implementation is harmonized with the EU law by entering into force the Competition Law.

Also, according to the Competition Law there are measures for removal of competition infringement i.e., preventing probable occurrence of the same or similar infringement, by

giving orders to undertake certain behavior or prohibit certain behavior (behavioral measures).

Administrative measures are determined by special laws, which regulate special administrative areas regardless of the fact are there prescribed sanctions for that administrative areas.

It is already answered within Article 142 Paragraph 2 of the Constitution of the Republic of Serbia.

Criminal Code and Misdemeanor Law contain all mentioned requirements (e.g. mandatory representation or assistance by an attorney, legal help, procedural time limits, legal remedies, the principle of the right to appeal, etc), while in the Republic of Serbia there is special Law on Protection of Right to Trial in a Reasonable Time.

Article 8, paragraph 3 of the Misdemeanor Law prescribes that against the person who has been, in the criminal proceedings or in the proceedings for an criminal offense, validly pronounced guilty for the act, which also has the elements of a misdemeanor, shall not be initiated a procedure for the misdemeanor, and if it is initiated or is in process it cannot be continued or finished.

In the Case Law of the Constitutional Court there is a decision of the Constitutional Court No. Уж 1285/12 as of 21 June 2015.

From the Constitutional Court Decision No. Уж 1285/12 as of 21 June 2015

...,According to the Article 34 Paragraph 4 of the Constitution it is determined that no person may be prosecuted or sentenced for a criminal offence for which he has been acquitted or convicted by a final judgement, for which the charges have been rejected or criminal proceedings dismissed by final judgement, nor may court ruling be altered to the detriment of a person charged with criminal offence by extraordinary legal remedy, as well as the same prohibitions shall be applicable to all other proceedings conducted for any other act punishable by law”.

...“In the assesment of the Constitutional Court, an applicant of the constitutional appeal, , pointing out the violation of the right to legal certainty in criminal law under the Article

34 of the Constitution, indicates exclusively a violation of the principle *ne bis in idem*, guaranteed by the Article 34 paragraph 4 of the Constitution, as evidenced by his statements that in the misdemeanor and criminal procedure is pronounced guilty for the same act and the same fact, thus violating his rights to legal certainty in the criminal law, thereby citing provision of Article 34 Paragraph 4 of the Constitution, as well as the fact that he has pointed out the violation of the rights referred to in Article 4 of Protocol No. 7 of the European Convention of Human Rights and Fundamental Freedoms, which also guarantees the protection of the principle of prohibition of double prosecution“.

1. Described in the previous question.

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

II-Q1 For initiating the misdemeanor procedure the system is as follows:

- Misdemeanor Court in the first instance adjudicates in misdemeanor procedure (Article 27 of the Law on Organization of Courts), unless under the competence of an administrative authority;

- Law on public procurement regulates that the first instance procedure in the area of public procurement is under jurisdiction of the Republic Commission for Protection of Rights in the Public Procurement Procedure, while against these decision an appeal may be lodged before the Appellate Misdemeanor Court;

Authorized body, or authorized person may issue a misdemeanor order punishable by no other penalty than a monetary fine in accordance with a law. Against this misdemeanor order it may be lodged request for judicial review upon which Misdemeanor Court may bring decision on initiation of misdemeanor procedure;

- on appeals lodged against the decisions of the Misdemeanor Courts decides Appellate Misdemeanor Court, as well as on appeals against decision brought by administrative authority in the misdemeanor procedure;

- Against decision of Appellate Misdemeanor Court there is extraordinary legal remedy request for the protection of the legality that could be lodged before the Supreme Cassation Court.
-

II -Q1

Execution of administrative sanctions is prescribed by the Misdemeanor Law and is under jurisdictions of Misdemeanor Courts.

Part III - Specific questions

III – Q1 In our system it is fault-based liability.

Ancillary questions:

A person not respecting the duty of the alimony cannot be sanctioned with the privation of his/her car.

III – Q4 The answer is contained in the answer to question on. 6.

III – Q5 Misdemeanor Law, as one of the extraordinary legal remedy, prescribes and request for the repetition (re-opening) of misdemeanor procedure.

III – Q6 Misdemeanor Law contains possibility for instance when there one misdemeanor procedure is in process for one or more misdemeanor in acquisition, there is possibility to conclude an Agreement recognizing misdemeanor, that could be concluded and submitted to the Misdemeanor Court until the decision making process in the first instance. This Agreement may not be concluded regarding misdemeanor for which a misdemeanor order is issued. The Court decides on the Agreement recognizing misdemeanor, which can reject, adopt or dismiss the mentioned Agreement. The Court may dismiss an Agreement if it is brought after the first instance decision of the Misdemeanor Court and against this decision no appeal may be lodged. Against decision of the Court on rejecting of mentioned Agreement, an appeal may be lodged within 8 days from the day when the decision is submitted and an appeal may be lodged by the applicant, offender (accused party) and his/her attorney. Against decision on adoption of Agreement no appeal may be lodged. Decision by which an agreement is granted the Court announces the offender responsible/guilty and it orders him/her fine, or other administrative sanctions and decides on other issues prescribed in the Agreement recognizing misdemeanor.