



**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: Slovenia



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Slovene national report

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?*

In Slovenian legal system, “criminal sanctions” and “sanctions for minor offences” are both regulated precisely as sanctions for different criminal acts. System of criminal sanctions is regulated in Criminal Code and covers “penalties”, “warnings” and “security measures”. Sanctions for minor offences, which are less serious criminal acts, are numerous, for instance “fine”, “warning”, “deportation of non-citizens from the country”, “seizure of objects” etc. and are all systematically regulated in Minor Offences Act. Jurisdiction to decide upon criminal sanctions is vested in criminal courts, while for minor offences competence is divided (according to procedural rules) between criminal courts and different administrative bodies, which can in such cases function as minor offence authorities. If Minor Offences Act does not stipulate otherwise, the provisions of the Criminal Code regarding the basic institutes of criminal law are used in minor offences proceedings.

“Administrative sanctions” is a rather new legal (statutory) term in Slovenian law. Administrative sanctions are not (yet) defined as such in administrative practice and case law. But this does not mean they do not exist. Minor Offences Act as lately amended by Act Amending the Minor Offences Act, Official Gazette of the Republic Slovenia No. 32/16, 6. 5. 2016, stipulates in Art. 1, Para. 4 that the provisions of this Act shall not apply for administrative sanctioning for legal persons in accordance with legislation regarding the protection of competition, insurance supervision, securities market, prevention of money laundering and regulations implemented by the Bank of Slovenia. Thus, administrative sanctions in terms of Minor Offences Act, which are

however not enacted yet as such, shall be regulated precisely in different (lex specialis) statutes outside Minor Offences Act. For the moment, these statutes determine only minor offences.

Administrative sanctions in terms of Minor Offences Act are expected to have the following common characteristics (according to the explanation of the draft amendments to the Minor Offences Act): (i) it is an administrative measure and decision about it is made by the administrative body in administrative proceeding; (ii) sanction and the proceeding is specifically regulated by legislation regarding the protection of competition, insurance supervision, securities market, prevention of money laundering and regulations implemented by the Bank of Slovenia; (iii) the sanction is imposed on legal person; (iv) as a rule, strict liability is a standard for liability;¹ (v) sanction can only be monetary; (vi) subsequent (ex post) administrative judicial control.²

Beside administrative sanctions, mentioned in Minor Offences Act, there are also different already existing sanctions dispersed throughout legislation, that are not considered as having punitive nature. They are not criminal sanctions nor sanctions for minor offences. They are also not explicitly named as administrative sanctions, but they could have (at least some) common characteristics with administrative sanctions in terms of Minor Offences Act. An example can be found in Prevention of Restriction of Competition Act, which provides for a fine if the company fails to submit required information or impedes the investigation; penalty may also be imposed on natural person.

It seems there is somehow a clear distinction between administrative sanctions, criminal sanctions and sanctions for minor offences, albeit there is an obvious link between them in practice. Constitutional Court stated in its jurisprudence “the supervision procedure conducted by the Slovenian Competition Protection Agency under the Prevention of Restriction of Competition Act is essentially and in itself not regulated as a punitive procedure under the statutory regulation in force. However, the data and evidence obtained during a search conducted by this Agency in the supervision procedure regularly serve as a basis for the initiation of a minor offence procedure and possibly criminal proceedings. Therefore, the Agency's authorizations must be regarded as powers vested in a state authority to conduct a punitive procedure. The effective performance of the supervision procedure in the search phase is namely also a necessary condition for effectively imposing sanctions for minor offences by which the legal entity violated competition rules, and for effectively imposing sanctions for criminal offences.”³ Judgement whether a certain measure fulfils criteria for criminal charge in terms of Art. 6 of the ECHR is done on case-by-case basis. For instance, in a case regarding taxes Supreme Court ruled that “it does not seem that the present tax assessment and the tax rate applied is a punitive measure, since Tax Procedure Act has specific punitive provisions for individuals [...]. Sanction is fine and liability for the offence shall be established in a special procedure regulated in the Minor Offences Act. From this perspective, order to pay a tax is not a punitive measure but the measure, which eliminates the illegality and establishes previous state (its approximation). Since neither the tax rate is not criminally increased, the goal of the procedure is not repressively oriented. Thus, the present procedure of tax assessment is much

1 However, one cannot anticipate exactly the future approach of the legislator in this respect. Namely, the Minor offences act is not precise in the elements of the administrative sanctions, also not regarding the strict liability.

2 Martin Dekleva: Administrativne sankcije: temeljna vprašanja, in: Pravna praksa, 35 (2016) 29–30, p. 14.

3 Constitutional Court RS Decision U-I-40/12, 11 April 2013.

closer to one on which the ECtHR ruled in its judgement Ferrazzini against Italy on 12. 7. 2001 that it does not qualify under the provision of Art. 6 of the ECHR.”⁴

Principle of legality (of “incrimination”) is applicable to administrative sanctions similarly as in the case of minor offences, which are however part of penal law. This means every administrative sanction should be determined in formal statute. Moreover, administrative bodies shall decide upon administrative matters pursuant to statute, executive regulations, local communities regulations and general acts adopted by statutory authorities (Art. 6 of the General Administrative Procedure Act). According to Art. 87 of the Constitution of the Republic of Slovenia, the rights and duties of citizens and other persons may be determined by the National Assembly only by law (legislative power of the National Assembly). Principle of legality also derives from the rule of law; Slovenia is a state governed by the rule of law (Art. 2 of the Constitution).

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?

Jurisprudence follows ECtHR case law regarding the Art. 6 of the ECHR (for instance the requirement of a fair trial, the principle of hearing, subsequent review by a judicial body with full jurisdiction), but since the notion of administrative sanctions is new in Slovenian law, the relevant ECHR's jurisprudence is for now only used in cases regarding minor offences law. Thus it is questionable to which extent that could be the case with regard to administrative sanctions.

Also, in Slovenian legal system is generally accepted that the procedural guarantees under the Art. 6 of the ECHR do not apply in all rigor in criminal cases which do not fall within the core of the criminal law. The obligation to hold an oral hearing is not absolute. However, as a fundamental criterion for determining whether the exclusion of the main hearing is justified, approach of the ECtHR is applied which takes into account the nature of the matters which the court must consider, in particular whether this raises any legal or factual issue that could not be adequately resolved on the basis of the case file.⁵ Approach of the CJEU (for instance the case Schindler Holding, T-138/07) is applied implicitly or indirectly. Namely, in administrative proceedings the penalty can be imposed by an administrative body, but it is subject to subsequent review by the administrative court. Generally, the court has the jurisdiction to examine all questions of fact and law relevant to the dispute before it. The court has the power to assess the evidence. However, the judicial review is performed according to procedural rules laid down in Administrative Dispute Act (hereinafter: ADA), which for instance stipulates that in an administrative dispute the parties cannot claim facts and submit evidence if they have already been given this opportunity in proceedings before the issuance of the administrative act (Art. 20, Para. 3 of ADA). Also, the court always assesses an administrative act within the limits of the statement of claim (Art. 40, Para. 1 of ADA).

There is no judicial practice in the field of administrative sanctions, where ECtHR and CJEU

⁴ Supreme Court Judgment X Ips 414/2014, 13 April 2016.

⁵ Constitutional Court RS Decision Up-718/13, 7. October 2015.

jurisprudence, including EU Charter on Fundamental Rights, would be applied at the same time. Moreover, EU Charter on Fundamental Rights is not (directly) applied unless the EU legislation is executed as according to Art. 51 of the Charter; its provisions are addressed to the institutions, bodies, offices and agencies of the EU with due regard for the principle of subsidiarity and to the Member States only when they are implementing EU law.

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

*Statutory-based solutions, which are forecasted in the Minor offences Act have not been explicitly given in this respect for administrative sanctions yet. There are general procedural rules in General Administrative Procedure Act and in ADA. Sectoral legislation (Prevention of Restriction of Competition Act, Financial Instruments Market Act, Banking Act, Electronic Communications Act etc.) do not yet regulate administrative sanctions envisaged by Minor Offences Act, however, as has been explained in answer to **IQ1** they contain numerous special provisions on sanctions, that basically have same characteristics as administrative sanctions envisaged by Minor Offences Act.*

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 is no such practice or case law yet.

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

This EU law requirement is not as such explicitly and directly applied in Slovenian law regarding administrative sanctions, but it should be obvious that the purpose of administrative sanctioning is also to discourage potential perpetrators or potential violations of law.

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?)

Distinction between administrative sanctions and other administrative measures is relatively clear. Namely, from theoretical point of view administrative sanctions have some common characteristics as already explained above, which are different from other administrative measures. The latter refer to different measures which are generally directly (not indirectly through monetary sanction) intended to eliminate violations of law (for instance, prohibition on carrying on the certain illegal activity).

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)?*

Procedural requirements regarding administrative sanctions are or will have to be to a certain

extent similarly regulated as they are for criminal sanctions. Principle of legality and proportionality, which are both part of the rule of law, are legally relevant for both administrative and criminal sanctions. Criminal procedural rights are analogically applied in minor offences cases (which are in Slovenian law part of punitive law), but for administrative sanctioning criminal guarantees are not stipulated in legislation. Thus, they are or will have to be indirectly applied in proceedings according to basic principles of administrative law.

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?

Until now the only clear yet still general regulatory solution is given in Art. 1, Para. 4 of the Minor Offences Act, which we already mentioned. The detailed regulation will depend on the sectoral legislation, but has not been adopted yet.

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 most important administrative procedural requirements that are the closest to the ones applicable to criminal sanctions are: right to be heard with the possibility of requiring an oral hearing, the burden of proof, which is borne by the administrative authority, principle of legality, principle of equality, principle of proportionality, presumption of innocence, prohibition of retroactivity, prohibition of self-incrimination and the principle of the right to appeal. Competence of courts is different in case of administrative sanctions as administrative not criminal courts have jurisdiction to rule on them.

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)?*

The case Grande Stevens concerned the applicants’ appeal against the administrative penalty imposed on them by the Italian Companies and Stock Exchange Commission and the criminal proceedings after having been accused of market manipulation in the context of a financial operation involving the car manufacturer FIAT. Separately, the applicants were criminally prosecuted for the same conduct and were convicted of a criminal offence. The criminal prosecution of the applicants, in addition to administrative enforcement action for the same conduct, was a breach of the ne bis in idem principle as articulated in Art. 4 of Protocol No 7 (Art. 4). No such case, according to Slovenian database on jurisprudence, exists in Slovenia.

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)?

According to Art. 56 of Slovene Criminal Code, which reads, "A term of imprisonment, a fine, or any other criminal sanction, which the convicted person has served for committing a petty offence as well as any prison term or term of detention applied for the violation of military discipline, shall be counted as part of the sentence, provided that the elements of criminal conduct also constitute a petty offence or a violation of military discipline" any previous administrative penalty is to form part of latter criminal sanction. It is therefore includable. Invert cases are regulated in the Minor Offences Act, Art. 11.a. If criminal procedure is final, than procedures for minor offences shall not commence or continue.

As mentioned above, Prevention of Restriction of Competition Act, which provides fines, does not define the liability for offences. Since the penalties are based on offences (not criminal sanctions) and since the rules refer to the acts of violators, one can assess that the liability is fault-based. Generally speaking, a liability in rare cases of administrative sanctions is, on the other hand, different as in case of minor offences, not fault based. The latter does not mean, that certain statute cannot foresee a (certain level of) fault. Since statutes that shall regulate administrative sanctions have not yet been adopted, it remains to be seen which approach will be taken by the legislator.

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)?

Yes, especially criminal courts, because the procedures for minor offences are usually accomplished prior the commencement of the criminal proceedings. These are not very numerous cases and only some of them reached the highest instances. One case is reported at the Supreme Court.⁶

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?

Actually, this is the case of the Slovenian approach as explained above. The ne bis in idem principle is often used in Slovene jurisprudence, but not in all cases like anticipated by the question. Cases concern administrative law, but not the sanctions. As explained above, Slovene legal system regulates the inclusion of the penalties for minor offences (or any other, like fines for small offences) in criminal charges. It means that the criminal procedure can be initiated, but the sanction can not be simply duplicated. This approach is even more in favor to the liable person; ECHR allows different sanctions for violation, whereby they do not have to be includable (see R.T. V Switzerland, No. 31982/96). What is at issue here, whether the aim of Art. 4 of Protocol No. 7, which is to prohibit the repetition of criminal proceedings that have been concluded by a final decision (see Nilson v. Sweden), is respected. Namely, if certain sanction is to be regarded as criminal, the repetition of the procedure is nevertheless possible; only sanctions are not

⁶ Judgement XI Ips 33642/2014-85

cumulative.

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?*

Having regard to the already mentioned fact that administrative sanctions are not yet a general phenomenon in Slovenian legal order and the fact that conducts that will in the future presumably be sanctioned with administrative sanctions are for now regarded as minor offences, it can be firstly explained that the Slovenian legal system for minor offences could be regarded as a sort of mixed system. The administrative authorities are, on one hand, competent to supervise the correct implementation of the regulations (law), typical conducting inspection proceedings, and on the other hand, function as minor offence authorities. There is no prohibition for an official of the administrative authority acting as minor offence authority who discovers an infringement of the law can not initiate or even conclude the minor offence procedure. The potential negative effect of this can be mitigated in latter proceedings. After the adoption of a decision on a minor offence the request for a judicial review (protection) is available to the offender. Powers of the courts are complete, meaning that they can oversee factual and legal aspects of the matter. First-instance judicial decision can be appealed to the second-instance court (high court). The final judicial remedy is the so called request for protection of legality, which is decided by the Supreme court. The power to impose sanctions for a minor offence therefore ultimately lies in the hands of the judiciary.

Strictly taking into consideration only administrative sanctions (de lege ferenda) the outlook of the system differs only slightly. If the administrative authority decides or will decide on an administrative sanction, the decision will be regarded as an administrative decision. General Administrative Procedure Act provides that the affected individual can appeal against an administrative decision to the supervisory authority, typically one of the state's ministries, except where the law explicitly prohibits an administrative appeal. After the appeal procedure or if this procedure is not allowed, making the administrative decision final, the affected individual (natural or a legal person) can initiate an administrative dispute procedure. According to ADA (Art. 2) in an administrative dispute the court shall rule on the legality of final administrative acts interfering with the legal status of the plaintiff; on the legality of other acts the court shall adjudicate only if stipulated so by the law. Since imposing an administrative sanction clearly interferes with the legal status of the plaintiff (and therefore the legal position of the party would be improved by granting their claim) the administrative dispute procedure against decisions on administrative sanctions will always be possible. Against a decision of the first-instance administrative court an appeal (regular legal remedy by which points of fact and law can be contested) can be filed to the Supreme court, however under relatively strict conditions. If the appeal is not allowed the first-instance court decision can be contested with a request for a

revision, which is essentially an appeal on a points of law.

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?*

If a decision on administrative sanction is disputed the role of the administrative court is primarily one of supervision. First-instance administrative court generally decides on the legality of the decision and does not make a decision on the matter itself. Most of the court decisions will be the annulment of the administrative decision and, at the same time, the remanding (returning) the case (back) to the administrative authority to repeat the administrative proceeding. ADA stipulates that in case of annulment of the administrative act the case must be returned to the administrative authority. However, the decision on returning the case back to the administrative authority can be and in judicial practice is omitted in particular cases. If the court is of the opinion that there is no ground at all for issuing the disputed decision, it can decide not to return the case to the administrative authority, effectively deciding on the administrative matter itself. ADA explicitly stipulates that an administrative court can, under specific conditions, change the decision and decides on the administrative matter on its own (this are so called full jurisdiction disputes).

According to Art. 65 of ADA a court can decide on the administrative matter if this is permitted by the nature of the matter and if the data on the procedure provide reliable grounds for this decision or if the facts of the case were established at the main hearing, particularly if: the removal of the disputed administrative act and the new procedure at the competent body would cause damage for the plaintiff which would be difficult to redress; after the administrative act has been removed, the competent body issues a new administrative act, which is contrary to the legal opinion of the court or its positions on the procedure. The court can also make a decision of this sort if the competent body does not issue a new administrative act within thirty days of the annulment of the preceding administrative act, or within the period set by the court, or within seven days of a special request by the party, if the plaintiff demands that the court rule on rights, obligations or legal benefits and if this is necessary in view of the nature of the rights or for the protection of a constitutional right.

The possibility of an administrative court to decide on the matter, i. e. administrative sanction, by itself is, however, rather slim, as will be explained later.

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 administrative courts have the power to control the use of material law, legality of the administrative procedure, as well as factual grounds of the disputed decision. Regarding the factual questions an administrative court has the duty - within the limits of

the allegations in the claim - to test if the facts of the case were established correctly or completely in the administrative procedure (Art. 20 of ADA). If that is not the case it can investigate facts on its own. The facts of the case are investigated at the main hearing. As determined by Art. 51 of ADA, the court adjudicates after conducting a main hearing. However, according to Art. 59 of ADA the court may also adjudicate without conducting a main hearing (if the state of facts, which was the basis for the challenged administrative act, is not disputable between the parties; if it is evident from the claim, the challenged act and the case file documentation that the claim is founded and the administrative act should be annulled; if the facts of the case are contentious between the parties, but the parties state only those new facts and evidence that the court may not take into consideration in compliance with this Act (Article 52 thereof) or the proposed new facts and evidence are not relevant for the decision; or if the court has already decided on a substantially similar case between the same parties).

According to Art. 73 ADA an appeal may be filed against a first-instance judgement under the following conditions: the court of first-instance itself established facts, which are different to those established by the defendant (state), and on the basis thereof the court changed the contested administrative act or if the court decided on the basis of Article 66 thereof (the latter is an administrative dispute procedure, in which the court adjudicates on the legality of individual acts and actions, by which the authorities interfere with human rights and fundamental freedoms of an individual – this type of procedure is only possible if no other form of judicial review has been guaranteed). The Supreme Court, competent to decide appeal cases, has the power to annul the first instance judgement if it finds that the facts of the matter were incorrectly or incompletely established and it also has the power to conduct the main hearing itself.

Since the conditions for filing an appeal are not easily met, the most frequently invoked legal remedy the Supreme court is competent to decide upon is the extraordinary legal remedy called revision. As a rule, in a revision procedure questions of fact can not be disputed.

Regarding the possibility of the courts to decide on the matter of administrative sanction instead of the the administrative authorities it can be explained that when the administrative sanction is (or will be) prescribed in range (from minimal to maximal penalty) this is (will be) regarded as a margin of appreciation/discretion conferred to the administrative authority. According to ADA the administrative court has the competence to review the discretion exercised by the administrative authorities too. However, according to Art. 27 of ADA, it shall not be considered an incorrect application of regulations (the law) if the competent body made a discretionary decision on the basis of an authorisation granted by the regulations, within the bounds (scope) of the authorisation and in compliance with the purpose for which it was granted the authorisation. Therefore, only the observance of bounds (scope) and the purpose of discretionary power can be supervised by the court. Consequently, the court is not permitted to annul or reduce the administrative sanctions that is within the prescribed range if it is of the opinion that a reduced sanction would be more appropriate – unless it establishes that the sanction was imposed disregarding the purpose of the discretion.

This is in line with the general principle of separation of powers. If the court decides on the administrative matter itself it is essentially taking away the power of direction, that was granted by the law to the administrative authorities. This dilemma is of little practical importance, since the plaintiff will usually seek a complete annulment of the administrative sanction, though a petition for partial annulment of the contested administrative act is of course possible.

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)?*

With respect to minor offences (i.e. not the administrative sanctions), the Minor Offences Act stipulates that the person is liable for the offence commenced with negligence or intentionally. (Art. 9). It means that the liability for minor offences is a fault based liability. According to the same act (Art. 14) and according to the jurisprudence liability of legal persons is also fault based in a sense, that only natural persons can commit an offence and legal persons can be liable only in the framework of acts of violator. A question of a fault and vis maior can be at stake as possible exception of the fault-based liability (also in case of strict liability), but as in case C-210/00, the question is also, whether something constitute vis maior or not.

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)?*

Having in mind that Slovene legal system does not regulate, except in certain areas, the administrative sanctions (but rather the minor offences), we can only refer to this question in the sense of lex specialis rules. Regarding the notion of an administrative act, the initial starting point is the ADA. It defines it as an administrative decision and other public law, unilateral, authoritative individual act, issued within the framework of implementing administrative function, in which a body makes a decision on a right, obligation or legal benefit of an individual or legal entity, or of any other person who may be party to the proceeding of issuing the act. Might be that these conditions are not fulfilled in cases where the individual act does not safeguard the individual right in the first place but rather the public interests (the right of the individual is only reflexly affected). When it comes to the civil sanctions this cannot be the case, since the decision on administrative sanction will always affect the individual in the first place.

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).*

Non-financial sanctions can be understood in Slovenian legal system as different measures, imposed on a liable person by supervisory authorities – typically inspections, with an aim to eliminate an infringement or restore a previous state and in the broader context, to control the implementation or compliance with laws and other regulations. It follows from this that such

measures are not (administrative) sanctions from the strict point of view.

Forms of so-called non-financial sanctions (in the broad sense) can be very different because all measures can be ordered in accordance with the relevant law, which are necessary to eliminate irregularities and deficiencies, for instance: prohibition of performance of an activity, seizing the objects and documents, sealing of objects or equipment etc. In addition to this, also preventive measures (such as informing the public) and warnings are possible. An order to restore the site to its original state can also lead to the demolition of a construction. Building inspector may issue a decision to stop and demolish illegal construction.

Ancillary questions:

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

Yes, 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, administrative sanctions cannot be used in the private law sphere.

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, administrative sanctions may encroach upon ownership rights. Because of this, principle of legality has to be fully respected.

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.*

Yes, apart examples above, the Data Protection Authority (pursuant to Article 28 par. 1 of Directive 95/46/EC) is organized pursuant to Public Information Access Act (see Article 31 of the Public Information Access Act). The decision of the Public Commissioner can be reviewed by the Administrative Court.

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?*

No case of this sort in connection with administrative sanctions was put forward to the Supreme court yet.

The Supreme court dealt with the issue in cases not related to administrative sanctions, ruling

that Slovenian procedural rules regulating judicial administrative dispute procedure do not allow the re-opening of a final judicial decision in order to correctly apply EU law. Similarly the Administrative Court stated its views (in case I U 251/2016, 17. 1. 2017) that such re-opening of an administrative decision could be admissible only in accordance with the relevant national law (General Administrative Procedure Act).

The Supreme Court pointed (in case no. X Ips 471/2014) to the jurisprudence of the CJEU (C-213/13, C-69/14), explicitly stating that EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgement, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law. The Supreme court has not yet declared such a general position regarding extraordinary legal remedies available in the administrative procedure. According to Art. 274 of General Administrative Procedure Act the supervisory authority (state ministry) can annul an administrative decision of the first-instance administrative authority if “it obviously breaches material law”. Time limit for such a decision is one year after the decision was issued. It is possible that some administrative decisions could be deemed as obviously breaching EU and thus material law.

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?*

No plea bargaining is possible.

Prepared by:

*Luka Kovač
Martin Dekleva
Rajko Knez*