Administrative financial sanctions

A study in material and procedural administrative law

Summary

The aim of the monograph is to perform a comprehensive analysis of administrative financial sanctions with regard to their compliance with constitutional rules, such as the principle of proportionality, the principle of citizens' trust in the state and its law, the principle of equality before the law, as well as to ascertain if the legal regulations of those institutions ensure sufficient guarantees of both the material and procedural law for entities penalized by sanctions which have a repressive function.

The application of administrative sanctions and particularly administrative financial penalties allows for effective accomplishment of the set objectives and tasks of a good administration process, hence it is necessary for the legislator to enact them. Currently, there is a tendency to limit the scope of crimes and misdemeanours while simultaneously increasing the number of administrative torts. It follows the premise that criminal law should be *ultima ratio*, hence the legislator should first resort to instruments which stigmatize the perpetrator to a lesser extent, although not less severely. At present, it is of secondary importance to justify the choice of an administrative sanction in the form of faster proceedings. Increasing the material and legal as well as procedural guarantees concerning the imposition and administration of financial penalties while failing to increase the number of administrative staff results in the necessity to extend the proceeding. As a rule, increasing the scope of administrative liability related to the depenalization of certain infringements of the law should be ascertained positively. However, one may question the careless change of the liability regime regarding behaviours which should be stigmatized and for which the question of guilt is essential. The legislator is right to stop regarding as misdemeanours those infringements which are fully deprived of social disapproval (where the perpetrator, in the eyes of the society, does not deserve to be morally stigmatized for a longer period of time).

The legislator should be requested to select clear and transparent criteria for selecting the regime of sanctionable liability. Careless actions on the part of the legislator may threaten the principle of the cohesion of criminal law. The basic criteria for selecting the appropriate regime of liability could be objective, subjective and institutional.

The contemporary model of punishment using administrative financial sanctions is not significantly different from the regulations in Western European countries and it complies with the *Recommendations of the Committee of Ministers of the Council of Europe no. R (91) 1 dated February 13, 1991 on administrative sanctions*, as well as the *Resolution of the Committee of Ministers of the Council of Europe no. R (77) 31 dated September 28, 1997 on protecting individuals in cases adjudicated by acts of administrative bodies*.

The amendment to the *Code of administrative proceedings* adopted on April 7, 2017, which added section IV A, entitled *Administrative financial penalties*, raises numerous doubts. It leads to a specific "autonomism" of administrative financial penalties against other administrative sanctions. This fragmentary regulation of only one type of administrative sanctions will cause difficulties in all cases where the body is allowed to select the type of administrative sanction - financial or non-financial. Undoubtedly, it is imperative to include in the provisions of the code also a general regulation of administrative non-financial penalties, so that the model of penalising by the administration is cohesive and follows the principle of equal treatment of parties subject to punishment by the administration.

It should be noted that many new institutions of applying administrative financial penalties relate to the characteristics of institutions specific to criminal law. The scope of circumstances which the administrative body must investigate during administrative proceedings has been increased significantly. On the one hand, it may contribute to improving the situation of the entity threatened by the imposition of an administrative financial sanction and on the other, it will further extend administrative proceedings while eliminating the purposes of sanctions themselves, making the administrative model of imposing sanction look like a justice system.

Administrative proceedings which impose or administer administrative financial penalties, which include even most extended guarantees, will be different from a criminal procedure, which is a contradictory, multi-instance procedure that creates the obligation to respect the principle of presumed innocence and ensure an extensive right to defence, hence the legislator should exercise extreme care in considering whether a specific infringement should be handled by administrative proceedings.

Only extensive discussions and the sharing of knowledge and experience by theoreticians, practitioners of the law and also citizens concerning the application of administrative financial penalties will allow the legislator to introduce creative solutions for this difficult topic. The necessity to raise this difficult problem is unquestionable. It is a matter of great importance for the theory and practice of the law.