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Significance of Principles of Penal Law in Administrative Law

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The article examines legal regulation of sanctions imposed by public administration, and argues that all the sanctions imposed by institutions of public administration, at least in legal doctrine, should be considered as being a discrete sub-branch of administrative law, in the legal regulation of which and in application of sanctions the principles of substantial and procedural law that are common with penal law should be complied with. A separate section of the article is dedicated to one of these principles – institution of limitation.

Keywords: administrative sanction, administrative violations, limitation period, administrative liability, penal law.

Content

Introduction

Coercive measures applied by institutions of public administration – administrative sanctions – is a special form of operation implemented by the public administration.[1] Already since restoration of independence in Latvia, the concept that administrative sanctioning should be regulated separately from the procedure

[1] *Briede, J., Danovskis, E., Kovaļevska, A.* Administratīvās tiesības. Mācību grāmata [Administrative Law. Textbook]. Rīga: Tiesu namu aģentūra, 2016, ISBN 978-9934-508-39-4, 204. lpp.

of regulating adoption of administrative existed,[2] because administrative sanctioning is kindred to penal law. However, when the Administrative Procedure Law entered into force, decisions by institutions on applying administrative sanctions complied with the definition of an administrative act included in the Law and, as such, were appealed against in administrative courts. Since July 2012, decisions in cases of administrative violations are appealed against in courts of general jurisdiction, and since 2013 these are no longer considered as administrative acts. However, a number of laws still provide for the sanctions that institutions of public administration apply by issuing administrative acts. The causes of this dualism are difficult to understand not only to the students beginning to master administrative law, but sometimes also to the lawyers, whose daily work is not related to administrative law. Therefore, this article explains the genesis of administrative sanctioning in Latvia and highlights the need to comply with the principles typical of penal law in regulating and applying these sanctions.

The article consists of three sections. The first section outlines the causes of dualism in regulation of administrative sanctions. In the second section, by using an institution typical of penal law – limitation, the need to be aware of importance of penal law principles in regulation on administrative sanctions is proved. The third section, in turn, comprises some theoretical reflections on whether the entire regulation on sanctions applied by institutions of public administration can be examined as a united sub-branch of administrative law.

1. Development of Administrative Penal Law in Latvia

The current regulation on administrative sanctions both in its substantial and procedural aspects is comparatively clearer than ever before. A codified regulation of administrative sanctions did not exist during the inter-war period (1918–1940). Institutions had a right to apply sanctions both for some offences referred to in the Penal Law of 1933 (prior to that – the Penal Law of 1903), and violations referred to in a number of other laws. In 1936, Nikolajs Ripke (1892–?), Vice-prosecutor of the Chamber of Prosecution at Riga Regional Court, listed 63 laws and regulations, which granted to institutions of public administration the right to apply sanctions for various violations.[3] Diverse opinions are found in the periodicals of the first period of independence, deliberating as to whether in all cases, when a law granted an institution the right to apply administrative sanctions, the provisions of the Criminal Procedure Law of 1864 were applicable. N. Ripke concluded that "the lack of procedural norms in cases to be resolved in administrative procedure is an obstacle to correct application of administrative sanctions. The fact that administrative sanctions here, in Latvia, have not been regulated by procedural norms, in no respect should be considered as something typical of procedure for applying administrative sanctions. Other states have a detailed regulation on administrative procedure."[4] The Chief Prosecutor of the Senate Fricis Zilbers (1875–1942), in his turn, pointed out the need to apply the procedure established in the Criminal Procedure Law for examining similar cases in all those instances, where

[2] Sk. *Danovskis, E.* Procesuālais duālisms administratīvo pārkāpumu lietu izskatīšanā [Procedural Dualism in Reviewing Cases of Administrative Violations]. *Augstākās Tiesas Biļetens,* ISSN 1691-810X, 2011, Nr. 3, 42. lpp.

[3] *Ripke, N.* Tiesa un administratīvā sodīšana [Court and Administrative Sanctioning]. *Tieslietu Ministrijas Vēstnesis*, 1936., Nr. 4, 692.–697. lpp.

[4] Ibid., p. 705.

institutions applied administrative sanctions.[5] He criticised the fact that appeal in these cases took place in accordance with the Law on Administrative Courts of 1921 (decisions of Ministries were appealed in the Administrative Department of the Senate),[6] and admitted "that one law on criminal-administrative procedure should be adopted, it would be applicable to all cases of administrative sanctioning and would establish a clear procedure of prosecuting for, investigating and sanctioning for criminal offences, entering into effect of a decision and enforcements thereof."[7] In Annex of the Article 1130 of the Criminal Procedure Law of 1939, 23 instances were indicated, when institutions in cases under their jurisdiction had to abide by the simplified procedure for examining cases in an institution, established in the Criminal Procedure Law.[8]

In the initial period of Soviet occupation, there were no concepts like "administrative liability" and "administrative violation" in the Soviet law. In the 1950s, these terms were relatively new.[9] Until the very beginning of the 1960s, neither substantial, nor procedural legal norms had been drafted that would systemically regulate institutions' rights to apply sanctions. However, many sanctions of this kind were not envisaged in the Criminal Code, but instead were established in regulatory enactments of different levels, moreover, codified procedural norms that would regulate application of such sanctions were non-existent. The first significant attempt to harmonise legal regulation of one administrative sanction – a fine, and application thereof, was a decree by the Supreme Soviet of the USSR, adopted on 21 June 1961, "On Further Restricting Application of Fines to be Applied in Administrative Procedure". On 23 December 1961, on the basis of this decree, the Presidium of the Supreme Soviet of the Latvian SSR adopted a similar decree,[10] as well as Regulation of procedure for examining cases of administrative violations, as a consequence of which fines must be applied in administrative procedure.[11] This regulatory enactment was the first important attempt to establish a united regulation on applying an administrative sanction (a fine). Almost 20 years later, the Supreme Soviet of the USSR adopted "The Basis for Legislation on Administrative Violations of the USSR and the Republics of the

[5] *Zilbers, F.* Pie jautājuma par administratīvo sodīšanu un administratīvām tiesām [On the Question of Administrative Sanctioning and Administrative Courts]. *Tieslietu Ministrijas Vēstnesis*, Nr. 1, 1937., 145. lpp.

[6] Ibid., pp. 150–152.

[7] Ibid., pp. 152–153.

[8] Kriminālprocesa likums [Criminal Procedure Law]. Rīga: Valsts tipogrāfija, 1939, 182.–183. lpp.

[9] See *Bel'skij, K. S.* Administrativnaja otvetstvennost': genezis, osnovnye priznaki, struktura. Gosudarstvo i Pravo. 1999, No. 12, c. 12.

[10] Par administratīvā kārtā uzliekamo naudas sodu piemērošanas tālāku ierobežošanu: Latvijas PSR Augstākās padomes prezidija 1961. gada 23. decembra dekrēts [On Further Restricting Application of Fines to be Applied in Administrative Procedure: Decree of 23 December 1961 by the Presidium of the Supreme Soviet of the Latvian SSR]. Grām.: Latvijas PSR spēkā esošo likumdošanas aktu sistemātiskais krājums. XXVI sadaļa. Likumdošanas akti par administratīvo atbildību [Systemic Collection of Legal Acts in Force in the Latvian SSR. Section XXVI. Legal Acts on Administrative Liability]. 1. burtnīca, 1.–7. lpp. Rīga: Latvijas PSR Tieslietu ministrija, 1977.

[11] Nolikums par kārtību, kādā izskatāmas lietas par administratīviem pārkāpumiem, par kuriem uzliekami naudas sodi administratīvā kārtā: Apstiprināts ar Latvijas PSR Augstākās padomes prezidija 1961. gada 23. decembra dekrētu [Regulation on procedure for examining cases of administrative violations, for which fines must be applied in administrative procedure: Approved by the Decree of 23 December 1961 of the Presidium of the Supreme Soviet of the Latvian SSR]. Grām.: Latvijas PSR spēkā esošo likumdošanas aktu sistemātiskais krājums. [Systemic Collection of Legal Acts in Force in the Latvian SSR] …, 8.–12. lpp.

Union".[12] This Basis of Legislation comprised the most important general rules on pre-conditions of administrative liability, administrative sanctions and application thereof, as well as on procedure in administrative cases. The provisions included in the Basis of Legislation were transferred to the administrative violations codes adopted by republics of the Union, including the Administrative Violations Code of the Latvian SSR, adopted on 7 December 1984[13] (hereinafter – the Code). The Code was noteworthy due to the fact that it for the first time codified all administrative violations to be regulated by law.[14]

Upon restoring Latvia's independence, the Code was retained,[15] and the tradition of codification continued; i.e., those violations, for which institutions of public administration had the right to impose an administrative sanction, were defined in the special part of the Code. However, gradually the rights of institutions of public administration to apply sanctions were established also in other regulatory enactments. For example, Chapter XIII of the Cabinet Regulation "On State Monopoly of Alcohol and Alcoholic Beverages"[16] envisaged the right of officials of the State Revenue Service and the State Committee for Trade Supervision to apply fines to companies for violations of this Regulation in the amount up to 1000 lats. In January 1995, the Cabinet adopted, in the procedure established by Article 81 of the *Satversme* [Constitution], a regulation with the force of law "On Securities"[17], which granted to the Security Markets Commission a right to apply a fine for violation of this regulation in the amount up to 5000 lats. A similar right was established also in the law adopted in 1995 "On Securities",[18] and in the Credit Institutions Law.[19] Currently, apart from the right of the State Revenue Service to apply fines for violations in tax payments, the right to apply "penalty payments" have been granted in 20 laws to eight institutions of public administration:

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[12] Osnovy zakonodatel'stva Sojuza SSR i sojuznyh respublik ob administrativnyh pravonarushenijah. Vedomosti Verhovnovo Soveta SSSR, 1980, No. 44.

[13] Latvijas PSR Administratīvo pārkāpumu kodekss [Administrative Violations Code of the Latvian SSR]. *Latvijas PSR Augstākās Padomes un Valdības Ziņotājs*, 1984. gada 20. decembris, Nr.51.

[14] Pursuant to Section 5 of the Administrative Violations Code of the Latvian SSR, the local councils of people's deputies and executive committees also were authorised to adopt decisions, for the violation of which administrative liability was envisaged.

[15] Par Latvijas PSR likumdošanas aktu piemērošanu Latvijas Republikas teritorijā: Latvijas Republikas Augstākās padomes 1991. gada 29. augusta lēmums [On Application of Legal Acts of the Soviet SSR within the Territory of the Republic of Latvia: Decision of 29 August 1991 by the Supreme Council of the Republic of Latvia]. Available at http://m.likumi.lv/doc.php?id=68772 [last viewed 01.07.2017]; Par Latvijas PSR normatīvo aktu piemērošanas izbeigšanu [On Ceasing to Apply Regulatory Enactments of the Latvian SSR]. *Latvijas Vēstnesis*, 1998. gada 28. oktobris, Nr. 317/320(1378/1381).

[16] Par spirta un alkoholisko dzērienu valsts monopolu: Ministru kabineta 25.01.1994. noteikumi Nr. 37 [On State Monopoly of Alcohol and Alcoholic Beverages. Cabinet Regulation No. 37 of 25.01.1994]. *Latvijas Vēstnesis*, 1994. gada 2. februāris, Nr. 14(145).

[17] Par vērtspapīriem: Ministru kabineta 07.01.1995. noteikumi Nr.10 [On Securities. Cabinet Regulation No. 10 of 07.01.1995]. *Latvijas Vēstnesis*, 1995. gada 14. janvāris, Nr. 6(289).

[18] Par vērtspapīriem [On Securities]. *Latvijas Vēstnesis*, 1995. gada 12. septembris, Nr. 138(421).

[19] Kredītiestāžu likums [Credit Institutions Law]. *Latvijas Vēstnesis*, 1995. gada 24. oktobris, Nr. 136(446).

the Financial and Capital Market Commission,[20] the Bank of Latvia,[21] the Public Utilities Commission,[22] the Competition Council,[23] the Consumer Rights Protection Centre,[24] the National Electronic Mass Media Council,[25] the Health Inspectorate,[26] and the Food and Veterinary Service.[27] The origins of the term "penalty payment" (as opposed to "a fine") used in these laws is linked to two main considerations. Firstly, the term "penalty payment" is used to differentiate it from the term "fine" used in the Code. This differentiation was necessary to prevent misunderstandings of whether norms of the Code should be applied in imposing this sanction. Secondly, the term "penalty payment" is used also because it was envisaged to apply these sanctions to legal persons; however, the possibility to envisage legal persons as subjects of administrative liability (and fine) appeared only in 1998.[28] There are no other reasons for this terminological differentiation, and it has gradually become meaningless. For example, the coercive measure that is established in the Competition Law has been called a fine (not a penalty payment as in other laws), whereas para. 5 of Section 15(8) of Unfair Commercial Practice Prohibition Law defines the right of the respective supervisory authority to "apply a fine in the procedure established in Section 15^2 of this Law", however, in Section 15^2 the coercive measure that is regulated has been called a penalty payment. Thus, at present there is neither a theoretical nor practical significance in giving different names to the same institution – an obligation imposed by an institution of public

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[20] Kredītiestāžu likums [Credit Institutions Law] …; Ieguldījumu pārvaldes sabiedrību likums [Law on Investment Companies]. *Latvijas Vēstnesis*, 1997. gada 30. decembris, Nr. 342/345(1054/1057); Valsts fondēto pensiju likums [Law on State Funded Pensions]. *Latvijas Vēstnesis*, 2000. gada 8. marts, Nr.78/87(1989/1998); Finanšu un kapitāla tirgus komisijas likums [Law on the Financial and Capital Market Commission]. *Latvijas Vēstnesis*, 2000. gada 20. jūnijs, Nr. 230/232(2141/2142); Krājaizdevu sabiedrības likums [Law on Savings and Loan Associations]. *Latvijas Vēstnesis*, 2001. gada 18. aprīlis, Nr. 60(2447); Ieguldītāju aizsardzības likums [Investor Protection Law]. *Latvijas Vēstnesis*, 2001. gada 23. novembris, Nr. 170(2557); Finanšu instrumentu tirgus likums [Financial Instrument Market Law]. *Latvijas Vēstnesis*, 2003. gada 11. decembris, Nr. 175(2940); Apdrošināšanas un pārapdrošināšanas starpnieku darbības likums [Activities of Insurance and Reinsurance Intermediaries Law]. *Latvijas Vēstnesis*, 2005. gada 1. aprīlis, Nr. 52(3210); Maksājumu pakalpojumu un elektroniskās naudas likums [Law on Payment Services and Electronic Money]. *Latvijas Vēstnesis*, 2010. gada 17. marts, Nr. 43(4235); Alternatīvo ieguldījumu fondu un to pārvaldnieku likums [Law on Alternative Investment Funds and their Managers]. *Latvijas Vēstnesis*, 2013. gada 24. jūlijs, Nr. 142(4948); Apdrošināšanas un pārapdrošināšanas likums [Law on Insurance and Reinsurance]. *Latvijas Vēstnesis*, 2015. gada 30. jūnijs, Nr. 124(5442); Kredītiestāžu un ieguldījumu brokeru sabiedrību darbības atjaunošanas un noregulējuma likums [Law on Restoring and Regulating Activities of Credit Institutions and Investment Brokerage Companies]. *Latvijas Vēstnesis*, 2015. gada 2. jūlijs, Nr. 127(5445).

[21] Kredītiestāžu likums [Credit Institutions Law], …; Kredītu reģistra likums.[Law on Credit Register]. *Latvijas Vēstnesis*, 2012. gada 13. jūnijs, Nr. 92(4695).

[22] Enerģētikas likums [Energy Law]. *Latvijas Vēstnesis*, 1998. gada 22. septembris, Nr. 273/275(1334/1336); Elektronenerģijas tirgus likums [Electricity Market Law]. *Latvijas Vēstnesis*, 2005. gada 25. maijs, Nr. 82(3240).

[23] Reklāmas likums [Advertising Law]. *Latvijas Vēstnesis*, 2000. gada 10. janvāris, Nr. 7(1918); Konkurences likums [Competititon Law]. *Latvijas Vēstnesis*, 2001. gada 23. oktobris, Nr. 151(2538); Negodīgas mazumtirdzniecības prakses aizlieguma likums [Unfair Retail Trade Practice Prohibition Law]. *Latvijas Vēstnesis*, 2015. gada 3. jūnijs, Nr.107(5425).

[24] Reklāmas likums [Advertising Law], …; Negodīgas komercprakses aizlieguma likums [Unfair Commercial Practice Prohibition Law]. *Latvijas Vēstnesis*, 2007. gada 12. decembris, Nr. 199(3775).

[25] Reklāmas likums [Advertising Law],...

[26] Reklāmas likums [Advertising Law],...

[27] Reklāmas likums[Advertising Law],…

[28] Grozījumi Latvijas Administratīvo pārkāpumu kodeksā [Amendments to the Latvian Administrative Violations Code]. *Latvijas Vēstnesis*, 1998. gada 8. jūlijs, Nr. 199/200(1260/1261).

administration to pay money for violating a legal provision. Essentially, this sanction is a penalty.

Penalties applied by these institutions differ from the fine envisaged in the Code only in some, however, important aspects. First, in imposing these penalties the Code is not applicable. Institutions adopt the respective decisions in accordance with the Administrative Procedure Law and the special norms envisaged in the respective law. A decision on applying these sanctions is an administrative act, whereas decisions on sanctions envisaged in the Code are not administrative acts.[29] Sometimes a court underscores it in particular, if an applicant in a case regarding application of a sanction outside the Code refers to terms set in the Code: "The procedure, in which the Financial and Capital Market Commission issues administrative acts is defined by regulatory enactments that regulate procedure for issuing administrative acts. [The Code] is not a regulatory enactment that regulates the procedure for issuing administrative acts, therefore Section 37 thereof, which defines limitation period in a case of administrative violation, was not and is not applicable in issuing an act of sanctioning a person for [...] a violation of the Financial Instrument Market Law. Therefore [...] the Commission was not obliged to comply with the terms defined in Section 37 [of the Code]."[30] Secondly, disputes regarding applying of sanctions are to be heard by an administrative court, whereas decisions in cases of administrative violations since July 2012 are to be appealed in a court of general jurisdiction.[31] Thirdly, the majority of these sanctions significantly exceed the fines established in the Code.[32] Fourthly, large part of these sanctions follow from obligations of the Member States established in directives of the European Union to envisage "effective, proportionate and dissuasive" sanctions [33] for respective violations.

The right vested in institutions of public administration to apply sanctions is part of penal law as a broader field of law, which covers both criminal law and sanctions applied by public administration. These sanctions, similarly to the fine envisaged in the Criminal Law (recovery of money for legal persons) and the fine envisaged in the Code are coercive measures of economic nature applied by

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[29] Ar 2012. gada 1. novembra grozījumiem Administratīvā procesa likumā [By amendments of 1 November 2012 to the Administrative Procedure Law]. *Latvijas Vēstnesis*, 2012. gada 21. novembris] Nr. 183(4786)] ir noteikts, ka lēmumi administratīvo pārkāpumu lietās nav administratīvi akti [it is established that decisions in cases of administrative violations are not administrative acts].

[30] Administratīvās apgabaltiesas 2014. gada 26. marta spriedums lietā Nr. A43013712, 12.1. punkts [Decision of 26 March 2014 by the Administrative Regional Court in case No. A43013712, para. 12.1]. Available at https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/152371.pdf [last viewed 12.02.2017].

[31] Grozījumi Latvijas Administratīvo pārkāpumu kodeksā [Amendments to the Latvian Administrative Violations Code]. *Latvijas Vēstnesis*, 2011. gada 22. decembris, Nr. 201(4599).

[32] Section 26(1) of the Code provides that the maximum fine for legal person shall not exceed 14 000 euro. To compare: Pursuant to Section198[1](1) of the Credit Institutions Law, the Financial and Capital Market Commission has the right to impose a penalty payment up to five million euros, but in some cases – even more.

[33] See, for example, Directive (EU) 2015/849 of the European Parliament and of the Council 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC; Directive (EU) 2005/29 of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council, *Official Journal of the European Union*, 11 June 2005, L 149/22, Art. 13.

institutions of state power for violations of legal norms. Therefore the majority of them should be recognised as sanctions of criminal law nature in the context of Article 6 and Article 7[34] of the Convention for the Protection of Human Rights and Fundamental Freedoms.[35] For example, the Supreme Court has recognised that "the nature, essence, severity of the violation of competition law demand examining the actions by the Competition Council in investigating the case and determining liability in the light of criminal law nature in the meaning of Article 6 and 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In view of the severity of sanction applied to the applicant, [...] the fine by the Competition Council and the procedure for determining thereof has criminal law nature. Therefore, the activities of the Competition Council and the fine that was applied is to be examined from the perspective of respective general principles of law, *inter alia*, principles of legal security, *ne bis in idem*, and proportionality."[36]

Sanctions applied by institutions of public administration have not only the procedural dimension referred to above, but also the dimension of substantive law. I.e., in creating legal norms that envisage application of a sanction a number of requirements derived from the principle of legal certainty must be met. For example, a norm that establishes or intensifies a sanction cannot have a retroactive force;[37] if the legal norm envisages adverse consequences to the sanctioned person (the institution of penal record), then such consequences should be limited in time. Within the Latvian legal system, the issue of limitation period of those sanctions applied by institutions of public administration that are regulated outside the Code has been of particular relevance.

2. Limitation Period as an Institution Typical of Penal Law

In 2016, the *Saeima* reviewed draft amendments to "Law on the Financial and Capital Market Commission" (Nr. 523/Lp12), a proposal concerning these was submitted in the second reading to envisage a limitation period for sanctions

[34] See more on the case law of the European Court of Human Rights Guide on Article 6 of the European Convention of Human Rights. Right to a fair trial (criminal limb), 2014, pp. 9–10. Available at http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf [last viewed 03.02.2017]; *Litvins, G., Aperāne, K.* Administratīvā pārkāpuma lietvedība ceļu satiksmē [Administrative Violations Record Keeping in Road Traffic] Rīga: Sabiedriskās politikas centrs PROVIDUS, 2011, ISBN 978-9984-854-21-2, 12. lpp.

[35] Cilvēka tiesību un pamatbrīvību aizsardzības konvencija [Convention for the Protection of Human Rights and Fundamental Freedoms]. *Latvijas Vēstnesis*, 1997. gada 3. jūnijs, Nr. 143/144(858/859).

[36] Augstākās tiesas Administratīvo lietu departamenta 2016. gada 14. septembra spriedums lietā Nr. 461/2016, 11. punkts, nav publicēts [Judgement of 14 September 2016 by the Department of Administrative Cases of the Supreme Court in case No. 461/2016, para. 11, unpublished].

[37] The failure to abide by this principle was the grounds for the Supreme Court to set aside the judgement by the Administrative Regional Court in case reagrding application of disciplinary punishment to a person employed in public service relations. The Supreme Court recognised that also in disciplinary cases "the principle for applying sanctions that a sanction that intensifies a sanction applied to a person cannot have retroactive force" must be abided by. See Augstākās tiesas Administratīvo lietu departamenta 2015. gada 19. marta spriedumu lietā Nr. SKA-27/2015, 5. punktu. [Judgement of 19 March 2015 by the Department of Administrative Cases of the Supreme Court in case No. SKA-27/2015, para. 5]. Available at https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/207794.pdf [last viewed 02.02.2017].

applied by the Financial and Capital Market Commission.[38] Although this proposal was not supported, it initiated a discussion on whether and what kind of limitation period would be necessary for sanctions applied by the Financial and Capital Market Commission. This minor episode from the legislative process proves the need to be aware of the significance of limitation period as an institution typical of penal law both in legislation and in application of laws. It should be taken into account that in this sense the absence of limitation period and the wish to establish such is not unique. In 1974 the Council of the European Communities adopted a regulation, which was intended especially for establishing a limitation period to the European Commission's right to apply sanctions for violations in the fields of transport and competition.[39]

The institute of limitation period follows from the principle of legal certainty. The need to establish a limitation period for sanctions applied by institutions of public administration was particularly emphasized by the Committee of Ministers of the Council of Europe by adopting on 13 February 1991 recommendation on administrative sanctions.[40] The 4th principle of this recommendation provides that any action taken by authorities with respect to a violation must be taken within reasonable time. The meaning of the institution of limitation period has been already explained also in a judgement by the Supreme Court, referring to the book by professor Pauls Mincs (1868–1941) "Course of Criminal Law. General Part":[41] "The State usually restricts the right to apply sanctions by setting a definite term. At least two noteworthy reasons for establishing a limitation period have been mentioned in legal literature: 1) absurdity of the procedure – after a longer period of time the circumstances of the case no longer can be accurately established, therefore "it is better to waive the claim to a sanction than demonstrate one's helplessness"; 2) "the necessity to release from a sanction due to a limitation period follows from the internal striving of law for certainty [...]." The fact that limitation period makes officials of the respective institutions better disciplined and facilitates making the culpable persons legally liable in a timely manner[42] can be mentioned as an important feature of limitation.

Although the main objective of the institution of limitation is to promote legal certainty, lack of institution of limitation *per se* cannot be regarded as a situation

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[38] Latvijas Tirdzniecības un rūpniecības kameras 2016. gada 6. aprīļa vēstule Nr. 2016/190 Saeimas Budžeta un finanšu komisijai [Letter of 6 April 2016 by the Latvian Chamberof Commerce and Industry No. 2016/190 to the Budget and Fiance Committee of the *Saeima*]. Available at http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/468C0E7009F3F68BC2257F8E001FCA5A?OpenDocument [last viewed 03.02.2017].

[39] Regulation (EEC) No. 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition. *Official Journal of the European Union*, 29 November 1974, L 319.

[40] Recommendation No. R (91) 1 of the Committee of Ministers to Member States on Administrative Sanctions. Available at https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2011123&SecMode=1&DocId=392992&Usage=2 [last viewed 03.02.2017].

[41] *Mincs, P.* Krimināltiesību kurss. Vispārīgā daļa. Ar U. Krastiņa komentāriem [Course of Criminal Law. Genera l Part. With Comments by U. Krastiņš]. Rīga: Tiesu namu aģentūra, 2005, ISBN 9984-671-91-7, 322.–323. lpp.

[42] Augstākās tiesas Senāta Administratīvo lietu departamenta 2009. gada 2. marta spriedums lietā Nr. SKA-6/2009, 12. punkts [Judgement of 2 March 2009 by the Department of Administrative Cases of the Supreme Court in case No. SKA-6/2009, para. 12]. Available at https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/13099.pdf [last viewed 03.02.2017].

contrary to legal certainty or human rights. For example, the Court of Justice of the European Union has recognised: "The failure to set a limitation period for the exercise of the Commission's powers to find infringements of Community law is not therefore in itself unlawful from the point of view of the principle of legal certainty."[43] The Court has made this conclusion with respect to the European Commission's right to establish an infringement upon requirements of a European Union regulation after the term for applying the respective sanction defined in the regulation has expired. The Court arrived at a similar conclusion already in 1970, when the legal norms of the European Union did not yet set a limitation period to the right of the European Commission to apply sanctions for violations of competition law.[44] However, the fact that the limitation period has not been defined in regulation does not mean that the term for applying a sanction is everlasting. The Court of Justice of the European Union, in summarising the judicature on issues of applying the European Union law to limitation period, has recognised that "where the EU legislature has not laid down any limitation period, the fundamental requirement of legal certainty precludes the administration from indefinitely delaying the exercise of its powers."[45] Thus, in circumstances, where the limitation period has not been set in legal norms, an institution, in deciding on the need to apply a sanction, must examine, whether application of sanction, compared to the time when the violation was committed or ceased and the nature and consequences of the offence, causes greater benefit for protecting interests established by legal norms, compared to the infringement of the offender's right to legal certainty.

The fact that in the majority of laws, referred to in footnotes 20–27 of this article, a limitation period has not been set can be explained also with the fact that at the time, when these laws were drafted, the link of these sanctions to the general principles of penal law was not considered, in particular, to the principle of legal certainty. In this respect, Latvia differs from other EU Member States. An overview of foreign regulatory enactments that envisage the right of the respective financial supervisory authority to apply sanctions reveals that rules on limitation are found comparatively frequently. For example, the Dutch Act on financial supervision, Section 1:87, defines a three year limitation period for applying a sanction for a violation of this law.[46] The Czech Act on Banks, Part 6 of Section 36.i provides that proceedings for a violation may be initiated no later than within a year after this violation was detected, but no later than within five years after the date when the violation was committed.[47] The Austrian Act on Banks (Section 99.b) sets

[43] Eiropas Savienības tiesas Pirmās instances tiesas 2005. gada 6. oktobra spriedums apvienotajās lietās Nr. T-22/02 un T-23/02, 83. punkts [Judgement of 6 October 2005 by the First Instance Court of the Court of Justice of the EuropeanUnion in joined cases No. T-22/02 and T-23/02, para. 83]. Available at www.curia.europa.eu [last viewed 01.07.2017].

[44] Sk. Eiropas Kopienu tiesas 1970. gada 15. jūlija sprieduma lietā Nr. 41/69, 17. –21. punktu [Judgement of 15 July 1970 by the Court of Justice of the European Communities in case No. 41/69, para. 17–21]. Available at www.curia.europa.eu [last viewed 01.07.2017].

[45] Eiropas Savienības Civildienesta tiesas 2014. gada 12. marta spriedums lietā Nr. F-128/12, 50. punkts. [Judgement of 12 March 2014 by the European Union Civil Service Tribunal in case No. F-128/12, para. 50]. Available at www.curia.europa.eu [last viewed 01.07.2017].

[46] Act of 28 September 2006, on rules regarding the financial markets and their supervision. Available at https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/brieven/2009/11/16/engelse-vertaling-van-de-wft/act-on-financial-supervision.pdf [last viewed 11.02.2017].

[47] Act of 20 December 1991 on Banks. Available at http://www.cnb.cz/en/legislation/acts/download/act_on_banks.pdf [last viewed 11.02.2017].

the limitation period as 18 months.[48] The Finnish Act on Financial Supervisory Authority, Section 42.a, differentiates the limitation period, depending upon the severity of offence, – for administrative sanctions (to legal persons – up to the amount of 100 000 euro) – 5 years, but for penalty payment (may reach the amount of several millions) – 10 years.[49] In one of the regulations of the European Central Bank the limitation period to applying sanctions to credit institutions is set as 5 years.[50] This comparison shows that limitation periods differ and depend upon peculiarities of Member States' legal systems, *inter alia*, whether Member States have common rules on administrative sanctions, and, if they have, whether these rules do or do not apply to sanctions imposed by financial supervisory authorities. However, even this brief insight proves that in the national law of Member States limitation period is included in the regulation on sanctions by public administration as a principle characteristic of penal law.

Although absence of the institution of limitation *per se* does not exclude the possibility to apply a sanction, in the interests of legal certainty (in particular, from the perspective of economic actors) it is important to establish it in those cases, where institutions of public administration are granted the right to apply sanctions outside the system of administrative sanctions established in the Code. However, limitation period is not the only institution shared with penal law, the significance of which should be considered either in legislation or in application of law. In creating legal norms: 1) possibility to envisage for the same unlawful action both the possibility for an institution of public administration to apply a sanction and to apply coercive measures defined in the Criminal Law should be avoided (*ne bis in idem*);[51] 2) to envisage a term for extinguishing penal record, if the fact of sanctioning leads to other adverse consequences (for example, is taken into consideration as an aggravating circumstance, when a sanction for other violations is applied); to ensure that the ruling may be appealed against on its merits in at least two court instances,[52] whereas in applying sanctions it must be taken into consideration that legal norms that aggravate legal situation for the sanctioned person, do not have retroactive force,[53] presumption of innocence must be abided by,[54] and other procedural safeguards that must be met in other cases of criminal law nature must be ensured.[55]

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[48] Federal Banking Act. Available at http://ec.europa.eu/internal_market/bank/docs/windingup/200908/annex1_finalcountryreport_at-3-austrian%20banking%20act_en.pdf[lastviewed11.02.2017].

[49] Act of the Financial Supervisory Authority. Available at http://www.fin-fsa.fi/en/Regulation/Legislation/Finnish/Documents/FIVA_Act.pdf [last viewed 11.02.2017].

[50] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities. *Official Journal of the European Union.* 14 May 2014, L 141/1.

[51] Cilvēka tiesību un pamatbrīvību aizsardzības konvencijas 7. protokola 4. pants [Convention for the Protection of Human Rights and Fundamental Freedoms, Article 4 of Protocol No. 7].

[52] Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of Protocol No. 7.

[53] Cilvēka Convention for the Protection of Human Rights and Fundamental Freedoms, the first part of Article 7.

[54] Convention for the Protection of Human Rights and Fundamental Freedoms, the second part of Article 6.

[55] Convention for the Protection of Human Rights and Fundamental Freedoms, the third part of Article 6.

3. Administrative Penal Law as a Sub-branch of Law

It was already noted in the Section 1 of this article that since the mid-1990s there are two types of sanctions that have been applied by institutions of public administration in Latvia: sanctions that are applied in accordance with the Code, and sanctions that are applied in other cases established by law in accordance with the general procedure established in these laws and in the Administrative Procedure Law.[56] Legal regulation and application of these sanctions must ensure the substantial and procedural legal principles that are typical of penal law. With respect to violations and sanctions envisaged in the Code such terms as "administrative violation", "administrative sanction", "administrative liability" have been used already for many decades, however, the sanctions used in other laws ("penalty payments") have gone almost unnoticed by doctrine. A textbook on administrative law states the following about these sanctions: "A number of laws establish coercive measures similar to administrative liability. These are not to be considered as administrative violations, because they have not been envisaged in the Latvian Administrative Violations Code."[57] At present there is no other more exhaustive assessment of these violations and sanctions, as well as their place in the Latvian legal system. In certain respects, the issue of whether these violations and sanctions that are regulated outside the Code should be equalled to violations and sanctions envisaged by Code is theoretical; however, in the framework of the currently proposed reform to the Code (more about it below) it might acquire also practical significance.

Violations and fines for them envisaged in the Code and in other laws differ only in two aspects: amount and procedure of application. However, these sanctions do not differ substantially. Therefore, attempts to find different names for two substantially similar phenomena seem to be redundant. The term "administrative violation", borrowed from the Soviet law, has become organically integrated into the Latvian legal system and successfully denotes those violations, the sanctions for which are applied by an institution of public administration ("administrative"). Today, the term "administrative violation" denotes only those administrative violations that are envisaged in the Code and in binding regulations of local governments. This follows from the second part of Section 1 ("the Code shall determine, which action or inaction shall be acknowledged as an administrative violation") and Section 5 (on the right of local government councils to provide for administrative liability) of the Code. Currently, this term is necessary to underscore that the rules included in the Code are applicable only to violations and sanctions that are envisaged in the Code and binding regulations of local governments. Therefore, from the perspective of legal terminology, at least at present it is not correct to also designate other violations anticipated for in other laws, for which the sanctions may be applied by institutions of public administration, administrative violations. At the same time, it must be admitted, that at least for now the Latvian legal system does not have any other, semantically more appropriate term to denote these violations.

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[56] Administratīvā procesa likums [Administrative Procedure law]. *Latvijas Vēstnesis*, 2001. gada 14. novembris, Nr. 164(2551).

[57] *Briede, J., Danovskis, E., Kovaļevska, A.* Administratīvās tiesības. Mācību grāmata [Administrative Law. Textbook] …, 209. lpp.

Similar considerations apply to the use of the term "administrative sanction" and "administrative liability". Although in regulatory enactments these terms are used exactly in the context of the Code, substantially, at least on the level of legal doctrine, these could be attributed also to the sanctions established in other laws that are applied by institutions of public administration. At least in legal doctrine, the administrative penal law should be defined as a totality of legal norms that define violations and sanctions thereof, which institutions of public administration may apply to private persons. According to the current legal regulation, it can be considered that administrative penal law consists of two parts: 1) violations and sanctions applicable thereof that are envisaged in the Code and in binding regulations of local governments; 2) sanctions of financial nature (fines) stipulated by other laws, which institutions of public administration are entitled to apply for violations of these laws. Hence, there are also two types of administrative violations: 1) administrative violations referred to in the Code and binding regulations by local governments, with respect to which procedure is conducted in accordance with the Code; 2) administrative violations envisaged in other laws, where decision on applying a sanction is adopted in procedure established by the Administrative Procedure Law and in other legal norms.

At the time of writing this article, the Administrative Violations Procedure Law was being prepared for the third reading by the *Saeima*.[58] It is intended that this Law will replace the Code. One of the most significant changes that this draft law proposes is the so-called "de-codification of administrative violations". I.e., elements of administrative violations that until now were envisaged in the special part of the Code will be "transferred" to sectoral laws. A question may arise in the context of this reform, whether violations that are currently envisaged in other laws should not be included in a new system of law, similarly to Germany, where also sanctions for financial market[59] and competition violations[60] are examined in the procedure[61] established by the Administrative Violations Law (Ordnungswidrigkeitengesetz).[62] At the moment, the draft law does not envisage including these violations in the system of administrative violations. This approach comprises some considerations worth reflecting upon. Firstly, with respect to some sanctions that may be applied

[58] Administratīvo pārkāpumu procesa likums. 12. Saeimas likumprojekts [Administrative Violations Procedure Law. Draft law of the 12th convocation of the *Saeima*]. Available at http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/WEBRespDocumByNum?OpenView&restricttocategory=16/Lp12|2521| [last viewed 12.02.2017].

[59] See, for example, Securities Trading Act (Gesetz über den Wertpapierhandel) Article 39 ff. Available at https://www.gesetze-im-internet.de/wphg/BJNR174910994.html#BJNR174910994BJNG000604377 [last viewed 12.02.2017]. See also Guidelines on the Imposition of Fines in Administrative Offence Proceedings for Breaches of the Provisions of the Securities Trading Act. Available at https://www.bafin.de/SharedDocs/Downloads/EN/Leitfaden/WA/dl_lf_bussgeldleitlinien_2013_en.pdf?__blob=publicationFile [last viewed 12.02.2017].

[60] See Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) Article 81. Available at http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/GWB.pdf?__blob=publicationFile&v=3 [last viewed 12.02.2017].

[61] In Germany, the system of regulation on administrative violations is similar to the one that is intended to be created by the Administrative Violations Procedure Law. I.e., the majority of elements of administrative violations are included in other laws, not in the German Administrative Violations Law. See, for example, *Bohnert, J.* Ordnungswidrigkeitenrecht. 4. Auflage. München: Verlag C. H. Beck, 2010, ISBN 978-3-406-60556-7, S.1–3; *Klesczewski, D.* Ordnungswidrigkeitenrecht. München: Verlag Franz Vahlen, 2010, ISBN 978-3-8006-4066-9, S. 3–4.

[62] Ordnungswidrigkeitengesetz. Available at https://www.gesetze-im-internet.de/owig_1968/ [last viewed 12.02.2017].

by the Competition Council and the Finance and Capital Market Commission and the respective violations, over time a rather stable case law of administrative courts has been established. The cases regarding violations of the Competition Law often require delving deep into very specific issues typical of this group of violations. In these cases, certain specialisation of judges has evolved. Thus, there is a considerable risk that by transferring these cases for reviewing to courts of general jurisdiction, the stability of judicature and quality of hearing of these cases might be jeopardised. Secondly, some of these laws (for example, the Competition Law) provide for special norms on performing procedural actions (for example, obtaining and securing evidence). Thirdly, in the view of the complexity of hearing of these cases, the need not to apply a number of provisions included in the Administrative Violations Procedure Law (for example, comparatively short period of limitation and other procedural terms) should be considered.

However, there are also some considerations on why these cases (at least in the institution) could be examined in the procedure established in the Administrative Violations Procedure Law. Firstly, from the perspective of procedural regulation, the regulation established in the Administrative Violations Procedure Law is more appropriate (more detailed) than the regulation of the Administrative Procedure Law on issuing administrative acts. For example, it is doubtful, whether a reasonable explanation exists as to why with respect to the sanctions currently applied by the institutions of public administration outside the framework of the Code rules on the presumption of innocence, the obligation to prove and the legal presumption of a fact should not be applied in the framework of the Administrative Violations Procedure Law. Secondly, from the perspective of clarity and transparency of the legal system, it is rational to develop a system of administrative sanctions that is based upon common principles, taking into account that all administrative sanctions are applied by institutions of public administration and that the principles of substantial and procedural law, typical of cases with a nature of criminal law, must be implemented accordingly.

Summary

1. For more than 20 years, two types of sanctions that are imposed by institutions of public administration have existed in the Latvian legal system: 1) sanctions that are imposed in compliance with the Code for administrative violations stipulated by the Code and binding regulations of local governments; 2) other sanctions envisaged in 20 laws, which, in accordance with the procedure established by the Administrative Procedure Law, are applied by institutions of public administration for violations of these laws by issuing an administrative act. Although the majority of these sanctions ("penalty payments") are terminologically differentiated from the fines envisaged in the Code, substantially, these sanctions do not differ.
2. In legal regulation and application of administrative sanctions, the requirements that follow from the Convention for the Protection of Human Rights and Fundamental Freedoms with respect to hearing cases of criminal law nature, as well as other principles of substantial and procedural law typical of penal law must be abided by. The institution of limitation period is one of the institutions that should be included in all cases, where public administration is granted the right to apply sanctions.

3. Respecting the current, different procedure for applying these sanctions, at least in legal doctrine all sanctions imposed by administrative institutions and legal regulation thereof should be elaborated as belonging to the administrative penal law in the form of a discrete sub-branch of administrative law, which, in turn, constitutes a part of the so-called penal law.

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