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The right to a fair trail: the case of administrative sanctions

Abstract
The right to a fair trial becomes a guarantee for all of the other human rights. Therefore, the discussions concerning the development of a contemporary charter of fundamental rights, which was the purpose of the 4th International Conference on Human Rights in Bari, had to include a reflection on this highly important human right: the right to a fair trial.
The right to a fair trial, is normatively guaranteed both in international law and in domestic legal systems. However, it turns out that these numerous normative guarantees of the right to a fair trial, i.e. the right to have the case examined by a "competent," impartial, and independent court, are not always sufficient. One type of cases that pose problems in terms of implementing these normative declarations are cases concerning administrative sanctions. The court's control over cases in which public administration authorities decide about penalties cannot be limited to controlling legality. This raises the question of whether the Polish solution consisting in court control over the imposition of administrative sanctions being entrusted to administrative courts ensures proper implementation of the right to a hearing of one's case before a "competent" court, as provided for in Article 45 of the Constitution of the Republic of Poland.
The doubts are related to the fact that Polish administrative courts are courts of law and not courts of fact. The Polish system of administrative courts has two instances: the first instance are the regional administrative courts (there are 16 of them, one per region) and the second instance is the Supreme Administrative Court. However, the task of these courts is not to adjudicate on administrative cases, but only to control the activities of public administration authorities. Polish administrative courts do not adjudicate on the subject matter, they do not decide about the rights and obligations of individuals; they only control if, in the given case, public administration authorities acted in accordance with legal regulations.

Keywords: administrative sanctions, right to a fair trial, human right, Polish administrative court, Polish Constitution, administrative law, criminal law, competences of administrative courts.

1. The right to a fair trial as a human right

It is commonly acknowledged that the concept of human rights is vague. This concept, covering the fundamental rights of the man and of the citizen, evolves in time due to civilizational and social changes. However, the its scope should be understood in a universal manner in every legal culture, and as broadly as possible. Observance of the fundamental rights is the foundation of making sure that humans occupy the central position in contemporary world. This should be the priority of all decision-making bodies, in particular public authorities. In turn, the observance of these rights by these bodies should be guarded by courts. Consequently, the right to a fair trial becomes a guarantee for all of the other human rights. Therefore, the discussions concerning the development of a contemporary charter of fundamental rights, which was the purpose of the 4th International Conference on Human Rights in Bari, had to include a reflection on this highly important human right: the right to a fair trial.

The role of the right to a fair trial, as one of the most important human rights, is reflected in legal regulations. This right is normatively guaranteed both in international law and in domestic legal systems. In Article 6, the European Convention on Human Rights provides for a right to a fair trial.[1] The same is guaranteed in Protocol No. 7 of 1984, which introduced the prohibition of being tried or punished twice.[2] The right to a fair trial is also among those guaranteed by the International Covenant on Civil and Political Rights of 1966.[3] The right to an effective remedy and to a fair trial is guaranteed in Article 47 of the Charter

[1] The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, subsequently amended by means of Protocols No. 3, 5, and 8 and supplemented by means of Protocol No. 2 (Polish Journal of Laws No. 1993.61.284, as amended). Sentence one of Article 6 provides that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

[2] Article 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Strasbourg on 22 November 1984 (Polish Journal of Laws No. 2003.42.364).

[3] Sentence one of Article 14.1 of the International Covenant on Civil and Political Rights opened for signature on 19 December 1966 (Polish Journal of Laws No. 1977.38.167) provides that – All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

of Fundamental Rights of the European Union.[4] The Polish Constitution also guarantees the right to a fair trial, providing that "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court."

However, it turns out that these numerous normative guarantees of the right to a fair trial, i.e. the right to have the case examined by a "competent," impartial, and independent court, are not always sufficient. One type of cases that pose problems in terms of implementing these normative declarations are cases concerning administrative sanctions.

2. The concept of an administrative sanction

By administrative sanctions, I understand all kinds of sanctions imposed by administrative authorities in accordance with administrative law for violations of the norms of that law. This means various types of consequences of violating norms of administrative law that follow from the right to apply administrative coercion, which is the fundamental measure of ensuring the efficiency of public administration. This broad category comprises various forms of reactions of public administration authorities to disobedience or passivity of citizens, such as administrative financial penalties (e.g. a penalty for cutting down a tree without a permit, a penalty for driving a non-normative vehicles on a public road, a penalty for offering gambling on EGMs outside of a casino, etc.), loss of rights (e.g. revocation of driving license as a result of speeding, loss of a license to sell alcoholic beverages, loss of a license to drive a taxi, etc.), as well as orders (e.g an order to demolish a building) and prohibitions (e.g. a prohibition of gatherings).

The issue of whether the right to a fair trial is properly ensured in such cases is particularly topical today in view of the spreading phenomenon of decriminalizing sanctions, i.e. transforming them from criminal sanctions to

[4] OJ C 83 of 2010, p. 2. Article 47 provides i.a. that "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law." On the issue of the scope of application of the Charter, cf. e.g. N. Półtorak, *Zakres związania państw członkowskich Kartą Praw Podstawowych Unii Europejskiej*, Europejski Przegląd Sądowy, September 2014, pp.17–28.

administrative sanctions.[5] The reason for this clear tendency to move the penal function from criminal law to administrative law, thus broadening the scope of administrative sanctions, is primarily the simplified procedure of imposing administrative sanctions. Unlike the procedure of imposing criminal sanctions, it is unconnected to individual reasons for liability; in particular, there is no need to determine the perpetrator's guilt, consider the principle of innocent until proven guilty, take into account the elements excluding the perpetrator's liability, etc.[6] This method of imposing a penalty is based on strict liability, i.e. it is limited to concluding that a violation of administrative law has occurred, without the need to examine the reasons for this violation, which makes it undoubtedly easier, faster, and cheaper. The scope of the entities on which these sanctions can be imposed is also much wider. These include not only natural persons, but also legal persons and organizational entities without legal personality, while criminal law, in principle, applies only to the first of those.

As a result, the boundary between criminal law and administrative law is becoming blurred, and the legislator is often acting completely without reflection, penalizing similar behaviors sometimes in criminal law and sometimes in administrative law, with no consideration for the fundamental differences

[5] For instance, originally, construction law provided for a fine, i.e. a measure belonging to criminal law, for illegal use of a building; currently, the legislator uses an administrative sanction for such a violation.

[6] Cf e.g. A. Wróbel, *Odpowiedzialność administracyjna w orzecznictwie Trybunału Konstytucyjnego (na przykładzie kar administracyjnych pieniężnych)*, Europejski Przegląd Sądowy 2014, No. 9, pp. 33–40; M. Rypina, *Wina jako przesłanka odpowiedzialności przy stosowaniu administracyjnych kar pieniężnych*, in: R. Stankiewicz (ed.), *Kierunki rozwoju prawa administracyjnego. Prace Członków i Przyjaciół na 5-lecie Koła Naukowego Prawa Administracyjnego na Uniwersytecie Warszawskim*, Warsaw 2011, pp. 186–206; J. Turski, *Administracyjne kary pieniężne w świetle Konstytucji RP – wybrane zagadnienia*, Zeszyty Naukowe Wyższej Szkoły Administracji i Biznesu im. E. Kwiatkowskiego w Gdyni, 2013, No. 20, pp. 160–177; A. Błachnio-Parzych, *Sankcja administracyjna a sankcja karna w orzecznictwie Trybunału Konstytucyjnego oraz Europejskiego Trybunału Praw Człowieka*, in: M. Stahl, R. Lewicka, M. Lewicki (eds.), *Sankcje administracyjne. Blaski i cienie*, Warsaw 2011, pp. 657–673; W. Hermeliński, *Sankcja administracyjna: represja czy dyscyplinowanie?*, in: W. Federczyk (ed.), *Jedność norm i wartości. Zbiór studiów dedykowanych Profesor Marii Gintowt-Jankowicz*, Warsaw 2014, p. 66–67; J. Malanowski, *Pojęcie i koncepcje odpowiedzialności administracyjnej*, in: M. Wierzbowski, J. Jagielski, A. Wiktorowska, E. Stefańska (eds.), *Współczesne zagadnienia prawa i procedury administracyjnej. Księga jubileuszowa dedykowana Prof. zw. dr. hab. Jackowi M. Langowi*, Warsaw 2009, p. 172 et seq.; D.K. Nowicki, S. Peszkowski, *Kilka uwag o szczególnym charakterze administracyjnych kar pieniężnych*, in: M. Błachucki (ed.), *Administracyjne kary pieniężne w demokratycznym państwie prawa*, Warsaw 2015, p. 11.

between these two branches of law. Naturally, the concept of regulating repressive (i.e. criminal) sanctions in administrative law, i.e. in a branch that formally is not a part of criminal law, is acceptable as such. However, the legislator should not do this completely arbitrarily, without paying attention to the differences between these two branches of law in terms of concepts of liability and the models of application of law. Unfortunately, this is often the case, which leads to a number of threats for fundamental rights, such as the *ne bis in idem* principle, the principles of equality and proportionality, and the eponymous right to a fair trial.

3. Limitations of Polish administrative courts

In academic literature and in the body of rulings of the European Court of Human Rights,[7] it is emphasized that in order to ensure compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms, it is not necessary for certain cases to be qualified as belonging to criminal law, but only for the standards laid down in Article 6 of the Convention to be observed.[8] Therefore, in a proceedings other than strictly criminal, it is necessary to ensure a standard of protection of individuals that offers adequate trial-related guarantees.[9]

One of the most important procedural standards concerning administrative sanctions is guaranteeing the party with the right to a fair trial. This means in particular that the court's control over cases in which public administration authorities decide about penalties cannot be limited to controlling legality.[10]

This raises the question of whether the Polish solution consisting in court control over the imposition of administrative sanctions being entrusted to administrative courts ensures proper implementation of the right to a hearing of one's case before a "competent" court, as provided for in Article 45 of the Constitution of the Republic of Poland.

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[7] Hereinafter as the "ECHR."

[8] Cf. e.g. the judgment of the ECHR in *Malige v France* (23 September 1998) where the Court concluded that the sanction of a loss of driving license is repressive, but since France did ensure guarantees of a fair trial that are required in criminal cases, Article 6 of the Convention was not violated.

[9] Cf. the judgment of the Polish Constitutional Tribunal sitting as a full court of 14 October 2009, in the Kp 4/09 case, OTK ZU No. 9A of 2009, item 134.

[10] The judgment of the ECHR in *Belilos v Switzerland* (29 April 1988).

The doubts are related to the fact that Polish administrative courts are courts of law and not courts of fact. The Polish system of administrative courts has two instances: the first instance are the regional administrative courts (there are 16 of them, one per region) and the second instance is the Supreme Administrative Court. However, the task of these courts is not to adjudicate on administrative cases, but only to control the activities of public administration authorities. Polish administrative courts do not adjudicate on the subject matter, they do not decide about the rights and obligations of individuals; they only control if, in the given case, public administration authorities acted in accordance with legal regulations.[11] The sole criterion in this respect is legality, which significantly limits the scope of control. This form of shaping the competences of administrative courts results in the courts being bound by the so-called principle of relevance, i.e. the need to consider the legal and factual state of affairs that existed at the moment of the given public administration authority issuing its decision. Furthermore, presentation of evidence before Polish administrative courts is highly limited. These courts can only admit evidence in the form of documents, and even in this respect to a limited extent, if this is necessary to clear significant doubts and provided that it will not result in excessive prolongation of the proceedings.[12] However, they cannot hear witnesses or admit evidence in the form of expert opinions. As a result, their capability of verifying the conclusions of public administration authorities as to facts is limited. This leads to doubts: for instance, even if courts had the statutory right to apply sanctions on a spectrum, they would not have tools sufficient to verify if the imposed penalty is fair. This is because administrative courts have no possibility of determining the given person's guilt.[13]

[11] Sentence one of Article 184.1 of the Constitution of the Republic of Poland provides that "The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration". This is confirmed by Article 1 § 1 of the LPBAA, which provides that "Administrative courts shall ensure justice by means of controlling the activities of public administration authorities and solving disputes as to competence and relevance between entities of local governments, local government boards of appeal, and between these bodies and government administration authorities". Article 1 § 2 adds that "The control referred to in § 1 shall concern compliance with the law, unless statutory regulations provide otherwise".

[12] Article 106 § 3 of the Polish Law on Proceedings Before Administrative Courts (the "LPBAA").

[13] This issue was raised in a dissenting opinion by judge W. Hermeliński in a case K 13/08 OTK ZU No. 7A of 2009, item 105, pending before the Polish Constitutional Tribunal that concerned the Polish Law on Fishery.

These serious limitations of the extent of court control constitute a definite threat for the protection of the party's rights in proceedings for the imposition of an administrative sanction, thus forming a basis for questioning whether the right to a fair trial is guaranteed in such cases.

4. Instruments intended to guarantee the right to a fair trial in cases concerning administrative sanctions

Due to the limitations of court control described above, the adjudicating of Polish administrative courts with respect to administrative sanctions requires a special kind of diligence and thoroughness, so as to minimize, as much as possible, these deficiencies of legal protection of the party to the proceedings. One has to remember that these sanctions are often severe, close in nature to criminal sanctions, while, contrary to them, their imposition is not related to determining the degree of guilt. This nature of administrative sanctions means that it is particularly important to establish guarantees for individuals that the sanctions will be imposed in accordance with the law.[14] However, this requires increased vigilance and sensitivity from the court.

One of the methods to counterbalance the limitations of administrative courts is the skillful use of the existing (although, by nature, limited) procedural instruments, including in particular the possibility of admitting evidence in the form of a document, which is provided for in Article 106 § of the LPBAA. In cases concerning administrative sanctions, courts expand the scope of acceptable documentary evidence, so as to cover situations where the requested evidence "is linked only to evaluating the legality of the challenged administrative act."[15] For instance, with respect to the sanction consisting in the loss of driving license as a result of speeding, circumstances such as errors in measuring the speed of the vehicle may be brought up and considered not only at the stage of administrative proceedings (before the *starosta*, i.e. the head of the district, and before the local government board of appeal), but

[14] The Polish Supreme Administrative Court pointed this out in the judgment of 5 March 2009 (II OSK 291/08).

[15] See e.g. the judgment of the Polish Supreme Administrative Court of 24 September 2010 concerning an additional tax obligation determined on the basis of the VAT Law, which was classified as an administrative sanction by the Court of Justice of the European Union in the judgment of 15 January 2009.

also before the administrative court, where they may be verified and possibly taken into account.[16]

In cases concerning administrative sanctions, administrative courts should be particularly sensitive and make sure that the person subject to administrative liability is heard before the decision about an administrative sanction is made. A party cannot be deprived of this important procedural guarantee.

Administrative courts also use another method, which is direct application of the Constitution in order to weaken the automatism of public administration authorities, which sometimes results in a complete lack of reflection when applying legal regulations concerning sanctions.

For instance, in the body of rulings, it is strongly emphasized that an entity that failed to comply with an administrative obligation must have the possibility to defend and demonstrate that the non-compliance was a result of circumstances for which it was not responsible. This is because the application of provisions imposing financial penalties cannot lead to a result that would be in conflict with the fundamental constitutional principles.[17]

Following this pro-constitutional approach, the Polish Supreme Administrative Court concluded that, in spite of the fact that under the Law on Environmental Protection, an entity using the environment has to pay higher fees in the case of not having a permission to emit gases and dusts, the reasons for the lack of this permission have to be taken into account. The Court, referring to Articles 2 and 7 of the Constitution of the Republic of Poland, decided that since the lack of the permission was a result of the prolonged proceedings before the authority competent to issue this permission, then the company is not responsible for not having the permission. This means that the Court used a kind of counter-type, even though it was not provided for in statutory regulations.[18]

A similar example is a judgment in which the court concluded that the sole fact of liability being strict does not mean that this liability is absolute.

[16] This was pointed out by the Polish Constitutional Tribunal in the judgment of 11 October 2016 (case K 24/15, OTK ZU A/2016, item 77), in which it concluded that in this respect, the VAT Law is in conflict with the Constitution.

[17] The case concerned Article 23.2.1 of the Law on Road Transport of Hazardous Materials: the entity transporting hazardous materials failed to send one copy of its annual report to the governor of the region on time; the deadline fell on a Saturday, which, however, was not a statutory holiday; the judgment of the Polish Supreme Administrative Court of 15 February 2012 (II GSK 1191/10).

[18] Judgment of the Polish Supreme Administrative Court of 1 June 2010 (II OSK 871/09).

Therefore, the entity can release itself from liability if it demonstrates that it has done everything that could be reasonably expected of it in order to prevent the violation of legal regulations (i.e. the entity has exercised due diligence in the performance of its duties and, objectively, could not act in any other way). Rejecting this possibility would be in conflict with the fundamental constitutional principles following from the concept of a democratic state of law: the principle of the citizens' trust to the state and the principle of legal security.[19]

In cases concerning administrative sanctions, it is also accepted that the basis for liability should be the legal regulation in force on the day of committing the act covered with the sanction and not the one in force on the day of issuing the final decision, unless the latter is more favorable for the perpetrator. This is a clear deviation from the general rules of adjudication of administrative courts. There are no clear legal bases for such a deviation; however, courts justify this exception by referring to the specific nature of the cases that concern sanctions. In the body of rulings, it is emphasized that the entity violating legal regulations may expect—considering the guarantee function of repressive law and on the basis of the principle of trust to the state and the laws introduced by the state, stemming from the principle of a democratic state of law—that sanctions will be imposed on it on the basis of the legal regulations that were in force when the violation occurred. In each individual case, when making a decision on applying a new law, it should be considered whether this could produce results that are unacceptable from the point of view of the constitutional principles of legal order.[20]

Another way to ensure the best possible protection of the party's rights in proceedings before administrative courts is basing judgments on the requirements specified in the *Recommendations of the Committee of the Council of Ministers No. R (91) of 13 February 1991 regarding Administrative Sanctions*. Polish

[19] The case concerned a penalty for failure to report a vehicle for licensing. The party demonstrated that the vehicle was reported for licensing, but the registered letter was not delivered to the public administration authority and it was not the party's fault; judgment of the Regional Administrative Court in Białystok of 25 July 2007 (II SA/Bk 267/07), upheld by the Supreme Administrative Court in the judgment of 13 September 2011 (II GSK 816/10).

[20] The judgment of the Polish Supreme Administrative Court of 11 January 2005 (OSK 994/04), in which the Court questioned the possibility of imposing a financial penalty for illegal transport of goods by road as per the legal regulations in force on the day of issuing the decision, concluding that the penalty should be lower, in accordance with the legal regulations in force on the day of committing the act.

administrative courts follow this approach, even though the *Recommendation* is not a formally binding source of law in the Polish system of sources of law. As a result, it does not constitute applicable law, but rather lays down certain standards of conduct of public authorities in a specific area, which are accepted and used by administrative courts.[21] The *Recommendation* has introduced i.a. the principles of informing the party about the charges against it, providing the party with sufficient time to prepare for the case, informing the party about evidence against it, providing the party with a possibility of being heard prior to the decision being made, and placing the burden of proof on the public administration authority. These principles are also laid down directly in the Polish Code of Administrative Procedure; however, in a situation where the object of the proceedings is the imposition of an administrative penalty—i.e. a sanction similar to a criminal sanction—it becomes even more important to observe the procedural rights of the parties and the principles of explanatory proceedings.

In cases concerning administrative sanctions, administrative courts cannot ignore the obligation to weigh goods and values.[22] The essence of the principle of proportionality, as expressed in Article 31.3 of the Constitution of the Republic of Poland, is that the measures used by the legislator have to be sufficient to achieve the intended goals, but, at the same time, that they have to be necessary to protect the interest they are related to and that their effects have to be proportional to the burdens placed on citizens. The penalty should be strict enough to prevent future violations. At the same time, it cannot be excessive.[23] The objective nature of administrative liability cannot lead to unreflective violations of the principle of proportionality. In order for administrative sanctions to be effective, it is necessary that they are inevitable and onerous, but

[21] Cf. e.g. the judgment of the Polish Supreme Administrative Court of 5 March 2009 (II OSK 291/08).

[22] Cf. e.g. the judgment of the Polish Supreme Administrative Court of 12 October 2010 (II GSK 860/09) concerning a financial penalty for constructing an exit from a national road without the required permit, which contains a reference to the fact that Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms is exclusively of civil and criminal nature, introducing the requirement of maintaining a reasonable balance between public interest and the protection of the complaining party's fundamental rights; cf. also the judgment of the Polish Constitutional Tribunal of 14 June 2004 (SK 21/03; OTK-A 2004, No. 2, item 56).

[23] Cf. e.g. the excessively high penalties for cutting down a tree without a permit that were declared unconstitutional by the Polish Constitutional Tribunal in the judgment of 1 July 2014 (case SK 6/12, OTK ZU No. 7A of 2014, item 68).

also that they correspond to the nature of the violation.[24] Although concurrence of administrative and criminal liability does not violate the principle of *ne bis in idem* (as discussed above), it should not lead to the violation of the prohibition of excessive repressiveness or result in disproportionate severity due to a cumulation of negative consequences of one situation.[25] In the process of applying law in terms of administrative sanctions, there should also be no violations of the principle of equality, as guaranteed in Article 32.1 of the Constitution of the Republic of Poland.[26]

Protection of individuals in cases concerning administrative sanctions could also be increased by adopting a model of control based on subject-matter adjudication by administrative courts, which would be tantamount to undermining the adequacy of the cassation-based model of control of sanction-imposing decisions by administrative courts. The model of subject-matter adjudication would certainly solve a number of issues related to proper implementation of the right to a fair trial in cases concerning administrative sanctions. However, this issue is highly controversial and has been a subject of unsolvable disputes in academic literature since the very beginning of the existence of administrative courts.

5. Summary

The unclear boundary between an administrative and a criminal delict makes it possible to determine the nature of the given sanction only through a decision of the court adjudicating in the given case. An example illustrating the difficulty of making the distinction is the request for a preliminary ruling made by the Polish Supreme Courtto the CJEU in the decision of

[24] Cf. the judgment of the Polish Constitutional Tribunal of 14 June 2004 (case SK 21/03, OTK-A No. 6 of 2004, item 56).

[25] Cf. e.g. the judgment of the Polish Constitutional Tribunal of 9 October 2012 (case P 27/11; OTK ZU No. 9A of 2012, item 104) confirming the violation of the constitutional principle of equality by legal regulations which provide that different employees are entitled to a different number of days off; cf. also the judgments of the Polish Constitutional Tribunal of 14 October 2009 (sitting as a full court, case Kp 4/09, OTK ZU No. 9A of 2009, item 134) and of 29 April 1998 (case K 17/97, OTK ZU No. 3 of 1998, item 30).

[26] Cf. the judgment of the Polish Constitutional Tribunal of 29 June 2004 (case P 20/02, OTK ZU No. 6A of 2004, item 61) concerning the charging of the same additional fee for using public transport without a document confirming the entitlement to a concessionary ticket and for using public transport without a ticket or without entitlement to a concessionary ticket.

12 October 2010, asking about the legal nature of the sanction provided for in Article 138 of Regulation 1973/2004 consisting in not granting direct aid in the years following the year in which the farmer provided false data concerning the declared area[27]. The response to this request was crucial to determine if the *ne bis in idem* principle would be violated in the related cases, since, at the same time, criminal law provides for liability of the perpetrator for making a misrepresentation in order to obtain aid under false pretenses.[28] Another example of the difficulties in determining the nature of a specific sanction is the sanction consisting in assigning penalty points to drivers for speeding, which ultimately leads to the loss of driving license when the number of points is high enough. In the body of rulings, decriminalization of this measure has been accepted as a possibility, but, at the same time, it has been pointed out that it is necessary to ensure proper procedural guarantees due to its repressive nature.[29]

In cases concerning the imposition of administrative sanctions, full court control should be possible, i.e. control exercised by an independent and impartial court established by law, competent to adjudicate on the matter, and permitted to use the full range of measures in terms of evidence. Entrusting court protection in cases concerning administrative sanctions in Poland to administrative courts could be seen as corresponding to the requirements regarding the right to a fair trial, as laid down in the Polish Constitution and the relevant conventions, but these courts have to be active in the application of law—without this, considering the existing limitations of court control and the lack of comprehensive provisions regulating the imposition of administrative sanctions, it would not be possible to ensure full protection of rights and freedoms.

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[27] The judgment of Polish Supreme Court of 27 September 2010, case V KK 179/10, OSNwSK 2010, No. 1, item 1796.

[28] In the judgment of 5 June 2012, case Bonda v Poland C-489/10, the Court of Justice of the European Union decided that Article 138.1 of Regulation 1973/2004 of 29 October 2004 must be interpreted as meaning that the measures provided for in the second and third subparagraphs of that provision, consisting in excluding a farmer from receiving aid for the year in which he made a false declaration of the eligible area and reducing the aid he can claim within the following three calendar years by an amount corresponding to the difference between the area declared and the area determined, do not constitute criminal penalties.

[29] The judgment of the Polish Constitutional Tribunal, sitting as a full court, of 14 October 2009, case Kp 4/09, OTK ZU No. 9A of 2009, item 134.

As a de lege ferenda postulate, it should be stated that it is necessary to regulate, in statutory provisions, precisely and comprehensively, the principles of using administrative sanctions. The recent amendment to the Polish Code of Administrative Procedure concerning administrative financial penalties[30] is a step in the right direction; still, this is insufficient. It should be postulated that the legislator, when creating various types of liability, should finally start rationalizing prosecution and penalization. The decision to classify the given sanction as an administrative or criminal penalty is an element of legislative policy and an expression of the legislator's belief that the given nature of the penalty will be better to achieve its purpose. However, this decision cannot be arbitrary, as it is limited by the axiology of the Constitution—the reasons for liability have to correspond to the nature of the violation and the severity of the sanction. The law needs to be axiologically "legal" and must ensure proper substantive and procedural guarantees.

The doubts related to administrative sanctions not being regulated are clearly visible not only in Polish law. Currently, the works on a code of administrative procedure of the European Union are under way. These works were initiated by a group of academics forming the ReNEUAL, which has developed a draft (model) of the code, which comprises six books. However, none of them contains provisions regarding sanctions, even though the authors do see the need for such a regulation. The draft constituting an annex to the Resolution of the European Parliament of June 2016, which in fact is the ReNEUAL model cut down to two books, does not contain regulations concerning sanctions, either. Therefore, even though the lack of a comprehensive regulation of administrative sanctions is noticed in the European academic literature and body of rulings, no specific draft of such regulation has been produced. The conclusions reached in academic literature in this respect and active adjudication by administrative courts are an attempt to fill this gap. However, this is insufficient to compensate for the lack of such a comprehensive regulation.

The concept and the contents of the particular human rights should be redefined. As part of this process, one cannot forget about the courts, which guard human rights, i.e. about the right to a fair trial before a "competent,"

[30] Section IVa – "Administrative financial penalties," added to the Polish Code of Administrative Procedure under Article 1.41 of the Polish Law of 7 April 2017 (Journal of Laws No. 2017.935); the amendment came into effect on 1 June 2017.

impartial, and independent court, with the procedural rights guaranteed to the party to the proceedings.

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