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Administrative and Criminal Liability: Toward Sustainability

Administrative Liability as a Separate Type of Responsibility

When examining the issues of the coherence and harmonization of administrative and criminal liability in Europe, it should be noted that the Communication of the European Commission Toward an EU Criminal Policy (European Commission 2011) states that EU criminal law policy is primarily based on the provisions of Article 83(2) of the Treaty on the Functioning of the European Union (TFEU) (2012). EU law does not provide for a consistent set of constituent elements that characterize an administrative penalty and allow it to be distinguished from criminal sanctions. Markus Kärner (2022) stated that the concept of an administrative sanction is not precisely defined in EU law, and this concept also varies greatly between Member States. In the author's opinion, the purpose of administrative sanctions is similar to the purpose of criminal sanctions: punishment for violating the law. However, criminal sanctions (such as imprisonment) have traditionally been more severe and carry greater social stigma compared to administrative sanctions. Because of the severity of potential sanctions, there are many procedural safeguards in place, and criminal sanctions are almost exclusively imposed by the courts. Administrative sanctions are applied for behavior that does not correspond to the essence of criminal law and may not require severe sanctions. Therefore, the term *administrative* is used in legal acts to indicate the non-criminal nature of sanctions and the main role of the administrative authority in sanctioning (Kärner 2022). The assessment of the administrative sanction is presented in the documents adopted based on Articles 82 and 83 of the TFEU (criminal law measures). After examining the instruments of criminal law, two examples of interaction with administrative sanctions should be presented. The PIF Directive (Directive (EU) 2017/1371, 2017) lays down the minimum rules on the definition of criminal offenses and sanctions in the fight against fraud and other illegal activities that harm the financial interests of the Union. Despite references to non-criminal sanctions and administrative fines that cannot be equated with criminal proceedings, the PIF Directive does not provide any specific guidance on how criminal sanctions differ from administrative sanctions. The Criminal Law Directives allow for non-criminal fines that penalize legal entities to be adapted to different legal systems. There are no criteria for distinguishing between criminal and administrative sanctions

for legal entities. However, in 2014, the Market Abuse Regulation (Regulation (EU) No 596/2014, 2014) and the Directive on Criminal Sanctions for Market Abuse (CSMAD) (Directive 2014/57/EU, 2014) were simultaneously adopted. According to the Market Abuse Regulation, Member States can apply administrative sanctions for market abuse, while CSMAD requires criminal sanctions for serious cases of market abuse. Article 14 of the PIF Directive states that Member States shall ensure that criminal proceedings initiated on the basis of national provisions implementing this Directive do not unduly affect the proper and effective administrative application of measures, penalties, and fines, which cannot be equated to a criminal procedure established by Union law or national implementing provisions.

The European Court of Human Rights (ECtHR) has clarified that three criteria must be considered when deciding whether a person is guilty of an offense: the assessment of the offense in national law; the level of the penalty to be imposed; and the purpose of the penalty. According to the criteria laid out by the ECtHR in *Engel and Others v. The Netherlands* (1976) and the Court of Justice of the European Union (CJEU) in *Łukasz Marcin Bonda* (2012), the nature of the offense and the severity of the sanction are the most important factors in the application of the guarantees of the criminal law, rather than the formal qualification of the penalty. Therefore, the guarantees of criminal liability also apply to criminal administrative fines, which fall under the independent criminal concept. This means that the Engel-Bonda criteria cannot be used in EU law to distinguish between criminal and non-criminal administrative sanctions (Kärner 2022). The ECtHR summarizes that an administrative offense (e.g., traffic offenses, disturbance of public order and other administrative offenses) may qualify as criminal offenses within the meaning of Article 6 of the European Convention on Human Rights (ECHR), even though in some cases a light sentence is imposed. The ECtHR also considers criminal offenses within the meaning of Article 6 of the ECHR to include customs, budgetary and financial, and competition offenses. In this case, the qualification is not affected by whether the competence to punish is conferred by national law on the courts or on administrative supervisory authorities (European Court of Human Rights 2022). This means that if the process of applying administrative liability meets the criteria set out in ECtHR case law, such a process of applying administrative liability in ECtHR Member States must comply with the guarantees provided by Article 6 of the ECHR.

The CJEU has not taken a firm position on the definition of a criminal sanction in EU law. A serious problem arises from the fact that "criminal" is simply a label that can mean different things in different Member States.

Markus Kärner (2022) suggests that purely administrative fines could be understood as criminal fines for an offense imposed by an administrative authority in a non-criminal process. The author argues that three types of criminal sanctions are used in EU law: criminal sanctions, undefined sanctions, and administrative sanctions. Purely administrative fines could be understood as criminal fines for an offense imposed by an administrative authority in a non-criminal procedure.

Administrative Liability in Different European Countries

A comparative study of most European countries (ACA-Europe 2017) carried out in 2017 showed that there is no common understanding and implementation of administrative liability across Europe. In some European countries, administrative liability is defined in legislation. Some of the countries surveyed also indicated that new regulations were being drafted or were under consideration at the time of the survey, which provide for rules similar to those applicable to criminal liability. The regulatory model in Latvia was previously the most similar to Lithuania's, but in 2020 amendments came into force, creating a single law for the general rules and procedure for the application of liability, thus unifying and simplifying the application of administrative liability and bringing it into a single system. Meanwhile, Estonia has taken the decision to completely change the legal model for the regulation of administrative liability, essentially abandoning administrative offenses as a separate category and opting to classify such offenses as a less serious category of criminal offenses. The Estonian regulation is partly like the German model of legal regulation of administrative liability.

In Germany, following the adoption of the 1968 Act on Regulated Offenses, there is a distinction between offenses (*Strraftaten*) and infringements of rules (*Ordnungswidrigkeiten*) (Law Commission 2015). The German system is an example of a codified approach to administrative sanctions, which are regulated in various special administrative law acts (Andrijauskaitė 2022). In France, the differentiation is very similar. The French legal framework, compared to the Lithuanian one, draws a clearer distinction between decisions of administrative authorities which are intended to punish and those which are administrative in nature (the equivalent of public administration), and emphasizes the application of all the guarantees of Article 6 of the ECHR in cases of punishment which are intended to punish the violator. Maciej Bernatt (2016) examined the place of administrative sanctions in the Polish legal system. He pointed out that the rules for imposing penalties are rarely fully regulated in a single piece of legislation – the main reference point is the ECtHR and EU standards. The Council of Europe

standards state that the design of a system for imposing administrative penalties should consider, firstly, the complexity of the specific area of administrative law and, secondly, the severity of the sanctions. Efficiency and procedural fairness must be balanced (Bernatt, 2016).

In the United Kingdom (UK), administrative offenses are not distinguished as a separate category of offense qualification. However, the UK has detailed rules on the individualization of fines. There is no general administrative offense regime in England and Wales. However, there are separate schemes for the use of such offenses in specific situations. The use of truly criminal and purely administrative offenses may lead to a dispute as to which category is most appropriate. There is a risk that political or bureaucratic expediency will lead to the classification of conduct that should be considered truly criminal as merely administrative. It is suggested that criminal law should only apply to those criminals who deserve the stigma attached to a conviction. This should not be used as the main regulatory tool. The harm or risk caused should be considered serious enough to be criminalized. Minor offenses should be abolished in all cases where the introduction of a civil penalty (or equivalent) can do as much to provide an appropriate level of punishment and deterrence (Law Commission, 2015).

Each country chooses the system of liability for breaches of public law that it wants to establish and sets its legal framework accordingly. The practice of States in this respect varies, and three different variants of the liability which in Lithuania is qualified as administrative can be distinguished: where it is not distinguished as an independent type of liability, but is integrated into the system of criminal liability of the State (e.g., administrative liability); where, although distinguished as an independent type of liability, it is integrated into the State's criminal system (e.g., Lithuania, Germany, Austria, the Czech Republic, Latvia, Montenegro, the Netherlands, Norway, Serbia, Portugal, Spain); and where it is an independent type of liability that is not criminal in nature (e.g. Cyprus, France, Hungary, Malta) (Markevičiūtė 2022). Agnė Andrijauskaitė (2022) argues that there is no single version of what an administrative sanction is and how it occurs. Legal systems may follow a centripetal (German system), centrifugal (French system) or introspective (British system) path, introducing administrative sanctions into the respective systems. For these reasons, administrative sanctions are not easily defined.

The purpose of administrative liability is essentially the same in different countries – to enforce existing legal rules, incurring criminal liability for the violation of which would be disproportionate or inappropriate, and to punish the perpetrators of such offenses. It is a common practice in foreign legal scholarship to take a broader view of administrative liability, considering it as a purposeful attempt by the state to change the behavior of individuals in a way that

is beneficial to society, with the aim of ensuring that they behave in a way that is consistent with the standards set out.

Administrative and Criminal Liability According to Lithuania's Regulations

In Lithuania, administrative and criminal liability are established separately. The Criminal Code of the Republic of Lithuania (Seimas of the Republic of Lithuania 2000a) is an integral criminal law, the purpose of which is to protect the rights and freedoms of the individual and the citizen, as well as the interests of society and the state, against criminal acts by means of criminal law. Article 12 of the Criminal Code provides that a criminal offense is a dangerous act (act or omission) prohibited by the present Code, which is punishable by a penalty other than deprivation of liberty, except for arrest. Administrative liability is regulated by the Code of Administrative Offenses of the Republic of Lithuania (hereinafter – CAO) (Seimas of the Republic of Lithuania 2015), the purpose of which is to protect human rights and freedoms, the interests of society and the state against administrative offenses by means of the law, to ensure the implementation of the principle of justice, and to promote the peaceful coexistence of the state and the people and members of society. Administrative liability in Lithuania is also regulated by other laws. Article 5 of the CAO provides that an administrative offense is a dangerous act (act or omission) committed by the perpetrator, prohibited by this code, which meets the characteristics of an administrative offense for which an administrative penalty is provided. A person shall be held administratively liable under this code for an offense which meets the elements of an administrative offense provided for in this code, provided that the offense committed does not give rise to criminal liability. Article 593 of the CAO states that the provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* in the case of administrative investigations of misdemeanors. Article 632 of the CAO states that, when examining the merits of a case, the court shall have the power to carry out any procedural step provided for in the Code of Criminal Procedure. In the case of such actions, the provisions of the Code of Criminal Procedure shall apply *mutatis mutandis*. Article 666 of the CAO states that the provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* to the costs of proceedings before the court in cases of administrative offenses.

Thus, the CAO regulates the specific acts prohibited in respect of natural persons, as defined in the special part of the CAO, as well as the rules applicable to the imposition of penalties and the procedure for administrative offenses. By contrast, special laws, in addition to the provisions regulating activities in a specific field,

generally only regulate prohibited acts and the levels of penalties, and the detail of the regulation of the investigation of infringements varies. Jurgita Paužaitė-Kulvinskienė (2021) argues that such regulation is inconsistent. Although the current Code of Administrative Offenses, which entered into force in 2017 and replaced the Code of Administrative Law Violations of the Republic of Lithuania (1984), has changed the regulation of administrative liability, it was not intended to merge administrative liability under the CAO with liability under special laws.

Milda Markevičiūtė (2022) argues that, given the abovementioned plethora of acts regulating administrative liability, it is difficult even for the courts to decide which act should be used as an analogy in a particular case of a dispute over punishment. It is considered that the inclusion of most of the rules on liability in a unified system would create greater comfort for the entities imposing administrative liability, for the entities subject to liability, and for the legislator. At present, administrative liability is closely linked to criminal liability, as both types of liability pursue the same objectives (punishment, special and general prevention). Moreover, a similar system of sanctions is provided for as a result of the application of both types of liability. Finally, the offenses themselves are of a similar nature, i.e., they apply to acts or omissions in the same areas, and the criterion for distinguishing liability is often based on features related to the expression of the specific offense (act or omission), such as the seriousness of the offense (e.g., in the case of drink-driving) or the value of the object (e.g., in the case of theft). Markevičiūtė considers that Lithuanian law emphasizes the criminal nature of administrative liability. Meanwhile, the Supreme Administrative Court of Lithuania (Supreme Administrative Court of Lithuania 2018) has expressed the opinion that to determine whether a specific violation of law qualifies as criminal within the meaning of ECtHR jurisprudence, it is necessary to assess first of all whether such a violation belongs to criminal law in the system of national law. The high level of the penalty to be imposed does not in itself determine the criminal nature of the infringement. In Lithuanian case law, the criteria for determining whether an infringement amounts to a criminal offense (the nature of the infringement and the severity of the penalty) are applied in a broad and complex manner: the presence of one of these features is sufficient for the infringement to amount to a criminal offense (Markevičiūtė 2022).

Researchers' Opinions on the Difference Between Criminal and Administrative Sanctions

The EU's criminal law competence is divided into criminal law in the narrow sense and the law of administrative sanctions. The distinction between what is

and what is not criminal under the EU competence is not clear, but this should be decided on the basis of a number of factors (e.g., whether it entails imprisonment or other burdensome sanctions). Öberg (2013) proposed that there should be two concepts of criminal sanctions in EU law. He proposed a list of criteria for defining criminal sanctions and stated that individual administrative fines should not normally be criminalized (unless they are linked to the commission of a criminal offense and a criminal record), as they are not deterrents in practice and do not express serious moral condemnation.

Albertas Čaplinskas *et al.* (2004) argued that the problem of the distinction between criminal and administrative liability has become particularly acute since the new Criminal Code of the Republic of Lithuania (Seimas of the Republic of Lithuania 2000a) introduced liability not only for criminal offenses, but also for misdemeanors, which are often not easy to distinguish from administrative offenses. The criteria for distinguishing between criminal offenses and administrative offenses are based on the objective features of the offense, relating to the social importance of the object of the offense as a legal value, the nature of the offense, its social harmfulness and dangerousness, and the nature and extent of the consequences. Agnė Andrijauskaitė (2022) argued that administrative sanctions are flexible, versatile, and less costly law enforcement measures compared to criminal law measures. The use of administrative sanctions is very attractive to various policymakers who want to impose punishment quickly and economically without resorting to judicial action. However, it should be noted that a financial penalty may be small but may destroy the reputation of the applicant. Even small fines can lead to a chain of negative consequences, e.g., a traffic offense and the resulting sanction may subsequently lead to the claimant not being able to receive the full insurance benefit (Andrijauskaitė 2022).

Alan Brudner (2009) argued that none of the criteria for distinguishing between real crime and legal violations are able to distinguish between the two. Petter Asp (2013) argued that the main problem with the criminal approach is that it lacks the normative constraints on preventive measures that characterize administrative enforcement. Eithan Y. Kidron (2018) examined when a regulator should favor criminal sanctions over administrative sanctions. The author argued that administrative sanctions have evolved as a distinct sanctioning tool alongside the criminal and civil spheres. Both criminal and administrative sanctions protect public law – in both cases, the State acts as the legal representative of this right and protects it on the basis of the justification of corrective justice. Where the regulator has evidence of subjective guilt on the part of the offender, it should opt for the criminal courts. Where there is evidence of excessive future risk but no evidence of subjective fault, it should opt for an administrative court.

In other words, the administrative approach should act as a parallel rather than an alternative method of criminal enforcement (Kidron 2018). Michael Faure and Franziska Weber (2017) argued that there are significant differences between administrative and criminal procedures. In administrative proceedings, the risk of error depends on the complexity of the issues at stake and the resources, expertise, and experience of the authorities. The potential for error is more likely in administrative law enforcement compared to criminal law enforcement because the decision-making process is less complex. The high standard of proof in criminal law makes it less likely that an innocent person will be convicted. Thomas Blondiau *et al.* (2015) argued that the shift from a criminal enforcement system for environmental offenses to a combined criminal and administrative system is not necessarily positive. It should be borne in mind that there are some differences between the administrative and criminal enforcement of environmental offenses: similar offenses are punishable by lower penalties in administrative proceedings than in criminal proceedings. The authors concluded that criminal prosecution is still a more powerful tool to deter offenders. The choice between a combined approach and an enforcement system using only criminal procedures should be seen as a compromise. Markus Kärner (2022) stated that the EU law on criminal sanctions that came into force after the Treaty of Lisbon (2007; European Commission 2011) makes a distinction between criminal and non-criminal sanctions: the legislator prefers non-criminal sanctions. The regulation of such sanctions has become more precise, and the legislator has started to refer to the administrative nature of such sanctions. However, this may limit the discretion of Member States to find the most appropriate way to transpose such sanctions into national law, and may amount to a prohibition of the application of criminal law.

The Criteria for Determining Administrative and Criminal Liability in the Case Law of Various Courts

At the European level, administrative law rules are primarily shaped by the CJEU based on unwritten general principles of law common to the constitutional traditions of Member States. The CJEU jurisprudence classifies the law on administrative offenses as criminal law, as criminal law covers all acts that are punishable (Piesliakas 2008). This means that CJEU case law does not distinguish the type of liability if the administrative offense committed is criminal in nature. The imposition of criminal administrative sanctions together with criminal law measures (the so-called calibrated regulatory approach) shows that the CJEU is not prepared to identify administrative sanctions with criminal law sanctions and to

prohibit their dual use. The CJEU does not talk about administrative law, let alone administrative sanctions, although it is not always easy to distinguish between administrative and criminal sanctions. It has been repeatedly stressed in case law that the CJEU cannot control the content of a State's national law through Article 6. The CJEU has reiterated that it is the task of national courts to determine the appropriate punishment in the circumstances of the case (Andrijauskaitė 2022).

In assessing whether an administrative offense committed under the national law of a Member State is criminal in nature, the CJEU applies the three so-called Engel criteria: the qualification of the offense in national law; the nature of the offense; and the severity of the sanction imposed on the offender (Opinion of Advocate General Cruz Villalón 2012). As these principles can operate independently, the fact that, for example, an offense may only be punishable by a fine does not mean that it can be classified as non-criminal. The view that minor offenses can simply be transferred to the Administrative Offenses Code may turn out to be a mistake, as the small scale of the offense is not relevant in determining whether it is truly criminal or not (Law Commission 2015).

As previously mentioned, in the Lithuanian legal system, criminal, and administrative liability are separate types of legal liability. The norms of criminal and administrative liability are similar and there are no clear criteria to distinguish between them. According to Lithuanian jurisprudence, the distinction between these types of liability is based on the seriousness of the act. When examining a criminal case, the court has to refer to the criteria formulated by the CJEU and decide whether the nature of the violation falls within the sphere of criminal law. Lithuanian case law does not distinguish between the type of liability in the case of an administrative offense of a criminal nature and in the case of an administrative offense of a non-criminal nature. The case law shows that courts sometimes do not assess whether an administrative offense is criminal at all. The most important criterion that the Lithuanian courts focus on is whether at least one essential element of the offense is identical (Supreme Court of Lithuania 2009). Lithuanian courts have also often stated, based on case law, that it is not forbidden to impose double legal liability on a person (Supreme Court of Lithuania 2006), provided that its main purpose is not punishment. However, both the ECtHR and the Lithuanian courts apply double legal liability to a person if the violations are qualified as concurrent (*Oliveira v. Switzerland* 1998).

The content of the principle of criminal liability as a measure of last resort is revealed in the jurisprudence of the Constitutional Court and the Supreme Court of Lithuania. With regard to the legality and justification of the application of administrative or criminal liability, the Constitutional Court of the Republic of Lithuania has repeatedly emphasized that, when assessing whether legal liability

falls under administrative or criminal law, it should be stressed that there are a number of similarities, but also significant differences, between administrative and criminal legal liability. The gravity of administrative offenses and criminal offenses is different, as are the consequences of being held administratively or criminally liable (Constitutional Court of the Republic of Lithuania 2005). The Supreme Court of Lithuania, when speaking on the issue of the application of administrative and criminal liability, has stated that administrative offenses are dangerous acts, because their commission also violates certain values, but their seriousness is lower. Since the difference between administrative and criminal liability is also determined by the nature of administrative and criminal offenses, i.e., the greater or lesser dangerousness of these acts, the criteria for determining this increased or reduced dangerousness become crucial in distinguishing an administrative offense from a criminal offense (Supreme Court of Lithuania 2012).

On November 10, 2005, the Constitutional Court stated in its ruling that every time it is necessary to decide whether to recognize an act as a crime or another violation of the law, it is very important to assess what results can be achieved by other measures unrelated to the application of criminal penalties – *inter alia*, administrative sanctions.

The Constitutional Court, interpreting the constitutional principle of the rule of law, has stated that the imposition of legal restrictions and liability for infringements of the law must comply with the requirement of reasonableness, as well as with the principle of proportionality, according to which the legal measures imposed must be necessary in a democratic society and appropriate to the pursuit of legitimate and generally important objectives (there must be a balance between the objectives and the means), and they must not restrict a person's rights more than is necessary to achieve those objectives (Rulings of the Constitutional Court of December 13, 2004, December 29, 2004, September 29, 2005, January 16, 2006).

The Supreme Court of Lithuania, in accordance with the abovementioned interpretations of constitutional jurisprudence, has stated that both the purpose of criminal law and the general principles of law, as enshrined in the jurisprudence of democratic states governed by the rule of law, presuppose that it is impossible to establish a legal practice where criminal law norms are applied in civil, administrative or disciplinary disputes, and the behavior of a person is regarded as representing the commission of a criminal offense, exclusively in the context of the above-mentioned legal relations. Therefore, whenever it is necessary to decide whether to recognize an act as a crime or another legal offense, it is essential to assess what results can be achieved by other non-punitive measures

(administrative, disciplinary, civil sanctions or measures of public influence, etc.) (Constitutional Court Resolutions of November 13, 1997, November 10, 2005, cassation rulings in criminal cases Nos. 2K-409/2011, 2K-P-267/2011) (Supreme Court of Lithuania 2021a). The Supreme Court of Lithuania (2021b), in case No. 2K-207-788/2021, stated that a criminal offense may also be recognized as a continuous offense in cases where one or several individual acts correspond to the elements of an administrative offense, but the totality of the acts must be treated as a criminal offense.

The Supreme Court of Lithuania, in its ruling of January 14, 2014, stated that in cases where both criminal and administrative liability is provided for an analogous act, when deciding on the determination of the type of legal liability, the issues of the constituent elements of a criminal act and criminal liability are considered first, and only after concluding that the seriousness of the act has not reached a level that makes it criminal are the questions of administrative liability addressed.

In the case law, it is established that the administrative penalty and the measure of administrative impact imposed must punish the offender and cause them suffer the corresponding negative consequences. The law also places the public interest of the society above the public interest in ensuring traffic safety and public security through the application of preventive measures, and not the personal interest of the person who committed the offense in avoiding negative consequences. This is also in line with constitutional jurisprudence, which has repeatedly stated that, in order to prevent unlawful acts, it is not always the case that such acts should be criminalized and that the most severe measures, namely penalties, should be applied to the perpetrators.

The Relevance of the Application of the *non bis in idem* Principle for the Qualification of Administrative and Criminal Liability

The qualification of administrative and criminal liability has important implications for the application of the *non bis in idem* principle. While the scope of this principle has traditionally been limited to criminal law, ECtHR case law has led to its extension to situations of criminal and administrative sanctions.

In the EU, the *non bis in idem* principle is enshrined in Protocol 7 of the ECHR, the Charter of Fundamental Rights of the European Union (2012), the Convention on the Schengen Agreement (2000), the Convention on the International Recognition of Criminal Sentences (1970), the European Convention on the Transfer of Criminal Proceedings (1972), and the Council of Europe Convention on Extradition (1996).

Although the autonomy and independence of administrative and criminal proceedings have traditionally been accepted in Member States, many exceptions to this principle are made (Court of Justice of the European Union 2017). Four groups of Member States can be distinguished. First, some Member States follow an autonomy approach, establishing that the initiation of criminal proceedings does not affect the course of administrative proceedings and vice versa (Germany, France). Second, other Member States, although following this traditional approach, have reduced it for many infringements by providing that the second process must be suspended or prohibited (Hungary, Poland, UK). Third, other Member States have special rules providing for the suspension of administrative proceedings after the initiation of criminal proceedings, whether during the proceedings aimed at imposing an administrative penalty (Spain) or during the enforcement phase of the imposed sanction (Italy). Fourth, in Sweden, the new system came into force in 2016. It has been established that under certain circumstances the administrative tax case is not initiated if a criminal case has been initiated.

In addition to those factors related to the connection between different processes, it can be noted that in certain states, administrative authorities are bound by the factual circumstances established during the criminal process (Spain, France) (Court of Justice of the European Union 2017). The jurisprudence of the ECtHR and the CJEU has gradually developed judicial formulations on the scope of the *non bis in idem* principle, leaving to national courts the task of applying to the various legal traditions conditions that are compatible with the ECHR, Charter of Fundamental Rights of the European Union, and CISA (The Schengen acquis; The Convention implementing the Schengen Agreement) provisions. A key issue causing tension between the jurisprudence of different courts is the question of the combination of different types of proceedings (administrative and criminal), with mutual influence between the ECtHR and the CJEU (Coffey 2023).

Giulia Lasagni and Sofia Mirandola's (2019) article observed that both the ECtHR and the CJEU have united their views – not only lowering the assessment standards, but also establishing new rules that, although partially converging, remain very unclear. Until 2016, the jurisprudence of the Strasbourg and Luxembourg courts on double jeopardy was aligned, with a higher level of protection (Simonato 2017). This pro-defendant approach can be seen in the concept of *non bis in idem*: the CJEU, and soon after the ECtHR, defined it as the same set of factual circumstances, regardless of the legal characterization of

the crime or the protected legal interest (Peers *et al.* 2021). This convergence of jurisprudence, beneficial to the individual, has been extended under both the ECHR and the Charter of Fundamental Rights to cover not only criminal proceedings but also administrative criminal proceedings of a criminal nature, considering the so-called Engel criteria (*Sergey Zolotukhin v. Russia* 2009; *Åklagaren v. Hans Åkerberg Fransson* 2013). The reconciliation of the opinion of the two courts may become even more necessary, as national judges may decide to request a preliminary interpretation from both European courts for the same reason (Lasagni and Mirandola 2019).

The provision of Article 31, paragraph 5 of the Constitution of Lithuania reflects the *non bis in idem* legal principle: a person cannot be punished a second time for the same violation of the law. The principle does not mean that different types of legal responsibility cannot be applied to a person for a violation of the law in general, nor that they cannot be subject to the main and additional punishment for a crime, or the main and additional administrative penalty for an administrative violation of the law (Constitutional Court of the Republic of Lithuania 2001). The Supreme Court of Lithuania (2016) emphasized that the *non bis in idem* principle also means that if a person was held not criminally but administratively responsible for an act contrary to the law – i.e., a sanction was applied to them and the penalty was imposed not as a crime, but as an administrative violation of the law – they cannot be held criminally responsible for that act. This principle is also established in Article 592 of the Civil Code (Seimas of the Republic of Lithuania 2000b).

In ECtHR jurisprudence, criminal law includes the so-called administrative law of Lithuania. For this reason, the ECtHR, when evaluating whether, according to the Lithuanian legal system, an administrative violation of the law can be attributed to criminal law according to the ECtHR, applies three criteria: 1) the classification of the violation in national law; 2) the nature of the violation; and 3) the severity of the sanction assigned to the offender (Opinion of Advocate General Cruz Villalón 2012). When deciding whether an administrative violation of law can be attributed to criminal law, only the last two characteristics are decisive. Although the violation would be qualified as an administrative violation of the law in Lithuania, according to these criteria, the ECtHR can assess that the violation is attributable to criminal liability. In such a case, it would mean that the application of criminal liability to a person punished for the same actions with an administrative penalty violates the principle of non bis in idem.

Interim Findings

In the Lithuanian legal system, criminal, and administrative liability are separate types of legal liability. The norms of criminal and administrative liability are similar, and there are no clear criteria that would allow them to be delimited. The criminal nature of administrative liability is noted in Lithuanian law. When analyzing the prospects for the development of the legal regulation of administrative responsibility, it should be noted that the idea of defining European criminal law harmonization guidelines or common principles of special criminal law or administrative criminal law (commonly called administrative liability in Lithuanian law) has been discussed many times at the European Union level. The Lithuanian Constitutional Court (2008) supported this conclusion, indicating that economic sanctions are attributable to the institute of administrative responsibility. The Supreme Administrative Court of Lithuania (2018) relied on this practice of the Constitutional Court in subsequent cases.

After summarizing the research conducted, it can be concluded that it is necessary to consider the severity and nature of the violation of the law. Administrative sanctions imposed for certain illegal actions which are considered particularly serious may not be a strong enough response. At the same time, criminal sanctions may be chosen when it is considered important to emphasize strong disapproval to ensure deterrence. Including a conviction in a criminal record can have a particularly dissuasive effect. The type of sanction that is considered most appropriate to achieve the overall objective of an effective, proportionate, and dissuasive sanction should be chosen. An administrative sanction can often be decided on and implemented immediately, avoiding lengthy, and costly procedures. For this reason, administrative sanctions may be considered in areas where, for example, infringements are not very serious or particularly numerous, as well as in areas where administrative sanctions and procedures are appropriate and effective for other reasons (e.g., complex economic evaluations). It is not uncommon for administrative law to provide a greater variety of possible sanctions, from fines and suspension of licenses to the deprivation of the right to receive state benefits, and to adapt them to a specific situation. Therefore, in many cases, administrative sanctions can be sufficient and even more effective than criminal sanctions. It is acceptable that it is appropriate to leave two separate types of liability in Lithuanian law, more clearly demarcating administrative and criminal liability. For this, it would be appropriate to review the classification of current administrative offenses, with the aim of transferring some of the administrative offenses that cause a great danger to public safety, human health, and life – such as driving while intoxicated – to criminal offenses.

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