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Administrative Fines as Instruments of Legal Influence

dr hab. Lucyna Staniszewska, Assoc. Prof.
Adam Mickiewicz University in Poznań, Poland
ORCID: 0000-0003-3457-0901
email: lucyna.staniszewska@amu.edu.pl

Abstract

Administrative power is an attribute of public administration which is a reflection of state power. Thanks to it, the administration can unilaterally shape the legal situation of the administered persons, exercising the powers granted to it. However, the scope and manifestations of power must be regulated in statutes, which is a prerequisite for exercising control over the administration in a democratic state ruled by law. The functions, goals and tasks of the administration evolve, the intensity and manifestations of administrative power also change, yet it is still a permanent feature of administration and there is no indication that this will change.

The article shows the evolution of power in various manifestations of administration activity, both in legal and factual activities. The changing models of the administrative procedure and, consequently, the degree of intensification of the authoritative actions in the classical sense of authority in the issuance of administrative acts were analysed. The characteristic types of authority were also indicated, such as: planning authority, statutory authority, organizational and functional authority, plant authority.

Keywords

state authority; planning authority; statutory authority; organizational and functional authority; company authority; administrative coercion; administrative sanctions

1. Introduction

For modern administration, it is necessary to have legal instruments that serve to implement the legal order regulated by normative acts. This affects the way administrative law is conceived, which must be oriented towards its efficiency and effectiveness. Administrative fines can be seen as tools that allow the objectives set by public policymakers to be achieved through the implementation of a specific regulation. This places the administration in an important position in terms of the legislature, as its actions are determined by the legislature, which, due to its institutional design, is unable to enforce them itself[1].

1 G Jellinek, *Ogólna nauka o państwie* [General Science of the State] (Księgarnia F. Hoesicka 1924) 225–231.

By contrast, the conditions or assumptions under which a regulation is effective or efficient are dealt with by the science of administration[2]. In order to achieve the effectiveness of law, as well as administrative policy, an important element is the regulatory instruments and the way they work[3]. These include administrative sanctions, which are analysed in the doctrine of Polish administrative law from the perspective of their concept, constitutional legitimacy, limitations in the application and exercise of the sanctioning power. The subject of interest is also their function, which makes it possible to distinguish administrative fines from similar sanctions on the grounds of criminal, criminal-tax and misdemeanour law. The subject of analysis in this article is the latter issue – the function and purpose of administrative fines. It is already apparent to the naked eye that the first objective in the enactment of administrative fines is to achieve compliance of the administered behaviour with normative acts as well as general and individual acts.

It is therefore important to approach the functions of administrative penalties through the prism of the functions of administrative law[4]. The functions of administrative sanctions, including fines, should be derived from the functions of public administration and administrative law[5]. They are characterised by their incentive effect. Administrative law is a part of the legal order, established to ensure the implementation and protection of social interest. According to S. Kasznica, it is an important goal for administration to induce in the external world certain phenomena considered beneficial from the point of view of public interest, social values, order and a sense of security[6]. H. Maurer, on the other hand, identifies three goals to which good administration should be guided. These are: shaping society, dealing with community affairs and being guided by the public interest[7]. Administrative law has been shaped in the interest and for the needs of the administered, who is at the same time subject to supervision, control and sanctions in order to fulfil the legitimate public interest. This makes it possible to adopt a functionalist approach to public law with regard to these measures of administrative penalties[8].

The underlying function and objectives of administrative fines constitute the theory explaining the power of regulatory bodies to impose sanctions. As S. Kasznica pointed out, it is necessary for the administration to have tools enabling it to act and facilitating the realisation of the established public objectives imposed by the legislator[9]. In addition, the article attempts to test whether this way of understanding an administrative fine has dogmatic support in

2 See E Schmidt-Aßmann, 'Zum Stand der Verwaltungsrechtsvergleichung in Europa: Wissenschaft' (2012) Die Verwaltung vol. 45, 264–277.

3 B Lozano Cutanda, 'Sanciones administrativas: el peligroso protagonismo de un ius puniendi alternativo' (2018) Revista Andaluza de Administración Pública vol. 102, 22.

4 Z Duniewska, 'Rola, cele i funkcje prawa administracyjnego' [The Role, Goals and Functions of Administrative Law] in Z Duniewska, R Hauser, M Jaśkowska, M Matczak, Z Niewiadomski, A Wróbel (eds), *Instytucje prawa administracyjnego* System Prawa Administracyjnego [Institutions of Administrative Law, Administrative Law System] (CH Beck 2010) 105.

5 M Wincenciak, *Sankcje w prawie administracyjnym i procedury ich wymierzania* [Sanctions in Administrative Law and Procedures for Imposing Them] (Wolters Kluwer 2008) 256.

6 S Kasznica, *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* [Polish Administrative Law: Basic Concepts and Institutions] (Wydawnictwo Prawnicze 1946) 11.

7 H Maurer, *Ogólne prawo administracyjne* [General Administrative Law] (Kolonia Limited 2003) 21–22.

8 More extensively L Staniszewska, *Administracyjne kary pieniężne. Studium z zakresu prawa administracyjnego materialnego i procesowego* [Administrative Fines. Study in the Field of Substantive and Procedural Administrative Law] (Wydawnictwo Naukowe UAM 2017) 165.

9 S Kasznica (1946) 135.

domestic positive law. In order to achieve these objectives, this article is structured as follows: firstly, it presents the various levels on which the discussion around administrative sanctions takes place, highlighting their function in relation to other criminal sanctions. Next, the dynamics of introducing successive administrative sanctions in Polish law as effective measures, especially as a result of the implementation and enforcement of the law made by the organs of the European Union, are explained. Against this background, the Polish model for the application of administrative fines is presented.

2. The role of administrative fines and the main points of discussion about them in the Polish doctrine

The discussion around administrative sanctions at the national level has focused on several issues that operate at different discursive levels: the legitimacy of their enactment and constitutionality as well as the conceptual level, i.e. the model of imposition, what functions they are supposed to perform.

Given the numerous doubts about the constitutionality of imposing sanctions by the administration, it should be pointed out that, starting with the principle proposed by Charles Louis Monteskius of a tripartite division of powers into executive, legislative and judicial, discussions began about the limits of the powers of these authorities to impose sanctions by the public administration, in the context of whether the imposition of such measures does not constitute the exercise of the administration of justice, especially when the authority is acting within the scope of administrative discretion[10]. Indeed, the function of administering justice must, in principle, be entrusted to independent and autonomous courts. There can be no strict separation of powers in any state, as executive, legislative and judicial powers are always mixed to some extent. The imposition of fines by the administration, although it raises certain reservations concerning the violation of the principle of separation of powers and procedural guarantees for the addressees of sanctions, has become common not only in Poland, but throughout Europe[11]. The Constitutional Tribunal in Poland has repeatedly stated that one of the means of securing the implementation of public law norms contained in normative, general or individual acts may be through administrative fines[12]. Thus, also in the doctrine I. Niżnik-Dobosz pointed out that each branch of law should have legal instruments with which to punish legal entities for a violation of obligations, orders and prohibitions arising from the norms of law belonging to this branch, because where regulations impose obligations on natural or legal persons, there should also be a provision specifying the consequences of not carrying out the obligation[13]. The judicial and administrative case law is also uniform in this respect.

The issue of the relationship between criminal sanctions and administrative fines is also related to the issue of the concurrence of criminal and administrative liability, as consequenc-

10 L Dubel, *Historia doktryn politycznych I prawnych do schyłku XX wieku* [History of Political and Legal Doctrines Up to the End of the 20th Century] (Wolters Kluwer 2007) 233–234.

11 P Soto Delgado, 'A Conservative Turn on Administrative Sanctions in Chile: Transforming the Administration Into a Judge to Unprotect the Public Interest' (2018) Revista de la Facultad de Derecho vol. 45, 350.

12 Judgments of the Polish Constitutional Tribunal of: 15 January 2007, P 19/06 (2007) OTK-A 2; 5 May 2009, P 64/07 (2009) OTK-A 64.

13 I Niżnik-Dobosz, 'Aksjologia sankcji w prawie administracyjnym' [Axiology of Sanctions in Administrative Law] in R Lewicka, M Lewicki, M Stahl (eds), *Sankcje administracyjne. Blaski i cienie* [Administrative Sanctions. Lights and Shadows] (Wolters Kluwer 2011) 129.

es of the same behaviour being a violation of a norm of administrative substantive law[14]. With regard to this situation, the Constitutional Court has generally assumed that it is not subject to qualification in the context of a violation of the *ne bis in idem* principle derived from Article 2 of the Constitution of the Republic of Poland, because these penalties perform different purposes and functions, but it may lead to a violation of the prohibition on "excessive repressiveness" and the disproportionality of imposed penalties[15]. Therefore, the procedural act of the APC regulates two institutions aimed at protecting entities punished for the same infringement with different sanctions, i.e. one of the directives for the assessment of penalties in Article 189d(3) APC covers situations where the perpetrator has previously been punished for the same behaviour for a criminal offence, a fiscal offence, a misdemeanour or a fiscal offence. This institution applies to penalties subject to mitigation and therefore determined relatively, and not to rigid penalties[16]. The second instrument mitigating the non-applicability of *ne bis in idem* is the institution of refraining from imposing a penalty and contenting oneself with instructing the perpetrator in the circumstances where, for the same conduct, an administrative pecuniary penalty has been previously imposed on a party by another authorised public administration body by a valid decision, or a party has been validly punished for a misdemeanour or fiscal misdemeanour, or validly convicted of an offence or fiscal offence, and the previous penalty fulfils the purposes for which the administrative pecuniary penalty was to be imposed. This institution applies to both rigid penalties and those specified in a wide range.

It is worth noting that the jurisprudence of the Constitutional Court in Spain is shaped differently. The Constitutional Court deliberated and then ruled that the re-imposition of sanctions is prohibited in those sanctioning procedures where, due to their complexity and the sanction that can be imposed, their "nature and size" can be equated with a criminal process, and therefore administrative sanctions are repressive in nature[17]. It should therefore be emphasised that the assessment in terms of the benchmark in the form of the prohibition on double punishment has to be carried out whenever the "accompanying" criminal sanction is an administrative fine – a legal measure of a repressive nature.

14 More extensively on. B Majchrzak, 'Problematyka prawna administracyjnych kar pieniężnych w orzecznictwie Trybunału Konstytucyjnego i sądów administracyjnych' [Legal Issues of Administrative Fines in the Jurisprudence of the Constitutional Tribunal and Administrative Courts] in M Błachucki (ed), *Administracyjne kary pieniężne w demokratycznym państwie prawa* [Administrative Fines in a Democratic State of Law] (Biuro Rzecznika Praw Obywatelskich 2015) 63.

15 Judgments of the Polish Constitutional Tribunal of: 14 October 2009, Kp 4/09 (2009) OTK-A 134; 29 April 1998, K 17/97 (1998) OTK-A 30; 27 April 1999, P 7/98 (1999) OTK 72; 9 October 2012, P 27/11 (2012) OTK-A 104.

16 A different view is presented by R Suwaj, *Zasady nakładania administracyjnych kar pieniężnych* [Rules for Imposing Administrative Fines] (Wolters Kluwer 2022) 210, who states that all administrative monetary penalties specified in substantive law – apart from cases where a separate provision stipulates otherwise – are subject to mitigation under the principles of Article 189d of APC, regardless of the manner in which they are shaped.

17 Judgment of the Constitutional Court in Spain No. 334/2005 ES:TC:2005:334, <https://hj-tribunalconstitucional-es.translate.goog/es-ES/Resolucion/Show/5594?_x_tr_sch=http&_x_tr_sl=es&_x_tr_tl=pl&_x_tr_hl=pl&_x_tr_pto=sc> accessed 24 Jul 2023.

3. Motivation of the legislator to legislate and the Dynamics of the development of administrative fines in Polish law

It is increasingly accepted in Polish law that sanctions applied by the administration are ideal tools for protecting the public interest and enforcing the requirement of compliance with administrative obligations by both natural persons and legal entities. Administrative sanction law is an important aspect of the process of executing and applying the law in Poland. The increase in the popularity of administrative penalties is a response to the shortcomings of misdemeanour and penal procedures in the form of: the lengthiness of proceedings, the high costs (too often the effect does not justify the expenditure incurred by law enforcement bodies) and the stigmatisation of the perpetrator for years. However, it is under the criminal procedure that a defendant charged with a criminal offence enjoys guarantees such as:

(a) having the case heard by an independent court;
(b) the right to a defence, also ex officio;
(c) the separation of the functions of prosecution and adjudication.

However, it is extremely difficult to draw a clear line between an administrative tort and an offence. As the Constitutional Court has emphasised, the boundary between the two is fluid and its definition depends on the discretion of the Polish legislator[18]. Only the legislator ultimately decides which procedure will apply in a given situation, which does not change the fact, however, that the legislator is obliged to observe the principle of proportionality and to be consistent in the choice of the form of liability for violations of a similar nature[19].

Unfortunately, a blurring of the boundary between criminally and administratively sanctioned acts is perceptible in Polish legal regulations; although the punishment for a crime and for a misdemeanour is primarily intended to be repressive and administrative penalties are assigned primarily a preventive, as well as a restitutionary purpose, this does not negate the fact that they fulfil a repressive function. In order to make administrative penalties for torts of a serious nature effective and to ensure that operators subject to public law regulation do not find it more profitable to violate the law than to comply with it, administrative fines are imposed at a serious level[20]. It is also important to note that no regulation specifies the possibility of assigning specific functions to specific administrative penalties.

The negative phenomenon of transforming misdemeanour liability into administrative liability is dealt with in Poland by W. Radecki and D. Danecka[21] with the omission of a number of procedural guarantees belonging to criminal cases. The purpose of this transformation is faster proceedings due to the lack of establishing the offender's guilt, relieving the burden on criminal divisions in common courts as well as speeding up the enforcement of imposed penalties. It also favours the implementation of sanctions for violations of EU law, which leaves the national legislator free to choose sanctions that are effective, proportionate and dissuasive.

18 Judgment of the Polish Constitutional Tribunal of 15 January 2007, P 19/06 (2007) OTK-A 2.

19 D Szumiło-Kulczycka, *Prawo administracyjno – karne* [Administrative and Criminal Law] (Zakamycze 2004) 72.

20 Ibid., 155–156.

21 W Radecki, 'Kilka uwagi o zastępowaniu odpowiedzialności karnej odpowiedzialnością administracyjną' [A few Comments on Replacing Criminal Liability with Administrative Liability] in M Bojarski (ed), *Współczesne problemy nauk penalnych. Zagadnienia wybrane* [Contemporary Problems of Penal Science. Selected Issues] (Wydawnictwo Uniwersytetu Wrocławskiego 1994) 24; D Danecka, *Konwersja odpowiedzialności karnej w administracyjną w prawie polskim* [Conversion of Criminal Liability into Administrative Liability in Polish Law] (Wolters Kluwer 2018) 2.

4. Model for imposing administrative fines in Polish law

It is worth taking a closer look at the concept of administrative fines in the context of what guarantees there are for their application under Polish law. At a conceptual level, the doctrinal contribution of administrative law is momentous.[22] For years, the doctrine has called for the introduction of a definition of an administrative sanction, currently succeeding only in the area of pecuniary sanctions in Article 189b of the APC, which states that an administrative pecuniary sanction is understood as a pecuniary sanction specified by law, imposed by a public administration body by way of a decision, following a violation of the law consisting of a failure to perform an obligation or a violation of a prohibition imposed on a natural person, a legal person or an organisational unit without legal personality. However, more broadly, it can be pointed out that any administrative sanction is a negative compensation foreseen by the legal system and imposed by the public administration for the commission of an administrative tort, resulting from the recognition of liability for the consequences resulting from committing an administrative tort. Two points should be emphasised here. Firstly, the retributive purpose of the administrative sanction, according to which it aims to punish non-compliance with certain behaviour; and secondly, the demarcation of administrative sanctions from other actions of the administration that have negative consequences for those administered. A sanction cannot be applied to any situation that is not preceded by an administrative tort having been committed, even if it generates damage or adverse legal effects in the public interest. Both criminal and administrative sanctions are therefore on the same conceptual level. The question here focuses on whether both types of sanctions are of the same nature. In this respect, what is known as the quantitative difference thesis is the dominant idea in criminal and administrative doctrine. According to this thesis, both are manifestations of the state of *ius puniendi*.

Many representatives of the doctrine have questioned whether the model of adjudication in cases of administrative fines is uniform, since in Polish law we have sanctions where judicial review is fragmented into administrative courts and common courts, and whether the administration can unify the application of sanctions when, in many cases, the authority applies several laws at the same time, i.e. the provisions of Section IV A of the APC, the Tax Ordinance and the special law constituting the basis for imposing them. Even a cursory analysis reveals significant discrepancies that may contribute to the feeling of a violation of equality before the law of the addressees of decisions on the imposition of administrative penalties in the form of fines.

The legislator regulated the general provisions on the adjudication of administrative fines in Section IVA of the Code of Civil Procedure. They constitute institutions such as:

(a) the rationale for administrative fines;
(b) waivers on imposing an administrative fine or giving an instruction;

22 J Jendrośka, 'Administracyjne kary pieniężne' [Administrative Fines] (1980) Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji vol. 14, 7–14; J Jendrośka, 'Kary administracyjne' [Administrative Penalties] in R Mastalski (ed), *Księga jubileuszowa Profesora Marka Mazurkiewicza* [The Jubilee Book of Professor Marek Mazurkiewicz] (Oficyna Wydawnicza "Unimex" 2001) 44–55; M Wincenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzania* [Sanctions in Administrative Law and the Procedure for Imposing Them] (Wolters Kluwer 2008) 7; M Błachucki, 'Wytyczne w sprawie nakładania administracyjnych kar pieniężnych (na przykładzie wytycznych wydawanych przez Prezesa UOKiK)' [Introduction and Guidelines on the Imposition of Administrative Monetary Penalties (on the Example of Guidelines Issued by the President of UOKiK)] in M Błachucki (ed), *Administracyjne kary pieniężne w demokratycznym państwie prawa* [Administrative Fines in a Democratic State of Law] (Biuro Rzecznika Praw Obywatelskich 2015) 42–62.

(c) limitation periods for imposing an administrative fine;
(d) interest on unpaid administrative fines;
(e) granting relief from administrative fines.

In addition, a legal construction is provided for excluding punishability when the infringement of the law occurred as a result of force majeure, or the application of a law more favourable to the infringer if the legal situation has changed between the date when the tort was committed and the date when it is assessed by the public administration.

With the help of these legal constructions, the administrative authority, in the absence of regulations in this respect contained in separate provisions, and as long as that the general provisions are comprehensively applied to each fine, assesses the adequacy of the sanction in relation to the breach of a public-law obligation by the addressee, shaping the final amount of the sanction using the directives of penalty mitigation as legally permissible instruments for applying the principle of proportionality by the public administration. Thanks to this regulation, the authority can carry out the requirement of a proportionate state response to unlawfulness in the performance of public-law obligations.

However, for example, when Provincial Environmental Protection Inspectorates impose administrative fines for violations of the Waste Act, they apply the provisions of: the Act on Environmental Protection Inspection of 20 July 1991,[23] the Waste Law of 14 December 2012,[24] the Environmental Protection Law of 27 April 2001,[25] the Code of Civil Procedure and sometimes also the Tax Ordinance Act of 29 August 1997,[26] causes numerous complications in the application of individual instruments mitigating the penalty. To a large extent, therefore, it is the jurisprudence of the administrative courts controlling the application of administrative fines by public administration bodies that shapes the model of sanctioning with this legal measure.

5. Functions of administrative fines under Polish law

Administrative fines applied by law have primarily a preventive significance. By announcing the negative consequences that will follow in the event of a breach of the obligations set out in the law or in an administrative decision, they motivate the addressees to fulfil their statutory obligations. The basis for applying such penalties is the objective infringement of the law itself. However, it cannot be overlooked that they also perform functions of both repression, restitution and compensation. The more flexible the sanction, the better it can be adapted to the circumstances of the case and the less repressive it will be; in the case of rigid sanctions, they will have a more repressive function. In the case of rigid sanctions, the legislator has provided for the possibility of waiving them. This institution corresponds to the postulate of taking into account the individual circumstances of a given case and has been regulated by Article 189f of the APC Procedure. The norm allows for waiving the imposition of an administrative fine in special cases, for example where the gravity of the infringement of the law is negligible and the party has ceased to infringe the law. They provide sufficient protection for those committing an

23 Ustawa z dnia 20 lipca 1991 r. o Inspekcji Ochrony Środowiska [Act of 20 July 1991 on Environmental Protection Inspection] [2023] JoL 995.
24 Ustawa z dnia 14 grudnia 2012 r. o odpadach [Act of 14 December 2012 on Waste] [2023] JoL 699.
25 Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska [Act of 27 April 2001 the Environmental Protection Law] [2023] JoL 1219.
26 Ustawa z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa [Act of 29 August 1997 – Tax Ordinance] [2002] JoL 2651.

administrative tort in those cases where this is justified by the circumstances of the case, while not depriving the authorities of the possibility to impose administrative fines where there is abuse that could lead to the assumption that an administrative fine may be imposed on the perpetrator of an administrative tort not from the date of initiating the proceedings, but only from the date of notifying the perpetrator. The legislator, in the wording of Article 189f § 1(1) of the APC, has not clarified which violations of the law can be considered negligible. The literature distinguishes between degrees of infringement of the law: qualified infringements, infringements that do not have the burden of qualification, but are important for the preservation of the legal order, and insignificant infringements of the law[27]. In particular, an infringement of the law that has not had negative consequences for the values to be protected is deemed to be an insignificant infringement. An insignificant infringement of the law meets the condition for waiving the imposition of a fine, as the seriousness of the infringement of the law must be deemed to be negligible. When determining what circumstances should be taken into account when assessing the seriousness of the infringement of the law, the content of Article 189d(1) of the APC is also helpful, in which the legislator indicated that, when imposing an administrative fine, the public administration body takes into account: the seriousness and circumstances of the infringement of the law, in particular the need to protect life or health, to protect property of significant size or to protect an important public interest or an exceptionally important interest of a party, and the duration of the infringement. Against the background of this standard, it is assumed in the doctrine that, taking into account the directive of the seriousness of the violation of the right, the public administration body should assess the importance (significance and seriousness) of the violated prohibition and the seriousness of the violation of the prohibition. On the other hand, in the jurisprudence it is indicated that, in light of Article 189f § 1(1) of the APC, determining whether the infringement of the law is sufficiently trivial to justify abandoning the imposition of an administrative fine requires some kind of proportionality test, i.e. the balancing of the hierarchy of goods (values) protected by the law against the background of a specific factual situation[28].

However, it is pointed out that the repressive function should not dominate the other functions. The protective function of the administrative order takes priority, followed by the redistributive function and finally the repressive function.

An exhaustive analysis of the essence of administrative fines was presented in the judgment of the Supreme Administrative Court of 16 May 2016, ref. II GPS 1/16[29]. Among other things this judgment stated that the effectiveness of the solutions adopted in the discussed scope, when it comes to the effectiveness of a given administrative sanction and its functions, is measured by the degree of its impact on the obliged entity. This means it is related to such factors that, in terms of the degree of seriousness of the sanction and its proportionality to the type of infringement of the law – including the amount of the administrative fine – and, in particular, the inevitability and speed of its imposition, would sufficiently motivate the addressee of the legal norm to behave accordingly. These factors, especially the way in which the legislator emphasises the importance of each of them, are not without influence on the nature and type of function that should be associated with a given administrative sanction. The judgment mentioned above also

27 B Adamiak, J Borkowski, *Kodeks postępowania administracyjnego. Komentarz Komentarze Kodeksowe* [Code of Administrative Procedure. Commentary, Code Comments] (CH Beck 2017) 969.

28 See the judgment of the Regional Administrative Court in Warsaw of 27 July 2021 V SA/Wa 566/21 [2021] Lex 3347424.

29 Judgment of the Supreme Administrative Court of 16 May 2016 II GPS 1/16 [2016] Lex 2039440.

indicates that, among the functions of an administrative sanction, a basic distinction is made, in principle, between a preventive and a repressive function constituting an ailment addressed to the subject towards whom it is applied. A distinction is also made between the protective function, consisting in the protection of the values of administrative law, and the function of measuring the importance of the protected good, assessed by the degree of seriousness of the administrative sanction in relation to the social importance of the protected values. On the other hand, the motivational function of the administrative sanction, which is related to its preventive impact in both individual and general terms, refers to the impact on the behaviour of the subject against whom it is applied, and in respect of which it is intended to create incentives for lawful behaviour and to counteract undesirable behaviour. The restitutive function, on the other hand, is associated with the effect of restoring the actual state of affairs to its conformity with the state resulting from the law in force and the legal norm of an injunction or prohibition established on its basis. On the other hand, the redistributive function of an administrative sanction may lead to a transfer of property and granting or depriving certain tangible or intangible benefits[30].

It follows from the above that the restitutive function of restoring the actual state of affairs to its conformity with the state resulting from the law in force and the legal norm of injunction or prohibition established thereunder is only one of the functions performed by an administrative fine. The other functions – protective, repressive, redistributive and motivational – are no less important. It will not be possible for a fine to fulfil these functions if the authority is deprived of the ability to effectively impose it. There are no grounds to give primacy to only one function over the others.

6. Effectiveness of administrative fines under Polish law

In the case of an effective sanctions regime, the very existence of sanctions often leads to compliance without the need to formally invoke them. Thus, it can be said that the existence of administrative sanctions is "co-extensive" with the substantive law norms setting out behavioural standards for their addressees in regulatory laws[31]. However, in order for the system of punishments to be effective, public administration bodies should first develop plans for checks preceding the imposition of administrative fines and shape a coherent policy on the application of sanctions. In Poland, these issues of administrative science are only just developing, as can be seen in the preparation of plans for inspections of regulatory or environmental authorities, but the policy of penalties is still not linked to deliberate actions, but is undertaken *ad hoc* according to guidelines coming from central authorities or special purpose funds which gain the proceeds from enforced sanctions. Meanwhile, it would be appropriate to create a programme, along with a set of recommendations, on how best to apply sanctions in each public administration body endowed with the power to impose them. An analytical approach to sanctioning should also be linked to the protection of guarantees for the parties to administrative proceedings. It is essential that such a sanctioning policy or scheme is known to the businesses subject to sanctions liability, so that they are able to shape their behaviour in accordance with the law without the use

30 Cf P Przybysz, 'Funkcje sankcji administracyjnych' [Functions of Administrative Sanctions] in M Stahl, R Lewicka, M Lewicki (eds), *Sankcje administracyjne. Blaski i cienie* [Administrative Sanctions. Lights and Shadows] (Wolters Kluwer 2011) 170–171; M Kobak, R Sawuła, 'Problematyka stosowania sankcji administracyjnych' [The Issue of Applying Administrative Sanctions] in M Stahl, R Lewicka, M Lewicki (eds), *Sankcje administracyjne. Blaski i cienie* [Administrative Sanctions. Lights and Shadows] (Wolters Kluwer 2011) 523–524.

31 R Baldwin, J Black, 'Really Responsive Regulation' (2008) The Modern Law Review 71(1), 59.

of sanctions or enforcement coercion. It is therefore necessary to link not only the lawful use of administrative forms of action, such as sanction decisions, but also the development of administrative methods of action, such as sanction policies, since administrative sanctions are tools aimed at modifying the behaviour of regulated entities in order to achieve objectives pursued by administrative law. It is necessary to address the motivation and incentives of businesses to comply with the rules in force. Empirically, of course, it can be argued that not everyone is driven by the same motivations, as some comply with the law out of rationality, aimed at maximising profits, while others may be driven by reputation, social responsibility, religious values or membership of a particular community[32]. However, the authority should make a kind of analysis of its sector in order to identify the most effective incentives that will shape compliance with the law in a given community and thus adapt its methods of action to these circumstances. The condition for the effectiveness of sanctions is, therefore, not only their repressiveness, manifested in the severity of the penalty, but also the availability of a wide range of intervention mechanisms, organised hierarchically, by the administrative body. The authority should start with persuasive actions towards compliance with the law by responsible parties on the basis of instructions, frequent inspections, and drastic sanctions should only appear as *ultima ratio*. This is particularly evident in the field of sanctions applied by the environmental authorities, imposing penalties on businesses using the environment in a particular way, imposing high fines on them at the beginning or depriving them of permits appears to be drastic and disproportionate in the context of the fact that such businesses generally operate legally, while criminals subject to criminal law are often punished with lower penalties or are not identified as offenders at all. Constitutional and business law principles, such as the rule of law, legal certainty, non-discrimination and guarantees of rights, should be applied to those entities that consistently strive to operate in the best possible manner and in compliance with EU and national business regulations.

A well-functioning system should consist of punitive measures alongside other non-sanctioning instruments that promote compliance.

7. Conclusions

It follows from the above analysis that the legislator, on the one hand, and the administration, on the other, are pursuing the objectives that the legislation has set out, and one of the tools for this is administrative sanctions. These, together with other non-criminal measures, must be applied taking into account procedural guarantees as well as proportionality. This is particularly important given the fact that more and more competence norms are being legislated in which the legislator refers to the power of the administration to impose sanctions in order to guarantee more effectively the social interests threatened by violations of public law.

It does not seem correct to refer to the principles of criminal law in matters of administrative fines, as the intentions and objectives that the legislator had in mind when resorting to these measures are different from those of criminal law. This does not change the fact that the authorities should be guided not only by the better suited guaranteed nature of the regulation, but also by the adoption of an appropriate policy for their application that is not subordinated solely to the fiscal objectives of the state or the motives of the media, i.e. situations in which the media – the press or television – place pressure on supervisory authorities due to reports of crimes, for example

32 R Alexy, 'Normativity, Metaphysics and Decision' in S Bertea, G Pavlakos (eds), *New Essays on the Normativity of Law* (Hart Publishing 2011) 220–228.

about fires at landfills or abandoning hazardous waste in public places, which should not affect the repressive approach to businesses operating on the basis of permits and in a legal manner.

This way of using administrative sanctions as instruments to achieve the objectives established by the legislator, without equating administrative sanctions with criminal ones, is necessary, otherwise there is a risk of equating criminal and administrative law and nullifying those aspects of administrative fines that justify their application.

Administrative sanctions should be legislated and applied responsibly. This means that the regulator must be equipped with the tools to go through the options, from persuasion to the application of sanctions. In short, this means that administrative sanctions are a type of administrative compliance tool used as a last resort.

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