



**Seminar organized by the Supreme Court of the Republic of Slovenia  
and ACA-Europe**

**Administrative Sanctions in European law**

Ljubljana, 23–24 March 2017

**Answers to questionnaire: Finland**



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*organized by*  
*the Supreme Court of the Republic of Slovenia*  
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# *Administrative sanctions in European Law*

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## *Questionnaire*

The topic that was selected for this Seminar, “*Administrative Sanctions in European Law*”, aims to address both theoretical and practical questions regarding the application of administrative sanctions at the national level, by administrative authorities and judges.

As the superposition of three different legal orders (ECHR, EU and national legal orders) may lead to potential tensions, and poses numerous questions, whenever national administrative authorities and courts deal with administrative sanctions, the Seminar will also focus on how, at the European level, the Courts have addressed the concern.

We will discuss the applicability of the European Convention of Human Rights (ECHR) and case law developed by the European Court of Human Rights (ECtHR) on Art. 6, as well as its definition of a “criminal charge”. We will also analyze the jurisprudence of the Court of Justice of the European Union (CJEU), which also addresses the question as to whether certain administrative sanctions can be considered “criminal charges”.

By definition, the ECtHR stipulates that criminal charges must satisfy certain criteria, irrespective of how they are classified at the national level: the latter is merely a starting point. Said criteria are outlined in the case *Engel and Others v. the Netherlands*, §§ 82-83:

**1. Classification in domestic law:**

If domestic law classifies an offence as “criminal”, then this will be decisive. Otherwise, the Court will look behind the national classification and examine the substantive reality of the procedure in question;

**2. Nature of the offence:**

In evaluating the second criteria, which is considered to be more important (*Jussila v. Finland* [GC], § 38), the following factors can be taken into consideration:

- whether the legal rule in question is directed solely at a specific group or is of a generally binding character (*Bendenoun v. France*, § 47);

- whether the proceedings are instituted by a public body with statutory powers of enforcement (*Benham v. the United Kingdom*, § 56);
- whether the legal rule has a punitive or deterrent purpose (*Öztürk v. Germany*, § 53; *Bendenoun v. France*, § 47);
- whether the imposition of any penalty is dependent upon a finding of guilt (*Benham v. the United Kingdom*, § 56);
- how comparable procedures are classified in other Council of Europe member States (*Öztürk v. Germany*, § 53).

**3. Severity of the penalty that the person concerned risks incurring:**

The third criterion is determined by reference to the maximum potential penalty for which the relevant law provides (*Campbell and Fell v. the United Kingdom*, § 72; *Demicoli v. Malta*, § 34).

The second and third criteria for the applicability of Article 6 that are laid down in the case *Engel and Others v. the Netherlands* are alternative and not necessarily cumulative. It suffices that the offence in question can by its nature be regarded as “criminal” from the point of view of the ECHR, or that its sanction belongs in general to the “criminal” sphere - by its nature and degree of severity (*Lutz v. Germany*, § 55; *Öztürk v. Germany*, § 54). The fact that an offence is not punishable by imprisonment however is not in itself decisive, since the relative lack of seriousness of the penalty at stake cannot divest an offence of its inherently criminal character (*ibid.*, § 53; *Nicoleta Gheorghe v. Romania*, § 26).

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The questionnaire we are asking you to complete, at a maximum of 12 pages, should reflect the main issues at stake at the national level, both from a practical and a judicial point of view. The questions were formulated in such a way as to allow you to address the issues and take into account the case law of the ECtHR and the CJEU. However, should there be relevant points that have not been captured by the questionnaire, please feel free to add a comment in **Part IV**.

If you have any questions regarding the questionnaire, please contact Mr. Rajko Knez at the following address: [rajko.knez@um.si](mailto:rajko.knez@um.si).

The completed questionnaire should be sent by **Monday, February 6<sup>th</sup>, 2017** to the same e-mail address.

***Part I – The notion of administrative sanctions***

**I-Q1** – *Are the definitions of administrative sanctions (sanctions for minor offenses) and criminal sanctions precisely regulated at the national level? How is the notion of “administrative sanctions” defined in your administrative practice and case law? How does it differ from the notion of “criminal sanctions”? Is the principle of legality (i.e. the necessity of a legislative act, “no crime without law”, etc.) of the incrimination applicable to administrative sanctions?*

The definitions of administrative sanctions and criminal sanctions are not, as such, regulated in legislation at the national level in Finland. Definitions of “administrative sanctions” have been developed in preparatory acts of legislation (e.g. Government proposals, opinions and reports of parliamentary committees), case-law of the courts (mainly the Supreme Administrative Court and the Supreme Court) and legal literature.

In general terms, administrative sanctions have been described as being non-criminal punitive sanctions imposed by an administrative authority or an administrative court. In Finland, administrative authorities must have a competence based on a special provision in legislation in order to be able to impose administrative sanctions. Such sanctions include certain petty fines (e.g. parking tickets, penalty fare in public transport) and other punitive fines (e.g. fine on oil spillage, financial penalties on carriers in breach of their obligations, penalty payment for competition law infringement), punitive taxes as well as disciplinary punishments on civil servants. Such administrative actions as, for example, the withdrawal of administrative permission or the injunction aimed at prohibiting the continuation of an infringement are, however, not considered to be administrative sanctions. A coercive measure by which a court or an administrative authority orders someone to do something or desist from doing something on pain of paying a penalty (called in Finnish “uhkasakko” and in Swedish “vite”) is neither considered to be an administrative sanction.<sup>1</sup>

In legal literature<sup>2</sup> the purpose of use of administrative sanctions has been divided in several categories. In the past, administrative sanctions were mainly enacted as a means to decriminalize petty crimes. Along with the development in EU law context, the number of administrative sanctions in legislation has multiplied during this century.<sup>3</sup> Many of the present financial administrative sanctions have their background in EU law. Finland, as other EU member states, have introduced administrative sanctions instead of, or, along with, criminal sanctions in order to implement EU law. As a consequence, administrative sanctions are not anymore limited to minor offenses and low financial consequences. Another reason for the multiplication of the use of administrative sanctions even in purely national context is the presumed effectiveness of administrative sanctions and the flexibility of the administrative procedure compared with criminal charges and the criminal procedure. This development has generated wide, and sometimes critical, interest among academic writers crossing over the limits of public administrative law and criminal law.

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<sup>1</sup> The Supreme Administrative Court has specifically stated that a penalty payment as a coercive measure is not a punitive sanction and, thus, the issuing of a penalty payment cannot raise questions about the principle of *ne bis in idem* (KHO:2016:96).

<sup>2</sup> See *Mikael Koillinen*: Hallinnolliset seuraamukset tietosuojan sanktiomekanismina. *Defensor Legis* 4/2016, p. 570-586.

<sup>3</sup> According to Halila and Lankinen there are more than 40 different financial administrative sanctions in the Finnish legislation. If all tax-related sanctions are taken into account the number raises to more than 60. See *Leena Halila – Veronica Lankinen*: Administrativa sanktionsavgifter I nordisk kontext. *JFT* 5/2014, p. 305-328, at p. 305.

The Constitutional Law Committee of the Parliament<sup>4</sup> has described some of the main principles arising from the Finnish Constitution which have to be taken into account when enacting provisions on administrative sanctions. They include the following:

- According to Section 2.3 of the Finnish Constitution “[t]he exercise of public powers shall be based on an Act.” Since the imposition of sanctions includes exercise of public powers such competences have to be laid down by an Act of Parliament. In certain limits the Committee has, however, accepted that administrative sanctions can be based on lower level regulations if there is a sufficiently precise enabling provision in the Act of Parliament.
- The imposition of sanctions is considered to involve significant exercise of public powers which means that such competence can only be delegated to public authorities (Section 124 of the Constitution). For the same reason, there has to be precise and clear provisions about the grounds for determining the level of the sanction as well as about the legal protection of the object of the sanction.
- Although Section 8 of the Constitution (“The principle of legality in criminal cases”) does not, as such, apply to administrative sanctions, the general requirement of preciseness arising from the principle of legality cannot be disregarded when enacting such provisions. For example, it has to be clear and evident in which circumstances administrative sanctions can be imposed.
- Legislation concerning administrative sanctions must respect the principle of proportionality. This involves, among other things, questions about sanctioning of lenient acts and derelictions as well as scaling the sanction according to the seriousness of the misdemeanor.
- Due to the principle of presumption of innocence (Section 21 of the Constitution: “Protection under the law”) it can be problematic if the administrative sanction is based on strict liability or reversed burden of proof.
- In enacting provisions on administrative sanctions it has to be taken into account that they can satisfy the criteria of “criminal charges” in the meaning of Article 6 of the ECHR (“Engel criteria”). In such cases the case-law of the ECtHR has to be followed. This also includes the case-law of the ECtHR concerning Protocol 7 Article 4 of the ECHR (*ne bis in idem*).
- There must be a legal remedy (right to appeal) against a decision to impose an administrative sanction (Section 21 of the Constitution).

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<sup>4</sup> In Finland, the constitutionality of parliamentary acts is examined in advance. This mainly takes place in the Parliament, and more particularly in its Constitutional Law Committee. The aim of this parliamentary control is to prevent in advance that laws which are in conflict with the Constitution or international human rights treaties are enacted. The opinions of the Constitutional Law Committee, thus, constitute an important source for examining constitutional principles in Finland. The Committee has, for example, contributed to the development of the doctrine of constitutional limits and restraints concerning administrative sanctions. This is why some of the central principles of this doctrine of the Committee are highlighted in this questionnaire along with court cases and other sources.

The Supreme Administrative Court has dealt with the legal questions arising from the use of administrative sanctions in several judgements. It has, for example, confirmed that the principle of legality stemming from Section 8 of the Constitution and Article 7 of the ECHR has to be given due weight even when the sanction imposed on an entrepreneur is not a criminal sanction as such (KHO 2004:15). In case KHO 2010:34 the Court stated that a municipal regulation in which a fare was in certain circumstances punitive was not in line with the enabling Act and, thus, could not be applied. Moreover, the Court has dealt with such questions as privilege against self-incrimination in tax issues (KHO 2016:100) and burden of proof / presumption of innocence in the context of administrative sanctions (KHO 2014:64). There is also a line of case-law dealing with the principle of *ne bis in idem* (see I-Q3 below). In many of these cases the Court has taken stance on the issue whether an administrative action should be considered to constitute an administrative sanction or not (e.g. KHO 2014:95, KHO 2014:96, KHO 2016:96).

***Ancillary questions:***

*With respect to the above question, does your administrative practice and jurisprudence follow ECHR case law (Cases Engel, 5101/71, 5354/72, 5102/71, 5370/72, [1976] ECHR 3, 5100/71, (1976), Jussila, 73053/01, Grande Stevens, 18640/10, 18647/19, 18663/10 in 18698/10)? Do you also apply the approach of the CJEU (for instance in the case Schindler Holding, T-138/07)? Are the ECtHR and CJEU jurisprudence (including EU Charter on Fundamental Rights) applied at the same time?*

The answer is affirmative. The administrative authorities and courts in Finland follow the case-law of the ECtHR and the CJEU. The essential judgments of both European courts are regularly cited and explained in the judgements of the Finnish courts. The ECHR and the EU Charter on Fundamental Rights (and the Finnish Constitution) are applied at the same time. In case the Charter is not applicable (Article 51 of the Charter) the courts apply the ECHR and the Constitution.

*Is there any statutory-based solution given in this respect by the national legislator or by the administrative authorities?*

The ECHR has been incorporated in the Finnish legal order by an Act of Parliament. It has been accepted that this also includes following the case-law of the ECtHR.

Finland is a member state of the EU. This means that it is bound by EU law and obliged to follow the case-law of the European Court of Justice.

*Do you have examples in practice or case law where the jurisprudence of the EU law is found to be compatible with jurisprudence of the ECtHR (for instance, cases C-210/00 Käserei Champignon Hofmeister GmbH or C-489/10, Łukasz Marcin Bonda). Do the teachings of the CJEU, and in particular its definition of administrative and criminal sanctions, fit within the framework of ECtHR decisions?*

General principles of EU law are principles that have been expressly qualified as such by the EU courts. Many such principles have been established by the CJEU on the basis of comparative study of the laws of Member States. Many principles have also been derived by the CJEU from “constitutional traditions common to the Member States”, as acknowledged in Article 6 (3) TEU as well as in the Preamble and Article 52 (4) Charter. Lastly, general principles of EU law have also been established by the CJEU on the basis of the ECtHR, as acknowledged by the Article 6 (3) TEU and as well in the Preamble and Article 52 (3) Charter. Both the courts, CJEU and ECtHR, seek inspiration from the other court’s jurisprudence and are trying to keep their interpretations in balance. In Finland, there is no notion of any developments contrary to this. This said, it is still possible that there might be some differences in time and according to circumstances.

*How is the EU law requirement -according to which sanctions need to have a deterrent effect- applicable?*

Deterrent effect is taken into consideration when various EU directives are implemented at the national level into the legislation. See also the answer to I-Q1 concerning the principles developed by the Constitutional Law Committee. For instance, an administrative sanction cannot be against the principle of proportionality.

*What distinction does your national legal system make between administrative sanctions and other administrative measures to restore compliance with the law? (e.g.: the closure of an exploitation of a waste management facility that was operating without a license v. an administrative fine?)*

According to the Finnish Environmental Protection Act, a competent supervisory authority may prohibit a party that violates this Act or a Degree based on it from continuing or repeating a procedure contrary to a provision or regulation; order a party that violates this Act or a Degree based on it to fulfill its duty in some other way; order a party referred to above to restore the environment to what it was before or to eliminate the harm to the environment caused by the violation; order an operator to conduct an investigation on a scale sufficient to establish the environmental impact of operations if there is justified cause to suspect that they are causing pollution contrary to this Act. The supervisory authority may suspend the activities if the harm cannot be eliminated or sufficiently reduced otherwise.

The Finnish Environmental Protection Act is based on the Directive 2010/75/EU on industrial emissions. Administrative fines as a sole measure to ensure compliance with the requirements of the Directive in question would be problematic. According to the Directive 2010/75/EU, Member States shall take the necessary measures to ensure that the permit conditions are complied with. In the event of a breach of a permit, Member States shall ensure e.g that the operation of the installation or the relevant part thereof shall be suspended.

An order to suspend operation or to take some other necessary measures to prevent pollution caused by the installation is not considered to be an administrative sanction. Neither a penalty payment (“uhkasakko” or “vite”) detached to such an order is considered to be an administrative sanction (see also the answer to I-Q1).

In Finland, these kind of orders are administrative coercive measures. The lawfulness of these measures can be challenged by making an appeal to an administrative court. The remedies in question are the same as remedies when challenging pecuniary administrative sanctions. The coercive measures ordered by the competent authority are usually enforceable before they come final. The pecuniary administrative sanctions are usually enforceable first after becoming final.

**I-Q2** - *Are procedural requirements regarding administrative sanctions equally or similarly regulated in the case of criminal sanctions (how far-reaching is the principle of legality, what is the role of the principle of proportionality)?*

In Finland, the Administrative Procedure Act (2003) contains provisions of the fundamental principles of good administration and on the procedure applicable in all administrative matters. The Act is applicable for instance, when there is a question whether an authority should order an administrative sanction. The Act is applicable by all the authorities.

In Chapter 2 of the Act (Section 6) is stipulated that an authority shall exercise its competence only for purposes that are acceptable under the law. The acts of the authority shall be impartial and proportionate to their objective. They shall protect legitimate expectations as based on the legal system.

Before the matter is decided, a party shall be reserved an opportunity to express his or her opinion on the matter and to submit an explanation on the demands and information which may have an effect on the case (Section 34). A party shall be notified of the purpose of the hearing. When necessary, the notification on the hearing shall indicate the points on which clarification is being sought. The party shall be provided with the adequate documents before giving his or her explanation (Section 36). In general, it is not possible to decide upon an administrative sanction without first hearing the person in question. On the other hand, administrative coercive measures may be decided without hearing the party, if hearing may jeopardise the objectives of the decision to be taken or the delay in the matter would cause a significant hazard to the public health, public safety or the environment.



According to Section 40 of the Act, it is even possible to give testimony in an administrative matter. This means that witnesses may be heard under oath, but this kind of proceedings are very rare. If witnesses are heard, the parties immediately concerned by the matter shall be reserved an opportunity to be present and to put questions to the witnesses. The hearing will be arranged by an Administrative Court. The Court is functioning merely as a judicial assistant to the authority, so the authority is responsible of the questions presented to the witnesses. The witnesses have the right to refuse to testify according to the provisions of the Administrative Judicial Procedure Act (1996).

According to Section 44 of the Act, a decision shall indicate clearly a statement of reasons for the decision and a detailed statement as to what the party is entitled or obliged to. According to Section 45, the statement of reasons shall indicate the circumstances and information that have affected the decision and the provisions that have been applied. A decision that is open to an appeal shall be accompanied with appeal instructions.

***Ancillary questions:***

*With respect to the above question, does your national law offer any regulatory solutions and what is the role of direct applicability of the jurisprudence of the ECtHR and the CJEU?*

See the answer to I-Q1.

*What are the administrative procedural requirements that are the closest to the ones applicable to criminal sanctions (e.g.: mandatory representation or assistance by an attorney (Cf. “Salduz-doctrine” Salduz v. Turkey, 36391/02), legal help, procedural time limits (including “reasonable time”), the possibility of requiring an oral hearing, burden of proof, competence of courts, legal remedies, application of the principles of reasonability, equality, presumption of innocence, prescription/prohibition of retroactivity, the principle of « retroactivity in mitius », the prohibition of self-incrimination, the principle of the right to appeal, etc.)?*

In Finland, when a case concerns imposing an administrative sanction by a competent authority, there is no mandatory representation or assistance by an attorney. The person in question (or legal person) may retain an attorney or a counsel for an administrative matter and get legal help, if he or she can't afford handling of the case by his or her own assets. There are limitations to get legal help if the case concerns a legal person.

According to the Finnish Constitution, Section 21, all administrative and judicial cases shall be handled without undue delays.

Rights of defence are specially stipulated in Competition Act (2011). The Finnish Competition Authority investigates restraints on competition and effects thereof. It shall initiate the necessary proceedings to eliminate or restrain on competition or the harmful effects thereof if it finds that an undertaking is restraining competition in a manner referred to in Section 5 or 7 of the above mentioned Act or Article 101 or 102 of the TFEU.

An undertaking shall be obliged, at the request of the Finnish Competition Authority, to provide the Authority with all the information and documents needed for the investigation of the content, purpose and impact of a restraint on competition. If it is necessary, the Authority has a right to invite a representative of an undertaking or a person who may for a justified reason be suspected of having acted in the implementation of a restraint of competition, to appear in person before it. The Authority may record the responses. In addition, the Authority is empowered to conduct an investigation in the business premises and storage facilities controlled by the undertaking. The Authority is also empowered to conduct an investigation in premises other than the ones controlled by the undertaking, if reasonable suspicion exists that bookkeeping or other documents relating to the business may be held there.

For the inspections in the premises other than the actual business premises the Authority needs an advance permission from the Market Court. The Market Court may prohibit an inspection if it would be arbitrary or excessive. The Market Court shall in its deliberations pay attention to the gravity of the suspected infringement, the importance of the evidence sought and the reasonable likelihood that the business books and records are kept in the premises.

The official conducting the inspection can examine the business correspondence, bookkeeping, computer files, other documents, and data of an undertaking which may be relevant and to take copies. The official conducting an inspection is empowered to request from all representatives of the undertaking or all the members of the staff of the facts and documents relating to the object and purpose of the replies obtained. He or she is also empowered to seal business premises and business correspondence, documents and data for the period and to the extent necessary for the inspection. When an inspection is conducted in other than actual business premises the official conducting the investigations does not have the right to ask further information.

According to Section 38, the Finnish Competition Act, the Authority shall inform the undertaking under investigation of its position in the proceedings and of what actions it is suspected of. The undertaking has right to receive the information as soon as it is possible without jeopardizing the investigation. Upon request, the undertaking has the right to receive information on the documents concerning the investigation and the phase of the proceedings insofar as it cannot harm investigations in the matter. The Authority may only use the information obtained on the basis of above mentioned rules, unless it starts new investigation. An undertaking shall not have

obligation to deliver the Authority documents which contain confidential correspondence between an outside legal consultant and the client. When an undertaking responds to the questions raised by the Authority, it is not under an obligation to submit that it has violated Sections 5 or 7 of the Act, or Articles 101 and 102 of the TFEU.

The undertaking has the right to be heard prior the Authority is making a proposal for a competition penalty payment (which case is handled by the Market Court; the Authority is not empowered to impose that kind of penalty by its own discretion), or a decision stating a violation of Sections 5 or 7 of the Act or Articles 101 or 102 of the TFEU (that kind of a case is handled by the Market Court as an appeal case because the Authority is empowered to make a binding decision in the first place). When hearing an undertaking, the Authority shall inform it in writing of the claims and justifications relating to the issues which have arisen during the investigation. The Authority shall fix a reasonable time-limit within which the undertaking in question can present its comments to the Authority.

Competition cases are handled by the courts (at the first instance Market Court and at the latter instance the Supreme Administrative Court) by the rules defined in the Administrative Judicial Procedure Act (1996). In the latter Act, there are, for instance, provisions on witness hearings and on a right to deny to witness due to the prohibition of self-incrimination.

The proceedings in other kind of administrative penalty sanctions are usually conducted by the rules of the Administrative Procedure Act (2003). In Finland, there is going to be published in this spring a Nordic survey upon the need to have a separate set of general rules concerning the proceedings when different administrative sanctions are investigated and later imposed.

**I-Q3** – *Have unwanted consequences ever accrued from the decision of the ECtHR (e.g.: Grande Stevens, No. 18640/10, 18647/19, 18663/10 in 18698/10) (such as decreasing the effectiveness of separated regimes – administrative and criminal- because the administrative sanction, which has the characteristic of criminal sanction, prevents criminal procedure; in line with the principle ne bis in idem)?*

In 2010, the Supreme Court of Finland took for the first time the view that an administrative sanction, in that case a tax increase, may prevent criminal charge for tax fraud in the same matter because of principle *ne bis in idem*. The view was based, essentially, on *Zolotukhin v. Russia* -judgment of the ECtHR. After that the same view was adapted (and improved in details) in several judgements of the Supreme Court, and also the Supreme Administrative Court shared the same view meaning that, vice versa, criminal charge may prevent imposing a tax increase which is considered to be “a criminal charge” in the meaning of Article 6 of the ECHR. Originally, it was ruled that first sanction (criminal or administrative) had to be final to prevent another

sanction to be imposed, that meaning that there could be duplication of sanctions if the second process of imposing a sanction was started before the first one was ended. However, the Supreme Court changed its ruling in 2013. According to the new ruling, the first decision, which does not need to be final or to become final, shall prevent to impose other kind of a sanction (for instance a decision of a tax increase shall prevent making a criminal charge). Supreme Administrative Court, on its part, stated in 2014, based on new judgments of ECtHR (*Nykänen v. Finland*, *Glantz v. Finland* and *Häkkä v. Finland*), that a process, whether started firstly or secondly, has to be interrupted only when a decision made in the other process becomes final.

In 2013, special legislation was adapted in Finland in the field of taxation. Therefore, there should be no more (new) cases where both a tax increase and a criminal punishment would be passed to the same person in the same matter. Therefore, the practical relevance of the fact that the rulings of the Supreme Court (2013) and the Supreme Administrative Court (2014) were slightly different is limited. The ECtHR has also lately developed its own case-law (A and B v. Norway, Grand Chamber judgment 2016) to the direction which resembles the legislative situation in Finland before the Zolotukhin judgment.

In Finland, the same question (whether there may not be an administrative and a criminal sanction together) has been raised also in other fields of public law and tested at several court cases. However, at most cases so far, an administrative “sanction” has been considered to be something else than a punishment prohibited by the *ne bis* -rule.

***Ancillary questions:***

*How is the principle ne bis in idem understood in your legal system, taking into account CJEU interpretation (case C-617/10, Fransson) and ECtHR interpretation of Art. 4 of Protocol No. 7 (ECHR (GC) Zolotoukhine/Russia, No. 14939/03)?*

See the answer above. The ECHR and ECtHR judgements have been the main source influencing the *ne bis in idem* -principle and its development in the Finnish praxis. The EU Charter and the judgments of the CJEU (such as *Åkerberg Fransson* -judgment) have played a minor role.

*Are national courts faced with cases where individuals, subject of administrative sanctions, would like to exclude criminal sanctions and criminal procedures (including in other EU Member states) in order to avoid dual trial? Does your system accept double penalty for non-nationals? (e.g.: criminal punishment for a criminal offense and administrative expulsion at the end of (or during) the sentence (accompanied with a residence ban)?*

In Finland, expulsion orders are not imposed in the context of criminal proceedings. Expulsion is the sole competence of the administrative authorities, in practice the police, border control authorities or the Finnish Immigration Service. The expulsion orders (and orders on prohibition of entry) are special preventive measures and they are not classified as criminal. This is in line

with the case-law of the ECtHR (see e.g. *Maaoui v. France*, 5 October 2000, para. 77, and *Üner v. The Netherlands*, 18 October 2006, para. 56). Thus, no issues of the kind mentioned in the question have been successfully raised in Finland.

*Is it possible, in your legal system, that an individual be sanctioned with both - the administrative and the criminal sanction, and if so, does the criminal sanction take into account the administrative one (i.e. is the administrative sanction considered a part of the criminal sanction)? What role does the EU Charter of Fundamental Rights and the ECHR principle ne bis in idem play in this respect?*

See the answers above.

## ***Part II – The system of authorities competent to impose administrative sanctions***

***II-Q1*** – *Is your legal system “unified” or “dual” when it comes to authorities competent to impose administrative sanctions? More specifically: Are the administrative authorities that are competent to adopt administrative sanctions only responsible for their enforcement? Or is it a system where administrative bodies are competent for both the enforcement and the regulation of certain areas of law? (e.g.: in areas like competition or financial transactions, are the authorities that are competent for the regulation of these areas also competent to adopt administrative sanctions in case the rules are not respected?) Or is it a third, mixed, system in which both solutions coexist? And finally, at enforcement level, can the official who discovers an infringement impose an administrative sanction?*

The Finnish system is mainly dual. Saying that means that administrative sanctions are usually imposed by the authorities which do not have at the same time regulatory powers. There are although exemptions, for instance at the supervision of financial market. Petty administrative fines can be imposed by the official who discovers the infringement (for instance control of car parking or travelling without a valid ticket)

***II-Q2*** – *Does your legal system allow for only one, or several levels of jurisdiction in procedures regarding administrative sanctions? What role is given to the national courts (and to the highest administrative court if it is competent to decide issues of fact and not only issues of law, like a court of cassation) when deciding on administrative sanctions? Do courts only have a supervisory role (i.e. a judicial review, a competence to annul) or are they also competent to reform or adopt (alone) the administrative sanctions?*

Appeal against an authority’s decision shall be lodged in an Administrative Court that has a competence defined in law both in connection to the matter and in connection to the right forum (the forum provisions are based either to a place where an appellant is living or a place where the authority in question has taken its decision). Appeal against of an Administrative Court shall be lodged in the Supreme Administrative Court.

The court at the first instance and the court in the last instance have same kind of competence. They both are competent to quash the decision, reform it or leave it as it was imposed by the authority. The court cannot decide against the appellant's demand and raise the sanction imposed when the appellant is the sole appellant in the matter (reformation in peius). The Court at the first instance cannot either normally impose a sanction when the authority has refrained from doing so. If the court considers that the sanction should be imposed it returns the matter to the authority for a new consideration and for a new decision to be made.

When it is a question about tax increase, first instance appeal is to be made to the Board of Adjustment, which is not an independent court but part of the Tax Administration. However, the majority of the members of each division of the Board are independent from administration. The decision of the Board may then be appealed to an Administrative Court.

**II-Q3** – *Is the court's judicial review of administrative sanctions based solely on the legality of the decision, or also on factual questions/circumstances? If there is certain discretion given to the administrative authorities? Can the courts review the discretion exercised by the administrative authorities too? (See CJEU C-510/11 P, Kone and others v. Commission, as well as Menarini, No. 43509/08 of the ECtHR).*

The court's judicial review is based both judicial and factual questions. As a part of judicial interpretation the courts in Finland have to decide whether the authority, whose decision is appealed against, has exercised its competence defined in the law for the purposes that are acceptable under the law. The authorities have a margin of appreciation, but that margin must stay in the limits defined in the law.

### **Part III – Specific questions**

**III-Q1** - *What kind of liability is provided by your national legal system for administrative sanctions: fault-based liability or strict liability? Does your legal system require a fault of the individual as a condition for the administrative sanction (See: CJEU C-210/00 Käserei Champignon Hofmeister GmbH)?*

There is no clear answer to the question. Firstly, there may be both fault-based national provisions and provisions based on strict liability and, secondly, it is not easy to identify to which category different provisions belong. For instance, *dolus* or cross negligence is a prerequisite for imposing a high amount of tax increase. According to the very new court judgments it remains however unclear if cross negligence may be concluded (i.e. deemed to exist) without evaluating one's subjective guilty (KHO 2016:15 cf. KHO 2016:153).

**III-Q2** – *Is it the nature of the administrative act relevant for its judicial review? Is it possible that a judicial review is impeded by the nature of the decision leading to the administrative sanction (when, for example, the act is not considered an administrative act)?*

There seems not to be any similarities in the Finnish system relating to this question.

**III-Q3** - *What kind of non-financial (non-pecuniary) sanctions are known in your legal system (for instance, the prohibition to pursue one's business or certain professional activities, the deprivation of the ownership, the duty perform certain works, etc.)? More specifically, in matters of urban planning, can an order to restore the site to its original state lead to the demolition of a construction? (case of ECtHR Hamer/Belgium, No. 21861/03).*

In the context of the EU directives and Regulations, it is quite common to speak about sanctions, criminal and non criminal sanctions and even other sanctions. For example, in the Directive 2014/57/EU on criminal sanctions for the market abuse is to be found as other sanctions for legal persons following: exclusion from entitlement to public benefits or aids, temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; judicial winding-up and temporary or permanent closure of establishment which have been used for committing the offence.

Most of these kind of measures taken by the competent authority are in Finland classified as administrative coercive measures that are necessary for the compliance of the legislation.

**Ancillary questions:**

*When provided, do non-financial sanctions have to be in causal relation to the (administrative) offence?*

*Can the sanctions, which are administrative sanctions in their nature, be used in the private law sphere (e.g.: a person not respecting the duty of the alimony: could he/she be sanctioned with the deprivation of his/her car)?*

*In your legal system, can administrative sanctions encroach upon ownership rights (Art. 1 of the first protocol ECHR – for instance, freezing of assets, substantive financial penalties, etc.)?*

**III-Q4** – *Are there cases in your national system where the organization of the authorities competent to adopt administrative sanctions is based on EU law requirements? This question could, for instance, refer to the leniency program that exists in EU competition law, which allows for the severity of the administrative sanction to depend on the party's ability and willingness to produce evidence, and requires a system where the same authority that hears the case also adopts the sanctions.*

As a member of the EU, Finland has several laws where administrative sanctions are based on EU law requirements (for example supervision upon market abuse when it concerns functioning of financial market and supervision upon money laundering; see also the Competition Act described above).

In the Finnish Competition Act, there are provisions concerning leniency (immunity from penalty payments and reduction of them in cartel cases). The Finnish Competition Authority grants the undertaking the conditional immunity after the undertaking has submitted the Authority information and evidence on the grounds of which the Authority may conduct an inspection or following an inspection delivers information or evidence, on grounds of which the Authority can establish that Section 5 or Article 101 of the TFEU has been violated. The Authority shall not take a position on any other application of leniency prior it has decided whether it shall grant conditional immunity to the undertaking who was the first one to lodge an application. At the end of the procedure, the Authority shall issue a written decision on whether the undertaking fulfils all the criteria for getting leniency. The information and evidence submitted to the Authority in order to get leniency cannot be used for any other purpose than the order to terminate a restraint on competition or the review of a penalty payment proposal at the authority, the Market Court and the Supreme Administrative Court. Concerning other than cartel cases, the Authority may propose than a lower penalty payment be imposed to an undertaking that would the case otherwise. The Authority may also refrain from making a penalty payment proposal to the Market Court, if the undertaking has significantly assisted the Authority in the investigation of a restraint on competition. The same rules are also applicable to the Market Court and to the Supreme Administrative Court.

In Finland, leniency is granted by the Authority, although it is not empowered to impose the sanction. The sanction is imposed by the Market Court upon the proposal of the Authority. Both the Authority and the Court shall pay attention to how leniency affects the outcome of the case.

*III-Q5 – Have your national administrative authorities, or even courts, been faced with the request to apply the jurisprudence of the CJEU and to reopen/change already final administrative decisions on administrative sanctions? Do national rules of administrative procedure (or even rules on court reviews) allow such re-openings of cases?*

Reopening of a case is possible upon the conditions set in the Administrative Procedure Act, when it concerns a case decided by a competent authority. According to Section 50 (correction of a material error) if a decision is clearly based on erroneous or insufficient information or an obviously incorrect application of the law, or if a procedural error has occurred in the decision-making, the authority may annul its erroneous decision and decide the matter anew. The decision may be corrected to the benefit or the detriment of the party. The consent of the party shall be required for a correction of the decision to his or her detriment. The consent is not



needed, if the error is obvious and has arisen from the conduct of that party. According to Section 52, an authority shall review the matter on its own initiative or on the demand of the party. The initiative and the demand shall be submitted within five years' time of the date of the decision. The correction of a material error shall require a new consideration and the making of the new decision. When an authority is still considering the correction of a material error it may prohibit or stay the enforcement of the decision for the time being (Section 53). If an authority rejects a demand for correction of an error, the case is not open to appeal. Lack of an appeal is not so detrimental, because the means of extraordinary appeal can still be used.

In Finland, an administrative decision (or Administrative Court's decision or even a decision of the Supreme Administrative Court) that has become final may be subject to extraordinary appeal by means of procedural complaint, restoration of expired time or annulment. "Final" means that nobody has made an appeal or the appeal made has been rejected without any further possibilities to appeal against the decision. According to Section 63, the Finnish Administrative Judicial Procedure Act, a final decision may be annulled, for instance, if the decision is based on manifestly erroneous application of the law or an error which may have had an essential effect on the decision or if new evidence which could have had a relevant effect on the decision appears and it is not the fault of the applicant that the evidence was not presented in time. The decision shall not be annulled, unless it violates the right of the individual or unless it is deemed that it is in the public interest that the decision be annulled.

The competent court to annul decisions is the Supreme Administrative Court. Time limit for an application of annulment is five years of the date when the decision came final. After that time, it takes very significant reasons to annul a decision.

In Finland, the case-law of the CJEU has mainly caused applications for annulment in cases concerning taxes (ne bis idem based cases concerning annulment have been stemming mainly from the jurisdiction of the ECtHR). In a recent case of the Supreme Administrative Court, it was ruled that reopening the final national judgment was not allowed even though the ECtHR had at the same person's case ruled that the national judgment was against ne bis in idem -rule (KHO 2016:33).

**III-Q6** – *Is it possible for the administrative authorities and offenders to negotiate on an administrative sanction (in order to reach a deal), similar to “plea bargaining” in certain criminal procedures? If so, is this a general rule or is it only possible in specific cases? In case a deal is reached, what is its status when a court reviews the case? What is the position and role of the court in such cases?*

According to the Finnish law, it is not allowed to negotiate on any administrative sanctions; it is for the administrative authorities to impose sanctions based on provision of law and not on the deal with a private person or a company.

***Part IV – Additional information (if needed)***

In this section, you can add any information on the topic of administrative sanctions in your national legal system that you deem appropriate and that hasn't already been covered in this questionnaire.

Thank you for your cooperation!