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RESEARCH ARTICLE

Legal Regulation of Administrative Misdemeanours: European Principles and the Case of Albania

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ABSTRACT

Administrative misdemeanours refers to one of the legal institutes of a high importance in the legislative policy adopted in a country. It regulates from an administrative perception actions or omissions that cause a harm (or potential harm) to the society and therefore are punished through specific penalties, being thus close to criminal law. In the European region, specifically the Council of Europe, but the European Union as well, specific regulations have been foreseen as important principles to be respected by countries members of such structures. An analysis of such principles and their application in the Albanian legislation is of importance for the country, as many conflicts might arise, and arise with regard to a non clear legislation adopted to regulate administrative misdemeanours and its application in daily life. Many daily actions and activities of human beings and legal persons are subject to administrative misdemeanours regulations; therefore, consequences of the application of such laws are massive. Economic dimension is of specific importance in this analysis as well. A reflection of European principles in the Albanian legislation is addressed in the article, as well as a clarification of main principles to be adopted with regard to administrative actions is provided.

Key Words:Administrative Misdemeanours, Council of Europe and EU Principles, Legality, Due Process, Economic Consequences

INTRODUCTION

Administrative misdemeanours adopted in a country address an important administrative legislative policy. It is an institution that regulates from an administrative perception actions or omissions that cause a harm (or potential harm) to the society. Administrative misdemeanour is an institute of administrative law close to criminal law. It refers to the existence of a set of circumstances which are considered, as per the legislation, as not positive for the society and against which a relatively severe reaction is expected and adopted. Such actions [omissions] are distinct from those considered crimes in a society due to a lower level of danger they present for the society. Such distinction needs to be clearly reflected in the legislation as well.[1] An act or omission that is considered dangerous is prevented, punished and rehabilitated: proportionally to the danger presented for the society punishments must be adopted, *i.e.* punishments for administrative misdemeanours are lower than those foreseen for crimes. The legislation and the doctrine are clear in making the distinction between an administrative misdemeanour and a criminal offense. [2] Cases of legislation that do not differentiate between actions [omission] prohibited as crimes or administrative misdemeanours, are cases of an unclear legislative policy which make citizens have a chaotic perception of the reasoning behind a law [or even legal entities, being private or public]: ultimately such legal chaos is translated in the absence of 'legal security', a guiding principle for the legislation. A clear legislation is necessary to be adopted, not only from the perspective of information, but also from an economic perspective of the state actions. A proper analysis should be developed considering as well the economic aspects of the issue and the economic interests of each party involved in an administrative misdemeanour. Such an analysis can be a very good indicator to policy makers, including the relevant executive bodies and the legislator, for making the proper legal and criminal policy choices in general.

Furthermore, analysis of such legislation is necessary to be developed from the control the consistency of our country's legislation in this regard with the main principles of European

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[1] A specific law on administrative misdemeanours is adopted in Albania in 2010, Law no. 10 278 on administrative misdemeanours (hereinafter 'law on administrative misdemeanours'), as well as several specific laws foreseeing specific actions [omissions] as administrative misdemeanours.

[2]Yet the Albanian legislation embodies certain regulations which do not reflect such a need. This has apparently been the case of many years, which have not properly adjusted with time. For more see: Jani Çomo, *E Drejta Administrative e RSH [Administrative Law in the Republic of Albania]*, Book 3, Year 1983.

rules, especially because of the political process of European integration.

THE MEANING OF ADMINISTRATIVE MISDEMEANOUR AND THE GENERAL REGULATION AS PER ALBANIAN LEGISLATION

Administrative organs are, among others, empowered with the competence of taking punitive measures aiming at implementing the legislative or administrative acts: that in order to prevent violations, punish those as well as rehabilitate the respective subjects.[3] The policies adopted in a country with regard regulations of specific acts/omissions that cause harm to society, as crimes or administrative misdemeanours, might differ from one country to another and those differ with time as well. Nevertheless, disregarding the policies a country adopts, the doctrine has already consolidated the differences between crimes and administrative misdemeanours. Even though administrative offenses resemble to the criminal acts, those are different:

- administrative misdemeanours are not an 'evil' in itself, so cannot be classified in any case in the category of crimes which are mala in se that have been traditionally considered as such,
- although administrative misdemeanours are considered as acts/omission dangerous to society, policies adopted against these violations is softer,
- the social risk of acts/omissions that are administrative misdemeanours is perceived and adopted as lower from the legislator as compared to acts/omissions that classify as crimes,
- fault is necessarily required as an element to reach the conclusion that an administrative offense has been committed,
- the usual penalty in administrative misdemeanours acts/omissions is a fine even though the law provides imprisonment penalty limited to 30 days by law, while in crimes the penalty is higher and limitation of freedom is considered usual.[4]

Disregarding doctrinal differences, the demarcation line between a criminal act and an administrative violation must be clearly presented in the law: it may however change or develop differently under the influence of several reasons that relate to social economic and political developments in a country.[5] Despite this division, which is based on the idea that an act/omission should be considered as more dangerous or less dangerous to society, which means that it is either considered as a criminal act or administrative offense, the Albanian legislation not in every case is so clear. There are several cases when the legislator foresees that if the offense set forth in the *lexspecialis* does not constitute a criminal offense, it constitutes an administrative violation.[6] Such cases indicate that there is an understanding in general of the distinction mentioned, however such cases indicate that different interpretations can be made, which does not lead necessarily to a clear legislation, a requirement as mentioned, of the rule of law concept.

Clarity is a requirement to avoid any type of legal chaos, which in itself translates into a lack of 'legal security'. Such clarity of law is required by the European Convention of Human Rights as well, a convention part of our Constitution and also ratified by law by Albania.7 According to the ECHR it is one of the essential elements of the legislation in a state of law.8 Based on the ECHR Court jurisprudence, the law must be sufficiently clear as it can enable subjects to anticipate correctly the consequences of their actions.9 The Constitutional Court of the

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[3] For a more detailed analysis on the meaning and features of the administrative misdemeanours in Albania read: Jani Çomo, E Drejta Administrative e RSH, Book 3, Year 1983; and: Dobjani E., *E Drejta Administrative 3*, SHBLU, Tirana, 1998.

[4] Law no. 7679, dated 4.1993 "*For administrative offenses'* (hereinafter Law 7679)

[5] Mozdiakova M. dheSalinkova A., *Administrative Offences and Legal Sanctions in accordance with act no. 254/2008 COLL., On the amendment of the legislation related to adoption of act on selected measures against legitimisation of process of crime and financing of* terrorist, Annals of the 'ConstantinBrâncuşi' University of TârguJiu, Juridical Sciences Series, Nr. 1/2009.

[6] Such an example is Law no. 8950, dated 10.10.2002, "On civil status", art. 69 of which provides:

> *In terms of this law, violations or not implementation of the provisions stipulated in Articles 12, point 5, 34 points 5, 37 points 8 and 50 point 3 of this law, when not qualified as criminal acts, constitute an administrative violation and are condemned by a fine.*

Also, Art. 44 of Law No. 9367, dated 7.4.2005 "For the prevention of the Conflict of Interest in public functions" foresees:

> *'When, the violation of the obligations foreseen by this law, does not constitute a criminal act, it constitutes an administrative misdemeanour and is condemned by a fine . . .*

[7] Article 17 of the Constitution, paragraph 2, provides:

> *These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.*

Article 116 of the Constitution, paragraph 1, provides:

> *Normative acts that are effective in the entire territory of the Republic of Albania are:*
> *the Constitution;*
> *ratified international agreements;*
> . . . . . .

Article 122 of the Constitution, paragraph 1, provides

> *Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. . . . .*

[8] Greer S., *The European Convention on Human Rights: Achievements, Problems* and Prospects, Cambridge University Press, UK, 2006.

[9] Many cases can be mentioned here such as: *Sandy Times v. UK* (1980) 2 EHRR 245 parag. 49; *Sahin v. Turqisë* (2005) 41 EHRR 109 parag.77; *Goodwin v. UK* (1996) 22 EHRR 123 parag.31-34; *Silver v. UK* (1983) 5 EHRR 347 parag. 88

Republic of Albania has also highlighted in a number of its decisions that '. . . Legal security is among the essential elements of rule of law. This certainly presupposes inter alia the reliability of citizens to state law and stability of the law for the regulated relations...'10

The Albanian legislation provides for a typical regulation, which is: *'In case they do not constitute a criminal offense, the offense would constitute an administrative offense*." Potentially, with such a regulation, the investigative process is undermined from the very beginning: such a legal rule logically guides administrative bodies to wait until a judgment of the criminal nature is finalized, *i.e*. if the case constitutes a criminal act or not, and only after that to further exercise their competences. Administrative bodies in such cases will be erratic due to legal uncertainty of forecasting: in this case the situation can be resolved with by-laws that and an administrative body may issue, because the issue refers to an investigation performed by an institution with a specific status as that of the prosecutor's office. Further, procedurally it requires close cooperation between them, but even if this will not be considered as an obstacle (would require institutional cooperation skills that often are lacking between the Albanian institutions), minimally the time limit as a procedural element of the investigation of administrative offenses might potentially be already expired. Or, such legal provisions would require the existence of qualified personnel in criminal law as part of the administrative organigram of the institution,[11] because if such qualified personnel is missing, than potentially every case might be required to be transferred to the Prosecutor's office to have an answer if a criminal act has been committed or not before the administrative procedure starts.

In reference to such examples, the relevant bodies charged with the obligation of investigating the administrative violations, must have a clear understanding of both the criminal legislation as well as he administrative *lexspecialis* based on which they act and for which they are specialized. Furthermore, the obligation to have knowledge on the penal legislation seems to further increase by clauses in our legislation such as '. . *When a criminal offense has been committees, the Criminal Code provisions shall apply and the case will be transferred for criminal investigation*.'[12] This would naturally bring forward the question if the administrative bodies are required to apply criminal code dispositions during their investigations or not. I would say that in this case we are not in front of situations that superpose institutions, and especially not the role of a body envisaged by the Constitution to deal with criminal investigations, such as the prosecutor. This is a legal regulation that requires a specialized investigation for a correct administrative investigation and accurate analysis so that the prosecution is put in motion to protect the legal order and the public interest to the extent appropriate.

Legal provisions which do not foresee for a clear demarcation line between administrative misdemeanours and crimes, considering the problematic consequences especially in practice, would be wise to be reconsidered. Thus, one might conclude that, there is a need for:

- clarity of separation between criminal acts an administrative offences;
- general definitions such as "when the acts does not constitute a criminal act it is considered an administrative violation" must be avoided. In such cases there is a need for distinctive boundaries between the two, such as determination of monetary constraints or that of the occurrence of certain situations such repeating the offense;
- definitions which seem to put obstacles to the administrative process because of the criminal one be avoided. If the legislator would provide such conditions, procedural aspects associated to these situations must also be adopted.

BASIC PRINCIPLES ADAPTED BY THE COUNCIL OF EUROPE AND EUROPEAN UNION

The administrative misdemeanour is considered a necessary legal mechanism in the European Union with the aim of taking appropriate measures for the implementation of European legislation. It cannot be said that there exist a decision or regulation providing for a general understanding of the institute; however, one can find reference to it in many of the *acquis* in the European Union. Meanwhile, the Council of Europe among many recommendations has adopted a special one on administrative offenses: Recommendation No. R (91) of the Committee of Ministers "On administrative sanctions'.[13] Such recommendations in the Council of Europe are adopted after a careful study of the legal systems of member countries of the Council of Europe, thus one can say that these are presented as a best legal practice of the European systems (mainly). Thus, an analysis of such a recommendation would be a fair reference to the basic principles that prevail in, or that are recommended to the member states of the Council of Europe, our country included. This adjustment would lead to a harmonization of our legislation with that of other European countries, serving thus to the process of harmonizing of our legislation with that of the EU as well.

The recommendation states that since the administrative sanctions can take many forms, they will include (this not being an exhaustive list) fines or higher duties, confiscation of goods, the closure of an enterprise, a ban on exercising activities and the suspension or withdrawal of licenses, permits or authorizations required to conduct a business, industry or profession, etc.. The recommendation also is very clear to distinguish the disciplinary measures and sanctions of a criminal character. It includes a set of basic principles that

[10]Decision of the Constitutional Court nr. 26, dated 02.11.2005, Summary of Decisions, Year 2005, pg. 223

[11] Such a regulation is that provided by the Customs Code. Art.9, parag. 4 provides that judiciary police officers are employed with customs authority to investigate cases of a criminal nature in the customs related processes.

[12] See for example Art. 69 of law 'On the civil status'.

[13]Recommendation No R (91) 1 of the Committee of Ministers for member states 'On Administrative Sanctions' (Approved by the Committee of Ministers on 13 February 1991).

must be followed in cases of administrative violations, which, in comparative analytical approach, are listed below:

The principle of legality

The principle requires that all administrative sanctions be provided by law.

This is a principle already provided by the Albanian legislation. Albanian law on administrative misdemeanours foresees administrative misdemeanours as "the violation by fault of the legal and sublegal acts, performed with acts and omission for which an administrative penalty is foreseen by law ".[14] Administrative misdemeanours are thus considered acts or omissions that violate administrative nature rules in our country.[15] No act or omission can be qualified as a criminal act without law:[16] it is the law that must foresee administrative misdemeanours considering that those are acts/omission with risk for the society. Considering that such acts/omissions are condemned by a fine usually or even imprisonment in specific cases[17], thus affecting human rights and freedoms of individuals and legal persons, the latter cannot be limited other than by a law of the parliament, a request deriving from Art. 17 of the Constitution.[18]

One aspect that might need to be analysed carefully is related to the regulation by law that the local government administrative bodies (councils) are competent to approve administrative offenses. From a literal, formal-legal, and narrow interpretation of the word 'law' referred to in the Recommendation of the Council of Europe, it means the act approved by Parliament. The acts issued by local government bodies are not a law: those are sublegal acts and one might argue that the requirement of the Council of Europe is not met. However, in response to such an interpretation, the mentioned local government bodies are able to anticipate administrative sanctions (penalties) only as the result of the competence given by law on administrative misdemeanour.

Principle of non-retroactivity

If an action/omission was not considered an administrative offense at the time of the commission, it should not be punished. Also, any favorable legal settlement in the area of administrative violations must be applied retroactively.

This principle, though not directly expressed in the applicable law in the Republic of Albania, can be drawn from the law.[19] Despite this, it should be clearly expressed in the law. This requirement of the recommendation is in compliance with the meaning of the administrative offense as a dangerous action/omission to society, similar thus to criminal offences.

The draft should also consider the principle properly. Its Art. 48 provides for several regulations regarding the application retroactively of the law on administrative misdemeanours: this article thus reflects the non retroactivity principle, even though it does not explicitly state it. It would be a positive relief for any subject of law that the law expressly include this principle in its text.

Ne bis in idem

The Council of Europe recommends that the *nebis in idem* principle be applied for administrative violations as well. This principle, originated in the criminal law, does not exclude the possibility that a non/action may constitute two or more illegal acts in administrative terms. This means that if different administrative authorities examine the same non/action, they can each give individual sanctions, according to their powers. However, it is required that any authority consider sanctions already given for the same action/omission. Although the Recommendation provides for potential difficulties in its application to cases that may be considered both criminal and administrative, it does not offer any solution to such situations.

First, it must be identified that this principle is not clearly expressed neither in the current law in force, nor in the draft law. Not only that proportionality is not foreseen in the decision-taking process: with proportionality in this case it needs to be understood taking into account the other administrative bodies decisions on the same issue, but at the same time no rule is foreseen to handle the issue of non qualification of the same act/omission as an administrative misdemeanour or a criminal act at the same time. Such cases exist in the Albanian legislation and these can bring as a consequence several problems in properly qualifying the situation and the evaluation of the work of the relevant administrative institutions.

Secondly, it must be clear that the CoE Recommendation does not pose a requirement for such a division, but I think that the danger of an action/omission is either high or low, i.e. a certain action does reflect a specific status. This should be

[14] Art. 4 of law on administrative misdemeanours.

[15] Dobjani E., *E Drejta Administrative 3*, SHBLU, Tirana, 1998.

[16] Art. 29 of the Constitution of the Republic of Albania reads:

1. *No one may be accused or declared guilty of a criminal offense that was not provided for by law at the time of its commission, with the exception of offenses, which at the time of their commission constituted war crimes or crimes against humanity according to international law.*
2. *No punishment may be given that is more severe than that which was contemplated by law at the time of commission of the criminal offense.*
3. *A favourable criminal law has retroactive effect.*

[17] The law foresees that these sanctions are: fine, imprisonment up to 30 days (always decided by the *administrative penalties, depending on the forecast of the special law*."

[18] Art. 17 of the Constitution reads:

1. *Limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it.*

[19] Article 4 of Law on administrative misdemeanours foresees that administrative misdemeanours are foreseen by law, thus calling for the principle of legality to be applied.

proportionally reflected in the legal measure adopted as well, otherwise (as already referred to above) the principle of the due process is infringed.

Therefore, the concern referred to in the recommendation needs a demarcation line adopted in legislation for actions/omissions so that it be qualified as a crime or administrative violation: for example in the case of smuggling adoption of a limit quantitative value of the offense committed (see above). Similarly, *lexspecialis*needs to adopt the demarcation line and it does not include the sentence *'in cases they do not constitute a criminal offense, the offense would constitute an administrative offense*."

A quick administrative process

The process of finding and providing the punishment should be fast.

Such a principle is in compliance with the due process of law principle foreseen in Art. 6 of the ECHR. This principle, though not explicitly referred to as such, is reflected in the Albanian legislation: within 30 days after notice but no later than six months after the violation has been performed the process must start.[20] Such terms are clear. Also, with regard to the timeline for taking the decision, Article 17 of law on administrative procedures foresees that the term for taking the decision is determined as per *lexspecialis*. Indeed, as per the Albanian Administrative Procedure Law, if the *lexspecialis* does not have a specific term to finalize the decision, than a general timeline of 3 months from the beginning of the procedure, as foreseen in the Albanian Code of Administrative Procedure,[21] applies. Such references help administrative bodies to better serve the public interest (the investigation needs its time and the chances to be correct and just are present), yet reflecting the principle of a fast administrative process. Seen from the economic perspective, such a term even though it may increase the costs of an administrative offense investigation, its outcome would potentially be more fair (the cost of an unfair process would be higher for the state budget: potentially such a process has greater chances to be appealed and in principle appeal bodies would repeal previous administrative decision), and the same would be true for the collection of (typically) financial sanctions.

Notwithstanding the above assessment, it would be a positive legal solution that the principle of a quick process be expressly included in legislation. Such a suggestion derives from the perspective of not taking the administrative process to the maximum legal time-limit, but be finalized as soon as possible before the termination of the maximum term set by law.[22]

The obligation to issue a decision

In each case an administrative misdemeanour process has begun, the administrative body is obliged to issue a relevant decision.

This obligation, envisaged implicitly in several provisions of the current law must be explicitly foreseen in the legal provisions. Article 13 of the law on administrative misdemeanours foresees for several types of decision the organ needs to take at the termination of investigative phase of administrative procedure. Nevertheless, if foreseen specifically that public administration organs are obliged to take a decision, disregarding its type, once an administrative misdemeanours investigative procedure stars, would bring the Albanian legislation more in compliance with the CoE Recommendation. In this analysis, it needs to be included the regulation of the Albanian Administrative Procedure Code, which in its Art. 15 provides for the principle of taking the administrative decisions, which foresees the obligation of the administrative bodies to take a decision in administrative processes.

A due process

The principle requires that while respecting every element of a due administrative process, specifically in administrative misdemeanour decision-making processes the following be respected:

- *informing the subjects for beginning the process*
- *the right to be heard*
- *sufficient time to prepare*
- *the obligation to necessarily issue a reasoned decision / punishment given*

All these requirements are generally reflected in the Albanian administrative law, but despite this, it would be more effective to include these elements in the relevant law on administrative misdemeanours. Especially giving sufficient time for defence to entities accused of committing an administrative violation is an element of the principle that needs to be expressly foreseen in the law: it gives to such entities a higher procedural security to defend their interests.

Burden of proof

According to the Council of Europe Recommendation, the burden of proof in such processes must lie with the administrative body. This is a regulation that necessarily must be reflected in the law. In the Albanian law it is foreseen in Art. 26 that the burden of proof in appeals of such processes

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[20] Art. 17 of Law on administrative misdemeanors.

[21] Art. 49 of the Albanian Administrative Procedure Code.

[22] Such a principle is foreseen in the Association Stabilization Agreement for specific cases. *See*: http://mie.gov.al/skedaret/1253174290-SAA_Final_EN.pdf.

Art. 32 - *Verification of proofs of origin* – reads:

> *...5. The customs authorities requesting the verification shall be informed of the results of this verification as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in the Community or Albania and fulfill the other requirements of this Protocol.*

Such a legal provision can be a good reference to adopt the principle in other administrative process as well.

lies with the administrative body, complying with the recommendation common in European countries, but a similar regulation is not explicitly foreseen with regard to the initial decision of an administrative misdemeanours. Furthermore legal difficulties exist to adopt it, considering that in administrative processes in Albania, Art. 82 APC,[23] the burden of proof belongs to the subjects, disregarding the obligation of the administrative body to be active during the process.

Control/revision of administrative misdemeanours decisions

According to this principle, any decision must be revisable.This principle is foreseen in Art./s 42 and 44 of the Constitution of the Republic of Albania, as well as in Art. 18 of the APC.

If reference to law on administrative misdemeanours, it can be said that certain legal problems might appear. This law provides for the right to appeal, even though it expressly regulates that if an administrative appeal is foreseen but not exhausted, the judicial appeal may not apply.[24] Art. 42-43 of the Constitution provides for the possibility of appeal in at least two degrees of the judiciary. In relation to issue, the Supreme Court in several decisions has addressed the appeal procedure to be followed in administrative misdemeanour cases. Thus, in Decision no. 198, dt. 25.06.2009, the Civil College of the Supreme Court interprets that:

> *. . . Interested party may request the court to reject an administrative act only if the law provides a directly right of appeal in court or in cases where the law does not provide a specific procedure and modalities for the administrative jurisdiction as a required complaint to be exhausted before filing a complaint against an administrative act.*[25]

Further, the Supreme Court in another decision of its own, a unifying one, argues that:[26]

> *Despite that the violation may be for example of an administrative nature, if the penalty provided by law or by a court decision is imprisonment, exemption from the right of appeal to a higher court, as provided by paragraph 2 of article 2 of Protocol 7 of the Convention as well (Gurepka against Ukraine, 2005), cannot be applicable.*

Further, in the same decision it is argued that in cases of administrative violations:

> *. . . the entity has the right to file a suit in the court of first instance against any type of administrative penalty issued by an administrative body, disregarding the fact if this right is expressly provided by the specific law or not.*
> *The decision given by the court of first instance that has considered the administrative offenses is final and not appealable, except when a special law expressly provides for the right to follow the usual route of appeal against the court decision in a higher court.*
>
> *Meanwhile in cases where an administrative penalty decision is given by the court of first instance, the party litigant is entitled to exercise the appeal against this decision to a higher court."*[27]

The law has addressed such uncertainties in current law, providing in several articles for the appeal against decisions, being thus in accordance with general principles of the rule of law and general rules of the Albanian Administrative Procedure Code.

CONSIDERATIONS FROM AN ECONOMIC PERSPECTIVE

Using administrative offense or criminal ones as preventive, punishment and rehabilitation measures should also take into account economic aspects or aspects related to the free market in the country. Their application also means stunt or boost of the economy, and at the same time protection of economic nature values in the country.[28] Also, any non/action does have an economic cost that can be directly or indirectly connected with the economic activity in the country. Several studies on the use of criminal, civil or administrative measures analyze this aspect.[29] Thus, in one of these studies it is indicated that the Singapore government's efforts to liberalize the market in order to attract foreign players and investors can be undermined from excessive criminalization of misconduct. This is considered as such due to the fact that international businesses, if not only 'mala in se' behaviors but even only wrong ones are criminalized, can withdraw their investments:

> *. . . International players and investors would be deterred by the possible stigma of "criminal convictions" merely for a technical breach of the law especially where these convictions have to be disclosed to other foreign regulatory authorities and stock exchanges.*[30]

The same study also analysis that a less criminalized policy for certain infringements, i.e. increase of usage of administrative

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[23] Art. 82 reads:

> *Burden of Proof for the facts pretended lies with the interested parties, disregarding the obligation of the administration foreseen in paragraph 1 of Art. 81.*
> *Interested parties can attach documents or opinions or ask from the administration to receive measures to secure evidences necessary to take final decision.*

[24] Refer to Art. 15 of law on administrative misdemeanors.

[25] See: http://www.gjykataelarte.gov.al

[26] Decision no. 11, dated 02.10.2009, See http://www.gjykataelarte.gov.al/V_U2009.htm

[27] *Ibid.*

[28] A&L Goodbody Ltd. and ERM Environmental Consulting, *A Study on the use of Administrative Sanctions for Environmental Offences in other comparable countries and assessment of their possible use in Ireland*, Prepared for the Office of Environmental Enforcement, EPA, Ireland, July 2009.

[29] *See for example*: Attorney General's Chamber, *Administrative Civil Sanctions*, LRRD No.7, May 2002.

[30] *Ibid*., pg. 5.

sanctions '. . . *may aid the Government's promotion of entrepreneurship and a more vibrant economy*'.[31] The study also refers to the facts that in the criminal law, accusations and penalties extend jurisdictionally beyond territory of a country.[32] Thus, investors would be alarmed from the mere fact of submitting to extra-territorial jurisdictions. The issue might appear mitigated if the law foresees non-criminal administrative or civil sanctions instead of those criminal to deal with cross-border transactions. Thus the study, suggests a wider use of administrative penalties, although it does not suggest the full removal of the criminal penalties. It suggests a well-thought combined use of all such sanctions, in order for the development of the economy be supported and not obstructed.

Similarly, another study shows that in the U.S. after the second half of the 20th century use of civil sanctions against criminal ones has increased. Statistics also speak for a tendency of agencies not to send cases to trial, but to apply administrative sanctions themselves. Statistics indicate that in the year 1979, 27 federal departments and independent agencies have implemented 348 statutory penalties of a civil character.[33] The study considers such a regime more effective: its application in the study is proposed to be applied broadly in reference to other dangerous non/actions related to the market, such as false trading, manipulation of exchange of goods, the use of information on prohibited transactions in insurance and futures contracts, etc.[34] A criminalized regime for similar such non/action has resulted inappropriate for irregular market behaviours and a situation that would make investments be prejudged negatively.[35]Thus, seen from the perspective of actors operating in the market field, there exists a direct relation between the interests of stakeholders operating in the market and a just de/criminalization policy and adoption of just administrative/civil/criminal punishments for non/actions related to economic activities.

Also, I would say that the mentioned policy is of interest also seen from the perspective of economic benefit of state itself. Criminalization means the use of punitive measures such as fines or imprisonment. The latter, not only would be ineffective for the market itself and economic entrepreneurship country (see above studies), but at the same time means direct state budgetary costs. Statistics of a survey on smuggling in customs for the years 2002-2006 in our country[36] show that the tendency of the judiciary reflected a similar perception indicated in the above-mentioned studies: punishment with a fine has been applied more. For example, in trials related to Art. 172 - Smuggling of goods for which an excise is paid – a criminal act that is condemned with the highest punishment among other smuggling criminal figures, for the years 2002-2006, the penalty applied was a fine and only in 16% of cases persons were found guilty and the less imprisonment conviction was applied in these cases as well. The situation is similar even for other criminal acts related to smuggling. [37]Penalties by a fine, according to Art. 34 of the Criminal Code of the Republic of Albania, vary in accordance with the type of offense: for crimes from 100 thousand to 10 million leks (Albanian currency) and criminal offenses from 50 thousand to 5 million leks.[38] Meanwhile, the Customs Code relates the application of the fine to the unpaid amount for goods subject to smuggling.[39] First, in the latter case, the punishment seems to be proportional with the violation, and second means faster collection of incomes to the state budget, and thirdly more revenue for the state budget itself: thus, administrative punishment might appear to be sufficient as a punishment for the majority of law violators in a field related to the economy in the country.

Despite such considerations, a proper study of economic character is required in order of various aspects of the analysis to be exhausted, a mere economic analysis by specialists of this field. Also, this discussion should not be understood as a suggestion not to criminalize any non/action to perform in the economic field. As ACIT has recommended in an analysis of smuggling for our country, criminalization is needed to better fight the phenomenon of corruption, but in any case, actions that in the current Criminal Code included in the category of smuggling, could be reclassified as administrative violations.[40]

Conclusions

An administrative violation is regulated by a special law in our country. Although it can be said that the legal regulation generally reflects the similarities and differences of the administrative misdemeanour from the criminal act, there is room for changes so that such similarities and differences be better reflected. In fact, the current legal dispositions on administrative and criminal penalties occasionally appear problematic. Since preliminary studies and tests have been very few in our country, the legal rationale provided in this article does not pretend to have necessarily exhausted all viewpointand therefore not put forward the best legal solution.

[31]Ibid, pg. 6.
[32]Ibid, pg. 7.
[33]Kenneth Mann, "*Punitive Civil Sanctions: The MiddlegroundBetween Criminal and Civil Law*" 101 Yale L.J. 1795 at 1844.
[34]*Ibid*.
[35] Attorney General's Chamber, *Administrative Civil Sanctions*, LRRD No..7, May 2002, pg. 5.
[36] For a more detailed analysis read: ÇaniG., *Vepratpenalenëfushën e Kontrabandës: vështrim i legjislacionitdoganordhe penal shqiptar (Problemeteorikedhepraktike*) [*Offenses in the area of Smuggling: overview of the customs laws and penal (theoretical and practical problems)*], Faculty of Law, University of Tirana, Department of Criminal Law, Masters Program, 2008, Library of the Faculty of Law, University of Tirana, Albania.
[37]*Ibid*.
[38]Law no. 7895, dated 27.01.1995 On the Criminal Code of the Republic of Albania.
[39] Art. 281 of the Custom Code of the Republic of Albania.
[40]QendraShqiptarepërTregtinëNdërkombëtare (ACIT), "Lehtësimi i ProceduraveDoganoredhe i MarrëdhënievetëBiznesit me AdministratënDoganore [*Improving custom procedures and the relations of business with the custom administration*]", November 2004, pg.30, point 73.

There are misunderstands in the meaning of a criminal act and an administrative offense and there is no demarcation line in-between, such as the smuggling case. Therefore, in such cases, abuse of law is naturally present. Also, one can say that even though the paper sought to shed light on the effectiveness of using or not a criminalized policy in the field of trade, proper studies are needed to analyze such effectiveness in specific areas. This would be a valid recommendation for consideration any time legislation is drafted on a special administrative area. Also, the legislator must reflect the European recommendations, whether those of a general nature, such as those of the Council of Europe, as well specific guidelines or laws of the EU in special administrative areas. The latter are a direct necessity for the integration into the EU, while the regional European recommendations must be considered as they reflect the best European practices in the field of law.

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