

The Place of Financial Administrative Sanctions in the System of Public Liability*

Tetiana Kolomoiets¹, Serhii Kushnir², Daria Yevtushenko³,

Ivan Shumeiko⁴, Svitlana Frankovska⁵

¹⁻⁵ Zaporizhzhia National University, Ukraine



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Abstract.

The article is devoted to clarifying the place of financial administrative sanctions among other sanctions in public law, which constitute a single 'right of responsibility'. Financial administrative sanctions are a widespread phenomenon, as they allow the states to respond promptly to violations of public order, while increasing budget revenues. The purpose of the article is to find out whether there is a single 'right of liability' and what exactly it includes; to establish how certain types of public law liability are distinguished from each other, in particular, to characterise the difference between financial administrative sanctions and criminal law sanctions; and to find out the extent to which criminal law guarantees are extended to the system of financial administrative sanctions. The article provides a rationale for the existence of a single 'right of liability', which is divided into two branches based on the criterion of the subject of liability - criminal liability and administrative sanctions. The authors compare financial administrative sanctions and criminal sanctions by the subject and substantive criteria. The authors substantiate the view that criminal law guarantees should be applied when imposing financial administrative sanctions on a person. The study is based on the current state of legal doctrine, making the article theoretical in nature. The results of the study make it possible to determine the true legal nature of financial administrative sanctions. They can be used to develop concepts of legislative acts and in law enforcement.

Keywords: administrative sanction, criminal law guarantees, financial responsibility, gravity of an offence, procedure for applying a sanction, public law responsibility, 'right of responsibility', severity of a sanction.

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¹ **Tetiana Kolomoiets**, Doctor of Law, Professor, Honored Lawyer of Ukraine, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Zaporizhzhia National University, Zaporizhzhia, Ukraine, ORCID: 0000-0003-1101-8073. Email: t_deputy@ukr.net

² **Serhii Kushnir**, Doctor of Law, Professor, Vice-Rector for Academic and Production Work and Logistics, Zaporizhzhia National University, Zaporizhzhia, Ukraine. ORCID: 0000-0002-3449-1261. Email: prorektor.znu@gmail.com

³ **Daria Yevtushenko**, Doctor of Philosophy in Law, Senior Lecturer of the Department of Constitutional and Administrative Law, Zaporizhzhia National University, Zaporizhzhia, Ukraine. ORCID: 0000-0001-5334-8498. Email: darya_ezh@ukr.net

⁴ **Ivan Shumeiko**, Ph.D. in Law, Doctoral student of the Department of Constitutional and Administrative Law, Zaporizhzhia National University, Zaporizhzhia, Ukraine. ORCID: 0009-0001-5510-841X. Email: ivanshummm@gmail.com

⁵ **Svitlana Frankovska**, Doctor of Philosophy in Law, Lecturer of the Department of Constitutional and Administrative Law, Zaporizhzhia National University, Zaporizhzhia, Ukraine. ORCID: 0009-0001-4821-4169. Email: frankovskaasvetlana@gmail.com

**Corresponding author: t_deputy@ukr.net

A. INTRODUCTION

The legal doctrine increasingly discusses the existence of a single ‘jus puniendi’ (‘law of liability’), which encompasses all legal liability imposed by a state on individuals under its jurisdiction for non-compliance with public law. However, ‘jus puniendi’ is a doctrinal term and is practically not used in state legislation. On the contrary, a stable trend in lawmaking is the division of public law liability into separate types. This justifies the imposition of several sanctions for one offence, which formally belong to different kinds of legal liability. In addition, this division allows states to argue that certain guarantees inherent in criminal proceedings are not applicable when applying administrative sanctions.

The imposition of financial administrative sanctions is a stable trend in market economies. The monetary nature of the sanction allows it to be extended to legal entities. It motivates business entities to comply with the rules established by the state, for example, in the areas of taxation, protection of economic competition, labour protection, social insurance, and consumer protection, among others. The amount of such sanctions sometimes exceeds the number of criminal fines. A paradox arises when an administrative sanction may be more severe than a criminal sanction.

International law does not and cannot establish exhaustive lists of acts that should be considered criminal offences. Therefore, it is not uncommon for the same act to be criminalised in one state, while in another state it entails only an administrative sanction. The identity of the very nature of the act inevitably raises the question of the criterion by which criminal law and administrative law sanctions are distinguished. It suggests the existence of such a phenomenon as ‘the right of responsibility’. Moreover, if such a system exists, it is necessary to determine the place of financial administrative sanctions within it, draw a line between these sanctions and other liability measures, and identify the criteria used by states, court practice, and legal doctrine for such a distinction. The result of such a study will be necessary for establishing the true legal nature of financial administrative sanctions as an element of the system of public liability.

Thus, the purpose of the study is to find out whether there is a single ‘right of liability’ and what exactly it includes; to establish how certain types of public law liability are distinguished from each other, in particular, to characterise the difference between financial administrative sanctions and criminal law sanctions; and to find out the extent to which criminal law guarantees are extended to the system of financial administrative sanctions.

B. METHODS

The research is based on both theoretical and practical conclusions drawn from the scientific works of foreign and Ukrainian scholars. It focuses on methodological approaches to establishing international legal, administrative, and financial aspects of public liability, particularly regarding the role of financial administrative sanctions. The study employs the epistemological method of scientific inquiry, enabling an understanding of the essence of financial administrative sanctions within the broader system of public liability. This methodological approach allows the author to conceptualize the nature, significance, and function of financial administrative sanctions as a distinct yet integral part of public liability.

To ensure the ontological integrity of scientific knowledge regarding the improvement of the public liability system in the context of financial administrative measures, the author employs methods of classification, systematization, and structural-logical organization. These methods facilitate the identification of the key features, principles, and interrelations that define the place of financial administrative sanctions within the legal framework governing public liability.

The combination of these approaches contributes to a comprehensive analysis, enabling the formulation of substantiated proposals to enhance the coherence, effectiveness, and proportionality of financial administrative sanctions in contemporary legal systems.

C. RESULTS AND DISCUSSION

1. On the existence of a single 'right of liability'

The idea of the existence of a single 'jus puniendi' ('law of liability'), although relatively new, is actively discussed by scholars. In particular, T.M. Guskow and L.P.S. Oliveira argue that criminal and administrative liability are united by the fact that these sanctions are punitive in nature. They are backed by the general powers of the state, which bring to justice citizens who violate the legal order established in the interests of society. According to scholars, the ontological identity between administrative and criminal offences confirms the idea of the existence of a single 'jus puniendi' ([Guskow, Oliveira, 2024](#)). At the same time, the jus puniendi system cannot include civil liability, as it arises from violations of private law. Relations involving civil liability occur between equal subjects and are ensured by state coercion only when a court resolves a private law dispute. Disciplinary liability cannot be included in this system, as

it is imposed for violations of labour regulations, public service rules, or rules of independent professional activity. Disciplinary liability is internal to an enterprise, body, or professional community, and therefore is not a liability of an individual to society represented by the state. Thus, the discussion about the existence of 'jus puniendi' can only take place in relation to public law types of legal liability.

The conclusion about the ontological identity of criminal law and administrative tort rules is supported by the latest case law of the European Court of Human Rights, which applies an autonomous interpretation of the concept of 'criminal charge'. The European Court of Human Rights interprets this term through the prism of the substantive approach, not through the prism of national legislation. These legal positions also influence the legal doctrine in those countries that aim to build a state governed by the rule of law. Thus, in the article by D.C. Dănișor and M.-C. Dănișor states that in modern liberal democracies, all 'repressive law' is considered 'criminal'. Nevertheless, the authors note that states seek to avoid the control that comes from modern constitutionalism and the guarantees offered by international human rights treaties by transferring 'repressive law' to the plane of administrative law ([Dănișor, Dănișor, 2021](#)). Thus, at the present stage of development in most states, public law liability is divided into two main branches according to the criterion of the body that brings to justice. The first branch is criminal liability, which is the exclusive prerogative of the court. The second branch is public legal liability, imposed by authorities outside the judiciary (executive authorities, local self-government bodies, and subjects of delegated powers). The commonly accepted doctrinal name for this branch of public law legal liability is 'administrative sanctions'. In national legislative systems, this branch may form several independent types of legal liability. For example, there may be a division into administrative liability, a 'logical extension' of criminal liability for less serious offences, and financial liability, imposed on business entities for violations of business activity rules. Alternatively, vice versa - in certain countries, administrative sanctions may not have their own 'national' name and may be unsystematic.

E.C. Quinzacara also supports the thesis of a single 'right of responsibility'. Identifying a tendency to increase the sanctioning powers of public administration entities, the scholar states that no content or object is inherently exclusive to a crime or an administrative tort alone. Both criminal and administrative sanctions are manifestations of the state's power to suppress specific behaviour subject to constitutional restrictions. In both cases, the first step is for the state to adopt a law defining the offence and the penalty. Only the

next step is to determine whether the punishment will be applied by the judiciary or the executive ([Quinzacara, 2012](#)). Given the unity of purpose of criminal and administrative sanctions, the legislator should exclude cases where the same act simultaneously entails sanctions of both types. As a rule, administrative sanctions are imposed for less serious offences than criminal ones, which explains the possibility of an out-of-court, simplified procedure for imposing these sanctions. Only the most dangerous acts for society are subject to criminalisation, but this does not mean that there are no other acts that cause harm to society. For such acts, there is a system of administrative sanctions, which should be considered as adjacent to the system of criminal sanctions; these two systems form a broader system of public law liability, or 'jus puniendi'.

Some scholars, while not asserting the existence of a single 'right of liability', nevertheless cite standard features of different types of legal liability. Thus, comparing criminal and administrative liability, N.V. Hryshyna points out that they are to some extent similar to each other in terms of the actual basis of liability - the presence of an administrative violation or a crime in the actions of a person, the main features of these elements, the main general features of unlawful acts of both types (public danger, unlawfulness, punishability and guilt) ([Hryshyna, 2014](#)). Thus, both criminal offences and those that entail the application of administrative sanctions are characterised by the concept of 'corpus delicti' and the presence of its elements - object, objective side, subject, and subjective side. The distinction between these types of offences is precisely in the characterisation of these elements (for example, the subjects of a crime are usually individuals, while the subjects of an offence for which an administrative sanction is imposed may be both individuals and legal entities). At the same time, there are no universal standards for criminalisation of offences, especially in the case of 'borderline cases' - acts that are considered criminal offences in some states, while in others they entail only administrative sanctions ([Leheza et al., 2024](#)).

There is no unanimity in legal doctrine on the question of whether there is a single 'jus puniendi'. As an example, let us cite the point of view of C.R. Calderón, J.C.F. Bórquez, and P.M. Ortiz, who point out that the sanctioning powers of public administration are a manifestation of its inherent regulatory activity, which is broader than just police activity. The authors note that the traditional thesis of a single jus puniendi has no basis in fact, since sanctions are not the only response of the system to private offences; sanctions are only part of a wide range of practical measures to ensure compliance with administrative rules ([Calderón, Bórquez, Ortiz, 2021](#)). The validity of this statement depends

on the perspective from which the sanctioning powers are viewed. If the subject of the study is purely the activity of public administration, then the imposition of sanctions is indeed only one element of such activity. However, suppose the subject of the study is legal liability. In that case, the system of administrative sanctions cannot be considered 'separately' from criminal liability, given the single purpose of these measures and their general nature. Therefore, it should be concluded that there is indeed a single system of 'liability law' in public law, and administrative sanctions (including financial sanctions) are an integral element of this system.

2. Financial administrative sanctions and criminal sanctions: distinction between grounds for application

Given the prevalence of the view that there is a single 'right of liability', the question arises as to the criteria for distinguishing between the established types of legal liability. For example, most administrative sanctions are financial in nature, but criminal law also includes fines as a form of punishment. Financial administrative sanctions are particularly widespread in the collection of budget revenues (in particular, taxation). K. Horubski points out that liability for violation of public finance discipline is a specific type of administrative liability; this specificity lies in the adaptation of the legal structure of this liability to the requirements associated with the trend of introducing sanctions modelled on criminal ones into administrative law. The researcher calls the form and intensity of sanctions the primary criterion for distinguishing between administrative law and criminal law provisions. Suppose the 'critical mass' of the intensity of the sanction is exceeded. In that case, the actual existence of criminal liability, "dressed" by the legislator only in the 'clothes' of administrative liability, should be stated ([Horubski, 2022](#)). Thus, one of the criteria for distinguishing financial administrative sanctions from criminal sanctions is that the former should have a lower level of 'intensity', for example, they should not entail a criminal record. Additional penalties cannot accompany them. If the amount of financial administrative sanctions is commensurate with (or even higher than) the amount of fines established in criminal law, then, according to K. Horubski, we should actually be talking about a criminal sanction, which, however, is applied not by a court, but by a public administration entity. However, the correctness of this thesis depends on the meaning of the concepts of 'criminal sanction' and 'administrative sanction'. Suppose they are distinguished solely by the criterion of the subject (and such a distinction is the most predictable and accurate). In that case, an administrative sanction that exceeds a certain level of severity does not become a 'criminal

sanction', but it may be possible to extend criminal law guarantees to the procedure for applying such administrative sanctions.

In addition to the criterion of the severity of the sanction, the criterion of the gravity of the offence may also be used for distinction. In support of this thesis, we cite an article by L.C. Vega, which states that the criminal law doctrine of the Republic of Chile considers the difference between an administrative offence and a criminal offence to be only quantitative. In fact, the only distinction between them is the degree of severity. An administrative offence is nothing more than an offence with a reduced social and ethical significance, which, for this reason, should be subject to only light sanctions, the imposition of which does not require such strict guarantees as those accompanying criminal punishment. Therefore, the scientist, referring to the decision of the Constitutional Court of the Republic of Chile, points out that both administrative sanctions and punishment belong to the same sanctioning activity of the state; at the same time, there can be no sanctioning powers without complete judicial control. ([Vega, 2020](#))

At the same time, this statement needs to be supplemented. In cases where a legal entity is not recognised as a subject of a criminal offence, it is possible to impose a financial administrative sanction on it in parallel with bringing its officials to criminal liability. An example is tax evasion, which in many countries is a crime, but also entails financial administrative sanctions for the taxpayer. Suppose an individual is the subject of an offence for which a financial administrative sanction is provided. In that case, an administrative sanction can only be considered as a less severe alternative to a criminal sanction. ([Leheza et al., 2023](#))

While studying the legislation of the Republic of Poland, M. Lysko notes the tendency to 'criminalise' the law of misdemeanours, blurring the distinction between crimes and misdemeanours due to their generic identity. Further strengthening of the links between misdemeanour law and criminal law, according to M. Lysko, was the result of the political reform of 1990, which included all the practice of administrative commissions in the sphere of judicial control, and later, in 2001, all misdemeanour cases were transferred to the exclusive jurisdiction of courts. In turn, the procedure for reviewing misdemeanour cases by courts was formed by analogy with criminal proceedings ([Lysko, 2020](#)). Thus, the division of sanctions into criminal and administrative sanctions is not consistent across all states based on the criterion of the entity that applies such sanctions. As we can see, in the Republic of Poland, there is a phenomenon of administrative sanctions being applied by

courts. In this case, there is a discrepancy between the doctrinal concept of “administrative sanction” and its legal definition. Although, of course, the legislative classification of misdemeanors under the jurisdiction of courts as administrative offenses affects the legal doctrine of those states where this phenomenon occurs. ([Leheza et al., 2024](#))

Continuing the statement about the impossibility of establishing a uniform standard for distinguishing between misdemeanors that entail criminal and financial administrative sanctions for all states, we will cite the point of view of V. Tuliakov, who draws attention to the phenomenon of blurring the conceptual boundaries of criminal law. Listing such types of legal liability as administrative, financial-administrative, etc., the scholar notes that, despite being called differently, these types of liability essentially comply with the principles of determining criminal liability established by the ECHR practice on the interpretation of the provisions of paragraph 2 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ([Mizhnarodni standarty, 2022, 81](#)). Thus, there is a widespread view in legal scholarship that criminal law guarantees should, to some extent, apply to the entire system of public liability measures, regardless of the legal nature of the sanction. It is about the “criminalization” of public liability, but not in the sense that the list of crimes is expanded, but in the sense that the guarantees inherent in criminal law are extended to other misdemeanors, including those that entail the application of financial administrative sanctions. ([Kulinich et al., 2023](#))

The trend of “criminalization” of misdemeanor law is usually combined with another trend - the expansion of the scope of administrative sanctions. Moreover, financial administrative sanctions are a means of filling the state budget. E. Śliwiński rightly notes that the legislator, when regulating a particular area of social relations, often chooses administrative monetary sanctions instead of other instruments of “repressive law”, such as the creation of a crime or a minor offense. The researcher concludes that the administrativeization of punishment is primarily driven by the desire to ensure an effective system of penalties, which actually involves departing from the guarantees inherent in criminal law. At the same time, the problem is not the “administrative nature” of the penalty itself, but whether the penalty is justified, fits into the system of law, and complies with human rights ([Śliwiński, 2021](#)). The key difference in the mechanisms of imposing a financial administrative sanction is that there is usually no judicial control during its application stage, allowing for the simplification of the sanctioning procedure. In addition, if the violation is recognized and the violator agrees to the imposed sanction, there is no judicial control, and the sanction is enforceable. It is this

efficiency, along with the ability to effectively replenish budget revenues, that encourages states to prefer financial administrative sanctions to criminal sanctions, especially in the field of economic activity. ([Leheza et al., 2023](#))

Developing the thesis on the “administrativeization” of public law sanctions as a way to circumvent criminal law guarantees, F.R.G. Pullés expresses a similar point of view. The scholar argues that the introduction of the right of public administration to impose sanctions has, in his opinion, a teleological rather than an ontological basis. Since this is not due to the nature of the offense, but rather to avoid the restrictions imposed by the guarantees of criminal law. Paradoxically, according to the researcher, there are acts for which administrative sanctions are provided that do not have a statute of limitations, unlike criminal offenses, which do have such a statute of limitations ([Pullés, 2020](#)). Thus, the driving force behind the legislator's efforts to expand the scope of financial administrative sanctions is the relative ease of imposing them compared to criminal sanctions. At the same time, the legislator's priority in a democratic state should be to ensure human rights and protect the legitimate interests of business entities. Therefore, the legislator should rely on objective factors (primarily the gravity of the offense and the amount of the sanction to be imposed for its commission) to distinguish the grounds for establishing a particular type of sanction. ([Leheza et al., 2021](#))

3. Criminal law guarantees in the system of financial administrative sanctions

Despite the debate on the boundaries between criminal and administrative sanctions, scholars are virtually unanimous in their opinion that human rights guarantees must be observed when applying administrative sanctions. However, the question arises as to the nature of such guarantees. In particular, whether such guarantees should be similar to those used in criminal proceedings. ([Zadyraka et al., 2023](#))

It is worth supporting the view that states impose financial administrative sanctions in order to make them easier to apply than criminal sanctions. This view is supported by numerous cases of criminal and financial liability for the same offense. For example, J.E. Veas notes that it is now increasingly common for the same fact to constitute two or more violations, which are investigated by different government authorities, making it possible to impose sanctions effectively. For example, in areas characterized by a high level of complexity, such as tax law, securities markets, or free competition, the investigation of illegal actions and the imposition of sanctions may require

special skills. The scientist argues that if the legislator were prohibited from establishing both types of liability for the same act, it would be forced to choose between a more deterrent sanction, but with a lower probability of successful application (criminal sanction), and a less deterrent sanction, but with a higher probability of successful application (administrative sanction) ([Veas, 2023](#)). At the same time, applying two different types of sanctions for the same act is possible only if the subjects are different (for example, a financial administrative sanction is applied to a legal entity, and a criminal sanction is applied to its director). However, even in the case of such a difference, the question arises regarding the evidentiary value of imposing a financial administrative sanction to prove the commission of a criminal offense. ([Leheza et al., 2020](#))

The need for guarantees of observance of individual rights during the application of financial administrative sanctions is discussed in the article by J.C.C. Rocha, who notes that under the current tax regulation, when a taxpayer faces the application of penalties, he will only have the guarantees of the audit procedure, and not “enhanced” guarantees. According to the scholar, this seriously affects the taxpayer's right to defense. The scholar proposes that tax sanctions should be applied through a special “penalty procedure” in compliance with constitutional principles ([Rocha, 2022](#)). Having studied the guarantees of protection of the rights of business entities when imposing administrative and economic sanctions on them, M. Voinarivskyi determined that such sanctions should be applied in compliance with the principles of legality, inadmissibility of consideration of the case by the person who certified the fact of the offense, and proportionality of the application of sanctions ([Voinarivskyi, 2014, p. 12](#)). In addition to the guarantees themselves, effective control over their observance must also be established. First of all, it means mandatory subsequent judicial control at the request of the person to whom the sanction was applied. ([Halaburda et al., 2021](#))

Financial administrative sanctions are applied not only to individuals, but also to legal entities, which, as a rule, are not subjects of criminal offenses. In the article cited above, F.R.G. Pullés argues that the postulate on the extension of criminal law guarantees to the field of administrative sanctions, as outlined in the decision of the Inter-American Court of Human Rights, should be extended to legal entities ([Pullés, 2020](#)). In some countries, legal entities may be subject to criminal sanctions. For example, in Brazil, the Environmental Protection Law establishes such sanctions against legal entities. Analyzing the regulatory legal acts of this country which establish administrative sanctions against legal entities, J.S. da S. Cristóvam and G.C. Ferreira point out that if an administrative sanction is more serious than a criminal sanction or at least

similar to a criminal sanction, the rights and guarantees of a person in administrative proceedings should be similar to those granted to legal entities in the criminal sphere ([Cristóvam, Ferreira, 2020](#)). Thus, the person to whom financial administrative sanctions are to be imposed must have the right to familiarize themselves with the case file, participate in hearings (if any), or state their position in writing. In turn, the official who imposes such sanctions must, first, not be the same as the official who conducted the audit; second, not be interested in the outcome of the case; third, assess both the audit materials and the explanations of the person subject to the audit, and fourth, refrain from a biased view that the person is guilty. The more straightforward the procedure for imposing a financial sanction, the greater the risks to the rights of the person being held accountable. ([Leheza et al., 2020](#))

The tendency towards “administrativeization” of public law sanctions in public policy (i.e., an increase in the share of administrative sanctions in the system of liability measures), on the one hand, and the tendency towards “criminalization” of administrative sanctions in legal doctrine and court practice (i.e., the extension of criminal law guarantees to administrative sanctions), on the other hand, are interdependent due to their diametric opposition. The more offenses the state refers to the jurisdiction of administrative bodies, the more legal positions of judicial bodies and legal scholars will be expressed that administrative sanctions are of a “criminal” nature. These trends are especially true for administrative sanctions of a financial nature. The state is interested in establishing numerous financial sanctions, as this will both deter potential violators and satisfy fiscal interests. Financial administrative sanctions are becoming more widespread in the business field, as the profit motive justifies the state's imposition of significant fines that would be disproportionate for individuals. ([Kobrusieva et al., 2021](#))

The number of violations for which the state imposes financial administrative sanctions also depends on the level of liberalization of the state's policy in the field of business. The more strictly the state regulates the rules of conducting business activities, the greater the scope of sanctions it applies to violators. At the same time, sanctions as a means of ensuring law and order should have a subsidiary role; business entities should be interested in voluntarily complying with the established rules. For example, a simple, transparent, and non-burdensome taxation system better encourages compliance and de-shadowing of the economy. In an environment where most business entities voluntarily fulfill their obligations to the state, there is no need to impose harsh financial administrative sanctions. At the same time, this issue goes beyond the “law of liability” and requires a separate study.

D. CONCLUSIONS

In this article, we share the view of scholars who argue for the existence of a single “right of liability”. At the same time, the existence of a single “right of liability” can only be discussed within the framework of public law types of legal liability. Neither disciplinary liability nor civil liability has such a mass of features that would make them part of the system of “liability law”. The law of liability is divided into two branches based on the criterion of the subject of liability: criminal liability and administrative sanctions. At the same time, the rules that establish the grounds for both liability are ontologically identical, can “flow” from one branch of law to another, and the classification of an act as a crime or administrative tort is the prerogative of each state. The generally accepted criterion for distinguishing between these acts is the level of public danger, which determines the level of severity of the sanction. The more severe the sanction, the greater the guarantees of protection the state must provide when applying it. An additional criterion for distinguishing between the two is the subject of the offense, since criminal sanctions are less often applied to legal entities than administrative sanctions.

Most administrative sanctions are financial in nature. A fine does not constitute a restriction of personal freedom and is therefore less severe than most criminal sanctions. Additionally, a fine is practically the only effective type of penalty that can be imposed on a legal entity. It should be noted that fines also exist in criminal law; however, a fine as a criminal sanction entails a criminal record and may be accompanied by additional penalties. The distinction between financial administrative sanctions and criminal sanctions can be made based on the subject or substantive criteria. The subjective criterion is obvious and is used for internal (national) classification - if a court applies the sanction, it is criminal (however, there are exceptions here as well, since in some countries there is a phenomenon of administrative sanctions being applied by courts - therefore, the doctrinal and regulatory definitions of the concept of “administrative sanction” may differ). The substantive criterion stems from the case law of the European Court of Human Rights. It involves taking into account the general nature, deterrent or punitive purpose, and severity of the sanction. This criterion is necessary for determining the guarantees that should be provided to the person to whom the sanction is applied. There is also a widespread view that criminal law guarantees should apply to the entire “right of responsibility”, i.e., to financial administrative sanctions; this view is quite reasonable. At the same time, states seek to expand the scope of financial administrative sanctions, given the simplified nature of the procedure and the possibility of increasing budget revenues. At the same time, in our opinion,

when determining whether an act is subject to a financial administrative sanction rather than a criminal sanction, a state governed by the rule of law should be guided by the gravity of the offense and the level of severity of the proposed sanction, rather than by considerations of simplifying the sanctioning procedure.

The administrative nature of a financial sanction does not exempt the state from the need to respect human rights and fundamental freedoms. The desire of states to circumvent criminal law guarantees by administrativeizing sanctions leads, on the one hand, to easier imposition of sanctions, but on the other hand, carries the risk of human rights violations. One should refrain from over-simplifying the procedure for imposing a financial administrative sanction. The person to whom such a sanction is imposed should be heard, and the public administration entity should be as impartial as possible. It should ensure the person's right to participate in the proceedings.

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