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The Procedural Framework of Administrative Liability in Slovakia: Proceedings, Remedies and Enforcement in Environmental Matters[1]

Abstract

This article examines the procedural architecture of administrative punishment in Slovakia with an emphasis on environmental protection cases. It maps the interplay between the Act on Infractions and the Administrative Procedure Code, describing how environmental offences are detected, clarified and adjudicated, including the distribution of competences among authorities and the procedural status of key actors. The analysis covers first-instance proceedings, summary forms of procedure, ordinary and extraordinary remedies and the enforcement of administrative decisions, including the role of administrative courts. Particular attention is paid to systemic weaknesses of the current framework, fragmentation and the absence of codification for 'mixed' administrative offences (notably those committed by legal entities and entrepreneurs), inconsistent protection standards (e.g. reformatio in peius), deficits in predictability and data availability and recurring difficulties with sanction proportionality. The article concludes with reform-oriented recommendations aimed at greater coherence, transparency and effectiveness of administrative liability enforcement.

Keywords: Administrative punishment, administrative offences, infractions, environmental protection, legal entities, enforcement of decisions, proportionality of sanctions

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1. Introduction

Defining the procedural regulation of administrative punishment is not possible without first establishing the essential foundations of its substantive law. Procedural regulation always concerns the adjudication of guilt and the imposition of a fair sanction upon the perpetrator of an administrative offence, i.e. primarily, the determination of the substantive legal status of the individual accused of committing such an offence. The role of procedural regulation is thus to establish whether the accused individual has in fact committed the administrative offence (and is therefore its perpetrator) or not.

In the territory of the Slovak Republic, administrative liability is adjudicated by public administration authorities, whose decisions are subject to review by independent and impartial courts through administrative lawsuits pursuant to Section 194 et seq. of the Administrative Judicial Procedure Code.[2]

Administrative liability forms part of the public law sector – specifically, administrative law. The subfield dealing with liability is referred to as administrative penal law.

Administrative penal law is not a separate branch of the Slovak legal system but constitutes an integral part of administrative law as a legal branch.[3] By contrast, recent Slovak scholarship argues that environmental law satisfies the standard criteria of an independent branch of law, which may also affect how administrative liability in environmental matters is conceptualised.[4] Administrative penal law is governed by both substantive norms (rights and obligations of public authorities and regulated entities) and procedural norms (the process by which liability is determined and enforced).

Currently, nearly all legal regulations within administrative law contain sanctioning provisions.

Administrative liability refers to liability for violations of administrative law norms enforced through administrative procedures by public authorities. From a substantive perspective, both the substantive and procedural aspects related to the conditions for the emergence of liability, the process of enforcement and even preventive measures must be addressed.

Administrative liability may be imposed on a natural person or legal entity only if their conduct (or omission) fulfils all elements of the factual basis of an administrative offence. In line with the principle of *nullum crimen sine lege*, liability in administrative law may only be imposed for acts explicitly designated by law as administrative offences.

2 | Act No. 162/2015 Coll. Administrative Judicial Procedure Code as amended.
3 | See Cepek et al. (eds.) 2018, 94–95.
4 | Michalovič & Maslen 2024.

The term "administrative offence" is a crucial concept in administrative penal law. Where no administrative offence exists, administrative liability cannot be imposed. The conduct in question may either be legally permissible or constitute a criminal offence. The legal system does not provide a statutory definition of an administrative offence. Although the Administrative Justice Procedure Code introduces the legislative shorthand 'administrative offence' to refer to infractions, disciplinary and other administrative offences,[5] it does not further define these categories.

The term 'administrative offence' encompasses all types of administrative violations found in the legal system. Typically, an administrative offence is defined as unlawful conduct, the elements of which are established by law and for which a public authority imposes a sanction prescribed by administrative law.[6]

Administrative offences are categorised as follows:

a) infractions,
b) other administrative offences committed by natural persons,
c) administrative offences committed by legal entities and self-employed natural persons,
d) disciplinary administrative offences,
e) procedural administrative offences.[7]

Legal practice deals mostly with infractions and administrative offences committed by a legal entity or self-employed natural persons. An infraction is a culpable act that violates or endangers societal interests and is explicitly designated as such in the Act on Infractions[8] or another statute, provided it does not constitute another administrative offence punishable under special legislation or a criminal offence.

An administrative offence committed by a legal entity or self-employed natural persons is unlawful conduct by a legal entity or a natural person authorised to perform certain activities, the elements of which are defined by law, and for which a public authority imposes a statutory sanction, provided it is not a criminal offence.

International sources of administrative penal law include both hard law and soft law instruments.[9] Hard law sources include treaties, while soft law sources include selected recommendations of the Council of Europe. Case law from the European Court of Human Rights also serves as a supplementary source of law.

5 | Art. 71(1) Administrative Justice Procedure Code.
6 | See, e.g. Machajová 2005, 149.
7 | E.g. Machajová 2005, 151; Vrabko et al. (eds.) 2012, 282; Košičiarová 2015, 217; Vrabko et al.(eds.) 2018, 208.
8 | Act No. 372/1990 Coll. on Infractions, as amended.
9 | Hard law sources are legally binding rules of conduct that are enforceable. They are usually enshrined in international treaties. Soft law sources, on the other hand, are not binding rules of conduct, but rather rules that are merely recommendations.

The primary national source of administrative penal law is the Constitution of the Slovak Republic. At the statutory level, the Act on Infractions and the Administrative Procedure Code[10] are considered foundational sources. The Act on Infractions is the only regulation in the field of administrative punishment that partially codifies infractions as administrative offences; no such codification exists for other types of administrative offences.

The significance of the Act on Infractions lies not only in its definition of the term 'infraction' but also in its codification of the general substantive regulation of infractions, applicable to all infractions, including those defined in special legislation. Additionally, the Act on Infractions regulates the procedural aspects of liability enforcement, codifying the procedure by which public authorities impose sanctions for committed infractions.

The Administrative Procedure Code, as a general procedural regulation for public administration, is also a significant source of law for administrative punishment. In relation to infractions, it is used only subsidiarily, meaning that its provisions apply only where the Act on Infractions does not provide a specific regulation (e.g. time limits, reasoning and instruction in decisions).

For administrative offences committed by legal entities and self-employed natural persons, other administrative offences committed by natural persons and procedural administrative offences, the Administrative Procedure Code serves as the primary procedural regulation, except for legal institutions specifically governed by a special legislation regulating the elements of these offences. Procedural aspects mostly include jurisdiction and time limits for liability enforcement.

Further sources of administrative penal law include all statutes that define the elements of administrative offences. For example, there are over 160 statutes governing administrative offences committed by legal entities.[11]

These special statutes primarily regulate the elements of administrative offences, types of sanctions (most commonly fines), factors to be considered by public authorities when determining the type and of a sanction and its range, time limits for enforcement and jurisdiction for administrative proceedings. Other legal institutions must be applied either under the Act on Infractions (for infractions) or, most commonly, under the Administrative Procedure Code.

A major drawback of the current legal framework is its lack of conceptual coherence and the absence of a unified regulation. In the field of environmental protection, Slovak practice-oriented scholarship similarly highlights fragmented regulation and unclear competences as key barriers to effective control and the derivation of liability.[12] We believe that a unified legal framework in the field of administrative penal law is both possible and desirable, at least in certain areas.

10 | Act No. 71/1976 Coll. Administrative Procedure Code, as amended.
11 | See the comprehensive list in Horvat 2017, 257–263.
12 | Michalovič & Jenčo 2022, 13.

A suitable solution would be a statute that regulates both the general substantive framework for administrative punishment and the procedural framework for liability enforcement.

Such a statute should unify infractions and other administrative offences committed by natural persons into a single category of administrative offence (infraction). It should also regulate administrative offences committed by legal entities and self-employed individuals. Due to the differing subject matter, this statute should not regulate disciplinary and procedural administrative offences. In this respect, administrative penal law, unlike administrative law as a branch of law, is codifiable.

2. Administrative offence proceedings

In this section of the article we will look into two questions in more detail: (1) How are administrative offences detected and investigated, and (2) which authorities are responsible for initiating proceedings?

The current legislation on administrative liability was not passed on a uniform basis. Therefore, even unlawful acts designated as administrative offences constitute a numerous group of acts of a diverse nature, and there is no law that would legislatively define the individual categories of administrative offences. Legal theory defines types of administrative offences on the basis of various dividing criteria. In the following, we will base our approach on the division of administrative offences into infractions, administrative disciplinary offences, administrative order offences, other administrative offences of natural persons and administrative offences of legal entities and natural persons engaged in business.[13] Since in the field of environmental protection the most frequently occurring administrative offences in the Slovak legal order are infractions and administrative offences of legal entities and natural persons engaged in business, in the following chapters special attention will be paid to these types of administrative offences.

2.1. How are administrative offences detected and investigated?

In the field of environmental protection, the special part of the Act on Infractions establishes the facts of offences in such a way that an offence is committed by a person who violates the generally binding legal regulations on environmental protection in a manner other than that resulting from the provisions of Art. 21 to 44 of the Act on Infractions,[14] i.e. in a manner other than in the cited facts of the

13 | Vrabko et al. (eds.) 2018, 208.
14 | Act No. 372/1990 Coll. on Infractions.

Act on Infractions, and worsens the environment. A fine of up to 99 EUR may be imposed for such an offence.

An offence procedure can be characterised as a special type of administrative procedure in which the competent administrative authority acts and decides on the guilt and the penalty for the offence committed. Misdemeanour proceedings are a special type of administrative proceedings; therefore, it is necessary to analyse their relationship to the general procedural rules of administrative proceedings, i.e. the Administrative Procedure Code.[15] The Act on Infractions is in a relationship of subsidiarity to the Administrative Procedure Code, i.e. the Act on Infractions is applied in priority to the application of the Administrative Procedure Code.[16]

In terms of time, the offence procedure can be divided as follows:

- Pre-procedural phase: clarification of offences (this phase does not take place only in the case of draft offences).
- First instance proceedings (mandatory).
- Remedy procedure (optional).
- Enforcement proceedings (optional).[17]

2.1.1. Clarification of offences

If an offence is suspected to have been committed, it is necessary to obtain and procure the necessary documents for the offence proceedings, various explanations, for example, from state authorities or citizens, and to carry out actions to establish the identity of persons and other actions in order to clarify the offence and to obtain documents for the decision of the administrative authority on the offence. We therefore refer to the institution of clarification of offences as the pre-procedural stage, in which the documents necessary for initiating proceedings on the offence and for issuing a decision are obtained.[18] It should be noted that the clarification of an offence is not an offence proceeding; the authorities clarifying the offence do not have the status of an administrative authority and cannot apply the Administrative Procedure Code in the clarification of offences, since the latter applies exclusively to administrative (and therefore also offence) proceedings.[19] The main objective of the clarification of offences is to establish the actual state of affairs.

The clarification of offences is initiated on the basis of a specific complaint, either on the basis of the administrative authorities' or bodies' own findings or on the basis of a notification by a natural person or legal entity. The administrative

15 | Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Code).
16 | Art. 51 of the Act on Infractions: "Unless otherwise provided for in this or any other Act, the general regulations on administrative proceedings shall apply to proceedings on misdemeanours."
17 | Hamuľáková & Horvat 2019, 114.
18 | Ibid.
19 | Potásch & Hašanová 2013, 214.

authority or body empowered to clarify offences shall, as a rule, conclude the clarification of the offence within one month from the date on which it became aware of the offence. This is a statutory period, which means that its expiry does not result in the termination of the obligation of the competent authority to clarify the offence.

The clarification of offences is a pre-procedural stage, or a stage prior to the initiation of proceedings for an offence, which does not result in a decision.

2.1.2. Offence proceedings at first instance

Like the Administrative Procedure Code, the Act on Infractions distinguishes two ways of initiating proceedings: proceedings initiated by the administrative authority on the basis of the principle of formality or proceedings initiated at the request of a party on the basis of the principle of disposition. In contrast to administrative proceedings under the Administrative Procedure Code, the principle of formality is applied in most cases in the initiation of proceedings in offence proceedings, and offence proceedings at the request of a party are initiated only in exhaustively defined cases in the case of so-called draft offences, namely offences in the field of the right of access to information and the offence of defamation, which is classified as an offence against civil coexistence. In most cases, the offence proceedings are initiated by the administrative authority, i.e. *ex officio*. The distinction between the way in which the offence proceedings are initiated is important in terms of the calculation of procedural time-limits. Proceedings initiated at the initiative of the administrative authority are initiated on the date on which the administrative authority takes the first action against the party to the proceedings, usually by serving the first document on the party to the proceedings, e.g. by serving a summons to an oral hearing. Proceedings initiated on the application of a party shall be initiated on the date on which the party's application reaches the administrative authority competent to decide on the matter.[20]

In relation to jurisdiction in misdemeanour proceedings, legal theory distinguishes the jurisdiction of the administrative authority in infractions proceedings as subject-matter, local jurisdiction and functional jurisdiction.[21] In principle, the administrative authorities with jurisdiction in the first instance are the district authorities, unless the law provides otherwise. The subject-matter jurisdiction of administrative bodies other than district authorities is laid down in the Act on Infractions as well as in specific laws. For example, a municipality may be another administrative body with subject matter competence, with the municipality itself as a legal entity having the status of a subject matter competent administrative

20 | Srebalová 2019, 74–75.
21 | Srebalová 2015, 260 et seq.

body.[22] The Act on Infractions further establishes the subject matter jurisdiction of the Police Corps authorities for proceedings on infractions committed in violation of generally binding legal regulations on road traffic safety and continuity, infractions against public order pursuant to Art. 47(1)(k) to (m) of the Act on Infractions, infractions of extremism pursuant to Art. 47a of the Act on Infractions, and infractions if a special law so provides. The Military Police authorities shall deal with infractions if a special law so provides.

Local jurisdiction determines which of the substantively competent administrative authorities is entitled to hear the infractions with regard to the perimeter of its territorial jurisdiction.[23] The administrative authority within whose territorial jurisdiction the infraction was committed shall be locally competent to deal with the infractions.

Functional jurisdiction in infractions proceedings is not directly regulated by the Infractions Act, and therefore the provisions of the Administrative Procedure Code shall apply in the alternative. Where an authority which is internally subdivided into departments empowered by law to act independently is competent to act, the administrative authority competent to act in the first instance shall be the department provided for by law. For example, in the Bratislava District Office, Department of Trade Licensing: the subject matter jurisdiction is determined by the district office; the local jurisdiction is determined by the territory of the City of Bratislava, and the functional jurisdiction is determined by the Department of Trade Licensing.

2.1.3. Subjects of infraction proceedings

Any actual or potential holder of procedural rights or obligations in an infringement procedure is a subject of an infraction procedure. We distinguish two basic subjects of the infraction proceedings, namely the administrative authority and the participant(s) in the administrative proceedings. In infraction proceedings this is the accused. We refer to these subjects as the basic subjects, since without them the infraction proceedings cannot be conducted. In addition to the basic subjects, there may be other subjects of the infraction whose participation is generally not necessary, such as the victim, the owner of the thing to be confiscated, the complainant (more on this below), the witness, the expert, the interpreter, the translator, the persons in possession of the things or documents which are means of evidence or who are obliged to endure inspection, the public prosecutor.[24]

An administrative authority, according to its legal definition in Art. 1(2) of the Administrative Procedure Code, is a state authority, a body of territorial

22 | Art. 27 of Act No. 369/1990 Coll. on Municipal Establishment.
23 | Ševčík 2007, 24.
24 | Hamuľáková & Horvat 2019, 131.

self-government, a body of interest self-government, a natural person or a legal entity entrusted by law with the decision-making on the rights, legally protected interests or obligations of natural persons and legal entities in the field of public administration.

The parties to the proceedings are defined exhaustively in Art. 72 of the Act on Infractions, so Art. 14 of the Administrative Procedure Code, which regulates the definition of parties to administrative proceedings, does not apply to infraction proceedings. The different parties to the proceedings have different procedural status in the proceedings on infractions.

The parties to an infraction proceeding are:

a) the person accused of an infraction – a natural person suspected of having committed an act having the characteristics of an infraction. A natural person becomes accused of an infraction at the moment when the administrative authority has carried out the first procedural act against him/her. The accused shall be presumed innocent until his/her guilt has been pronounced by a final decision. The principle of presumption of innocence applies in this case.

If the accused is a juvenile, he/she enjoys special care of the society devoted to youth (in the Act on Infractions it is expressed in a special provision on juveniles), which is to ensure the educational effect of their punishment for the infraction and their special protection in the proceedings on infractions. The specifics of the liability for an infraction against juvenile defendants further concern the imposition of sanctions, the inadmissibility of hearing an infraction of a juvenile in a dispositional proceeding, the obligation of the administrative authority to notify the juvenile's legal representative of the oral hearing ordered, the authority for social protection of children and social guardianship and, if the juvenile is entrusted to the personal care of a natural person on the basis of a decision pursuant to special regulations or is placed in an institution on the basis of a court decision pursuant to special regulations, these persons as well.

b) the injured party, if the proceedings concern compensation for property damage caused by an infraction – the injured party in an infraction proceeding is the person whose property has been damaged, i.e. damage expressible in monetary terms. In the case of non-pecuniary damage (defamation), the claimant is the party to the proceedings, not the injured party. The injured party is only a party to the proceedings for infractions to a limited extent, which is defined by the hearing of compensation for pecuniary damage.

c) the owner of an item that may be seized or has been seized, in the part of the proceedings relating to the seizure of the item – similarly to the injured party, he/she is a party to the infraction proceedings only to a limited extent, as he/she is a party only to the part of the infraction proceedings relating to the seizure of an item. Confiscation is a protective measure which may be imposed provided that the sanction of forfeiture has not been imposed. This protective measure may also be imposed if the item belongs to an offender who cannot be prosecuted for the

infraction (e.g. lack of age) or if the item does not belong to the offender if the safety of persons or property or another general interest (e.g. it is a weapon) so requires. The owner of the item can then appeal only against the part of the infraction decision that pronounces the confiscation of the item.[25]

d) the claimant, on whose motion the proceedings on the infraction were initiated pursuant to Art. 68(1) of the Act on Infractions – the claimant is a party to the proceedings on the infraction only in the case of draft infractions, which may be heard by the administrative authority only on motion.

Only a natural person may be the accused of an infraction; the injured party, the owner of an object and the claimant may also be a legal entity. Only those persons who have a certain relationship to the subject matter of the proceedings have the procedural status of parties to the proceedings. Their procedural status is determined by the totality of procedural rights and procedural obligations arising not only from the Act on Infractions but also from the Administrative Procedure Code.[26]

2.1.4. Termination of infraction proceedings

First instance infraction proceedings may be terminated in the following ways: a) by discontinuance of the infraction proceedings, b) by a decision on the case, i.e. a decision on the infraction, if the accused has been found guilty, c) by amicable settlement of the case (only for one type of infraction, namely the infraction of defamation).

The stay of proceedings can be characterised as an institute of procedural law which is applied when an obstacle of a permanent nature occurs in administrative proceedings, i.e. an obstacle which permanently prevents the continuation of the proceedings. A stay of proceedings may occur at any stage of the infraction proceedings, including the appeal proceedings.[27] The Act on Infractions regulates the grounds for discontinuance of infraction proceedings exhaustively and thus cannot be extended. These grounds include, for example, where it is established that: the act in question has not been or is not an infraction, or the act has not been committed by the person accused of the infraction or has not been proven to have been committed, or the act has already been finally decided by an administrative or criminal authority.[28] A decision to discontinue proceedings shall terminate the administrative proceedings without a decision on the merits. The finality of the decision to discontinue the proceedings creates an obstacle to the case already finally decided (*res iudicata*), and thus the act which was the subject of the

25 | Art. 16(b) of the Act on Infractions.
26 | Potásch & Hašanová 2013, 235.
27 | Hamuľáková & Horvat 2019, 138.
28 | The grounds for discontinuation of infraction proceedings are exhaustively listed in Art. 76 of the Act on Infractions.

proceedings and which was discontinued by the administrative authority cannot be retried in the administrative proceedings.

If, after evaluating the grounds for the decision, the administrative authority concludes that the act was committed by the accused of the infraction and at the same time none of the legal grounds for discontinuation of the infraction proceedings has occurred, it shall issue a decision on the infraction, by which it shall find the accused guilty of the infraction. The content of the infraction decision shall comprise the operative part, the statement of reasons and the notice of appeal.

2.1.5. Summary forms of infraction proceedings

Summary forms of infraction proceedings are simplified and accelerated ways of concluding infraction proceedings without ordering an oral hearing or procedurally demanding evidence. Summary forms of infraction proceedings are applied to minor infractions where the conditions laid down by law are met.[29]

The block procedure is a shortened, accelerated and simplified form of infraction proceedings which may be implemented in cases where the facts immediately after the infraction are sufficiently established and no further evidence is necessary. The block procedure is used for minor infractions. It is intended to increase the educational effect in relation to natural persons by means of repression, in the form of a block fine imposed on the offender immediately after the infraction has been committed.[30] The statutory conditions for the processing of an infraction in misdemeanour proceedings, which must be cumulatively fulfilled, are:

a) the infraction must be reliably established – there is no doubt about the act which is to be an infraction as well as about its perpetrator,
b) the accused of the infraction is willing to pay the fine – the accused is willing to pay the block fine, thereby in effect admitting his or her guilt,
c) reprimand is not sufficient to settle the matter – for minor infractions, sometimes the matter can be settled by a reprimand; sometimes it is stated that it is actually an interview. A reprimand is not in itself a sanction (such as a reprimand under Art. 11 of the Act on Infractions). A reprimand cannot be used to terminate summary forms of infraction proceedings, for which the penalty under the Infractions Act is prohibition of activity and forfeiture of property,[31]
d) it is not a petitionable infraction – infractions which are dealt with only on a petition pursuant to Art. 68(1) of the Act on Infractions cannot be dealt with in block proceedings.

29 | Hamuľáková & Horvat 2019, 147.
30 | Vrabko 2015, 418.
31 | Vrabko 2015, 419.

If the aforementioned legal conditions are met, the administrative authority may deal with the matter in block proceedings and impose a block fine on the offender. The decision issued in the block procedure cannot be appealed, nor can there be a retrial or review of the decision outside the appeal procedure, since by paying the block fine the person accused of the infraction admits that he/she committed the infraction, that he/she agreed to the fine imposed, and that he/she did not exhaust the remedies in the infraction procedure.[32]

The order procedure is another abbreviated, accelerated and simplified form of infraction proceedings. The purpose of this procedure is to shorten the hearing of infractions by allowing a decision to be taken without an oral hearing and without the taking of evidence.[33] The statutory conditions for the hearing of an infraction in a summary procedure, which must be cumulatively fulfilled, are:

a) there is no doubt that the person charged with the infraction has committed the infraction – i.e. there is no doubt about the act which is to be an infraction as well as about the perpetrator of the infraction,
b) the matter has not been dealt with in a block proceeding – the decision on the infraction in a block proceeding creates an obstacle to *res iudicata*,
c) the person charged with the infraction is fully competent to perform legal acts (i.e. their legal capacity is not impaired),
d) the infraction is not a juvenile offence – a juvenile offence cannot be dealt with in a dispositional procedure,[34]
e) it is not a petition infraction – infractions which are dealt with only on a petition pursuant to Art. 68(1) of the Act on Infractions cannot be dealt with in order proceedings.

Unlike block proceedings, one of the statutory conditions of the order procedure is not the consent of the person accused of the infraction. The result of the order procedure is the issuing of a so-called order. An order is a specific type of individual administrative act which has all the elements of a decision on an infraction.[35] As in block proceedings, the only type of sanction that can be imposed in order proceedings is a fine. It is not possible to decide on costs or compensation for the damage caused by the infraction. According to the Act on Infractions, a fine of up to EUR 250 may be imposed in order proceedings.[36] Special regulations may also provide for a different upper limit of the fine in order proceedings.

32 | Judgment of the Supreme Court of the Slovak Republic of 27 January 2010, Case No. 2 Sžo 58/2009.
33 | Potásch & Hašanová 2013, 261.
34 | Art. 19(2) of the Act on Infractions.
35 | Vrabko 2015, 432.
36 | Art. 13(2) of the Act on Infractions.

2.2. How are administrative offences detected and investigated?

As administrative offences committed by legal entities and self-employed natural persons are frequent in the field of environmental protection, in addition to infractions, the following text provides the basics of the legal regulation of this type of administrative offence.

We classify administrative offences committed by legal entities and self-employed natural persons as other administrative offences, i.e. administrative offences other than infractions. Administrative offences committed by legal entities and self-employed natural persons are referred to in legal theory as mixed administrative offences, since laws usually regulate the liability of legal entities together with that of self-employed natural persons. Administrative offences committed by legal entities and self-employed natural persons (mixed administrative offences) can be characterised as the unlawful conduct of a legal entity or a natural person authorised to carry on certain activities, the features of which are set out in the law, for which the administrative authority imposes a statutory sanction if it is not a criminal offence.[37] The above definition implies a similarity with other administrative offences, but mixed administrative offences are distinguished by a specifically defined subject and a subjective aspect.

The legislation on mixed administrative offences is fragmented and scattered in a large number of specific pieces of legislation. Unlike infractions, there is not even a partial codification of their legislation. The laws governing the sanctioning of mixed offences are mostly limited to regulating the facts of administrative offences, the penalties and their scope, the time-limits for the imposition of penalties and establishing the power of the competent administrative authorities to impose penalties. From a procedural point of view, the legal regulation of this type of offences mostly refers to the application of the Administrative Procedure Code. The legal regulation of mixed administrative offences is subject to justified criticism due to its lack of conceptual clarity, opacity, as well as inconsistency and absence of regulation of the bases of administrative law sanctions (e.g. concurrence of administrative offences, anchoring of absolute objective liability, principles for imposing sanctions, etc.). In practice, the problems in deriving administrative liability, which often also lie in the different nature of legal entities, are often solved by (sometimes controversial) analogies from infractions or criminal law.[38]

The tort capacity of a legal entity and a self-employed natural person consists in the fact that a legal obligation is breached by a natural person (statutory body, employee, etc.) acting on behalf of a legal entity or a self-employed natural person,

37 | Sládeček 2013, 224.
38 | Vrabko et al. (eds.) 2018, 237.

and this breach is attributed to the legal entity or self-employed natural person, as the case may be. Natural persons acting on behalf of a legal entity or a self-employed natural person may be subject to liability for an infraction under Art. 6 of the Act on Infractions or for another administrative infraction of a natural person. The current legislation on mixed administrative offences makes it almost impossible to get rid of strict liability, as there is no general regulation of liberalisation grounds (we are talking about the so-called absolute strict liability). In cases where the legislation does provide for liberalising grounds, the legal entity or self-employed natural persons may be exempted from liability by proving that these grounds have been met – these are unavoidable events, such as force *majeure* in the form of a natural disaster.[39]

Proceedings on administrative offences committed by legal entities and self-employed natural persons (mixed offences) are a special type of administrative proceedings in which the competent administrative authority decides on the guilt and sanction of a legal entity or a self-employed natural person for the committed act. As in the substantive law, the procedural procedure for imposing administrative liability for mixed offences is not regulated by a single legal regulation; therefore, the Administrative Procedure Code will apply to this procedure in the alternative. The commencement of proceedings is also linked to the *lis pendens* barrier (*lis pendens*), which fulfils the *ne bis in idem* principle. If proceedings are pending before another authority in respect of an identical act, this fact precludes the institution of other proceedings in respect of that act (the case must be identical and against the same subjects). This means that further administrative proceedings against the same party(ies) cannot be carried out in the same case by a different administrative authority, and the subsequent administrative proceedings must be discontinued. In relation to administrative offences committed by legal entities, the *lis pendens* barrier also arises in relation to criminal liability or criminal offences of legal entities. Where a criminal prosecution has already been initiated against a legal entity, that fact precludes administrative proceedings being brought against the same legal entity for the same act.[40] In relation to concurrent proceedings for an administrative offence, the Act on Criminal Liability of Legal Entities regulates the *lis pendens* bar in favour of criminal proceedings. The *lis pendens* bar arises at the moment of initiation of the criminal proceedings, while the identity of the act (subject matter of the criminal and administrative proceedings) and the identity of the legal entity must be fulfilled at the same time.[41]

39 | For more on this, see Vrabko et al. (eds.) 2018, 235 et seq.
40 | Art. 21(1) of Act No. 91/2016 Coll. on Criminal Liability of Legal Entities and on Amendments and Additions to Certain Acts.
41 | Hamuľáková & Horvat 2019, 207.

3. Infractions and administrative offences committed by legal entities and self-employed natural persons at second instance

In this part of the article, we will take a closer look at the infractions and administrative offences committed by legal entities and self-employed natural persons at second instance, focusing on what options are available for challenging administrative fines and decisions and what are the steps for administrative appeals and reconsideration.

In principle, a decision on an offence can be reviewed by ordinary and extraordinary legal remedies. Ordinary remedies are appeal, dissent and in order proceedings opposition and can be lodged against decisions which are not final. The extraordinary remedies which may be brought against final decisions are a retrial and a review of the decision outside the appeal procedure. Their application is fully covered by the provisions of Arts. 62 to 64 of the Administrative Procedure Code (retrial) and Arts. 65 to 68 of the Administrative Procedure Code (review of a decision outside the appeal procedure).[42]

In relation to administrative offences committed by legal entities and self-employed natural persons, we have stated in the previous part of the article that from the procedural law point of view they will be subject to the regulation under the Administrative Procedure Code, and this also applies to the institute of ordinary and extraordinary remedies.

3.1. Ordinary remedies

The Act on Infractions specifies only an appeal, but it does not contain a complete regulation of the institute of appeal; therefore, the subsidiary regulation in the Administrative Procedure Code shall apply.

The right of a party to an infraction proceeding to file an appeal is limited by its procedural status and relationship to the infraction case. Only the accused may appeal in full against a decision on an infraction, not only against a decision on guilt, but also against a decision on the imposing of a sanction and the imposing of compensation for costs and damages. If the accused is a juvenile, the appeal may also be lodged by his/her legal representative and by the authority for the social protection of children and social welfare. The injured party is a party to the proceedings on infractions only to a limited extent, which is defined by the hearing of compensation for property damage. Therefore, the injured party may appeal only in respect of compensation for damages. The owner of property that may be seized

42 | The specific means of reviewing the decision on the offence are the prosecutor's protest (Art. 23 et seq. of Act No. 153/2001 Coll. on the Prosecutor's Office) and the administrative action in matters of administrative punishment (Art. 194 et seq. of Act No. 162/2015 Coll. – Administrative Judicial Procedure Code).

or has been seized is, like the injured party, a party to the infraction proceedings only to a limited extent; he may appeal only to a limited extent, and only against the part of the decision pronouncing the seizure of the property. The complainant may appeal only against the part of the decision which relates to the declaration of the guilt of the accused of the infraction or the obligation of the complainant to pay the costs of the proceedings; he may also appeal against the decision to discontinue the proceedings.[43]

The appeal shall be lodged with the administrative authority which issued the contested decision. The time-limit for lodging an appeal shall be 15 days from the date of notification of the decision, unless a different time-limit is laid down by a special law. The Act on Infractions expressly provides that a timely lodged appeal against a decision on an infraction shall have suspensive effect, which cannot be excluded.[44] The appeal has a devolutory effect in relation to the administrative authority, i.e. the power to decide on the appeal passes to the higher administrative authority or the administrative authority of the second instance.[45]

The Act on Infractions expressly provides for the prohibition of *reformatio in peius* (prohibition of change for the worse) for the appeal proceedings, and thus the position of the accused of the infraction cannot be worsened after the decision on appeal.[46] This is a specificity of the infraction law, since according to the general legislation on administrative proceedings in the Administrative Procedure Code, the administrative authority shall examine the contested decision in its entirety, without being bound by the claims and evidence submitted by the parties to the proceedings.[47] It follows from the above that the decision may be changed to the advantage or disadvantage of the party who lodged the appeal.

Art. 61 of the Administrative Procedure Code applies to the appeal procedure. An appeal may be lodged against a decision taken at first instance by a central government authority. The appeal shall be decided by the head of the central government body on the basis of a proposal from a special commission appointed by it. No appeal may be lodged against that decision.

With regard to the summary forms of infraction proceedings, it has already been pointed out that a decision given in a block procedure cannot be appealed, nor can there be a retrial or a review of the decision outside the appeal procedure.

43 | Art. 81 of the Act on Infractions.

44 | In contrast to the general regulation in Art. 55(2) of the Administrative Procedure Code, according to which, if it is required by an overriding general interest or if there is a danger that a party to the proceedings or someone else will suffer irreparable harm by postponing the enforcement of a decision, the administrative authority may exclude the suspensive effect; the urgency must be duly justified.

45 | Vrabko et al. (eds.) 2019, 131.

46 | Art. 82 of the Act on Infractions: "In the appeal proceedings, the administrative authority may not change the sanction imposed to the detriment of the person accused of the infraction if it does not establish new material factual circumstances."

47 | Art. 59 of the Administrative Procedure Code.

Unlike in block proceedings, the person charged with an offence may lodge an appeal against an order, which is referred to as an opposition. The opposition shall be lodged with the administrative authority which issued the order. The timely lodging of a statement of opposition shall have the effect of setting aside the order and initiating summary proceedings, as a general rule by ordering an oral hearing. The infraction proceedings shall then end with the issue of a decision on the infraction, against which the party to the infraction proceedings may appeal.

3.2 Extraordinary remedies

A review of final decisions rendered in administrative proceedings is carried out before administrative authorities or courts (national or European) by means of extraordinary administrative remedies. Among the extraordinary administrative remedies that belong to the general institute of review of administrative decisions issued by administrative authorities in administrative proceedings and are also among the remedies in administrative proceedings, we can include, to the widest extent, retrial, review of a decision outside the appeal procedure, judicial review of final decisions in the framework of administrative justice in the Slovak Republic or in the framework of the European administrative justice before the European Courts.[48] Until the last amendment to the Administrative Procedure Code, the procedure on a prosecutor's protest was also included, which was subsequently deleted from the Administrative Procedure Code by the last amendment as an institute of extraordinary remedy. A review of a decision outside the appeal procedure has the character of a supervisory remedy. The prosecutor's protest proceedings and the judicial review of final decisions within the administrative justice system are usually referred to in theory as means of supervision of legality in public administration; thus, they have the character of supervisory means.[49]

Extraordinary remedies under the Administrative Procedure Code include the reopening of proceedings and the review of a decision outside the appeal procedure.

The reopening of proceedings at the request of a party to the proceedings or on the order of an administrative authority, if there is a general interest in reviewing the decision, occurs if the following conditions are met:[50]

a) new facts or evidence have come to light which may have had a substantial influence on the decision and which could not have been adduced in the proceedings through no fault of the party to the proceedings;
b) the decision depended on the examination of a preliminary question on which the competent authority had decided otherwise,

48 | See more on the right to access justice in environmental matters: Ujhelyi-Gyurán, Lele & Pártay-Czap 2024, 203–224.
49 | Vrabko et al. (eds.) 2019, 140.
50 | Art. 62 of the Administrative Procedure Code.

c) the administrative authority's wrongful conduct deprived the party concerned of the opportunity to participate in the proceedings where that could have had a substantial effect on the decision and where the remedy could not have been made in the appeal proceedings;
d) the decision was made by an excluded authority where it may have had a material effect on the decision and where the remedy could not have been made on appeal;
e) the decision is based on evidence which has proved to be false, or the decision was obtained by criminal means.

It should be noted that the reopening of proceedings consists of two stages, namely (a) the proceedings for authorisation or for ordering a reopening of proceedings, (b) a new trial of the case. The review of a decision outside the appeal procedure[51] is a supervisory (or instance) remedy which allows the higher administrative authorities to intervene in a case already finally decided by a lower administrative authority and thus to have an administrative authority's already final decision reversed or annulled on the ground of illegality.[52] A review of a decision outside the appeal procedure may be carried out on its own or on another initiative by the administrative authority of the next higher level above the administrative authority which issued the decision, or, if it is a decision of a central government body, by its head on the basis of a proposal from a special commission appointed by him. The administrative authority competent to review the decision shall annul or amend it if it was issued in contravention of a law, a generally binding legal regulation or a generally binding regulation.

For the Slovak Republic, the fact that it is codified in the form of the relevant provisions of the Administrative Procedure Code[53] (in particular Sections 194 to 198) is of the greatest importance from the point of view of the judicial review of a decision on an administrative offence. For its purposes, the Administrative Procedure Code defines both the term 'administrative punishment' and 'administrative offence'. For the purposes of this Act, administrative punishment means the decision of public authorities on an infraction, administrative offence or sanction for other similar unlawful conduct. Administrative offence means infractions or disciplinary and other administrative offences. Pursuant to Art. 6 of the Administrative Procedure Code, administrative courts in the administrative justice system review, on the basis of actions, the legality of decisions of public administration bodies, measures of public administration bodies and other interventions of public administration bodies, provide protection against inaction of public administration bodies and rule on other matters provided for by this Act.

51 | Art. 65 to 68 of the Administrative Procedure Code.
52 | Vrabko et al. (eds.) 2019, 147.
53 | Act No. 162/2015 Coll.

In the field of administrative penalties, it is important to note that the administrative courts rule on administrative actions in matters of administrative penalties. An administrative court is entitled to review only final decisions of public authorities in matters of administrative sanctions, provided that the party to the proceedings has exhausted all the ordinary remedies available under the special provision before they become final.[54]

A cassation complaint may be lodged as an extraordinary remedy against a judgment of an administrative court. The Supreme Administrative Court of the Slovak Republic is the competent administrative court to decide on a cassation complaint.

4. Enforcement of administrative decisions

Enforcement of an administrative decision is understood in legal theory as a procedural mechanism through which compliance with obligations imposed on parties or other entities in administrative proceedings is compelled, in cases where such obligations were not voluntarily fulfilled within the prescribed time limit.[55] Individual decision-making activity within public administration can fulfil its societal function only if the rights granted and obligations imposed through acts of legal application are effectively realised in practice. Since public administration authorities, through their individual acts, not only determine the legal status of natural persons and legal entities but also carry out tasks assigned to them within their jurisdiction, the enforcement of such decisions is of both individual and societal interest – particularly with regard to imposed obligations.[56]

The right to a fair process in the execution of public administration, as guaranteed by Art. 46(1) and (4) of the Constitution of the Slovak Republic, must be understood not only as the right of individuals to a legally established procedure in the issuance of administrative decisions but also in their enforcement. The recipient of an administrative decision is obligated to act in accordance with it. If an obligation is imposed, it must be fulfilled. In cases where voluntary compliance does not occur, the legal framework provides for a procedural mechanism by which a public authority may compel compliance through the exercise of public power. This is referred to as administrative enforcement, which Slovak legislation designates as the 'enforcement of a decision'. The procedural actions involved directly and immediately affect the legal status of the obligated party and are carried out against their will. Therefore, public authorities must act in accordance

54 | At the same time, it is legally irrelevant which of the parties to the original administrative proceedings used the proper remedy. Of course, assuming that there were several parties to the administrative proceedings.
55 | Jakab & Molitoris 2025, 179.
56 | Tóthová 2019, 167.

with applicable legal regulations, which are designed to guarantee a certain level of protection to the obligated party.[57]

Enforcement of a decision represents the final and relatively autonomous stage of administrative proceedings. It is not a mandatory stage that follows automatically but occurs only when the obligation imposed by the decision has not been voluntarily fulfilled.[58]

Currently, the following enforcement procedures are applied within public administration:

a) enforcement of decisions under the Administrative Procedure Code,
b) tax (customs) enforcement under the Tax Procedure Code,
c) enforcement of decisions under the Enforcement Procedure Code,
d) enforcement of decisions under special legislation with supplementary application of the Administrative Procedure Code (e.g. in infraction cases).

Given the focus of this paper, we will address only the enforcement of decisions under the Administrative Procedure Code, as this procedure is generally applied in relation to administrative offences. We will also highlight specific legal regulations (such as the Act on Infractions) that govern certain particularities – namely, special methods of enforcement that differ from those provided in the Administrative Procedure Code.

Legal theory emphasises several principles and rights in relation to the enforcement of decisions. These include: a) the right to a reasonable period for voluntary compliance, b) the right to a legally regulated enforcement procedure and c) the right to proportionate enforcement measures. The principles that must be observed in connection with compulsory enforcement include several principles. These are: the principle of legality – enforcement must be governed by law and carried out only by authorities with legally established competence; the principle of transparency – affected private individuals, especially the obligated party, must be informed in advance by the public authority about the enforcement and its reasons; and the principle of proportionality – applied to the measures that the public authority is authorised to use during enforcement.[59]

An administrative decision issued in matters of administrative punishment is considered an enforcement title under the Administrative Procedure Code. The enforcement title represents the legal-theoretical basis for carrying out administrative enforcement and constitutes a condition for enforcement. The administrative authority is required to examine the existence of this condition throughout the entire enforcement process.

57 | Košičiarová 2013, 320.
58 | Sobihard 2007, 301.
59 | Košičiarová 2013, 320.

The enforcement of a decision is initiated based on a motion by the enforcing creditor, i.e. the entitled party to the proceedings or the enforcing administrative authority.[60]

Enforcement will always be sought by the party to the proceedings who has a legal interest in the actual execution of the decision – i.e. the person who derives a right from the decision against the obligated party and seeks to exercise it.[61]

The enforcement of a decision is carried out by the first-instance administrative authority. The enforcement process consists of two phases: ordering the enforcement and executing the enforcement.

Upon receiving the motion, the enforcing administrative authority examines whether the conditions for enforcement have been met.[62] The executing authority does not examine the material correctness or legality of the enforcement title; it only verifies whether the decision is enforceable and whether it imposes an obligation with a specified deadline for voluntary compliance.[63]

In administrative enforcement, it is necessary to ensure legal protection for both the party to the proceedings and third parties affected by the enforcement. The law therefore allows the submission of a special remedy against individual actions and measures related to enforcement, referred to as objections. This remedy does not have the nature of an appeal within administrative proceedings. Objections may be raised against any act within the enforcement process.[64]

The second phase of the enforcement process involves the actual coercive execution of the obligation arising from the enforcement title. In cases involving monetary obligations, enforcement is typically carried out by an entity other than the administrative authority that ordered it. For non-monetary obligations, enforcement is carried out according to the nature of the obligation imposed.[65] Enforcement may only be carried out using means prescribed by law. The chosen method must be the one that least burdens the party while still achieving the intended outcome. Enforcement is carried out on the basis of an enforcement order.

The Administrative Procedure Code categorises the means of enforcement into two groups: means for enforcing monetary obligations and means for enforcing non-monetary obligations.

With respect to monetary enforcement, the Code regulates the following methods: wage garnishment, assignment of claims and assignment of claims from bank accounts.

The law provides that the Enforcement Procedure Code may be applied supplementarily in the enforcement of monetary obligations.

60 | Tóthová 2019, 172.
61 | Košičiarová 2017, 263.
62 | Sobihard 2007, 310.
63 | Tóthová 2019, 175.
64 | Píry 2022, 243.
65 | Sobihard 2007, 311.

These enforcement methods apply to both infractions and other administrative offences, particularly when the administrative authority has issued a decision imposing a fine. In the case of infractions, however, the Act on Infractions provides for special enforcement methods, including: community service and garnishment from social insurance benefits, subsistence assistance or parental allowance.

A decision imposing a non-monetary obligation may be enforced through substitute performance, imposition of monetary fines or direct enforcement of the obligation.

5. Challenges in administrative procedural law

Administrative proceedings in the Slovak Republic are primarily governed by the Administrative Procedure Code, which serves as the general procedural statute for public administration.[66] While it regulates decision-making processes,[67] its fundamental principles also apply to other administrative acts that do not constitute individual decision-making activities.[68]

In addition to the Administrative Procedure Code, public administration authorities utilise other legal regulations in their procedural activities, most commonly applying the Administrative Procedure Code subsidiarily.[69] One such regulation is the Act on Infractions.

Although these statutes have been in force for a considerable time, legal practice has largely aligned with them, ensuring both continuity and relative stability in administrative decision-making. However, by contemporary standards this legal framework is also relatively general. We contend that this generality is not detrimental; rather, it contrasts with the modern legislative trend toward excessive specificity and casuistry, which can render statutes less adaptable in cases of legal gaps. This issue is less prevalent in the application of the Administrative Procedure Code and the Act on Infractions.

Legal norms are frequently supplemented by the decision-making practice of administrative authorities, which is subject to judicial review by independent and impartial administrative courts, headed by the Supreme Administrative Court of the Slovak Republic.

Nonetheless, this reliance on interpretative practice invites critical reflection. In the Slovak context, public administration personnel often lack formal legal education. Imposing obligations on them to understand a wide array of legal regulations and relevant case law – both domestic and supranational – can pose

66 | Sobihard 2007, 14.
67 | Vrabko et al. 2007, 23–24.
68 | See Art. 3(7) Administrative Procedure Code; see more Potásch et al. 2019, 52–53.
69 | For the relationship between specific legal regulations and the Administrative Procedure Code, see, for example Škrobák 2019, 42–47.

significant challenges. Consequently, there is a growing consensus within the professional community regarding the need for a comprehensive reform, including procedural rules governing administrative liability.[70]

Generally, there has been no pressing demand within legal practice to revise the legal framework governing the enforcement of decisions, which is therefore considered sufficient. However, as previously noted, a notable deficiency remains: the absence of legislation regulating the enforcement of decisions through community service. We strongly advocate for the prompt adoption of such legislation.

In a certain sense, the procedural framework is sufficiently flexible and does not impose unnecessary administrative burdens on decision-making processes. On the other hand, it does not always provide clear answers to all legal questions, which may result in inconsistent decision-making, procedural delays (due to the complexity of cases), and, ultimately, the annulment of administrative decisions upon judicial review.

Currently, records of committed infractions are maintained. The administrative authority competent to adjudicate an infraction, including in summary proceedings, is responsible for maintaining such records. A central registry of infractions is maintained by the relevant central government authority with jurisdiction over the offence. This registry serves to provide data to authorised entities and is used for criminal proceedings, civil litigation and administrative proceedings, and for verifying the integrity and reliability of individuals. Data from the registry may only be disclosed pursuant to the Act on Infractions and is not subject to the Freedom of Information Act.[71] The registry is not publicly accessible.[72] At present, no registry exists for administrative offences other than infractions.

This lack of centralised data makes it relatively difficult in practice to determine whether administrative authorities impose sanctions consistently in similar cases. This inconsistency poses practical challenges, particularly in light of the principle of legitimate expectation, which requires that future conduct of public authorities in specific matters be predictable based on applicable legal norms and prior decisions. If this principle were consistently upheld, deviations from established practice would require rational justification.[73]

We believe that a unified registry of administrative offences should be established, enabling administrative authorities to compare their decision-making practices and promote a consistent approach to similar factual scenarios. This would enhance legal certainty[74] and reinforce the principle of legitimate expectations. Moreover, it would assist authorities encountering novel factual situations,

70 | See Horvat 2025, 106.
71 | Act No. 211/2000 Coll. as amended.
72 | Srebalová 2020, 453–456.
73 | Košičiarová 2013, 33.
74 | See more on the principle: Orosz & Svák et al. 2021, 24–25, 43.

thereby facilitating timely adjudication in accordance with the principle of procedural expediency.[75]

In the Slovak Republic, enforcement proceedings in criminal matters[76] are conducted by courts or law enforcement authorities pursuant to Art. 406 et seq. of the Criminal Procedure Code.[77] Law enforcement authorities include investigators and prosecutors. Therefore, aligning enforcement mechanisms between criminal proceedings and administrative liability proceedings is generally infeasible due to the separation of powers and the differing nature of imposed sanctions. In criminal proceedings, custodial sentences are standard, whereas in infractions proceedings, fines are the typical sanction.

Nonetheless, certain areas of cooperation may be identified, particularly in the enforcement of fines and forfeiture of property, which are sanctions imposed in both criminal and administrative proceedings. However, joint enforcement by a single authority is currently not possible. As noted, enforcement in criminal matters is carried out by courts, prosecutors or investigators, while in administrative matters, it is the responsibility of the first-instance administrative authority. This does not preclude inter-agency cooperation and information exchange on a partnership basis.

6. Future perspectives and conclusions

We consider the current legal framework to be generally sufficient. The enforcement of administrative decisions must respect the specificities of each Member State. From this perspective, further standardisation of enforcement procedures could hinder effective implementation, as it may fail to accommodate enforcement mechanisms that prove efficient within individual jurisdictions.

Nevertheless, we emphasise that fundamental principles governing the enforcement of administrative decisions should apply uniformly across the European legal space. We refer to Recommendation CM/Rec (2007)7 on good administration, which builds upon Recommendation CM/Rec (2003)16 of the Committee of Ministers concerning the enforcement of administrative and judicial decisions in the field of administrative law. Art. 20 of the latter sets forth rules for the enforcement of administrative decisions, aimed at promoting good governance in practice. It underscores the principle that public authorities bear responsibility for enforcing their own decisions. Each Member State must establish an adequate system of administrative or criminal sanctions to ensure that private individuals comply with decisions issued by public authorities. Such substantive regulation

75 | See more on the principle: Jakab & Molitoris 2025, 52–53.
76 | See more on enforcement proceedings in criminal matters: Čentéš, Kurilovská, Šimovek & Burda et al. 2021, 811–909.
77 | Act No. 301/2005 Coll., as amended.

should incentivise voluntary compliance with administrative decisions. Accordingly, individuals must be granted key procedural rights, including: the right to a reasonable period for voluntary compliance, the right to have enforcement procedures governed by law, and the right to proportionate enforcement measures. Exceptions to these rights may be justified only by urgent public interest. In the realm of enforcement, authorities must adhere to the principles of legality, transparency and proportionality.[78]

Regarding automated decision-making in public administration, we maintain that if a state opts to implement such systems, it must do so under a clear and precise legal framework that provides sufficient safeguards against disproportionate interference with fundamental rights and freedoms. Each safeguard serves a distinct purpose and corresponds to specific rights, ensuring that algorithmic decisions remain reviewable, explainable and attributable to identifiable actors.[79]

Our analysis indicates that preserving the right to a fair process in the use of artificial intelligence systems – particularly in administrative punishment – requires informing individuals when a decision has been made with the assistance of AI tools. Public authorities must not only disclose the use of automated decision-making but also clearly and intelligibly explain how the AI system operates and how it influenced the final decision. This transparency is essential to uphold another fundamental right – the right to appeal. Individuals must understand the rationale behind automated decisions to effectively exercise their right to challenge them. As previously stated, every automated decision in administrative proceedings – not limited to administrative penalisation – must be subject to judicial review. To enable meaningful judicial oversight, authorities must ensure that such decisions are sufficiently transparent and legally intelligible.[80]

The current legal regulation of administrative offences in the Slovak Republic is enshrined in a number of legal regulations, and there is no codification. Partial codification can be recorded only in the case of infractions, as one of the types of administrative offences, in the Act on Infractions. In the case of other administrative offences, such as administrative offences committed by legal entities and self-employed natural persons, in particular, the situation is more complicated. The legal regulation of administrative offences committed by legal entities and self-employed natural persons is thus contained in a large number of specific legal provisions, which means that it does not have a codified form and is currently accused of being nonconceptual, opaque and inconsistent in the basis of administrative sanctions and of lacking regulation of general institutes. From a procedural point of view, this legislation mostly refers to the subsidiary application of the Administrative Procedure Code, which, as a general procedural regulation,

78 | Košičiarová 2012, 136–139.
79 | Andraško et al. 2022, 338.
80 | See more Hamuľáková & Horvat 2026, in press. Hamuľáková 2024, 8–24.

does not contain specifics on the imposition of liability for administrative offences. The absence of a uniform regulation of the basic substantive and procedural legal institutes of administrative offences complicates the guarantee of the rights of the accused under Art. 6 of the Convention. The shortcomings of the legal regulation of administrative punishment in the Slovak Republic are reflected, for example, in the inconsistent application of the prohibition of *reformatio in peius* to those accused of infractions and to those accused of other administrative offences, as the Administrative Procedure Code, unlike the Act on Infractions, does not provide for the regulation of this prohibition. Shortcomings also appear in the framework of the fulfilment of the principle of legitimate expectation, i.e. that unjustified differences do not arise in the decision-making activities of administrative authorities on factually identical or similar cases. It is the proper reasoning of the decision on an administrative offence that tends to be problematic in the practice of administrative authorities. The current regulation of administrative offences committed by legal entities and self-employed natural persons does not regulate the requirements for the justification of a decision on the imposition of a sanction. The requirements of justification are found in Art. 47(3) of the Administrative Procedure Code,[81] from which it follows that the evaluative reasoning of the administrative authority must be evident from the justification of the decision. However, as a general procedural regulation, the Administrative Procedure Code does not provide the administrative authorities with more detailed guidance on how the decision to impose a sanction should be justified. At present, however, the role of proper justification of the decision in matters of administrative sanctions is not fully understood and accepted by the administrative authorities, as confirmed by numerous judgments of the administrative courts. The current not very instructive legislation on the requirements for the statement of reasons for a decision on an administrative offence is largely influenced by case law.[82]

One of the biggest problems in imposing administrative liability (not only in the field of environmental protection) is the requirement of proportionality of the sanctions imposed for administrative offences committed. It is precisely in relation to the proportionality of the fines imposed that the professional public increasingly advocates the view that Slovak laws should contain a criterion when imposing a sanction that would take into account the position of the responsible person, in particular his or her financial circumstances.

An important objective of the legal regulation of administrative punishment is to set up an effective system of sanctions that would correspond to the principles

81 | Art. 47(3) of the Administrative Procedure Code: "In the reasons for the decision, the administrative authority shall state which facts formed the basis for the decision, what considerations guided it in assessing the evidence, how it applied the correct reasoning in applying the legal provisions on the basis of which it made its decision and how it dealt with the submissions and objections of the parties to the proceedings and their comments on the basis of the decision."

82 | Judgment of the Supreme Court of the Slovak Republic of 29 September 2011, Case No. 5Sžo/15/2011.

of punishment in the rule of law, in particular the principle of proportionality of the sanction and the principle of individualisation of the sanction, while achieving the repressive and preventive purpose of the sanction. While in the case of infractions we can find several types of sanctions or protective measures in the legal regulation,[83] in the case of administrative offences committed by legal entities and self-employed natural persons we mostly encounter fines in the current Slovak legal regulation. In our opinion, the current system of sanctions imposed in the framework of administrative punishment of legal entities, with the predominance of sanctions in the form of fines, is not sufficiently differentiated and is not very effective compared to the options offered in the reformed systems, i.e. imposing differentiated punishments (e.g. warning, fine, prohibition of activity, community service, forfeiture of property, ordering the sale of a business, ordering the dissolution of a legal entity and its entry into liquidation) and protective measures (e.g. official supervision, compulsory administration, etc.). Naturally, the most serious sanctions (for example, the dissolution of a legal entity) cannot be imposed in the conditions of administrative law.

However, a fine is not an effective sanction in every case. This is the case, for example, when the administrative authorities do not use the full range of sanctions that the law gives them in their decision-making. This does not motivate the legal entities to behave in a desirable way; on the contrary, it reinforces the legal entity's belief that it is 'worthwhile' to not comply with a legal obligation, that it is still cheaper to pay a relatively low fine than to provide often costly measures to prevent offences or to ensure lawful behaviour at the cost of more complex, demanding action.

The types of penalties that could be imposed on legal entities (and natural persons doing business), including in the field of environmental protection, could be categorised as follows:

a) property penalties, i.e. (a) property sanctions, i.e. sanctions affecting the property of legal entities (fines, forfeiture of property used or intended to be used for the commission of an administrative offence), (b) sanctions against the activities of legal entities (the sanction of prohibition of activities, or the sanction of prohibition for the responsible entity to participate in public procurement by submitting tenders), (c) sanctions against the reputation, good name of legal entities (warnings, publication of the decision on the administrative offence of legal entities). Thus, the sanction of publication of the decision on administrative offence may be an appropriate solution where the legal entity is concerned about its reputation and/or at the same time it is necessary to warn the public against an untrustworthy entity. The effectiveness of this sanction can also be demonstrated in the field of

83 | Art. 11(1) of the Act on Infractions: "The following sanctions may be imposed for a misdemeanour: a) reprimand, b) fine, c) prohibition of activity, d) forfeiture of property." Section 16 of the Act on Infractions: "Protective measures are: a) a restraining measure, b) confiscation of the item, c) a probation programme or other educational programme in the proceedings against the juvenile."

environmental protection in cases where there is a need to inform the public about unfair (commercial) practices of legal entities, or where there is a recidivism by the responsible legal entity, or where the imposition of a financial sanction does not fulfil the desired purpose of administrative punishment. These are cases where the administrative authority, on the basis of the criteria set out in the law, imposes a fine either in the minimum amount or even in a high, even maximum, amount, but for a particular legal entity this fine is of a negligible nature compared to the profit that it will achieve by the unlawful conduct (non-compliance with the law), i.e. despite the (high) fine imposed, it is 'worthwhile' for the legal entity to break the law. However, the threat of 'damage to its reputation, a bad reputation' in the form of publication of the decision on the administrative offence, which could have a negative impact on its further economic activity, appears to be a more effective means of achieving the lawful conduct in the cases in question.[84]

It follows from the preceding text that the basic substantive and procedural law institutes, in particular of administrative offences committed by legal entities and self-employed natural persons, are not regulated. The basic principles of administrative procedure under the Administrative Procedure Code do not constitute a special procedural regulation for the implementation of liability for administrative offences. The above complicates the exercise of the fundamental rights of an accused of an administrative offence under Art. 6 of the Convention. This situation underlines the need to unify the basic institutes related to the liability of legal entities and entrepreneurs for administrative offences in administrative law by creating a general norm regulating this issue. In our view, an appropriate solution would involve enacting legislation that establishes a general substantive framework for administrative punishment, alongside procedural rules governing the imposition of liability. This legal framework should consolidate infractions and other administrative offences committed by natural persons into a single category of administrative delict (infraction). The same statute should also regulate administrative delicts committed by legal entities and by natural persons acting as entrepreneurs. Due to the distinct nature of the protected legal interests involved, the statute should exclude disciplinary administrative offences and procedural administrative offences from its scope. Unlike administrative law as a whole, administrative penal law lends itself to codification.

84 | Hamuľáková 2017, 231.

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