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ADMINISTRATIVE FINES AND THE ADMINISTRATION OF JUSTICE

Abstract

This study analyzes the issue of imposing administrative fines by public administration bodies in the Polish legal system. Using a dogmatic-legal method, the author verifies the thesis that the imposition of repressive administrative fines by executive authorities fulfills the material conditions of administration of justice and thus violates the constitutional boundary between the executive and judicial powers. Against the backdrop, he presents, among others, the police function of the Polish Financial Supervision Authority. The study, based on current and historical literature on the subject, judgments, and normative content, seeks the limits of punishment, drawing on the coexistence of judicial and administrative application of the law. The conclusions point to the need for a systemic correction of procedural and guarantee solutions in order to prevent the de facto transfer of judicial powers to non-judicial bodies.

Key words: administrative fines; administration of justice; Financial Supervision Authority; administrative fines; Code of Administrative Procedure; procedural guarantees

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1. Introduction

With the steady increase in public law regulations, particularly after Poland's accession to the European Union, there has been a dynamic increase in the number of provisions enabling executive authorities to impose administrative fines. The phenomenon of administrative fines, although it has a long tradition and has received international attention[1] and extensive academic reflection [Staniszewska 2017; M. Stahl, R. Lewicka, M. Lewicki 2011; Błachucki 2015; and the literature cited in these studies], has not led to the development of consistent answers to several fundamental questions, including the most important one: where does administration end and justice begin in the field of punishment? In practice, the choice of the form of sanctioning reprehensible behavior, between an administrative fine and a penalty, is sometimes completely arbitrary, and the amount and severity of fines imposed by administrative authorities often exceed the penalties imposed by judicial authorities. One gets the impression that in this respect, the constitutionally established separation of powers between the executive and the judiciary is becoming blurred, and the decision as to whether negatively assessed behavior will be subject to the judgment of the judiciary or the executive authorities is a matter of the whim of the legislator. Entering the sphere of constitutionally guaranteed rights and freedoms with administrative punishment powers, without the safeguards characteristic of the judiciary, is slowly becoming the norm. This situation requires deep reflection. This study presents and analyzes selected issues related to the imposition of administrative fines in the context of the imposition of penalties by the judiciary. It aims to verify the thesis that administrative fines imposed by public administration bodies meet the relevant criteria of administration of justice. Due to the adopted framework, the study omits the issue of European financial fines imposed on states [Kisilowska, Zieliński 2018: 81]. The study employed a dogmatic method involving logical and linguistic analysis and interpretation of legal texts using interpretative directives.

[1] See Recommendation No. R (91) 1 of 13.02.1991 on administrative sanctions.

2. The essence of justice

The system of government of the Republic of Poland is based on the separation and balance of legislative, executive, and judicial powers[2]. This separation is fully justified. Judicial power balances the monopoly of executive power and performs two essential functions in a democratic state: it protects the rights of the individual and binds state authorities to the constitution and the law [Czeszejko-Sochacki 1997: 88]. This raises a fundamental question about the essence of "justice" since it has been entrusted exclusively to courts and tribunals. Attempts to define this concept already have a history [Lubiński 1987]. In the past, when the principle of the separation of powers, including the independence of the judiciary, was rejected, the administration of justice was defined as: "(...) the imperative activity of the relevant state authorities, consisting in imposing penalties or resolving legal conflicts or non-conflictual matters in the sphere of fundamental civil rights and freedoms" [Lubiński 1987:18]. Even then, it was openly and boldly pointed out that entrusting the function of punishment to non-judicial bodies turned out to be a facade with very different levels of adjudication [Lubiński 1987: 21].

The concept of "justice" is heterogeneous and consists of two complementary spheres: subjective and objective. The Polish Constitution uses the term "justice" as an element defining the subjective sphere of the organs of justice, rather than its essence. The framers of the Constitution indicated[3] that justice is exercised by the Supreme Court, common courts, administrative courts, and military courts. The principle that justice is exercised by common courts, subject to the jurisdiction of other courts, was also included in the Polish Constitution. This is also linked to the constitutional principle of the right to a court[4], according to which everyone has the right to a fair and public hearing of their case without undue delay by a competent, impartial, and independent court. It should be emphasized that the right to a court applies not only to citizens but also to other legal entities[5]. Importantly,

[2] Art. 10 (1) and Art. 173 of the Polish Constitution (Journal of Laws of 1997, No. 78, item 483, as amended).

[3] See: Article 175 of the Constitution of the Republic of Poland.

[4] See: Article 45 of the Constitution of the Republic of Poland.

[5] See: the ruling of the Constitutional Tribunal of February 25, 1992, K 4/91, OTK 1992, No. 1, item2.

the concept of "case" is not limited to civil or criminal matters, but covers any type of legal dispute, including administrative disputes[6].

From the point of view of the subject matter, the concept of "justice" refers to justice as a value whose realization is a difficult art that has engaged the minds of lawyers for generations. Its implementation is the foundation of the state, and its source, as indicated in the preamble to the current Constitution of the Republic of Poland, is God for many. It is the need to guarantee fair decisions that is the reason for the establishment of judicial authorities. The Constitution of the Republic of Poland has reinforced this justice with several constitutional guarantees. Solutions have been developed to ensure the independence of judges, manifested, among other things, in their subordination to the Constitution and statutes; guarantees of working conditions and remuneration; the obligation of apoliticality; a special method of appointment and permanence of this relationship, irremovability, retirement, and judicial immunity[7]. At the statutory level[8], it was confirmed that justice is administered by judges, setting high requirements in terms of education, competence, criminal record, and moral attitudes expected of persons who are to administer justice in the state. The essence of judicial power, its exclusive competence, is therefore the administration of justice. To achieve the objective of administering justice in a competent, independent, impartial manner, free from pressure and not guided by particular interests, the administration of justice functions in a subjective manner.

The elusive element of justice is contained in the broader concept of the application of law. The very process of establishing the facts, constructing a model of conduct from the provisions of law, and deciding on the consequences of the behavior found to be in line with the model is common to both the activities of courts and administrative bodies. The problem is further complicated by the fact that the adjudication of cases by courts is not always the administration of justice. A number of the current competences of courts, such as conducting registry or land registry cases, can be successfully entrusted to the administrative authorities. For this purpose, courts employ

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6 See: the Constitutional Tribunal ruling of January 7, 1992, K 8/91, OTK 1992, No. 1, item 5; Constitutional Tribunal ruling of April 8, 1997, K 14/96, OTK 1997, No. 2, item 16.

7 See: Articles 178 to 181 of the Constitution of the Republic of Poland.

8 Act of July 27, 2001, *Law on the System of Common Courts* (consolidated text, Journal of Laws of 2024, item 334, as amended).

court clerks, i.e., persons who apply the law, e.g., make entries in registers, but do not administer justice[9]. This raises the question of what constitutes the exclusive competence of the courts to administer justice, and where the boundaries lie between the exclusive competence of the courts and other situations of adjudication. A comprehensive presentation of this multifaceted problem goes beyond the scope of this study, and for this reason, the discussion will cover only a part of the problem, focusing on one traditional competence related to judicial power: punishment.

The function of punishment is undoubtedly linked to and permeated by the idea of justice. It is, in a sense, inherent in human nature. Punishment, understood as repression, whether it concerns crimes, misdemeanors, or administrative offenses, should be fair. It should inspire confidence that it is not only a balanced response to negatively assessed behavior, but also that it will change the offender's attitude and public awareness. The idea of justice that permeates punishment, therefore, encompasses not only trust in the impartiality, independence, and professionalism of those who administer justice, in the proper guarantee procedure that allows for a balanced and correct ruling, but also in the form that this just retribution will take. In this light, punishment seems to be the most fundamental, primary, and obvious element of the administration of justice, which the Polish Constitution reserves exclusively for the courts.

3. Administrative authority

The executive power serves primarily for administration. In administrative relations, the lack of equality between the parties manifests itself in the competence to demand specific behavior from entities subordinate to the executive power. In order for administration to be effective and for behavior to be in line with the will of the legislator, administrative bodies should be and are equipped with powers enabling them to enforce behavior in accordance with normative standards. Naturally, not every obligation imposed by administrative bodies is a punishment and therefore a form of repression. Sanctioning mechanisms that ensure the effectiveness of administrative authority are classified in many ways. French scholarship

[9] Pursuant to Article 2 of the Act of July 27, 2001 *Law on the System of Common Courts* (Journal of Laws of 2024, item 334), tasks related to the administration of justice are performed by judges, and tasks related to legal protection other than the administration of justice are performed in courts by court clerks and senior court clerks.

distinguishes between financial and non-financial sanctions, e.g., warnings [Lemonnier 2016: 49]. Under Polish law, the three main types of administrative sanctions are most often mentioned, i.e., repressive, enforcement, and invalidity sanctions [Staniszewska 2017:35]. The essence of administrative fines has divided legal scholars. Some treated them as an independent institution separate from criminal and administrative law, others as an institution reflecting administrative and legal responsibility, and still others as a response to administrative offenses [Staniszewska 2017:47]. Analyzing the Constitutional Tribunal's rulings broadly, legal scholars note that the Tribunal distinguishes between the following types of sanctions: criminal sanctions (for crimes and misdemeanors); administrative fines (preventive); and administrative fines of a punitive (repressive) [Majchrzak 2015:70]. The distinction between preventive and repressive administrative fines is extremely important. In the case of preventive fines, we are primarily dealing with the enforcement of behavior in accordance with a normative model. An example of a coercive means is the administrative financial fine provided for in the Banking Law, imposed by the Polish Financial Supervision Authority on a bank for failure to implement recommendations, e.g., to restore the bank's liquidity. In such a situation, the aim is to ensure the correct level of the bank's cash resources by performing the indicated activities during the bank's operation. Here, the administrative fine is not primarily intended as retribution, but to enforce an improvement in the bank's liquidity in the future[10]. Similarly, an administrative fine of up to PLN 1 million imposed under Article 107(7) of the Act on Trading in Financial Instruments for failure to sell shares by a shareholder of a brokerage house is intended to enforce the restoration of corporate order. In this case, the financial fine should be balanced enough to encourage compliance with the obligation and should not contain any additional element, i.e., severe repression. It therefore resembles an enforcement measure. Meanwhile, the second type of administrative financial fines (penal) involves severe retribution for the offense. From the point of view of this study, the most important is the third category, i.e., those administrative financial fines that are penal and repressive in nature.

[10] See: Article 138(3)(3a) of the Banking Law Act of August 29, 1997 (hereinafter: "Banking Law").

In terms of the concept of administrative punishment and broadly understood criminal punishment[11], there are currently no clear grounds for choosing one of the regimes. There are no clear indications allowing for a distinction between what can and should be punished as an administrative offense and what as a misdemeanor or criminal offense. The Polish legal system is chaotic in this respect. We faced a similar situation in the interwar period, when, after regaining independence, we had to answer the question of which of the partitioning models of punishment to adopt, and how to distinguish between administrative and judicial punishment in the various post-partition models functioning in the country. One concept was to arrange both models of punishment in a cascade, as it were. For behavior that violated fundamental values, it was proposed to shape criminal liability as for crimes, for violations of a lighter nature as for misdemeanors, and for the mildest, administrative fines [Staniszewska 2017:104]. There was sound logic in this concept. Since we entrust the punishment of crimes and misdemeanors to the judiciary, with all its guarantees and high level of legal professionalism, the administrative authorities are left with only minor cases, with a negative impact below that of misdemeanors. In that case, minor cases and minor fines can indeed be entrusted to administrative bodies, recognizing that justice begins above a certain weight of cases, and below that limit, punishment falls within the scope of administration.

It is also worth recalling here the discussion that took place during the systemic changes after 1989 and the adoption of the current Constitution of the Republic of Poland. Historically, going back half a century, there were misdemeanor colleges established by the Act of May 20, 1971, on the system of misdemeanor colleges[12]. These were administrative bodies operating, among others, at the presidia of county councils. The members of the colleges were elected in particular by the national councils. The requirements for college members were: Polish citizenship, full public rights, good reputation, and being at least 24 years of age. Judges, prosecutors, and lawyers, among others, could not be members of the college. The Code of Procedure in Misdemeanor Cases, adopted on the same day[13], stipulated that misdemeanor courts had the right to adjudicate misdemeanor cases and impose, in accordance with

[11] That is, both in terms of liability for crimes and misdemeanors.
[12] Journal of Laws of 1971, No. 12, item 118.
[13] Journal of Laws of 1971, No. 12, item 116.

the Misdemeanor Code[14], penalties of arrest, restriction of liberty, fines, and reprimands. The main prosecutor before the court was the Citizens' Militia, and the proceedings ended with a ruling, which could be appealed to a higher court, with the exception that in the case of rulings by the court of first instance imposing a basic penalty of arrest or restriction of liberty, those entitled to appeal had the right to appeal in the form of a request to refer the case to court proceedings[15]. The Minister of Internal Affairs and the presidium of the national councils, which supervised the panels, could, in particular, issue guidelines on the policy of adjudication in cases of misdemeanors[16]. The panels were therefore adjudicative bodies, but did not administer justice [Lubiński 1987:23]. During the political transition, given the nature of misdemeanors and the penalties for them, and given that the Polish Constitution entrusted the administration of justice exclusively to the courts, it was impossible to maintain the competence of the colleges for misdemeanors, and after a transitional period, they were removed from the legal system. It was emphasized that their activities were incompatible with the entrusting of the administration of justice to the courts. At that time, there was no doubt that punishing even minor, prohibited, and often trivial behaviors, such as placing a poster in a public place not designated for that purpose [17], ticket speculation[18], or failure to illuminate a place accessible to the public[19], was an administration of justice and fell within the exclusive jurisdiction of the court (with exceptions, with the consent of the accused, for summary proceedings). Even more interesting legal problems arose until 1999 from the then fiscal penal code, which entrusted the adjudication of fiscal offenses punishable by a fine to financial adjudicating authorities, i.e., the administration rather than the courts[20]. The examples given of punishment by administrative authorities for crimes and misdemeanors actually existed, and there are still people alive who were punished for crimes by administrative authorities.

14 Journal of Laws of 1971, No. 12, item 114.
15 Article 86 of the Code of Misdemeanors.
16 Article 111(1) of the Code of Misdemeanors.
17 Article 63a of the Code of Misdemeanors.
18 Article 133(1) of the Code of Misdemeanors.
19 Article 79(1) of the Code of Misdemeanors.
20 See: Art. 123§1 of the *Penal Fiscal Act* (Journal of Laws of 1984, item 22, No. 103, as amended).

Despite the entry into force of the provisions of the Polish Constitution, the current division of powers between judicial and administrative authorities in the area of imposing financial fines/penalties remains unregulated. Time and again, the legislator has expressed complete freedom in the area of changes between liability for misdemeanors, which are adjudicated by courts, and punishment for administrative breaches, which are the domain of the executive branch. The changes in nuclear law are a case in point. The Nuclear Law Act of April 10, 1986,[21] provided in Article 62a that failure to comply with the obligation to perform dosimetric control or to keep records of nuclear materials, ionizing radiation sources, and radioactive waste was prohibited as a misdemeanor. Meanwhile, the Atomic Law Act of November 29, 2000,[22] included in Article 123(1)(8) as conduct prohibited under threat of an administrative fine, conduct consisting in failure to comply with the obligation to perform dosimetric control or keep records of nuclear materials, ionizing radiation sources, radioactive waste, and spent nuclear fuel. There are many examples of behavior that were initially punished as a misdemeanor and then recognized as an administrative offense [Staniszewska 2017: 120].

The legislator, therefore, considers that punishment for the same physical behavior is sometimes a matter of justice and falls within the exclusive competence of the courts, and sometimes is not a matter of justice and punishment is entrusted to administrative authorities—naturally, taking into account the specific nature of both types of proceedings. Such shaping of normative patterns is striking in its arbitrariness and confirms the lack of clear boundaries in the scope of punishment separating the competences of the executive and judicial authorities. In the institution of administrative fines, science sees elements of repression, compensation, and coercion [Klat-Wertelecka 2011:70]. It is difficult to argue that such elements are not present in penalties.

When the provisions of the Code of Administrative Procedure were amended in 2017, Chapter IVa on administrative fines was introduced[23]. The adopted solutions overlapped with random regulations of a similar nature, scattered throughout the legal system. For these reasons, it was specified at the outset in which situations the adopted solutions would not apply; in particular, the application of these provisions was excluded from misdemeanor

[21] Journal of Laws of 1986, No. 12, item 70, as amended.

[22] Journal of Laws of 2024, item 1277 (consolidated text).

[23] Act of April 7, 2017, *amending the Act – Code of Administrative Procedure and certain other acts* (Journal of Laws of 2017, item 935).

proceedings where the penalty is imposed by an administrative authority. Importantly, a statutory definition of an administrative financial fine was also included, stating that it is understood as a financial sanction specified in the Act, imposed by a public administration body, by way of a decision, as a result of a violation of the law consisting in a failure to fulfill an obligation or a violation of a prohibition imposed on a natural person, a legal person, or an organizational unit without legal personality.[24] The grounds for imposing an administrative fine introduced into the Code of Administrative Procedure indicate that when imposing such a fine, a public administration body is required to take into account: the gravity and circumstances of the violation of the law, in particular the need to protect life or health, the protection of significant property or the protection of an important public interest or an exceptionally important interest of a party, and the duration of the violation; the frequency of past failures to fulfill an obligation or violations of a prohibition of the same type as the failure to fulfill an obligation or violation of a prohibition for which the administrative fine is to be imposed; previous punishment for the same behavior for a crime, fiscal offense, misdemeanor, or fiscal misdemeanor; the degree of contribution of the party on which the administrative fine is imposed to the occurrence of the violation of the law; actions taken voluntarily by the party to avoid the consequences of the violation of the law; the amount of benefit gained by the party or the loss avoided; in the case of a natural person, the personal circumstances of the party on whom the administrative fine is imposed. [25]

The rules for balancing administrative fines are very similar to the judicial imposition of penalties in criminal and misdemeanor proceedings[26]. Although many of the provisions on which the imposition of administrative fines depends do not mention guilt, there are exceptions to this. For example, Article 56(6) of the Energy Law[27] makes the amount of the administrative fine dependent on fault, which is examined by the President of the Energy Regulatory Office. Similarly, Article 104(2) of the Food and Nutrition Safety Act [28] states in Article 104(2) that when determining the amount of the finan-

[24] Article 189b of the Code of Administrative Procedure.
[25] Article 189d of the Code of Administrative Procedure.
[26] Compare Article 33 et seq. of the Code of Misdemeanors and Article 53 et seq. of the Criminal Code.
[27] Act of April 10, 1997, *Energy Law* (Journal of Laws of 2024, item 266, consolidated text)
[28] Act of August 25, 2006, *on Food and Nutrition Safety* (Journal of Laws of 2023, item 1448, consolidated text)

cial administrative fine, the competent provincial sanitary inspector shall take into account the degree of harmfulness of the act, the degree of fault and the extent of the violation, the previous activity of the entity operating on the food market, and the production volume of the plant. In these situations, the imposition of administrative fines does not differ much from the process of administering justice carried out by the courts, as even the difficult element of the facts, which is the mental attitude of the perpetrator towards the act, must be taken into account.

Importantly, there is no mechanical aspect to either type of administrative fine imposition; many variables are weighed and assessed, and it is almost certain that different fines will be imposed in similar cases, depending on the person adjudicating. Therefore, since a non-judicial body has to weigh so many circumstances, its actions are functionally no different from the administration of justice by a court. From the point of view of the subject matter, this is the administration of justice in its purest form. The entity against which proceedings are conducted for the imposition of an administrative fine is at the same time deprived of the guarantee rights provided by the very extensive criminal law provisions in this area, including, among others, the principle of the presumption of innocence, in dubio pro reo, the provision of a public defender (in certain situations), and the right to refuse to make statements that cannot be used against the accused.

4. Administrative fines and the justice system

To understand the fine line between imposing penalties for offenses and administrative fines, we can take a simplified look at both punishment processes. The first element is the subjective form of the adjudicating body and its powers. In the case of an offense, the court is, as a rule, the authority competent to hear the case. Consequently, the case will generally be adjudicated by a single judge whose professional and moral qualifications, independence, and actions within the framework of dignity, seriousness, and the guarantees of the judicial authority entrusted to him or her provide a guarantee of the correctness of the adjudication (which does not mean that it is infallible). In the second case, the decision will be made by an administrative body that is not independent and impartial, and this function will be performed by a person who often has no legal education or experience, often has a clearly manifested worldview, is a member of a political party or

trade union, and is to some extent subordinate to it. There is also a certain inconsistency here. It turns out that executive authorities, such as the police, may impose a fine for an offense in summary proceedings, generally when the accused does not refuse to accept the fine. In two identical factual situations, there may therefore be a situation where, in the first case, the imposition of a fine for an offense will be an administration of justice because it will be imposed by a court, and in the second case, it will not be an administration of justice because a fine of the same amount will be imposed, for example, by a police officer.

From the point of view of the subject matter, both competent authorities, the judiciary and the administration, will face twin tasks. The first will be to establish the facts. In both misdemeanor and administrative proceedings, the principle of basing a decision on factual findings consistent with reality is of paramount importance. Therefore, both the judicial and administrative authorities will face the difficulties of gathering or supplementing evidence, freely assessing it, and reconstructing the facts. From the point of view of substantive law, the characteristics of prohibited behavior will be relevant in both cases. Both authorities will have to decode the legal situation in order to determine the legal norm that has been violated. In each case, the grounds must be specified by law, specific, and the conduct prohibited under penalty of punishment. The subjective element of the offender, i.e., the determination of who can be punished in certain situations, may differ between the two systems. Broadly defined criminal liability generally applies to natural persons, although the Act on the Liability of Collective Entities for Acts Prohibited under Threat of Punishment[29] imposes criminal sanctions on entities that are not natural persons. In turn, in the area of administrative fines, the circle of entities is freely defined.

In the case of misdemeanors, one of the prerequisites for liability is culpability. It is therefore not sufficient to violate a prohibition, i.e., to fulfill the elements of a prohibited act; it must also be committed with the appropriate mental attitude, as a rule intentionally or unintentionally, unless the law requires intent[30]. In the case of an administrative fine, the fulfillment of the elements of prohibited behavior may, but does not have to, be accompanied by

[29] See: The Act of October 28, 2002, *on the liability of collective entities for acts prohibited under penalty of law* (Journal of Laws of 2024, item 1822, consolidated text).

[30] See: Article 5 of the Code of Misdemeanors.

an element of guilt, i.e., the perpetrator's mental attitude toward the act. An entity that has committed a violation without fault may be punished with an administrative fine. In the case of a penalty, the emphasis seems to be on the trio of act-fault-punishment, while in the case of an administrative fine, it is on act-public interest-punishment, although the possibility of demonstrating special circumstances in administrative proceedings, including force majeure, also has an impact on the possibility of punishment.

There are certain differences between a penalty and an administrative financial fine, including the consequences of non-compliance. In the case of a penalty for an offense, the penalty may be converted in enforcement proceedings into a penalty of a different type, while in the case of an administrative financial fine, the fine imposed remains enforceable. Criminal penalties are also considered to have a greater negative moral weight than administrative fines. The two types have many similarities. Both are imposed in monetary terms, their amount is not clearly defined and falls within certain limits, allowing for flexibility in adjusting the amount to the circumstances of the case. Both serve the functions of retribution and prevention. Both should be fair, although due to their specific nature, the criteria taken into account when assessing fair retribution may differ in detail. In the case of a penalty, fair retribution should not exceed the degree of guilt of the perpetrator, while in the case of an administrative financial fine, fair retribution should proportionally protect the public interest. Both proceedings are therefore permeated by the idea of a proportionate response to the circumstances of the reprehensible behavior, the perpetrator, and the consequences. In terms of the statute of limitations, administrative fines are more severe than criminal penalties, as many provisions of substantive administrative law do not include a statute of limitations for liability, which therefore becomes perpetual [Staniszewska 2015:3].

Since a non-judicial body is required to weigh so many circumstances when imposing an administrative fine, and the sanctions it imposes infringe on constitutionally protected rights such as property rights, its actions are, from this point of view, no different from the administration of justice by the courts. In particular, the fact that certain groups of premises differ from each other to a certain extent does not make the essence of this application of the law something separate or exceptional. It is the administration of justice in its purest form, albeit with certain secondary differences in terms of coercive

enforcement or social stigmatization. The entity against which proceedings are conducted for the imposition of an administrative fine is, at the same time, deprived of the guarantee rights provided by the very extensive criminal law provisions in this respect.

In this light, attention should be drawn to one more, perhaps the most important, element – the scale of the burden and severity of the penalties/fines imposed. The amount of the penalty, including an administrative fine, can destroy a person's life or the existence of another legal entity. It is, among other things, the severity of the consequences of the administrative fine, its burden, the fact of authoritative interference with constitutional rights, and the need to weigh the burden fairly that means that they should be imposed by independent courts and independent judges. Currently, the severity of administrative fines often exceeds the amount of penalties for crimes. In this respect, the record seems to belong to the President of the Office of Competition and Consumer Protection, who was able to impose an administrative fine of over PLN 723 million on one of the entrepreneurs for practices unfairly exploiting contractual advantage, and for including prohibited contractual provisions in the regulations, administrative fines amounted to tens of millions of zlotys [31]. This means that, in terms of subject matter, the justice administered by the executive branch repeatedly exceeds the severity of penalties imposed by the courts. One may therefore ask why we need the judiciary if it has only modest means of response in the form of financial penalties against lawbreakers, while the executive branch has been equipped with a "nuclear weapon" in the form of administrative fines.

It is also worth noting the position of the Constitutional Tribunal, which has repeatedly dealt with the issue of administrative fines [For a more detailed discussion, see Błachnio-Parzych 2011: 657 et seq.]. In its ruling of SK 3/08, the Constitutional Tribunal stated that "The distinguishing feature between a 'penalty' within the meaning of criminal law and an 'administrative fine' is that the former must be individualized — it can only be imposed if a natural person commits a culpable act that meets the criteria of a crime (misdemeanor, fiscal offense), while the latter can be imposed on both a natural person and a legal person, is applied automatically based on strict liability, and is primarily preventive in nature." This position is not defensible today if

[31] The decision of the President of the Office of Competition and Consumer Protection (UOKIK) of December 11, 2020, ref. no. RBG.440.1.2019; the decision of the President of UOKIK of November 8, 2024, ref. no. DOZIK 3.611.1.2024.KJ.

we look at the statutory grounds for imposing an administrative fine contained, for example, in the Code of Administrative Procedure. In addition, in a later judgment of the Constitutional Tribunal of May 5, 2009 [32], in a dissenting opinion by Constitutional Tribunal judge Marek Mazurkiewicz, an important view was expressed that the automatic and rigid nature of the sanctions provided for in the Act is incompatible with the constitutional principle of fair legislation and the principle of proportionality. Consequently, it is obviously flawed to look for differences between criminal individualization and the administrative automaticity of sanctions. Both systems of law enforcement decode legal premises, establish factual circumstances, and impose an appropriately severe punishment, thus administering justice in its purest form.

5. The powers of the Polish Financial Supervision Authority (KNF) to impose administrative fines

The issue of imposing administrative fines is particularly important when it affects financial market participants. Not only do prohibitions contribute to the stability of the financial system, but so do the high administrative fines associated with them.

The structure of supervision in Poland has changed in recent years[33]. A state legal entity was established to supervise the financial market with bodies in the form of the Financial Supervision Commission and the Chairman of the Financial Supervision Commission. The Financial Supervision Commission consists of a Chairman, three Deputy Chairmen, and nine members[34]. The scope of the KNF's powers is very broad, and an attempt

[32] Judgment of the Constitutional Tribunal of May 5, 2009, ref. no. P 64/07, OTK-A 2009, no. 5, item 64.

[33] See: The Act of July 21, 2006, *on financial market supervision* (Journal of Laws of 2025, item 640, consolidated text), (hereinafter: "NFinU").

[34] Pursuant to Article 5 of the NFinU, the members of the Commission are: the minister responsible for financial institutions or his representative; the minister responsible for the economy or his representative; the minister responsible for social security or his representative; the President of the National Bank of Poland or a member of the Management Board of the National Bank of Poland delegated by him; a representative of the President of the Republic of Poland; a representative of the Prime Minister; a representative of the Bank Guarantee Fund; a representative of the President of the Office of Competition and Consumer Protection; a representative of the minister – member of the Council of Ministers responsible for coordinating the activities of special services, and if no such representative has been appointed, a representative of the Prime Minister.

to organize these powers indicates the following functions: licensing, regulatory, supervisory, and disciplinary (police) [Capiga 2011:58; Daniluk 1996:13]. There are essentially no requirements in terms of education or competence for the people who make up the KNF. Most of them may be politicians. Only the Chairman of the KNF should have a higher education and knowledge of the financial market, although he or she does not have to be a lawyer. In summary, the KNF is a state legal entity and therefore an administrative body that is only supervised by the Prime Minister. The Financial Supervision Authority is an entity with its own budget, which is primarily funded by contributions from supervised entities. The people who make up the UKNF bodies do not need to have a legal education, and in most cases do not even need to have a higher education. The right to use state coercion on a scale that may exceed tens or hundreds of millions of zlotys has thus been given to an entity outside the government administration structure. A state legal entity has been granted the right to impose administrative fines on a scale and of a severity significantly higher than those that can be imposed by the constitutionally established judiciary.

Several problems related to punishment (but not only) should therefore be noted here. The first is the systemic position of the financial market supervisor, an entity transferred outside the traditional framework of public administration, in relation to the disproportionately broad powers entrusted to it. This can naturally be justified by the need for the independence of this entity, although this argument falls apart when one considers the composition of the Polish Financial Supervision Authority. The second element is the competence of a state legal entity to impose disproportionately high administrative fines. The third is the lack of guarantee mechanisms that should accompany the power to impose such high administrative fines. As indicated in the study, the imposition of administrative fines may take the form of an enforcement measure, enabling the enforcement of public law obligations. In this respect, the powers of the Polish Financial Supervision Authority (KNF) seem to be adequate. Several administrative fines in the Banking Law, the Financial Market Supervision Act, and the Act on Trading in Financial Instruments[35] refer to strengthening the effectiveness of financial market supervision rather than directly to typical severe administrative fines. However, there are administrative fines whose essence

[35] Act of July 29, 2005, on trading in financial instruments (consolidated text, Journal of Laws of 2024, item 722, as amended).

is to punish reprehensible behavior, which in essence does not differ from punishment under the justice system. For example, administrative fines imposed for past offenses on entities that no longer operate on the market take the form of sanctions rather than enforcement measures[36]. Similarly, in the case of an irreversible breach, e.g., when an issuer of bank derivatives fails to make the notification referred to in Article 88p(2) of the Banking Law, the Financial Supervision Authority may impose an administrative fine of up to PLN 10 million on the issuer[37]. Such punishment for past events is not similar to an enforcement measure serving administrative purposes, but has primarily repressive characteristics. Imposing such an administrative fine manifests characteristics of subsequent retribution for prohibited behaviour and could equally well constitute a type of crime or offence.

Considerations on the nature of administrative financial fines and the discussed issues of the actual administration of justice fall squarely within the competence of the Polish Financial Supervision Authority. The imposition of administrative fines as a form of repressive retribution (not an enforcement mechanism) by the KNF, in its current form, might fulfill the conditions for the administration of justice from the point of view of the subject matter, although constitutionally it is reserved exclusively for the judiciary.

6. Conclusion

The considerations presented above have allowed us to verify the research problem and demonstrate that the imposition of repressive administrative fines, in many cases, despite the different moral weight and consequences of non-voluntary compliance, meets the relevant criteria of administration of justice. The administrative rules for gathering and evaluating evidence, establishing the facts, including sometimes also fault, interpreting the provisions that define behaviours prohibited under threat of an administrative fine, as well as assessing other grounds for liability and determining the amount of the fine, do not differ significantly from the administration of justice. Punishment, as a traditional function of the administration of justice, is today

[36] See: Article 12a of the NadFinU, which reads: "In the cases specified in this Act, in the provisions of the Acts referred to in Article 1(2), or in the provisions of separate Acts, a financial fines may also be imposed by the Commission on an entity whose license to conduct the activity related to the violation has expired or whose license to conduct such activity has been revoked, and on an entity that has been removed from the register authorizing it to conduct the activity to which the violation relates."

[37] See: Article 88r of the *Banking Law* Act.

largely carried out by the executive authorities. In addition, paradoxically, they have gained the power to impose administrative fines (often of a perpetual nature – without a statute of limitations) that are higher than the fines for crimes or offences, while lacking the guarantees appropriate to the judiciary. The current coexistence of the system of administrative fines and criminal penalties for crimes and misdemeanors requires in-depth constitutional reflection and systemic restructuring. Administrative fines cannot be seen as an antidote to the inefficiency of the justice system [Nowicki, Peszkowski 2015: 12].

The executive branch, together with the legislative branch, under the pretext of increasing the efficiency of state administration, seems to be usurping powers reserved exclusively for the judiciary. The Constitutional Tribunal, which could be expected to draw clear boundaries between punishment within the justice system and other forms of punishment, avoids confronting this systemic problem. The Constitutional Tribunal's shallow statements embolden the legislature, which is increasingly replacing judicial justice with administrative fines, naturally accompanied by repeated verbal assurances that there is no question of entrusting justice to the administration. No one seems to be bothered by the imbalance between judicial penalties and administrative fines in favor of the administrative authorities, nor by the lack of independence and impartiality or procedural guarantees. We are on the threshold of a reality in which the administration of justice will soon begin and end with acts for which a person can be deprived of their liberty, with the administration successfully taking over everything else. The time has come, after many years, to ask ourselves once again about the limits of the competence of administrative and judicial authorities in the area of punishment and to rebuild this questionable system.

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