

Abstract – English

This paper is focused on new legal institute, starting to grow and practised relatively very late, during the period of the socialist regime. Such institute is new, but nowadays has grown to substantial dimensions which is connected not only with the practical point of view, but also with the development of the society and economics. Very similar development can be observed also in other law cultures; the administrative penalty has everywhere the rising intensity, also in Anglo-American law, both in law in books, as well as in law in action.

Our law order has the traditional classification of such institute to Administrative Law, not Criminal Law. Such classification has its advantages, but also disadvantages – as advantage it is very easy to apply the law in books, relatively free procedural law, effectiveness and speed of the punishment. As disadvantage it is the absence of guaranty of fundamental right of defendant (offender), insufficient observation of the facts of liability, a quantity of specific law rules organized by every ministry, and moreover very poor catalogue of administrative punishment.

With the respect of such deficiency of this part of Administrative Punishment this paper is prepared with the traditional point of view of the Criminal Law concentrated on the particular aspects of the legal relation. The new focus is on the objective and especially subjective aspects which are important for the right and fair administrative punishment and which still is not very observed. The substantial part of this paper is connected with the problems which arise from the judicial decision, on the field of legislative power such problems has not been accepted. Such problems are connected with the punishment at the concurrence of delicts, definition of such concurrence, problems with the act of the corporates and subjects of such acting.

As regards the objective aspects of the Administrative Delict the paper is focused on the new definition of act of the corporate, especially very similar to the Criminal Law and liability of individual people. The very similar method should be applied also for the subjective aspects of act; such subjective aspects are also included in our legal order, but are a little bit hidden as deliberation aspects.

Another part of this paper is concentrated to the problems of the punishments and administrative penalties themselves. The catalogue of this punishment is very limited and in practise it is focused only on penalty (financial punishment). But there are possibilities of

many other punishments and limitations – such new punishment should be more effective including the conditional punishment, or the dissolution of the corporate (legal entity) or liability of legal successor of corporate (legal person).

In the point of view of the penalty (financial punishment) itself the paper is focused on definition in law (acts) which is sometimes very broad, not concrete, sometimes the amount of the penalty is very high, but in practise such penalty had never been imposed. When we focused on the aspect how effective is the income arising from the penalties for the state (public) budget, it is very marginal part of such budget. On the other hand there are some public subject which are known as the very lucrative income of the penalties (i.e. municipal police). Concentrating on the amount of the penalties to the corporates (legal persons) it can be observed that such amount is very low, although such corporates are very strong and had very good economic results. Such good economic income sometimes goes from the delicts.

The another part of this paper is focused on very high delict actions nowadays which are very good to illustrate the problems of Administrative Punishment, the formal aspects of the administrative regulation, very easy and common circumvention of the public duties, as well as the corruptcy of many public offices – controllers obliged to observe to fulfill such duties. This situation is similar as in Europe, as in American life, and was very manifesting during so called „economic crisis“. Some gigantic legal persons (corporates) – Enron or WorldCom in the U.S.A., Parmalat in Italy, SkyEurope in Slovakia, give us the picture of the weak regulation. Moreover, the bankruptcy of the bank houses are very sensitively perceived, often the bankruptcy of such banks are followed on the state financial aid. This method of negotiation is known as the privatization of profits and socialization of loss.

Very discussed lap of problems connected with the administrative liability it is the procedural aspect. Due to the fact that the united procedural code for punishment is not valid and such punishment is applied by many public administrative bodies, the only one guaranty of some uniform proceed is the judicial power and decisions of administrative justice. Such situation is common in democratic legal state. Unfortunately the influence of such judicial decision to legislative power is very small (i.e. for guaranty to the right of defense, still not existing rights for victims of delicts, very broad possibilities for the administrative bodies in administrative punishment, and many others). This problems are still reprehended to the public administration, but the practise is not good. The necessity of some basic, very fundamental, procedural code which unify the practise is very important

and such new procedural administrative code should contribute to more effective administrative punishment. The current situation – the administrative justice is entitled very broadly to enter into the proces of administrative punishment and decided on the punishment (penalty) – is very good regulated by law, but in practise is very rare. As well as the review of administrative acts itself in the rank of the public administration is very rare and unique (controle of the publi interest in administrative decisions which is connected with the amount of penalties).

The final part of the paper is focused on the very new situation – the mutual relationship between the Criminal and Administrative liability. The practice is now very weak, although there are some first decisions in the field of Criminal Liability of Corporates. The paper is concentrated on the theoretic aspects of these two liabilities, especially to the possibility of punishment by two state powers – administrative and judicial (with the premacy of judicial state power). Very important observation should be focused on the aspects of acting, acts, with respect to the objective and subjective parts of such acts.

Finally, the problemation of the administrative liability of corporates is very extensive, contained in many legal acts, in practice very influenced by the particular procedural customs, without some unification authority in the field od public administration. The only unify power is the judicial power – administrative justice – but it is concentrated mainly on the problems of rights of defendants. That is the reason that this paper is also concentrated on situation to find the unifying parts and judicial review of administrative decisions, as how they can be seen in administrative justice. It can be reviewed by other aspects, maybe the problems of controlle of the administrative decisions – but such point of view could be done by the state prosecutor or ombudsman. The author has no experience with such situation, therefore this paper has no considerations on such topic.