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APPLICATION OF THE MORE RELATIVE ACT IN THE FIELD OF ADMINISTRATIVE PENALTY IN THE LIGHT OF ANALOGY TO CRIMINAL LAW

STOSOWANIE USTAWY WZGLĘDNIEJSZEJ W ZAKRESIE ADMINISTRACYJNYCH KAR PIENIĘŻNYCH W ŚWIETLE ANALOGII DO PRAWA KARNEGO

Summary: The state's repressive response to unlawful behavior takes various forms. By introducing a regulation covering the imposition of administrative fines into the Code of Administrative Procedure, the legislator adopted – taken from substantive criminal law - the principle of applying an act more relative to the perpetrator of an administrative tort, in a situation where at the time of its commission a different legal state of affairs was in force than on the date of adjudication. The purpose of the article is to analyze the practical doubts raised by the application of the commented regulation to non-universal offences, as well as to attempt to resolve them based on the analogy of substantive criminal law. The result of the research will be the formulation of *de lege ferenda* postulates, which, in the opinion of the authors, would make it possible to eliminate the doubts in question and duly secure the rights and freedoms of administered subjects.

Keywords: administrative monetary penalty, substantive criminal law, analogia *legis*, analogia *iuris*, application of a more relative act

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Streszczenie: Reakcja represyjna państwa na bezprawne zachowania przybiera różne formy. Ustawodawca, wprowadzając do Kodeksu postępowania administracyjnego regulację obejmującą nakładanie administracyjnych kar pieniężnych, przyjął – zaczerpniętą z prawa karnego materialnego – zasadę stosowania ustawy względniejszej dla sprawcy deliktu administracyjnego, w sytuacji gdy w chwili jego popełnienia obowiązywał odmienny stan prawny aniżeli w dacie orzekania. Celem artykułu jest analiza wątpliwości praktycznych, jakie rodzi stosowanie komentowanej regulacji w odniesieniu do czynów niejednochwilowych, jak również podjęcie próby ich rozwiązania w oparciu o analogię do prawa karnego materialnego. Rezultatem przeprowadzonych badań będzie sformułowanie postulatów *de lege ferenda*, które – w ocenie autorów – pozwoliłyby rzeczone wątpliwości wyeliminować i należycie zabezpieczyć prawa i wolności podmiotów administrowanych.

Słowa kluczowe: administracyjna kara pieniężna, prawo karne materialne, analogia *legis*, analogia *iuris*, stosowanie ustawy względniejszej

INTRODUCTION

It is obvious that a certain amount of time always passes between the date of the commission of an illegal offence and the date of adjudication of legal responsibility for that offence. On the other hand, also the offence itself considered illegal may last for a certain longer or shorter time interval. The above raises intertemporal problems related to changes made by the legislator to the legal status relevant to the offence committed and the legal liability for its commission.

In view of the fact that a repressive reaction of the state is always associated with the most far-reaching interference with constitutionally protected rights and freedoms of the individual, it should be considered obvious that the legislator on the grounds of repressive law partially abandons the principle of *lex posterior derogat legi priori*, in favor of the principle of applying a law more relative to the perpetrator, even if this were to mean retroactive application of the provisions of the law. Indeed, in the case of norms belonging to repressive law, the issue of normative change is resolved on the basis of the application of two complementary principles, namely, the principle of *lex severior retro non agit* and the principle of *lex mitiorretro agit*.

In terms of criminal law, the principle of applying the act more relative to the perpetrator is expressed in Article 4 § 1 of the Criminal Code[1], according to which if at the time of adjudication an act different from the one in force at the time of committing the crime is in force, the new act shall be applied, but the act in force previously should be applied if it is more relative to the perpetrator. A similar-sounding provision can be found in administrative procedure, on the grounds of the rules for

[1] Act of June 6, 1997 – Criminal Code (i.e., Journal of Laws 2022, item 1138, as amended); hereinafter referred to as the Criminal Code.

imposing administrative monetary penalties. This is because according to Article 189c of the Code of Administrative Procedure[2], if at the time of issuing a decision on an administrative monetary penalty an act is in force other than at the time of the violation of the law as a result of which the fine is to be imposed, the new act shall be applied, but the act in force previously shall be applied if it is more relative to the party. It is difficult not to see the identical wording of the two cited norms (semantic differences are reduced only to a different mode of imposing sanctions)[3].

On the grounds of criminal regulation, doubts in doctrine and jurisprudence arise when a given criminal offence extends over time, and in the course of "committing" it, a change in the legal status occurs. The doubt in this case is whether the entire duration of the act, i.e. the period from the first to the last behavior of the perpetrator included in the continuous (permanent) act, is covered by the principle of choosing the law more relative to the perpetrator, or only the final moment of the act, determined by the last behavior of the perpetrator included in the continuous (permanent) offence. However, this problem, despite the convergence of regulations, is not recognized on the grounds of the administrative regulation devoted to the procedure for imposing a monetary penalty.

With the above in mind, it should be considered an issue worthy of scientific reflection to try to determine the appropriate temporal scope of application of the principle of choosing an act more favorable to the perpetrator of an administrative tort, especially in the case of non-universal offence. This is because it should be noted that the decision in this regard will directly affect the choice of normative regime under which a party's administrative liability will be decided.

This paper will attempt to resolve the problem presented. Using the formal-dogmatic method, and, alternatively, the comparative method, the authors will also try to answer the question of the extent to which it is legitimate to use analogies to criminal law on the grounds of administrative proceedings aimed at imposing a monetary penalty.

Justifying the choice of the topic that is the subject of this study, it is important to pay attention to the practical dimension of the considerations carried out. As is well known, a number of administrative torts are permanent torts of omission, and therefore take place over a longer time interval. From the point of view of the legal position of the perpetrators of such torts, it is therefore extremely important to choose an act that is more relative to the party, and this is true even if the change in the legal status occurred during the tort.

[2] Act of June 14, 1960 – Code of Administrative Procedure (i.e., Journal of Laws 2022, item 2000, as amended); hereinafter referred to as the Code of Administrative Procedure.

[3] Cf. P. Majczak, *Refleksje na temat kodeksowej regulacji kar administracyjnych*, „Ius Novum" 2020, no. 1, p. 140.

The considerations carried out in this article, will allow the formulation of *de lege ferenda* postulates, which, firstly, will aim to eliminate the interpretative doubts occurring on the issue constituting the subject of the study, and secondly, will correspond to the due protection of the rights of administered entities on which monetary penalties are imposed. For, as aptly pointed out in the literature, the task of the researcher should be to formulate conclusions aimed at improving the legal institution which is the subject of the study[4].

ADMINISTRATIVE REGULATION

The literature is fully correct that administrative fines can be compared to monetary penalties imposed in criminal proceedings[5]. In doing so, an important difference is the objectification of liability in the administrative-legal regime. The indispensable element of a criminal law sanction, namely culpability, does not condition the imposition of an administrative monetary offence. Only the objective violation of public law obligations is relevant here, and the element of guilt, which is an immanent component of the normative structure of the crime, remains irrelevant[6]. The jurisprudence even indicates that the administrative fine is not a consequence of the commission of a criminal offence, but of the existence of an illegal condition[7].

As indicated previously, according to Article 189c of the Code of Administrative Procedure, if at the time of issuing a decision on an administrative monetary penalty an act is in effect other than at the time of the violation of the act following which the penalty is to be imposed, the new act shall be applied, but the act in effect previously shall be applied if it is more relative to the party. Given that a significant part of the acts subject to administrative-legal liability are permanent offences of omission, it often happens that during their duration the legal state changes, which is then evaluated by the public administration body through the prism of Article 189c of the Code of Administrative Procedure. In the context of the above, it is necessary to note and share the view of Andrzej Wróbel, according to whom "the commented provision applies to normative change, which occurred both at the time after the

[4] Cf. M. Gurdek, *Monokratyczne organy jednostek samorządu terytorialnego,* Sosnowiec 2012, p. 12.

[5] Cf. L. Staniszewska, *Materialne i proceduralne zasady stosowane przy wymierzaniu administracyjnych kar pieniężnych*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (ed.), Warszawa 2015, pp. 30-31; R. Zawłocki, *Pojęcie i istota deliktu administracyjnego,* „Monitor Prawniczy" 2018, no. 1, p. 13 et seq; M. Sala-Szczypiński, *Administracyjne kary pieniężne czasu epidemii i zasada stosowania „ustawy względniejszej"*, „Roczniki Administracji i Prawa" 2021, z. 1, p. 138.

[6] Cf. K. Czichy, *O niestosowaniu gwarancji karnych do administracyjnych kar pieniężnych*, „Prokuratura i Prawo" 2017, no. 12, p. 102; J. Żurek, *Wina jako przesłanka wymierzania administracyjnych kar pieniężnych,* „Roczniki Administracji i Prawa" 2020, z. 3, pp. 181-192.

[7] Cf. the judgment of the Voivodship Administrative Court in Olsztyn of June 24, 2014, II SA/OI 419/14, unpublished; quoted in: D. Fleszer, *Administracyjne kary pieniężne*, „Roczniki Administracji i Prawa 2022, z. 1, p. 93; similarly M. Szydło, *Charakter i struktura prawna administracyjnych kar pieniężnych*, "Studia Prawnicze" 2003, no. 4, p. 124.

violation of the act, and at the time (duration) of the violation of the act. If another (new) act enters into force at the time of the violation of the law, it is necessary to assess whether the change is the establishment or aggravation of administrative responsibility, or, on the contrary, the abolition or mitigation of this responsibility, which in turn requires consideration of changes in both the sanctioned and sanctioning provisions"[8]. However, this thesis has not been further substantiated. This raises the question of whether the relevance for this assessment is the legal state of affairs occurring during the entire period of the tort, or only from the date of termination, or perhaps from the date of commencement of this tort[9].

In the context of the above dilemma, attention should be paid to the disposition of Article 7a § 1 of the Code of Administrative Procedure, according to which, if the subject of administrative proceedings is the imposition of an obligation on a party or the limitation or deprivation of a right of a party, and doubts remain about the content of the legal norm, these doubts are resolved in favor of the party, unless opposed by the disputed interests of the parties or the interests of third parties directly affected by the outcome of the proceedings. In the opinion of the authors of this study, this provision will undoubtedly be applicable to the imposition of administrative monetary penalties. This is because the object of the proceedings in these cases is to impose a penalty on a party for committing an administrative tort. Thus, the provision in question is functionally related to Article 189c of the Code of Civil Procedure, which introduces the obligation to apply the law more relative to the perpetrator in the event of a conflict in a given case between the different legal states from the date of the tort and the date of adjudication. Any doubt as to the scope of application of Article 189c of the Code of Civil Procedure should therefore be resolved in favor of the party to the proceedings on whom the obligation to pay the monetary fine is to be imposed.

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[8] A. Wróbel, [in:] M. Jaskowska, M. Wilbrandt-Gotowicz, A. Wróbel, *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, LEX/el. 2022, Article 189(c), thesis 6.

[9] Only as a side note, it should be pointed out that the question of the scope of application of the regulation provided for in Article 189c of the Code of Civil Procedure in terms of subject matter is also interesting. As the Court of Competition and Consumer Protection has pointed out, the principle of applying an act more relative to the punished party, which is stipulated in Article 189c of the Code of Administrative Procedure, covers only the criminalization of a given behavior or the lack thereof and the amount of an administrative monetary penalty, but cannot be applied to the issue of the statute of limitations for punishment (cf. ruling of the Regional Court in Warsaw of April 26, 2022, XVII AmE 148/20, Legalis No. 2740160). Therefore, with regard to the statute of limitations, the public administration authority shall apply the regulations in effect on the date of the administrative decision, unless the statute of limitations expired under the previous act. Indeed, it should be considered that the introduction by the legislator of a longer statute of limitations after the statute of limitations on the punishability of a particular offence under the previous state of the law has run, does not result in the restitution of the punishability of that offence. Adopting a different concept would stand in axiological contradiction to the rudimentary principles of the legal system, such as certainty and stability of legal circulation. However, the issue is not uniformly resolved. To the contrary on the subject, cf. the ruling of the Regional Court in Warsaw of June 17, 2021, XVII AmE 79/20, Legalis No. 2738438.

Applying the above remarks to the essential subject of this article, doubt as to the determination of the correct legal status in effect at the time of the tort should be resolved in favor of the administered entity. The divergence that exists as to whether the entire duration of the tort should be taken into account here, or only its final moment, should therefore be resolved in favor of assessing a broader palette of legal states, which will always be a more favorable solution for the tortfeasor, since it will increase the possibility of choosing the legal regime that is most favorable to that entity.

Arguments in favor of the validity of the interpretive position expressed in the preceding paragraph can also be sought, it seems, in analogy with relevant criminal legal norms.

TYPES OF ANALOGIES IN LAW

One method of filling in gaps in the law is by inference *per analogiam*. This method is based on the assumption that states of facts of a similar nature should fall under similar provisions of law[10]. At the same time, while analogy *legis* presupposes referring to a particular piece of legislation or group of regulations, analogy *iuris* already has a much broader scope, as it refers to the legal system as a whole. It is therefore assumed that the primary source of the search should be the legal act in question. The use of analogy *iuris* is subsidiary in nature and should only come into play when the search for an analogy *legis* fails to produce the desired result[11].

Relating the above explication to the possibility of supplementing the regulation covering the imposition of administrative monetary fines in the scope relating to the temporal limits of the application of the rule of choosing a law more relative to the perpetrator of an administrative tort, it should be stated that an analysis of the Code of Administrative Procedure dictates that it should be assumed that there are no regulations in this law that can be used to formulate conclusions based on *legislative* analogy. Therefore, it is necessary to reach out to the guiding thoughts of the legal system by way of analogia *iuris*. The most appropriate direction of search here seems to be the guarantee norms of criminal law, and this is due to the similarity of administrative monetary penalties to criminal sanctions of a financial nature, already indicated in the earlier considerations (while noting any differences between these institutions), as well as the convergence of the repressive nature of the norms belonging to the compared regimes of legal responsibility.

In the context of the above, it is necessary at this point to express the view that the principle of applying the norms that are as little as possible to the subject of repressive responsibility, exhibits the distinctive features of the guiding principle of

[10] Cf. J. Wróblewski, *Sądowe stosowanie prawa,* Warszawa 1988, p. 280. More extensively on analogy in law: J. Nowacki, *Analogia legis*, Warszawa 1966, *passim*.

[11] Cf. B. Brzezinski, *Wykładnia prawa podatkowego*, Gdańsk 2013, p. 135.

the entire system of law (its "spirit") and has its anchorage in the principle of respect for human dignity, as described in Article 30 of the Constitution of the Republic of Poland[12]. This principle is reflected, for example, in the criminal law principle of humanity (Article 3 of the Criminal Code), in the order to apply the act more relative in terms of criminal reaction (Article 4 § 1 of the Criminal Code), or in the rule of *in dubio pro reo* (Article 5 § 2 of the Criminal Code[13]). Even in enforcement proceedings, the legislator accepts the obligation that the enforcement authority act in the least burdensome way possible for the debtor[14].

Therefore, it should be stated that the views developed in the doctrine and case law on the basis of Article 4 § 1 of the Criminal Code should also be appropriately applied to the regulation of Article 189c of the Criminal Code, especially in view of the identical wording of the two provisions. Indeed, both of these norms are founded on the broadly understood idea of humanitarianism, reflected in the key principles governing the entire legal system in the area of repressive regulation.

CRIMINAL LAW REGULATION

On the basis of Article 4 § 1 of the Criminal Code, the jurisprudence of the Supreme Court has expressed the view that in the case of continuous offences, only the legal state of the final date of the continuous act should be considered relevant from the point of view of the order to apply the law more relative to the perpetrator[15]. In doing so, this position should be applied to any situation in which the crime extends over a certain time interval, i.e., to permanent offences, multi-act crimes, *etc*. The cited view of the Supreme Court, however, should be considered highly questionable at this point, not only from an axiological point of view, but also from the point of view of the literal wording of Article 4 § 1 of the Criminal Code. This is because this provision refers to "the time of the commission of the crime," and this - according to Article 6 § 1 of the Criminal Code – is defined as "the moment when the perpetrator has acted or has omitted an action he has been obliged to perform." In the case of permanent offences, as in the case of continuous offences, to consider

[12] Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws No. 78, item 483, as corrected and amended).

[13] act of June 6, 1997 – Code of Criminal Procedure (i.e., Journal of Laws 2022, item 1375, as amended); hereinafter referred to as the Code of Criminal Procedure.

[14] which, incidentally, is not related to the choice of a particular legal regime, but is also a testimony to the application of the response of state authorities more relative to the citizen, with respect for the dignity of the human person; cf. Article 799 § 1, fourth sentence, of the Act of November 17, 1964 – Code of Civil Procedure (i.e., Journal of Laws 2021, item 1805, as amended); similarly, Article 30, first sentence, of the Act of June 17, 1966 on Administrative Enforcement Proceedings (i.e., Journal of Laws 2022, item 479, as amended).

[15] Cf. the judgments of the Supreme Court of November 14, 2016, III KK 273/16, KZS 2018, no. 9, item 5; of June 21, 2017, II KK 92/17, Legalis no. 1651448; of June 27, 2019, IV KK 267/18, Legalis no. 2268114 and of December 28, 2021, II KK 595/21, Legalis no. 2671698.

that the duration of the act is only the last moment of the act therefore appears as a *contra legem* conclusion. Since the offence lasted for a certain period of time, the entire period of time is the "time of committing the crime" referred to in Article 4 § 1 of the Criminal Code. Therefore, the direction of interpretation, according to which only the final moment of the act should be considered as the time - in the context of the order to choose the legal regime more relative to the perpetrator - cannot gain acceptance. It should be noted at this point that the view reported above is not presented uniformly in the case law of the Supreme Court[16].

In view of the argument presented in the preceding paragraph, Jarosław Majewski is correct when he argues that the time of committing non-singular offences cannot be equated with one specific point on the timeline when the perpetrator completed the criminal action[17]. Coherent to the above, it is aptly pointed out by Włodzimierz Wróbel that the time of committing a criminal offence is relative to the legal status according to which this offence is judged[18]. For the reasons already mentioned in earlier discussions, these views deserve strong approval.

Consequently, it should be assumed that in the case of non-universal acts, the principle of choosing the law more favorable to the perpetrator is covered by the entire duration of the act, that is, the period from the first to the last behavior of the perpetrator included in the continuous (permanent) offence. In an identical manner, this issue – due to analogia *iuris* – should be resolved on the grounds of administrative proceedings for the imposition of a monetary penalty.

The interpretative position presented above is further confirmed by the relationship between Article 4 § 1 of the Criminal Code and Article 189c of the Code of Civil Procedure, and the *in dubio pro reo* rule which dictates that doubts should be resolved in favor of the passive party to the proceedings, and which, according to the prevailing position in the criminal procedural literature, should be applied to both factual and legal doubts[19]. The relationship as it appears is twofold in nature. Firstly, it refers to

[16] Cf. the judgment of the Supreme Court of July 4, 2001, V KKN 346/99, „Prokuratura i Prawo" 2001, no. 12, item 16.

[17] Cf. J. Majewski, *Zmiana ustawy karnej w czasie popełnienia czynu zabronionego*, „Palestra" 2003, No. 9-10, p. 21.

[18] Cf. W. Wróbel, *Z zagadnień retroaktywności prawa karnego*, „Przegląd Sądowy" 1993, no. 4, pp. 3 and n.

[19] M. Lipczyńska, *Znaczenie i funkcje zasady in dubio pro reo w procesie karnym*, „Państwo i Prawo" 1967, no. 10, p. 556; F. Rosengarten, *In dubio pro reo*, „Nowe Prawo" 1973, no. 12, pp. 1787-1788; W. Daszkiewicz, *Prawo karne procesowe. Zagadnienia ogólne*, Bydgoszcz 1999, p. 80; A. Gaberle, *Dowody w sądowym procesie karnym. Teoria i praktyka*, Warszawa 2010, pp. 296-297; M. Cieślak, *Selected Works, vol. I, Zagadnienia dowodowe w procesie karnym*, S. Waltoś (ed.) with cooperation of M. Rusinek and S. Steinborn, Krakow 2011, p. 169; T. Grzegorczyk, J. Tylman, *Polskie postępowanie karne*, Warszawa 2011, p. 154; A. Jesusek, *Zastosowanie reguły in dubio pro reo przy rozstrzyganiu zagadnień prawnych*, „Państwo i Prawo" 2012, no. 6, p. 75; B. Sygit, W. Juchacz, *Gloss to the judgment of the Supreme Court of February 10, 2011, V KK 281/10*, [in:] *Prawo i administracja*, vol. X, B. Sygit (ed.), Piła 2012, p. 288; M. Rogalski, [in:] *Proces karny. Część ogólna*, G. Artymiak, M. Rogalski (eds.), Warszawa 2012, p. 80; A. Tęcza-Paciorek, *Zasada domniemania niewinności w polskim procesie karnym*, Warszawa 2012, p. 146; J. Kil, *Prawda w procesie karnym*, Warszawa 2015, p. 112.

how the commented regulations are applied, in the case of normative change. Indeed, in the event of a change in the state of the law, the doubt, covered by the scope of application of the rule in *dubio pro reo*, may concern the content of the provisions applicable to the case, i.e. the legal regime that will form the basis for valuing the behavior of the perpetrator. This doubt should therefore be resolved in each case with respect for the principle of *in dubio pro reo*, and therefore by choosing the legal regime that in its totality proves to be the most absolute for the punished. Secondly, the relationship of Article 4 § 1 of the Criminal Code and Article 189c of the Code of Civil Procedure with the *in dubio pro reo* rule occurs at the meta-level, i.e., in terms of resolving how to interpret the referenced provisions in a way that is as favorable to the perpetrator as possible. In such a view, applying the rule of *in dubio pro reo* to doubts about the temporal limits of the application of the principle of choosing the law more relative to the perpetrator, expressed in Article 4 § 1 of the Criminal Code and Article 189c of the Code of Criminal Procedure, respectively, in the case of non-singular offences, it is necessary to advocate the application of the commented principle for the entire duration of the unlawful act, and therefore from the first to the last behavior of the passive party, included in the offence to be valued.

As a complementary note, it should be noted at this point that the legislature's use – both under Article 4 § 1 of the Criminal Code and Article 189c of the Civil Code – of the phrase "the act" can be misleading. Indeed, a literal interpretation of the provisions in question may lead to the conclusion that when comparing different legal states in order to choose the state more relative to the subject of the sanction, only legal acts of statutory rank should be taken into account. However, such a direction of interpretation of the provisions in question could lead to an unauthorized narrowing of the assessment of the legal state, to the detriment of the criminal subject. Thus, the Supreme Court rightly took the position that the term "act" should be understood as the entire body of law affecting the legal situation of the perpetrator, including acts of sub-statutory rank[20]. These rulings, despite the fact that they were issued on the basis of Article 4 § 1 of the Criminal Code, can – precisely because of analogy *iuris* – be successfully applied also to the disposition of Article 189c of the Code of Administrative Procedure. Thus, the amendment of an act of sub-statutory rank during the course of an administrative tort will statute on the part of the public administration body the obligation to take into account all acts of this kind in force *tempore delicti*, in order to choose a legal state more relative to the perpetrator of the tort.

Finally, there is no doubt that it is not possible to choose certain elements of the legal state that are more relative to the perpetrator, in force at different times. Choosing a law more relative to the perpetrator means choosing a particular legal

[20] Cf. the judgments of the Supreme Court of July 4, 2001, V KKN 346/99, „Prokuratura i Prawo" 2001, no. 12, item 16, and of July 1, 2004, II KO 1/04, OSNwSK 2004, no. 1, item 1216.

state as a whole[21], which can *in concreto* make it difficult to make a correct choice, due to its multifaceted nature.

CONCLUSIONS AND POSTULATES *DE LEGE FERENDA*

Despite certain similarities that exist between the norms of criminal law and the norms of administrative law that statute the imposition of administrative monetary penalty, the jurisprudence has expressed the view that the constitutional guarantees of Article 42 of the Basic Act[22] cannot be applied to the latter. This does not mean, however, that the subject subject of an administrative law sanction is deprived of certain fundamental legal guarantees that are valid under any regime establishing legal liability of a repressive nature, which include, for example, the order to apply a law more relative to the perpetrator. This is because, according to the authors, these guarantees should be derived from the guiding principles of the Polish Constitution, such as the principle of a democratic state of law, the principle of legalism or the principle of respect for human dignity. It is difficult to imagine that in a democratic state under the rule of law, public authorities can arbitrarily impose administrative sanctions in a procedure devoid of guarantee elements that safeguard the rights and freedoms of the punished.

While intertemporal issues related to the choice of the legal regime relevant to the state's criminal legal response under substantive criminal law have been the subject of contradictory statements by doctrine and jurisprudence, these issues have so far been absent from the discourse of the interpretive community under administrative law regulation. It is important to keep in mind the introduction of the legislation in question relatively recently, in 2017.

As has already been pointed out many times in this study, it is difficult not to notice the rather strong affinity occurring between the regulations of criminal law and the regulations of administrative law covering the application of administrative monetary penalties. This is because both constitute a state response to unlawful behavior, a response of a repressive nature. Thus, it would be difficult not to apply to administrative fines the rudimentary norms inherent in criminal law, such as the principle of presumption of innocence, the rule of *in dubio pro reo*, or the order to apply the regulation more relative to the perpetrator. Therefore, the above position, as far as the subject of this study is concerned, dictates that in the case of non-universal offences, both on criminal law and criminal-administrative grounds, the principle of choosing the law more relative to the perpetrator is covered by the

[21] Cf. the judgments of the Supreme Court of July 4, 2001, V KKN 346/99, „Prokuratura i Prawo 2001, no. 12, item 16; of January 4, 2002, II KKN 303/99, „Prokuratura i Prawo" 2002, no. 9, item 6; of November 17, 2016, II KK 351/16, KZS 2017, no. 2, item 17.

[22] Cf. the CT judgment of March 31, 2008, SK 75/06, OTK-A 2008, no. 2, item 30.

entire duration of the offence, that is, the period from the first to the last perpetrator's behavior constituting the offence to be valued.

Regardless of the above, in the opinion of the authors, a pertinent solution to eliminate the doubts that currently exist regarding the temporal boundaries of the application of the principle of choosing an act more favorable to the perpetrator in the case of non-universal offences would be *de lege ferenda* introduction of an appropriate amendment to the provisions of the Criminal Code and the Code of Administrative Procedure. In an effort to protect the legitimate procedural interests of the passive party as much as possible, Article 4 § 1 of the Criminal Code could have the following wording: "If at the time of adjudication a law different from that in effect at the time of the offense is in force, the new act shall be applied, but the law previously in force shall be applied if it is more relative to the perpetrator"; and Article 189c of the Code of Criminal Procedure reads: "If, at the time of the decision on an administrative monetary penalty, an act is in effect other than at the time of the violation of the act following which the fine is to be imposed, the new law shall be applied, but the act in effect previously shall be applied if it is more relative to the party".

The use of the phrase "at the time of the offense" in place of "at the time of the commission of the offense" and, similarly, the phrase "at the time of the violation" instead of "at the time of the violation" would clearly indicate that the relevant legal status from the point of view of the choice of the more relative act would be that of the entire period of the violation of the law, resulting from the unlawful behavior of the perpetrator of the offense or the perpetrator of the administrative tort. The authority imposing the monetary penalty, like a court adjudicating a criminal case, would therefore have to compare the legal state of affairs at the time of adjudication with all the legal states that existed at the time of the offence under evaluation. From the range of legal states thus established, it would then be necessary to select the state of the most absolute for the punished subject, which would remain not insignificant for the realization of the guarantee function of repressive provisions.

References

Literature

Brzeziński B., *Wykładnia prawa podatkowego*, Gdańsk 2013.

Cieślak M., *Dzieła wybrane*, t. I: *Zagadnienia dowodowe w procesie karnym*, S. Waltoś (ed.), with cooperation of M. Rusinek and S. Steinborn, Kraków 2011.

Czichy K., *O niestosowaniu gwarancji karnych do administracyjnych kar pieniężnych*, „Prokuratura i Prawo" 2017, no. 12.

Daszkiewicz W., *Prawo karne procesowe. Zagadnienia ogólne*, Bydgoszcz 1999.

Fleszer D., *Administracyjne kary pieniężne,* „Roczniki Administracji i Prawa" 2022, no. 1.

Gaberle A., *Dowody w sądowym procesie karnym. Teoria i praktyka*, Warszawa 2010.

Grzegorczyk T., Tylman J., *Polskie postępowanie karne*, Warszawa 2011.

Gurdek M., *Monokratyczne organy jednostek samorządu terytorialnego*, Sosnowiec 2012.

Jezusek A., *Zastosowanie reguły in dubio pro reo przy rozstrzyganiu zagadnień prawnych*, „Państwo i Prawo" 2012, no. 6.

Kil J., *Prawda w procesie karnym*, Warszawa 2015.

Lipczyńska M., *Znaczenie i funkcje zasady in dubio pro reo w procesie karnym*, „Państwo i Prawo" 1967, nr 10.

Majczak P., *Refleksje na temat kodeksowej regulacji kar administracyjnych*, „Ius Novum" 2020, nr 1.

Majewski J., *Zmiana ustawy karnej w czasie popełnienia czynu zabronionego*, „Palestra" 2003, nr 9-10.

Nowacki J., *Analogia legis*, Warszawa 1966.

Rogalski M., [w:] *Proces karny. Część ogólna*, G. Artymiak, M. Rogalski (ed.), Warszawa 2012.

Rosengarten F., *In dubio pro reo*, „Nowe Prawo" 1973, no. 12.

Sala-Szczypiński M., *Administracyjne kary pieniężne czasu epidemii i zasada stosowania „ustawy względniejszej"*, „Roczniki Administracji i Prawa" 2021, no. 1.

Staniszewska L., *Materialne i proceduralne zasady stosowane przy wymierzaniu administracyjnych kar pieniężnych*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (ed.), Warszawa 2015.

Sygit B., Juchacz W., *Glosa do wyroku Sądu Najwyższego z dnia 10 lutego 2011 r., V KK 281/10*, [in:] *Prawo i administracja*, t. X, B. Sygit (ed.), Piła 2012.

Szydło M., *Charakter i struktura prawna administracyjnych kar pieniężnych*, „Studia Prawnicze" 2003, no. 4.

Tęcza-Paciorek A., *Zasada domniemania niewinności w polskim procesie karnym*, Warszawa 2012.

Wróbel A., [in:] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, LEX/el. 2022.

Wróbel W., *Z zagadnień retroaktywności prawa karnego*, „Przegląd Sądowy" 1993, no. 4.

Wróblewski J., *Sądowe stosowanie prawa*, Warszawa 1988.

Zawłocki R., *Pojęcie i istota deliktu administracyjnego*, „Monitor Prawniczy" 2018, no 1.

Żurek J., *Wina jako przesłanka wymierzania administracyjnych kar pieniężnych*, „Roczniki Administracji i Prawa" 2020, no. 3.

Case law

Judgment of the Supreme Court of July 4, 2001, V KKN 346/99, „Prokuratura i Prawo" ("Prosecution and Law") 2001, no. 12, item 16.

Judgment of the Supreme Court of January 4, 2002, II KKN 303/99, „Prokuratura i Prawo" ("Prosecution and Law") 2002, no. 9, item 6.

Judgment of the Supreme Court of July 1, 2004, II KO 1/04, OSNwSK 2004, no. 1, item 1216.

Judgment of the Constitutional Court of March 31, 2008, SK 75/06, OTK-A 2008, no. 2, item 30.

Judgment of the Voivodship Administrative Court in Olsztyn of June 24, 2014, II SA/OI 419/14, not published.

Judgment of the Supreme Court of November 14, 2016, III KK 273/16, KZS 2018, no. 9, item 5.

Judgment of the Supreme Court of November 17, 2016, II KK 351/16, KZS 2017, no. 2, item 17.

Judgment of the Supreme Court of June 21, 2017, II KK 92/17, Legalis No. 1651448.

Judgment of the Supreme Court of June 27, 2019, IV KK 267/18, Legalis No. 2268114.

Judgment of the Regional Court in Warsaw of June 17, 2021, XVII AmE 79/20, Legalis No. 2738438.

Judgment of the Supreme Court of December 28, 2021, II KK 595/21, Legalis No. 2671698.

Judgment of the Regional Court in Warsaw of April 26, 2022, XVII AmE 148/20, Legalis No. 2740160.