4 Administrative penalty proceedings in Bulgaria

This last chapter analyses procedural issues of administrative penalty law. It deals with principles, rights and standards applicable to and during proceedings, rules to serve summons and notices as well as to possible procedural dynamics such as suspension, consolidation and in absentia proceedings. Recommendations and proposals build on the draft Code of Administrative Violations and Penalties of 2015, whose proposals represent a valuable basis to complement the legal framework and avoid gaps and loopholes that emerged in practice.

4.1. The AVPA could provide for more detailed and extensive rules for proving administrative violations and the identity of the offender

The AVPA does not contain rules for proving the administrative violation and the identity of the offender. The only rules for proving the administrative violations are those for the seizure of material evidence by the act for establishing an administrative violation. The rules of the Criminal Procedure Code apply by virtue of the restrictive reference contained in Article 84 of AVPA. However, these rules do not apply in the out-of-court phase of the proceedings and regulate the proof of the crime, which is why they presuppose significant formalism. The need to ensure the availability of the full range of investigative tools of the Criminal Procedure Code, including special intelligence means, in proceedings against legal persons was also underscored by the OECD Working Group on Bribery in relation to foreign bribery investigations (OECD, 2021[1]).

The AVPA could explicitly provide that the rules of the Code of Criminal Procedure apply accordingly in relation to the proof of offences, by laying down exceptions to these rules. Such exceptions are for example the involvement of witnesses of the procedural actions, for judicial review of measures of inquiry, etc. However, future codification could provide the detailed rules on proof in administrative criminal proceedings.

A good basis for concrete legislative proposals can be found in the draft Code of Administrative Violations and Penalties of 2015. Taking that text as basis, the specific wording of the provisions in the codification act could be as proposed in Box 4.1.

Box 4.1 Proposed procedural rules for administrative penalty proceedings

"CHAPTER...

EVIDENCING

Section I. GENERAL PROVISIONS

Subject to evidencing

Article 1.

(1) In administrative criminal proceedings, the following shall be proved:

1. the violation committed;
2. the participation in the commitment of the offence of the person against whom the act for establishment of the administrative violation has been drawn up;
3. the circumstances relevant to the liability of the person against whom the act for establishment of the administrative violation has been drawn up.

(2) The provisions of this chapter shall be applicable also for the circumstances relevant to the liability of the sole trader or legal entity for failure to fulfil an obligation towards the State or municipality in the course of their activities.

Burden of proof

Article 2.

(1) The burden of proving the violation shall fall onto the sanctioning authority.

(2) The person against whom the act for establishment of the administrative violation has been drawn up is not required to prove that he has not committed the infringement.

(3) No conclusions can be drawn to the detriment of the person against whom the act for establishment of the administrative violation has been drawn up in case he has not given or refuses to provide explanations or has failed to substantiate his objections.

(4) Paragraphs 2 and 3 shall apply mutatis mutandis to the sole trader and to the legal person entity representing the legal entities against whom the administrative infringement notice has been drawn up.

Evidence and evidence means

Article 3.

(1) The evidence may be factual data relating to the circumstances of the administrative proceedings, which contribute to their clarification and are established in accordance with the procedure laid down in that code.

(2) The evidence means shall be used to reproduce evidence or other evidence means.

(3) Evidence and evidence means which has not been obtained or associated in accordance with the conditions and procedures laid down in this Code shall not be admissible.

Methods of evidencing

Article 4. Evidence in administrative criminal proceedings shall be carried out using the methods provided for in this Code.

Collection of evidence

Article 5.

(1) The act issuer, the sanctioning authority and the court shall collect evidence ex- officio or at the request of the persons concerned.

(2) The act issuer, the sanctioning authority and the court collect and verify both evidence supporting the findings of the offence and aggravating the liability of the person against whom the administrative offence has been issued and evidence exculpating or mitigating liability.

(3) Paragraph 2 shall also apply mutatis mutandis to the taking of evidence of the liability of the sole trader or legal entity against whom the act of the establishment of the administrative violation has been drawn up.

(4) The collection of evidence cannot be refused on the sole ground that the request was not made within a certain time limit.

Actions by delegation

Article 6.

(1) Acts of collecting the evidence by delegation shall be permitted where they are to be carried out outside the area of the authority dealing with the case or file and their performance by that authority presents particular difficulties.

(2) Where it is ordered by a court, the delegation is executed by a judge of the district court concerned and, where ordered by the act issuer or sanctioning authority, by the relevant authority.

(3) Where it considers it necessary, the authority dealing with the case or the file may carry out individual actions under paragraph 1 also in the area of another authority.

Section II. EVIDENCE AND EVIDENCE MEANS

Types of evidence

Article 7. The evidence shall be material and written.

Material evidence

Article 8.

(1) As material evidence shall be collected and checked the objects intended or used to commit the violation, which are traceable to the violation or have been the object of the violation, as well as any other objects which may serve to clarify the circumstances of the proceedings.

(2) The material evidence shall be attached to the case file, taking care not to damage or modify or, if that is not possible, described in an appropriate record and, if possible, photographed.

(3) When the case file is passed from one body to another, the material evidence shall be delivered together with it.

(4) Material evidence, which because of their dimensions or for other reasons cannot be attached to the file, must, where possible, be sealed and stored in the places specified by the respective authority.

(5) Cash and other valuables shall be transferred for safekeeping to a commercial bank serving the state budget or to the Bulgarian National Bank.

Safe-keeping of material evidence

Article 9.

(1) The material evidence shall be kept until the administrative criminal proceedings have been completed. Seized items shall be handed over for safe-keeping in accordance with the rules laid down. In the absence of such rules, the items shall be handed over to the department of the act issuer. Where appropriate, they may be handed over for preservation of the offender or other persons.

(2) Objects seized as material evidence, the possession of which is prohibited, shall be delivered to the relevant authorities or shall be destroyed.

Written evidence

Article 10.

(1) Documents which contribute to the clarification of the circumstances referred to in Article 1 shall be collected and checked as documentary evidence.

(2) A certified copy or excerpt of a document shall have the same evidentiary value as the original. Upon request, any person shall be obliged to produce the document in its original form.

(3) The electronic document may be presented on paper in the form of a certified copy. Upon request, any person shall be required to present the document in digital form.

(4) Documents submitted in a foreign language shall be accompanied by an accurate translation into Bulgarian.

Disposal of material and written evidence

Article 11.

(1) Except as provided for in Article (20-21 AVPA), objects seized as material evidence shall be confiscated for the benefit of the State where:

1. it has not been established who they belong to and they have not been sought within one year of the conclusion of the administrative criminal proceedings;
2. the person to whom they belong to is identified, the person entitled has been duly informed to appear in order the objects to be returned and they have not been sought within six months of the notification.

(2) Objects seized as material evidence may, with the permission of the sanctioning authority, be returned to those who are entitled before the conclusion of the administrative criminal proceedings, where this will not hinder the disclosure of the objective truth and are not subject to forfeiture in favour of the State.

(3) The refusal of the sanctioning authority under paragraph 2 shall not be open to an appeal.

(4) The goods subject to rapid dissolution could be sold, with the permission of the sanctioning authority, through state and municipal companies, and the amount received, after deduction of the costs incurred, is deposited with a commercial bank servicing the state budget or with the Bulgarian National Bank.

(5) At the end of the administrative criminal proceedings, books or other written documents collected as material or written evidence shall be placed in the case file or handed over to the institutions, legal entities and natural persons concerned. Objects seized as material evidence, the possession of which is prohibited, shall be delivered to the relevant establishments or be destroyed.

(6) Where a dispute arises over a right over objects collected as material evidence to be decided by a court, they are kept until the court's decision becomes final. The final decision of the court is binding on the sanctioning authority in matters of civil status and property rights.

Types of evidence means

Article 12. Evidence shall be established by vocal, material and written evidence means.

Verbal evidence means

Article 13. Verbal evidence means are:

1. the explanations of the person against whom the act of the establishment of the administrative violation has been drawn up;
2. witness statements.

Explanations

Article 14.

(1) The person against whom the act of the establishment of the administrative violation has been drawn up shall have the right to give or refuse to give explanations to the inspection body, the act issuer, the sanctioning authority or the court.

(2) The penal order cannot be based solely on the confession of the person against whom the act of the establishment of the administrative violation has been drawn up;

(3) The confession of the person against whom the act of the establishment of the administrative violation has been drawn up does not relieve the authorities concerned of their obligation to collect further evidence.

Persons who cannot be witnesses

Article 15.

(1) A person who has participated in the same proceedings in different procedural capacity cannot be a witness unless:

1. the person against whom the administrative criminal proceedings has been terminated;
2. the inspection body;
3. the act issuer.

(2) a person who, because of physical or psychological disabilities, is not capable of correctly perceiving the facts relevant to the proceedings or to give credible testimony to them cannot be a witness.

Persons who may refuse to testify

Article 16. May refuse to testify:

1. the spouse, ascendants, descendants, siblings of the person against whom the act of the establishment of the administrative violation has been drawn up and the person with whom he/she is in coexistence;
2. the sole trader against whom the act of the establishment of the administrative violation has been drawn up;
3. representing and managing the sole trader, the legal entity against whom the administrative violation has been drawn up.

Witness testimonies

Article 17. Testimony may establish all the facts which the witness has accepted and which contribute to revealing the objective truth.

Rights and obligations of the witness

Article 18.

(1) The witness shall have the right to:

1. use notes of figures, dates, etc. in his possession relating to his testimonies;
2. receive the expenses he has made;
3. requires the annulment of acts which adversely affect his rights and legitimate interests.

(2) A witness shall have the right to consult a lawyer if they consider that the answer to the question referred affects his rights under Article 14 (1). Upon request, the act issuer, the sanctioning authority or the court shall provide for this possibility

(3) The witness has the obligation to:

1. appears before the relevant authority when summoned;
2. sets out everything he knows about the circumstances of the proceedings;
3. answers the questions he is asked

(4) A witness who is unable to appear because of illness or disability may be questioned where he or she is present.

Circumstances, in which the witness shall not be obliged to testify

Article 19.

(1) The witness is not obliged to testify on questions the answers to which would accuse him/her or his/her ascendants, descendants, brothers or sisters or spouse, or the person with whom he/she is in a factual coexistence in the commission of a crime or other offence.

(2) The witness cannot be questioned on the circumstances which have been entrusted to him as a legal representative.

Written evidence means

Article 20.

(1) Written evidence means are:

1. the statements of findings;
2. the protocols of the collection of evidence;
3. the protocols for the establishment of material evidence means;
4. other documents.

(2) The protocol shall include:

1. the date and place of the action concerned;
2. the time when the action started and ended;
3. details of the persons who participated in the action carried out;
4. the actions carried out and their sequence;
5. evidence collected;
6. the requests, observations and objections made.

(3) The record shall be signed by the authority which carried out the act in question and by other participants in administrative criminal proceedings in the cases provided for in this Code.

(4) All corrections, amendments and additions to the protocol shall be certified by the signature of the persons referred to in paragraph 3.

(5) Reports drawn up in accordance with the procedure laid down in this Code shall constitute evidence of the performance of the acts concerned, of the procedure in which they were carried out and of the evidence obtained.

Material evidence means

Article 21.

(1) Where material evidence cannot be separated from the place where it is found and in other cases provided for in this Code, the inspection body, the act issuer, the sanctioning body or the court shall produce photographs, slides, cinemas, videogames, phonograms, recordings on a computer data carrier, plans, diagrams, memoranda or prints.

(2) Computer data shall also be recorded on paper where necessary.

(3) Where special knowledge and qualification is required, a technical assistant shall be appointed.

(4), persons referred to in Article 15 (2) cannot be technical assistants.

(5) The technical assistant carries out the task assigned to him them under the direct supervision and direction of the authority which appointed him.

(6) The materials referred to in paragraph 1 shall be attached to the case file.

Obligation to preserve and transmit evidence

Article 22.

(1) At the request of the inspection body, the act issuer, the sanctioning authority or the court, all institutions, legal entities, officials and citizens shall retain and transmit the objects, papers and computer data in their possession which may be relevant for administrative penalty proceedings, unless special procedures are laid down for their collection.

(2) Where the collection of evidence is subject to a ruling by a court of law, jurisdiction lies with the court which, in accordance with the rules of that code, decides on an appeal against the penalty order.

Section III. METHODS OF EVIDENCING

Types of methods of evidencing

Article 23.

(1) The methods of evidencing are the interrogation, expert examination, inspection, search, seizure, inquisitorial experiment, recognition of persons and objects.

(2) Where necessary, the examination, search, seizure and inquisitorial experiment shall be carried out in the presence of an expert or of a specialist technical assistant. The persons referred to in Article 15 par.2 cannot be technical assistants. The technical assistant carries out the task assigned to him under the direct supervision and direction of the authority which appointed him.

(3) In the application of the procedures referred to in paragraph 1, the provisions of the relevant special laws shall apply to lawyers, notaries or private bailiffs.

Interrogation of the person against whom the act for the establishment of the administrative violation has been drawn up

Article 24.

(1) The interrogation of the person against whom the act for the establishment of the administrative violation has been drawn up shall take place during the day, unless it is urgent.

(2) Prior to the hearing, the authority carrying out the interrogation shall establish the identity of the person.

(3) The interrogation of the person against whom the act for the establishment of the administrative violation has been drawn up begins by asking whether he understands what offence he is accused of, and then invited to disclose, if he so wishes, in a form of free narrative, everything he knows about the circumstances to be proved.

(4) Questions may be put to the person against whom the act for the establishment of the administrative violation has been drawn up to supplement his explanations or to remedy incompleteness, ambiguity or contradictions.

(5) The questions must be clear, concrete and related to the circumstances of the proceedings. They should not suggest answers or lead to a particular answer.

(6) Where the act for the establishment of the administrative violation is drawn up against two or more persons, they shall be interrogated separately.

(7) Where the person against whom the act for the establishment of the administrative violation is drawn up wishes and will not have the effect of postponing the measure of taking evidence, his interrogation shall be carried out in the presence of his legal representative.

(8) The interrogation of the person against whom the act for the establishment of the administrative violation has been drawn up may also be conducted via videoconference or teleconference, for which electronic and paper records are drawn up and attached to the case.

(9) In the cases referred to in paragraph 8, the identification of the witness shall be carried out by an authority referred to in Article 87 (2) or by a police authority.

Interrogation of a witness

Article 25.

(1) The interrogation of a witness shall take place during the day, unless it is urgent.

(2) Prior the interrogation, the identity of the witness and his or her relations with the other participants in the proceedings shall be established.

(3) The authority conducting the interrogation shall invite the witness to testify in good faith and shall warn him/her of the responsibility before the law in case he/she refuses to give testimony, or neglects certain circumstances.

(4) The witness shall make a promise that he/she will state in good faith and precisely everything he/she knows in connection with the case.

(5) The right to refuse to testify shall be explained to the persons referred to in Articles 97 and 100.

(6) The witness shall state, in a free narrative form, everything he/she is aware of regarding the case.

(7) A minor witness shall be interviewed in the presence of a pedagogue or psychologist and, where necessary, in the presence of his/her parent or legal guardian. The authority conducting the hearing shall explain to the minor witness the need to give a testimony without warning him of liability.

(8) A minor witness shall be interrogated in the presence of the persons under the para. 7, if the respective body deems so necessary.

(9) The interrogation of the witness may also be carried out via videoconference or teleconference, for which a record is drawn up in electronic and paper form which are attached to the case.

(10) In the cases referred to in paragraph 9, the identification of the witness shall be carried out by an authority referred to in Article 87 (2) or by a police authority.

Interrogation by delegation

Article 26.

(1) The person against whom the act for establishment of the administrative violation has been drawn up or witness may be interrogated by delegation if it has to be committed outside the jurisdiction of the act issuer, the sanctioning authority or the court and there are particular difficulties in their being committed by that authority.

(2) Where it is ordered by a court, the delegation is carried out by a judge of the district court concerned and, where it is ordered by an act issuer or a sanctioning authority, by a relevant act issuer or sanctioning authority.

Interrogating with an interpreter and Interpreter in Bulgarian sign language

Article 27.

(1) Detailed with the participation of an interpreter or interpreter shall take place in the cases referred to in Article....

(2) A person referred to in Article 15 (2) may not be an interpreter or interpreter.

Cross-examination

Article 28.

(1) A cross- examination may be made in the event of a significant contradiction between:

1. the explanations of the persons against whom the act has been drawn up;
2. the explanations of the persons referred to in subparagraph 1 and the testimonies of witnesses;
3. testimony.

(2) Before questioning, the persons between whom a cross- examination is made are asked whether or not they know each other and what their relationship is.

(3) With the permission of the relevant authority, persons taking part in cross- examination may ask each other questions.

Expert's examination

Article 29.

(1) Where special knowledge in the field of science, art or technology is required in order to clarify certain circumstances of the case, the act issuer, the sanctioning authority or the court shall order an expert's examination.

(2) The expert 's examination shall be mandatory where there is doubt about:

1. the sanity of the person against whom the act for establishment of the administrative violation has been drawn up;
2. the ability of the person against whom the act for establishment of the administrative violation has been drawn up, having regard to his physical and mental state, to correctly perceive the facts relevant to the subject matter of the evidence and to give plausible explanations of them;
3. the capacity of the witness, having regard to his physical and mental condition, to correctly perceive the facts relevant to the subject matter of the evidence and to give credible testimony to them.

(3) The act instituting an expert examination shall specify: the grounds which necessitate the performance of the examination; the object and the task of the expert examination; the materials presented to the expert; the expert's full name, education, specialty, scientific degree and official position or the name of the establishment, where the expert works, the name of the medical establishment, where the stationary observations will be performed and the term of presentation of the opinion.

(4) The authority which appoints the expert's examination may require the person against whom the act for establishment of the administrative violation has been drawn up; from the sole trader or the representative of the citizens' organisation against whom the act for establishment of the administrative violation has been drawn up; from the witness samples for comparative examination, where it is not possible to obtain them in any other way.

(5) The persons referred to in paragraph 4 shall be obliged to provide the required samples for comparative examination and, if they are refused, they shall be forcibly seized with the permission of a judge of the district court, who shall be competent to rule on an appeal or a prosecutor's protest against the penal order.

Persons to whom an expert examination is to be entrusted

Article 30.

(1) An expert examination shall be entrusted to experts from the appropriate field of the science, art or techniques.

(2) Persons, who shall not be experts:

1. the persons against whom the grounds referred to in Article....apply ;
2. witnesses on the case;
3. persons who are ex officio or otherwise dependent on the person against whom the act for establishment of the administrative violation has been drawn up or his/her legal representative;
4. persons who are employees or are associated with the sole trader or the legal entity against whom act for establishment of the administrative violation has been drawn up or their legal representative;
5. the persons who carried out the inspection, the materials of which served as a basis for initiating the proceedings;
6. persons who do not possess the necessary professional qualifications.

(3) In the cases referred to in paragraph (2), the experts shall be obliged to challenge themselves.

(4) Where the expert fails to comply with the obligation referred to in paragraph 3, the expert shall be removed by the act issuer, the sanctioning authority or the court of its own motion or at the request of the person concerned. The person concerned shall bring an action before the authority which ordered the expert's examination.

Service of the document appointing an expert's examination

Article 31.

(1) The authority which appointed the expert shall call upon the expert, check identity, education and qualifications, and whether there are any grounds for objection.

(2) The decision commissioning an expert assessment shall be served on the expert witness, who shall then be informed of their rights and obligations and of their liability if they submit false conclusions.

Rights and obligations of the expert

Article 32.

(1) The expert is entitled to:

1. acquaint himself with the materials of the procedure relating to the expert's examination;
2. request additional material and participate in individual evidence-gathering activities where this is necessary in order to fulfil the task assigned to it;
3. is remunerated for the work performed;
4. shall be paid for the expenses he has incurred;
5. requires the annulment of acts which adversely affect rights and legitimate interests.

(2) Where there are two or more experts, they shall be entitled to consult one another before they give an opinion. In case of consensus, the experts may assign one of them to expose the general opinion before the respective body, and where there is a difference in opinions, each of them shall present a separate opinion.

(3) The expert shall be obliged to appear before the relevant authority when summonsed and to submit conclusions on the questions of the examination.

(4) A court hearing of an expert outside the country may also take place via videoconference or telephone conference where the circumstances of the case so require.

Expert's opinion

Article 33.

(1) After carrying out the necessary examinations, the expert shall draw a written conclusion, in which he/she shall state:

1. his/ her name and the grounds on which the expert examination was carried out;
2. where the expert's examination was carried out;
3. the task that has been assigned;
4. the materials which have been used;
5. the examination carried out and by which scientific and technical means;
6. the results obtained;
7. the conclusions of the expert examination.

(2) The statement shall be signed by the expert and, where more than one expert is appointed, by each of them.

(3) Where the expert's examination reveals new material which is relevant to the proceedings but in respect of which no task has been assigned to, the expert shall be required to mention them in his report.

(4) The expert opinion is not mandatory for the act issuer, the sanctioning authority and the court.

(5) Where an authority disagrees with the conclusion of an expert, it shall be obliged to state its reasons.

Additional and repeat expert examination

Article 34.

(1) An additional expert examination shall be appointed when the expert's examination is not sufficiently completed and clear.

(2) A repeat expert examination shall be appointed where the expert's statement is not well grounded and a doubt about its correctness arises.

Inspection

Article 35.

(1) The control body, the act issuer, the sanctioning authority or the court may inspect locations, premises or objects in order to discover, investigate and preserve traces of the offence or other evidence necessary to clarify the circumstances of the administrative criminal proceedings.

(2) The inspection shall be carried out during the day, unless it is urgent

(3) Upon performing the inspection everything shall be examined as it has been found and after that the necessary movements shall be made.

Searches and seizures

Article 36.

(1) Where there is sufficient reason to believe that objects, papers or computer information systems containing information data which may be relevant to the proceedings are located in any premises or person, a search shall be carried out to detect and seize them.

(2) The search and seizure shall be carried out in the presence of the person using the premises or an adult member of his or her family. Where the user of the premises or a member of their family cannot be present, search and seizure shall be performed in the presence of the house manager or a representative of the municipality or mayor's office.

(3) Search and seizure on premises used by state or municipal services shall be conducted in the presence of a representative of the office.

(4) Searches and seizures in premises used by a sole trader or a legal entity shall be carried out in the presence of their representative. Where a representative of the sole trader or the organisation of citizens cannot be present, the search and seizure shall be carried out in the presence of a representative of the municipality or town hall.

(5) Searches and seizures at the premises of foreign representations of international organisations and in the accommodation of their officials who enjoy immunity from the administrative criminal jurisdiction of the Republic of Bulgaria shall be carried out with the consent of the Head of Representation and in the presence of a representative of the Ministry of Foreign Affairs.

(6) Searches and seizures concerning computer information systems and software applications shall be conducted in the presence of an expert technical assistant.

(7) Search and seizure shall be conducted during the daytime, unless they can be delayed. Before carrying out a search and seizure, the relevant authority shall propose to indicate to it the objects, papers or computer information systems sought containing computer information data.

(8) When conducting search and seizure, no actions shall be undertaken unless they are necessary for the purposes thereof. Premises and storerooms shall be forced open only in the event of a refusal to open them and unnecessary damages must be avoided.

(9) Where the search and seizure reveal circumstances related to the private life of citizens, the necessary measures not to disclose them shall be taken.

(10) The seized objects, papers and computer information systems containing computer data shall be handled to those present. Where necessary, they shall be bagged and sealed at the place where they were seized.

(11) Where carried out by an act issuer or a sanctioning authority, search and seizure shall be carried out with the permission of a judge of the district court who is competent to rule on an appeal or appeal against the penalty order.

(12) In urgent cases, where this is the only possibility of gathering and preserving evidence, the act issuer and the sanctioning authority may carry out a search and seizure without the authorisation referred to in paragraph 11, and the record of the taking of evidence carried out shall be submitted to the judge for approval without delay and no later than 24 hours.

(13) In judicial proceedings, search and seizure are carried out by decision of the court hearing the case.

Search of a person

Article 37.

(1) The search of a person shall be permitted where there is sufficient reason to believe that the person has concealed objects or documents relevant to the administrative criminal proceedings.

(2) The search shall be carried out by a person of the same sex.

(3) In the case of searches, Article 36 (6) to (14) shall apply accordingly.

Investigation experiment

Article 38.

(1) The act issuer, the sanctioning authority or the court may carry out an investigation experiment in order to verify and specify data obtained from the questioning of the witness or the person against whom the act for establishment of the administrative violation has been drawn up, or from any other measure of inquiry.

(2) The investigation experiment shall be permitted provided that the dignity of the persons participating in the experiment is not stripped of and that there is no danger to their health.

Recognition

Article 39.

(1) Recognition of persons or objects shall be carried out when it is necessary to confirm the identity of persons and objects in order to clarify the circumstances of the proceedings.

(2) The act issuer, the sanctioning authority or the court shall propose to the person against whom the act for establishment of the administrative violation has been drawn up or to the witness to identify a person or object.

(3) Immediately before recognition is carried out, the person is questioned whether he knows the person or object to be recognised; the characteristics on which he can recognise them; the circumstances in which he/she observed the person or object; and the condition in which he/she was perceived by the person or object to be identified.

(4) A person shall be presented for identification together with three or more persons similar in appearance to that person and measures shall be taken to avoid direct contact between that person and the identifying person.

(5) At the discretion of the authority performing the recognition, it may be carried out in such a way that the person identifying the person does not appear directly with the identified person.

(6) An object shall be presented for identification together with three or more homogeneous objects.

(7) Where it is not possible to show the person or object themselves, a photograph shall be displayed together with the photographs of three or more persons similar in appearance or photographs of three or more homogeneous objects.

(8) Where several persons referred to in paragraph (2) are required to recognise persons or objects, they shall be shown separately on each of the identifiable persons, ensuring that the identification persons do not come into direct contact with each other. Simultaneous identification by several individuals shall be inadmissible.

(9) The person referred to in paragraph (2) shall be proposed, by specifying the person or object to which the statements or statements given by him or her relate, to explain how they have recognised them.

(10) Photo album may be used for recognition."

Note: The texts basically reproduce the provisions of the 2015 draft of the Administrative Violation Code (Art. 82 - Art. 121). The proposed wording is in compliance with the concepts and definition of the current AVPA in relation to sole traders and legal entities. Numbering starts from one for indicative purposes only.

With regards to the related issue of the ascertainment of the offender´s identity, the curret wording of Article 43 of the AVPA provides that "when the identity of the offender cannot be established by the issuer of the

act it shall be established by the closest municipal administration or division of the Ministry of Interior." According to the interviews carried out within the fact-finding mission with key ministries and agencies making use of the administrative penalty framework, this text creates practical difficulties because it requires the intervention of the Ministry of Interior´s officials each time there are problems in establishing the identity of the offender. To overcome this challenge and swift the process of ascertaining the offender´s identity, Bulgaria could amend the relevant text by giving the right to require a personal document to any official issuing an act for establishment of the committed administrative violation along the proposal illustrated in Box 4.2.

Box 4.2. Proposed art. 43 (3) of AVPA

"Art. 43. (3) In order to establish the identity of the offender, the act issuer shall have the right to require an identity document or another document in lieu thereof. Where the offender does not present identity document or it is not possible to establish his identity from the document presented, it shall be established by the nearest municipal administration or department of the Ministry of the Interior."

Source: OECD based on a proposal brought up during fact-finding interviews.

4.1.1. Revising the regulation on seizure of material evidence

For the purposes of the administrative penalty proceedings, when establishing administrative violations the issuer of the act can seize and keep the material evidence related to the establishment of the offence, as well as the objects subject to seizure in favour of the state (Article 41 of the AVPA). This requires that they are being described in the act establishing the administrative violation.

In these proceedings, unlike in the criminal proceedings, there is no need for judicial approval of the actions of the organ seizing the property, although searches and related seizures significantly restrict the legal sphere of the person subject to that investigative measure. Furthermore, the law does not explicitly regulate the possibility for seizing and attaching the material evidence after drawing up the act and during the proceedings.

Another issue concerns the safekeeping and disposal of the material evidence contained in the file until the case is solved. The procedural administrative penalty law is extremely laconic on this issue. For example, there are no rules as to whether the seized material evidence should be kept until the end of the administrative criminal proceedings, neither are there rules as to whether it is permissible to dispose of these items outside the hypothesis of Article 46, paragraph 4 AVPA, before the end of the proceedings before the sanctioning body. The law does not contain any reference to the Criminal Procedure Code on these issues either.

At the same time, the seized items may include ones that are important for the offender or items of value significantly exceeding even the maximum amount of the proprietary sanction provided for the violation. It is also possible that the items are not relevant to the subject of proof, but the administrative authority nevertheless wrongfully refuses to return them to the person against whom the act has been drawn up.

In the absence of explicit regulation, the possible conclusion is that the matter is left to the discretion of the sanctioning authority. This circumstance hides a serious risk of unjustified return of items attached as material evidence or means of proof to an entitled or non-entitled person. There is also a risk of unjustified detention of items that are not relevant to the proceedings (not a source of relevant facts) in order to motivate the entitled person to dispose of the service intended by the administrative body. Additionally, it may lead to corrupt administrative practices.

This legal gap could be addressed by creating a more robust gal framework regulating the power of the sanctioning body to dispose of items seized in the file before the end of the proceedings and preventing the sanctioning body from refusing to return the irrelevant items.

Proposals to regulate matters relating to the keeping and disposal of material and documentary evidence in a future codification act have already been referred to in Box 4.1. Under the current AVPA, the provisions could be worded as proposed in Box 4.3.

Box 4.3. Proposed Articles 41, 46 and 21a

"Article 41 When administrative offences are found, the act issuer may seize material evidence relating to the establishment of the violation, as well as the items to be confiscated for the benefit of the State under Articles 20 and 21. The rules of the Code of Criminal Procedure shall apply to the procedure for seizing material evidence."

"Article 46.

(1) The seized items shall be kept until the administrative penalty proceedings have been completed. Seized items shall be handed over for safe-keeping in accordance with the rules laid down. In the absence of such rules, the items shall be handed over to the department of the collector. Where appropriate, they may be handed over for preservation by the offender or other persons.

(2) Objects seized as material evidence, the possession of which is prohibited, shall be delivered to the relevant establishments or be destroyed.

(3) Objects seized as material evidence may, with the permission of the sanctioning authority, be returned to those entitled before the conclusion of the administrative penalty proceedings, where this will not hinder the disclosure of the objective truth and are not subject to forfeiture in favour of the State.

(4) The refusal of the sanctioning authority under paragraph 3 shall not be appealed.

(5) The goods spoiling are sold, with the permission of the sanctioning authority, through state and municipal companies, and the amount received, after deduction of the costs incurred, is deposited with a commercial bank servicing the state budget or with the Bulgarian National Bank.

(6) At the end of the administrative penalty proceedings, books or other written documents collected as material or written evidence shall be placed in the case file or handed over to the institutions, legal entities and natural persons concerned. Objects seized as material evidence, the possession of which is prohibited, shall be delivered to the relevant establishments or be destroyed.

(7) Where a dispute arises over a right over objects collected as material evidence to be decided by a court, they are kept until the court's decision becomes final. The final decision of the court is binding on the sanctioning authority in matters of civil status and property rights."

"Article 21a. Except in the cases provided for in Articles 20 and 21, objects seized as material evidence shall be confiscated for the benefit of the State where:

1. it has not been established who they belong to and have not been sought within one year of the conclusion of the administrative criminal proceedings;
2. the person to whom they belong is found, the person entitled has been duly informed to appear in order for them to be returned and have not been sought within six months of the notification."

Note: This proposal is based on the draft Administrative Violations and Penalties Code of 2015 with some edits and additions.

4.2. The AVPA could introduce provisionson the separation and consolidation of proceedings

The procedural rules in the AVPA only regulate the case when the act establishing the administrative violation concerns for a single violation and this violation is the subject of the final law enforcement act issued by the sanctioning body. However, there are also cases when it is possible or even appropriate from the perspective of procedural economy that the act is drawn up for two or more violations. In these cases, it is not always possible to launch proceedings for both offences. For example, if the offences fall within the scope of competence of different enforcement authorities, it may be that one of the offences requires collecting of evidence or there are grounds for suspension of proceedings, etc., and for the second one it is not necessary. It is therefore appropriate to develop provisions for the separation of files in the procedural law. This could also be done within the court phase of the proceedings, but in such case, the rules of the Criminal Procedure Code will apply.

It is also possible that there is a connection between two or more administrative penalty files. In such case, it is appropriate to provide for the possibility of merging proceedings in the general administrative law. The provisions concerning the exercise of the powers of the sanctioning authority in this respect could be worded as proposed in Box 4.4.

Box 4.4. Proposed Articles on separation and consolidation of proceedings

“Proceedings separation

Article X.

(1) Where evidence of the involvement of more persons in the commission of the violation has been gathered, the sanctioning authority may separate the materials for some of them in separate proceedings where:

1. their treatment in a single proceeding would hinder the course of those proceedings;
2. some of the persons are not identified;
3. there is reason to stop the proceedings in respect of one or more of the persons.

(2) Where evidence of several violations involving the same person has been gathered, the sanctioning authority may separate the material for some of the violations where dealing with them in one proceeding would hinder the course of those proceedings.

(3) Where evidence of several violations involving the same person has been gathered and the sanctioning authority has jurisdiction to rule only in respect of some of them, it shall separate the material for the offences for which it does not have jurisdiction and shall forward it to the competent sanctioning authority.”

“Consolidation of proceedings

Article X. Where it is established that two or more proceedings instituted for different violations or against different persons have a link with each other, the sanctioning authority may bring them together if this is necessary to reveal the objective truth and will not impede the course of the proceedings.”

Note: This proposal is based on the draft Administrative Violations and Penalties Code of 2015 with some edits and additions.

It is also necessary to provide for the possibility of bringing together two or more administrative penal cases at the stage of judicial review of administrative acts, where there is an objective or subjective link between them, as it is possible with criminal cases. Such a need would arise, for example, when contesting:

- two or more acts of the sanctioning authority issued against two or more persons concerning their involvement, even in a different administrative-punitive capacity, in the commission of the same administrative offence (for example, as perpetrator and supporter, as perpetrator and as an admitter, in simultaneous sanctioning the legal person and the legal entity representing it, etc.);
- two or more acts of the sanctioning authority issued against the same person for two or more violations committed in the same factual context (e.g. two or more violation of the Road Traffic Act committed in the same time, place and circumstances, two or more infringements of the VAT Act in two consecutive tax periods, etc.);
- two or more acts of the sanctioning authority against the same person for the same violation, issued contrary to the principle *non bis in idem* (in order to ensure a lawful assessment of which of them should be annulled);
- main and additional penal orders.

Similarly, it would also be important to provide for the opposite possibility of splitting of proceedings, which would be needed when:

- the proceedings are initiated following an appeal or protest against a penal order sanctioning the offender for two or more offences committed in different judicial districts;
- the proceedings are initiated following an appeal or protest against a penal order sanctioning one or more persons for offences with no connection between them;
- the conditions for the stop of proceedings against one or more of the persons pecuniary sanctioned are met, and the other conditions are not met.

Box 4.5 proposes two articles on splitting and consolidation of cases.

Box 4.5. Proposed Article on splitting and consolidation of cases

Splitting the case

"Article X. The district court may divide the case file where:

1. the proceedings are initiated following an appeal or a prosecutor protest against a decision under Article 58e by which the sanctioning authority has ruled on two or more violations committed in different judicial districts;
2. the proceedings are initiated following an appeal or a prosecutor protest against an act referred to in Article 58e by which the sanctioning authority has ruled on the liability of two or more persons who have acted without connection with each other;
3. the conditions for the stop of proceedings against one or more of the persons against whom an order under Article 58e has been issued are met, and the other conditions are not met."

Consolidation of cases

"Article X.

(1)The district court may combine two or more cases brought on appeal or prosecutor protest against decisions under Article e of the AVPA where :

1. has territorial jurisdiction to hear cases;
2. the judicial inquiry into either of them has not begun.

(2) The court shall exercise its powers under paragraph 1 where two or more of the acts referred to in Article 58e are issued against:

1. two or more persons for the same violation;
2. the same person for the same violation;
3. the same person for two or more violation committed in the same factual context."

Note: Provisions proposed by the OECD.

A separate but related issue pointed out in the Phase 4 report of the OECD Working Group on Bribery concerns the fact that, where sanctions against legal persons are imposed in the course of the criminal proceedings against natural persons, the AVPA provides for separate proceedings for natural and legal persons. While this is justified by judges participating in the review process with the fact that proceedings against legal persons tend to be faster and more flexible, and may continue independently in cases where the natural person is later acquitted, the report notes that evidence gathered in the criminal proceedings against natural persons may be used in the proceedings against legal persons and, more generally, that evidentiary activity on the two set of proceedings cannot be isolated. Based on this the report concludes that, where appropriate, Bulgaria consider combining proceedings against natural and legal persons in the same case following the practice of some other OECD Working Group members with non-criminal corporate liability. (OECD, 2021[1])

4.3. The AVPA could provide for the possibility to suspend proceedings in case of mental offender's disorder or if a request for international co operation is pending

Currently, the possibility to suspend the administrative penalty proceedings is regulated in Article 43, para. 6 of the AVPA, as follows:

> *When the offender, after a thorough inquiry, cannot be found it shall be noted in the act and the proceedings shall be terminated.*

This is the only hypothesis when the administrative penalty proceedings can be suspended, which is addressed later on in the report when discussing the servicing the summons, papers and notices (section 4.5) and the possibility of in absentia proceedings (section 4.11). Beyond this option, the legal framework could provide for the possibility to suspend proceedings in other cases such as when, after the offence has been committed, the offender has been affected by a short-term mental disorder, which precludes his sanity, and in cases where a response to a request for international co-operation is expected. In particular:

1. The offender's short-term mental disorder, which excludes his sanity after committing the violation, is not an obstacle to his administrative penalty liability. This circumstance only temporarily impedes his ability to participate in the proceedings and to exercise his right to defence. In case the person recovers, the sanctioning body would have the power to resume the proceedings and to ascertain the responsibility of the suspected offender. In case the person does not recover by the expiration of the limitation period, the sanctioning body should be obliged to terminate the proceedings.
2. If a response to a request for international co-operation related to summoning a person from another EU member state or obtaining evidence relevant to the subject of the file is expected, there is again reason to suspend the proceedings because no other procedural actions are required during this period, and because the suspension of the proceedings is necessary so that the preclusive term for issuing a penalty ruling provided for in Article 34 of the AVPA does not expire.

The power to suspend proceedings should belong to the sanctioning body and not, as before, to the authority which issued the act. On the one hand, the exercise of the power of suspension of the proceedings is a decision on the merits, which is solely a competence of the sanctioning authority. On the other hand, this creates a legal guarantee against possible illegal procedural actions on the part of the authority, which issued the act. A closely related gap concerns the lack of a procedure to resume the suspended administrative penalty proceedings, both when the grounds for suspension cease to exist and when there is a need to perform additional actions to collect evidence.

Legal amendments to address the gaps in this area could be establishes both under the current AVPA and in a future codification act. The provisions could be worded as proposed in Box 4.6.

Box 4.6. Proposed Articles 52a and 52b

"Article 52a.

(1) Within the period referred to in Article 52 (1), the penalty authority shall suspend the proceedings:

1. where, after the offence has been committed, the offender has experienced a short-term disorder of consciousness which excludes sanity or has any other serious illness which prevents the conduct of the proceedings;
2. the person against whom the act for establishment of the administrative violation has been drawn up is a foreign national with immunity from the administrative criminal jurisdiction of the Republic of Bulgaria;
3. while awaiting a reply to a request for international co-operation;
4. the person against whom the act for establishment of the administrative violation has been drawn up cannot be found at the address for summoning indicated by him, his residence in the country has not been established and his absence hinders the discovery of the objective truth.

(2) The existence of a ground for suspension of the administrative criminal proceedings in respect of the offender shall not preclude the continuation of the proceedings in respect of the sole trader or legal entity whose activity has been the subject of a failure to fulfil an obligation towards the State or a municipality.

(3) The sanctioning authority shall decide on a suspension of proceedings by means of a reasoned order, which shall contain:

1. the first name, forename, surname and function of the person who issued it;
2. the date of issue of the decree;
3. the date of the act on the basis of which the file was opened and the name, position and place of employment of the act issuer;
4. a description of the offence, the date and place where it was committed, the circumstances in which it was committed;
5. the legal provisions which have been infringed culpably;
6. the reasons justifying the suspension of proceedings and the legal basis thereof;
7. signature of the sanctioning authority.

(4) The order referred to in paragraph 2 shall not be subject to appeal or prosecutor protest.

(5) Where the proceedings are suspended pursuant to art. 1 par.1, the sanctioning authority shall check every six months whether the situation of the offender allows the proceedings to continue.

Article 52b. The sentencing authority shall reopen the suspended proceedings by reasoned order in the following cases:

1. the reason for suspension no longer applies;
2. there has been a need to carry out additional evidence-gathering measures.

(2) Where proceedings are resumed, Article 52a par.3 and par.4 shall apply accordingly.

(3) When reopening proceedings on the basis of art 1 par.1, upon the healing of the person, the sanctioning body shall exercise its powers under Article 52 within one month of the date of healing.

(4) Where, in the course of the suspended proceedings, the conditions for their termination are established, the sanctioning authority shall terminate the proceedings without reopening the proceedings."

Note: The texts are based on the provisions which have been discussed in the working group for drafting Law amendment of AVPA, adopted by the National Assembly at the end of 2020. This version proposes two new grounds for suspension of proceedings and supplementation under p. 2 and 4 of Art. 52a, para. 1, as well as a new para. 2 of the text.

4.4. The AVPA could provide for specific rules on translation and interpretation rights during proceedings

Other procedural areas where rules could be further clarified are the ones concerning the procedural representation of persons and for translation of documents of procedural significance.

In 2014, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings was transposed into Bulgarian law by introducing, in Article 55 par. 4of the Code of Criminal Procedure governing the rights of the accused, a new paragraph 3 under which an accused person who does not speak Bulgarian has the right to interpretation and translation in criminal proceedings in a language which he understands. The defendant shall be provided with a written translation of the decree for bringing the accusations, of the court rulings for a constraint measure, of the act of indictment, of the judgment delivered, of the decision of the Court of appeal and of the decision of the cassation instance. A defendant shall be entitled to refuse written translation pursuant to this Code where he/she has a defence counsel and his/her procedural rights are not being violated.

However, there is no provision in AVPA on the right to translation of participants and before the court. Apart from this, the failure to ensure the right to translation at the out-of-court stage of the procedure may have an extremely negative impact on the rights of defence of the persons against whom an act for establishment of the administrative violation has been drawn up in the proceedings. To address these gaps it is necessary a set of provisions in the procedural law to be established.

In the first place, it is necessary to create a provision which explicitly states the language in which proceedings are conducted (Box 4.7).

Box 4.7. Proposed Article on language of proceedings

"Article X.

(1) The proceedings under this Act are conducted in Bulgarian.

(2) Persons who do not speak Bulgarian may use their native language or another language indicated by them. In these cases, an interpreter shall be assigned to the person.

(3) The sanctioning authority or the court appoints an interpreter in cases where it cannot itself verify the correctness of the translation of documents submitted in a foreign language.

(4) When a party to the proceedings is deaf, deafblind, or blind, an interpreter into sign Bulgarian language is appointed."

Note: This proposal is based on the draft Administrative Violations and Penalties Code of 2015.

Secondly, an explicit regulation of the rights of the person against whom the act for establishment of the administrative violation has been drawn up is necessary (Box 4.8).

Box 4.8. Proposed Article on the rights of the person against whom the act for establishment of the administrative violation has been drawn up

"Article X.

(1) The person against whom the act for establishment of the administrative violation has been drawn up shall be entitled to:

1. find out for what violation for the act was drawn up and on the basis of which evidence;
2. give or refuse to give explanations;
3. become familiar with the evidence collected and make the necessary extracts;
4. presents and requests the taking of evidence of its own motion;
5. be involved in the proceedings;
6. refuse to participate in separate actions of evidence collection;;
7. make requests, observations and objections;
8. appeals against acts which adversely affect his rights and legitimate interests;
9. be represented by a legal representative.

(2) The exercise of the right referred to in paragraph 1 item 9 shall not cause urgent actions to be delayed.

(3) The person against whom the act for establishment of the administrative violation has been drawn up, who does not have a command of Bulgarian, has the right to interpretation and translation in administrative penalty proceedings in a language which he understands.

(4) The person against whom the act for establishment of the administrative violation has been drawn up, shall be provided with a translation of the act, the final decision of the sanctioning authority and the decision of the district and administrative courts within 24 hours of their preparation. That person shall have the right to interpretation during interrogation and discussion of the terms of the agreement. The person against whom the act for establishment of the administrative violation has been drawn up may

refuse translation or interpretation when represented by a lawyer or legal adviser or other person with a legal background.

(5) The provisions of paragraphs 1 to 4 shall apply mutatis mutandis to the legal representative of the sole trader or the legal entity against whom the act for establishment of the administrative violation has been drawn up."

Note: Para.1, 2, and 5 build on art. 76, para. 1-3 of the draft Code of Administrative Penalties and Violations of 2015. Para. 3 and 4 are new proposals.

The need to regulate the issue of costs at the extra-judicial stage of the proceedings emerged during the interviews during the OECD fact-finding interview. In this context, it could be provide that the remuneration of experts, the interpreter and the interpreter in Bulgarian sign language should be determined by the act issuer, the sanctioning authority or the court, and that the costs are to be borne by the budget of the administration to which experts and interpreters are assigned.

It is also necessary for a provision similar to that of Article 142 of the Code of Criminal Procedure to be provided (Box 4.9).

Box 4.9. Proposed Article on witnesses' interpretation

"Article X.

(1) Where the witness does not have a command of the Bulgarian language, an interpreter is appointed.

(2) When the witness is deaf or silent, an interpreter in Bulgarian sign language is appointed.

(3) The rules of Article..... shall apply to the interpreter and interpreter in Bulgarian sign language.

(4) The hearing may also be carried out by a videoconference."

Note: This proposal is based on the draft Administrative Violations and Penalties Code of 2015.

4.5. Bulgaria could provide for more detailed and comprehensive rules for serving summonses, papers and notices in administrative penalty proceedings

Additional rules could be developed in the AVPA with regards to the serving of summonses and notices to the person against whom an act establishing an administrative violation is to be drawn up, or against whom an act has been drawn up and is to be filed and served. The only provision on these procedures is contained in the first subparagraph of Article 43, para. 4 of the AVPA. The same applies to the summoning of the persons against whom a penalty ruling has been issued according to Article 58, para. 1 of the AVPA. Furthermore, there are no special rules for the summoning of legal entities and sole entrepreneurs and of persons who have suffered damages as a result of the violation.

The respondents to the OECD questionnaire point out that the existing legal framework is insufficient to ensure the normal exercising of the powers of the controlling and sanctioning bodies to serve the relevant acts and the participation of legal entities in the out-of-court phase proceedings, for example in relation to the Traffic Law. A related issue has been raised by the OECD Working Group on Bribery, which expressed concern about the limited circumstances in which a legal person's representative is duly summonsed before court proceedings can commence and recommended that Bulgaria ensure that these limited

circumstances do not prevent court proceedings against legal persons being commenced. (OECD, 2021[1]).

Participants to the workshop organised by the OECD to discuss preliminary recommendations proposed to simply the procedure for service of summonses and papers, especially in the cases when a low penalty is envisaged. Although this may be appealing it is important to ensure the same rules apply, since the right of defence and the right of the person to be informed of the penalty should not depend on the gravity of the violation and the amount of the sanction. However, legal changes on this topic is needed and the AVPA could provide for detailed rules for summoning and serving summonses, papers and notices, both to individuals and to sole entrepreneurs, legal entities and companies without legal personality.

Proposals in this direction were also made in the development of the latest amendments to the AVPA from the end of 2020, but their final adoption has not been achieved. Indeed, these rules need to be upgraded and their possible drafting could be as proposed in Box 4.10.

Box 4.10. Proposed Articles for serving summonses, papers and notices

"Article 43a.

(1) The summons for taking part in the proceedings and the service of documents and communications shall be implemented by:

1. the address for service or, if not found at these addresses, the permanent address and, for those registered in the BULSTAT register, at the address for correspondence entered in the register, for natural persons and, if they are abroad, service under the legal aid agreement with the State concerned or another mechanism of international law co-operation or, in the absence of a contract, through the Ministry of Foreign Affairs;
2. the address of the registered office for sole traders and legal entities, unless another address for correspondence is entered in the BULSTAT Register or another address is entered in the Commercial Register;
3. the address of the place of business, if there is no address referred to in subparagraph 2, for foreign persons doing business in the country through a permanent establishment or a fixed base;
4. the address declared to the offices responsible for the administrative control of foreigners — for a foreign national residing in the country, except in the cases referred to in subparagraphs 1 and 3;
5. the address of the first real estate acquired — for non-residents who have acquired real estate in the territory of the country and not covered by subparagraphs 1 to 4;
6. the place where a custodial sentence or detention order is to be served, for persons deprived of liberty and in custody;
7. to natural persons and legal entities registered in a foreign country for which the addresses referred to in points 2 3 to 5 are not available, service shall be effected in accordance with the legal aid agreement with the State concerned or any other mechanism of international law co-operation, or, where there is no contract, through the Ministry of Foreign Affairs.
8. By sending a message to a personal account registered in the secure electronic service information system as a module of the Single Portal for Access to Electronic Administrative Services within the meaning of the e-Government Act — where the person holds such an account.

(2) Persons requesting compensation and the other witnesses may also be summoned by telephone, telex or fax. The summons by telephone or fax shall be certified in writing by the official who did it and by telex with a written acknowledgement of receipt.

(3) Public enterprises, establishments or organisations harmed by the violation may be summoned via the e-mail address given in the case. An electronic message is deemed to have been served when the addressee sends an acknowledgement of receipt by means of a return electronic message, activation of a hyperlink or downloading it from the information system of the competent administration.

Article 43b.

(1) The summons is carried out by the act issuer or another person of the administration concerned. The summons shall include the act to which the person is summoned.

(2) A summons may be served by:

1. sending a letter with acknowledgement of receipt via a licensed postal operator, in which the action for summoning the person is written down.
2. via the municipality or town hall where the person has his address;
3. through the authorities of the Ministry of the Interior.

(3) A summons of a natural person may be served:

1. to the person, his or her representative or agent;
2. to an adult member of his household and to an adult having the same permanent address if they agree to accept it with the obligation to hand it over to the person;
3. at the place of work, either personally or through an employer or other employee, if he agrees to accept it under an obligation to hand it over;
4. if the person is deprived of his or her liberty or detained in custody, through the administration of the establishments concerned.

(4) A summons on a sole trader may be served to:

1. the sole trader;
2. his representative;
3. his employee, if he agrees to accept it with the obligation to hand it over to the person.

(5) A summons to a legal entity may be served to:

1. its manager or member of a management body;
2. his or her representative or agent;
3. his employee, if he agrees to accept it with the obligation to hand it over to the person.

(6) The official who served the summons shall return the receipt in a timely manner, which shall be placed on the file.

Article 43c.

(1) The person serving the summons shall certify by his signature the date and method of service, all acts of service, as well as his name and official capacity. He shall also record the full name, permanent address and capacity of the person to whom the summons was served, after requesting him to prove his identity by means of an identity document.

(2) The addressee of the summons certifies by his signature that he has received it.

(3) A summons sent by post with acknowledgement of receipt shall be deemed to have been served on the date on which the acknowledgement of receipt is signed by one of the persons referred to in Article 43b (4) to (6).

(4) Refusal to accept a summons shall be attested by the signature of the person who served it and at least one witness, mentioning the full name and permanent address or address of the summons and a note is taken on the receipt for this. Where service is effected through the municipality, town hall or licensed postal operator, the official concerned shall sign the refusal.

Article 43d.

(1) Service via attachment to the file shall be carried out:

1. in the case of natural persons, after at least two visits to the address to be summoned every 7 days, one of which during the weekend or, if he or she was not found, after one visit to his permanent address or address of work;
2. for sole traders and legal entities, after at least two visits to their registered office every seven days, in working days between 09.00 hours and 17.00 hours;
3. for foreign persons referred to in Article 43a (3) and (5), after at least two visits to the address every seven days, on working days between 09.00 hours and 17.00 hours, or, in the case of natural persons, after two visits to the address, one of which during the weekend.

(2) In case the person is not found on the addresses referred to in paragraph 1 during the second visit, the server shall place a notice at the entrance door informing him that the summons can be received within 14 days in the organisation to which the author belongs.

(3) The circumstances referred to in paragraphs 1 and 2 shall be attested by a record of each visit to the address, which shall include details of the time and place of the visit, the names, position and place of service of the person compiling it, the file on which it is drawn up, the date and time of the visit to the address, the activities carried out to visit the address and the signature of the person drawing it up. After completion of the procedure referred to in paragraphs 1 and 2, the act for establish the administrative violation shall be duly served on the date of the last visit to the address referred to in Article 43a.

(4) The requirements referred to in paragraph 1 shall not apply where there is clear evidence that:

1. the permanent address or address indicated for correspondence under Article 43a is non-existent;
2. the person has no permanent address or address for service in the country and his address abroad is not known.

(5) In the cases referred to in paragraph 4, the summons shall be placed in a designated place within the organisation to which the act issuer belongs. If the person fails to appear before the expiry of a period of 14 days from the date on which the summons was lodged, the summons shall be placed on the file and the document shall be deemed to have been duly served. The dates of affixing and downloading of the summons shall be recorded by the author on the summons itself.

Article 43e. The rules referred to in Articles 43a to 43d shall not apply where a special law provides otherwise."

Note: The texts are based on the provisions discussed in the working group for drafting Law amendment of AVPA, adopted by the National Assembly at the end of 2020, but these provision did not become part of the bill submitted to the National Assembly. The text propose a new version of Art. 43a, para. 1, 43b, para. 2 and Art. 43g, para. 2. Furthermore, items 7 and 8 are included in Art. 43a, para. 1, as well as para. 2 and 3 of Art. 43a.

The adoption of such a regulation will also lead to the repeal of the special rules for service of the penalty order referred to in Article 58 par.2 AVPA (SG. 109/2020 AVPA), the application of which, according to some of the respondents to the OECD questionnaire, gives rise to contradictory case-law. These proposed rule would contribute to address difficulties in summoning and serving documents to persons who do not have an address on national territory, which was also referred to as a problem in the data collection exercise as well as the concerns expressed by the OECD Working Group on Bribery on the limited circumstances for duly summonsing a legal person's representative. (OECD, 2021[1])

4.6. Bulgaria could introduce provisions on determining costs and remuneration in the out-of-court phase of the proceedings

The analysis of the legal framework also evidenced a possible gap in the law concerning the costs and remuneration in the out-of-court phase of the administrative penalty proceedings. Indeed, in this context there a two possible approaches.

The first one would be to consider that the costs incurred by the act issuer and the sanctioning authority during the pre-judicial stage of the proceedings in order to prove the violation and the identity of the offender remain at the expense of the establishment or organisation to which the sanctioning authority belongs, regardless of the act by which that stage of the proceedings ended. This is the current solution adopted by Bulgaria, which is similar to the one of Germany (Box 4.11).

Box 4.11. Settling costs in Germany

In Germany the following regulation applies in relation to costs according to Article 105 of the Act on Regulatory Offences:

"(1) In the proceedings of the administrative authority, section 464 subsections 1 and 2, sections 464a and 464c as far as the costs of sign language interpreters are concerned, sections 464d, 465, 466, 467a subsections 1 and 2, section 469 subsections 1 and 2, sections 470, 472b and 473 subsection 7 of the Code of Criminal Procedure shall apply mutatis mutandis, in the proceedings against juveniles and adolescents also section 74 of the Youth Court Act shall apply.

(2) The necessary expenses which the Treasury shall bear in accordance with subsection 1 in connection with section 465 subsection 2, section 467a subsections 1 and 2 as well as sections 470 and 472b of the Code of Criminal Procedure shall be imposed on the Federal Treasury if an administrative authority of the Federation conducts the proceedings, otherwise the Treasury of the Land shall bear the costs, unless otherwise provided by the law."

Source: OECD research.

The second one would be to assess whether the costs incurred in the pre-judicial phase of the proceedings may be charged to the offender in cases where the final law enforcement authority rules in favour of the question of his involvement in the violation for which the proceedings are initiated, where the proceedings end with a penal order, a warning under Article 28 AVPA or an agreement between the sanctioning authority and the offender. Should Bulgaria decide to take this approach, similar to the solution adopted by Austria, the possible legislative solution could as proposed in Box 4.13.

Box 4.12. Cost of the administrative penalty proceedings in Austria

“Article 64

(1) Each administrative penalty decision shall contain a clause stating that the person sentenced shall contribute a share of the cost of the penalty proceeding.

(2) This share amounts to 10% of the fine for the proceeding in first instance, however, to a minimum of EUR 10; in the case of detention sentences, one day of detention shall be deemed to be the equivalent of EUR 100. The share of cost paid

(3) Cash expenditures caused in the administrative penalty proceeding (Article 76) shall be reimbursed by the person sentenced, unless resulting from the fault of a different person; the amount to be reimbursed shall be quoted, whenever feasible, in the judgement (the decision), otherwise by separate administrative decision. This is not the case for any fees payable to interpreters and translators made available for the defendant.

(4) The collection of contributions to costs and cash outlays must be refrained from if there is reason to assume that it would be unsuccessful.

(5) Articles 14 and 54b (1), 1a and 1b are to be applied accordingly.

(6) If the offender's request to resume criminal proceedings is not granted, the preceding provisions shall apply mutatis mutandis to the obligation to bear the costs of the proceedings.”

“Article 66

(1) In case a penalty proceeding is dropped or a sentence imposed is revoked because the proceeding is resumed, the costs of the proceeding shall be borne by the authority or refunded if already paid.

(2) In such cases the private prosecutor shall bear only such costs actually resulting from his intervention. (2) In such cases, the private prosecutor shall only be charged the costs actually caused by his intervention.”

Source: Administrative Penalty Act of Austria.

Box 4.13. Proposed Articles on costs

"Article X.

(1) Costs in the procedure for finding an administrative offence and imposing an administrative penalty shall be met by the amounts provided for in the budget of the administration concerned, in which it is the authority ordered the action to be carried out.

(2) The remuneration of experts, the interpreter and the sign interpreter and the costs incurred by witnesses shall be determined by the act issuer or the sanctioning authority, via a decree.

(3) The costs of an interpreter and interpreter in Bulgaria sign language shall be charged to the budget of the administration to which they are assigned.

(4) The costs of witnesses and experts incurred in proving the offence shall be awarded to the person in respect of whom the order was made if the proceedings have resulted in a penalty order, caution or settlement. Where the act was issued in respect of several persons, the penalising authority or the court shall determine the portion to be paid by each of them (5) Where the proceedings are partially discontinued for one of the offences or one of the persons, the sanctioning authority shall order the person in respect of whom the proceedings are continued to pay only the costs incurred in proving the violation for which the proceedings culminate in a penal order, warning or settlement.

(6) When administrative penalty proceedings are terminated, the costs shall remain at the expense of the budget of the administration in which the sanctioning authority is located.

(7) For the costs awarded, a writ of execution is issued by the relevant court of first instance.

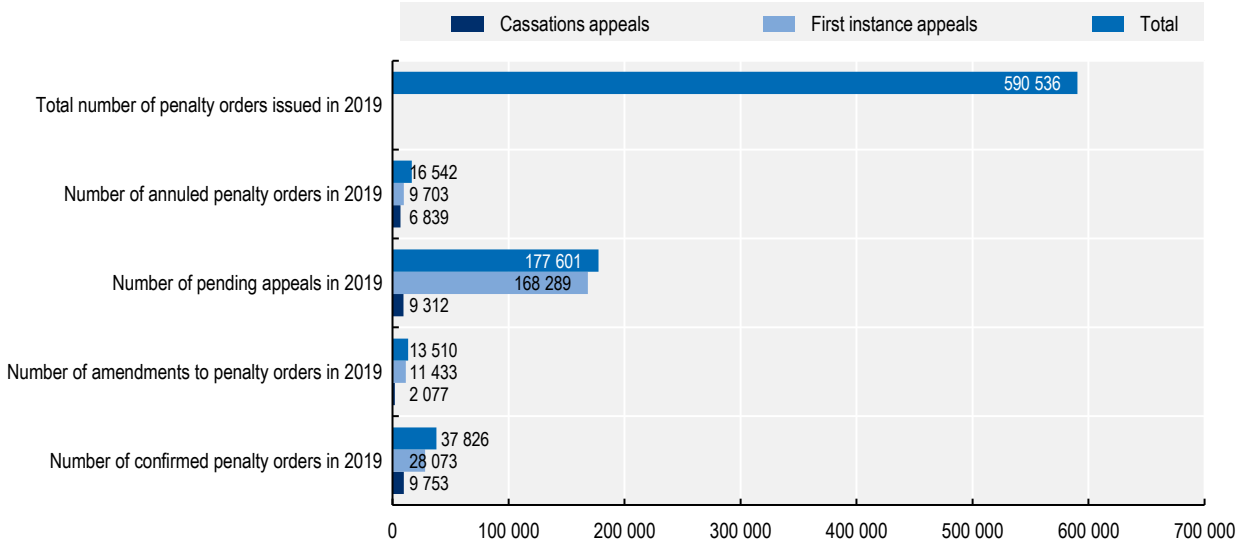
(8) The penalty order and the warning may also be appealed only in respect of the costs awarded."

Note: The text are based on Article 128 of the draft Code of Administrative Violations and Penalties of 2015. Provisions of para. 1, para. 2 (the costs for witnesses are also included), para. 4 et al. 6, as well as a new para. 8 are new proposals. The regulation of the costs awarded by the courts, proposed by the draft of Code, has not been recreated here, as the issue has been included in the AVPA with two consecutive amendments from 2019 and from 2020.

4.7. Bulgaria could ensure the coherency of procedural rules by applying rules of criminal procedure for both appeals and cassation proceedings for administrative penalty cases

A significant part of penalty orders are subject to appeal in front of judicial bodies (Figure 4.1). Penal orders are subject to challenge before the regional courts, which act as courts of first instance appeal in such proceedings. They review cases under the Criminal Procedure Code. At the same time, the decisions of the district courts are subject to cassation appeal before the administrative courts on the grounds, provided for in the Criminal Procedure Code (PPC) and following the procedure under Chapter Twelve of the Administrative Procedure Code (APC).

Figure 4.1. Appeals against penal orders in 2019



Source: 2019 Annual State of the Administration Report.

The reference to both the PPC and the APC in the current provision of Article 63, para. 1 of the AVPA creates a number of difficulties in the practice of administrative courts. One of the questions is whether in cassation proceedings the administrative court has the power to re-classify the violation described in the penal decree, bringing the facts established by the administrative sanctioning authority under another provision of law which has been infringed (point 2 of the proposal to institute interpretative case No 1/2020 of the Supreme Administrative Court's has not been decided yet). There is also the contradiction between the reference to Chapter Twelve of the Administrative Procedure Code and the reference to the provisions of the PPC in Article 84 of the AVPA in connection with unresolved issues related to the reviewing of cassation appeals by the administrative court.

In particular, Article 84 of the AVPA, following the last amendment in 2011, states that:

> *Inasmuch as this Act contains no special rules for subpoena and presentation of subpoena and announcements, making inventory lists and seizing objects, determining expenses of witnesses and remuneration of experts, calculation of periods, as well as for the proceedings in court for consideration of complaints against penal prescriptions, of cassation claims at the administrative court and proposals for resumption shall apply the provisions of the Penal Procedure Code.*

And in Article 63 (1), 2 (after amendment — Article 63c), it is stated that:

> *The decision of the Regional court shall be subject to cassation appeal before the Administrative court on the grounds, provided for in the Penal Procedure Code and under Chapter Twelve of the Administrative Procedure Code.*

The reference to two different procedural regulations applicable to the same procedure was not removed by the 2020 amending law, although in the course of the discussion preceding the submission of the draft law to the National Assembly, such proposals were made by interested parties. To address these inconsistencies, the AVPA could provide for the reference to the procedures laid down in the Code of Criminal Procedure only (Box 4.15). The procedure under the Code of Criminal Procedure should be preferred given the origins of the administrative penalty system in Bulgaria, whose structure and concepts derive from criminal law . Furthermore, this would be in line with the model adopted by Germany, which is also informed by criminal law and has been influencing Bulgaria's administrative penalties system since its inception Box 4.14.

Box 4.14. Use of criminal procedure rules throughout administrative penalty proceedings in Germany

In Germany, section 46 (1) of the Act on administrative penalties (OWiG) provides for the general rule of applicability mutatis mutandis of the general criminal law acts on the imposition of administrative penalties by administrative authorities. Section 67 of this act (OWiG) ensures the applicability mutatis mutandis of a few provisions of the German Code of Criminal Procedure (CCP). According to section 79, 80 and 80a OWiG the Administrative Penalty division (Bußgeldsenat) of the Higher Regional Courts (Oberlandesgericht) are in charge of judicial review of administrative decisions imposing administrative penalties, and they apply the German Code of Criminal Procedure.

Source: OWiG

Should Bulgaria decide to codify administrative penalty law, it should be recommended that the questions relating to the pleas in cassation and the procedure for dealing with the appeal on a point of law should be laid down in detail (see next para), avoiding a reference to procedural rules laid down in other legal acts which govern different procedural relationships in nature.

Box 4.15. Proposed Article 63(c)

"**Article 63c**. The decision of the district court shall be subject to appeal on a point of law before the administrative court, on the grounds and in accordance with the procedures laid down in the Code of Criminal Procedure."

Note: This is a new proposal from OECD.

4.8. Bulgaria could introduce regulation of the cassation review over the sanctioning acts of the administration

With the entry into force of the new amendments to the AVPA adopted in December 2020 the regulation of the judicial review of the sanctioning act of the administration was updated through explicit regulation of the powers of the district court, the procedural representation of the parties before the regional court and the regulation of abbreviated court proceedings

However, the AVPA has not yet regulated in detail the proceedings before the administrative (cassation) courts, so additional rules may be considered to clarify the grounds for cassation appeal and powers of the cassation court. A comprehensive regulation of cassation proceedings under the AVPA could be implemented by means of a comprehensive codification of the rules on administrative penalties. Concrete proposals were made with the 2015 draft Code of Administrative Violations and Penalties, which is the basis for the rules proposed in Box 4.16.

Box 4.16. Proposed Articles on cassation review

"**Chapter……**

Cassation proceedings

Subject of the cassation proceedings

Art. 1. Subject to cassation proceedings entirely or in its separate parts shall be the first instance decision of the district court rendered by the order of art.63- 63b.

Right of cassation complaint or protest

Art. 2.

(1) The procedure before the cassation instance shall be instituted upon challenge of the prosecutor or upon appeal of the other parties.

(2) Right to appeal the decision shall have the parties or their legal representatives in the case, for which it is unfavourable.

(3) The prosecutor may submit cassation protest when his/hers procedural rights are violated and/or he/she finds that the rights and legal interests of one of the other parties are violated.

(4) A party that has not challenged the act under Art.58e AVPA before the district court could also file the cassation appeal or protest.

Cassation grounds

Art. 3.

(1) The decision of the district court be subject to cancellation or amendment under cassation procedure:

1. where the law is offended;
2. where a significant procedural breach has been admitted;
3. where the imposed penalty is obviously unjust.

(2) Offence of the law appears where it has been applied incorrectly or the law which shall be applied has not been applied.

(3) The breach of procedural rules shall be significant if:

1. has led to limitation of the procedural rights of the parties if has not been removed;
2. there is no reasons or a protocol of a district court;
3. the decision have been rendered by a non-lawful body;
4. the confidentiality of the deliberation has been broken during the rendering of the verdict or the decision.

(4) The procedural breach which cannot be removed does not establish ground for cancellation of the decision.

(5) The punishment is obviously unjust, if it is not relevant to the social danger of the violation and the perpetrator, to the extenuating and the aggravating the liability circumstances, as well as to the purposes of art.12 AVPA.

Term and order of submission of the cassation complaint and the prosecutor protest

Art. 4. The complaint and the protest shall be submitted within fifteen-day period from its announcement of the decision of the district court.

Contents of the complaint and the protest

Art. 5.

(1) the complaint or the protest shall be filed in written form and shall contain:

1. Indication of the district court through which the complaint or protest are filed;
2. Indication of the administrative court to which the complaint or protest are filed;
3. the name and the exact address of the appellant, respectively the name and the position of the prosecutor;
4. Indication of the appealed decision;
5. Precise and grounded indication of the concrete defects of the decision, which present cassation grounds;
6. What consist the claim of:

(2) The complaint or the protest shall be signed.

(3) To the complaint or the protest shall be attached:

1. document for paid state fee;
2. copies of the complaint or the protest according to the rest parties.

(4) An objection against a filed complaint and protest, as well as the amendment to them, could be made in writing until the case is heard in court.

Verification of jurisdiction

Art. 6.

(1) after initiating the case, the court shall check the jurisdiction.

(2) When the court finds that the case is not within its jurisdiction, it shall immediately send the case to the relevant administrative court.

(3) in cases under para.2 the term for filing the cassation appeal or protest shall be assessed as of the date of their submission to the court through which they are filed.

Verification of regularity

Art. 7.

(1) When the cassation complaint or protest do not meet the requirements under art. 5, para.1, letters 2-6 or para.2, they shall be left without movement, as the disputing party shall be given an opportunity to eliminate the irregularities within the 7- days period from the receipt of the notification thereof.

(2) The corrected contestation shall be considered regular from the day of its submission.

(3) If the irregularities are not eliminated within the term under para.1, the administrative court shall terminate the proceedings.

(4) The ruling of the administrative court under para.3 is final.

Admissibility verification

Art.8

(1) The administrative court shall terminate the proceedings when the cassation complaint or protest:

1. Has not been submitted in time;
2. Is filed by a person who has not right to appeal or protest;
3. Is not subject to consideration by cassation procedure.

(2) The ruling of the administrative court for termination of the proceedings shall be final.

Withdrawal and refusal from cassation contestation

Art. 9.

(1) The appellant may withdraw or refuse entirely or partially from the contestation till the finishing of the cassation proceedings.

(2) The legal representative may withdraw the complaint only with the consent of the person he represents.

(3) In the cases under art.1 the court shall declare the disputed act is entered into force and shall terminate the proceedings with a ruling, which shall be final.

(4) When the act is challenged by several persons and only one of them withdraws his complaint or protest, the proceeding in respect of the others shall not be terminated.

Procedure of consideration of the cassation complaint and the protest

Art. 10.

(1) the cassation complaint and the protest shall be considered in a Court session with summoning the parties.

(2) Non-appearance of one of the parties without good reasons shall not establish obstacle to try the case. The case shall be tried in the absence of the party, if the party has not been found at the indicated address.

(3) The chairman judge or reporting judge reports the content of the cassation complaint or protest.

(4) The parties shall be heard following an order as established by the Court.

Subject of the cassation check

Art. 11.

(1) The Administrative Court shall consider only the defects of the decision, pointed out in the complaint or the protest.

(2) The court shall also annul or amend the decision in respect of the undisputed parties, if the grounds for this are in their favour.

(3) The court shall check and ex officio for the significant violations of the procedural rules in the proceedings before the district court.

Evidence

Art. 12

(1) For the establishment of the cassation grounds shall be admitted written evidence.

(2) Shall not be admitted evidence for the establishment of circumstances, which are not related with the cassation grounds.

Prohibition for factual establishments

Art. 13. The Administrative Court shall assess the application of the material law on the ground of the facts, established by the first instance court in the appealed decision.

Powers of the administrative court

Art. 14.

(1) The administrative court shall pronounce within one month from the holding of the court session, in which the case has been announced for decision.

(2) The administrative court may:

1. annul the decision and confirm the act under art. 58e;
2. annul the decision and annul the act under art. 58d;
3. annul the decision and return the case to the district court;
4. amend the decision;
5. confirm the decision;
6. annul the decision of the district court and terminate the administrative penalty proceedings;
7. suspend the administrative penalty proceedings.

(3) The administrative court shall annuls the decision and confirms the act under art.58e, when there is a respective complaint or protest.

(4) The administrative court shall annuls the decision and remand the case back for new trial in the first instance, when:

1. a substantial violation of the procedural rules has been committed during its enactment;
2. a violation of a substantive law, which cannot be remedied by the administrative court, has been committed during its enactment;
3. ascertains that there is a ground under art. 63, para. 2, item 3, when the proceedings before the administrative court and before the district court have been instituted upon a respective protest of the prosecutor.

(5) The administrative court shall amend the decision, when a violation of a substantive law remediable by the administrative court has been admitted and there is a ground under art. 63, para. 2, items 1, 2 or 4.

(6) The administrative court shall confirm the decision when there are no grounds for its annulment or amendment.

(7) The administrative court shall revoke the decision and shall terminate the administrative penalty proceedings when it establishes that after issuing the disputed judicial act a circumstance under Art. 34, b. "A" - "c".

(8) The decision of the administrative court shall be final.

(9) The administrative court shall suspend the dispute proceedings when:

1. one of the parties in the proceedings has fallen into a short-term or long-term disorder of consciousness, which excludes sanity or has another serious illness, which prevents the participation in the proceedings;

2. while awaiting a response to a request for international co-operation.
3. After the grounds for suspension have ceased to exist, the court shall resume the administrative penalty proceedings with a ruling.

Mandatory instructions

Art. 15

(1) Upon the review of the case, the instructions of the cassation instance shall be mandatory with regard to:

1. the application of the law, save in the cases where other states of facts have been established;
2. removal of the admitted significant breaches of procedural rules.

(2) Elimination of the admitted significant violations of procedural rules.

(3) The instructions of the administrative court shall be obligatory.

Special provision

Art. 16. For matters not covered by this Chapter, the rules of…shall be applied."

Note: These proposals are based on the draft Administrative Violation Code of 2015.

These rules would maintain the competence of administrative courts over cassation proceedings as this is part of a broader judicial policy of Bulgaria. However, a reflection and discussion could start among representatives of the executive and judicial branches to evaluate advantages and disadvantages of maintaining the current division of competence or transfer the cassation review back to the district courts. The comparative experience seems to go into the direction of having either administrative or criminal judges reviewing administrative penalties at the appeals and cassation levels (Box 4.17).

Box 4.17. Judicial review of administrative penalties in Austria, Czech Republic and France

Austria

The decisions to impose a sanction are subject to full judicial review by the administrative jurisdiction. First, the Federal Finance Court, the Federal Administrative Court or one of the nine regional administrative courts are responsible for the appeals/complaints. As a rule, these courts have to hold a public, oral hearing. These courts have full cognitive power and decide in administrative penalty matters always in the matter itself. These decisions are subject to a legal control by the Supreme Administrative Court or the Constitutional Court.

Czech Republic

A decision imposing a sanction for an administrative offense may be challenged by a complaint under Section 65 of Act No. 150/2002 Coll., which is decided by a regional court in administrative judiciary. The decision of the regional court may be challenged by a cassation complaint to the Supreme Administrative Court. The court examines the legal and factual circumstances of the case (it may, for example, repeat or add evidence produced by the administrative body - Section 77 (2) of Act No. 150/2002 Coll.).

France

There are several means of appeal that allow administrative sanctions to be reviewed by the administrative judge. The person to whom the administration has imposed a sanction may challenge it before the administrative judge, by means of the various appeal procedures that are the recourse for excess of power and the recourse for full litigation. The recourse available depends on the type of sanction contested, it being noted that the scope of the full recourse is extensive.

Source: (European Committee on Crime Problems, 2020[2]).

4.9. Bulgaria could introduce additional possible grounds to resume proceedings before the entry into force of the penal order

One of the points raised by public entities during the workshop was how to proceed in case, after the issuance of the final act of the sanctioning authority and before the initiation of a judicial review of this act, a legal basis for termination occurs, i.e. death of the offender, expiration of the statute of limitations, deletion of the sole proprietorship/legal entity.

Detailed regulation of the powers of the district court in the proceedings for judicial control over the acts of the sanctioning body partly addressed this issue. According to new amendment law the court has the power to revoke the act under Art. 58e and to terminate the administrative penalty proceedings (Art. 63, para. 6, item 2, item 3 AVPA) in case the death of the person or termination of legal entity occurs after issuance of penal order. However, there is still legislative gap in cases when the person has died or the legal entity has been terminated after issuance - but before the entry into force - of a penal order. In this case the penal order will enter into force.

Considering this gap a new ground for resuming proceedings could be included. This should be a possibility, but not obligation for the prosecutor: if the prosecutor considers that there are no grounds for resumption, the act will enter into force and will give rise to its legal consequences in the legal sphere of the person's heirs. It is not necessary in any of the cases to reopen the proceedings, because if the violation

is established in an unequivocal manner and no substantial violation of the procedural rules is committed, it is logical for the legal entity to be sanctioned, even if the fine is collected from the property, left after his death. However, there should also be the possibility of resuming the proceedings where there are the reasonable grounds that the penalty order could be revoked and there is no other option for that because of the death of sanctioned person or termination of the legal entity within the period between the issuance of penal order and enter into force.

4.10. Bulgaria could consider discontinuing the possibility to settle civil claims in administrative penalty proceedings

According to the provisions of Article 45, para. 1 of the AVPA, in its current wording, until the penalty ruling is issued, the victim can submit a request to the sanctioning body for compensation for damages to the amount of up to two BGN (in comparison, up to 01.05.2021 the minimal salary set for the country is in the amount of BGN 650), unless the relevant law or decree provides for the possibility of claiming a larger compensation for damages before the same body.

The possibility for a person who has suffered harm as a result of the violation to bring a civil action for damages in the course of administrative criminal proceedings derives from the general principle of law that everyone is obliged to repair the damage wrongfully caused by them to someone else. Where the offence is also a tort, the injured party has two possibilities: to bring a civil action for recovery of the damage caused to them before the civil court, in accordance with the Code of Civil Procedure, or to submit a claim for compensation to the sanctioning authority.

Despite the relatively detailed arrangements for civil claim in administrative criminal proceedings, the analysis of administrative penalty cases shows that this provision does not find real practical application for two reasons: first, due to the principle that administrative violations affect the established order of government, therefore they may not cause substantial damage to individual citizens or economic operators, and secondly, due to the outdated amount of compensation for damages that can be claimed under this order.

This conclusion is also based on the answers to during the OECD fact-finding mission whereas interviewees have not been able to rule on a civil claim brought jointly with administrative criminal proceedings, and they agree that dealing with a civil claim, especially for compensation for material damage, would constitute a significant difficulty for them, as it would require an assessment of whether the violation concerned has caused damage, of what type and to what extent. Bulgaria could thus consider discontinuing the possibility of examining a civil claim in administrative criminal proceedings. A number of recommendations have also been made in the course of the discussion for the draft of AVPA adopted at the end of 2020. This can be achieved by repealing Articles 45 and 55 of the AVPA and amending the other provisions of the Act governing the procedural rights of the victim.

4.11. Bulgaria could introduce the possibility of in absentia proceedings in specific cases to avoid delays and impunity

Most of the respondents to the OECD questionnaire have pointed out that a serious problem for engaging the responsibility of legal entities is establishing their current location, their summoning to participate in the proceedings, respectively presenting and serving the drafted act. It is pointed out that in many cases the violators do not want to receive summonses and messages, they do not appear when summoned, and their current address cannot be established. This significantly delays the administrative penalty proceedings and creates impunity.

According to current art. 43, para. 6 of the AVPA, when the violator cannot be found after a thorough search, this shall be noted in the act and the proceedings shall be suspended. The administrative penalty authorities have faced the same problem. In art. 58, para. 2, however, when the offender or the person requesting compensation is not found at the address indicated by them, and their new address is unknown, the sanctioning body shall mark this in the penalty ruling and it shall be considered served from the day this has been marked.

Provisions for the default service of administrative infringement notices issued and penalty orders issued are also laid down in the special administrative legislation such as:

- Article 233 par.4 of the Consumer Protection Act, which provides that notices establishing administrative violations and penal orders within the meaning of the Administrative Violations and Penalties Act, as well as individual administrative acts within the meaning of the Administrative Procedure Code, may be served to any natural person who is in the business premises and who has a civil or employment relationship with the person against whom they are issued.
- Article 232 of the Customs Act, which lays down two exceptions to the rules on the lodging and service of the document and the penal order. Where the offender is unknown, the act is to be signed by the act issuer and one witness and not to be served. In this case, a penal order shall be issued, which shall take effect from the time it is issued. Where the offender is known but not found at the address indicated when the administrative offence was served, or has left the country, or has indicated an address abroad only, the law again provides that the penal order shall not be served and shall be deemed to have entered into force two months after it was issued.

In this context, Bulgaria could consider introducing limited cases in which the proceedings may continue, even if the offender is not found to be presented and served the act. A similar possibility is regulated for the persons who have committed a crime in art. 269 of the Criminal Procedure Code and in other EU countries (Box 4.18).

Box 4.18. Proceedings in absentia in Austria and Germany

Austria

The Austrian regulation on Administrative Penalties (VwSG) limits the requirement to hear the accused to the obligation to give him the opportunity to react in writing before the given time limit (see Article 42, second paragraph). The relevant provisions on the obligation to hear the accused are the following:

“Article 40

(1) f the authority does not already dispense with prosecution on basis of the data in the report received or of the results of the investigation carried out (§ 45), it shall give the defendant an opportunity to present his case.

(2) For this purpose, the authority may summon the accused to be questioned or request him to either appear at a certain point in time for questioning or to justify himself in writing by this point in time. In doing so, the accused is to be informed of his right to call in a defence counsel of his choice for questioning.

(3) If the accused is not in the municipality in which the authority has its seat, it can arrange for the accused to be questioned by the municipality of his place of residence.

Article 41

(1) The summons (§ 19 AVG) must contain:

1. the clear description of the offense against which the accused is charged and the administrative regulation in question;
2. the request to present the facts useful for the defence and to bring the evidence useful for the defence or to inform the authority in good time that they can still be brought for questioning.

(2) The summons can also contain the threat that the criminal proceedings can be carried out without a hearing if the accused does not comply with the summons without justification. This legal consequence can only occur if it is threatened in the summons and if the summons has been served on the accused in his own hands.

Article 42

(1) The request pursuant to Section 40 (2) must contain:

1. the clear description of the offense against which the accused is charged and the administrative regulation in question;
2. the request to justify oneself in writing within the set deadline or orally at the time specified for questioning and to disclose the facts and evidence serving the defence to the authority, otherwise the authority will conduct the criminal proceedings without his hearing.

(2) This request must be sent to your own hands."

Germany

According to Article 74 of Germany´s Act on Regulatory Offences:

"(1) The main hearing shall be conducted in the absence of the person concerned if he has not appeared and was relieved of the obligation of personal appearance. Previous examinations of the person concerned and his statements put on record and other statements shall be introduced at the main hearing by communication of their essential content or by reading them out. It shall suffice to give defence counsel the indications required in accordance with section 265 subsections 1 and 2 of the Code of Criminal Procedure.

(2) If the person concerned fails to appear without sufficient excuse although he was not relieved of the obligation to appear, the court shall reject the objection in a judgment without a hearing on the merits.

(3) In the summons the person concerned shall be informed of subsections 1 and 2 and section 73 and section 77b subsection 1 first and third sentences.

(4) If the main hearing has been held without the person concerned in accordance with subsection 1 or 2 he may, in respect of the judgment, request within one week of service restoration of the status quo ante on the same conditions as apply in respect of failure to observe a time limit. He shall be informed thereof upon service of the judgment."

Source: OECD Research

4.12. Bulgaria could introduce provisions to ensure compliance with administrative penalties imposed by a foreign countries and to establish international co-operation

The AVPA does not contain provisions regulating the execution of penalties imposed abroad or the execution abroad of penalties imposed by Bulgarian administrative bodies. Furthermore, as some of the respondents to OECD questionnaire have pointed out, the issue of international legal co-operation in

administrative penal cases is becoming more and more relevant. The number of cases of violations of cross-border nature or committed by foreign citizens or Bulgarian citizens with permanent residence in another country is increasing. This is particularly relevant for legal entities without a registered office and address in Bulgaria, as well as for violations that have affected a Bulgarian citizen or violated the interests of the Bulgarian state or a Bulgarian municipality.

The legal framework could thus explicitly regulate these cases, including when another EU member state or a third country has imposed an administrative penalty for a violation that is subject to sanction or has already been sanctioned by the Bulgarian law enforcement authorities. In this sense, the draft Code of Administrative Violations and Penalties of 2015 proposed a regulation of international legal co-operation in administrative penalty proceedings which Bulgaria could consider to regulate this are (Box 4.19). However, before recommending such provisions to be adopted in the AVPA or in the relevant codification act, a deeper exploration of the opportunities for collaboration between the different administrations and the relevant competent bodies from other countries is necessary, both at the pre-judicial stage of the procedure and at the enforcement stage.

Box 4.19. Proposed regulation of international legal co-operation in administrative penalty proceedings

"Basis and content

Article 251.

(1) International legal assistance in administrative penalty proceedings shall be subject to an international agreement to which the Republic of Bulgaria is a party or to the principle of reciprocity.

(2) International legal aid includes:

1. service of documents;
2. collection of evidence;
3. provision of information;
4. other forms of legal aid provided for in an international treaty to which the Republic of Bulgaria is a party or imposed on a reciprocal basis.

An inquiry to the requested State

Article 252.

(1) The request for international legal aid shall contain:

1. the name of the authority making the request;
2. details of the authority competent to execute the inquiry of the requested State;
3. a description of the subject matter and the reason for the request;
4. the name and nationality of the person concerned by the request;
5. the name and address of the person on whom the documents are to be served;
6. where appropriate, a summary of the circumstances of the infringement and the legal provisions infringed.

(2) The request for international legal assistance shall be sent through the Ministry of Justice, unless an international treaty to which the Republic of Bulgaria is a party provides otherwise.

Execution of an inquiry from the requesting State

Article 253.

(1) The request for international legal assistance shall be sent to the Ministry of Justice, unless an international treaty to which the Republic of Bulgaria is a party provides otherwise.

(2) The request for international legal assistance shall be executed in accordance with the procedure laid down in Bulgarian law or in accordance with an international treaty to which the Republic of Bulgaria is a party.

(3) The request may also be executed in accordance with the procedure laid down by the law of the requesting State if this is requested and is not contrary to Bulgarian law.

(4) The requesting State shall be informed of the time and place of execution of the inquiry if so requested.

Refusal of international legal assistance

Article 254.

International legal assistance may be refused where the execution of the request could jeopardise sovereignty, national security, public order or other important interests protected by the law.

Costs of enforcement

Article 255. The costs of the execution of the request shall be apportioned between the parties in accordance with international treaties to which the Republic of Bulgaria is party or in accordance with the principle of reciprocity.

Article 256 (1) The provisions of Articles 251 to 255 shall not apply where a special law provides otherwise.

(2) The provisions of the Code of Criminal Procedure shall apply to matters not covered by Articles 251 to 255."

Source: This proposal is based on the draft Administrative Violations and Penalties Code of 2015.

In developing such regulation, Bulgaria could also consider the broader European context of mutual assistance in administrative penalty cases, as well as examples of regulations from single countries (Box 4.20).

Box 4.20. International co-operation in Europe and specific regulations in Germany and Austria

At the European level, a system of international co-operation in administrative penalty cases is lacking. Only recently the European legislator seems to pay attention to the lacking system of mutual assistance at the imposition and recovery of administrative pecuniary sanctions and the service of documents. According to EU law national authorities are increasingly obliged to loyally offer mutual assistance at the impositions of administrative pecuniary sanctions in an increasing amount of policy fields.

As far as administrative penalties are involved two systems of mutual assistance exits: a system of mutual assistance in criminal matters and a system of mutual assistance in administrative matters. Considering administrative penalties imposed by administrative authorities, the criminal law system applies when judicial review is offered by criminal courts and the administrative law system applies when judicial review is offered by administrative courts. Both systems exist in Europe and sometimes mutual assistance is required between two different national systems. European law requires national

authorities to effectively co-operate with both systems, even if the national system of the requesting state is different from the national system of the requested state.

Administrative penalties imposed according to the German Act on administrative penalties fall within the ambit of systems of mutual assistance in criminal matters, such as the Framework Decision 2005/214 on the application of the principle of mutual recognition to financial penalties. Indeed, it is possible to provide legal assistance in "criminal matters" regardless of whether the offence in question is regulated by criminal or administrative procedure. The Act on International Legal Assistance in Criminal Matters [Gesetz über die internationale Rechtshilfe in Strafsachen – IRG] explicitly includes administrative offences provided that a court of criminal jurisdiction can determine the sentence (section 1 (2) IRG, comparable to Article 1 (3) of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 082)). This means that, as a rule, all instruments of legal assistance can be called upon for international co-operation in matters of criminal law.

As this framework decision is part of the system of mutual assistance in criminal cases most if not all Member States have implemented this European Regulation in their national criminal law systems. In Germany this is the Act on international mutual assistance in criminal matters (Gesetz über die internationale Rechtshilfe in Strafsachen (IRG)). In the Czech Republic this is § 460o ff of the Code of criminal procedure. In the Netherlands the framework decision was implemented with the "Wet wederzijdse erkenning en tenuitvoerlegging geldelijke sancties en beslissingen tot confiscatie". This is a special act which should be considered part of the national system of mutual assistance in criminal matters. Interestingly enough the case law following the Baláž-case encouraged the Dutch legislator to add administrative financial penalties which are part of the administrative law to the list of sanctions Dutch authorities are given the power to request assistance to authorities of other EU Member States. These only involve Dutch provisions falling with the ambit of 'conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods' (see article 5, first paragraph, Framework Decision 2005/214).

In Austria the „Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union" (EU-JZG) applies to mutual assistance in criminal matters, whereas the EU-Verwaltungsstrafvollstreckungsgesetz applies to mutual assistance in matters of administrative penalties. This means that in Austria international mutual assistance regarding criminal financial penalties will be given on the basis of the EU-JZG whereas international mutual assistance regarding administrative financial penalties will be given on the basis of the EU-Verwaltungsstrafvollstreckungsgesetz. Mutual assistance requested by another member state on the basis of a legal instrument of mutual assistance in criminal matters, even if they involve administrative financial penalties imposed by administrative authorities, will follow the rules of the EU-JZG if judicial review is given by the criminal courts. If this act does not apply, the EU-Verwaltungsstrafvollstreckungsgesetz applies to the enforcement of administrative penalties requested by administrative authorities of other EU Member States. Requests of assistance of Austrian authorities to authorities of other EU Member States in matters concerning administrative penalties are regulated by this EU-Verwaltungsstrafvollstreckungsgesetz.

Source: OECD Research; (European Committee on Crime Problems, 2020[2]).

4.13. Bulgaria could introduce more detailed rules on the procedure to collect sanctions and to develop a mechanism to collect costs and pecuniary sanctions in administrative penalty cases from foreigners without permanent or known address in Bulgaria

According to Art. 79, para. 1 of AVPA, the penal decrees and decisions of the court, by which fines have been imposed or monetary compensations have been awarded in favour of the state, shall be fulfilled by the order of collecting the state takings. This is also the procedure established for the collection of the fine imposed as a penalty under the Criminal Code. In particular, Article 416, para. 4 of the Criminal Procedure Code, establishes that when the sentence includes a pecuniary sanction or compensations, or if court costs and fees are awarded in favour of the state, the court issues a writ of execution and sends it to the respective enforcement body.

The body authorised to collect state takings is the National Revenue Agency, which, however, does not have the competence to carry out actions for compulsory collection of debts arising from fines or pecuniary sanctions imposed on foreigners who have no permanent or known address in the Republic of Bulgaria and legal entities who have their registered office and address abroad. Indeed, neither the Criminal Procedure Code nor the Law on Administrative Offences provides for rules for the execution of sentences and rulings when the person against whom they are issued is a foreigner without permanent or known address in the Republic of Bulgaria. The only provision to that sense is that laid down in Article 79a of the AVPA, according to which, “when with the penal decree a pecuniary sanction was imposed to an offender without permanent address in the Republic of Bulgaria, the offender shall transfer the sum to an account noted in the penal decree.” As a consequence, Bulgaria could develop a mechanism for collecting costs and pecuniary sanctions in administrative penalty cases from foreigners without permanent or known address in the territory of the Republic of Bulgaria.

Additionally, if the fine is not paid within a specified period, the debt is sent to the National Revenue Agency (´NRA´) for enforcement. However, if after that, the fine is paid to the authorities issuing the fine, they do not have the obligation to notify the NRA. As highlighted during the fact-finding interviews, this gaps creates a problem – in practice - because the debt is paid but the NRA continues the process to collect it. This situation does not only lead into a duplication of efforts, but it also creates uncertainty in citizens and businesses, which eventually undermines their trust in the enforcement system as a whole efficiency. To address this challenge, Bulgaria could introduce the compulsory notification, for the authority issuing the penal decree to notify the NRA if payment of the fine has been received, so that the NRA can terminate the proceedings to collect the fine. It is necessary also to be provided for an obligation of NRA to notify the authority issuing the penal decree in case the sanction has been collected.

In order to address these challenges, which were also pointed out in OECD questionnaires and interviews, the AVPA could be amended as proposed in Box 4.21.

Box 4.21. Proposed Article 79 and Article 79(a) of the AVPA

“Article 79

Art. 79. (1) Penal orders and court decisions by which fines or pecuniary sanctions have been imposed, or pecuniary compensation has been awarded in favour of the State, shall be executed in accordance with the procedure for the collection of State claims.

(2) In the event that enforcement proceedings are instituted for the collection of fines or pecuniary sanctions imposed:

1. the penalizing authority shall immediately notify the revenue authority, respectively the public executor, of the amounts collected;
2. the revenue authority or the public enforcement officer, as the case may be, shall immediately notify the penalising authority of the amounts collected.

(3) Penalty decrees and court decisions awarding monetary compensation in favour of state enterprises, cooperatives or other public organisations or citizens shall be enforced in accordance with the procedure provided for in the Code of Civil Procedure.

Article 79a.

(1) Where a penal order or a court decision imposes a pecuniary sanction on an offender without a fixed or current address in the Republic of Bulgaria, or on an offender with the address or residence in another country, the sanctioning authority or court may:

1. order the provisional execution of the punishment imposed;
2. collect the administrative pecuniary sanction imposed in accordance with the rules on international co-operation — except in the cases referred to in point 1.

(2) Enforcement of the punishment imposed shall be permitted where all the following conditions are met:

1. the offender has participated in the procedure for establishing an administrative offence and imposing an administrative penalty and the penal order or court decision issued has been duly served on him;
2. the offender agrees to pay the administrative pecuniary sanction imposed on him at the time of service of the penalty order or the court's decision.

(3) In case of provisional enforcement of the administrative penalty imposed, the offender is liable to pay 80% of the amount of that penalty. The penal order or the decision of the court in respect of which provisional enforcement has been granted shall be subject to appeal in accordance with Article 59. The pecuniary sanction imposed by a penal order or decision of the court which has been granted provisional enforcement, which has been appealed and confirmed by the court, is due in full.

(4) The administrative pecuniary sanction imposed, other than in the cases referred to in paragraph 1 (1), shall be collected:

1. under the procedure laid down in the Act on the recognition, execution and transmission of confiscation or confiscation orders and orders imposing financial penalties;
2. in accordance with bilateral or multilateral agreements on the enforcement of administrative pecuniary sanctions, except in the cases referred to in subparagraph 1;
3. by other appropriate means — except in the cases referred to in points 1 and 2

(5) The provisions of paragraphs 1 to 4 shall also apply mutatis mutandis to financial penalties imposed."

Note: These proposals are based on the new amendment of art.79b of AVPA but with some additions and improvements based on proposals suggested during the fact-finding interviews with Bulgarian entities.

4.14. The AVPA could introduce more detailed provisions on preclusive time periods and statutory limitations and ensure a differentiated regime in line with their functions

The regime on preclusive time periods and statutory limitations is regulated by Art. 34 AVPA.

According to some respondents to the OECD questionnaire, the one-year period in Article 34, para. 1 (c) AVPA for initiating administrative criminal proceedings in some cases is too short, also taking into account that there is no provision in the AVPA analogous to Article 81 para of the Criminal Code laying down an absolute limitation period after which administrative liability is extinguished, depending on the severity of legislative sanction provided by law but not on the penalty imposed.

In order to address these weakness Bulgaria could firstly establish a clear definition of preclusive time periods and statutory limitation periods. Preclusive time periods should have a disciplinary effect on the administration in order not to cause undue delays in proceedings and expiry of statutory limitation periods. The increase in the length of the period aims to guarantee that the evidence shall be lawfully gathered and, if the violation is established at the time it is committed or it is proved in a short time, it would not preclude to establish the liability in a shorter period of time.

Secondly, in order to address a challenge pointed out in Interpretative Decree No 1 of 27.02.2015 of the Supreme Court of Cassation and the Supreme Administrative Court, there should be a differentiation between ordinary limits (which may suspend and interrupted) and absolute limits (which are not affected by suspension and interruption).

Thirdly, the limitation period should be explicitly regulated for the attempt to commit an administrative violation that is punishable in the cases referred to in Article 9 para. 1 AVPA, as well as in the case of an offence of negligence (for example, failure to submit a declaration, failure to co-operate and the like). Limitation periods also need to apply to the liability of sole traders and legal entities. Until now, the principle of limitation applied to the category of legal entities analogically.

Based on these recommendations the wording of the relevant provisions could be amended as proposed in Box 4.22.

Box 4.22. Proposed Article 34 and 34a

“Article 34.

(1) Administrative penalty proceedings shall not be opened, and the opened ones shall be terminated if an act for establishment of the administrative violation has not been drawn up for the duration of:

1. six months from finding the offender, for violations of a legislative act governing the budgetary, financial and accounting activities referred to in Article 32 par.1, item 1 of the Public Financial Inspection Act, as well as for violations of a statutory instrument regulating the gambling activity and the measures against money laundering and terrorist financing, as well as for violations of the Energy Sector Act, the Energy from Renewable Sources Act and their implementing regulations, of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency as well as the ones for violation of the Independent Financial Audit Act.
2. four months from finding the offender for customs, taxation, ecological and foreign currency violations, as well as according to the Election Code, the Political Parties Act, the Public Offering of Securities Act, Markets in Financial Instruments Act, Special Investment Companies and Securitization Companies Act, the Act on Application the Measures Against Market Abuse with

Financial Instruments, Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Regulation on Market Abuse) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission (OJ, L 173/1 of June 12, 2014), the Act on the Operation of the Collective Investment Schemes and of Other Undertakings for Collective Investment, Part Two, Part Two "A" and Part Three of the Code of Social Insurance, the Insurance Code and the statutory instrument for its implementation and under the Register BULSTAT Act

3. three months from the finding the offender, in other cases.

(2) Administrative penalty proceedings shall be terminated if no penal decree has been issued within six months from the date when the act of the establishment of the administrative violation was drawn up.

(3) Where proceedings are initiated pursuant to Article 36 para. 2, they shall be terminated if no penal decree has been issued within six months of receiving the materials by the court or prosecutor.

(4) The time limit referred to in paragraphs 2 and 3 shall not run while the proceedings are suspended.

Article 34a.

(1) Administrative penalty proceedings shall not be opened, and the opened ones shall be terminated when:

1. the offender has died;
2. the offender has lapsed into a permanent mental disorder;
3. the statutory limitation period has expired.

(2) Administrative criminal liability shall be time-barred if no administrative penalty has been imposed or a warning addressed to the offender in accordance with Article 28 by a final decision until the expiration of:

1. three years from the commission of the violation — for a violation under Article 34 para 1, item 1 and for violations punishable by a penalty of unpaid work for the benefit of the society
2. two years after the offence was committed, in the case of a violation under Article 34 para 1, item 2;
3. one year after the violation was committed, in other cases.

(3) For an attempt, the limitation period referred to in paragraph (2) shall begin on the day when the last act was carried out.

(4) The limitation period shall be suspended when:

1. the initiation or continuation of administrative criminal proceedings depends on the resolution of a preliminary matter by a final judicial decision. Once the question has been resolved by a final judicial decision, the limitation period continues to run.
2. the sanctioning authority has terminated the administrative criminal proceedings and has sent the materials to the prosecutor in accordance with the procedure laid down in Article 33 (2). In the event that the public prosecutor refuses to initiate pre-trial proceedings on the basis of the documents in the file or terminates the pre-trial proceedings initiated, the limitation period shall continue to run from the date on which the prosecution authority was seized by the public prosecutor.

(5) The statutory limitation period shall be interrupted in the case of:

1. drawing up an act for establishment of the administrative violation;
2. the lodging claiming and servicing of the act for establishment of the administrative violation;
3. adjudication by decision of the sanctioning authority in the administrative penalty file;
4. handling to the offender of the penalty decree or proposal referred to in Article 28;
5. the making of a decision or order by the court in proceedings under this legislative act.
6. summons of the offender to participate in the proceedings.

(6) After completion of the action, whereby statutory limitation was interrupted, a new limitation term shall start.

(7) Notwithstanding the suspension or interruption of the limitation period, administrative liability shall expire if four years and six months have elapsed since the violation was committed.

(8) The provisions of paragraphs 2 to 7 shall also apply mutatis mutandis to the liability of sole traders and legal entities.

(9) The provisions of Articles 1 to 8 shall apply unless a special law provides otherwise."

Note: A text with a similar wording has been discussed by the working group for the preparation of the Law of amendment and supplementation of AVPA adopted by the National Assembly at the end of 2020, promulgated, SG, issue 109 of 2020, but did not become part of the final bill submitted to the National Assembly. Paragraphs 3 and 4 are in the wording proposed by the OECD.

The establishment of provisions in the general law which exclude its application in special situations is necessary to ensure that special legislation takes into consideration sector specificities. Such longer time periods are laid down, for example, in Article 153 of the Credit Institutions Act, according to which acts for the establishment of the administrative violation shall be drawn up by officials authorised by the deputy manager of the Banking Supervision Administration within one year of the day on which the offender is found, but no later than 5 years after the violation was committed.

The Act amending and supplementing the Payment Services and Payment Systems Act, promulgated in SG No 13/2020, provides in Article 188 (1) that the acts for the establishment of the administrative violation under Articles 187-185 shall be drawn up by persons authorised by the deputy manager of the Bulgarian National Bank managing the „Bank Supervision" within 6 months of the day on which the offender was found, but no later than 5 years after the offence was committed, and penal orders shall be issued by the deputy manager or by a person authorised by him.

Should Bulgaria decide to codify administrative penalty law, it is appropriate that the questions relating to the extinction of the administrative responsibility to be systemised into a separate section, which regulates the legal facts justifying the termination of proceedings for natural persons, sole traders and legal entities, as well as the statutory limitation periods for the liability of those entities. For this purpose, Bulgaria could consider the relevant comparative experience in this context (Box 4.23).

Box 4.23. Preclusive time periods and statutory limitations in Austria, Czech Republic, Germany, Lithuania, and the Netherlands

Austria

According to § 31 of the Austrian Act on Administrative offenses (Verwaltungsstrafgesetz):

"Section 31.

(1) The persecution of a person is inadmissible if no act of persecution (Section 32 (2)) has been carried out against them within a period of one year. This period is to be calculated from the point in time at which the criminal activity has been completed or the criminal behaviour has ceased; if the success related to the offense occurred later, the period does not run until this point in time.

(2) The criminal liability of an administrative offense expires by the statute of limitations. The limitation period is three years and begins at the point in time specified in Paragraph 1. The limitation period does not include:

1. the time during which, according to a legal regulation, the persecution cannot be initiated or continued;
2. the time during which criminal proceedings against the offender are being conducted with the public prosecutor, the court or another administrative authority;
3. the time during which the procedure is suspended until a final decision has been reached;
4. the time of proceedings before the Administrative Court, the Constitutional Court or the Court of Justice of the European Union.

(3) A sentence may no longer be carried out if three years have passed since it was finally imposed. The limitation period does not include:

1. the time of proceedings before the Administrative Court, the Constitutional Court or the Court of Justice of the European Union;
2. Times in which the execution of sentences was inadmissible, suspended, postponed or interrupted;
3. Times in which the offender was abroad."

Czech Republic

According to § 30 of the Act on administrative offenses of the Czech Republic the prescriptive period is one year for misdemeanours with a possible administrative penalty of less than CZK 100 000 (± EUR 3 930). For misdemeanours of at least CZK 100 000 this period is three years.

§ 31 and § 32 of this act provide for a detailed regulation of the setting and interruption of the prescriptive period. These provisions read as follows:

"§ 31 The running of the limitation period

(1) The limitation period shall begin to run on the day following the day on which the offense is committed; the day on which the offense is committed means the day on which the proceedings were concluded which the offense was committed. If the sign is a transfer to an effect, the limitation period shall begin to run on the day following that on which such effect occurs.

(2) The limitation period begins to run

(a) in the case of a continuing offense, on the following day after the day on which the last partial attack took place,

(b) in the case of a collective offense, on the day following the day on which the last attack took place, and

(c) in the case of a continuous offense, on the day following the day on which the unlawful removal took place condition.

(3) If the offender has committed more than one offense, he shall run for each of them the limitation period separately.

§ 32 Setting and interruption of the limitation period

(1) The limitation period does not include time,

(a) which has been the subject of a criminal offense for the same act management,

(b) after which the infringement proceedings have been suspended because a sentence could be expected to be imposed accused of a misdemeanour for another act in criminal proceedings, the administrative punishment that can be imposed in misdemeanour proceedings is insignificant in addition to punishment that could be imposed in a criminal offense management,

(c) after which the matter was the subject of administrative court proceedings,

(d) for which the conditional waiver of an administrative sentence has lasted.

(2) The limitation period is interrupted

(a) notification of the commencement of misdemeanour proceedings,

(b) by issuing a decision recognising the accused guilty,

(c) issuing a decision approving the settlement agreement; by interrupting the limitation period, the limitation period begins new.

(3) If the limitation period has been interrupted, the liability for the offense shall expire no later than 3 years from its commission; in the case of an offense for which the law sets the amount of the pecuniary sanction, the upper limit of which is at least CZK 100 000, liability for the offense expires no later than 5 years after its commission."

Germany

The German Act on Administrative Offenses (Ordnungswidrigkeitengesetz) has a rather detailed regulation of the setting and suspension of the prescription period. The relevant provisions read as follows:

"Section 31 Prosecution Barred by the Statute of Limitation

(1) Prosecution of regulatory offences and the ordering of incidental consequences shall be barred after the period of limitation has expired. Section 27 subsection 2 first sentence number 1 shall remain unaffected.

(2) If not otherwise provided by statute, the period of limitation for the prosecution of regulatory offences shall expire:

1. after three years in the case of regulatory offences for which a maximum regulatory pecuniary sanction of more than EUR 15 000 may be imposed,
2. after two years in the case of regulatory offences for which a maximum regulatory pecuniary sanction is imposable ranging from more than EUR 2 500 to EUR 15 000,

3. after one year in the case of regulatory offences for which a maximum regulatory pecuniary sanction is imposable ranging from more than EUR 1 000 to EUR 2 500,
4. after six months in all other cases involving regulatory offences.

(3) The statute of limitation shall begin to run as soon as the act is completed. If a result constituting a factual element of the offence occurs only later, the period of limitation shall begin to run at that time.

Section 32 Period of Limitation Tolled by Statute

(1) The period of limitation shall be tolled for as long as prosecution cannot be commenced or continued by operation of the statute. This shall not apply if the act cannot be prosecuted due to the absence of a request or authorisation.

(2) If prior to the expiry of the period of limitation a judgment of the court of first instance or a decision in accordance with section 72 has been rendered, the period of limitation shall not expire prior to the date on which the proceedings were concluded with final and binding effect.

Section 33 Period of Limitation Interrupted

(1) The period of limitation shall be interrupted by:

1. the initial examination of the person concerned, the notification that investigation proceedings have been initiated against him, or by the order requiring such examination or notification,
2. any judicial examination of the person concerned or of a witness, or by the order requiring such examination,
3. any appointment of an expert by the prosecuting authority or the judge, if the person concerned has previously been examined or was informed of the initiation of the investigation proceedings,
4. any order by the prosecuting authority or by the judge for seizure or search, and by judicial decisions by which such order is upheld,
5. the temporary discontinuation of the proceedings by the prosecuting authority or the judge because of absence of the person concerned, as well as by any order of the prosecuting authority or the judge issued after such discontinuation of the proceedings to establish the whereabouts of the person concerned or to secure evidence,
6. any request by the prosecuting authority or the judge to undertake an investigatory act in a foreign country,
7. the statutory hearing of another authority by the prosecuting authority prior to conclusion of the investigations,
8. the transfer of the case to the administrative authority by the public prosecution office in accordance with section 43,
9. issuance of a regulatory fining notice, so far as such notice is served within two weeks, otherwise by service thereof,
10. receipt of the files at the Local Court in accordance with section 69 subsection 3 first sentence and subsection 5 second sentence and referral of the case to the administrative authority in accordance with section 69 subsection 5 first sentence,
11. any fixing of a date for a main hearing,
12. reference to the possibility of giving a decision without a main hearing (section 72 subsection 1 second sentence),
13. preferring public charges,
14. the opening of main proceedings,
15. a penal order or any other decision equivalent to a judgment.

In independent proceedings involving an order imposing an incidental consequence or a regulatory pecuniary sanction against a legal person or an association of persons, the period of limitation shall be interrupted by the acts referred to in the first sentence for the purpose of carrying out independent proceedings.

(2) The running of the statute of limitations shall be interrupted by a written order or decision at the time at which the order or decision is signed. If the document has not immediately commenced processing after signing, then the time it is actually submitted for processing shall be decisive.

(3) After each interruption, the statute of limitations shall commence to run anew. However, prosecution shall be barred by the statute of limitations at the latest either when, since the time indicated in section 31 subsection 3 twice the statutory period of limitations has elapsed, or when at least two years have elapsed. If a person is charged with an act in proceedings pending at a court, which at the same time constitutes a criminal offence and a regulatory offence, then the period ensuing from the criminal penalty imposable shall be deemed to be the statutory period of limitations within the meaning of the second sentence. Section 32 shall remain unaffected.

(4) The interruption shall be effective only in respect of the person to whom the act relates. In cases falling under subsection 1 first sentence numbers 1 to 7, 11, and 13 to 15, the interruption shall also occur if the act is aimed at prosecution of the offence as a criminal offence.

Section 34 Execution Subject to the Statute of Limitations

(1) A regulatory pecuniary sanction imposed with final and binding effect may no longer be executed after expiry of the period of limitation.

(2) The period of limitation shall amount to

1. five years in the case of a regulatory pecuniary sanction exceeding EUR 1 000;
2. three years in the case of a regulatory pecuniary sanction not exceeding EUR 1 000.

(3) The period of limitation shall begin on the day on which the decision enters into final and binding effect.

(4) The statute of limitation shall be tolled for as long as:

1. execution may not be commenced or continued by operation of statute,
2. execution is suspended, or
3. easier means of payment have been granted.

(5) Subsections 1 to 4 shall apply mutatis mutandis to incidental consequences resulting in an obligation to pay. If such incidental consequences have been ordered in addition to a regulatory pecuniary sanction, execution of one legal consequence shall not fall under the statute of limitation earlier than that of the others."

Lithuania

Article 35 of the Code of administrative offenses of the Republic of Lithuania has detailed regulation of the prescriptive period of administrative penalties and the way this period is set and suspended. The provisions read as follows:

"Article 35. Time limits for imposing an administrative penalty

An administrative penalty may be imposed no later than six months from the date of the offense or, in the case of a continuous offense, within six months from the date on which it became apparent. An administrative penalty may be imposed for the infringements referred to in Section Twelve of this Code, as well as for the infringements provided for in Articles 413, 85, 1852, 1932, 20710, 20712, 209, 2091,

2092, 2093, 2094, 2095, 2096, 210, 21411 within six months from the date of the finding of the breach, if no more than one year has elapsed between the date of the breach and the date of its finding.

Refusing to initiate a pre-trial investigation into a criminal offense or imposing an economic sanction established by the laws of the Republic of Lithuania on an undertaking when the relevant administrative offense entails administrative liability, or terminating criminal proceedings or imposing an economic sanction on an undertaking the violation entails administrative liability, procedure, or after the acquittal of a court judgment, if the actions of the prosecuted person show signs of an administrative violation, an administrative penalty may be imposed no later than two months after the decision to refuse to initiate a pre-trial investigation or refuse to impose Lithuanian Economic sanction established in the laws of the Republic of Latvia for an economic entity when the liability, or from the decision to terminate the criminal proceedings or the imposition of an economic sanction established in the laws of the Republic of Lithuania on the economic entity, when the relevant administrative offense entails administrative liability, the procedure, or from the effective date of the acquittal.

If the person subject to administrative responsibility does not have a permanent residence, is away or lives abroad for a long time, is ill, has been searched or if the issue of administrative liability cannot be resolved due to an investigation or other reasons, the time limits referred to in paragraphs 1 and 2 shall be extended. whether or not an administrative offense report has been drawn up for the person to be prosecuted, but not for more than one year, counting from the date of the offense or its discovery or from the decision to refuse to open a pre-trial investigation or to terminate criminal proceedings, whether to impose an economic sanction established in the laws of the Republic of Lithuania on an economic entity when the relevant administrative violation of law entails administrative liability for the person, or to terminate the sanctioning procedure, or from the acquittal court date of adoption.

In the cases provided for in the second and third paragraphs of this Article, no administrative penalty may be imposed if more than two years have elapsed since the date of the administrative offense.

When the decision to impose an economic sanction established in the laws of the Republic of Lithuania on an economic entity, when the relevant administrative offense is committed, renders the person administratively liable, or terminates the sanctioning procedure or the date on which the decision of the appellate court takes effect."

The Netherlands

According to the regulation of administrative pecuniary sanctions in the General Administrative Law act the prescriptive period of the power to impose administrative penalties is five years after the transgression was committed. Only in the few cases involving lighter transgressions this period is three years. The term of three years is the same prescriptive period as the one that applies in criminal law for offences, which is the lighter category for criminal offenses (see article 70 DCC). According to the third paragraph of this provision the prescription period will be suspended during objection or appeal.

The relevant provision, which applies to administrative penalties provided in all legislation, is the following:

"Article 5:45

(1) If article 5:53 applies, the power to impose an administrative pecuniary sanction expires five years after the violation took place.

(2) In all other cases the power to impose an administrative pecuniary sanction expires three years after the violation took place.

(3) If an objection or appeal is lodged against an administrative pecuniary sanction, the expiry period is suspended until a final decision is given on the objection or appeal."

Source: OECD Research.

4.15. The AVPA could introduce the possibility to delete the administrative penalty from the record some time after its application

Under the current regulation of administrative liability, there is no institution similar to the rehabilitation of protected persons under Article 86 and the following articles of the Penal Code. In other words, the fact that an administrative penalty has been imposed is not deleted from the record even after its application.

It is noteworthy that such a mechanism is provided for those who have committed a crime, but not for those who have committed administrative violations. This legal gap also impacts the legal status of the persons who have committed a crime and have been released from criminal liability by having an administrative penalty.

A possible solution would be to create a new Article 82b with the wording as proposed in Box 4.24, which would be in line with the practice in other EU countries like Slovenia (Box 4.25).

Box 4.24. Proposed Article 82(a)

"Article 82a.

(1) The person on whom an administrative penalty has been imposed shall not be deemed to be punished after the expiry of:

1. two years after the sentence has been served;
2. two years after the expiry of the period referred to in Article 82 (3), where the penalty imposed has not been executed and, where the administrative penalty imposed is a pecuniary sanction, for the recovery of which enforcement proceedings have been initiated, two years after the expiry of the time limits laid down in Article 171 of the Tax Code — the Insurance Procedure Code.

(2) Where the person is punished for two or more infringements, the time limit referred to in paragraph 1 shall run for each of them separately.

(3) The provisions referred to in paragraphs (1) and (2) shall also apply respectively to sole traders and legal persons on whom a financial penalty has been imposed."

Note: A text with a similar wording has been discussed by the working group for the preparation of Amendment Law of AVPA, adopted by the National Assembly at the end of 2020, promulgated, SG, no. 109 of 2020, but did not become part of the final bill submitted to the National Assembly. Paragraphs 2 and 3 are proposed by the OECD based on the discussion in the working group.

Box 4.25. Deletion of minor offence decisions, judgments and orders in Slovenia

"Article 205

Final minor offence decisions, judgments and orders shall be deleted from the records referred to in Articles 203 and 204 of this Act upon the expiry of a three-year period from the day they became final, but not until secondary sanctions cease to have effect; the documentary materials on the basis of which they were entered shall be kept in accordance with the provision of paragraph seven of Article 206 of this Act."

Source: Minor Offences Act – ZP-1 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 7/03 of 23 January 2003).

References

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