

A Court's Right to Moderate Administrative Penalty in Selected Central European Countries

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ABSTRACT

The purpose of this paper is to analyse the extent of a court's authority to moderate¹ penalties imposed by administrative bodies in several Central European countries: the Czech Republic, Slovakia, Germany, and Austria. The central goal is to investigate the legal frameworks within these nations and their relationship to Article 6 of the European Convention on Human Rights.

The methodology employed involves a comparative analysis of legal provisions in the aforementioned countries concerning judicial review of administrative penalties. The study scrutinizes the differences in the legal approaches taken by these nations, highlighting the diverse methods used to address the court's role in moderating administrative penalties. The investigation is grounded in the concept of full jurisdiction, emphasising the right of individuals to have their cases thoroughly examined by a court, which also includes assessing the legality, merit, appropriateness, and proportionality of the penalties imposed.

The findings reveal significant variations among the surveyed countries regarding the approach to judicial review of administrative penalties. These differences underscore the complex interplay between the executive and judiciary branches within legal systems, raising crucial concerns about principles such as legal certainty, proportionality, and the right to an effective remedy. The paper illuminates the varying degrees of court intervention in moderating administrative penalties across different legal contexts and makes a substantial academic contribution by shedding light on a relatively understudied aspect of administrative law within

¹ This article uses the term „moderate“ as a verb for situations, where a court (defined in Article 6 paragraph 1 of the European Convention on Human Rights), is by law authorized to lower the imposed administrative penalty at its discretion or to completely abstain from imposing a penalty while reviewing an administrative decision. Under these conditions, we are not talking about court moderation where the court is the body that directly imposes the administrative penalty.

Central Europe. It provides valuable insights into how different legal systems address the delicate balance between executive power and judicial oversight, particularly in matters of administrative penalties.

The study's originality lies in its comparative approach, offering a nuanced understanding of the court's role in moderating penalties and its implications for broader legal principles and human rights protection. Furthermore, the paper serves as a foundational resource for scholars and practitioners interested in exploring the origins and nuances of judicial moderation in administrative law, potentially inspiring further research and providing a schematic tool for navigating this complex legal terrain.

Keywords: administrative penalty, comparison, moderation, full jurisdiction

JEL: K

1 Introduction

This article aims to understand similar legal regulations in various countries and how they differ in a specific area - judicial moderation of administrative penalty. To the best of the author's knowledge, there is no similar article focusing on the addressed issue in several European countries. Therefore, this work can be suitable for possible further research purposes and as an introduction to the topic.

The first question that needs to be answered right at the beginning is why comparing the Czech Republic, Slovakia, Germany and Austria makes sense. The answer lies in the similarities and differences in the legal systems of the selected countries. Concerning the focus of the article, it is essential to note that in the countries under consideration, the prosecution of misdemeanours is the responsibility of public administration rather than the courts.² As a result, the court plays a more or less supervisory role (as will be explained further) and is tasked with rectifying "incorrect" decisions made by public administration. Each of the examined countries differs in the extent of authority that domestic courts possess in reviewing administrative penalties and the options available to the court to moderate the imposed penalty.

The common history of the administrative justice system accompanying the mentioned countries cannot be overlooked. As Macur³ describes, the emergence and development of administrative justice in Czechoslovakia were essentially entirely dependent on Austrian administrative justice, both in terms of organisation and procedure. Austrian legal regulations significantly influenced the Czechoslovakian administrative justice established after 1918. Even further developments in administrative justice were influenced by Aus-

² Except for Germany, where while primarily this task belongs to administrative authorities (Section 35 paragraph 1 *Ordnungswidrigkeitengesetz*), nevertheless, in some cases, courts can be called upon for this purpose.

³ Macur, 1992, p. 111.

tria and Germany. The changes in Czechoslovakian administrative justice after November 1989 were based on the

“positive aspects of the concept of the rule of law as envisioned by O. Bähr and his successors, which had been applied in Germany, Austria, and some other countries during its development for a certain period”⁴.

Administrative law can be described as the law that concerns relations between the administration (governments) and private individuals⁵. According to Seerden,⁶

“issuing of decisions (based on sectoral statutes) is probably the most important instrument of the administration to achieve public goals or to put more abstractly, serve the general interest”.

One of the most essential areas of administrative decision-making is administrative sanctioning for offences (or misdemeanours). In the selected countries, that authority lies primarily with public administration. And the imposition of administrative fines is an expression of such discretion. The administration has discretion if it has the choice between several decisions, all deemed legal by the legislature. Wojciechowski describes discretion as a situation, where the deciding authority “*does not approach the process of applying the law in a strictly formalised and constrained manner*”.⁷ It then has to weigh which of the legal consequences fits best and best corresponds to the purpose of the law. This discretion only lies with the administration.

The power to decide who is guilty of a misdemeanour and what penalty the offender should receive is provided for by legal rules and is attributed to a public authority.⁸ The question important for this article then is how the courts control such power. This article is limited to judicial review in misdemeanour cases only in selected countries.⁹

4 Macur, 1992, p. 123.

5 Seerden, 2012, p. 1.

6 Ibid.

7 Wojciechowski, 2023, p. 2.

8 Cananea and Andenas, 2021, p. 3.

9 Countries chosen for this article are the Czech Republic, Slovakia, Germany and Austria. The reasons for this selection are, that to have a relevant comparison we need countries with a similar revisionary system of public administration. In all countries, the simple principle applies – public administration issues a decision, which can be reviewed by an administrative court. Even though the system of reviewing public administration acts is somewhat similar, all states differ in reviewing administrative penalties (as will be explained in the following text).

The definition of a misdemeanour is similar in Czech Republic¹⁰, Slovakia¹¹, Germany¹² and Austria¹³. The close affinity between criminal law and administrative law is well-known: “*The basic principles applicable to criminal punishment must also be respected in the field of administrative punishment*”.¹⁴ The jurisprudence of the ECtHR also indicates this proximity. There are frequent cases where the court navigates on the border between a misdemeanour and a criminal charge – instances where it must determine what can be subordinated to a criminal charge (which entails “higher” rights for the accused).¹⁵ One of the main differences between administrative and criminal sanctioning is that administrative fines are easier to administer and impose.¹⁶

The issue of administrative penalties is not purely a matter of domestic concern. Administrative penalties and their judicial review frequently arise before the European Court of Human Rights (ECtHR). The ECtHR takes an active stance in this area, and the concept of administrative penalty is part of its jurisprudence. When talking about judicial review of public administration, one must not forget the influence of the European Convention on Human Rights (ECHR).¹⁷

What are the legal provisions in the selected Central European countries governing the court’s authority to moderate administrative penalties? And how do countries differ in their approach to granting or limiting the court’s authority to modify administrative penalties? These questions are at the forefront of this article and provide the basic framework for the following text.

When discussing examination methods, it is necessary first to define the concept of moderation and identify what will be compared. Next, moderation in

10 In the Czech Republic a misdemeanour is a socially harmful unlawful act which is expressly designated as a misdemeanour in the law and which has the characteristics set out in the law unless it is a criminal offence (Section 5 of Act No. 250/2016 Coll., on Liability for Misdemeanours and Proceedings Thereon).

11 In Slovakia a misdemeanour is legally described as a culpable act which violates or endangers the interest of society and is expressly designated as an offence in this or any other law unless it is another administrative offence punishable under special legislation or a criminal offence (Section 2 para. 1 of Act No. 372/1990 Coll., on Misdemeanours).

12 German Act on Regulatory Offences in the version published on 19 February 1987 (*Ordnungswidrigkeitengesetz* – hereinafter referred to as “OWiG”) contains this definition in Section 1: A regulatory offence shall be an unlawful and reprehensible act, constituting the factual elements set forth in a statute that enables the act to be sanctioned by the imposition of a regulatory fine.

13 If we look closely to the Austrian legal framework and mainly at the Act on Administrative Sanctions from 1991 (*Verwaltungsstrafgesetz* – hereinafter referred to as “VStG”), we discover that VStG does not provide a general definition of a misdemeanour, which we can find in three previous countries. VStG explicitly mentions only certain characteristics of an administrative offence: punishable by law (Section 1 VStG), culpability (Section 5 VStG), and punishable by administrative law only if the act is not a criminal offence (Section 22 VStG).

14 Prášková, 2017, p. 25.

15 ECtHR cases: Case of *Engel and others v. The Netherlands*, 8. 6. 1976, Application no. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72; Case of *Malige v. France*, 23. 09. 1998, Application no. 27812/95; Case of *Mikhaylova v. Russia*, 19. 11. 2015, Application no. 46998/08; Case of *Ramos Nunes de Carvalho e Sá v. Portugal*, 6. 11. 2018, Application no. 55391/13. According to ECtHR, three *Engel criteria* are: (i) classification in domestic law, (ii) nature of the offence and (iii) severity of the penalty to the person concerned risks incurring.

16 Faure and Svatikova, 2012, p. 255.

17 The importance of ECHR is also emphasized by Cananea and Andenas, 2021, p. 10.

administering penalties should be placed within the framework of administrative justice. The legal regulations of various countries will then be assessed based on applicable legal texts and literature. While this article will not provide a comprehensive overview of the differences in moderation, it aims to explain how countries with similar legal cultures approach the principle of full jurisdiction and the review of penalties and moderation. The legal framework and understanding of moderation will highlight how each country interprets the concept and integrates it into its administrative justice system, possibly within the requirement for full jurisdiction according to the ECHR. Areas of agreement and disagreement between different systems will be emphasised, and discussion points will be presented to encourage further debate and exploration.

2 Moderation of administrative penalty

Although the chosen topic is closely related to administrative law, this article deals with misdemeanour law. An administrative penalty is the outcome of an administrative proceeding, at the end of which administrative authority establishes the offender's guilt and imposes a penalty for it. Such penalties can take various forms, and it is unnecessary to elaborate on each form in different countries. An administrative penalty can be defined as "*measures of state compulsion imposed by the relevant administrative authority after proceedings have taken place, causing harm to the offender for the committed offence*"¹⁸. A universal form of penalty for misdemeanour is a monetary fine¹⁹, although different administrative penalties are being recognised by the countries at hand. Other possible sanctions include a reprimand, prohibition of activity, forfeiture of property or substitute value, publication of the decision on the misdemeanour and even imprisonment.²⁰ An administrative penalty refers to a punitive measure imposed by a governmental or administrative authority in response to violating laws, regulations, or rules within a specific jurisdiction. Unlike criminal sanctions, administrative penalties are typically non-criminal. They are intended to address misconduct that falls short of criminal conduct, such as regulatory violations, breaches of administrative procedures, or infringements of statutory requirements.

Administrative law principles often govern the imposition of administrative penalties, and they may be subject to administrative review, adjudication, or other formal procedures to ensure procedural fairness and proportionality in their application.

Concerning the administrative decision and imposed penalties, it is also necessary to emphasise various legal flaws. Explaining these flaws can be important for understanding the subtle nuances that the discussed countries further dissect. Understanding of flaws in administrative decisions also paints

¹⁸ Prášková, 2017, p. 198.

¹⁹ Fine as an administrative penalty is common to all addressed countries – Slovakia (Section 11 of Act No. 372/1990 Coll., on Misdemeanours), Czech Republic (Section 35 of Act No. 250/2016 Coll., on Liability for Misdemeanours and Proceedings Thereon), Austria (Section 10 VStG) and Germany (Section 1 and 17 OWiG).

²⁰ Section 11 VStG.

a picture where the court intervenes with the administrative penalty. As Kopecký describes,

“Administrative acts, as a result of human activity, can be flawed in various ways. It happens that in their issuance, the procedurally established rules were violated by law, that officials incorrectly interpreted or omitted a legal norm, that the administrative act is based on inadequate factual findings, etc.”²¹

Kopecký²² and Skulová²³ describe four fundamental flaws of administrative decisions.

Firstly, the decision may exhibit formal flaws, such as errors in writing or calculations. These flaws are often very easily fixable and do not pose significant problems. Therefore, it is unnecessary to dwell on them in more detail.

Secondly, a decision may be unlawful - the decision conflicts with legal regulations (substantive or procedural law). A broad range of these flaws include jurisdictional flaws (an act issued by an incompetent authority) and substantive flaws (incorrect legal assessment).²⁴

The third flaw can be described as the substantive incorrectness of the decision. As Kopecký²⁵ states, substantive incorrectness can manifest only in administrative acts resulting from administrative discretion. As mentioned earlier, administrative penalties are an area where discretion is often used. Therefore, a penalty may be disproportionate - this flaw can be understood as the administrative body considering the legal criteria. Still, the imposed fine, for instance, does not correspond to the offender's financial situation, or the administrative body did not adequately consider exceptional circumstances of the case under review. At the same time, imposing a penalty without considering all the conditions the law provides. For example, it may have overlooked mitigating circumstances or imposed a fine outside the legal range. Part of the third flaw of administrative decisions is also the destructive nature of the penalty. A penalty may be destructive if it can have a significant economic impact on the offender, potentially jeopardising their livelihood.

The fourth and last flaw of an administrative decision can be its nullity, which can be defined as the legal non-existence of an administrative decision which does not produce any legal effects. That is why nullity stands apart from other flaws, and some authors do not qualify nullity as a flaw of administrative decision *stricto sensu* – because such an act is not a decision at all.²⁶

A similar view on flaws of individual administrative acts (decisions) is also held for example by Slovak doctrine, which recognises: correctable formal flaws

21 Kopecký, 2023, p. 184.

22 Ibid.

23 Skulová, 2017, p. 228.

24 Kopecký, 2023, p. 185.

25 Ibid (p. 186).

26 Skulová, 2017, p. 229.

(grammatical errors, mistakes in numbers), materially incorrect acts, unlawful acts, and void acts.²⁷

The term moderation implies that the court does not deal with the offence as an authority of the first instance. In that case, it imposes the penalty. Moderation, on the other hand, comes into play when the court verifies a penalty imposed by another authority, and it is a matter of the court's authority as to what it can do with such a penalty. In misdemeanour cases, the administrative authority primarily decides on two aspects - guilt and penalty. The court's right to moderate a penalty is typically applied where part of the decision concerning the offender's guilt stands, and the court agrees with it. However, there is an issue with the penalty part of the decision that the court needs to address.

2.1 Principle of full jurisdiction v. Cassation principle

The principle of full jurisdiction, sometimes called full jurisdiction requirement under Article 6 of the ECHR, is the cornerstone of the court's authority to intervene with imposed administrative penalties. Since the 1980s, the ECtHR has emphasised the core significance of full jurisdiction to implement Article 6 in administrative law disputes.²⁸ In the cases falling under both civil and criminal limbs of Article 6, ECtHR has repeatedly argued that full jurisdiction means a tribunal having jurisdiction to examine the merits of the matter, which is thus capable of reviewing the facts as well as the law, point by point, without ever having to decline jurisdiction when replying to them or ascertaining various facts.²⁹ As Pomahač³⁰ further explains,

“Subsequent judicial review must, however, be carried out by a body with full judicial authority when civil rights and obligation, or any criminal charges whatsoever, are being decided about. To be in conformity with the concept of full jurisdiction within the meaning of the ECtHR's case law, both lawfulness and the quality of discretion must be reviewed.”

According to ECtHR court (or tribunal) has to have the power to examine the merits of the case, to establish the facts and to assess the evidence³¹, to rule on the rights of the interested party.³² ECtHR has reasoned in its case law that an

“administrative court having full jurisdiction must be as competent as an administrative body to the effect that it will be able to, item by item, reconstruct factually and evaluate legally what a civil servant considered”³³.

The principle of full jurisdiction is easily applicable (in most European countries) in ordinary court disputes in civil and criminal law. In these disputes, courts are not generally limited and have the role of finding the law, and their final decision is an expression of their deliberation. If we were to apply the

27 Hašanová and Dudor, 2019, p. 65; see also Bumke, 2012, p. 1211-1238.

28 Allena, 2020, p. 299.

29 Ibid.

30 Pomahač and Handrlica, 2017, p. 45.

31 ECtHR Case of *Grande Stevens v. Italy*, 4. 3. 2014, Application no. 18640/10.

32 ECtHR Case of *Segame SA v. France*, 7. 6. 2012, Application no. 4837/06.

33 Pomahač and Handrlica, 2017, p. 45.

principle of full jurisdiction to administrative justice fully, it would mean that administrative courts should have the right to make substantive decisions - that is, replace the decisions of administrative authorities with their own decisions. And as we will see further, Austria has successfully followed this path. It must be mentioned that the court's power to moderate administrative penalties is an expression of such a concept.

Undeniably, full jurisdiction requirement interferes with the principle of separation of powers between the judiciary and the executive.³⁴ If courts have the power to replace decisions of administrative bodies with their assessment, then it is courts who perform the role of administrative bodies, and administrative decisions result from judicial assessment, not the assessment of executive authority.

For further explanation, it is also important to clarify the cassation principle, which is equally significant and can intersect with the principle of full jurisdiction. The cassation principle, in general, refers to a legal concept where higher courts, typically appellate or supreme courts, have the authority to review and evaluate lower court decisions for legal errors or violations of procedural rules, rather than re-examining the case on its merits. This principle allows for a form of control and consistency in the legal system by ensuring that decisions rendered by lower courts adhere to the law and correct legal procedures while leaving decision-making to the first instance.

Cassation is one of the three main corrective systems, alongside appeal and revision. All these systems developed in Europe over time and their historical evolution is quite significant.³⁵ Even though the cassation principle originated in France and manifested itself in the name of *Cour de cassation*³⁶, it is nowadays a pretty common principle in administrative justice in many EU countries. The difference between the three principles mentioned above can be described as follows. Appellate jurisdiction allows for a comprehensive re-examination of a case's legal and factual aspects. Meanwhile, cassation jurisdiction focuses on correcting legal errors without re-examining facts. And finally, review jurisdiction provides a limited scope for revisiting a case based on specific grounds. Although these systems are primarily associated with the decision-making of higher courts³⁷, this system can also be applied to determine the underlying principle of administrative justice. While in the civil or criminal branches of judiciary, it is common for different systems to apply to different levels, in administrative justice (in most compared countries), it is relatively common for the cassation principle to apply to both the first instance court and the Supreme Administrative Court.³⁸

34 Allena, 2020, p. 300.

35 Geeroms, 2002.

36 The history of the present French cassation systems with its specific features goes back to the period of the French Revolution of 1779. Its roots can, however, be traced back to the preceding period of the Ancien Régime and even back to the Roman Empire. For more detailed history Geeroms, 2002.

37 Bobek, 2009, p. 36.

38 Kühn et al., 2016, p. 640.

Cassation is often contrasted (as mentioned above) with full jurisdiction, which involves a higher court re-examining a case's legal and factual aspects. In a system with full jurisdiction, the court can make an entirely new decision rather than simply identifying errors made by the lower court or administrative body. The cassation principle aims to balance achieving legal correctness and efficiency. It allows for reviewing legal issues and procedural matters without re-litigating the entire case, saving time and resources.

2.2 European Convention on Human Rights

The question, of course, is why the ECHR is relevant and how all of this is related. ECHR stands as a monumental testament to the commitment of European nations towards safeguarding fundamental rights and ensuring justice for all. The core motivation underlying the adoption of the ECHR was to prevent a recurrence of the atrocities witnessed during World War II and to establish a system of checks and balances that would preclude the arbitrary exercise of state power.

This work primarily concerns Article 6 of the ECHR, which guarantees the right to a fair trial. Article 6 is a bulwark against undue state intervention and guarantees individuals the right to a competent, independent, and impartial court. Article 6 underscores the significance of due process, ensuring that individuals are provided with the essential tools to defend their rights. According to Teleki³⁹, the right to a fair trial is the most important provision of the ECHR. Teleki further continues:

“Fair trial is the transmission belt that ensures the smooth functioning of power by presenting the problems that the individual encounters to the authority that has the competence, the tools and, hopefully, the will to solve it”⁴⁰.

From the presumption of innocence to the right to examine witnesses, procedural safeguards within Article 6 are instrumental in preserving the integrity of legal proceedings. Moreover, the principle of impartiality underscores the importance of an objective tribunal, free from bias and undue influence, thus nurturing public trust in the judicial system.

According to Article 6, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. From a *stricto sensu* perspective, Article 6 of the ECHR naturally applies to civil and criminal proceedings. Fair hearing requirements are stricter in criminal cases than civil law ones. Generally, we can state that even though Article 6 speaks only about civil and criminal proceedings, the rules of Article 6 of the ECHR are not exclusive to these two types of proceedings. As ECtHR stated, the words “civil” and “criminal” do not match their equivalents in domestic law,⁴¹ and Article 6 (1) applies irrespective of the parties' status,

³⁹ Teleki, 2021, p. 93.

⁴⁰ Ibid.

⁴¹ ECtHR Case of *Grzęda v. Poland*, 15. 3. 2022, Application no. 43572/18.

the nature of the legislation governing the “dispute” (civil, commercial, administrative law etc.) and the nature of the authority with jurisdiction in the matter (ordinary court, administrative authority etc.).⁴²

According to ECtHR, being charged with a misdemeanour is almost always equivalent to a criminal charge under Article 6 of the ECHR.⁴³ Because of that, misdemeanour cases are also ruled by the principle of full jurisdiction, as stated in the previous section. When reviewing a misdemeanour decision, the court is thus subject to the full jurisdiction requirement while considering the cassation principle typical of administrative justice. So, how do selected countries deal with this in their legislation?

3 Selected countries

There are several types of administrative judiciary in Europe, and before going into a detailed examination of selected countries, it is important to explain them. We can identify four basic types⁴⁴ of administrative judiciary:

- I. The Prussian model, also known as the North German model, strongly emphasised fair decision-making by including civilian participation. Unlike solely safeguarding individual rights with limited oversight of administrative discretion, this model primarily aimed at protecting the legal framework from the influence of local authorities within the administrative judiciary system.
- II. In the French type of administrative judiciary, specific entities within the public administration handle judicial matters. Although these bodies are not formally acknowledged for judicial independence, they practically possess it, owing to tradition and public sentiment. The apex of this system is the State Council, which not only exercises judicial review but also functions as an advisory body to the government.
- III. The English model of administrative justice revolves around the role of general courts in protecting administrative actions. Unlike some other systems with specialized administrative courts, in the English model, regular courts (such as the High Court, Court of Appeal, and Supreme Court) handle disputes related to administrative law.
- IV. The Austrian model of administrative justice is characterised by the presence of specialised administrative courts that are distinct from both the regular court system and the administrative bodies. This model involves a separate judicial structure dedicated explicitly to handling disputes related to administrative law.

⁴² ECtHR cases: Case of *Bochan v. Ukraine*, 5. 2. 2015, Application no. 22251/08; Case of *Nait-Liman v. Switzerland*, 15. 3. 2018, Application no. 51357/07.

⁴³ ECtHR cases: Case of *Lutz v. Germany*, 25. 8. 1987, Application no. 9912/82; Case of *Marčan v. Croatia*, 10. 7. 2014, Application no. 40820/12; Case of *Lauko v. Slovakia*, 2. 9. 1998, Application no. 4/1998/907/1119; Case of *Balsytė-Lideikienė v. Lithuania*, 4. 11. 2008, Application no. 72596/01.

⁴⁴ Mikule, 1993; Kozelka, 2022, p. 16-18.

Dogmatically adhering to these models is not very feasible in today's conditions, as they represent concepts of administrative justice from which administrative justice evolved. Today, it is more about a fundamental framework from which subsequent legislation on administrative justice emerges, which, however, may exhibit various characteristics from different models. The English and French models are not applied in the countries under review, as judicial review in all four countries is carried out by more or less specialized administrative courts. In the Czech Republic, the review of certain decisions in which administrative authorities decide on private rights is entrusted to general courts. However, this is an exception. The system of Austrian administrative justice naturally derives from the Austrian model, which, however, has undergone significant changes, as will be described below. Considering the shared history of the Czech Republic, Slovakia, and Austria, the Austrian model understandably influenced the first two named countries, whose administrative justice (as part of Czechoslovakia) after 1918 was based on the Austrian model. The Czech Republic subsequently returned to this model, as will be described below. The German model of administrative justice naturally derives from Prussian model, but has some common signs with Austrian model – administrative justice is being done by administrative courts and not general ones. The German model involves greater specialization of administrative courts (for example taxes, labour, social matters etc.), whereas the other examined countries do not have this specialization. Austria, during the aforementioned administrative justice reform, introduced a Federal fiscal court, but otherwise adhered to the general specialization of administrative courts.

3.1 Czech Republic

Moderation of administrative penalties has been known in Czech law since 2003, in connection with the enactment of Act No. 150/2002 Code of Administrative Justice ("CAJ"). It has remained unchanged for two decades. Before 2003, Czech administrative courts could not moderate administrative penalties and could not even examine their proportionality⁴⁵. Therefore, disproportionate but legal penalties could not be remedied before the court. This situation led to an intervention by the Constitutional Court of the Czech Republic⁴⁶, which annulled legal provisions concerning administrative justice and, relating to Article 6 of the ECHR, essentially directed the legislature to establish full jurisdiction to review administrative penalties. Moderation was one of the outcomes of these efforts.

This is also obvious from the explanatory memorandum to the law above, according to which the legislator proceeded with this change to comply with Article 6 of the ECHR and Fundamental Freedoms. Specifically, the legislator states that

"administrative jurisdiction should generally ensure jurisdiction in cases of full jurisdiction review of decisions of administrative bodies that fall under the re-

⁴⁵ Act No. 99/1963, Civil procedure Code.

⁴⁶ Decision of Constitutional Court of Czech Republic, 27. 6. 2001, Case no. Pl. ÚS 16/99, available at: https://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-16-99_1.

gime of Article 6(1) of the European Convention, i.e., decisions on civil rights and obligations or criminal charges.”⁴⁷

At another point, the explanatory memorandum to Sections 64-77 of the CAJ adds that

“a completely fundamental further change, which - in some cases with considerable reservation - fulfils the requirements of the Convention, is the opening of free administrative discretion to judicial review to a much greater extent than under the previous regulations.”⁴⁸

The primary goal of introducing moderation was thus to establish a regime of full jurisdiction by the court in reviewing decisions by which an administrative body imposed a penalty. This allows the court (under conditions that will be discussed later in this article) to replace administrative discretion.

Section 65(3) of the CAJ establishes separate standing to sue in actions against decisions of administrative authorities, according to which if an administrative authority has decided to impose a penalty for an administrative offence, the person on whom such penalty has been imposed may, by action, also seek its waiver or reduction within the limits allowed by law. This entails a relatively independent standing to bring a lawsuit, and the submitted proposal can therefore only be justified by a request for reduction of the penalty or a request for its complete waiver, without the plaintiff having to challenge the substance of the decision. However, as emphasized by Šuránek⁴⁹, it is not an entirely independent standing to sue per se:

“The third paragraph does not regulate a new version of active procedural standing, but in essence, it is a special provision relating exclusively to persons authorized to bring a lawsuit based on Section 65(1).”

Moderation can be found in Section 78(2) of the CAJ, which introduces application criteria: If the court decides on a lawsuit against a decision by which an administrative authority imposed a penalty for an administrative offence, and if there are no reasons for annulment of the decision according to paragraph 1, but the penalty was imposed in a manifestly disproportionate amount, the court may waive it or reduce it within the limits allowed by law if such a decision can be made based on the factual situation on which the administrative authority relied, and which the court, if necessary, supplemented through its evidentiary proceedings in non-essential directions, and if such a procedure was proposed by the plaintiff in the lawsuit. The court can thus proceed with the moderation of the penalty if the above-mentioned criteria are met. These criteria can be summarised below. If the court:

- (i) decide on a lawsuit against a decision by which an administrative authority imposed a penalty for a misdemeanour,

⁴⁷ In Czech language available at: <https://www.psp.cz/sqw/text/tiskt.sqw?o=3&ct=1080&ct1=0>.

⁴⁸ Ibid.

⁴⁹ Jemelka et al., 2013, p. 509.

- (ii) there are no reasons to annul the decision due to unlawfulness or procedural flaws,
- (iii) imposed penalty is manifestly disproportionate,
- (iv) the court may reduce the penalty within the limits allowed by law or waive it,
- (v) moderation can be applied based on the factual situation on which the administrative authority relied, and which the court supplemented, if necessary, through its evidentiary proceedings in non-essential directions, and
- (vi) if moderation was proposed by the plaintiff.

To extensively describe individual conditions would mean that the focus of this article would lie on details of Czech legal regulation rather than on comparing regulations in different countries. However, it is important to highlight one condition that is contentious in the Czech legal environment and can limit the application of moderation in comparison to other countries. The most contentious condition is the requirement of a manifestly disproportionate sanction. For moderation of a penalty, ordinary disproportionality is insufficient, as manifest disproportionality is required. Presumably, by this definition, the legislator wanted to limit the court's moderation right to truly extreme cases. In the spirit of the abovementioned, a penalty that is both manifestly disproportionate and illegal (for example due to disregarding one of the aspects of the offence) can only be annulled. This condition therefore applies to sanctions that are manifestly disproportionate but not illegal.⁵⁰ In the case law of administrative courts, a general and somewhat vague rule has been established that the purpose and aim of moderation is not to *seek the ideal amount of the penalty*⁵¹.

Essentially, this only confirms what is already implied by the law. Imposing administrative penalties is the domain of the administrative authority, just as contemplating a specific penalty and its amount. Even if the court believes that a lower penalty would be more appropriate, it fundamentally cannot intrude into the deliberations of the administrative authority:

"In the course of judicial review, the courts cannot replace the essential activity reserved only for an administrative authority and public administration. They cannot 'step into the shoes' of the administrative authority and replace its activity with their own, even if it were accompanied by the best intentions."⁵²

At the outset, the court must consider whether the imposed penalty is manifestly disproportionate in light of the specific circumstances of the case. Although there is no exact threshold for this manifest disproportionality, the Supreme Administrative Court generally rejects moderating fines at the lower

⁵⁰ This 'conflict' is resolved with general premise that there is a difference between the incorrectness or injustice of a decision and its unlawfulness; Hašanová and Dudor, 2019, p. 65; Skulová, 2017, p. 228.

⁵¹ Judgment of the Supreme Administrative Court of 19 April 2012, Case no. 7 As 22/2012-23, available at www.nssoud.cz.

⁵² Bohadlo et al., 2013, p. 119.

limit in the order of single-digit percentages, stating that “a penalty that was imposed just above the lower limit of the statutory range cannot be considered manifestly disproportionate”.⁵³ In the present case, the Supreme Administrative Court did not accept the moderation of a fine imposed at a rate of 4% of the statutory rate, stating that “a fine imposed at 4% of the statutory range will most likely not be considered ‘manifestly disproportionate.’”⁵⁴ Similarly, the Supreme Administrative Court rejected the moderation of a fine originally imposed at a rate of 0.3% of the statutory rate, which, however, considering the large statutory range, still amounted to a multi-million fine. The Supreme Administrative Court specified for precise quantification of manifest disproportionality that

“it is not possible to quantify in advance, for all future cases, what percentage of the maximum possible rate expressed in the fine would be manifestly disproportionate. Although such an indicator may be a significant guide for the court’s conclusion on the manifest disproportionality of the imposed sanction, one cannot rely on it completely and exclude the possibility that in certain cases, a penalty imposed at a rate of 1% of the statutory range could not be manifestly disproportionate.”⁵⁵

When contemplating moderation, the regional court must determine where the imposed penalty falls on a hypothetical scale of the statutory range. The closer to the lower limit, the less the fine is ‘worthy’ of moderation. Furthermore, it is up to the court to address the question of proportionality, that is, to balance the plaintiff’s conduct (generally, the factual circumstances of the case) on one side and the imposed penalty on the other. What the court should consider when examining the factual circumstances of the case has also been defined by case law:

“The imposition of a penalty is based on two fundamental principles - the principle of the legality of the penalty and the individualization of the penalty. ... From the perspective of the individualization of the penalty in a given case, the seriousness of the administrative offence, the significance of the protected interest that was affected by the administrative offence, the manner in which the administrative offence was committed, its consequences, and the circumstances under which it was committed, are particularly relevant.”⁵⁶

Article 6 of the ECHR therefore empowers the court to evaluate both the legality and the proportionality of the penalty. This fully satisfies the condition that the court has the final say. However, on the other hand, the Czech regulation imposes very strict conditions and limits the court’s power to moderate penalties (compared to other countries, as will be further explained). CAJ places a strong emphasis on the separation of public administration (administrative authorities) and administrative justice. In particular, the Supreme Administrative

53 Judgment of the Supreme Administrative Court of 21 August 2003, Case no. 6 A 96/2000-62, available at www.nssoud.cz.

54 Ibid.

55 Judgment of the Supreme Administrative Court of 20 December 2012, Case no. 1 Afs 77/2012-46, available at www.nssoud.cz.

56 Judgment of the Supreme Administrative Court of 30 September 2010, Case no. 7 As 71/2010-97, available at www.nssoud.cz.

Court strives to draw a clear distinction and appeal to lower courts that the imposition of penalties falls within the purview of administrative bodies, not the courts. Such a concept separates the executive power (administrative authorities) from the judicial power. Administrative authorities prosecute misdemeanours and impose penalties, while courts perform purely revisionary roles. However, strict separation can also represent one of the biggest negatives. Courts are often constrained by the "fear" of interfering with the discretion of administrative authority. Moderation of administrative penalty is seen as something "out of the ordinary", that must be thoroughly justified.

3.2 Slovakia

The administrative law and justice system in Slovakia is very similar to the Czech legal regulation. It is based on a two-tier administrative proceeding with the possibility of appealing to a superior authority.⁵⁷ Against decisions in the appellate proceedings, it is then possible to file lawsuits with administrative courts, and almost all decisions of administrative courts⁵⁸ can be challenged by cassation appeals to the Supreme Administrative Court.⁵⁹ A key principle of Slovakian administrative justice is, as in the Czech Republic, the cassation principle.⁶⁰

The close connection between both countries is understandable due to their shared history. As to administrative justice, both countries had the same legal regulation⁶¹ up until 2003, when the Czech Republic adopted CAJ (as explained above). Slovakia reformed its administrative justice system by adopting Act No. 162/2015, the Administrative Justice Code ("AJC") in 2015.

Even though the main principle of Slovakia's administrative justice is the cassation principle, AJC is relatively lenient in terms of exceptions from that principle. AJC constitutes several types of moderation. As this article is aimed at misdemeanours, main focus will be on penalties. Although it is worth mentioning, that AJC allows the court to perform monetary moderation - the administrative court may, based on the results of evidence it has carried out, by judgment, reduce the amount of monetary performance or compensation for damage that was awarded by the contested decision of a public authority or by a measure of a public authority, if the plaintiff proposed it, and the awarded amount of monetary performance or compensation for damage is unreasonable or destructive towards the plaintiff.⁶²

Moderation of administrative penalties can be found in Section 198 of the AJC. The conditions for it are as follows:

57 Act No. 71/1967 Administrative proceedings Code.

58 Slovakia currently has 3 administrative courts – in Bratislava, Košice and Banská Bystrica (Section 10 of the Act. No. 162/2015).

59 Baricová et al., 2018, p. 1589.

60 Baricová et. al., 2018, p. 956.

61 Act No. 99/1963 Civil procedure Code.

62 Section 192 of the AJC.

- (i) decide on a lawsuit against a decision by which an administrative authority imposed a penalty for a misdemeanour,
- (ii) imposed penalty is disproportionate to the committed misdemeanour, or can have a destructive effect on the offender,
- (iii) the court may reduce the penalty within the limits allowed by law or waive it,
- (iv) if such court's procedure arises from the evidence presented by the court,
- (v) and if moderation was proposed by the plaintiff.

When it comes to the nature of the penalty that can be moderated, the Slovakian legal regulation is, compared to Czech law, more favourable to plaintiffs. It allows for the moderation of a disproportionate penalty, and it doesn't have to be manifestly disproportionate as in the Czech law. Interestingly, Slovakian law allows the court to moderate a destructive penalty, which is a separate category of penalty alongside disproportionality. A penalty that is otherwise proportionate can still have a destructive impact on the offender. In contrast, a Czech administrative court can moderate a destructive penalty only if it's also manifestly unreasonable. This can present an obstacle, especially for moderating penalties at the lower limit of the range. On the other hand, a Slovakian administrative court can take into account only the financial situation of the plaintiff, without really having to deal with the proportionality of the penalty.

An intriguing aspect of the entire Slovakian regulation is that both monetary moderation and moderation of administrative penalties rely on a certain level of court procedural activity. Both aforementioned provisions⁶³ stipulate that the administrative court can engage in moderation based on the results of evidence it has carried out. Does this mean that the administrative court has to conduct evidence gathering to moderate? Clearly, yes. The essence of this condition (always significantly connected with any procedure within the full jurisdiction in a broader sense) is the fact that the administrative court not only issues a decision in the administrative matter itself but simultaneously secures the basis for it. Without the conducted evidence gathering, the change of a decision by a public authority regarding the amount of monetary performance or compensation for damage would essentially have the character of intervening in its administrative consideration, without the administrative court replacing the public authority's consideration with its consideration.⁶⁴

3.3 Austria

The administrative judicial system in Austria significantly differs from the countries currently being compared. Therefore, it is appropriate to briefly mention its development⁶⁵ and current state. As was described above, Austrian administrative justice is one of the four main systems. Austrian conception lay in two-tier administrative proceedings with judicial review being per-

⁶³ Section 192 and 198 of the AJC.

⁶⁴ Baricová et. al., 2018, p. 956.

⁶⁵ The Austrian Judicial System [online]. Available at: https://www.justiz.gv.at/file/8ab4ac8322985dd501229d51f74800f7.de.0/cover_und%20text_the%20austrian%20judicial%20system_neu.pdf?forcedownload=true.

formed by independent administrative courts. And Austrian system heavily influenced the form of the administrative judiciary in Czechoslovakia. As Hácha⁶⁶ states, the history of the former Austrian administrative court is also the history of the Czechoslovakian administrative court.

Administrative justice in Austria was based on the principle of cassation, which had been in place since its inception in the nineteenth century. In 1876, the Administrative Court was established, empowered to handle administrative matters. It made decisions based on facts established by administrative authorities. If severe breaches of lawful procedure occurred, the Court could nullify contested administrative acts. It developed fair procedural principles for administrative procedures. This led to the Austrian General Administrative Procedure Act in 1925. After World War I, the Administrative Court was established to ensure public administration's legality. It could handle appeals against final administrative decisions and address administrative inaction. These powers persisted with minor changes until the 2013 Administrative Jurisdiction Reform.⁶⁷ Needless to say, the administrative process in Austria was also (mostly) two-tiered and only after completion of the administrative procedure one could appeal to the administrative court. As Köhler⁶⁸ states, the Administrative Court in all those years was the only court to decide on administrative matters. The review of administrative acts had to be carried out concerning the legality of the contested act. Moreover, the Administrative Court had to restrict its examination to the possible breach of the rights of the applicant. It had no competence to decide on the merits of the (administrative) case (instead of the administrative authority) but could only quash the act in case of its illegality.⁶⁹

Over a decade ago, Austria decided to transform the entire system of administrative authorities and administrative justice⁷⁰. As of January 1st, 2014, an extensive reform was implemented in the realm of administration in Austria, resulting in a significant reshaping of its functional structure. As Storr⁷¹ explains,

“With effect from 1 January 2014, there was a fundamental reform of the administrative jurisdiction. Previously, legal protection against administrative rulings was as follows: generally, there was either the possibility of an internal administrative appeal (Berufung) to the next authority in the hierarchy or an appeal to the so-called Independent Administrative Senates (Unabhängige Verwaltungssenat – UVS). ... Judicial relief against their decisions was possible from the Supreme Administrative Court (Verwaltungsgerichtshof) and/or the Constitutional Court (Verfassungsgerichtshof). In addition, there were special administrative courts such as the Asylum Court and special appeal bodies like the Independent Environmental Tribunal (Unabhängiger Umweltsenat) as well as the so-called collegial authorities with a judicial impact.”

66 Hácha, 1932.

67 Köhler, 2015, p. 33.

68 Ibid.

69 Olechowski, 1999.

70 Köhler, 2015, p. 37-38.

71 Cananea and Andendas, 2021, p. 37.

This comprehensive transformation not only encompassed the restructuring of the Supreme Administrative Court (*Verwaltungsgerichtshof*) but also entailed the establishment of the Federal Administrative Court (*Bundesverwaltungsgericht*) as well as the introduction of the Federal Fiscal Court (*Bundesfinanzgericht*). In addition to these pivotal judicial bodies, the revamped administrative landscape now features nine regional administrative courts, each serving as an integral cornerstone of the reformed system. These regional administrative courts have assumed the roles and responsibilities formerly vested in the autonomous administrative panels (*unabhängige Verwaltungssenate*), which held jurisdiction within the various states before the comprehensive reform initiative. This monumental reform aimed not only to streamline and modernize the administrative judicial processes but also to establish a more coherent and efficient structure that could cater to the evolving demands of a dynamic administrative landscape. By unifying the roles and functions of various administrative entities under a more cohesive framework, Austria aspired to enhance the effectiveness of its administrative justice system while ensuring a higher degree of consistency and fairness in the adjudication of administrative matters. In essence, Austria's administrative system overhaul in 2014 marked a significant milestone in the country's legal and judicial evolution. By creating a harmonious and integrated administrative justice framework that encompasses the Supreme Administrative Court, the Federal Administrative Court, the Federal Fiscal Court, and the regional administrative courts, Austria aimed to foster a more just and efficient administrative judicial environment that could respond adeptly to the complexities and challenges of contemporary governance.

In terms of moderation, it is necessary to point out that the

„administrative court of first instance generally decides on the merits of the case. Only in very exceptional cases does it set aside the contested act by the authority and refer the case back to it.”⁷²

As we have seen in cases of Czech and Slovakian regulation, moderation of penalties is somewhat an exception from the otherwise strict revisionary role of administrative courts. In Austria, however, administrative courts of first instance possess a much more active role and decide upon the merits of the case.

Under Section 50 (1) of the Administrative Justice Code⁷³ (VwGVG), unless the appeal to the court is to be dismissed or the proceedings discontinued, the Administrative Court shall decide on the merits of the appeal under Article 130 para. 1 subpara. 1 of Federal Constitutional Law⁷⁴ (B-VG).

Therefore, administrative courts can moderate penalties or completely waive punishment. Also, due to the system of administrative jurisdiction, there are no strict rules for the court to meet to moderate a penalty.

72 Ibid (p. 39).

73 Verwaltungsgerichtsverfahrensgesetz.

74 Bundes-Verfassungsgesetz.

3.4 Germany

The administrative judicial system in Germany is a bit more complicated. When Czech Republic and Slovakia administrative justice is being exercised by general administrative courts dealing with all issues of administrative law, Germany has a four-branch administrative judiciary, which divides into Tax law courts (*Finanzgerichte*), Labour law courts (*Arbeitsgerichte*), Social law courts (*Sozialgerichte*) and General administrative law courts (*Verwaltungsgerichte*). In misdemeanour cases, jurisdiction of general local courts also applies, as will be explained below.

In the field of administrative proceedings in Germany, it is necessary to emphasize the dichotomy between regular administrative proceedings and proceedings related to misdemeanours. Both types of proceedings have distinct legal regulations.⁷⁵ Such dichotomy exists in a way in the Czech Republic, Slovakia and Austria, which all have separate regulations for misdemeanour proceedings. During judicial review, however, legal regulations of other compared countries are unified, and the judicial review is governed by the general code regulating proceedings before administrative courts. The German Regulatory Offenses Act⁷⁶ (OWiG) not only regulates the procedures of administrative authorities but also governs subsequent judicial review.

According to Section 113 paragraph 2 Code of the Administrative Court Procedure⁷⁷ (VwGO), it is generally allowed for the court to alter the contested decision in part where the plaintiff is ordered to make a specific monetary payment. Such monetary payments can be fees, contributions, fines, administrative fines, penalties etc.⁷⁸ VwGO does not directly say, whether the court can moderate such payment. However, we can clearly say, that court has such authority.⁷⁹ From a relatively general law, we won't learn much about the conditions under which a court can proceed with the moderation of a penalty (and monetary obligations in general). The following conditions are inferred from the provisions:

- (i) Only on plaintiff's request,
 - (ii) it concerns a decision imposing a specific monetary obligation,
 - (iii) the court may,
 - (iv) determine a different amount,
 - (v) as long as it does not require a significant effort for the court to quantify it.
- From the text of the law alone, it appears that the court can proceed with moderating essentially anytime the plaintiff proposes it. That is, there seems to be no criterion. However, this is not the case.⁸⁰ The aforementioned provi-

⁷⁵ *Verwaltungsverfahren (VwVfG)* for general administrative proceeding and *Ordnungswidrigkeitenverfahren (OWiG)* for regulatory misdemeanours proceeding.

⁷⁶ *Ordnungswidrigkeitengesetz*.

⁷⁷ *Verwaltungsgerichtsordnung*.

⁷⁸ *Redeker/v. Oertzen* § 113 Rn. 32; *Eyermann/Kraft* § 113 Rn. 10.

⁷⁹ *BeckOK VwGO/Decker*, 65. Ed. § 113 Rn. 54.

⁸⁰ *Ibid.*

sion does not open the possibility to replace administrative discretion with judicial discretion, but rather to only grant the plaintiff's proposal if the monetary obligation is unlawfully high. Therefore, the court is bound by the plaintiff's proposal and cannot determine the fine at its discretion. This constitutes an exception to the cassation principle of administrative justice.⁸¹ Also, we must not forget that the court is, of course, limited by the principle of the prohibition of reformation in peius - therefore, it cannot increase the monetary payment to the detriment of the plaintiff.⁸²

In Germany, however, a large portion of misdemeanours do not follow the classic process of administrative authority - administrative court. Minor misdemeanours are prosecuted via OWiG, as the fundamental procedural code for misdemeanours. It establishes different conditions for judicial review than the aforementioned VwGO. OWiG primarily deals with regulatory offences or minor violations of law that are not considered serious crimes. It covers a broad spectrum of misdemeanours like traffic violations, environmental breaches, and violations of administrative regulations. OWiG also refers to other legislation on many issues⁸³, the most important of which is the Criminal Procedure Code (StPO).⁸⁴

Under OWiG judicial review is quite different than under VwGO. According to Articles 65 a 66 of the OWiG administrative authority imposes a penalty, which can be appealed by the accused through an objection (Article 67 of the OWiG). Most importantly, according to Article 68 of the OWiG, the competent court to decide on objection is the local court (*Amtsgericht*) and not the general administrative court (*Verwaltungsgerichte*). The great influence of criminal law and its laws can be seen in Article 71 of the OWiG, which states that the provisions of StPO shall apply to the objection procedure. Therefore, the local court deciding on an objection against a penalty imposed by an administrative authority proceeds under StPO. The imposed penalty does not bind the court, and it decides on penalty at its discretion.⁸⁵

4 Conclusion

A comparative analysis of administrative penalties and their moderation in the legal systems of the Czech Republic, Slovakia, Austria and Germany provides valuable insights into the different approaches and fundamental principles governing administrative justice. As we learned from the comparison of legal provisions, all four countries are familiar with court intervention with penalties imposed by administrative authorities. Moreover, the influence of the ECHR and the principle of complete jurisdiction is evident as they strive to comply. It is already clear how broadly or, conversely, narrowly individual countries interpret this principle. Aim of this article is not to prove that the moderation

81 Ibid.

82 Redeker/v. Oertzen § 113 Rn. 33.

83 Section 46 (1) OWiG.

84 Krenberger/Krumm OWiG § 1 Rn.9.

85 Krenber/Krumm OWiG § 71 Rn. 4.

of administrative penalties should be the same in all countries. However, it is undoubtedly attractive to observe that what is unthinkable and violates the separation of powers in one country functions routinely in another.

In the Czech Republic, the development of administrative law, particularly the adoption of the CAJ, has marked a major shift towards complete jurisdiction in reviewing administrative penalties. It is important to note that these are not revolutionary changes, but rather small steps taken in the right direction. The introduction of moderation was an essential result of alignment with Article 6 of the ECHR. However, the Czech legislation sets strict conditions for the moderation of penalties, particularly requiring that penalties be disproportionate, thereby limiting the court's interference with administrative discretion. Such an approach pursues a strict separation of powers between the executive and the judiciary. Still, it raises questions as to whether it is necessary to draw such a tough line at all. The examples of other countries then show that this tough line is not the only way to go. Overall, it is clear that Czech law is the most rigid one and does not want to allow the court to substitute administrative discretion.

Slovakia, which has a legal framework similar to the Czech Republic, has adopted AJC, which provides moderation in the administrative justice system. Unlike the Czech law, the Slovakian AJC allows for a broader scope of moderation, including sanctions that may be disproportionate or potentially destructive to the offender. This more moderation-friendly approach will enable courts to moderate sanctions based on various considerations broader than Czech law.

Austria underwent a significant reform of its administrative justice system in 2014, restructured it to create a more integrated and efficient framework. In contrast to the Czech and Slovakian systems, Austrian administrative courts, in the first instance, have a more active role that allows them to decide on the merits of a case, including the power to moderate penalties without strict rules. Although the Czech Republic and Slovakia have followed the Austrian administrative justice system in the past, Austria itself has moved on. The Austrian example shows that dogmatic adherence to the separation of powers between the judiciary and the executive may not be necessary and that another model works in practice. Administrative courts do not have to act as public administration reviewers but can actively participate in it.

The German administrative justice system is more complex in misdemeanours, as administrative courts (deciding on certain offences under the VwGO) and general courts (deciding on misdemeanours under the OWiG) are involved. It is safe to say that in neither of these regimes is the court prevented from reducing the penalty if necessary. The VwGO regime is close to the Czech and Slovakian systems but does not provide for any condition of disproportionality of the sanction imposed. Therefore, it is at the court's discretion whether to agree with the administrative authority's assessment. In the case of OWiG, on the other hand, the general court is the determining authority, which effectively decides on the penalty anew (applying principles from criminal law). In the case of OWiG, we can also see a very close relationship with criminal

law – even procedural laws from criminal law are used (StPO). While other countries maintain a particular gap between misdemeanours and criminal offences (separate laws, administrative courts), German law, on the contrary, brings the two violations closer together.

Reviewing these legal systems highlights the varying degrees of judicial intervention in administrative sentencing. While some jurisdictions enforce strict limits on the moderating powers of courts, others provide courts with greater latitude to address the disproportionate or disruptive impact of sanctions. These differences reflect differing legal philosophies, with some systems emphasising preserving administrative discretion and others favouring judicial oversight. The comparative analysis sheds light on the different approaches adopted by these countries, contributing to the broader discussion on administrative justice and sanction moderation in other legal contexts.

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