Oswald Jansen (ed.), *Administrative Sanctions in the European Union* (Cambridge – Antwerp – Portland: Intersentia 2013), ISBN 978-1-78068-8, 642 p.

This book represents an overview of administrative sanctions in the European Union and thirteen of its Member States. Chapter I is a general report named The Definition of Administrative Sanctions. In alphabetical order, Chapters II-XIV offer country analyses of administrative sanctions in Austria, Belgium, Finland, France, Germany, Greece, Italy, The Netherlands, Portugal, Romania, Spain, Sweden and The United Kingdom. The last chapter (XV) is focused on administrative sanctions in EU law. This chapter does not essentially differ from the country analyses, with the exception of the attention paid to the Charter of Fundamental Rights.

The studies that led to this book's publication started with an expert meeting in 2004. The project was financially supported by the Dutch Scientific Council and the Dutch Ministry of Justice. Oswald Jansen was coordinator of the project and editor of the book. The authors are experts in national or EU law. Although the book is not beyond criticism, credit must be given where credit is due. Comparative knowledge about administrative sanctions was largely absent until the publication of this book. For this reason and regarding the profundity of most articles, the book is an important addition to legal scholarship.

Comparative law is full of obstacles, especially applying to administrative sanctions. We deal with differences between legal systems of different countries with their own traditions and peculiar characteristics. The involvement of aspects of criminal law also creates complications. To overcome the obstacles, a series of benchmarks to be used in the studies of all countries can contribute to uniformity of outline and content. On the other hand, a detailed planning of these studies can lead to disappearing from view of some interesting elements. The book reaches a compromise. Its starting point is a broad general definition of 'sanction'. Having said that, the authors were encouraged to pay attention to peculiar aspects of their national law.

In the book remedial and deterrent sanctions are involved. Most attention is paid to deterrent or punitive sanctions. Some country reports, e.g. the French report, only briefly cover remedial sanctions unlike, for example, the German report which offers an extensive description of this type of sanction. The predominance of punitive sanctions in the book could be the result of a corresponding predominance in national legal orders, although the influences of individual authors cannot be excluded. Nevertheless, it is generally accepted that a sanction is a reaction to the violation of a precept and an administrative sanction isa reaction by the administration to such a violation.

The book is not based on a detailed series of benchmarks in favour of uniformity of outline and content of the country studies. As a consequence, the book has some imbalances. Besides remedial sanctions, in the country analyses different attention is paid to, amongst others, the reasons for introducing administrative sanctions, the relation to private, criminal and disciplinary sanctions, the possibility to sanction legal persons (societas delinquere non potest)

and the relevance of sanctions in specific domains such as tax law, environmental law or health law. The difference in size between the Dutch (148 p.) and the French (16 p.) or Italian (27 p.) contribution is striking.

Because of the overall applicability of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) the different legal systems are familiar with the same general principles and rights of defence. Therefore, the sections concerning the principles of legality, guilt, proportionality and non bis in idem, and the rights to be informed of the charge, to be silent, et cetera, seem to be of lesser interest. However, upon closer inspection it is clear that on a more fundamental level there are remarkable differences between national legal systems.

Corresponding to its objective this review focusses in particular on punitive sanctions. The book inspires much discussion. More or less at random, I will discuss three elements: i) the types of administrative punitive sanctions, including borderline cases, ii) the reasons for using administrative deterrent sanctions and the relationship to criminal law procedures, and iii) the legality principle. The aim of this discussion on a small selection of many interesting items is to underline the importance of comparative sanctions law.

i) The book makes clear that all countries struggle with the character (punitive or remedial?) of some administrative measures. In many countries the same borderline cases appear to be problematic, such as the withdrawal of a subsidy or a licence (among which a driving licence). The Spanish courts use a very restricted definition of sanctions. The return of investment grants which are not spent on the project for which they were granted, the closure of bars which do not comply with legislation of licenses and 'the withdrawal of potentially dangerous or unhealthy goods from the market' are examples of measures which the courts do not even consider a sanction at all (country analyses Spain, p. 517). Nevertheless, in Spain it is recognised, too, that in practise the punitive, deterrent and harmful character of some administrative decisions is controversial. Besides, one may wonder why there can exist any discussion about the punitive nature of some borderline measures. Isn't it true that the Rule of Law, the principle of legality and the lex certa principle demand an explicit and clear power to impose punitive sanctions, which makes a discussion about the character of a sanction redundant (apparently not!)?

All countries are familiar with a wide variety of administrative measures and sanctions. In particular administrative fines, i.e. punitive sanctions with a pecuniary nature, are common. These fines have a maximum, in some countries also a minimum limit. The countries involved have different maximum limits. The limits of these administrative fines can be higher than the highest fines in criminal law (see country analyses The Netherlands, p. 373-377, and Romania, p. 479). In some administrative fields this is a consequence of EU law and its demand for effective enforcement. Most striking is that in Austria 'the most

severe penalty in administrative penal law is imprisonment, which can be provided for not only as an alternative sentence in case, if a fine is not paid, but also as a primary penalty' (country analysis Austria, p. 38; see also country analysis Romania, p. 498-499). Where administrative penal law is defined as law 'in the competence of administrative authorities' (p. 37), such imprisonment is based on a decision of the administration instead of a court, indeed. In other countries, e.g. The Netherlands, the measure of imprisonment is reserved for criminal law.

ii) A characteristic of administrative punitive sanctions is the determination of guilt by the administration instead of a court. Although this does not breach the ECHR when access to a court is guaranteed, in some countries this is controversial. At the same time criminal law is acquainted with the determination of guilt by the administration, here the public prosecution, too. For example, the Dutch public prosecutor has the power to impose fines and other sanctions (country analyses The Netherlands, p. 343). On this basis it seems to be a small step to incorporate administrative punitive sanctions into the criminal law system. Administrative bodies could be authorised to impose fines in mandate under the responsibility of the public prosecution, combined with a criminal procedure and access to a criminal court. As the book makes clear, in most countries the administration has its own power to impose fines, without the possibility of receiving instructions from the public prosecution.

On the other hand, it is striking how interwoven administrative sanctions and criminal law procedures in Germany are. Within the framework of the 'Ordnungswidrigkeitengesetz' (OWiG) administrative authorities impose sanctions. In case of an appeal, these authorities review the correctness of their own decisions. 'If the administrative order imposing a fine is not withdrawn, the imposing authority is obliged to hand the files over to the public prosecutor's office (Section 69 III OWiG). It is only at this particular point that public prosecutors deal with administrative offences, otherwise they are not at all involved in this type of procedure' (country analysis Germany, p. 230). Besides, this transition from an administrative to a criminal procedure is related to the general German remedy of an administrative appeal in case of rejection of an objection: it is in accordance with a more general rule of legal protection.

The Portuguese system is largely inspired by the German one, and therefore 'somewhat peculiar, as the acts practised by administrative authorities are not subject to administrative law, but rather to the (few) rules contained in the [Regime General de Contra-Ordenações, RGCO, the Portuguese OWiG] and, as subsidiary law, in the Code of Penal Procedure' (country analysis Portugal, p. 479). In other countries administrative law procedures and criminal law procedures are strictly separated, with an exception for The United Kingdom, where the differentiation between administrative and criminal sanctions is somewhat blurred. The separation between both fields of law is evident in so far as administrative sanctions are normally reserved for small and criminal

sanctions for severe offences. Furthermore, criminal sanctions are indicated after a repetition of administrative sanctions imposed to the same person.

Country analyses which pay attention to the introduction of administrative sanctions as an alternative for or addition to criminal sanctions, give the same reasons for this introduction, namely the need for more law enforcement, lack of capacity of the public prosecutor, amelioration and speeding up procedures for imposing sanctions, and decriminalisation and depenalisation (Greece, p. 310-311, Portugal, p. 471-472, The United Kingdom, p. 587). The contributions to the book do not give the impression that administrative punitive sanctions like (sometimes high) fines are the object of a widespread and fundamental discussion in the countries involved.

iii) The legality principle has different meanings. In some countries it is connected to the idea that administrative sanctions must have a basis in legislation (nullum crimen sine lege). In other countries this idea is seen as an aspect of the Rule of Law. Furthermore, an aspect of the legality principle or the Rule of Law is that norms must be clear (nulla poena sine lege certa). This demand of foreseeability implies that a sanction is not allowed when a reasonable person cannot know when he breaches a vague norm. Regarding the increase of the use in modern legislation of open (vague) norms, it is unfortunate that this demand is barely elaborated in the book. An exception is the German contribution, where attention is paid to the socalled 'Bestimmtheitsgebot' (country analysis Germany, p. 245-246).

Remarkable too, is the notion that in Germany, as a hard core of the legality principle, the public prosecutor is obliged to prosecute offenders. In other words, in German criminal law the principle of mandatory prosecution is applicable. However, within the framework of German administrative punitive sanctions the principle of discretionary prosecution is applicable. As a result, 'the administrative authorities are not compelled to prosecute' (p. 229). The existence of discretion in exercising powers to impose punitive sanctions is accepted in all countries involved, although theoretically, under the influence of the principle of effectiveness, EU law can force an exception. Besides, one needs empiric data in order to assess whether in practise mandatory or discretionary powers make any difference in the use of enforcement powers at all: we cannot exclude the possibility that the (fundamental) difference between mandatory and discretionary powers is only of a theoretical nature.

As noted earlier, the first chapter of the book is a general report named The Definition of Administrative Sanctions. This title does not do the content justice. The chapter contains definitions of different types of administrative sanctions, indeed, but gives a comparative analysis of the legal systems concerned, too. Obviously this part, written by Carlo Enrico Paliero, is the most interesting as well as the most complex part of the book. After a phenomenological and typological definition of sanctions, Paliero gives insight in his method and structure

and some notions from EU law and ECHR cases as a legislative frame of reference. On this basis he compares and condenses the central results of the country analyses.

Firstly, a comparison to criminal sanctions is made, from a formal and a functional point of view. A conclusion is, for example, that Portugal is familiar with a higher degree of differentiation between administrative and criminal sanctions than The United Kingdom. Secondly, a comparison is made between the public administration's different reactions to the violation of a precept. The third comparison concerns disciplinary sanctions. Subsequently, Paliero examines internal characteristics of the concept of administrative sanction, more specific the existence and meaning of codes, a typology of administrative sanctions and indictment criteria for administrative sanctions. This results in a scheme with degrees of differentiation on several aspects giving a global impression of similarities and differences between the fourteen legal systems concerned.

The benefit of this scheme is its reduction of an enormous complexity. Nonetheless, one could be forgiven for thinking that another framework or other schemes are possible and more than adequate, too. However, Paliero has made an excellent attempt. It results in the conclusion that 'a high degree of functional differentiation associated with a low level of formal differentiation (as for example in Romania) leads to 'labelling fraud': administrative sanctions substantially become a criminal sanction with less guarantees' (p. 31). Of course, objections can be made here. It is just for this reason that such analyses are very attractive. It is a pity that such analyses are very rare. The book has above all a descriptive nature. This does not affect its high quality. The book is essential for those who want to penetrate into the roots of administrative sanctions as such and those who want to understand more about administrative law and enforcement systems elsewhere.

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