EXPIRATION OF ABSOLUTE LIMITATION PERIOD AS GROUNDS FOR CANCELLATION OF IMPOSED ADMINISTRATIVE PENALTIES

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***Abstract**: Is the absolute limitation period from the criminal law applicable upon realization of administrative-penal liability? Analysis of the case law and considerations of the author, that the crime perpetrators may not be placed in more favourable condition than those, who have committed administrative violations.*

***Key words:** administrative violations, administrative penalties, absolute limitation period.*

One of the main disputable issues in case of appeal of penal rulings is connected with the applicability of the absolute limitation periods, excluding the right of the state to realize administrative-penal repression.

According to art. 11 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT[1], „As regards the issues about the guilt, responsibility, the circumstances, excluding the liability, the forms of complicity, arrangement and attempt shall apply the provisions of the general part of the Criminal code unless provided otherwise in the present law ”

Based on the above reference, we address the provision of art. 80 and 81 from the CC[2]:

Art. 80. (1) Penal prosecution shall be excluded by prescription where it has not been instigated in the course of:

5. (amend. - SG, issue 26 dated 2010) three years in all other cases

Art. 81. (3) Notwithstanding the termination or interruption of prescription, penal proceedings shall be excluded provided a term has expired which exceeds by one half the term provided under the preceding Article.

From the above provisions follows that upon expiration of four years and a half from the date, on which administrative violations has been made, the right of the state to impose penalty to the offender is excluded.

For violations committed before 10^{-th} of April 2010p the above-mentioned term is three years, because before the amendments in the code the term under art. 80, para 1, i. 5 was only two years.

In the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT there is no provision concerning the absolute limitation period/prescription, upon which in initiated Administrative-penal proceedings to be precluded the opportunity of the state to engage the responsibility of the individual for committed offence. **Such provision has to exist in the Administrative-penal proceedings, as long as the offenders of crimes may not**

[1] Administrative violations and penalties Act, prom. in SG, issue 92 dated 28.11.1969 and subsequent amendments
[2] Criminal Code, prom. in SG, issue 26 dated 02.04.1968 , effective since 01.05.1968 and subsequent amendments

be put in more favorable position from the individuals, committing administrative violations. Art.11 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT states that as far as the issues regarding guilt, responsibility, the circumstances, excluding the liability, the forms of complicity, arrangement and attempt are concerned shall apply the provisions of the general part of CC. The absolute prescription under art.81, para 3 from CC appears circumstance, excluding the liability - argument from the norm of art.24, para1, i.3 from Criminal-procedure Code (CPC)[3], as well as Interpretive judgment № 112/16.12.1982 under crim. case № 96/82.[4] So in this particular case shall apply the norm of art.81, para 3 from CC, according to which Notwithstanding the termination or interruption of prescription, penal proceedings shall be excluded if a term has expired, exceeding with ½ the term, envisaged in the precedent article. The reference to art.80 from CC is explicit and therefore according to art.11 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT exactly this norm has to apply in connection with art.81, para 3 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT. Other interpretation appears inadmissible according to art.46 Law on normative Acts[5].

Though the prescription is not explicitly provided as grounds for termination of the the administrative-penal proceedings, the same according to art. 11 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT shall apply because according to the above-stated provision for cases, concerning the guilt, responsibility, the circumstances, excluding the liability and etc., shall apply The Criminal Code[6] .

The power of the state to initiate administrative penal proceedings against the offender and to impose to him administrative penalty is absolute prerequisite for initiation of the administrative-penal proceedings and it has to exist from the moment of initiation till its end. For the existence of such prerequisite the court has to bear official responsibility. If at the moment of ruling the court judgment, in case of appeal against penal ruling, the above power has already been precluded, because it conditions the admissibility of the proceedings, respectively entails termination of the administrative-penal proceedings.

Some colleagues share the contrary opinion[7]. In the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT is codified the matter concerning the ascertainment of the admnistrative violation and imposition of the respective administrative penalty, including also the grounds for termination of the administrative-

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[3] Criinal procedure Code, prom. in SG issue 86 dated 28.10.2005; effective since 29.04.2006 and subsequent amendments

[4] Interpretive judgment № 112 dated 16.XII.1982 under crim. case № 96/82 , general meeting of the penal college of the Supreme court, reproting judge Gospodin Gospodinov

[5] Law on normative acts, prom. in SG issue 27 dated 03.04.1973; emended and supplemented in issue 65 dated 21.07.1995.; amended in issue 55 dated 17.06.2003 ; effective from 18.12.2003; emended and supplemented in issue 46 dated 12.06.2007. According to art. 46, criminal, administrative or disciplinary liability may not be justified by analogue.

[6] Judgment № 239 dated 24.07.2012 of Regional court-Turgovishte under criminal case of admnistrative nature № 457/2012 ; Judgment dated 20.07.2012 of Administratuve court-Vratsa under criminal case of admnistrative nature (cassation) № 331/2012

[7] Judgment № 290 dated 09.05.2012 Administratve court-Pleven under criminal case of admnistrative nature (cassation), № 201/2012

penal proceedings, which are exhaustively specified in art. 34 from the same act. In the provision of art.82 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT is envisaged the instate of the prescription, after expiration of which the imposed administrative penalty shall not be realized, as well as the different terms, within which this prescription expires and also from when it starts. According to para 2 the prescription shall start as of effective date of the act, by which is imposed the penalty. According to para 3 of the same provision, notwithstanding of stopping or suspension of the prescription the admnistrative penalty shall not be realized if a term has expired, exceeding with one half the term under para 1 (two years), i.e. the absolute prescription for execution of the admnistrative penalty is three years. From the above provisions is seen that in the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT is envisaged the institute of the limitation period, therefore the norms of CC shall not apply by argument of art. 11 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT. Upon expiration of the limitation period the imposed penalty shall not be executed, but this limitation period starts from the effective date of the act, by which is imposed the penalty, not from the moment of commitment of the violation, as this is stipulated according to the rules of CC, nor starts it from the moment of imposing administrative penalty by issuance of penal ruling. The application of provisions of the general part of CC as regards issues from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT is possible only regarding those (issues) mentioned in the text of art.11from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT, i.e. regarding the issues on the guilt, responsibility, the circumstances, excluding the liability, the forms of complicity, arrangement and attempt, except if otherwise provided. The provision of art.34 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT determines the terms, within which may be issued an act for ascertainment of administrative violation, their beginning is determined depending on when the offender is found and when the violation is made as the above provision stipulates also the terms for issuance of the penal ruling. These terms are preclusive, i.e. procedural and their expiration is absolute obstacle for initiation of administrative-penal proceedings, resp. it appears absolute grounds for termination of the initiated proceedings. Upon their expiration shall be precluded the tight of the subjects, empower by the law to give rise to criminal proceedings. The prescription terms are of material nature and being such they differ by their nature and legal consequences from the preclusive terms and upon their expiration is precluded the right to be sought criminal liability for committed crime. Both types of terms are not concurring. As stated above, the prescription terms, envisaged in the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT are these under art.82, but they concern the execution of the sanction for committed violation, as they start from the effective date of the act, by which is imposed the penalty (the penal ruling), they are suspended and stopped upon existence of the prerequisites, envisaged in the law. In the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT there are no provisions regarding the limitation period for criminal proceedings of administrative violations, nor there is explicit reference to the

provisions for the prescription under CC. As mentioned above, the provision of art.11 from the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT refers to the provisions of the general part of CC, without explicit mentioning of texts, so their application follows the respective interpretation. The systematic place of the legal norms about the prescription in CC is in chapter 9 „Lapse of penal prosecution and imposed punishment", as the three envisaged grounds for that are: death of the perpetrator, amnesty or expiration of statutory prescription- circumstances, which appear obstacle only for realization of the criminal liability, but they do not exclude the liability. The prescription though is a circumstance, which leads to lapse of the criminal prosecution as it is an obstacle for realization of the criminal liability towards the perpetrator, it relates to expiration of the terms, envisaged in CC (and) their duration is determined in accordance with the type and extent of the envisaged punishment for the respective crime. The ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT does not refer to the provisions of CC, which stipulate the statutory prescription. The ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT refers to CC as regards the circumstances, excluding the liability and which are stipulated in the general part of CC – chapter 2 and appear obstacle the deed to be classified as a crime. Therefore it is considered that the institute of the limitation period, including the absolute prescription, does not concern the criminal prosecution for administrative violations, as the application of the norms of CC by analogy is inadmissible. In other words, if there is no norm in the ADMINISTRATIVE VIOLATIONS AND PENALTIES ACT, which to envisage limitation periods regarding criminal prosecution of the administrative violations and considering the lack of reference in this law to the provisions of the limitation periods under CC, the application of the provision of art.24 para1 i.3 from the Criminal-procedure Code appears inadmissible, in connection with art.81 para 3 and in connection with art.80 para 1 i.5 from CC in the administrative criminal procedure and termination of the procedure for elapsing of the liability by prescription.

Our position corresponds with the first standpoint that the institute of the absolute prescription ought to apply also for the administrative-criminal proceedings. The crime offenders should not be put in more favorable position from the authors of administrative violations. In support of the above position I would quote two legal provisions:

According to art. 84 from the Administrative violations and penalties Act, which concerns the proceedings before court for consideration of appeals against penal rulings, appeals of cassation in front of the administrative court and proposals for renewal, shall apply the provisions of the Criminal procedure Code.

According to the CPC Art. 24. (1) Criminal proceedings shall not be initiated and the initiated ones shall be terminated if:

3. the criminal liability has elapsed because of expiration of the prescription, envisaged by the law;

Hence the court is obliged to consider the appeal against the penal ruling upon applying the да приложи the provisions of the Criminal-procedure Code because the

Law on administrative violations and penalties does not envisage particular procedure for the court proceedings, the provision of art. 24, para 1, i. 3 shall apply– after expiration of the prescription envisaged in the law, the initiated administrative-penal procedure has to be closed.

Because of the conflicting case law on the problematic issue I do think that the same has to be settled ***de lege ferenda*** by explicit norm of the law or by interpretive judgment of the Supreme Administrative Court.