General principles and judicial remedies

The interaction between international and domestic courts

A research project of the CJC in collaboration with Association of European Administrative Judges

INTRODUCTION[1]

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Questionnaire prepared by the Centre for Judicial Cooperation (CJC) in collaboration with the Association of European Administrative Judges (AEAJ)

PART 1
The role of the national courts

Q1: Are there national legislation or soft law guidelines defined by the executive or by the judiciary itself, concerning the criteria to be followed when choosing:

- between several types of remedies (e.g. the grant of injunctions, the imposition of fines, expulsion or entry bans and detention or other limitation of freedom of movement), and
- when deciding about the severity of the sanction (e.g. the amount of the fine, the temporary or final suspension of the economic activity, the period of entry bans or deprivation of liberty)?

Please give examples (especially in environmental law, non-discrimination law, aliens law, and utilities (e.g. telecommunication law)), drawn from such legislation and such guidelines, if they exist.

Answer: The Swedish administrative courts do no deal with non-discrimination law, that is for the civil courts. Alien cases are dealt with in a few special courts only and they only decide on residence permit matters, detention decisions and citizenship decisions. Not expulsion, that is for criminal courts. Telecommunication law is only dealt with in the administrative courts of first and second instance in Stockholm.

Environmental law:

--The National Environment Protection Agency has issued handbooks on supervision on operations/actions affecting the environment and also a handbook on environmental sanction fees. Such material is focused on the work of the authorities but are used also by the land and environment courts. Important are also the preparatory works of the Environmental Code. The environmental code chapter 26 relates to supervision, also a governmental ordinance cover this matter. ----------
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(a.) Are soft law guidelines followed by national courts?

(b.) Sometimes

- Always
- Never
- Nearly Never

Please explain.

----Guidelines, statements in preparatory works and other soft law are regarded, have an impact at least on the reasoning but are not always followed.----------

Q2: Does the legislation/soft law guidelines concerning remedies usually make explicit reference to effectiveness, proportionality and dissuasiveness? If so, do they specify how these principles should be applied?

The principle of proportionality is covered by chapter 26 section 9 of the Environmental Code.- section 1 refers to effectiveness and dissuasiveness. In the NEPA handbooks such discussions are highlighted.--

Also in the field of public procurement, regarding the fee to be paid when an "illegal" procurement has been made but the law doesn´t specify how to apply the principles.----------
---In the government bill introducing the law there might be some guidelines.----------

Q3: What would a national court do if the national legislation, did not provide for a remedy and/or did not indicate specifically how the principles should be applied? See, for instance, on the,

Hard to imagine this situation relating to the Environmental Code and its solutions. The principle of legality may have limited the possibilities as the problems may be close to criminal law. ----------

--Also in other fields of law the legislation must provide for the remedy/sanction. How to apply the

principle is often left to the courts, sometimes-with guidelines in the government bill.----------
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Q4: Gap filling.

(a.). **When national rules give no guidance on effectiveness, proportionality and dissuasiveness, can the national court fill the gap** (e-g. the judge select the remedy and determines its content) ? If so under which conditions can the court do so and define the criteria used for effectiveness, proportionality and dissuasiveness? What is the allocation of gap filling power between the public administration (including independent regulatory authorities) on the one hand and the court on the other hand? (See Joined cases C-362/13, C-363/13 and C-407/13 *Fiamingo*[2])

Is the gap filling power limited by the criminal nature of the offence? Please differentiate between areas of law/situations in which the principle *"nulla poena sine lege"* applies and other areas of law where the infringement is not of a criminal nature.

[Note for the rapporteur: We assume that when the administrative infringement is of criminal nature the judicial gap filling function is limited or non-existing. But please confirm whether this is so.]

The principle of legality limits the area in cases close to criminal matters, environmental sanction fees and decisions on conditional fines. ----------
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--The court must seek guidelines in the government bills.----------
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(b.) Who should fill the legislative gap according to the national law: the administration or the judiciary?

(i) Neither

(ii) Only the administration

(iii) Only the judiciary

(iv) Both the judiciary and the administration.

Please, explain.

Environmental law: In first instance the administration. If it acts too soft and that decision is appealed, the court in a way is acting as an authority – in principle has the same power to act as the authority.------
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(c.) **<u>Judicial gap filling</u>**. If the reply was (iii) or (iv) in question **(b)** above, meaning that a judicial gap filling power related to remedies is recognized to courts, what are its limits? In ensuring the principle of effectiveness of EU legislation, would the court take into consideration also the effectiveness of related European fundamental rights? Would a court in your country be able to raise issue of the conformity with the principle of effectiveness and European fundamental rights ex officio? (e.g. inhuman or degrading treatment due to the living conditions in the holding centre of illegal entry migrants).

----It is free to act but has to consider fundamental principles of law and rights.----------
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(c.1) Can the court modify the conditions set out in legislation for access to or content of an existing remedy? E.g. modify the temporal limitation of access to courts, invoke certain factual or legal circumstances that expand access to court or legal aid, modify the effects, the length or the conditions of an injunction.

-----If the private party has appealed a sanction the court can modify it or remove it.----------
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(c.2) Can the court create a new remedy to fully implement the principle of effectiveness? In the affirmative case, please provide examples of newly created remedies.

-In the administrative courts we only deal with sanctions, that is negative measures for the private party. We cannot create new sanctions. Remedies is a positive sense, damages etc. are only dealt with in civil courts.----------
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(c.3) Are there any other factors limiting the gap filling power of courts, in relation to remedies? E.g. is there a correlation with the possibility to use discretionary power by the administration? How would administrative discretion limit the gap filling judicial power?

----------The courts can always decide on milder sanctions than what the administration has decided but it must have been foreseen by the law. For example, if the law gives the choice between warning or the loss of a permit or sets a range of administrative fees.----------
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(d.) **<u>Gap filling by the administration.</u>** If the reply was (ii) or (iv) in question **(b)** above, meaning that the gap filling power is conferred to the administration, do courts make reference to the EU principles when reviewing the exercise of that power?

Example: Suppose that legislation does not indicate which measures have to be taken, in order to protect sites adjacent to those which are unlawfully polluted, and the administration conditions the use of those sites on the adoption of precautionary measures. Are these measures subject to the "review of compliance" with the principles of effectiveness, proportionality and dissuasiveness, by national courts?[3]

Example: Suppose that remedies against air pollution are not foreseen by legislation despite non-compliance with EU legislation, is the public administration allowed to take measures such as car restriction or ban and what is the control of judges on such measures?

Answer: Environmental law: Yes – both which measures has been adopted and how strict they should be applied. The general provisions in the Environmental Code are sufficient (general precautionary principles and the different instruments for the supervisory authority may be applied – if not applied by the authority, it may be so by the court or the case referred back to the authority to take appropriate actions.)----------
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Q5. Evaluating the conflicts between national legislation implementing EU law and the principles of effectiveness, proportionality and dissuasiveness.

[*Note for the rapporteur:* Here there is national legislation concerning remedies but it conflicts with the principles. See Case C-81/12, *Asociatia ACCEPT*[4] and Case C- 331/13 *Nicula.*[5]]

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(a.1) Assessing the role of EU principles over sanctions: general questions.

The set of examples above illustrates a potential conflict between national laws and the principles: What are the available techniques which a national judge can use, so as to ensure compliance with EU law?

----A judge can disregard national legislation when it is in conflict with EU law principles.----------
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Can the national court 'deviate' from national legislation?

If yes:

- Would the national judge interpret national law according to the above mentioned principles and thus modify the national remedy?
- Could the national law be dis-applied and if so, could the judge issue an order containing a 'new remedy'?
- Other hypothesis?

Environmental law: -In principle yes – hard to find practical examples. ----------
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----------A judge cannot decide on more severe sanction but decide on milder sanctions, referring to the EU principle on proportionality----------
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(a.2) Assessing the role of effectiveness on sanctions: Penalties have to be effective[6].

When applying national legislation, if the judge identifies a conflict with the principle of effectiveness and the specific domestic provisions at issue, what are the most common 'tools' available to her to address this conflict?

Example: A driver causes a traffic accident. Regardless of criminal/civil sanctions, can the court add an additional penalty to those stated by the law, for example the suspension/ withdrawal of the driving licence of a driver, on the basis of effectiveness and dissuasiveness of sanctions?

B.Example: Suppose that administrative fines are foreseen in case of breach of species protection legislation. The level of fines does not provide adequate incentives to adopt precautionary measures. Could judges increase fines in order to ensure compliance?

Example: In case of a third country national who has not respected the domestic procedural time limit for lodging an appeal against the first court order of removal, would the court automatically reject the appeal, or on the basis of circumstantial evidence accept the appeal introduced after the expiry of the procedural time limit? What would these circumstances be (e.g. third country national was not informed in a language (s)he understands about the first instance decision, etc.)?

Answer B. If the operator appeals a decision, the fines can´t be increased. If a neighbour or an NGO appeals an order from an authority, the court in some cases (conditional fines – not environmental sanction fees, according to statements in the preparatory works of the Environmental Code.) may decide on stricter measures and also the sum of conditional fines.----------
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---Answer A: The court can´t add an additional penalty, it must have been given by the administrative body according to law.----------
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Does the principle of legality play a role in the decision of the court? If so, how? (the question is meant to address the problem of judicial discretion over the definition of remedies).

Answer: In cases close to criminal cases, the measures must be covered by law and correct claims.-------
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(a.3) Assessing the role of proportionality on sanctions: Penalties have to be proportionate.

When applying national legislation if the judge identifies a conflict between the principle of proportionality and the specific provisions at issue, what are the most common 'tools' available to address this conflict? [see for instance, Dublin III Regulation (604/2013), in Art 28 (2)]

Example: National law imposes a fine somewhere between €1000 to 3000 (Euro). After scrutinizing the proportionality requirement, the judge reaches the conclusion that even the lesser amount is too high: Can the judge reduce the fine below the minimum threshold established by the law, in accordance with the principle of proportionality?

Example: National law defines a time span for the temporary suspension of the activities of a factory, polluting the environment to somewhere between 60 days and 6 months. The judge believes that the minimum closure period violates the principle of proportionality (too long!). Can the judge decrease the period of suspension below 60 days by applying the principle of proportionality?

Can the court do it directly or does it first have to ask for a preliminary reference from the CJEU? What are the criteria upon which the court has to make the decision?

Answer, environmental law: The Court cannot in principle reduce the sum of environmental sanction fees (fixed sums in governmental ordinances). If disproportionate, the decision will be quashed.

Example 2, I don't see that situation.-----Probably not.----------
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Does the principle of legality play a role in the decision of the court? If so, how? (the question is meant to address the problem of judicial discretion over the definition of remedies).

------Yes. No sanction without law.----------

(a.4) Assessing the role of dissuasiveness on sanctions: Penalties have to be dissuasive.

When assessing the dissuasiveness of a particular sanction what are the criteria to be used by the national court?

Example: National law defines a fine for a violation of food safety law, ranging between €1000 and 3000 (Euro). The judge believes that even the higher threshold is not sufficient to dissuade enterprises from producing/marketing dangerous foodstuff. Can she issue a fine higher than €3000 claiming that national law is not conforming to the principle of dissuasiveness? If not is there any remedy available to her to promote true deterrence.

Example: National law defines a time span for the temporary suspension of the activities of a factory polluting the environment to between 30 days and 6 months. The judge believes that even the longest period is too short and that it does not comply with the principle of dissuasiveness. Can the national judge increase the time of suspension beyond 6 months by applying the principle of dissuasiveness?

Can the court modify the sanction directly or does the judge first have to ask for a preliminary reference from the CJEU to assess the conflict of national law with the principle of dissuasiveness?

Does the principle of legality play a role in the decision of the court? If so, how? (the question is meant to address the problem of judicial discretion over the definition of remedies).

Answer, environmental law: We don't have any fixed time limits. After appeal of a decision from supervisory authority, we may order an operator to stop his activities if regarded needed. A penalty sum may be set in order to force the operator to follow the order. If a time-limit is set in an order, it is done regarding risks for health and environment, and which steps that have to be taken in order to close down.

--Example 1: The court can never decide on a higher fine than that prescribed in law according to the principle of legality.----------
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(a.5) Is the evaluation of compatibility between national law and EU principles, solved differently if the sanction is criminal in nature, as that term is understood in accordance with the case law of the CJEU and ECtHR? How does the '*ne bis in idem'* principle play out?

----yes. In the legislation (the environmental code and in a governmental ordinance on environmental sanction fees), there are provisions to avoid sanction fees and conditional fines combined with

punishment according to the criminal law.----------

----The same in tax law: You can´t combine sanction fees and criminal punishment in two different proceedings (but it would be possible in one proceeding—but then you have to change the law so that for instance the criminal court decides also on the administrative sanction as well as the criminal one or vice versa)----------
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(a.6) Is the evaluation of compatibility between national law and EU principles solved differently in different fields/areas of administrative law? For instance, is the principle of proportionality or that of deterrence implemented through a different test, in different fields or areas of such law? Please provide examples from your case law.

-----No----------

(a.7) When applying these principles in court, please quantify the relevance of each principle while defining remedies on the basis of the current case law (from 1 to 3)?

-----1. Proportionality----------
------2. Effectiveness

3. Deterrence----------

Part II

Choice of remedies and escalation of sanctions.

Choice of remedies

Q1. Where the national administrative court can select remedies within a predefined legislative menu, are the principles of effectiveness, proportionality and dissuasiveness considered and applied, or presumed to have been taken already into consideration by the legislator? (See Case C-54/07, *Feyn*[7], see also Geneva Convention, at Art 31(1)])

(a.) What are the essential elements to be taken into account in selecting the appropriate remedy?

-The decisions are to be taken by an authority in first instance. After appeal a court can use the same remedies as the authority.----------
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(b.) How do the principles affect the choice between remedies?[8] For example is the choice between a fine, an injunction, entry ban or deprivation of liberty influenced by proportionality and/or dissuasiveness? If so explain in what way (does the judge have to choose the least burdensome sanction first?). [See for instance, Recast Reception Directive (2013/33), at Art. 8 and Art. 9; Recast Qualification Directive (2011/95), at Art. 12].

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-----The judge has to examine the decision of the authority. It depends who is the appellant and what he or she wants. In the first instance it is always the private party that appeals the decision of the administration. In the second instance it might be the administrative authority who is appellant-but the court can never make a more severe decision than the authority made originally.----------
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(c.) Is there a difference in the choice of remedies if the infringement relates to the violation of a fundamental right as distinct from an ordinary right, which is not included in the Charter? What are the main sanctions used by the judge in order to justify the choice of remedies? (e.g. seriousness of the breach, impact on victim recidivism etc.)

--Again (see background) the frame of the case is set by the authority when making the appealed decision. The court can never be more severe than the authority – only milder.----------
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(d.) Does the identity of the defendant (whether the public administration or a private party, a firm or an individual) affect the choice of remedy by the national court? E.g, is the principle of proportionality applied differently when the State is a defendant? Is the principle of dissuasiveness applied differently in such circumstances?

------In the rare cases where the State is a defendant (acting like a private party), for example public procurement, the principle of proportionality is applied in the same way----------
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Escalation of remedies

Definition of escalation:

Escalation implies the possibility to use 'stronger' remedies when previous remedies have failed. (e.g: A polluter has been fined, but continues polluting so that an injunction to stop polluting or to suspend the activity, might follow the fine; an individual sanctioned for defamatory or discriminatory statements, or conduct related to employment continues this discriminatory conduct, see ACCEPT case).

Note: the distinction between two following forms of escalation for the same infringement:

a. Escalation within the same type of sanction;
b. Escalation through a combination of different sanctions.

Q2. Escalation within the same sanction

(a.) When there is a persistent infringement can the judge escalate the sanction in relation to the same violation, where the original sanction has not been complied with (e.g. increase the amount of the fine, transform an injunction that temporarily stops the activity into a permanent injunction closing down the activity, etc.)?

Environmental law:--------Yes, after appeal from neighbour or an NGO.----------

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-Other administrative law: Not on the court´s own initiative but the administration can apply for a stronger sanction, imposition of a conditional fine----------

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(b.) Can the escalating power be exercised by the court even without an explicit legal statutory provision? Does the power of the judge to escalate apply to every type of sanction in the same way? Or are there differences between fines, injunctions, declarations and other types of remedies?

The measures must be based on a legal provision – such are found in the Environmental Code. Fines under the criminal chapter of the Environmental Code are exclusive for ordinary courts.----------
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(c.) How do the principles of effectiveness, proportionality and dissuasiveness affect the possibility to escalate sanctions?

Example: In case of a third country national (TCN) staying illegally in the country, Directive 2008/115 provides for a detailed procedure for the removal of the TCN (in part. Arts 6-8). The different stages of removal vary depending on whether the TCN accepts to be voluntary returned or not, usually starting with the return decision and culminating with the removal, and possibly accompanied by an entry ban whose length is variable (Art. 11). What are the different stages in the removal procedure established by your country? Do these include coercive measures (e.g. custody or other deprivation of liberty measures)? Do they require gradual escalation? Is the escalation and the choice of the escalation determined by the principle of proportionality? For instance do courts use the principle of proportionality to check if there are alternative measures less coercive than deprivation of liberty ? What elements does the court take into account in the balancing exercise, e.g. risk of absconding, severe crime, terrorism related crimes. In case the national legislation does not define detention/deprivation of liberty as a last resort measure, how do the national courts approach this?

Example: In the case of a TCN illegally staying in the country who was taken in custody, being suspect of a severe crime, or terrorism related acts, do the stages in the removal procedure need to be strictly followed? Or can the administration/court, for reasons of effectiveness, bypass a step in the escalating measures?

-----If the administration has gone to court and asked for a conditional fine for a private party the court can look at all these principles-------But in these cases the law does not prescribe an exact sum – it is up to the administration to decide. Once the administration asked for a conditional fine of 10 million Euros in a telecommunication case in order to be deterrent. The court lowered the sum –substantially It is not possible for the court to escalate the sum----------
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Q3. Escalation between different sanctions within administrative enforcement

(a.) In case of a persistent infringement can the judge escalate the sanctions in relation to the same violation where the original sanction has not been complied with (e.g. move from a fine to an injunction)

-------Not on the judge´s own initiative----------

(b.) Can the escalating power be exercised even without an explicit legal statutory provision? Does the power of the judge to escalate apply to every sanction in the same way? Or is there a difference between fines, injunctions, declarations and other types of remedies?

----------No----------

(c.) How do the principles of effectiveness, proportionality and dissuasiveness affect this power?

----------The judge does not have this power----------

(d.) Can the Rapporteur provide examples of how proportionality has contributed in defining the sequence of remedies modifying that provided by the legal framework? When, for example, has the escalation been considered in violation of proportionality because "progressivity" of sanctions has been lacking?

----------The judge must decide within the legal framework Only if the judge wants to give a milder sanction it would be possible to refer to the principle of proportionality and not follow the law (in special situations)----------
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(e.) Can the Rapporteur provide examples of changes in legislation concerning administrative remedies, to comply with the principle of proportionality that have been favoured by judicial practices?

-------No----------

(f.) Can the Rapporteur provide examples of changes in legislation concerning administrative remedies to comply with the principle of dissuasiveness promoted by judicial practices?

----------No----------

Part III

Combination or heap of remedies within administrative enforcement.

In the previous section of this questionnaire choice of remedies by national courts has been analysed. In this section we would like the Rapporteur to examine the possibility (and limits) of combining various remedies within the same type of enforcement.

(Q.1) Can different remedies addressing the same infringement be combined/associated?

Example: a company produces food potentially dangerous to health. The danger materializes. Is it possible (at the same time) to fine the company, to suspend the activity and to order a change in the production process? Can these remedies and sanctions be combined in a single case scenario?

Example: a company does not comply with the permit delivered by authorities. Do authorities have different escalating remedies? Do authorities have to comply with a specific scale of measures or do they have a large margin of appreciation as regard the level of action (for instance by directly adopt a suspension of the permit or even the cancellation of the permit)?

Example: The Return Directive provides that an entry ban should automatically be issued with the removal order; the length of the entry ban has to be established by the national authorities, depending on the circumstances of the case. What are the circumstances commonly considered by the national courts in your country? (Art. 11(2) Return Directive - The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years. It may however exceed five years if the third-country national represents a serious threat to public policy, public security or national security.)

---1. Yes

2. Some legislation gives the authorities a margin of appreciation----------
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-3. I have no information regarding asylum cases----------

Example: What about in the case of discriminatory conduct of the employer related to the hiring or working environment based on sexual orientation, gender, age criteria?

---------Discrimination cases are dealt with in civil courts, not in administrative courts----------
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(Q.2) If remedies can be combined, how do the principles of effectiveness, proportionality, and dissuasiveness, influence the choice of 'if' and 'how', the court should combine such remedies?

(a.) How does effectiveness affect the combination of remedies? For example can an affirmative injunction to clean the site be combined with an order prohibiting the use of certain pollutants? Could injunctions combine suspension of permit and injunction to clean the site or a combination of measures including revision of the permit by judges ?

-Environmental law: ---------An authority can in the first instance make a combination of remedies as described.-If it does not act, after appeal, the court may decide on which remedies that are appropriate.--
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(b.) How does proportionality affect the combination of remedies? For example can administrative fines and court injunctions be imposed on the same occasion and/or sequentially in the same case? What are the limits to this type of approach on the basis of national current case law?

-Environmental law: -No, the conditional fines (injunctions) are imposed either by the authority or by court, after appeal.----------
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(c.) How does dissuasiveness affect the combination of remedies? What are the limits to this type of approach of the basis of national current case law?

Environmental law:------The remedies must be set in order to deter the operator from further violation – it should not be cheaper for the operator not to act.----------
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(Q.3) How does the criminal nature or aspect of the sanction affect the possibility to heap different remedies? Here we assume that the administrative court can also administer criminal sanctions.

Scenario 1: **the fine is criminal in nature but the injunction is not.** Is this type of combination between different remedies possible in your system? Do judges consider the three principles when determining what the combination should be? For example does the principle of proportionality apply differently if the two sanctions are administrative or if one is criminal and the other is administrative?

Scenario 2: **both fine and injunction are of a criminal nature.** Is it then possible for the judge to impose both sanctions? Does the principle *'ne bis in idem'* preclude the use of multiple sanctions? What are the limits regarding the principle of ne bis in idem (Art. 4 of Protocol No. 7 of the ECHR)?

-Answer: ---Fines are decided by prosecutor or by ordinary court. Conditional fines (injunctions) are in the first instance decided by the supervisory authority. If its measures are regarded too soft, after appeal a court may decide in the same manner (same limitations) as the authority.----------
---------Ne bis in idem is relevant as mentioned earlier. But conditional fines, combined with an order to stop an operation or to take certain precautionary measures, are set for the future but fines and environmental sanction fees are targeting what has happened and thus and in practice most often do not violate of the principle of ne bis in idem – not the same offence.----------
---In tax law it is no longer possible to have a criminal punishment and an administrative-sanction for the same action—if the sanction/punishment are imposed in different proceedings----------
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Part IV

Combining multiple enforcement mechanisms

In the previous part we consider the possibility of combining remedies within one type of enforcement (civil, criminal, administrative). We now move to a scenario where the potential combination concerns remedies and sanctions based on different enforcement mechanisms e.g. combining a criminal and administrative sanction, or public and private enforcement (for example in competition law injunctions and damages). The combination of different enforcement mechanisms generally presuppose the operations of different courts. However in some instance the same court can administer remedies based on different enforcement mechanisms.

(Q.1) Is it possible that the same infringement has different, multiple consequences in the field of criminal and administrative law? Can multiple enforcement mechanisms be combined? What are the limits, if any?

Environmental law:----In principle yes – criminal matters in ordinary court and administrative sanctions at the land and environment court. The ne bis in idem limits the possibilities to combine, irrespective if the combination is met in the same or in different courts.----------
---Other law: Weapon licence withdrawal can be combined with punishment for weapon crimes----------
-----Driving licence withdrawal can be combined with punishment for drunken driving for instance.-----
----Tax surcharge can be combined with jail or fines for tax crimes but not for identical actions----------
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(Q.2) A Does your legal order foresee a combination of remedies to be imposed by criminal courts and administrative remedies of a criminal nature, (as that term is understood according to the case law of the ECtHR) to be imposed by administrative courts?

B. How do the principles affect such combination? For example, does the principle of proportionality induce judges to use administrative rather than criminal sanctions? Fines rather than imprisonment?

-Environmental law:-----A. yes--- ----------
----------B. The principle of ne bis in idem is relevant. Also principles of proportionality are regarded in criminal court considering if there has been injunctions on costly investments to meet environmental requirements ordered by authority or by court after appeal. In administrative cases Ne bis in idem can be relevant otherwise if a person has been punished for an offence, in principle it does not

affect the area to act in order to rectify e.g. bad maintenance of water facilities or to clean up polluted areas. ----------

(Q.3) When the violation has already been established by a criminal court, does the administrative court have to take that into account, when defining the appropriate remedy? For example would the proportionality principle imply the reduction of a criminal fine if the activity has been suspended by an administrative injunction?

----------No, only when the principle ne bis in idem is affected----------

Part V

Legal innovation through judicial decision making in administrative law:

(Q.1) Have judges created new remedies whilst enforcing administrative law when implementing EU law? (See Unibet C-432/05[9])

-----No----------

(Q.2) When have the principles of effectiveness, proportionality and dissuasiveness been the drivers of judicial innovation?

(Q.3) What are the principle constraints of judicial innovation? Can the Reporter provide examples where courts have rejected a request for remedies on the grounds of one of these constraints?

----No.

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Case C-432/05, Unibet, ECLI:EU:C:2007:163, para. 77: "*[…] the principle of effective judicial protection of an individual's rights under Community law must be interpreted as requiring it to be possible in the legal order of a Member State for interim relief to be granted until the competent court has given a ruling on whether national provisions are compatible with Community law, where the grant of such relief is necessary to ensure the full effectiveness of the judgment to be given on the existence of such rights.*"