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Restorative justice in environmental law – conceptual and normative foundations*

Abstract: This article focuses on administrative law issues related to the possibility of handling administrative offenses in environmental protection using a restorative approach. First, it analyses selected substantive and procedural institutions of administrative law, theoretical issues of the approach, and examines the existing legal situation. It then formulates findings and, on this basis, evaluates the assumptions of the current legal framework in terms of more effective involvement of the perpetrator of an administrative offense in eliminating its negative consequences. Following the analysis, the article also deals with *de lege ferenda* proposals.

Keywords: restorative approach, administrative offences, environmental protection

Introduction

The concept of alternative dispute resolution is relatively broad. This broad definition is based on the term "alternative," which mainly reflects the fact that it is an alternative formalised process of authoritative decision-making by

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approved entities, most often courts or other public authorities. These procedures usually result in an agreement between the parties concerned, which is an alternative to a judicial decision. In such a case, the conflicting parties do not even bring their dispute before the court, or the agreement reached outside the court leads to an amicable conclusion of the proceedings that have already been initiated in court, but without a court decision on the merits of the dispute.[1]

1. Alternative (restorative) approach in Slovak criminal law

1.1. Characteristics of restorative justice

One of the distinctive features that characterise the current development of modern criminal law is the effort to rationalise the judiciary in order to lighten the burden on the courts, while also contributing to shortening the duration of criminal proceedings and reducing their financial intensity. At the same time, the ideals of restorative justice are increasingly being promoted in the criminal law of individual countries,[2] the premises of which are based on the conviction that, if the offender is to assume real personal and not merely formal criminal responsibility for what he or she has caused by their offence, the offender must first become fully aware of, acknowledge and understand his or her actions in their wider social and factual context, not just in their purely criminal consequences.[3] This is a revolutionary concept in its own way, innovating the process of resolving conflicts of persons' actions with legal norms, where active participation, reparation, reconciliation and reintegration take centre stage.[4]

"Restorative justice" has become a term that is widely used in the criminal justice system (and in other justice systems). It emphasises restoration of the victim and society, rather than punishment of the offender. Restorative justice aims not only to enhance justice and reduce crime but primarily to restore social

[1] P. Molitoris, *Konsenzuálne prostriedky alternatívneho riešenia sporov v správnom konaní*, University of Pavol Jozef Šafárik in Košice, Košice 2016, pp. 19, 20.

[2] For more details, see Š. Zeman, *Restoratívna justícia ako aktuálna výzva pre trestný systém a niektoré možnosti inšpirácie*, "Bulletin of Slovak Advocacy" 2015, no. 9, pp. 27–37.

[3] V. Černíková, *Sociální ochrana. Kriminologický pohled na terciární prevenci*, Police Academy of the Czech Republic, Prague 2005, p. 132.

[4] Š. Zeman, *Odklony ako nástroje restoratívnej justície v slovenskom trestnom práve a ich reálne uplatňovanie v praxi*, https://www.epi.sk/clanok-z-titulky/odklony-ako-nastroje-restorativnej-justicie-v-slovenskom-trestnom-prave-a-ich-realne-uplatnovanie-v-praxi-aktualita.htm [accessed 7 October 2025].

harmony and address the harm caused by unlawful acts. To see the goal solely in the reduction of crime impoverishes the mission of restorative justice. The latter equally seeks to offer practical advice on how citizens can lead a good life, with the aforementioned fight against injustice as the main goal. "Restorative process" is defined as any process in which the victim, the offender, or any other person or members of the community affected by the crime actively participate together in resolving issues arising from the crime. Often with the assistance of an impartial third party.[5]

The concept of restorative justice can thus be characterised as so-called restorative justice, which is based on the ideology that the offender should take not only formal criminal but also personal responsibility for his or her wrongful actions. It is therefore essential that the perpetrator of such an offence first realises, acknowledges and understands the consequences of his or her actions, not only in criminal terms, but above all in their social and wider factual context.[6] Following the informality of the restorative justice process as a response to the offence committed, "where the offender takes responsibility for his or her actions and actively participates in making amends, victim empowerment occurs and there is no stigmatisation of the offender, it is effective in terms of preventing reoffending."[7] The proponents of the restorative approach believe that if the accused is actively involved in dealing with the situation he or she has caused, he or she will be much more aware of the consequences of his or her wrongdoing than if he or she were merely a passive observer, and that the offender's active approach also brings greater satisfaction to the victims, who are thus not left to await the outcome of the criminal proceedings, in which they can only participate to a limited extent.[8] Hayes[9] states that restorative justice has positive effects on offenders and victims: "It is clear that restorative justice has many benefits for victims, offenders and the community. Victims benefit from active participation in the restorative process. Offenders benefit from opportunities for reparation and compensation. Society benefits from restorative justice negotiations that resolve its conflicts." In this sense, restorative justice has

[5] T. Strémy, L. Kurilovská, M. Vráblová, *Restoratívna justícia*, Leges, Prague 2015, pp. 15, 21.

[6] M. Čelár, D. Gibalová, *Restoratívna justícia a aplikácia odklonov v podmienkach SR z hľadiska teórie a praxe*, https://www.projustice.sk/bezpecnostne-vedy/restorativna-justicia-a-aplikacia-odklonov-v-podmienkach-SR-z-hladiska-teorie-a-praxe [accessed 6 October 2025].

[7] J. Hulmáková, *Kriminalita mládeže*, in: *Základy kriminologie a trestní politiky*, (eds.) J. Kuchta, H. Válková et al., C.H.Beck, Prague 2005, p. 291.

[8] Š. Zeman, *Odklony ako nástroje restoratívnej justície v slovenskom trestnom práve a ich reálne uplatňovanie v praxi*, https://www.epi.sk/clanok-z-titulky/odklony-ako-nastroje-restorativnej-justicie-v-slovenskom-trestnom-prave-a-ich-realne-uplatnovanie-v-praxi-aktualita.htm [accessed 7 October 2025].

[9] H. Hayes, *Reoffending and restorative justice*, in: *Handbook of Restorative Justice*, (eds.) G. Johnstone, D. W. Van Ness, Willan, Cullompton, UK 2007, p. 426.

achieved many goals (e.g., holding offenders accountable, which provides many opportunities to compensate victims not only symbolically but also materially, to encourage reconciliation between offenders, victims, and society).[10]

The most commonly used restorative justice programmes are: (a) Victim-offender Mediation ("Victim offender Mediation") – includes offender, victim, mediator, (b) Community and Family Group Conferences ("Family Group Conferences") – includes victim, offender, family members, friends, local political representatives, (c) Community Decision-Making Circles ("Peacemaking/ Sentencing Circles") – includes circular sessions of the victim, offender, their loved ones, and community members, also representatives of the judiciary, that is, judge, prosecutor, defence counsel.[11] Although these restorative justice goals can be achieved in a number of ways, the most comprehensive appears to be the gradual expansion of alternative procedures in criminal justice systems in each country's legal system and their effective application in practice.[12]

1.2. Alternative sentences in criminal law

In the Slovak Republic, there are several institutes which promote a restorative approach to punishing offenders. To these, it is necessary to add the substantive aspect of the regulation of alternative punishments in the criminal law.[13]

The issues of alternative sentencing and restorative justice are interrelated. Restorative justice requires the offender to look back critically at his or her past and to understand the consequences of his or her actions in order to sincerely regret the wrongs committed, with the aforementioned motivating the offender to at least mitigate the wrongs caused. The way in which the message of restorative justice is delivered will, of course, vary from case to case. Choosing the right kind of punishment is a difficult task, especially if it is to act as a deterrent in the future, must be fair, proportionate and, at the same time, have a positive impact on the offender. Alternative punishments are a milder form of punishment, particularly in cases of less serious offences, which can be thought of as negligent offences or intentional offences which, by their nature, do not rise to the level of seriousness that justifies the imposition of a custodial sentence.[14]

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[10] H. Kury, T. Strémy, *Restoratívna justícia a alternatívne tresty – nové výsledky*, in: *Restoratívna justícia a alternatívne tresty v teoretických súvislostiach*, (ed.) T. Strémy, Proceedings of the International Scientific Conference, Leges, Prague 2014, p. 31.

[11] T. Strémy, L. Kurilovská, M. Vráblová, *Restoratívna justícia*..., p. 16.

[12] Š. Zeman, *Odklony ako nástroje…*

[13] Act No. 300/2005 Coll. Criminal Code, as amended (hereinafter: Criminal Code).

[14] A. Bajčíková, *Ako alternatívne trestanie formuje súčasnú podobu restoratívnej justície*, in: *Aktuálne výzvy mediácie a restoratívnej justície na Slovensku*, (ed.) G. Paľa, University of Prešov, Prešov 2024, p. 6.

In this way, they are intended to contribute to reinforcing the principle that imprisonment should be used only as a last resort – *ultima ratio*.[15]

The idea of introducing alternative punishments into the system of sanctions in the Slovak criminal legislation has gained currency, especially in the period after 2000. It was quite naturally brought about by the necessity to deal with the increased number of convicts, the need to build new prisons to accommodate the increased number of convicts, the increase in the costs for the execution of sentences incurred by the state, the uneconomical nature of punishment, etc.[16] The answer to the question of which sentences are considered alternative varies in academic circles. Some authors advocate the so-called broad concept of the range of alternative punishments and include among them all punishments not connected with imprisonment, that is, suspended imprisonment, suspended imprisonment with probation supervision, punishment of forfeiture of property, house arrest, compulsory labour, expulsion, prohibition of activity, monetary punishment, and punishment of prohibition of participation in a public event.[17] Záhora includes among the alternative punishments the punishment of house arrest, the punishment of compulsory labour, the punishment of monetary punishment, the conditional suspension of the execution of the sentence, the conditional suspension of the execution of the sentence with probationary supervision.[18] Bajčíková is of the opinion that the alternative punishment should be truly expressed by the nature of the punishment in question, and that it should not be individual forms of imprisonment, which include conditional suspension of imprisonment and conditional suspension of imprisonment with probationary supervision. In the case of these penalties, they are not separate types of penalties, as they are merely different forms of implementation of a custodial sentence. Therefore, in the light of the above conditions, the sentence of house arrest, the sentence of compulsory labour and the sentence of a fine are considered alternative sentences.[19]

Although on the one hand, imprisonment fulfils the protective and repressive function of punishment, on the other hand, it has very little educational effect, particularly in the case of short-term custodial sentences, which do not provide sufficient time to re-educate the offender. At the same time, numerous negatives must always be taken into account when imposing this punishment (especially in the case of less serious offences and juveniles), such as criminalisation and

[15] D. Mašľanyová, E. Szabová et al., *Trestné právo hmotné. Všeobecná a osobitná časť*, Aleš Čeněk Publishing House, Plzeň 2021, p. 153.

[16] V. Čečot, N. Kánová, *Alternatívne tresty – jeden z moderných prostriedkov trestnej politiky demokratického štátu II*, in: *Restoratívna justícia a systém alternatívnych trestov*, (ed.) T. Strémy, Proceedings of the International Scientific Conference, Leges, Prague 2017, pp. 393, 394.

[17] Ibidem, pp. 398, 399.

[18] J. Záhora, *Pojem a účel trestu, systém trestov,* in: *Trestné právo hmotné. Všeobecná časť*, (eds.) J. Ivor et al., Iura Edition, Bratislava 2006, p. 356.

[19] A. Bajčíková, *Ako alternatívne trestanie*..., p. 7.

the associated criminal contagion, as well as the stigmatisation of the criminal label, which acts as an obstacle to the offender's social reintegration, or the destruction of positive links with family, friends and the home environment, the lack of consideration for the victim, and so on.[20] These emerging problems have prompted the criminal policy (not only) in the Slovak Republic to introduce alternative procedural procedures through the so-called alternative procedures in criminal proceedings, without the need to conduct procedurally, evidentially and time-consuming proceedings before the court, in the substantive area of enabling the substantive conditions for the imposition of alternative punishments as an option to imprisonment, respectively, the imposition of alternative sentences. Creating conditions for so-called alternatives to punishment that can ensure the offender's rehabilitation even without imposing a custodial sentence, thus reinforcing the principle of the auxiliary role of criminal repression.[21]

It should be stressed that the existence of such approaches does not in itself guarantee that alternative measures, whether of a substantive or procedural nature, will actually fulfil their purpose. The effective application of individual measures in the practice of law enforcement authorities and the courts must also take into account all the circumstances of the case, that is, the nature of the offence committed and its consequences, the motives and personality of the offender, his or her behaviour before, during and after the offence, the prospects for his or her future personal development, the legitimate interests of the victims and, last but not least, the interests of society itself.[22]

1.3. Alternative procedures in criminal law

There is no consensus in the literature on a single definition of alternative procedures (in Slovak original: *odklony*). For the purposes of this article, we will consider alternative procedure in the narrower sense of the word to be a *criminal procedural method that allows for an optional alternative procedure from the trial of a criminal case at the main hearing, usually by an out-of-court, less formal alternative procedure, as opposed to the usually demanding trial procedure, which, after the taking of evidence, ends with a decision of the court on guilt and punishment.* Under the Slovak Criminal Procedure Code[23] (hereinafter: CP), the following are among the alternative procedures:

[20] V. Černíková, *Sociální ochrana. Kriminologický pohled na terciární prevenci*, Police Academy of the Czech Republic, Prague 2005.

[21] D. Mašľanyová, Š. Zeman, *Nástroje restoratívnej justície v aplikačnej praxi SR – vývojové trendy a postrehy*, in: *Restoratívna justícia a systém alternatívnych trestov...*, pp. 125, 126.

[22] Ibidem.

[23] Act No. 301/2005 Coll. Criminal Procedure Code, as amended.

- conditional discontinuance of criminal prosecution (§ 216–217 of the Criminal Procedure Code),
- conditional discontinuance of prosecution of a cooperating defendant (§ 218 to 219 of the Criminal Procedure Code),
- conciliation (§ 220 to 227 of the Criminal Procedure Code),
- plea bargaining (§ 232 to 233 and 331 to 335 of the Criminal Procedure Code), and
- a criminal warrant (§ 353 to 357 of the Criminal Procedure Code).[24]

Ultimately, the aim of restorative justice is also to relieve the courts of unnecessary delays in court proceedings, which contributes both to reducing the overall length of criminal proceedings as a whole and to reducing their financial burden. Although these objectives can be achieved in various ways, we consider the use of alternative procedures to be the most effective solution.[25] This is an instrument based on the principles of restorative justice and its application is (as a rule) associated not only with the immediate or conditional discontinuance of criminal prosecution but also with a form of educational influence on the person against whom the criminal proceedings are conducted and against whom the alternative procedure is applied. In this context, it is important to note that alternative procedure does not constitute an element of decriminalisation, since the act remains a criminal offence, but an alternative way of dealing with the case and the waiver of a formal conviction are sufficient to achieve the preventive purpose of criminal law. The focus of their use should be on pre-trial proceedings in particular, where a more significant remedial or preventive effect can be achieved if the accused voluntarily accepts responsibility for his or her unlawful acts at an early stage of the criminal proceedings, which not only contributes to his or her successful re-socialisation, but to a large extent prevents, or at least minimises the risk of stigmatisation of the offender.[26] A higher level of application of alternative procedures already in the pre-trial stage of criminal proceedings should also benefit the entire criminal justice system, as the number of cases heard by the court would be reduced, which brings with it a relief of the burden on the

[24] Some authors, especially the Czech ones, such as Ščerba and others, do not classify plea agreements or penalty orders as deviations. They justify this mainly by the fact that both of these institutions also contain a statement of guilt and punishment and are in the nature of a condemnatory judgment, thus failing to meet the typical prerequisite of a deviation. They justify this mainly by the fact that both of these institutions also contain a verdict on guilt and punishment and are in the nature of a condemnatory judgment, thereby failing to meet the typical prerequisite for alternative procedure, which is to deviate from the typical course of criminal proceedings and therefore end differently than with a decision on guilt and the imposition of a punishment. See, for example, Š. Zeman, *Odklony ako nástroje…* [accessed 7 October 2025].

[25] M. Čelár, D. Gibalová, *Restoratívna justícia…* [accessed 6 October 2025].

[26] Š. Zeman, *Odklony ako nástroje…* [accessed 7 October 2025].

court system, a reduction in the time of hearing of individual cases and, last but not least, a non-negligible economic benefit, consisting in reducing the costs of criminal proceedings while increasing their efficiency.[27]

Thus, at the pre-trial stage, it is possible to decide, by way of the aforementioned alternative procedures, on a conditional discontinuance of the prosecution, on a conditional discontinuance of the prosecution of a cooperating defendant, on a conciliation, and thus to bring the case to a final conclusion without bringing it to trial. The plea bargain is also considered by Slovak criminal law theory, due to its simplified form, as an alternative procedure, but it is not an alternative to punishing the perpetrator of the crime, since its application results in the imposition of a sentence.[28]

The primary purpose of the concept of **conditional discontinuance of criminal prosecution** is to simplify the hearing of factually and legally simpler criminal cases before the court (if the proceedings are about an offence with a punishment rate of up to five years), or at the main hearing, which results in the acceleration and economy of the criminal proceedings.

Only the public prosecutor may conditionally discontinue the prosecution (at the request of the police officer or even without a request of the police officer), provided that the accused agrees to it and if the following conditions are cumulatively met:

a) the accused declares that he or she has committed the act for which he or she is being prosecuted and there are no reasonable doubts that his or her declaration was made freely, seriously and intelligibly;
b) the accused has made good the damage, if any, caused by the act, or has made an agreement with the victim for its compensation or has made other necessary arrangements for its compensation; and
c) having regard to the person of the accused, his or her previous life and the circumstances of the case, such a decision may be considered sufficient.[29]

The public prosecutor shall, in the order on conditional discontinuance of the prosecution, place the accused on probation for a period of one to five years, during which the accused shall be obliged to compensate the victim for the damage. In some cases, the prosecutor may, at his or her discretion, also impose reasonable restrictions and obligations on the accused, which the accused is obliged to comply with, as they are directed towards his or her rehabilitation to lead an orderly life. However, the prosecution may not be conditionally discontinued if death has been caused by the offence or if the prosecution is brought

[27] Ibidem.

[28] M. Žilinka, *K alternatívnym spôsobom vybavenia trestných vecí podľa zákona č. 301/2005 Z.z. Trestný poriadok*, https://www.epi.sk/odborny-clanok/K-alternativnym-sposobom-vybavenia-trestnych-veci-podla-zakona-c-301-2005-Zz-Trestny-poriadok.htm [accessed 25 September 2025].

[29] § 216 and further CPC.

for corruption or against a public official or a foreign public official for an offence related to the exercise of their powers and within the scope of their responsibility. From the above it can be stated that the decision to suspend the prosecution is based on two decisions of the prosecutor, namely, the decision to suspend the prosecution and the decision to certify it, if the accused, during the probationary period, has compensated the damage caused to the victim, has led an orderly life and, if other restrictions and obligations have been imposed on him or her, has also complied with them. It is a *sui generis* decision due to its temporary nature, since the issuance of this decision does not definitively end the criminal proceedings and does not decide on the guilt and punishment of the accused.[30]

In the context of **conditional discontinuance of prosecution of a cooperating defendant**,[31] the prosecutor may propose conditional discontinuance of prosecution of a defendant who has significantly contributed to the clarification of corruption, the offence of establishment, conspiracy and support of a criminal group or a criminal offence committed by an organised group or a criminal group or the offence of terrorism, or in the detection or conviction of the perpetrator of such an offence, and the interest of society in the clarification of such an offence clearly and demonstrably outweighs the interest of society and the victim in the prosecution of the accused for such an offence or for any other offence; the prosecution may not be conditionally discontinued in respect of an organiser, instigator or principal of an offence in the discovery of which he or she participated. The decision to discontinue the prosecution shall be taken by the pre-trial judge after presentation of the case file and hearing of the accused or other persons, as the case may be. In the order on conditional discontinuance of prosecution, the accused shall be placed on probation for a period of two to ten years.

The primary purpose of the institution of **conciliation** is to settle the relations between the entities which have been affected in any way by the commission of the offence, by removing all the harmful consequences on the part of the accused which have occurred in the commission of the offence, both in relation to the victim and to society as a whole. The application of this institution does not contravene Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention), which guarantees the right to due process, since the accused voluntarily waives that right by agreeing to a settlement.[32]

Only the public prosecutor may approve a conciliation and discontinue the prosecution in proceedings for an offence for which the law provides for a pen-

[30] M. Čelár, D. Gibalová, *Restoratívna justícia…* [accessed 6 October 2025].

[31] § 218 CPC.

[32] M. Prokeinová, in: *Trestný poriadok II. § 196–569*, (eds.) J. Čentéš, L. Kurilovská, I. Šimovček, E. Burda et al., C.H.Beck, Bratislava 2021, p. 231.

alty of imprisonment not exceeding five years, with the consent of the accused and the victim, if the accused:

a) declares that he or she has committed the act for which he or she is being prosecuted and there is no reasonable doubt that his or her declaration was made freely, seriously and definitely;
b) has made good the damage, if any, caused by the offence, has entered into an agreement with the victim or his attorney for the compensation of the damage or has made other arrangements for the compensation of the damage, or has otherwise remedied the damage caused by the offence;
c) deposits to the account of the court and, in the preparatory proceedings, to the account of the public prosecutor's office, a sum of money designated to the Ministry for the protection and support of victims of crime under a special law, and that sum of money is not manifestly disproportionate to the seriousness of the offence committed; and
d) having regard to the nature and gravity of the offence committed, the extent to which the public interest has been affected by the offence, the person of the accused and his or her personal and financial circumstances, considers such a method of decision to be sufficient.

As in the case of a conditional discontinuance of criminal proceedings, a settlement may not be approved if the offence has caused the death of a person, if a prosecution for corruption is pending, or if a public official or a foreign public official is prosecuted for an offence committed in connection with the exercise of his or her powers and within the scope of his or her responsibility.[33]

In view of the above conditions, a precondition for the approval of a conciliation is an agreement between the injured and the accused as a bilateral legal act, which must be concluded before the consent of the subjects concerned is given, that is, the accused and the injured can only agree to the approval of a conciliation after a conciliation agreement has been concluded between them. If the prosecutor does not approve the settlement despite the fact that the accused has declared that he has committed the offence, this declaration cannot be considered as a confession or evidence in the subsequent proceedings, since his declaration only concerned the intended procedure of approving the settlement. At the same time, it is the duty of the prosecutor, assuming that the conciliation is not approved, to return to the accused the sum of money which was intended for the protection and support of the victims of crime.[34]

In practice, however, the above-mentioned institutes are rarely used. For example, *Správa generálneho prokurátora Slovenskej republiky o činnosti prokuratúry v roku 2020 a zistenia o stave zákonnosti v Slovenskej republike* (Report of the Prosecutor General of the Slovak Republic on the activities of the

[33] § 220 CPC.

[34] M. Čelár, D. Gibalová, *Restoratívna justícia…* [accessed 6 October 2025].

prosecutor's office in 2020 and observations on the state of legality in the Slovak Republic) (hereinafter: Report of the Prosecutor General) shows that in 2020 indictments were filed against 26,206 accused persons, while in the same period in 2020 conditional discontinuance of criminal prosecution under section 216 of the Criminal Procedure Code was imposed against 1,129 accused persons, which is 164 fewer accused persons than in 2019. The approval of a conciliation and the subsequent discontinuation of prosecution under Article 220 of the Criminal Procedure Code occurred in 2020 against 427 defendants, which is 64 fewer defendants than in 2019.[35] Prokeinová sees two reasons for this state of affairs with regard to conciliation: (I) the very nature of the institution – in addition to the accused, the consent of the victim is also required. Some victims resolutely refuse to agree to enter into a conciliation with the accused. In other cases, there are complex negotiations to reach an agreement between the accused and the injured party, the outcome of which may be favourable or unfavourable and no agreement is reached. To this end, an experienced probation and mediation officer plays a key role in order to increase the chances of a successful agreement between the accused and the victim. (II) In addition to compensation, the accused must deposit a sum of money designated to the Ministry for the protection and support of victims of crime under a special law.[36]

If the results of the investigation or summary investigation sufficiently justify the conclusion that the act is a criminal offence and was committed by the accused who has confessed to the commission of the act, has pleaded guilty and the evidence points to the truth of his or her confession, the public prosecutor may initiate **proceedings for a plea bargain** at the initiative of the accused or even without such an initiative. The prosecutor shall summon the accused and the injured party who has duly and timely filed a claim for compensation to the plea-bargaining procedure, and the law imposes a duty on the prosecutor to take care to protect the interests of the injured party even during his or her possible absence. If an agreement on guilt, punishment and other terms has been reached, the prosecutor shall submit to the court, within the scope of the agreement, a petition for approval of the plea agreement. If there is no agreement on compensation for damages, the public prosecutor shall draw the court's attention to this fact in the application for approval of the plea agreement and suggest that the court refer the injured party to a civil trial or other proceedings to claim compensation for damages or part thereof. If no plea agreement is reached, the public prosecutor shall make an entry to that effect in the case file. If, in the course of the plea bargaining procedure, the accused pleads guilty to the offence in its entirety but there is no plea bargain, the public

[35] *Správa generálneho prokurátora Slovenskej republiky o činnosti prokuratúry v roku 2020 a zistenia o stave zákonnosti v Slovenskej republike*, in: M. Čelár, D. Gibalová, *Restoratívna justícia…* [accessed 6 October 2025].

[36] M. Prokeinová, in: *Trestný poriadok II.…*, p. 241.

prosecutor shall file an indictment stating the offence admitted by the accused, its legal qualification, the plea of guilty and shall request the court to hold a main hearing and to decide on the sentence and other statements which have a basis in the guilty verdict. If, in the plea bargaining procedure, the accused pleads guilty only in part, the public prosecutor shall file an indictment stating the act admitted by the accused, its legal qualification and the plea of guilty to that extent, as well as the act and its legal qualification, which the accused has not admitted, and shall request the court to conduct the main hearing to the extent to which the accused has not admitted the commission of the act and to the further extent necessary, and to decide on guilt, punishment and other statements which have a basis in the guilty verdict. If the accused and the injured party have concluded an agreement on the guilt and punishment or on other sentences, the public prosecutor shall submit to the court a motion for approval of the agreement.

The draft plea agreement can be characterised as a special decision of the public prosecutor, which only the public prosecutor is entitled to submit to the court for approval if an agreement on guilt and punishment or other sentences has been reached at the end of the investigation or summary investigation. It can be concluded from the above that, although only the court can approve a plea agreement, the prosecutor ultimately has the decisive role in concluding it. The plea agreement procedure consists of two stages, namely the proceedings before the public prosecutor and the proceedings before the court.[37] Its aim is to contribute to simplifying, streamlining and shortening the duration of criminal proceedings, while at the same time relieving the courts of the need to hear criminal cases in the main hearing. Compared to conditional discontinuance of prosecution and amicable settlement, the institution of plea bargaining is the most frequently used, although in recent years there has been a decline in its use. The plea bargain has an advantage over the aforementioned alternative procedures because it is not limited to offences, but applies to all offences regulated in a special part of the Criminal Code.[38] In practice, however, the conclusion of a plea and sentence agreement under section 232 of the Criminal Procedure Code occurred in 2020 with only 1,356 defendants, which is 510 fewer defendants than in 2019.[39]

Finally, a **criminal warrant** may be issued by a single judge without a trial at the main hearing if the facts are reliably established by the evidence taken. A criminal warrant may impose:

a) a sentence of imprisonment of up to three years,
b) a sentence of prohibition of activity,

[37] M. Čelár, D. Gibalová, *Restoratívna justícia…* [accessed 6 October 2025].
[38] M. Prokeinová, in: *Trestný poriadok II.…*, pp. 276–286.
[39] *Správa generálneho prokurátora Slovenskej republiky…*

c) a fine,
d) a sentence of forfeiture of property,
e) a sentence of compulsory labour if the accused agrees to it,
f) a sentence of house arrest,
g) a sentence of expulsion,
h) a sentence of prohibition of residence,
i) a sentence of prohibition of participation in public events,
j) a measure of protection.[40]

The penalty of compulsory labour may be imposed by a criminal warrant only after a prior report has been requested from the probation and mediation officer on the possibilities of imposing and properly executing this penalty and the opinion of the accused on the imposition of this penalty. The penalty of house arrest may be imposed by a criminal order only after a prior request for a report from the probation and mediation officer on the possibilities of imposing and duly executing this penalty, including the opinion of the accused on the imposition of this penalty and an examination of the conditions for controlling the execution of this penalty by technical means.

A criminal warrant is a simplified form of a criminal conviction and is terminologically classified in the literature as a specific alternative procedure in criminal proceedings. Its main purpose is to contribute to the simplification and acceleration of criminal proceedings. Simplification results in particular from the manner of handling a criminal case outside the main hearing, which consists in the fact that the court does not decide on the basis of the taking of evidence at the main hearing, but only on the basis of the case file submitted to it together with the prosecutor's indictment, and it is issued *ex cathedra*, that is, without hearing the case at the main hearing and without the parties' participation. Unlike other alternative procedures, this one does not apply in the preparatory proceedings and is not decided by the public prosecutor. Nor does its procedural procedure correspond comparatively to other alternative procedures, nor does it correspond to the general definition of alternative procedure, according to which an alternative procedure is an alternative procedure from the typical course of criminal proceedings, which may, as a rule, result in the court's decision on the guilt of the accused. Its purpose is an attempt to rationalise the criminal justice system, taking into account the overall workload of judges due to the increase in crime, and an attempt to make the administration of criminal justice more efficient, in cases that are factually and legally simpler. This is particularly the case for petty crime, which allows the judiciary to concentrate on serious crime.[41]

[40] § 353 CPC.

[41] D. Hamranová, in: *Trestný poriadok II. § 196–569*, (eds.) J. Čentéš, L. Kurilovská, I. Šimovček, E. Burda et al., C.H.Beck, Bratislava 2021, pp. 681–694.

2. Restorative justice in administrative law

From all the definitions and conceptual characteristics of restorative justice discussed above, it is clear that the concept of litigation is more typical of the field of adjudication where the parties to a dispute are entities with conflicting claims to rights, interests or duties and the impartial arbiter is a judge. The question of whether it is also possible to find fulfilment of the identifying features of a dispute in the context of the exercise of public administration has also been addressed by experts. According to Molitoris, the element of controversy is, in certain circumstances, an integral part of decision-making processes in public administration. In order to take account of the element of controversy in the exercise of public administration, controversy will, in principle, only need to be taken into account in the design of decision-making processes. In fact, controversy has a place only where the parties to a dispute formulate their opposing positions on the basis of their own decision, conditional on a range of factors and information which they have taken into account in their decision-making. If there is no objective alternative to the solution adopted and, for example, there can be no alternative to the wording of a piece of legislation, it is difficult to consider the scope for dispute. In the context of public administration, the legal basis for accessible dispute resolution is a *condictio sine qua non*, taking into account the principle of legality and the constitutional limitations of Article 2(2) of the Constitution of the Slovak Republic.[42] Thus, disputes in the field of public administration will generally be the result of disagreement with such an action or decision taken or intended to be taken by a public administration entity which, in the subjective opinion of the dissatisfied party, has violated or may violate the rights, duties or interests of specifically identified entities or the public. The potential for dispute in the broadest sense (i.e., notwithstanding the need for a formalised dispute procedure) can be identified in virtually any of the above decision-making processes.[43]

We see scope for the application of elements of alternative or restorative justice, for example, in the area of administrative punishment. Comparable reasoning appears in Slovak doctrinal discussions on environmental administrative enforcement, where Michalovič and Jenčo underline that efficient accountability mechanisms must go hand in hand with preventive and remedial functions of environmental administration, not merely with punitive control.[44] We also base the above on the decision-making of the European Court for Human Rights,

[42] Act No. 460/1992 Coll. Constitution of the Slovak Republic.

[43] P. Molitoris, *Konsenzuálne prostriedky...*, pp. 29, 30.

[44] M. Michalovič, J. Jenčo, *Koncepcia boja proti environmentálnej protiprávnej činnosti ako základný kameň revízie starostlivosti o životné prostredie v podmienkach SR*, in: *Bratislavské právnické fórum 2022: Increasing the effectiveness of combating illegal activities in the field*

according to which Article 6(1) of the Convention includes the notion of any accusation of a criminal nature, that is, not only criminal accusations in criminal proceedings, but also, under certain conditions, in administrative criminal proceedings (imposing liability for an administrative offence). Accordingly, the guarantee of rights or the right to a fair trial will also apply to the hearing of administrative offences, and thus rights typical and known from criminal proceedings will also be applied and included in administrative proceedings.

In view of the nature of criminal proceedings and the specific nature of the penalties imposed for criminal offences, the types of procedural derogations and the extent to which they are used in the field of administrative penalties will be narrower. It should be noted that there are significant differences between administrative and judicial punishment. They stem primarily from the different functions of administrative and criminal liability, as well as the functions of administrative law and criminal law as legal branches of the Slovak legal order. The application of liability for administrative offences is part of the exercise of public administration. While the main function of criminal law, in particular criminal justice, is to adjudicate guilt and punishment for criminal offences, public administration manages and administers public affairs, which encompasses many diverse activities. Judicial punishment primarily seeks redress in conjunction with direct or threatened punishment, whereas administrative punishment primarily seeks redress in a different way, and punishment is to be applied only in the alternative.[45] It is precisely the fact that the public administration's activity is primarily of a different nature than criminal one that should result in the widest possible application of such procedural procedures that allow for a "painless" resolution of the citizen's conflict with the law, minimising the harm to the rights of both the subjects affected by the violation of the law and the perpetrator of the administrative offence.[46]

According to Horvat, administrative law, as a special law of public administration, is that branch of law for which public service is typical. Public administration is often characterised as providing a service to the public. This leads to the clear conclusion that if criminal law regulates institutions that can be included under restorative justice, and if public administration is a public service, then administrative law should also deal with these institutions.[47]

of environmental care, (eds.) M. Durec Kahounová, V. Sokolová, Comenius University in Bratislava, Bratislava 2022, pp. 12–24.

[45] Z. Hamuľáková, *Správne delikty právnických osôb – vybrané inštitúty a problémy*, Wolters Kluwer, Bratislava 2017, p. 166.

[46] P. Molitoris, *Konsenzuálne prostriedky...*, p. 106.

[47] M. Horvat, *Zamyslenie sa nad restoratívnou spravodlivosťou/justíciou a možnosťami jej využitia v správnom práve*, in: *Súčasné uplatňovanie prvkov restoratívnej justície*, (eds.) J. Medelský et al., Eurokódex, Žilina 2013, p. 33.

3. Substantive aspects of administrative liability in environmental care

3.1. Legal regulation of the obligations of legal entities and natural persons

The Slovak legislation on the imposition of liability for administrative offences in environmental care is to be found in a number of pieces of legislation. It consists of both substantive and procedural legislation.

The system of statutory environmental protection legislation is based on a distinction between general and sectoral legislation. This structural distinction reflects what Michalovič and Maslen describe as one of the defining features of Slovak environmental law, which supports its recognition as an autonomous branch – the existence of a general framework (*lex generalis*) complemented by component acts (*lex specialis*), ensuring coherence across environmental governance.[48] The general basis and *lex generalis* is Act No. 17/1992 Coll. on the Environment[49] (hereinafter: the Environment Act). Its importance lies primarily in its subsidiary application in the application of specific laws which are *lex specialis* to it. These laws are also referred to as component laws because they are aimed at protecting a particular component of the environment. According to section 2 of the Environment Act, its components are, in particular, air, water, rocks, soil and organisms.

Lex generalis, in addition to defining the basic concepts and principles, also determines the obligations of legal entities and natural persons in the protection of the environment.[50] Within the provisions on liability for breach of obligations in environmental protection, it regulates, in § 28 and § 29, sanctions or other measures for environmental damage and, in § 30, the power of state administration authorities to decide on interim measures and, at the same time, to propose remedial measures. The *lex specialis*, in terms of the substantive regulation of the sanctioning of administrative offences, mainly regulates the facts of administrative offences. This includes a considerable number of laws, such as:

– Act No. 79/2015 Coll. on Waste (hereinafter: Waste Act),
– Act No. 543/2002 Coll. on Nature and Landscape Protection, as amended,
– Act No. 220/2004 Coll. on the protection and use of agricultural land and amending Act No. 245/2003 Coll. on integrated pollution prevention and control and on amending and supplementing certain acts,

[48] M. Michalovič, M. Maslen, *Advocating for environmental law – grounds for its status as an independent branch of law in Slovak legal doctrine*, "Prawne Problemy Górnictwa i Ochrony Środowiska" 2024, no. 2, pp. 1–26, https://doi.org/10.31261/PPGOS.2024.02.06.

[49] S. Košičiarová, *Právo životného prostredia. Všeobecná časť,* Aleš Čeněk Publishing House, Pilsen 2022, p. 105.

[50] M. Vrabko et al., *Environmentálne právo*, C.H.Beck, Bratislava 2025, p. 73.

– Act No. 364/2004 Coll. on Water and on amending Act No. 372/1990 Coll. of the Slovak National Council on offences, as amended (Water Act), as amended (hereinafter: Water Act),
– Act No. 15/2005 Coll. on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein and on Amendments and Additions to Certain Acts, as amended,
– Act No. 326/2005 Coll. on forests, as amended,
– Act No. 274/2009 Coll. on hunting and on amending and supplementing certain acts, as amended,
– Act No. 305/2018 Coll. on Protected Areas of Natural Water Accumulation and on Amendments and Additions to Certain Acts, as amended,
– Act No. 216/2018 Coll. on Fisheries and on the amendment of Act No. 455/1991 Coll. on Trade Enterprise (Trade Licensing Act), as amended,
– Act No. 146/2023 Coll. on Air Protection and on Amendments and Additions to Certain Acts, as amended (hereinafter: Air Act).

These and several other laws constitute a specific substantive and, to a minimum extent, procedural framework for the enforcement of administrative liability in environmental care, which are offences and administrative offences of legal persons and natural persons authorised to conduct business.

Offences are legally defined in Act No. 372/1990 Coll. on offences, as amended (hereinafter: the Act on Offences). An offence is a culpable act which violates or endangers the interest of society and is expressly designated as an offence in this or another Act, unless it is another administrative offence punishable under special legislation or a criminal offence.[51] Thus, an offence must involve the culpable conduct of a natural person, the conduct must fulfil a material characteristic, that is, it must violate or endanger the interest of society, and it must be expressly designated as an offence in the Act on Offences or in another law. The specific facts of offences are laid down in a specific part of the Act on Offences and are also regulated by specific laws. Act on Offences regulates only one type of offence in the field of environmental protection, namely under the provisions of section 45. Its factual essence is formulated in such a way that this offence is committed by a person who, by violating generally binding legal regulations on environmental protection in a manner other than that resulting from the provisions of sections 21 to 44 of the Act on Offences, worsens the environment. It is therefore applicable in the alternative in cases where the act cannot be subsumed under the facts of an offence under a special provision. It can thus be described as residual or residual.

Administrative offences committed by legal persons and natural persons authorised to conduct a business constitute an administrative sanction based on strict liability, that is, irrespective of fault. As stated by Košičiarová, in the case

[51] Provisions of section 2(1) of the Act on Offences.

of the administrative offences in question, "violations of the law by statutory bodies, employees or members are attributed to the legal entity as a whole, and the natural person engaged in business is the subject of the administrative offence, regardless of whether he or she or his or her employee has violated the obligation."[52] As we have already mentioned, their legal regulation is part of several legal acts compared to offences.

3.2. Penalties for offences and penalties for administrative offences committed by legal persons and natural persons engaged in business

A sanction is a consequence of both an offence and other administrative offences that is intended to deter the offender from further unlawful behaviour. It is a means of public-power coercion imposed by the administrative authority in administrative proceedings under the law.

According to Article 11 Act on Offences, the penalties for offences are: reprimand, fine, prohibition of activity, forfeiture of property. The Act on Offences, as a unifying code, regulates not only the different types of sanctions for offences, but also the rules for their imposition. The *lex specialis* regulating the elements of the facts of offences may also regulate the sanctions in relation to them in a special way. The sanction for offences and penalties for administrative offences committed by legal persons and natural persons engaged in business (hybrid administrative offences) is primarily a pecuniary penalty. Its amount for specific administrative offences and the specific rules for their imposition are governed by the *lex specialis*, since there is no substantive code governing the different types of penalties for hybrid administrative offences. Therefore, the type and amount of the sanction depends on what the provision of the specific law provides for. In addition to a fine, the special laws provide, in rare cases, for a prohibition of an activity, forfeiture of an object as a sanction (the aim is to prevent the object from being used again to commit an administrative offence and to make it more difficult for the offender to commit such an act again), a reprimand or a warning of a breach of the law, or publication of the decision on the administrative offence.[53] They may also regulate, for example, the rules on the imposition of fines for recidivism. As stated by Košičiarová, "a public administration body may have a specifically defined power in the law to impose a further fine for an administrative offence if a legal entity or a natural person entrepreneur has repeatedly breached an obligation (the same or a different one) within a statutory time limit. In these cases, the authority penalises the so-called recidivism. This is a situation where the same offender

[52] S. Košičiarová, *Právo životného prostredia*..., p. 294.

[53] M. Vrabko et al., *Environmentálne právo*..., p. 268.

commits an administrative offence under the same law again after the public authority has finally ruled on his or her previous administrative offence. The upper limit of the additional fine provided for by law is in principle higher, as the legislator considers recidivism to be a more serious offence."[54]

The basic objective of the legislation on administrative offences is to establish liability for the unlawful acts committed. The public administration thus has an important role to play, namely, to protect the interests of society. Legal theory uses the term *administrative punishment* to refer to the process of imposing sanctions and their enforcement by public authorities. Its social function is primarily repression, but it also has a protective and preventive function.[55] In the field of environmental protection, however, its most important task is to protect the environment from pollution or damage and to prevent the possible repetition of such conduct and the causing of ecological damage and harm under special regulations.

The repressive character of administrative punishment is exercised in relation to the perpetrator of the administrative offence by imposing a fair sanction.[56] On the basis of recent findings by independent inspection bodies, a penalty system based on fines appears to be unworkable. There are several reasons for this. One of them is the rapid development of legislation in the field of imposing liability for administrative offences against the environment and the frequent amendments to a considerable number of laws. These component laws, each protecting a specific element of the environment, contain numerous provisions defining administrative and environmental offences.[57] However, the findings of the Supreme Audit Office also point to a distortion in the performance of the SIŽP's activities due to the large number of proceedings on a number of complaints with minimal or no impact on the environment.[58] The evaluation of the

[54] S. Košičiarová, *Právo životného prostredia…*, p. 296.

[55] M. Vrabko et al., *Správne právo hmotné. Všeobecná časť*, C.H.Beck, Bratislava 2025, p. 200.

[56] Z. Hamuľáková, M. Horvat, *Základy správneho práva trestného*, Wolters Kluwer, Bratislava 2019, p. 17.

[57] For example, Act No. 79/2015 Coll. on Waste has amended 27 acts and regulates 30 offences in Article 115 and hundreds of provisions in Article 117 regulating the obligations, in case of violation of which the administrative authorities obligatorily impose a financial penalty for administrative offences on legal entities and natural persons engaged in business.

[58] Správa o výsledku kontroly 2024. Najvyššieho kontrolného úradu Slovenskej republiky: Prevencia znečisťovania životného prostredia a presadzovanie environmentálneho práva, p. 2. Available at the website of the Supreme Audit Office of the Slovak Republic (Najvyšší kontrolný úrad Slovenskej republiky), https://www.nku.gov.sk/sk/spravy-o-vysledkoch-kontrol-od-roku-2012?p_p_id=kisdataPortlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_r_p_mvcRenderCommandName=%2F&p_r_p_mvcRenderCommandName=%2F&_kisdataPortlet_q=&_kisdataPortlet_orderByCol=kontrolnaAkcia.evidencneCisloKA.keyword&_kisdataPortlet_orderByType=ASC&_kisdataPortlet_resetCur=-false&_kisdataPortlet_delta=20&_kisdataPortlet_cur=26 [accessed 30 September 2025].

state of legality in the procedure and decision-making in the field of illegal waste disposal by the General Prosecutor's Office[59] shows that administrative authorities (municipalities, cities, environmental protection departments of district offices), among other shortcomings in their decision-making activities, impose minimal fines for offences and other administrative offences. This practice does not motivate offenders to comply with their legal obligations, as it is more financially advantageous for them to pay a relatively small fine than to ensure often costly measures in compliance with the law.[60]

However, in terms of the legal regulation of the level of the upper limit of fines and the criteria for their imposition, fines are set in most laws in a manner proportionate to the nature of the breach of legal obligations and their consequences. It can be concluded that they meet the requirements of the protection of an important public interest. An exception is made for monetary fines for offences, where the level set does not correspond to the requirement of effective protection[61] against unlawful activity.

In the case of hybrid administrative offences, fines in excess of 50,000 EUR or 100,000 EUR are no exception.[62]

4. Procedural aspect of administrative liability in environmental care

4.1. Administrative proceedings prior to the initiation of administrative offences proceeding

Public authorities are obliged to ensure compliance with legislation and the fulfilment of obligations arising from it. This obligation is carried out through administrative supervision procedures and administrative proceedings for administrative offences.

[59] Evaluation of the state of legality in the procedure and decision-making of public administration bodies in the field of illegal waste placement according to Act No. 79/2015 Coll. on Waste and the state of legality in the procedure of law enforcement authorities in the case of illegal waste management, https://www.genpro.gov.sk/fileadmin/Ine_dokumenty/Zhodnotenie_o_odpadoch_2024.pdf [accessed 28 September 2025].

[60] Z. Hamuľáková, *Správne delikty právnických osôb*..., p. 224.

[61] According to Article 45 of the Act on Offences a fine of up to 99 EUR may be imposed for an offence in the field of environmental protection.

[62] For example, under section 117 of the Waste Act, a fine of up to 350,000 EUR may be imposed, and under section 75(9) of the Water Act, a fine of up to 165,000 EUR may be imposed.

Administrative supervision is a specific type of control activity of public administration bodies. It is a procedure by which the actual situation is ascertained and subsequently compared with the situation required by law or obligations imposed by decisions on an administered entity. If infringements of legal provisions have been detected in the course of administrative supervision, the public administration body shall indicate them in the report on the result of the inspection. Although, in terms of substance, the implementation of administrative supervision in the field of environmental protection is regulated differently by specific regulations, in general, corrective measures or punitive measures may be imposed for breaches of legal provisions.

Corrective measures are aimed at protecting the environment and therefore the general remedy is the power of the administrative supervisory authority to require the elimination of identified deficiencies, for example:
– by imposing an obligation to refrain from a certain practice,
– ordering the closure or suspension of an operation,
– by withdrawing the authorisation.[63]

Sanctioning measures, unlike corrective measures, are intended to punish the unlawful conduct detected. Sanctioning measures are fines for infringements of obligations of a substantive nature arising from generally binding legislation or decisions.

4.2. Administrative proceedings for administrative offences

From a procedural point of view, the procedure for the sanctioning of both offences and hybrid administrative offences is of the nature of an administrative procedure. When deciding on Offences, the procedure of the administrative authorities is regulated by Act on Offences and, in the alternative, by Act No. 71/1967 Coll. on administrative procedure (hereinafter: the Administrative Procedure Code).[64] The Administrative Procedure Code is *lex generalis* in administrative proceedings in relation to special regulations. Therefore, in administrative proceedings concerning administrative offences other than offences, the Administrative Procedure Code is generally followed and the *lex specialis* may regulate the specifics (or deviations) of the procedure for their sanction. Administrative proceedings are thus a procedure in which administrative authorities impose administrative liability on administered natural persons and legal persons who have committed an unlawful act by violating social relations protected by administrative law, that is, by committing an adminis-

[63] S. Košičiarová, *Právo životného prostredia*..., p. 148.

[64] M. Vrabko et al., *Správne právo procesné. Všeobecná časť*, C.H.Beck, Bratislava 2019, p. 93.

trative offence. It results in a decision which has the character of an individual administrative act. In administrative proceedings, the administrative authorities are obliged, in accordance with the principle of the legality of their procedure, to carry out a number of procedural acts according to the circumstances of the facts. The formalised procedure obliges the administrative authorities to carry out, for example, acts relating to the establishment of the facts, including acts of taking evidence, responding to the objections and motions of the parties to the proceedings, carrying out a review of the decision in the case, etc. Among the alternative procedures in the framework of offences and other administrative offences proceedings, one may include, in particular, conciliation, block proceedings, and order proceedings.

Several administrators include among the significant alternative procedures in administrative offence proceedings, in particular, conciliation pursuant to Article 48 of the Administrative Procedure Code. Already in its basic rules,[65] the Administrative Procedure Code calls on the administrative authority to always try to conciliate the matter between the parties, provided that the nature of the case permits it. Conciliation can only be concluded in the case of contentious proceedings where the parties to the proceedings have conflicting interests in the outcome of the administrative proceedings. This presupposes the existence of at least two parties to the proceedings, and a settlement cannot be concluded between the parties to the proceedings and the administrative authority. In the decision, the administrative authority does not assess the subject matter of the proceedings itself, since this has already been agreed between the parties and the administrative authority cannot interfere with that agreement. It is for the administrative authority to assess whether the content of the settlement is not contrary to the law or the general interest. The content of the approved settlement shall then form part of the operative part of the decision approving the settlement.[66]

The Act on Offences contains a restorative element, particularly in its section 78, according to which, in the case of a libel offence, the district authority shall attempt to reconcile the offended party and the accused of the offence. The Act on Offences lists exhaustively which offences are eligible for conciliation. These are so-called motion offences,[67] which are not heard by the district office *ex officio*, but where a motion by the offended person, or his/her legal representative or guardian, is required to initiate proceedings. This is a concretisation of the principle of conciliation under Article 3(4) of the Administrative Procedure Code. Also in this case, the conciliation is not concluded between the party to the proceedings and the administrative authority, the administrative authority does

[65] Article 3(4) of the Administrative Procedure Code regulates the principle of conciliation.
[66] S. Košičiarová, *Správny poriadok. Komentár*, Heuréka, Šamorín 2004, p. 208.
[67] Provision of Article 68(1) of the Act on Offences.

not interfere in the content of the conciliation, but only assesses the fulfilment of the conditions for its conclusion. A conciliation may be concluded at any stage of the infringement proceedings. A conciliation under the Act on Offences does not have the character of a conciliation under the Administrative Procedure Code. It is not decided by way of a decision, but by way of an agreement between the parties to the proceedings, the result of which is that the administrative authority compulsorily discontinues the infringement proceedings. While in the case of a conciliation under the Administrative Procedure Code, the administrative authority does not have the *expressis verbis* status of a body which is obliged to propose to the parties to the proceedings to conclude a conciliation, under the Act on Offences, it must be such an initiating body.[68]

It is therefore clear that administrative law also provides for a number of important institutes which, by their nature, can be partly described as institutes of restorative justice. According to Horvat, restorative justice could find its application particularly in offences against property. However, its use in administrative offences committed by legal persons whose activities may significantly affect the life of the community (e.g., by negatively affecting the environment) could also be interesting.[69]

Block proceedings and order proceedings are summary forms of administrative offence proceedings. They are provided for in § 84–§ 87 of the Act on Offences and, in addition, in a number of special regulations and for proceedings for other administrative offences. In principle, both types of these proceedings are shortened by the evidence phase and thus allow for a quick, almost informal, decision on the case. In these summary proceedings, the administrative authority does not, for example, summon the accused of the administrative offence or other parties and subjects of the proceedings to an oral hearing, does not take evidence and, in the case of block proceedings, does not issue a written decision (in the case of order proceedings, it issues an order with the formalities of a decision).

Both forms of summary proceedings are also used in proceedings for administrative offences in environmental care, according to some special regulations, for instance, injunction proceedings according to section 55(16) of the Air Act. Extension to other component laws may be considered according to the specificities in a particular field of environmental protection.[70]

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[68] M. Srebalová et al., *Zákon o priestupkoch. Komentár*, C.H.Beck, Bratislava 2015, pp. 395–397; M. Horvat, *Zamyslenie sa nad restoratívnou...*, p. 36.

[69] M. Horvat, *Zamyslenie sa nad restoratívnou…*, p. 37.

[70] Z. Hamuľáková, V. Sokolová, D. Noskovičová, *Zákon o ochrane ovzdušia ako priekopník skrátených konaní správneho trestania v oblasti životného prostredia*, in: *Bratislava legal forum 2024: Procedural principles of the right to a fair trial in administrative punishment*, (eds.) S. Kiššová, I. Sloboda, V. Ťažká, Collection of papers from the International Scientific Conference, 17–19 September 2024, Comenius University in Bratislava, Bratislava 2024, pp. 14–29.

5. An alternative (restorative) approach to the sanctioning of administrative offences in terms of the "final forms of public administration" (Slovak: *finálne formy činnosti verejnej správy*)

Public authorities use appropriate forms of action to achieve their goals and objectives. Each of these is externally manifested in a specific final form of action. Several of them may also create new rights and obligations. The final forms of public administration activity must always have a legal basis and realise the interest protected by individual laws. Legal theory refers in particular to: normative administrative acts, decisions, certificates, *de facto* acts, internal acts and administrative agreements.[71]

From the point of view of the possibility of dealing with administrative offences within the framework of administrative supervision and administrative proceedings, we can summarize that these are:

– **Decisions**, that is, legal acts which apply the legal norms contained in normative legal acts to individual cases. They do not have a law-making character but, as a rule, they establish or declare specific rights and obligations or may have an impact on the rights and obligations of specific subjects. Decisions are made on specific matters; thus, public administration bodies decide them on the rights and obligations of specific natural persons and legal entities. They also impose penalties for administrative offences. A special type of decision imposing obligations is the order and penalty notices. These decisions are issued in simplified administrative procedures for administrative offences.[72] The form of the decision is also used to approve a conciliation pursuant to Article 48 of the Administrative Procedure Code. As mentioned above, the setting of this procedural institute corresponds more to the settlement of disputes between the parties to an administrative procedure. Moreover, in our opinion, its wider use in practice is complicated by the fact that the Administrative Procedure Code does not currently take into account all the specifics of administrative punishment. It was not conceived in the 1960s as a general legal regulation for all administrative proceedings for the purpose of punishing administrative offences.
– **Inspection reports**, which are a special type of legal acts[73] and usually the result of inspection and surveillance procedures. In the event of a finding of non-compliance of the inspected condition with the requirements determined by legal regulations or individual administrative acts, the administrative supervisory authority has the power to impose obligations on the inspected

[71] M. Vrabko et al., *Správne právo hmotné*..., pp. 139–150.
[72] Ibidem, pp. 167–168.
[73] Ibidem, p. 223.

person. Depending on the circumstances, it shall impose such obligations in particular by means of corrective measures and sanctions.[74]

– **Administrative agreements** are bilateral and multilateral administrative acts which create rights and obligations for their parties. They are characterised by the fact that at least one of the parties concludes them in the context of the exercise of public administration, that is, it must have the status of a public authority. Their participants may not be only persons of Slovak law but also foreign persons.[75]

One possibility for an effective procedure that could shift the emphasis from punishment to restorative elements of justice in environmental law could thus be the so-called restorative agreements. Their content should be concrete corrective measures or compensatory measures proposed to the offenders. Thus, unlike the issuance of a decision to impose a fine, the administrative authority would either approve or disapprove the content of the agreement. At the same time, it is now already possible to consider an IT system in which the offender would choose the content of the agreement from the means offered by the automated e-assistance programme or another specific IT solution.

It is already possible to consider the application of the type of administrative agreements in question in the administrative supervision phase or in the administrative procedure. The essential prerequisite is the willingness of the offender to cooperate and accept responsibility for the infringement. If the offender duly and timely complies with the content of the agreement, no fine will be imposed. If, however, the content of the agreement is not fulfilled, the administrative procedure would continue in its entirety.

The reason for considering the use of administrative agreements as a final form of action suitable for dealing with administrative offences in the field of environmental protection is, among other things, the fact that the punitive function of administrative punishment is not typical of public administration and is used specifically in the context of the imposition of tort liability. In fact, the public administration should resort to repressive means only when social relations cannot be protected in any other way. The aim of public administration in this area is to prevent and protect society from unlawful activity, to impose fair sanctions, to eliminate the consequences of unlawful activity in a cost-effective manner and to deter potential perpetrators from committing administrative offences.[76]

[74] S. Košičiarová, *Právo životného prostredia*..., p. 149.

[75] M. Vrabko et al., *Správne právo hmotné*..., p. 150.

[76] Z. Hamuľáková, M. Horvat, *Základy správneho práva trestného*, Wolters Kluwer, Bratislava 2019, pp. 14–15.

6. Conclusions and future outlook

The *de lege lata* legal situation of administrative liability in the field of environmental protection is insufficient in terms of sanctioning mechanisms. Financial sanctions may appear to be the most appropriate way of sanctioning, specifically administrative offences of legal persons and natural persons engaged in business. It is clear from the experience of the administrative authorities in practice and from information from the key control bodies of the State that it is not sufficiently functional. In the legal order of the Slovak Republic, the punishment of administrative offences and criminal offences is clearly distinguished. However, there are also common features, one of which is alternative dispute resolution, which is implemented in various forms. In criminal law, the idea of restorative justice is developed through the institutes of alternative procedures from the trial of a criminal case at the main hearing, among which the legal theory ranks conditional discontinuance of criminal prosecution, conditional discontinuance of criminal prosecution of a cooperating defendant, conciliation, plea bargain, criminal warrant, as well as the substantive aspect of the regulation of alternative punishments in the criminal law. Apart from the fact that they are characterised by a certain form of educational effect on the person against whom criminal proceedings are conducted and against whom the alternative procedure is applied, their great positive effect is ultimately to relieve the courts and get rid of unnecessary delays in court proceedings, which contributes both to the reduction of the overall length of criminal proceedings as a whole, as well as to the reduction of their financial intensity. Although there are a number of differences in the nature of criminal proceedings and administrative proceedings, a number of representatives of the professional public, as well as practitioners, are now calling for the possibility of using alternative dispute resolution also in the area of administrative proceedings for administrative offences.

The theoretical debates are mainly directed towards the use of one of the procedural law institutes, which is conciliation. In our opinion, possible changes should focus primarily on strengthening the possibilities for public authorities to use several types of restorative measures in the context of liability for administrative offences. We see room for improvement of the current situation in the wider application of alternative solutions. Particularly in the form of legal regulation of administrative agreements of a restorative nature. Their use is already possible at the stage of the administrative supervision procedure or at the stage of the administrative proceedings. A restorative approach already in the course of administrative supervision appears to be the most appropriate way of protecting the environment in a timely manner. However, we propose to maintain the other alternative procedures in the administrative procedure, such as the block procedure and the injunction procedure.

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This article has been prepared as part of a coordinated research project jointly conducted within the Faculty of Law of Comenius University in Bratislava. The division of tasks between the research teams was intentional, while the present study by Srebalová and Hamuľáková focuses on the conceptual and normative foundations of restorative justice in environmental law, the subsequent contribution by Michalovič and Máčaj develops the practical and procedural dimension of the same research line. Their article, *Restorative justice in environmental administrative law – from concept to practice in Slovakia* proposes a model of restorative agreements to be tested under the Slovak Environmental Inspectorate (SIŽP) as part of the same project framework.[77] Together, both articles form a comprehensive analysis, moving from theory to practice, of how restorative justice principles can be integrated into Slovak environmental administrative law.

The synergistic effect of *de lege lata* and *de lege ferenda* means by strengthening restorative legal institutes can help to increase the effectiveness of the whole system of administrative punishment. We find room in the legislation for the proposed changes to the Environmental Act, whose *lex generalis* status vis-à-vis the component regulations could strengthen the consistency of the decision-making practice of administrative authorities operating in all environmental spheres. Such an approach would contribute to more effective enforcement of liability and increase the effectiveness of the system of administrative penalties.

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Sprawiedliwość naprawcza w prawie ochrony środowiska – podstawy koncepcyjne i normatywne

Streszczenie

Artykuł koncentruje się na zagadnieniach prawa administracyjnego związanych z możliwością rozpatrywania deliktów administracyjnych w dziedzinie ochrony środowiska z wykorzystaniem podejścia naprawczego. W pierwszej kolejności przeanalizowano wybrane instytucje materialnoprawne i procesowe prawa administracyjnego oraz aspekty teoretyczne wspomnianego podejścia, a także dokonano oceny obowiązującego stanu prawnego. Następnie sformułowano wnioski, na podstawie których oceniono założenia obecnych regulacji prawnych pod kątem efektywniejszego zaangażowania sprawcy deliktu administracyjnego w usuwanie jego negatywnych skutków. W dalszej części artykuł obejmuje również postulaty *de lege ferenda*.

Słowa kluczowe: podejście naprawcze, delikty administracyjne, ochrona środowiska

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Восстановительное правосудие в праве охраны окружающей среды – концептуальные и нормативные основы

Резюме

Данная статья посвящена вопросам административного права, связанным с возможностью рассмотрения административных правонарушений в сфере охраны окружающей среды с использованием восстановительного подхода. В первую очередь анализируются отдельные материальные и процессуальные институты административного права, теоретические вопросы подхода и исследуется существующая правовая ситуация. Затем следуют выводы и на их основе оцениваются предположения действующей правовой системы с точки зрения более эффективного вовлечения лица, совершившего административное правонарушение, в устранение его негативных последствий. В дальнейшей части работы также представлены постулаты *de lege ferenda* (с точки зрения желательного закона).

Ключевые слова: восстановительный подход, административные правонарушения, охрана окружающей среды

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Giustizia riparativa nel diritto della tutela dell’ambiente – fondamenti concettuali e normativi

Sommario

Il presente contributo si concentra su questioni di diritto amministrativo relative alla possibilità di trattare gli illeciti amministrativi in materia di tutela dell’ambiente mediante l’applicazione di un approccio riparativo. In primo luogo, si procede all’analisi di istituti selezionati del diritto amministrativo, sia di natura sostanziale sia procedurale, nonché delle questioni teoriche inerenti a tale approccio e dello stato attuale del diritto vigente. Successivamente, vengono formulate conclusioni che costituiscono la base per una valutazione delle premesse dell’attuale quadro normativo, alla luce di un più efficace coinvolgimento dell’autore dell’illecito amministrativo nella rimozione delle sue conseguenze negative. Nella parte finale del contributo sono altresì presentate proposte de lege ferenda.

Parole chiave: approccio riparativo, illeciti amministrativi, tutela dell’ambiente