



Reducing penalties by up to 40% without waiving the right to judicial appeal

The judgement of the Administrative Chamber of the Supreme Court of 6 October 2022 provides additional insights to those presented in 2021

Mechanisms of reduction of administrative penalties

Reducing pecuniary penalties in the event of recognition of responsibility and/or prompt payment is now a possibility in all sanctioning procedures, pursuant to article 85 of Law no. 39/2015. This decision follows from the successful implementation of this mechanism in specific areas, namely traffic and tax penalties.

There are two types of reductions: firstly, a 20% reduction if the offender recognises responsibility; and, secondly, a 20% reduction if the proposed penalty is voluntarily paid before the sanctioning decision is issued. These reductions may either be granted independently (20% each) or jointly, thus leading to an accumulated reduction of 40%. This is, actually, a minimum reduction, which may be increased in the norms governing specific procedures.

This possibility extends to all proceedings entailing exclusively pecuniary penalties. The possibility of benefiting from these reductions must be indicated in the initiation notice of the procedure, and it may be exercised at any time before the sanctioning decision is notified. This raises problems of quantification: if the infringement is acknowledged before the proposed resolution is issued, it will be necessary to wait for the resolution specifying the amount of the penalty to which the reductions are to be applied. This poses the risk of increasing the penalty offset the reduction.

Appealing in court after benefiting from reductions

Obtaining either one or both reductions does not prevent the offender from appealing in court. As explained in the Supreme Court judgement of 18 February 2021, it is possible to appeal before the Court without losing the right to the reduction, as article 85(3) of the Law no. 39/2015 only requires a waiver of actions in administrative proceedings.

According to this case law, where a penalty is imposed by a decision which does not put an end to administrative proceedings, the situation of the offender is less advantageous. This is because, in order to benefit from the reduction, the offender must waive the right to appeal in administrative proceedings, and hence is prevented from appealing in court at a later date.

In the case of penalties that put an end to administrative proceedings, the offender may recognise responsibility and appeal in court by relying on other legal considerations, such as lack of jurisdiction, error as regards the offence, and procedural infringements. Furthermore, it is also possible to make voluntary payment and appeal in court even without recognising responsibility.