GENERAL INFORMATION, APPLICABLE REGULATIONS AND PENALTY PROCEDURE STAGES FOR OFFENCES UNRELATED TO TRAFFIC REGULATIONS

This section provides an overview of the penalty procedure to be followed for the administrative and legal processing of penalties for offences unrelated to traffic regulations.

It does not address the aspects common to the penalty procedure for traffic offences or the administrative processes inherent to any procedure regulated by Law 30/1992, modified by Law 4/1999 (notification processes, publications in the Official Journal of the Province, etc.).

Accordingly, this section lists the applicable legislation, followed by an explanation of the penalty procedure stages. In order to provide an accessible overview of the penalty procedure stages, a set of basic schemes on its regulation is presented.

1. APPLICABLE REGULATIONS

The main penalty procedures are listed below, on the basis of their scope of application:

- Royal Decree (RD) 1398/1993, of 4th August, which approves the regulations for the exercise of the authority to impose penalties applicable when state regulations have been breached, in cases where no specific penalty procedure is in place for the aforementioned state regulations. This royal decree implements heading 9 of Law 30/1992, of 26th November, and will be of supplementary application.

- Decree 278/1993, of 9th November, regarding the penalty procedure of application in areas of competence of the Government of Catalonia.

- If approved, the regulations concerning the exercise of the authority to impose penalties, the issuance of penalty decisions and administrative silence in local council departments.

- Law 7/1985, of 2nd April, which regulates the terms and conditions of the local administrative framework (text modified by Law 7/2003, of 16th December, concerning measures for the modernisation of local government).

PENALTY PROCEDURE STAGES

The paragraphs below offer an analysis of the procedural stages, including the management process of each stage and its relationship with the process as a whole, from the perspective of La Selva County Council as a body specialising in the management of penalty procedures by virtue of the penalty collection management and delegation tasks carried out by local councils in the county, with their own methodology.

Taking into account the scope of application established in article 1 of Decree 278/1993:

“1.1 This decree establishes the administrative penalty procedure to be applied by the administrative bodies of the Government of Catalonia, in accordance with the principles set forth under heading 9 of the Law on the legal framework of public authorities and on common administrative procedure.

1.2 This decree will be of supplementary application in the local bodies of Catalonia when specific penalty procedures are not in place or are only partially in place in sectoral regulations or in local by-laws, except for matters in which the Spanish Government has full regulatory competence.

1.3 These regulations are directly applicable to local bodies in penalty procedures concerning matters that fall within the scope of competence of the Government of Catalonia, the exercise of which has been delegated to them.

1.4 Procedures involving the exercise of the authority to impose penalties in tax matters and procedures for the imposition of penalties for social order offences are outside the scope of the administrative penalty procedure.

1.5 The disciplinary system of employees and persons bound by a contractual relationship will be governed by its own specific regulations and is outside the scope of application of the exercise of the authority to impose penalties.”

Without prejudice to the fact that the local council may have its own approved penalty procedure in place for the processing of penalties for breaches of local regulations, a more detailed explanation is offered below of the Government of Catalonia decree, since a significant number of the penalty procedures address matters within the scope of competence of the Government of Catalonia, making it the applicable procedure.

Meanwhile, although the focus will be on this main procedure, it will also be compared with the procedures established in other legislation, such as Royal Decree 1398/1993.

The decree regulates two types of procedure, depending on the classification of the reported offence and the amount of the fine: the standard procedure and the fast-track procedure, regulated in article 18.

The fast-track procedure will be of application when the committed offence is minor or when the amount of the fine, regardless of the classification of the offence, is less than 600 euros.

The main difference is that in the fast-track procedure the alleged offender is notified simultaneously of the initiation agreement of the procedure and the penalty decision proposal put forward by the investigating official, skipping the investigation stage,

although the penalty decision proposal must at least contain the requirements inherent to the list of accusations.

Standard procedure

The standard procedure consists of the following stages:

Forms of initiation. The procedure will always be initiated *ex officio* and at the behest of the competent body, either on its own initiative or as a consequence of a superior order, a reasoned request made by other bodies or a complaint (the form of initiation is identical in all three penalty procedures).

1. OWN INITIATIVE: the competent body (whether due to the specific nature of the case, due to its status as a public authority, or due to the fact that it has been assigned the functions of inspection, research or investigation) initiates the procedure when it gains direct or indirect knowledge of acts that may constitute an offence.

2. SUPERIOR ORDER: an order issued by a body within the administrative unit that is hierarchically superior to the body with competence for initiating the action, and which includes, as far as possible, the alleged offender/offenders; the actions or incidents that may constitute an administrative offence and their classification; and the place, date/dates or periods of time during which the actions or incidents occurred.

3. REASONED REQUEST: proposal for the initiation of the procedure put forward by any administrative body that does not have the competence to initiate the procedure on its own initiative but which has knowledge of acts or circumstances that may constitute an offence. Such proposals may be made in isolated cases or more routinely by virtue of being assigned the functions of inspection, research or investigation.

   As far as possible, the requests must set forth the alleged offender/offenders; the actions or incidents that may constitute an administrative offence and their classification; and the place, date/dates or periods of time during which the actions or incidents occurred.

4. COMPLAINT: action through which a person, in fulfilment of a legal obligation or otherwise, informs an administrative body of the existence of acts or circumstances that may constitute an administrative offence. The complaint must include the same information as that listed for the *reasoned request*.

It must be pointed out that prior to the initiation agreement, the competent body can open or order a prior information-gathering period with the goal of shedding light on the circumstances of the circumstances and responsible parties.

Initiation agreement. An investigating officer and secretary (if necessary) will be appointed and the agreement must contain a series of points. In the case of local bodies, the investigating official may be appointed from another local corporation and, in exceptional cases, from the civil service of the Government of Catalonia, through any of the mechanisms set forth in the regulations concerning the provision of assistance. The various procedures are differentiated in the content of the initiation agreement, since Decree 278/1993 solely and exclusively allows for the appointment of the investigating officer and the secretary, as explained above, whereas by virtue of Royal Decree 1398/1993 (without prejudice to the provisions of the municipal regulations, if

approved) the content of the agreement is similar to the content of the list of accusations of Decree 278/1993.

Investigation stage of the procedure. The investigating officer orders *ex officio*, if applicable, the taking of evidence and the carrying out of actions that lead to determining the acts and responsibilities that may be subject to penalisation and, in accordance with the actions carried out, draws up the list of accusations, which must contain the following points:

- Identification of the allegedly responsible persons or entities.
- Statement of the acts with which they are charged.
- Offence/offences that may be constituted by these acts, indicating the corresponding regulatory framework.
- Penalties of application.
- The authority with competence to impose the penalty and the legislation that assigns this competence.
- If necessary, statement of the damages caused.
- Provisional measures that (if necessary) are adopted.

Notification stage. Once the initiation agreement has been approved (in the fast-track procedure the alleged offender is notified directly of the initiation agreement and the penalty decision proposal) and the list of accusations has been drawn up, the interested parties will be issued with the corresponding notification and will be given at least ten days to present written pleadings and put forward evidence to be used for the defence of their rights and interests.

This process, within the notification stage, is not just a process in itself but an inherent function of all penalty procedures since success in the imposition of penalties by the public authorities depends largely on its correct and efficient execution.

Once notification has been issued of the initiation agreement and the list of accusations, the alleged offender may voluntarily admit his/her guilt, in which case the investigating official will either directly transfer the record to the authority with competence to issue a penalty decision or, if he/she deems it appropriate, take the evidence put forward by the interested party in the written pleadings.

Drawing up the penalty decision proposal. Once the written pleadings have been received by the investigating officer, and following the taking of evidence, if this has been deemed appropriate, he/she will draw up a penalty decision proposal, which must contain the following:

- The acts with which the alleged offender is charged.
- Classification of the offence/offences constituted by the acts and the regulatory framework.
- Penalties/penalties to be imposed, amounts in the case of fines and precepts that establish them.
- If applicable, statement on the existence and reparation of damages.
- The body with competence for imposing the penalty.

In some cases, it is also necessary for a technical municipal report to be produced in order for the procedure to continue with guarantees.

Once the penalty decision proposal has been issued, the interested party must be notified since he/she will have a further ten days to present written pleadings (in the procedure regulated by Royal Decree 1398/1993, at this stage of the procedure the

option is given, in article 8.3, of paying the fine before the penalty decision is issued, which means that the procedure is finalised without the need to issue the decision; for its supplementary application, this measure may be incorporated in the procedure of Decree 278/1993, in order to speed up the process).

Drawing up the penalty decision. The competent body (the mayor or the delegated representative) will issue the penalty decision, which must be justified, and will decide on all the matters raised by the interested parties. No facts that were not determined in the investigation stage can be accepted, regardless of their legal worth. Furthermore, the decision must list the actions, the person or persons responsible, the offence or offences committed, the penalty or penalties that are imposed, the body with competence to execute the penalty or penalties and the applicable regulations in each case. Reference will be made, if applicable, to the offender's obligation to put right damage, returning any damaged elements to their original state, and to any compensation that is payable.

Appeal of reconsideration. The appeal for reconsideration may be lodged before the contentious-administrative appeal is lodged.

Fast-track procedure

In the case of offences classified as minor or penalised with fines of less than 601.01 euros it is possible to adopt the fast-track procedure referred to in article 18 in order to reach the penalty decision. This is applicable in the case of flagrant offences where the acts have been set forth in the corresponding report or in the notification issued by the competent authority.

Once the initiation agreement has been approved, in light of the actions carried out, the penalty decision proposal is drawn up.

The penalty decision proposal must notify the interested parties of the acts with which they are charged, the offences that these acts may constitute, the applicable penalties, the authority with competence to issue the decision and the regulations that grant it the said competence, together with the initiation agreement in the case of a fast-track procedure. The interested parties then have ten days to put forward the evidence that they deem necessary in order to defend their rights or interests.

At the end of this ten-day period, and following the taking of evidence, if applicable, the investigating official will directly transfer the procedure record to the body with competence to issue the penalty decision.

The competent body may propose following or decide to follow the standard procedure.

Indications of a crime or misdemeanour

If over the course of the penalty procedure there are indications that the acts against which charges have been presented may be classified as a crime or misdemeanour, the Attorney General's office must be informed and the administrative procedure must be suspended once the legal authority has initiated the corresponding criminal procedure, if the subject, act and grounds have been identified. Furthermore, if the administrative authority becomes aware through whatever means that a procedure is under way involving the same subject, act and grounds, it will suspend the penalty procedure in question.

The administrative authority cannot continue with the procedure and must declare its conclusion, demanding no responsibility, if the court decision deems that there are

indications that a crime or misdemeanour has been committed, and if the subject, act and grounds have been identified.

In any case, the acts declared proved in the decision of a criminal court are binding for the administrative bodies in respect of the penalty procedures that they substantiate. Any administrative penalty decision based on facts that contradict those declared proved in the decision of the criminal court will be subject to an *ex officio* review in accordance with the legislation governing *ex officio* review procedures.

The substantiation of the criminal process does not prevent precautionary measures from being kept in place. Neither does it prevent the adoption of any other measures that are essential in order to put right a physical situation that has been altered or in order to prevent new risks for people or damage to the protected goods or environment, in which case the legal authority responsible for the criminal procedure must be duly notified.

Expiry of the record

If no penalty decision is forthcoming **six months** after the initiation of the procedure, the period will begin for expiry of the record, as set forth in article 43.4 of Law 30/1992, of 26th November, concerning the legal framework of public authorities and of the common administrative procedure, except in cases where the procedure has been halted for reasons attributable to the interested parties or when the circumstances set forth in article 5 of this decree occur.

Prescription of offences and penalties

Article 3 states that the prescription of offences and penalties is governed by the laws that establish the said offences and penalties or, if no such provisions are established, by article 132 of Law 30/1992, of 26th November, concerning the legal framework of public authorities and of the common administrative procedure.

1. Article 132 of Law 30/1992, of 26th November states that offences and penalties will prescribe in accordance with the provisions of the laws that establish the said offences and penalties.

If no prescription period is established in the aforementioned laws, very serious **offences** will prescribe after three years. serious offences after two years and minor offences after six months; the **penalties** imposed for very serious misdemeanours will prescribe after three years, those imposed for serious misdemeanours after two years and those imposed for minor misdemeanours after one year.

2. The prescription period for offences will be calculated from the day on which the offence was committed.

The prescription period will be interrupted, with the knowledge of the interested party, by the initiation of the penalty procedure. If the penalty procedure is halted for over one month for reasons not attributable to the alleged offender, the prescription period will resume.

3. The prescription period for penalties will be calculated from the day after the one on which the penalty decision is declared final. The prescription period will be interrupted, with the knowledge of the interested party, by the initiation of the execution procedure.

If the execution procedure is halted for over one month for reasons not attributable to the offender, the prescription period will resume.