



Satversmes tiesa

Press release

Case No 2021-09-01

29.12.2021

Norms providing for an administrative penalty for violation of the regulations regarding payment of road user charge comply with the Constitution

On 29 December 2021, the Constitutional Court adopted a judgment in Case No 2021-09-01 “On the compliance of Section 9.¹(2) of the Law on the Road User Charge in the wording effective until 30 June 2020 and Section 149.⁴⁰(2) of the Latvian Administrative Violations Code in the wording effective from 1 January 2017 to 30 June 2020 with Article 1 and the first sentence of Article 92 of the Constitution of the Republic of Latvia”.

THE CONTESTED PROVISIONS

- Section 9.¹ (2) of the Law on the Road User Charge in the wording effective until 30 June 2020:

“For a violation, which is registered with technical means without stopping of a vehicle, a minimum fine which is stipulated for a carrier in the Latvian Administrative Violations Code shall be imposed on the person referred to in Paragraph one of this Section.”

- Section 149.⁴⁰(2) of the Latvian Administrative Violations Code (hereinafter referred to as the Code) in the wording effective from 1 January 2017 to 30 June 2020:

“For the use of the section of the State motor road specified in the Law if the road user charge has not been paid, a fine from one hundred and eighty to three hundred and sixty euro shall be imposed on the driver or from five hundred to one thousand euro on the carrier.”

PROVISIONS WITH A HIGHER LEGAL FORCE

- Article 1 of the Constitution of the Republic of Latvia (hereinafter — the Constitution):

“Latvia is an independent democratic republic.”

- First sentence of Article 92 of the Constitution:

“Everyone has the right to defend his or her rights and lawful interests in a fair court.”

THE FACTS OF THE CASE

The judicial proceedings of the Applicant, the Rēzekne Court, contain a case wherein the decisions of the State Police, by which administrative penalties have been imposed on a legal entity for an administrative violation provided for in Section 149.⁴⁰(2) of the Code, are being assessed. Pursuant to Section 9.¹(2) of the Law on the Road User Charge, the State Police has imposed on the legal entity the minimum fine which is stipulated for a carrier for the relevant violation, i.e. EUR 500. According to the Applicant, the amount of the fine imposed on the person – EUR 500 – is disproportionate, while the contested provisions do not provide the court with the possibility to reduce the amount of the fine and therefore the court cannot render a fair judgment in accordance with those provisions.

THE CONCLUSIONS OF THE COURT

On termination of the court proceedings

First of all, the Constitutional Court assessed the request of the Parliament to terminate the proceedings in the part concerning compliance of the contested provisions with the first sentence of Article 92 of the Constitution. [11.]

The Constitutional Court found that the Applicant, inter alia, seeks to ascertain whether the contested norms violate the scope of the powers of a court in line with the first sentence of Article 92 of the Constitution. In order to assess this, it was necessary to continue proceedings in the case. [11.3.]

As regards how the constitutionality of the contested provision is to be assessed

Within the framework of the specific case, the contested provisions should be assessed as a single legal regulation, and the Constitutional Court had to assess whether, in cases where the violation was registered with technical means without stopping the vehicle, the specific amount of the fine specified in the laws and regulations was proportionate and whether in an administrative violation proceedings the court has powers compliant with the first sentence of Article 92 of the Constitution to exercise control over the decision adopted by an authority regarding an administrative fine to be imposed on a person for the violation of the regulations regarding payment of road user charge. [12.1., 12.2.]

On the discretion of the legislator in the penalty policy area

The Constitutional Court noted that the penalty policy exercised by the legislator included the discretion to determine administrative liability for a particular act and the type of penalty appropriate to the violation, as well as the amount. Consequently, when examining cases relating to specific violations established by the legislator and administrative penalties provided therefor, the Constitutional Court assesses whether the legislator has acted within the margins of its discretion, including the purpose for which the legislator has established administrative liability for a specific violation, and whether this action is aimed at the achievement of legitimate objectives. [14]

On the compliance of the contested provision with the principle of proportionality

The Applicant held that the contested provisions were not compliant with the case-law of the Court of Justice of the European Union. However, the Constitutional Court concluded that the contested provisions did not provide that a fine for a violation of the regulations regarding payment of road user charge should be imposed without taking into account the behaviour of the offender, the nature and gravity of the committed violation, as it was in the cases of the Court of Justice of the European Union referred to by the Applicant. [15.3.1.]

The Constitutional Court also noted that, taking into account the substantial differences in the systems of determining the amount of the road user charge, the assessment of the Court of Justice of the European Union on the amount or severity of the penalty in comparison with the amount of the road user charge payable was not directly applicable to the legal framework of Latvia. Therefore, a comparison between the amount of the fine and the rate of charge for one day cannot be considered as the sole argument that the fine does not comply with the principle of proportionality. [15.3.2.]

The Constitutional Court concluded that the legislator had adopted the contested provisions in the interests of the protection of the welfare of the society, and that the means chosen by the legislator were appropriate to achieve the objective which the legislator had intended to achieve by those means. [16., 18.]

Having analysed the materials of adoption of the contested provisions, the Constitutional Court concluded that both the amount of the penalty, comparing it with similar violations, and its effectiveness in promoting voluntary payment of the road user charge were assessed. It was also concluded that, following the amendments increasing the amount of the administrative fine and introducing the possibility of registering the violation with technical means, there had been a significant reduction in the number of violations. [19.1.-19.2.]

If the legislator has assessed whether the amount of the fine is commensurate to the nature of the violation, including as regards the minimum and maximum limits of the fine, the mere fact that there is a possibility of imposing an even lower fine for a particular violation does not mean that the legislator has exceeded the limits of its discretion. Therefore, the Constitutional Court concluded that there were no other alternative means by which the legitimate objective could be achieved at least to the same quality. [19.3.]

The Constitutional Court also recognised that the amount of the fine established by the legislator in cases where the violation was registered with technical means cannot be regarded as disproportionate to the nature of the violation and the objective of the penalty policy which the legislator aims to achieve. The adverse consequences for the individual are outweighed by the benefit which the contested provisions confer to the society as a whole. Consequently, the contested provisions were declared to comply with Article 1 of the Constitution of the Republic of Latvia. [20.]

On compliance of the contested provisions with the first sentence of Article 92 of the Constitution

In order for the court, when exercising control over decisions imposing a penalty on persons for an administrative violation, to be able to reach a fair result in the judicial proceedings, it must, inter alia, have the appropriate powers to assess the circumstances relevant to the case and to verify the lawfulness and validity of the decision taken by the authority, both from a factual and a legal point of view. If the decision of the authority to impose an administrative penalty does

not conform to legal provisions, the court must have the power to remedy the consequences of such a decision for the person concerned. [21.]

However, the Constitutional Court also noted that, upon determining the specific constituent elements of an administrative violation, as well as the type of penalty to be applied and the limits of its amount, the legislator assesses whether the penalty is commensurate to the nature of the violation, including as regards the minimum and maximum margin of the amount of the penalty. The Court cannot take the place of the legislator and re-estimate the effectiveness of the means intended to achieve the objective of the administrative penalty policy. [22.]

Although Section 9.1 of the Law on the Road User Charge establishes the peculiarities in the administrative violation proceedings in cases where the violation has been registered with technical means, the court also has the appropriate power to assess the lawfulness and validity of the decision of the relevant authority. Having established a discrepancy, the court may remedy for the person concerned the consequences of a decision of an authority to impose an administrative penalty which does not conform to legal provisions. The Court assesses both whether an administrative penalty is applicable to a person in the given factual circumstances and whether the actions of the authority in the administrative violation proceedings comply with the provisions of laws and regulations. [22.]

The Constitutional Court recognised that if the legislator, when determining a specific amount of fine to be imposed for a given administrative violation, had already assessed its compliance with the nature of the particular violation and such a fine is in itself proportionate, then a comprehensive judicial control over the decision on the administrative penalty does not in itself include the power of the court to review and to determine, at its discretion, the amount of the penalty at a level lower than that provided for the specific violation by the legislator. [24.]

By adopting the contested provisions, the legislator has already balanced the characteristics of the specific administrative violation, as well as the fact that the violation is registered with technical means, with the amount of the applicable fine. Thus, in administrative violation cases regarding violation of the regulations regarding payment of road user charge, which is registered with technical means, comprehensive judicial control over decisions on the application of an administrative penalty is exercised, and the contested provisions comply with the first sentence of Article 92 of the constitution as well. [24.]

The Constitutional Court ruled the following:

