

Decision No 220 of 20 April 2023 on the exception of unconstitutionality of Article 101 (1) (8) of Government Emergency Ordinance No 195/2002 on traffic on public roads, in the form prior to the amendment by point 2 of the sole Article of Law No 252/2019 amending and supplementing Government Emergency Ordinance No 195/2002 on traffic on public roads, Published in the Official Gazette of Romania, Part I, No 540 of 16 June 2023.

Summary

I. As grounds for the exception of unconstitutionality, its author stated that the regulation of the offence of failure to comply with the rules on the circulation of bicycles and the penalty applicable to it set forth in Article 101 (1) (8) of Government Emergency Ordinance No 195/2002 on traffic on public roads was a restrictive measure on the right to property, as it had the effect of reducing the patrimony of bicycle drivers, subject to administrative penalties.

The author of the exception took the view that the measure did not comply with the principle of proportionality, since any failure to comply with the rules governing the circulation of bicycles is subject to the penalty in Class III of penalties, namely 6-8 points and a fine. However, those rules are numerous and their infringement poses a different social danger.

II. Having examined the exception of unconstitutionality, the Court held that the imposition of fines is the consequence of the commission of unlawful acts penalised by law, in the amount assessed by the legislator according to the gravity and frequency of those acts. In the same vein, the Court held that the right to private property was not an absolute right, with the result that it cannot be argued that the imposition of an administrative penalty on natural or legal persons infringed the right to property, even if the payment of the fine automatically amounted to a reduction of patrimony.

On the one hand, the fine for an administrative offence must be such as to ensure that it is dissuasive, that is to say, it prevents the production of results which undermine the values protected by the legislative act. On the other hand, the fine cannot be calculated in such a way as to cause excessive damage to the patrimony of the offenders. The administrative fine is calculated by reference to the national gross minimum wage, which is such as to neutralise a disproportionate financial effect for low-income offenders.

In accordance with the principle of proportionality, all main or complementary penalties imposed on the offender must be determined according to the seriousness of the offence. The individualisation of administrative penalties is, on the one hand, lawful – it is for the legislator, which lays down rules on the penalty by setting minimum and maximum limits for each fine and, on the other hand, administrative or judicial, the latter being carried out by the ascertaining officer or the judge within the limits laid down by law.

The Court held that, in the application of administrative penalties for failure to comply with the rules governing the circulation of bicycles, it is necessary for the ascertaining officer to analyse the proportionality of the main penalty in order to avoid rigid application of the law, in that regard it being necessary to interpret the relevant rules in the light of the objective pursued by the legislator and also to analyse the seriousness and social danger of the offence before ordering the imposition of the administrative fine. In accordance with Article 101 (1) (8) of Government Emergency Ordinance No 195/2002, all offences committed by natural persons relating to non-compliance with the rules on the circulation of bicycles are punishable by the fine laid down in Class III of penalties, i.e. 6-8 points and a fine. Consequently, in the absence of rules in the specific legislative act laying down criteria for legal individualisation, the penalty measure laid down in Class III penalties is automatically to be imposed on any infringement of the rules governing the circulation of bicycles on the public roads, irrespective

of the seriousness or social danger of the offence. The imposition of the same amount of the fine leads to the uniform sanctioning of very different factual situations.

Therefore, by the modality of regulation of the rules governing the individualisation of the administrative penalty in the situation provided for in the contested text, the legislator is in breach of the principles of legality and proportionality and limits the ability of the ascertaining officer and the judge to proceed with the administrative and judicial individualisation of the penalty, disregarding the provisions of Articles 1 (5) and 53, read in conjunction with Article 44 of the Constitution. The constitutional provisions of Article 124 on the administration of justice are also infringed, since the court, called upon to assess the guilt of the person covered by the contested administrative provision and to individualise the penalty corresponding to the offence, is unable to carry out the judicial act, and is required to apply indiscriminately to all offences relating to the circulation of bicycles the fine provided for in Class III penalties, namely 6-8 points and a fine.

III. For all those reasons, by a majority vote, the Court upheld the exception of unconstitutionality and found unconstitutional the provisions of Article 101 (1) (8) of Government Emergency Ordinance No 195/2002 on traffic on public roads, in the form prior to the amendment by point 2 of the sole Article of Law No 252/2019 amending and supplementing Government Emergency Ordinance No 195/2002 on traffic on public roads.