



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on behalf of the Republic of Latvia

Riga, 29 December 2021

in case No. 2021-09-01

The Constitutional Court in the following composition: Chairperson of the Court Session Sanita Osipova, Justices Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs and Anita Rodiņa,

on the basis of the application of Rēzekne Court,

under Section 85 of the Republic of Latvia Satversme (Constitution), and Sections 16(1), 17(1)(9), 19¹ and 28¹ of the Law on the Constitutional Court,

at the hearing on 30 November 2021, in the written procedure, examined the case

“On Section 9.1(2) of the Law on the Road User Charge, in the wording effective until 30 June 2020, and Section 149⁴⁰(2) of the Latvian Administrative Violations Code, in the wording effective from 1 January 2017 to 30 June 2020, compliance with Section 1 and the first sentence of Section 92 of the Constitution of the Republic of Latvia”.

Establishing Part

1. On 11 December 2008, the Saeima accepted the Law on the Road User Charge, which entered into force on 1 July 2014.

By the Law of 3 April 2019 "Amendments to the Law on the Road User Charge", which entered into force on 13 April 2019 (hereinafter referred to as the amendments of 3 April 2019), the Law on the Road User Charge was supplemented

with Article 9¹, which established specific features in administrative offence cases concerning offences recorded by technical means without stopping the vehicle. The first paragraph of this Section defined the subjects to whom an administrative fine is imposed for an offence recorded by technical means without stopping the vehicle, while the second paragraph of this Section defined:

“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.”

By the Law of 23 April 2020 "Amendments to the Law on the Road User Charge", which entered into force on 19 May 2020 (hereinafter referred to as the "Amendments of 23 April 2020"), Section 9¹ was deleted from the Law on the Road User Charge.

On 7 December 1984, the Supreme Council of the Latvian SSR adopted the Latvian Code of Administrative Offences (hereinafter referred to as the Code), which entered into force on 1 July 1985.

Section 149⁴⁰ (2) of the Code (hereafter in the wording in force from 1 January 2017 to 30 June 2020) provided that the driver of a vehicle shall be fined from one hundred and eighty to three hundred and sixty *euros* and the carrier from five hundred to one thousand *euros* for using a section of a public road prescribed by law if the charge is not paid.

On 25 October 2018, the Saeima accepted the Law on Administrative Liability, which entered into force on 1 July 2020. Paragraph 1 of its Transitional Provisions provides that the Code shall cease to have effect upon the entry into force of this Law.

2. The Applicant - Rēzekne Court (hereinafter referred to as the Applicant) - holds that the second part of Section 9¹ of the Law on the Road User Charge (here and hereinafter - in the wording in force until 30 June 2020) and the second part of Section 149⁴⁰ of the Code (hereinafter together also - the contested provisions) are incompatible with Section 1 of the Constitution and the first sentence of Section 92 of the Constitution.

The Applicant has before it the administrative offence case No. 1A26005620, in which seven administrative fines have been imposed on a legal entity for non-payment of road user charge. The offences were recorded by technical means without stopping the vehicle, and the legal entity, inter alia, on the basis of the contested provisions, was fined *EUR 500* for each administrative offence (*EUR 3,500* in total). The fine imposed on the individual - *EUR 500* - exceeds the daily charge (*EUR 6*) by more than 83 times. The Applicant submits that the imposition of such a fixed penalty, without the possibility of reducing it and without the possibility of assessing the nature and gravity of the infringement, is not proportionate and in conformity with law of the European Union.

Article 9a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, as amended by Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 (hereinafter 'the Directive'), gives Member States a wide margin of discretion in laying down the legal framework and penalties to ensure the collection of charges. However, the Court of Justice of the European Union, interpreting that article, has stated that, in the absence of harmonisation of the European Union legislation as regards the penalties applicable for failure to comply with the conditions laid down in the system established by that legislation, it is for the Member States to choose the penalties which they consider appropriate. However, Member States must exercise that competence in compliance with law of the European Union and general principles of law, including the principle of proportionality. The Court of Justice of the European Union has heard a case in which one carrier was fined 500 times the charges due and the other 87 times. In assessing the proportionality of the fines imposed in relation to the nature of the infringements committed in the present case, the Court found that the severity of such fines was effective and dissuasive, but also noted that the imposition of fixed penalties without taking into account the nature and gravity of the infringement was incompatible with the provisions of Article 9a of the Directive and the general principles of law of the European Union.

The severity of the sanction must correspond to the seriousness of the infringement in question, that requirement being a consequence of both Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter')

and the principle of proportionality of penalties laid down in Article 49(3) thereof. The Court of Justice of the European Union has held that, although the proportionality requirement of Article 9a of the Directive has no direct effect at a national level, the national court must, in accordance with its obligation to take all the general or specific measures necessary to ensure the implementation of that provision, interpret national law in accordance with that provision or, if such an appropriate interpretation is impossible, disapply any provision of national law the application of which, in the circumstances of the case, would lead to a result which would be contrary to law of the European Union.

The Court's ability to restore justice in any given case is inextricably linked to the body of procedural and substantive law adopted by the legislature in accordance with which the case is decided. The Applicant has noted that in several judgements of the courts of first instance it has been stated that the penalty provided for in Section 149⁴⁰ (2) of the Code is not proportionate and in conformity with Article 9a of the Directive, but the courts of appeal have not given their assessment of the references to the case-law of the Court of Justice of the European Union made in those judgements. The decisions of the courts of first instance have been motivated in different ways, but the courts of appeal have repeatedly stated in such cases that the penalty for the offence was imposed in accordance with the prescribed penalty, that the proportionality of the penalty had already been assessed and indicated by the legislator, and that the penalty imposed was in accordance with the objective of the administrative penalty.

There is no dispute in the case that the legal provisions have been adopted and promulgated in accordance with the procedure established by the Constitution and that they are sufficiently clearly formulated. The Applicant also considers that the obligation to pay the charge is aimed at the protection of the rights of others and the welfare of the society, as it ensures the maintenance and development of the main roads, as well as promotes the use of more environmentally friendly vehicles. However, the imposition of a fixed penalty of *EUR* 500, without the possibility of reducing it and without the possibility of assessing the nature and gravity of the infringement, is not proportionate and, therefore, does not comply with the principle of proportionality enshrined in Section 1 of the Constitution.

The authority and the court have no power to take into account the circumstances and gravity of the administrative offence and to adjust the appropriate fine for the offender. By deciding the case on the basis of the legal framework and in the light of the findings of the decisions of the Court of Appeal, the court was unable to give a fair judgement in the case. The legislator has failed to take into account the findings of the case-law of the Court of Justice of the European Union, the third paragraph of Article 49 of the Charter and Article 9a of the Directive and has failed to adopt the legal provisions necessary for a fair trial. Thus, the first sentence of Section 92 of the Constitution has not been complied with.

The objective of the Law on Charge and the Directive can be achieved by less restrictive means, as the legislator provides in the regulatory framework the possibility for the authority and the court to reduce the applicable penalty according to the nature and gravity of the infringement or to set a lower amount of the minimum penalty.

3. The institution that issued the contested act, the Saeima, considers that the contested provisions comply with Section 1 of the Constitution, but the proceedings on compliance of the contested provisions with the first sentence of Section 92 of the Constitution should be terminated.

3.1. The legislator has a wide margin of discretion in the formulation of penalties and enforcement policy. The Directive does not regulate how penalties are to be imposed for infringements of national provisions adopted pursuant to the Directive. It is for the Member States to choose the sanctions they deem appropriate, but they must not only be proportionate to the infringements committed, but also effective and dissuasive. It should also be noted that the fine provided for in Section 149⁴⁰ (2) of the Code is imposed for non-payment of the charge and not for non-payment in full.

The Applicant has referred to two cases of the Court of Justice of the European Union in which the proportionality of the amount of the fine imposed in Hungary for non-payment of charge was assessed. However, in Hungary, the fine was set at a fixed amount depending on the category of vehicle. However, Section 149⁴⁰ (2) of the Code provides that a fine of from *EU* 500 to EUR 1,000

shall be imposed, and the legislator has provided for a specific fine in only one case, i.e., in the case when the administrative offence was recorded by technical means. In this case, the legislator, regardless of the nature and gravity of the administrative offence, has decided on the most favourable solution for the private person by setting the smallest possible amount of the fine. According to the Saeima, such a fine cannot be recognised as a fixed fine, because even in the absence of Section 9¹ (2) of the Law on the Road User Charge, when assessing the nature and gravity of the administrative offence, the authority and the court should not impose a fine lower than EUR 500 .

The Applicant points out that the Court of Justice of the European Union has recognised that a fine which exceeds 87 and 500 times the amount which would be payable as a charge is disproportionate. However, it must be borne in mind that there are different charge rates (daily, weekly, monthly or annual) and that in any event the fine to be imposed must be effective and dissuasive. For example, a comparison of the minimum fine (*EUR 500*) and the annual charge rate (*EUR 300*) for vehicles with a gross vehicle weight of between 3,001 and 3,500 kilograms, which is the lowest possible annual charge rate, shows that the applicable minimum fine is only 1.67 times higher than that. If the proportionality of the fine were assessed solely in relation to the daily rate, this would lead to a situation where there is no effective and dissuasive sanction for non-payment of other charge rates. The fine must be proportionate to the offence, which also consists in the non-payment of the annual rate of this charge. It would also be unacceptable to find that the amount of the fine imposed in Latvia is disproportionate by referring only to the experience of one country.

Before the increase in the fine for the driver, the problem was identified that a significant number of carriers did not pay the charge because it was more profitable for them to pay the fine than to pay the charge for the whole year. If the minimum fine were reduced to its previous level of *EUR 120*, the problem would arise again. Moreover, the situation in Latvia is still such that punishment plays an important role in the fulfilment of legal obligations, i.e. it is punishment that deters the commission of an offence and encourages the fulfilment of a legal obligation.

According to the Ministry of Transport, the number of persons who do not comply with the obligation to pay the road user charge has decreased significantly.

One of the measures to improve charge payment discipline is to record such offences by technical means. Outreach activities are also important.

The Saeima additionally draws attention to the fact that according to Section 294(2) of the Code, the execution of the decision on the imposition of a fine could be suspended for a period of up to six months from the date of adoption of the decision, subject to a specific condition.

In the light of the foregoing, the minimum fine provided for in Section 149⁴⁰ (2) of the Code is to be regarded as proportionate.

3.2. Under the expired Code, the administrative offences procedure before the courts was designed to ensure comprehensive judicial control over decisions of the executive to hold a person administratively liable. As a result of this control, the court also has the possibility to remedy the consequences of an unlawful decision for the person - both to annul the decision adopted by the authority and to reduce the fine imposed on the person within the limits of the fine imposed by the legislator for the administrative offence in question.

If the authority held the person administratively liable by imposing the minimum fine for the offence, the court has no power to reduce the amount of the fine imposed on the person, since it is already the lowest possible fine provided by the legislator for the offence. If it were concluded that the court is unable to ensure a trial that complies with the first sentence of Section 92 of the Constitution because of Section 9¹ (2) of the Law on the Road User Charge, it would also follow that the court is unable to ensure a trial that complies with the right to a fair trial in every case where the authority has imposed the smallest possible fine.

Even where the administrative offence has been recorded by technical means, the court, in accordance with Section 289⁶ (9) of the Code, remains obliged to decide on all the same issues in the administrative offence case as it is required to decide on in other cases. The court can thus exercise a comprehensive control and annul a decision imposing administrative liability on a person which is not in accordance with the rules of law.

In the case before the Applicant, the disproportionality is the result of incorrect application of legal provisions. In particular, if the facts of the case in question show that the person was informed of the administrative offence only after the offence had already been recorded seven times, such administrative punishment

would be contrary to the purpose of administrative punishment laid down in Section 22 of the Code. It follows from the purpose of punishment that a person, after being informed of an administrative offence, must be given the opportunity to decide on his or her future conduct - to refrain from offences or not.

In the case law, there have been cases where administrative offence reports for other types of administrative offences have been annulled because the fine imposed did not comply with the objective of the administrative penalty and the principle of fairness. This means that the Applicant has at its disposal all the necessary legal methods to reach a just solution and a fair decision in the given case. According to the Saeima, the principle of proportionality may also serve as a basis for the annulment of administrative offence reports, insofar as the violation of this principle is manifested in the application of law.

In the case of the Applicant, it should also be assessed separately whether the principle of non-admissibility of double punishment is satisfied by a situation in which a person is imposed an administrative penalty for the same administrative offence committed on the same day, but at different times, and recorded while driving the same vehicle on the same stretch of road. It should also be borne in mind that the shortest period for which charges can be paid is one day.

The right to a fair trial does not require a court, when reviewing a decision to hold a person administratively liable, to make its own considerations of expediency and, on that basis, to determine a different penalty to be imposed on the person. This is a matter for the legislator to decide. The mere fact that the second part of Section 289¹² of the repealed Code provided for the possibility for the court to modify the amount of the sentence does not give grounds to conclude that such a possibility was envisaged in order to ensure a trial that complies with the first sentence of Section 92 of the Constitution. Consequently, the Saeima holds that the proceedings in the case in the part concerning compliance of the contested provisions with the first sentence of Section 92 of the Constitution should be terminated.

4. The invited person – the Ministry of Justice – states that the contested provisions comply with Section 1 and the first sentence of the Section 92 of the Constitution.

The amendment of 23 November 2016 increases the fine applicable to the driver and provides that not only the driver but also the carrier may be held administratively liable. The amendments were necessary to motivate drivers and carriers to pay the road user charge more actively. The aim of the amendments was to increase the revenue from the road user charge by increasing the fine to an amount that would make it more profitable for persons to pay the charge instead of the fine.

The penalty provided for in Section 149⁴⁰ (2) of the Code meets the requirements of proportionality. It is evident from the materials of the drafting of the Law of 23 November 2016 "Amendments to the Latvian Administrative Violations Code", which entered into force on 1 January 2017 (hereinafter - the amendments of 23 November 2016), that a detailed assessment of the objective to be achieved and its significance, the gravity of the offence, including in comparison with other similar offences, as well as the possible economic benefit from the offence was carried out. There is no reason to believe that a fine of this amount would be unduly burdensome. Similarly, Section 149⁴⁰ (2) of the Code does not provide for a fixed penalty, since the range of penalties is sufficiently wide to ensure the individualisation of the penalty in the light of the circumstances of the case.

Also, under the current legal framework, where an offence is recorded by technical means, the person is liable to the minimum fine prescribed for the offence. In such cases, it would be difficult, if not impossible, to ascertain and assess all the circumstances that are assessed when the offence is not recorded by technical means. That is why, in order to avoid the risk that improving the efficiency of the administrative offence procedure would lead to disproportionate or unfair penalties, the legislator has provided that the minimum penalty for the relevant offence should apply in these categories of cases. Thus, Section 9¹ (2) of the Law on the Road User Charge has eliminated the potential shortcomings in the penalty application process that could arise in cases where the offence is recorded by technical means.

The regulation of Section 9¹ (2) of the Law on the Road User Charge cannot be regarded as providing for a fixed fine within the meaning of the case-law of the Court of Justice of the European Union. Irrespective of the content of this

provision, under the Code, the authority could not impose a lower penalty than the minimum penalty set by the Code. Nor could a court mitigate a sentence if the person has already been given the minimum penalty allowed by the sanction. The provisions of Section 289¹² (2) of the Code also did not allow the court to impose a sentence lower than the minimum penalty provided for in the legislation. The amount of the fine, its minimum and maximum limits, is set by the legislator. However, the fact that the court is not entitled to impose a sentence lower than the minimum prescribed by law does not mean that a person's right to defend his or her rights and legal interests before a fair court has been violated.

With regard to the circumstances of the case of the Applicant, the Ministry of Justice points out that when determining a penalty for a specific administrative offence, inter alia, the aim of the penalty should be taken into account – to ensure that the person who committed the offence and other persons comply with the requirements established by law and refrain from committing new offences. In particular, the person who has committed an administrative offence must be given the opportunity and time to put an end to the offence and to comply with the requirements laid down by law. However, the above does not mean that the second part of Section 149⁴⁰ of the Code is incompatible with the first sentence of Section 92 of the Constitution.

It is also necessary to distinguish between a continuing or continuous administrative offence and a situation where several separate administrative offences have been committed. The official and the court should assess whether the subsequent offences recorded by technical means are indeed new administrative offences. The reference point could be the moment when the offence is stopped, i.e. fixed, and notified to the person. On the other hand, if it is considered that each offence recorded by a technical means constitutes a new administrative offence, this is an incorrect application of the legal provisions. Thus, the Applicant has at its disposal all the necessary legal methods in order to adopt a fair decision in the given case.

5. The invited person – the Ministry of Transport – states that the contested provisions comply with Section 1 and the first sentence of the Section 92 of the Constitution.

The Ministry of Transport agrees with the opinion expressed in the Saeima's reply and additionally points out that the amount of the road user charge depends on the emission level of the vehicle engine, the number of axles of the vehicle or combination of vehicles and the permissible gross weight. The vehicle holder can choose a daily, weekly, monthly or annual rate, thus choosing the most cost-effective way to pay for the use of Latvia's main and regional roads.

The amount of the fine in force before the adoption of the amendments of 23 November 2016 (*EUR* 120) was disproportionately low compared to the highest annual rate of the road user charge and the penalty for similar administrative offences. Moreover, other EU Member States also had higher penalties for infringements of road user charge rules at the time of the amendments.

The State Limited Liability Company "Latvijas Valsts ceļi" has implemented a pilot project to control the payment of the road user charge. The project includes the creation of an information technology infrastructure and the installation of road user charge payment control equipment. During the first phase of the pilot project, from 24 July 2017 to 15 June 2018, 16% of vehicles were found to have not paid the road user charge. In the second phase of the pilot project – from July 2018 to 31 May 2020 – 5.59% of vehicles were found not to have paid the national road user charge in the first month at two control points. Over the lifetime of the pilot project, the number of non-payers of road user charge has fallen by 60 percent. During this period, after one year, when vehicle owners, holders or operators realised that a fine was inevitable (because the controls were carried out by technical means), the number of offences had already fallen to 1.74%. This shows that the amendments to Section 149⁴⁰ of the Code, which increased the penalties for offences of the road user charge payment rules, have led to a significant reduction in the number of such offences.

6. The invited person – Ombudsman - considers that Section 9¹ of the Law on the Road User Charge, insofar as it denies the possibility to provide the owner of the vehicle with information on the offence of the road user charge payment rules recorded by technical means without stopping the vehicle, disproportionately restricts the right to a fair trial.

A fine is one of the least restrictive forms of administrative penalties and even the most severe penalty, as provided for in Section 149⁴⁰ (2) of the Code, did not reach the maximum amount of the fine provided for in Section 26 of the Code. The total amount of all fines imposed in the present case has not reached that level. A fine of *EUR* 500 would clearly not affect the ability of a legal person to exercise its fundamental rights. Moreover, the legislator has comprehensively considered and justified the imposition of a fine in the amount in question. Therefore, the fine of *EUR* 500 imposed on a legal person under Section 149⁴⁰ (2) of the Code is not manifestly disproportionate.

The purpose of an administrative penalty should not be contrary to the principle of the inevitability of a penalty in Section 35 of the Code. Accordingly, the fact that, by the time the decision of the authority to impose an administrative penalty is notified to the guilty person, he has already committed several identical administrative offences should not in itself be regarded as a reason not to impose a penalty or as an obstacle to the achievement of the objective of the administrative penalty. Otherwise, it should be recognised that decisions on infringements in the form of speeding offences recorded by technical means are also not aimed at achieving the objective of the administrative penalty, as they do not deter persons from committing a new offence.

According to Section 9¹ (1) of the Law on the Road User Charge, the penalty shall be imposed on the holder of the vehicle indicated in the State Register of Vehicles and their Drivers. Thus, when technical means are used to record an infringement of the road user charge, no information on the driver of the vehicle is obtained, but it is presumed that the owner or registered user of the vehicle is the perpetrator of the infringement. The fourth paragraph of the same Section, however, provided for the obligation to hear the owner of the vehicle only if the vehicle was not in the possession of its owner at the time of the offence due to unlawful acts of another person. Accordingly, Section 9¹ of the Law on the Road User Charge, in so far as it precludes the possibility of providing the owner of a vehicle with information on the infringement of the road user charge payment rules recorded by technical means without stopping the vehicle, constitutes, in essence, a restriction of an element of the right to a fair trial - the right to a fair hearing.

7. The invited person – the state limited liability company "Latvijas Valsts ceļi" – holds that the contested provisions comply with Section 1 and the first sentence of Section 92 of the Constitution, and fully shares the opinion expressed by the Saeima and the Ministry of Transport.

8. The invited party – the association "Association of Road Transport Operators "Latvijas auto"" – holds that the contested provisions are incompatible with Section 1 and the first sentence of Section 92 of the Constitution, the Directive, Article 49(3) and Article 52(1) of the Charter, as well as the general principles of law recognised in the case-law of the Court of Justice of the European Union and the law of the European Union, including the principle of proportionality.

The contested provisions are incompatible with Section 1 of the Constitution, since the total fine imposed on a private person (*EUR* 3,500) is disproportionately high – 146 times higher than the amount of the road user charge payable for four calendar days. As the offence is recorded by technical means, the fine can be imposed several times in one day, although the road user charge is paid for one calendar day. However, the contested provisions make it impossible for the institution and the court to assess each individual offence and find a fair solution. Even if the court considers that the offence is minor in the circumstances of the case, the minimum penalty that the court may impose is disproportionately harsh. Thus, the persons right to a fair trial, enshrined in Section 92 of the Constitution has been infringed.

The application of the contested provisions causes significant damage to the rights and legitimate interests of a person, as well as adversely affects the economic activity in the road transport sector. The objective of the Law on the Road User Charge and the Directive can be achieved by less restrictive means. The legislator could only impose a maximum sanction, leaving the institution and the court free to determine the amount of the penalty to be imposed according to the nature and gravity of the offence. It would also have been possible to set a lower minimum fine.

9. The invited party – association "LATVIJAS CEĻU BŪVĒTĀJS" – is of the opinion that the contested provisions ensure fair, just and uniform application of legal provisions and promote fair observance of laws.

The fact that the offender has paid the road user charge in 2018 shows that he/she was aware of the current regulation. Thus, the offences committed cannot be regarded as a random coincidence or the failure of an individual official, but as a deliberate evasion of the law. The penalty imposed is therefore fair and deserved.

The road user charge provided for in the Law on the Road User Charge is the only long-term foreseeable source of funding for the reconstruction, repair and maintenance of roads and bridges in Latvia. However, the share of the revenue generated by this charge in the annual state and local government works orders is less than 10 % of the average annual works orders for state and local government roads. Consequently, there is no reason to speak of this charge as a source of revenue that ensures the functioning of the road infrastructure. What is unique about the road user charge, however, is that the legislator cannot reallocate this revenue to other purposes, as is done, for example, with the annual revenue from the fuel excise duty.

10. Invited party – *Mg. iur.* Modris Žeivots – considers that the imposition of a fixed penalty, without the possibility of reducing it and without the possibility of assessing the nature and gravity of the offence, is disproportionate and incompatible with Section 92 of the Constitution, Article 49(3) of the Charter and Article 9a of the Directive, as well as the case-law of the Court of Justice of the European Union in this area.

The Latvian case-law has established that if a fixed (constant) fine is provided for an administrative offence, the proportionality of this fine has already been assessed by the legislator and it is in line with the purpose of the fine set out in the Code. However, fixed fines do not allow the totality of the circumstances of the case to be taken into account as required by Section 32(2) and Section 272 of the Code.

According to the regulatory framework, the information on non-payment of the road user charge recorded by technical means is transferred to the State Police, which is entitled to adopt a decision in an administrative offence case. In particular,

the decision to impose a penalty is not drawn up automatically in the system, but is taken by an official of the State Police on the basis of the information contained in the case file. Situations such as the one in the case under consideration of the Applicant could be avoided by imposing an obligation on the State Police, on its own initiative, to clarify the factual circumstances of the case, including informing the guilty person about such repeated offences, especially those recorded within one day, before taking a decision on imposing a penalty. This would not require a large budget, but would prevent the continuation of the offence and at the same time ensure that the parties to the proceedings have an equal opportunity to exercise their rights.

No one can be punished for the same offence twice in one day without the first decision to impose a penalty having been communicated to the guilty party and without the person being given the opportunity to express his views and submit evidence. Repeated punishment of a person for a continuing offences is permissible only if the person has been informed of the first decision to impose an administrative penalty. Otherwise, for objective reasons, the person cannot remedy the offence himself.

Several provisions of the Code, such as Section 260(2), Section 268(4), Section 271(2) and others, have laid down the obligation to investigate the offence, including informing the person of the recorded offence and giving him the opportunity to express his views. Also, according to Section 271(4) of the Code, the official had the right, but not the obligation, to examine the case without the presence of the parties in cases where the traffic offence was detected by technical means without stopping the vehicle. Moreover, the principle of fairness also requires that both parties to the proceedings have the right to be heard. This means that the State Police, also during the validity of the contested provisions, had the possibility to inform the offender, thus preventing the continuation of the offence.

The Code did not contain an explanation of the concept of "continuing offence". It has also been understood and applied differently in case law. However, a continuing offence is an offence which has not yet been brought to an end at the time of its discovery. The current Law on Administrative Liability remedies this deficiency. This law not only includes a definition of a continuing administrative offence, but also lays down the procedure for imposing a penalty in the event of a

continuing offence. That is, where an administrative offence is punishable by an administrative fine but the offence continues and is not brought to an end, the administrative sanction for the continuation of the administrative offence should be imposed after a reasonable time has elapsed for bringing the administrative offence to an end. In such a case, the principle of procedural fairness is also respected by giving the person concerned the opportunity to express his or her views and to submit additional evidence.

The second paragraph of Section 9¹ of the Law on the Road User Charge has expired; however, a similar provision is contained in Section 161(3) and Section 162(1) of the Law on Administrative Liability. Although the recording of an offence by technical means without stopping the vehicle is a specific area, which is still to be developed and studied, the principles of administrative offence proceedings in such cases should not differ from the general principles of administrative offence proceedings laid down in laws and regulations.

Thus, *Mg. iur.* Modris Žeivots believes that for driving without paying the road user charge, a person should have been punished for the first offence in the first place, or at least should have been informed about the recorded offence, and only after a reasonable period of time has passed and the person has not stopped the offence and has continued it, should the person be punished for the next offence. Moreover, the penalty should apply irrespective of the manner and means by which the offence was recorded. Punishment of any perpetrator of an administrative offence is not an end in itself; it is an instrument used to achieve the main objective of promoting compliance with the law.

Concluding Part

11. On the basis of Section 29(1)(6) of the Constitutional Court Law, the Saeima requests to terminate legal proceedings in the case on compliance of the contested norms with the first sentence of Article 92 of the Constitution.

According to the Saeima, taking into account the purpose of the administrative penalty provided for in Section 22 of the Code and applying the general principles of law, the Applicant has at the disposal all the necessary legal methods to reach a fair solution and a fair ruling in the given case. The Ministry of

Justice also expresses doubts as to whether a restriction of the fundamental right established in the first sentence of Section 92 of the Constitution can be established.

The Applicant, in turn, holds that the contested provisions infringe the fundamental rights of a person included in the first sentence of Section 92 of the Constitution. The legislator has failed to take into account the case-law of the Court of Justice of the European Union, Article 49(3) of the Charter and Article 9a of the Directive, and has failed to adopt the legal provisions necessary for a fair trial. Thus, it is not possible to give a fair judgement in the case pending before the Applicant.

Section 29(1) of the Constitutional Court Law gives the Constitutional Court the right to terminate the case, but does not provide for the obligation to terminate it. If arguments on termination of legal proceedings have been presented in the case, the Constitutional Court shall assess them before assessing the constitutionality of the contested provision (*see, for example, Paragraph 13 of the Decision of the Constitutional Court of 15 October 2021 on termination of legal proceedings in Case No 2020-63-01*).

Therefore, the Constitutional Court will first assess whether grounds exist for termination of the proceedings in the part concerning compliance of the contested provisions with the first sentence of Section 92 of the Constitution.

11.1. The present case was initiated on the basis of an application of the court. The court applies to the Constitutional Court in cases where it considers that a legal provision applicable in the case before it infringes fundamental rights of a person. In the case of an application before the court, or so-called specific scrutiny, the circumstances of the particular case are, *inter alia*, relevant for the determination of the case (*cf. Judgement of the Constitutional Court of 15 June 2017 in Case No 2016-11-01, paragraph 12.1.*).

The judicial proceedings of the Applicant 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 149⁴⁰(2) of the Code, are being assessed. Pursuant to Section 9¹(2) of the Law on the Road User Charge, the State Police has imposed on the legal entity the minimum fine for

each offence which is stipulated for a carrier for the relevant violation, i.e. EUR 500.

According to the Applicant, in accordance with the contested provisions, 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 judgement in accordance with those provisions.

Consequently, the Applicant considers the incompatibility of the contested provisions with the first sentence of Section 92 of the Constitution in the circumstance that the court has no appropriate powers to reduce the amount of the fine imposed on a person, which it considers disproportionate.

11.2. The Saeima, justifying the request to terminate the proceedings in this part of the claim, inter alia, points out that the disproportionality in the Applicant's case is due to the incorrect application of legal provisions, i.e., because a penalty is established for each recorded offence.

The Constitutional Court has repeatedly recognised that it is not within the competence of the Constitutional Court to review the legality of the application of legal provision, as well as the legality of decisions of courts of general jurisdiction (*see, for example, Paragraph 11 of the Decision of the Constitutional Court of 17 November 2017 on termination of proceedings in Case No 2017-01-01*). In the case when the compliance of a legal regulation applied in the proceedings with the first sentence of Section 92 of the Constitution is contested before the Constitutional Court, it is essential to distinguish the issue of constitutionality of the contested legal regulation from the issue of whether the contested legal regulation has been correctly applied to a person.

It follows from the application that the legal entity has been subject to a total of seven administrative penalties for the administrative offence provided for in Section 149⁴⁰ (2) of the Code. Among all the offences recorded, there are also offences recorded on the same day, but at different times, when the person was driving the same vehicle on the same stretch of road. The person was only informed of the offences after they had already been recorded seven times.

In the case under review, the Constitutional Court, in compliance with its competence established by the Constitution and the Constitutional Court Law, will

not assess how the contested provisions should be applied in the administrative offence case pending before the Applicant. The Constitutional Court will not, inter alia, assess whether in a given case an administrative penalty should be imposed on a legal person for each recorded offence and whether the principle of prohibition of double punishment has thus been observed, but will assess the constitutionality of the contested provisions.

11.3. The Constitutional Court has recognised that an institution of the judiciary must fulfil several requirements in order to be recognised as a "fair court" within the meaning of the first sentence of Section 92 of the Constitution. First of all, the institution should be independent, objective, and competent (*see, for example, Judgement of the Constitutional Court of 18 October 2007 in Case No 2007-03-01, paragraph 3*).

In the case-law of the Constitutional Court it has already been assessed whether the competence conferred on the court by law complies with the first sentence of Section 92 of the Constitution. The Constitutional Court has concluded, inter alia, that a competent judicial authority, within the meaning of the first sentence of Section 92 of the Constitution, is not only one which has professional skills, but also jurisdiction and the right to decide on certain matters or powers of a certain scope (*see paragraph 12.2 of the judgement of the Constitutional Court of 22 December 2017 in Case No 2017-08-01*).

In the examined case, the Applicant, inter alia, seeks to ascertain whether the contested provisions violate the scope of the powers of a court in line with the first sentence of Section 92 of the Constitution. In order to assess this, the Constitutional Court needs to ascertain whether in the administrative offence proceedings comprehensive judicial control over decisions on the imposition of an administrative penalty is exercised and whether, as a result of such control, the court can eliminate the consequences of an institution's decision on the imposition of an administrative penalty which is incompatible with legal provisions in relation to a person. It is therefore necessary to continue the proceedings in the present case. The Saeima's request for the proceedings to be terminated should be rejected.

Consequently, the proceedings in the case in the part concerning compliance of the contested provisions with the first sentence of Section 92 of the Constitution should be continued.

12. When examining a case initiated upon a court application, the Constitutional Court must examine the situation in so far as it is necessary for adjudication of the particular administrative case (*cf. paragraph 10 of the judgement of the Constitutional Court of 22 December 2017 in Case No 2017-08-01*).

According to the Applicant, the contested provisions are incompatible with Section 1 and the first sentence of Section 92 of the Constitution. If the compatibility of several legal provisions with the Constitution has been contested, then, taking into account the essence of the case under examination, the Constitutional Court must determine the most effective approach to assess the compatibility of these provisions (*see, for example, Paragraph 9 of the Judgement of the Constitutional Court of 11 December 2020 in Case No 2020-26-0106*).

12.1. The Law on the Road User Charge provides for the obligation to pay a charge for the use of the sections of the main and regional national roads included in Annex 1 to this Law (except for their crossing at intersections and use in populated areas, the boundaries of which are marked with road signs specified in Annex 1¹ to this Law) by certain goods vehicles or combinations thereof.

According to Section 8(4) of the Law on the Road User Charge, the violation of the charge payment rules may be recorded by technical means at the disposal of the State Police or the institutions referred to in Section 5(1) of this Law, which administer the charge, without stopping the vehicle.

Pursuant to Section 9¹ (1) of the Law on the Road User Charge, an administrative penalty for an offence recorded by technical means without stopping the vehicle shall be imposed on the holder of the vehicle indicated in the State Register of Vehicles and their Drivers or, if no holder is indicated or the vehicle is removed from the records, - on the owner (possessor) of the vehicle. Whereas, Paragraph two of the Section stated that 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.

Pursuant to Section 149⁴⁰(2) of the Code, 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 EUR 180 to EUR 360 shall be imposed on the driver or from EUR 500 to EUR 1,000 on the carrier.

In the case under consideration of the Applicant, the administrative offence was recorded by technical means and, therefore, in accordance with the provisions of Section 9¹ (2) of the Law on the Road User Charge, the minimum fine imposed on the legal entity for the relevant offence was *EUR 500*, as provided for the carrier in Section 149⁴⁰ (2) of the Code.

Thus, it can be concluded that within the framework of the reviewed case the contested provisions should be assessed as a single legal framework.

12.2. In examining the case, the Constitutional Court must examine whether the contested provisions comply with legal provisions of higher legal force, *inter alia*, taking into account the applicant's reasoning and the grounds and considerations reflected in the application (*cf. Judgement of the Constitutional Court of 15 June 2017 in Case No 2016-11-01, paragraph 12.1.*).

The Applicant does not object to the fact that the infringement of the road user charge payment rules may be recorded by technical means without stopping the vehicle. The Applicant, in essence, finds that the contested provisions are incompatible with Section 1 of the Constitution in the circumstance that the amount of the fine established for the infringement provided for in the contested provisions - *EUR 500* - is disproportionate. The Applicant points out that this amount exceeds the daily fee rate of *EUR 6*, provided for by the law, by more than 83 times for the person on whom the fine was imposed. The Applicant, in turn, finds that the contested provisions are incompatible with the first sentence of Section 92 of the Constitution in the fact that it has no possibility to render a fair judgement, since the contested provisions do not provide the court with the possibility to decide on the reduction of the fine - *EUR 500*.

Thus, it can be concluded that within the framework of the specific case, the Constitutional Court should 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 Section 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.

Taking into account the factual circumstances of the case and the Applicant's arguments on the possible unconstitutionality of the contested provisions, the Constitutional Court will first of all assess their compliance with the principle of proportionality included in Section 1 of the Constitution, and then - with the first sentence of Section 92 of the Constitution.

13. The Applicant finds that the contested provisions are incompatible with Section 1 of the Constitution in the circumstance that the amount of the minimum fine established for the given offence - *EUR 500* - is disproportionate. The association "Association of Road Transport Operators "Latvijas auto"" also agrees. The Saeima, the Ministry of Justice, the Ministry of Transport and the Ombudsman consider that the penalty complies with the principle of proportionality. According to the Ministry of Justice, there is no reason to believe that a fine of this amount would be unduly burdensome for a person.

Section 1 of the Constitution imposes an obligation on State institutions to respect the fundamental principles of the rule of law in their activities. The principles of a democratic and law-governed state are based on the fact that in society there is a balance between fundamental values and the realisation of rights (*see paragraph 6 of the Decision of the Constitutional Court of 13 October 2010 on termination of proceedings in Case No 2010-09-01*). Section 1 of the Constitution also includes the obligation of all State institutions to comply with the principle of proportionality in their activities (*see paragraph 11 of the Decision of the Constitutional Court of 28 February 2007 on termination of proceedings in Case No 2006-41-01*).

The principle of proportionality in general form establishes that there must be a reasonable relationship between the action of the State authority and the objective which the State authority seeks to achieve by that action (*see paragraph 13 of the judgement of the Constitutional Court of 4 November 2021 in Case No 2021-05-01*).

The obligation to respect the principle of proportionality binds not only the legislator, but also the public administration and the judiciary. Not only the

legislator, when adopting legal provisions, has to assess whether these provisions comply with the principle of proportionality, but also the public administration, when exercising public authority, has to take into account the principle of proportionality in each specific case. The judiciary has a dual role in observing the principle of proportionality: on the one hand, its actions and decisions adopted must comply with the principle of proportionality, but, on the other hand, the task of the judiciary is to verify whether the legislator and the State administration have violated the principle of proportionality (*see paragraph 11 of the Decision of the Constitutional Court of 28 February 2007 on termination of proceedings in Case No 2006-41-01*).

In the framework of the case under review, the Constitutional Court has to examine whether the amount of the fine established in the contested provisions for the specific administrative offence in the case when the offence was recorded by technical means without stopping the vehicle complies with the principle of proportionality.

14. In assessing compliance with the principle of proportionality, it should be borne in mind that the expression of this principle may vary from one area of law to another. The legislator's discretion in regulating a specific issue may be broader or narrower, and the Constitutional Court must assess whether the scope of discretion exercised by the Saeima complies with the Constitution (*see paragraphs 15.2 and 15.3 of the judgement of the Constitutional Court of 8 November 2006 in Case No 2006-04-01 and paragraph 7 of the judgement of 3 April 2008 in Case No 2007-23-01*).

The Constitutional Court has recognised that the legislator has a wide margin of discretion to determine penalties for specific offences. In adopting such legislation, the legislator is usually guided by the ideas, beliefs and values accepted by society and which it is entitled to express in normative form. When establishing the policy of penalties, the legislator establishes the frameworks of a person's behaviour, thus protecting the public security (*see paragraph 10 of the judgement of the Constitutional Court of 19 November 2013 in Case No 2013-09-01*).

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 offence, as well as the amount. Consequently, when examining cases relating to specific offences established by the legislator and administrative penalties provided therefore, 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 offence, and whether this action is aimed at the achievement of legitimate objectives. However, a situation, for example, where a legal provision is inconsistent with general principles of law and other provisions of the Constitution, European Union law or international law, it would be considered to be a violation of the limits of discretion laid down in the Constitution.

15. The Law on the Road User Charge, inter alia, introduced a Directive aimed at setting infrastructure charges for heavy goods vehicles. In accordance with Article 9a of the Directive, Member States shall establish an appropriate control mechanism and a system of penalties applicable to infringements of the national provisions adopted pursuant to the Directive and shall take all measures necessary to ensure that those provisions are complied with. The sanctions provided for must be effective, proportionate and dissuasive.

The Applicant holds that the contested provisions were not compliant with the case-law of the Court of Justice of the European Union on interpretation of Article 9a of the Directive. The Saeima and the Ministry of Justice, on the other hand, consider that the Latvian legal framework differs from the one assessed by the Court of Justice of the European Union in the cases referred to by the Applicant, and, consequently, the findings of the Court of Justice of the European Union are not applicable to the contested provisions.

Both when adopting national legal provisions and when clarifying the content of national legal provisions and applying them, the democracy-strengthening legal provisions of the European Union and the interpretation thereof enshrined in the case-law of the Court of Justice of the European Union must be taken into account (*see, for example, paragraph 23.1 of the judgement of the Constitutional Court of 11 June 2020 in Case No 2019-12-01*). The Court of Justice of the European Union has held that, in the absence of harmonisation of European Union law on the penalties applicable to infringements of the conditions laid down

in the system established by that law, it is for the Member States to choose the penalties they consider appropriate. However, Member States must exercise this competence in compliance with European Union law and general principles of law (*see Joined Cases C-497/15 and C-498/15 "Euro-Team Kft.", judgement of the Court of Justice of the European Union of 22 March 2017 and "Spirál-Gép Kft." paragraph 39*).

15.1. The case-law of the Court of Justice of the European Union shows: Article 9a of the Directive must be interpreted as precluding a system of penalties which provides for the imposition of a fixed fine for all infringements, irrespective of their nature and severity, of the provisions relating to the obligation to pay an upfront charge for the use of road infrastructure (*see judgement of the Court of Justice of the European Union of 22 March 2017, Joined Cases C-497/15 and C-498/15 "Euro-Team Kft." and "Spirál-Gép Kft." paragraph 50*).

According to Article 9a of the Directive, the repressive measures imposed by a Member State must, inter alia, neither go beyond what is necessary in order to achieve the legitimate objectives pursued by the legislation concerned nor be disproportionate to those objectives (*see judgement of the Court of Justice of the European Union of 22 March 2017, Joined Cases C-497/15 and C-498/15 "Euro-Team Kft." and "Spirál-Gép Kft." paragraph 58*).

The proportionality requirement of Article 9a cannot be considered to have direct effect. However, the national court, in accordance with its obligation to take any general or specific measures applicable to ensure the implementation of that provision, must interpret national law in accordance with that provision or, if such an appropriate interpretation is not possible, must disapply any provision of national law the application of which, in the circumstances of the case, would lead to a result contrary to European Union law (*see paragraph 62 of the judgement of the Court of Justice of the European Union of 4 October 2018 in Case C-384/17 Dooel Uvoz-Izvoz Skopje Link Logistic N&N*).

15.2. Pursuant to Section 4(1) of the Law on the Road User Charge, the levy shall be payable according to the level of emissions of the vehicle engine and the number of axles of the vehicle or combination of vehicles for the period during which the road is to be used, in accordance with the rates set out in Annex 2 to this Law. The daily rate for the use of the sections of national roads listed in the Annex

ranges from EUR 6 to EUR 12, the weekly rate from EUR 14 to EUR 51, the monthly rate from EUR 28 to EUR 101, and the annual rate from EUR 300 to EUR 1,018. Annex 1 of the Law on the Road User Law, "National main and regional road sections subject to charge", identifies a total of 17 road sections ranging from 7.1 kilometres to 306.5 kilometres. If a vehicle has paid the road user charge, it can use any of the road sections specified by law for a specified period of time.

It follows that in Latvia the road user charge rates vary depending on the period of road use and the technical characteristics of the vehicle. In particular, the road user charge payer can choose the most economically advantageous period of road use and pay daily, weekly, monthly or annual charge rates accordingly.

15.3. The Applicant holds that the contested provisions provide for the imposition of a fine of a fixed amount, and points out that the amount of the fine established therein - EUR 500 - exceeds 83 times the rate of one day's fee (EUR 6) applicable to a given person who has applied to court.

15.3.1. The Court of Justice of the European Union has assessed whether a system of sanctions providing for the imposition of a fixed fine is compatible with Article 9a of the Directive in the light of the legal framework laid down in Hungarian national legislation. The Court of Justice of the European Union found that, in Hungary, the fines imposed on drivers for infringements relating to the obligation to pay charges for the use of road infrastructure were determined solely on the basis of the category of vehicle, which in turn was determined by the number of axles on the vehicle. The Court of Justice of the European Union concluded that the Hungarian legislation does not provide the court with the power to take into account, when imposing a fine, the conduct of the driver, the nature and gravity of the offence committed (*see judgement of the Court of Justice of the European Union, Joined Cases C-497/15 and C-498/15 "Euro-Team Kft." and "Spirál-Gép Kft." Paragraphs 44 and 47*).

However, in Latvia, the legislator has set the minimum and maximum amount of the fine to be imposed for a given offence in Section 149⁴⁰(2) of the Code. Namely, the driver is liable to a fine of between EUR 180 and EUR 360, and the carrier to a fine of between EUR 500 and EUR 1,000. Consequently, the legal authority, taking into account the nature of the offence committed, the personality

of the offender, the degree of his or her guilt, his or her financial situation, mitigating and aggravating circumstances, has the possibility in each particular case to determine the amount of the fine to be imposed on a person within the limits provided for in Section 149⁴⁰ (2) of the Code (*see Section 32(2) of the Code*). The minimum and maximum limits set for fines allow for the individualisation of the fine, taking into account the circumstances of the case.

In the case provided for in the contested provisions, where the infringement is recorded by technical means without the vehicle being stopped, the fine imposed is not to be regarded as a fixed penalty in the sense interpreted by the Court of Justice of the European Union. The administrative offence procedure in cases where the offence is recorded by technical means without the vehicle being stopped is different from the procedure in cases where the offence is recorded by a competent authority or official. This is explained by the fact that in the case when the offence was recorded by technical means, it is not possible for the law enforcer to fully ascertain and assess all the circumstances that are ascertained and assessed in other cases (*see also the opinion of the Ministry of Justice in the case materials, vol. 2. pp. 7-13*). Therefore, Section 9¹(2) of the Law on the Road User Charge provides for the amount of the fine to be imposed on a person which is the lowest possible in the case of an offence under Section 149⁴⁰ (2) of the Code.

In administrative offence proceedings, even where the offence has been recorded by technical means, the authority and the court must verify whether an administrative offence has been committed, whether the person is liable and punishable and whether the administrative offence has been dealt with in accordance with the legal provisions. Pursuant to Section 289¹² (2)(4) of the Code, the court generally has the power to modify the amount of the penalty imposed by the authority, but only within the limits provided for in the regulatory enactment governing liability for the administrative offence in question. In the case provided for in the contested provisions, the court does not have such a right for the sole reason that the legislator has already laid down: in cases where the offence is recorded by technical means, the person shall be liable to the smallest possible fine. In particular, according to the contested provisions, the court cannot amend the amount of the fine solely because it is already the lowest possible amount of the fine to be imposed for the offence in question.

Consequently, the contested provisions do not provide that a fine for infringement of the road user charge payment rules should be imposed without taking into account the behaviour of the offender, the type and seriousness of the infringement.

15.3.2. The Court of Justice of the European Union has also assessed whether the severity of the penalties provided for in the national legislation of a Member State is contrary to the proportionality requirement of Article 9a of the Directive.

In Case C-497/15, the driver of a vehicle had, due to an error in the navigation system, passed an exit through which he had to leave the motorway in order to continue his route on a road of a lower category for which he had a licence. The driver had therefore driven for about five kilometres on the motorway without having paid the charge. The fine imposed on the driver was more than 500 times the unpaid charge, which is less than the amount actually paid for a comparable stretch of road. In Case C-498/15, however, the driver of a vehicle immediately paid the charge of the amount requested on his own initiative after discovering that, due to his own error, he had been using a section of road for 20 minutes for which the charge had not been paid. In this case, the fine imposed on the driver of a vehicle was more than 87 times the amount of the late payment (*see the judgement of the Court of Justice of the European Union of 22 March 2017 in Joined Cases C-497/15 and C-498/15 "Euro-Team Kft." and "Spirál-Gép Kft." Paragraphs 62, 63 and 65*).

In both cases, the Court of Justice of the European Union found that the persons held liable had not benefited from any advantage or caused any damage as a result of the offences. The Court of Justice of the European Union also found that sanctions of the level imposed in the main cases were not proportionate to the offences committed.

Moreover, the Court of Justice of the European Union has stated that, in order to assess the proportionality of a sanction, account must also be taken of the relationship between the amount of the fine potentially to be imposed and the economic advantage resulting from the offence in deterring any person from committing an offence of the same nature (*cf. see the judgement of the Court of Justice of the European Union of 11 February 2021 in Case C-77/20 "K. M"*,

paragraph 53). The principle of proportionality must be respected not only in determining the constituent elements of the offence and the rules on the amount of fines, but also in assessing the aspects that may be taken into account in determining the fine (*see the judgement of the Court of Justice of the European Union of 22 March 2017 in Joined Cases C-497/15 and C-498/15 "Euro-Team Kft." and "Spirál-Gép Kft." paragraph 43*).

As already pointed out, the second paragraph of Section 149⁴⁰ of the Code, in conjunction with other provisions of the Code, provides for the individualisation of the penalty in the light of the circumstances of the particular case. In Latvia, the legislator has chosen to set charge rates based on the technical characteristics of the vehicle and the period of road use. The amount of the fine set by the legislator in cases where the infringement was detected by technical means (EUR 500) is more than 41 times the highest daily rate (EUR 12), more than nine times the highest weekly rate (EUR 51), more than four times the highest monthly rate (EUR 101), and the highest annual rate (EUR 1018) is more than twice the amount of the fine. It should be noted that in Latvia the system of recording the offence provided for in the contested provisions is also different from that in Hungary. In Latvia, an offence is not recorded every time a vehicle starts to travel on any of the road sections listed in the law for the use of which a road user charge is payable. An offence with technical means is recorded when a vehicle drives without having paid the road user charge on a section of road on which the technical means are placed at the time.

The level of the penalty must not only be such as to ensure the achievement of the legitimate objectives pursued, but must also be effective and dissuasive. The Constitutional Court has recognised that the State is obliged to establish an effective tax collection system in the interests of the well-being of the society (*see, for example, Paragraph 17 of the judgement of the Constitutional Court of 15 April 2013 in Case No 2012-18-01*). Similarly, in the interest of public welfare, the system of collection of charges must also be effective, and the legal regulation in this area would not be considered sufficient if an effective system of prevention of offences did not function (*cf. 16.3 of the Judgement of the Constitutional Court of 6 April 2021 in Case No 2020-31-01*). The penalty policy designed by the legislator must be assessed in the light of the level of charges payable for all the periods

specified. The legislator's decision to set the daily rate as the shortest period for which the charge can be paid does not mean that the statutory fine for non-compliance should be reduced as a consequence.

The system of road user charges to be paid, as assessed by the Court of Justice of the European Union, which existed in Hungary, is based, *inter alia*, on the distance travelled by the vehicle (*see judgement of the Court of Justice of the European Union of 22 March 2017 in Joined Cases C-497/15 and C-498/15 "Euro-Team Kft." and "Spirál-Gép Kft."* (Paragraphs 9, 22 and 26, and Paragraph 21 of the judgement of 4 October 2018 in Case C-384/17 *Dooel Uvoz-Izvoz Skopje Link Logistic N&N*). Latvia's road user charge system is based on the technical characteristics of the vehicle and the period of use of the road. 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.

16. In order to assess the constitutionality of the contested provisions, the Constitutional Court must ascertain the legislator's aim to establish administrative liability for the use of the sections of national roads established by law, if the road user charge has not been paid, and to establish the possibility to record this offence by technical means without stopping the vehicle, providing for a minimum amount of a fine for such an offence.

According to the Applicant, the obligation to pay the road user charge is aimed at the protection of the rights of others and the welfare of the society, as it ensures the maintenance and development of the main roads, as well as encourages the use of more environmentally friendly vehicles. The contested provisions ensure that the additional funds required from the State budget for the maintenance and development of main roads are reduced.

The Saeima points out that the idea of the road user charge is based on the principle of infrastructure cost recovery. The obligation to pay road user charge

was introduced in order to implement the Directive. The administrative penalty, on the other hand, is provided for in fulfilment of the national obligation laid down in Article 9a of the Directive.

It appears from the amendment drafting materials of 23 November 2016 that the amount of the fine provided for in Section 149⁴⁰ of the Code was increased in order to motivate more active payment of the road user charge. Since the revenue from the road user charge is fully allocated to the state roads, the amendments were aimed at increasing the revenue from the road user charge by increasing the fine to such an amount that it would be more profitable for persons to pay the road user charge instead of the fine (*see the annotation to draft law No 723/Lp12 "Amendments to the Latvian Administrative Violations Code"*). However, it can be inferred from the amendment drafting materials of 3 April 2019, which introduced the possibility to record an offence of the road user charge payment rules by technical means, that the aim of the amendments was to improve the control of the road user charge payment (*see the annotation to the draft law No 258/Lp13 "Amendments to the Law on the Road User Charge"*).

The Constitutional Court has recognised in its case-law that such a regulation, which promotes and ensures the fulfilment of taxpayers' obligations, is aimed at the protection of the public welfare (*see, for example, Paragraph 17 of the judgement of the Constitutional Court of 15 April 2013 in Case No 2012-18-01 and Paragraph 16.3 of the judgement of 6 April 2021 in Case No 2020-31-01*).

The purpose of the road user charge is to promote the maintenance and development of the main and regional national roads and the use of more environmentally friendly means of transport (*see Section 1 of the Law on the Road User Charge*). The amount of the road user charge depends on the level of the vehicle's engine emissions and the number of axles of the vehicle or combination of vehicles, as well as the period of time during which the roads are to be used (*see Section 4(1) of the Law on the Road User Charge*). In particular, both the obligation to pay the charge and the amount of the charge are inter alia linked to the impact of the vehicle on the condition of the main and regional national roads and the environment. The provisions on liability for offences of road use restrictions encourage voluntary payment of road user charge.

Consequently, the legislator has provided for administrative liability for the use of the sections of national roads prescribed by law where the road user charge has not been paid and for the possibility of recording this offence by technical means without stopping the vehicle, in the interest of protecting the public welfare.

17. In assessing whether a legal provision complies with the principle of proportionality, it is necessary to examine:

1) whether the selected means are suitable for the achievement of the legitimate aim, namely, whether the selected means can achieve the legitimate aim;

2) whether such action is necessary, namely, whether the legitimate aim cannot be achieved by means which are less restrictive of the rights of the individual;

3) whether the restriction is appropriate, namely, whether the benefit to society outweighs the harm caused to the rights of the individual.

If, on assessment of a legal provision, it is recognised that it fails to comply with at least one of those criteria, then it also fails to comply with the principle of proportionality and is unlawful (*see, for example, Judgement of the Constitutional Court of 16 May 2007 in Case No 2012-18-01, paragraph 16, and Judgement of 21 December 2015 in Case No 2021-05-01, paragraph 14*).

When assessing administrative penalties established by the legislator for the specific offences, the Constitutional Court also assesses, *inter alia*, whether the amount of the penalty established by the legislator in the exercise of its discretion is proportionate to the objective which the legislator sought to achieve by means of the specific penalty.

18. The means selected by the legislator are appropriate for achieving a legitimate aim, if the aim is achieved by the specific framework (*see, for example, Judgement of the Constitutional Court of 13 November 2021 in Case No 2018-18-01, paragraph 20*).

According to Article 9a of the Directive, Member States are competent to choose the penalties they consider appropriate for non-payment of road user charge.

By implementing the Directive and adopting the Law on the Road User Charge, the legislator has obliged a certain group of persons, namely those who use the sections of national roads provided for by the Law, to contribute to the maintenance and development of these sections of roads. The contested provisions, on the other hand, provide for both administrative liability for evasion of the said obligation and a certain control mechanism or a way of detecting the offence, i.e. the offence may be detected by technical means without stopping the vehicle.

The contested provisions impose a minimum fine, while the control mechanism provided for in the contested provisions ensures that each offence is recorded on the section of the motorway where the technical means are installed.

The contested provisions have a deterrent effect. Providing for administrative liability for a specific offence encourages voluntary payment of road user charge. Thus, the contested provisions contribute to the protection of public welfare.

Consequently, the means chosen by the legislator are appropriate to achieve the objective which the legislator intended to attain by those means.

19. When examining whether the selected means are necessary to achieve the legitimate aim, the Constitutional Court assesses whether the legitimate aim cannot be achieved by other means which would be equally effective (*see, for example, Paragraph 21 of the judgement of the Constitutional Court of 13 November 2021 in Case No 2018-- 18-- 01*). However, The Constitutional Court has already held that a more lenient measure is not just any other measure, but only such a measure by which the legitimate aim can be achieved at least in the same quality (*see, for example, Judgement of the Constitutional Court of 7 October 2010 in Case No 2010-01-01, paragraph 14*).

The Applicant holds that the objective of the Law on the Road User Charge and the Directive can be achieved by less restrictive means, for example, by establishing in the regulatory framework the possibility for the authority and the court to reduce the applicable fine or by setting a lower amount of the minimum fine.

According to the Saeima, the previous fine (*EUR 120*) was not effective and dissuasive. The Saeima further notes that it is theoretically possible to provide for

an administrative penalty depending on the rate of the road user charge (daily, weekly, monthly or yearly rate) that has not been paid. In practice, however, this would mean that the administrative penalty for non-payment of the monthly or annual road user charge could not be applied at all. That is, each offence is recorded on a specific day, and it would therefore only ever be possible to establish an offence in respect of road user charge that has not been paid on the day on which the offence was recorded.

19.1. Until 31 December 2016, Section 149⁴⁰ of the Code provided for a fine of *EUR 120* to be imposed on the driver for using a section of a national road as defined by law if the road user charge is not paid. However, Section 149⁴⁰ of the Code was reworded by the amendment of 23 November 2016. The amendments stipulate that not only the driver but also the carrier can be held administratively liable and that the carrier is liable to a fine of between *EUR 500* and *EUR 1,000*. Increasing the amount of the fine and imposing administrative liability on the carrier was necessary to motivate drivers and carriers to pay the road user charge more actively (*see the annotation to draft law No 723/Lp12 "Amendments to the Latvian Administrative Violations Code"*).

In drafting the amendments of 23 November 2016, the proportionality of the amount of the fine to the offence was assessed. In particular, the annual road user charge rate at the time of the examination of the draft law was between *EUR 400* and *EUR 925*. The fine of *EUR 120* was therefore disproportionately low - more than seven times lower than the annual rate of the highest road user charge. The planned fines were also compared with those in other EU countries. The specific offence was compared with other similar offences and the level of penalties for them - for example, for evasion of payment of taxes or equivalent duties (*EUR 140-2,100*), for non-payment of customs duties or other duties (up to *EUR 140* for natural persons and up to *EUR 1,400* for legal persons), as well as other offences related to road transport. The State Police had found that around 16% of the road user charges had not been paid. This check found that some drivers had been fined as many as three or four times. According to the drafters, the fine of *EUR 120* was disproportionately low and a significant number of road carriers simply did not pay the road user charge because it was more profitable for them to pay the fine than to pay the road user charge for the whole year. In determining the

amount of the maximum fine in Section 149⁴⁰ (2) of the Code, account was also taken of the fact that the planned maximum fine applicable to the driver of the vehicle - EUR 360 - is approximately 50 per cent of the average annual road user charge rate, while the maximum fine applicable to the carrier - EUR 1,000 - is by EUR 75 higher than the maximum annual road user charge rate (*see the annotation to draft law No 723/Lp12 "Amendments to the Latvian Administrative Violations Code"*).

Thus, before amending the amount of the fine established in the contested provisions, the necessity of the respective amendments, the number and nature of the established offences, as well as the gravity of the specific offence were assessed, including a comparison of the offence with other similar offences.

19.2. By the amendments of 3 April 2019, Section 9¹ was added to the Law on the Road User Charge. The amendments introduced, inter alia, the possibility to record the non-payment or partial payment of the road user charge by technical means without stopping the vehicle. According to the annotation of the amendments of 3 April 2019, the basis for such amendments was also the conclusions of the pilot project on road user charge payment control carried out by the state limited liability company "Latvijas Valsts ceļi" in 2017-2018 (*see the annotation to the draft law No 258/Lp13 "Amendments to the Law on the Road User Charge"*).

The aim of the pilot project was to find out how many road user charge payers have paid their charge. During the pilot project, technical means were installed and, within six months, a check of all vehicles passing through the sites showed that 16% of the vehicles for which the road user charge was due had not paid it. The pilot project concluded that on average EUR 340,000 per month, or EUR 4.08 million per year, is not being collected by the state budget. Therefore, an automated road user charge payment control system was introduced with the amendment of 3 April 2019. The purpose of introducing such a system was to facilitate the collection of the charge and the implementation of the charge revenue plan (*see case materials vol. no. 2, pp. 51-57, and the annotation to the draft law No 258/Lp13 "Amendments to the Law on the Road User Charge"*).

The amendments of 3 April 2019 also introduced, inter alia, a provision that a person shall be liable for the minimum fine imposed on the carrier for an offence

detected by technical means without stopping the vehicle. The representative of the Ministry of Transport, regarding the question of the proportionality of the minimum fine provided for in the draft law, stated at the meeting of the Budget and Finance (Tax) Commission of the Saeima that such a fine is proportionate and it is set in order to motivate carriers to pay the charge for a year or half a year at once and thus avoid situations when persons forget to pay it or want to save money illegally (*cf. the annotation to draft law No. 258/Lp13 "Amendments to the Law on the Road User Charge" and the audio recording of the meeting of the Budget and Finance (Tax) Committee of the Saeima on 26 March 2019 from 00.00.50 to 00.04.00*).

The second phase of the pilot project was implemented from June 2019 to May 2020. In its first month, only 5.59% of vehicles were found to not have paid the charge at two control points, which was already a significant reduction compared to the first round of the pilot project. Moreover, during the second phase of the pilot project, an even more significant decrease in the number of non-payers of road user charge was observed, e.g. in May 2020, 1.74% of vehicles had not paid the road user charge (*see Case file in Vol. 1. pp. 50 - 74*).

Thus, following the amendments increasing the amount of the administrative fine and introducing the possibility of registering the offence with technical means, there had been a significant reduction in the number of offences.

19.3. In assessing whether there are other, more lenient means which could achieve the aim of the contested provisions at least to the same degree, the discretion of the legislator in the field of penal policy must be taken into account. As already indicated above, the legislator is entitled to determine the administrative liability for a specific act and to choose the most appropriate type and amount of the penalty to be imposed for specific administrative offences. The authorities and the courts determine the appropriate penalty in each individual case, within the limits set by the legislator.

When adopting the contested provisions, both the amount of the penalty, comparing it with similar offences, and its effectiveness in promoting voluntary payment of the road user charge were assessed. By the assessment of offences committed before the adoption of the amendments of 23 November 2016 it was concluded that the amount of the fine previously set (EUR 120) does not deter

persons from committing offences, including repeated offences. The legislator has assessed the appropriateness of the amount of the fine provided for in Section 149⁴⁰ (2) of the Code to the nature of the offence and has determined that, where the offence was recorded by technical means, the lowest possible fine provided for the carrier in Section 149⁴⁰ (2) of the Code for the offence concerned shall apply.

If the legislator has assessed whether the amount of the fine is commensurate to the nature of the offence, 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 offence does not mean that the legislator has exceeded the limits of its discretion.

Therefore, there were no other alternative means by which the legitimate objective could be achieved at least to the same quality.

20. When assessing whether a legal provision complies with the principle of proportionality, it must also be ascertained whether the adverse consequences for the individual outweigh the benefits for society as a whole. In particular, it is necessary to establish the legitimate interests to be balanced in the case and which of those legitimate interests and rights should be given priority (*cf. see, e.g., Judgement of the Constitutional Court of 12 February 2020 in Case No 2019-05-01, paragraph 24*).

In the case under review, the Constitutional Court has to establish whether there is a balance between the legitimate interests of road users and the State's obligation to establish a road use control system that is effective and, accordingly, contributes to the protection of the public welfare.

It is in the public interest to encourage the voluntary payment of road user charge and thus contribute to the maintenance and development of the national roads. The regulatory framework for liability for infringements of the rules on the use of the motorways must be effective, and its effectiveness is guaranteed both by the inevitability of the penalty and by the severity of the penalty.

As already pointed out, the increase in the amount of the fine and the introduction of the possibility to record the offence by technical means have significantly reduced the number of offences detected (*see paragraph 19.2 of this*

judgement). Thus, the amount of the fine established in the contested provisions is sufficient to encourage voluntary payment of the road user charge.

It should also be noted that the Law on the Road User Charge provides for the obligation to pay the charge for the use of certain sections of Latvian roads and to pay it only if the gross vehicle weight of the goods vehicle exceeds 3,000 kilograms or the gross vehicle weight of the goods vehicle combination exceeds 3,500 kilograms (*see Section 2(1) of the Law on the Road User Charge*). Moreover, the obligation to pay the charge and the amount of the charge are inter alia linked to the impact of the vehicle on the state of the main and regional national roads and the environment. The Saeima has also pointed out that the idea of road user charge is based on the principle of infrastructure cost recovery. The more a vehicle uses the roads referred to in the law, the more it is obliged to contribute to the infrastructure costs (*see the Saeima's reply in Volume 1 of the case file*). pp. 23 - 49).

The payer of the charge for the use of a section of a national motorway under the law may choose the most economically advantageous period for the use of the motorway, taking into account the specific circumstances of his activity and the regularity with which he needs to use the sections of motorway concerned. The procedure for payment of the road user charge is established in the Cabinet Regulation of 26 May 2014 No 272 "Procedure for Payment, Collection and Administration of the Road User Charge". It does not appear from the materials of the case that the fulfilment of the obligation for non-fulfilment of which the contested provisions provide for administrative liability would cause significant difficulties to persons.

The benefits to society of an effective system of control over road use include public order. The benefit to society of recording offences of the road user charge payment by technical means is both in the efficiency of the process and in the reduction of its costs. The control mechanism ensures that penalties are inevitable, i.e. that each such offence is recorded on the section of road where the technical means are installed.

Thus, the amount of the fine established by the legislator in cases where the offence was registered with technical means cannot be regarded as disproportionate to the nature of the offence 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 are compatible with Section 1 of the Constitution.

21. First sentence of Article 92 of the Constitution states: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

The concept of "fair trial" referred to in Section 92 of the Constitution includes two aspects, namely, "fair trial" as an independent judicial authority hearing a case, and "fair trial" as a due process, consistent with the rule of law, in which the case is heard. In the first aspect, this concept is to be interpreted in relation to Chapter 6 of the Constitution, in the second aspect – in relation to the principle of the rule of law enshrined in Section 1 of the Constitution. Section 92 of the Constitution provides for both the obligation to establish a system of relevant judicial institutions and the obligation to adopt relevant procedural norms (*see paragraph 2 of the Conclusive Part of the Judgement of the Constitutional Court of 5 March 2002 in Case No 2001-10-01*).

The first sentence of Section 92 of the Constitution establishes the legislator's obligation to adopt procedural norms necessary for the fair administration of justice (*see Paragraph 10 of the Judgement of the Constitutional Court of 1 November 2012 in Case No 2012-06-01*).

21.1. When clarifying the content of fundamental rights enshrined in the Constitution, Latvia's international human rights obligations must be taken into account. The national obligation to fulfil the international obligations in the area of human rights is inter alia included in Section 89 of the Constitution providing that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. The Constitutional legislator's aim has been to achieve harmony of the human rights provisions contained in the Constitution with international human rights norms (*see, for example, paragraph 9.1 of the judgement of the Constitutional Court of 15 March 2018 in Case No 2017-16-01*).

The first sentence of Section 92 of the Constitution, *inter alia*, must be specified in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) (*see, for example, paragraph 12 of the judgement of the Constitutional Court of 22 December 2017 in Case No 2017-08-01*). Moreover, the Constitution cannot provide for less protection of fundamental rights than the Convention. Therefore, when specifying the content of the Constitutional provisions, a solution should be sought that would ensure harmony between the Constitution and the provisions of the Convention (*see, for example, paragraph 14 of the judgement of the Constitutional Court of 12 March 2020 in Case No 2019-13-01*).

The Constitutional Court, referring to the case-law of the European Court of Human Rights, has indicated three criteria by which it may be established whether a given case is to be examined in the criminal law aspect of Section 6(1) of the Convention (*see paragraph 82 of the judgement of the European Court of Human Rights of 8 June 1976 in Engel and Others v. the Netherlands, Applications No 5100/71; No 5101/71; No 5102/71; No 5354/72; No 5370/72*). These criteria are:

- 1) the qualification of the specific offence in national law, linking it to criminal law;
- 2) the nature and gravity of the offence;
- 3) the severity of the punishment threatened to the person concerned for the offence (*see Paragraph 9.2 of the judgement of the Constitutional Court of 15 March 2018 in Case No 2017-16-01*).

For Section 6 of the Convention to be applicable in its criminal aspect, it is sufficient that at least one of those criteria is satisfied (*see paragraphs 36-42 of the judgement of the European Court of Human Rights of 11 February 2003 in Ringvold v. Norway, Application No 34964/97, and paragraph 82 of the judgement of 8 June 1976 in Engel and Others v. the Netherlands, Applications No 5100/71; No. 5101/71; No. 5102/71; No. 5354/72; No. 5370/72*). Article 6(1) of the Convention would therefore apply in its criminal aspect if the criminal nature of the offence were recognised as such or if the offence in question were punishable by a sanction which, by its nature and gravity, would generally fall within the sphere of criminal law. The second and third criteria are alternative. If the examination of

each criterion in isolation does not lead to a clear conclusion, a cumulative approach to the examination of those criteria is also permissible (*see, for example, paragraph 47 of the judgement of the European Court of Human Rights of 24 February 1994 in Bendenoun v. France, application No 12547/86*).

The administrative offence provided for in the contested provisions is not qualified as a criminal offence in the Latvian legal system, but this does not in itself mean that Article 6(1) of the Convention should therefore not apply to it.

The European Court of Human Rights has held that, as regards the second criterion, the nature and gravity of the offence and the nature of the sanction for it must be taken into account. If the provision is of a general nature and the sanction has both a preventive and a punitive purpose, the offence in question must be regarded as equivalent to the autonomous concept of 'criminal offence' within the meaning of Article 6 of the Convention (*see, for example, paragraph 53 of the judgement of the European Court of Human Rights of 24 February 1984 in Öztürk v. Germany, Application No 8544/79, and 47 of the judgement of 24 February 1994 in Bendenoun v. France, Application No 12547/86*). The Constitutional Court has also applied this approach in its jurisprudence, recognising the offence committed in administrative offence cases, in which a fine is envisaged as a sanction, as a "criminal offence" within the meaning of Article 6 of the Convention (*see, for example, paragraph 13.2.2 of the judgement of the Constitutional Court of 28 March 2013 in Case No 2012-15-01 and paragraph 9.2 of the judgement of 15 March 2018 in Case No 2017-16-01*).

The contested provisions provide that an administrative penalty is imposed for a certain type of offence, i.e. the use of certain road sections without prior payment of the road user charge. The contested provisions are aimed at the whole society and are of a general nature. The administrative offences provided for therein are punishable by a fine, which has the inherent punitive character of a criminal sanction. The penalty for infringement of the road user charge rules has both a punitive and a deterrent function, which is also in line with the objectives of criminal penalties. There are therefore sufficient grounds for finding that Article 6(1) of the Convention applies in its criminal aspect.

The European Court of Human Rights has held that where a sanction imposed by a public authority amounts to a criminal sanction within the meaning of

the Convention, the individual is entitled to a review of that decision by a judicial body which has "full jurisdiction" and ensures that the provisions of Article 6 of the Convention are complied with. The requirement of "full jurisdiction" is satisfied if the judicial authority has the power to review the decision both in fact and in law (*see, for example, paragraphs 34 and 36 of the judgement of the European Court of Human Rights of 23 October 1995 in Schmautzer v. Austria, application No 15523/89, and paragraph 139 of the judgement of 4 March 2014 in Grande Stevens and Others v. Italy, application No 18640/10*).

21.2. A fair result – a fair judgement – is also an integral part of a fair trial. Procedural laws set out a number of requirements aimed at ensuring a fair judgement, and as a result of correct application and interaction of the requirements it is possible to reach a fair judgement (*see paragraph 12.2 of the judgement of the Constitutional Court of 29 April 2016 in Case No 2015-19-01*).

Administrative liability is a form of legal liability that produces legal consequences for a person. They take the form of an administrative penalty for unlawful conduct that is not of such a serious nature as to give rise to criminal liability. In the procedure of administrative offences, the institutions which are competent to examine cases of administrative offences carry out procedural actions in order to establish all the elements constituting an administrative offence and, if they exist, to decide on the application of an administrative penalty (*see Paragraph 16.1.2 of the Judgement of the Constitutional Court of 15 March 2018 in Case No 2017-16-01*). The legal literature points out that administrative liability is an essential instrument of the executive power, ensuring the binding force of legal provisions and contributing to their effectiveness (*cf: Danovskis E. Procedural dualism in administrative offence cases. Supreme Court Bulletin No 3, 2011, pp. 41-43*).

Until 30 June 2020, administrative offence proceedings were governed by the Code, which provided for the basic tasks of the court in administrative offence proceedings. In the framework of the administrative offence proceedings, the court examines the legality of the decision adopted by the authority, which, inter alia, also includes the justification of the penalty imposed (*see, for example, Section 289.⁶ (9), Section 289.¹² (2) of the Code; Briede J., Danovskis E.,*

Kovaļevska A. Administrative Law. Textbook. Riga: Court Houses Agency, 2016, pp. 230-231).

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.

Thus, in order to assess compliance of the contested provisions with the first sentence of Section 92(1) of the Constitution, the Constitutional Court must establish whether, in the administrative offence procedure, comprehensive judicial control over decisions on imposing an administrative penalty is exercised and whether, as a result of such control, the court may eliminate the consequences of an institution's decision on imposing an administrative penalty which is incompatible with legal provisions with regard to a person.

22. According to the first and second paragraphs of Section 7 of the Code, no person may be subjected to a measure of restraint for an administrative offence except on the basis and in the manner prescribed by law. Administrative offences must be dealt with in strict compliance with the law. Section 32(1) of the Code, on the other hand, provided that the penalty for an administrative offence shall be imposed within the framework established by the legislative act providing for liability for the offence committed, in strict compliance with the Code and other acts on administrative offences.

When imposing an administrative penalty, including the type and amount thereof, on a person for a particular offence, the law-enforcing authority shall take into account the nature of the offence committed, the personality of the offender, the degree of his or her culpability, his or her financial situation, mitigating and aggravating circumstances (*see Section 32(2) of the Code*). The court, when reviewing the legality and reasonableness of the amount of the penalty imposed by the authority, may amend it only within the limits set by the legal provision

establishing liability for the administrative offence established (*see Section 289¹² (2)(4) of the Code*).

The legislator had set the minimum and maximum amount of the fine to be imposed for a given offence in Section 149⁴⁰ (2) of the Code; therefore, the legal enforcer, taking into account the circumstances of the case and the personality of the offender, must determine in each particular case the amount of the fine to be imposed on a person within the limits provided for in Section 149⁴⁰ (2) of the Code. Moreover, the minimum and maximum limits set out in this Section are sufficient to ensure that the fine can be personalised in the light of the circumstances of the case. The legislator has also laid down, inter alia, a different amount of penalty in cases where the charge is not paid or not paid in full (*see Section 149⁴⁰ (1) of the Code*).

The task of the legislator is to create preconditions for the uniform application of legal provisions and to effectively protect the fundamental rights of other persons by means of legal provisions (*see Paragraph 12 of the judgement of the Constitutional Court of 19 November 2013 in Case No 2013-09-01*). The court, when reviewing the lawfulness and reasonableness of a decision taken by an authority to impose an administrative penalty, must also respect the principle of separation of powers. The aim of the separation of powers is to ensure implementation and protection of fundamental values of a democratic state governed by the rule of law (*cf. Paragraph 11 of the judgement of the Constitutional Court of 18 December 2013 in Case No 2013-06-01*). Upon determining the specific constituent elements of an administrative offence, 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 offence, 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.

The powers of the court to review the lawfulness and reasonableness of the decision of the authority to hold a person administratively liable were regulated, inter alia, by Section 289⁶ (9) and Section 289¹² (2) of the Code.

Pursuant to Section 289⁶ (9) of the Code, the court, when considering the administrative offence, decided the following issues: (1) whether an administrative offence has been committed; (2) whether the person held administratively liable is guilty of that administrative offence; (3) whether the person is punishable for that administrative offence; (4) whether there are circumstances aggravating or mitigating the liability; (5) the administrative penalty to be imposed on the person; (6) whether the application for damages should be granted and, if so, in whose favour and in what amount; (7) what to do with the physical evidence and other things seized in the course of the proceedings for the administrative offence, the property and the bail imposed.

Section 289¹² (1) of the Code provided for cases where the court, irrespective of the complainant's motives, by a decision annuls the decision of the authority and refers the case to the authority having jurisdiction for a new hearing. However, according to Section 289¹² (2) of the Code, the court, after hearing the administrative offence case, could have adopted one of the following judgements: 1) uphold the decision; 2) annul the decision to terminate the administrative offence; 3) annul the decision and render a judgement finding the person guilty of the administrative offence and imposing a penalty; 4) amend the penalty within the limits of the penalties provided for in the legal provision establishing liability for the administrative offence established. Moreover, in the cases referred to in paragraphs 3 and 4, the court could only have ruled against the person if the case had been brought on the basis of a complaint by the prosecutor, the authorities or the victim.

In cases where an administrative penalty has been imposed on persons by a decision of an authority for an offence of Section 149⁴⁰ of the Code, the court assesses both whether the offence has occurred, whether the person concerned is liable and punishable, and whether the penalty imposed is proportionate (*cf, the judgement of the Zemgale District Court of 11 April 2019 in the case No. 1A33039519; judgement of the Zemgale District Court of 13 May 2019 in the case No. 1A73019618, and judgement of Riga City Latgale Suburb Court of 4 March 2020 in the case No. 1A29009620*). In cases provided for in the contested provisions, when the offence has been recorded by technical means, the court assesses, inter alia, whether the administrative offence has occurred and whether

the particular person should be held liable and punished, but does not assess the amount of the penalty imposed, as this is already the smallest possible penalty that can be imposed on a person (*see, for example, the judgement of the Zemgale Regional Court of 26 June 2020 in the case No. 1A73010420 and the judgement of the Riga Regional Court of 15 February 2021 in the case No. 1A68032920*).

Although Section 9¹ of the Law on the Road User Charge establishes the peculiarities in the administrative violation proceedings in cases where the offence 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 offence proceedings comply with the provisions of laws and regulations. Depending on what is found, the court has the power to annul the decision taken by the authority or, in certain cases, to refer it back to the authority for reconsideration.

23. As already indicated above, the amendments of 3 April 2019 introduced the possibility to record the infringement of the road user charge payment rules by technical means. These amendments established both the responsible authorities which are entitled to record such an offence, as well as the specifics of the procedure for such an administrative offence in Section 9¹ of the Law on the Road User Charge. The Section defines both the subjects to be fined and the amount of the fine, as well as other specific features, including those relating to the specific administrative offence report-decision, which is drawn up when the offence is recorded by technical means.

The contested provisions have been adopted in order to regulate the application of penalties in cases where an offence has been recorded in a specific manner. If the offence is detected by technical means without stopping the vehicle, neither the driver nor the person subject to the administrative penalty is informed of the offence at the moment of detection, and therefore, *inter alia*, no explanation can be given before a report - decision on the detected offence is drawn up. In such an

administrative offence, it is also not possible to ascertain all the circumstances referred to in Section 32 of the Code, which must be taken into account when specifying the amount of the penalty.

Thus, in the case when the offence of the road user charge payment rules is recorded by technical means, the State Police officer who takes the decision on the imposition of an administrative penalty cannot ascertain and assess completely all the circumstances that are ascertained and assessed in other cases. Therefore, the legislator, by introducing the possibility to record the offence of the road user charge payment rules by technical means, has already provided in the contested provisions that a fine of a certain amount shall be imposed on a person for such offence and has specified the fine in the smallest possible amount.

24. It is primarily the legislator's responsibility to assess the proportionality of the type and amount of the penalty to be imposed for a particular administrative offence to the nature of the offence. The authority and the court, in turn, ensure that the administrative penalty is individualised, taking into account the circumstances of the case, within the limits set by the legislator. The greater the infringement of a person's rights, such as a higher fine, the greater the need to take into account the individual circumstances of the case. However, in the case if the legislator, when determining a specific amount of fine to be imposed for a given administrative offence, had already assessed its compliance with the nature of the particular offence 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 offence by the legislator. The European Court of Human Rights has also held that the power of a court to review a decision of an authority may be compatible with the requirements of Article 6 of the Convention even where the sanction, in accordance with the gravity of the offence, is precisely defined by law, the sanction is not disproportionate per se and the court may review the legality of the decision-making process (*see paragraphs 46 to 51 of the judgement of the European Court of Human Rights in Malige v France, Application No 27812/95, 23 September 1998, paragraphs 46-51*).

In the contested provisions, the legislator has established a specific amount of the fine to be imposed in the case when the offence of the road user charge payment rules is recorded by technical means, and this fine is the smallest possible fine that may be imposed for the offence in question. The Constitutional Court has recognised that the fine established in these provisions complies with the principle of proportionality (*see paragraph 20 of this judgement*). By adopting the contested provisions, the legislator has already balanced the characteristics of the specific administrative offence, as well as the fact that the offence is registered with technical means, with the amount of the applicable fine.

Thus, in administrative offence 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.

Consequently, the contested provisions are compatible with the first sentence of the Section 92 of the Constitution as well.

Substantive Part

On the basis of Sections 30-32 of the Constitutional Court Law, the Constitutional Court

decided:

To declare that Section 9¹(2) of the Law on the Road User Charge, in the wording effective until 30 June 2020, and Section 149⁴⁰(2) of the Latvian Administrative Violations Code, in the wording effective from 1 January 2017 to 30 June 2020, comply with Section 1 and the first sentence of Section 92 of the Constitution of the Republic of Latvia”.

The Judgement is final and not subject to appeal.

The Judgement shall enter into force as of the date of its publication.

Chairperson of the Court session

Sanita Osipova