

### **13.05.2004, E.2000/43, K.2004/60**

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#### Headnotes:

The administration may apply sanctions other than imprisonment such as fines, disciplinary actions or seizing of driving licences for a certain period of time. The legislature has the discretionary power to give the administration the power to impose certain sanctions which were before within the competence of the judiciary provided that those sanctions are not related to imprisonment. Taking away a driving licence for a certain period of time under certain circumstances is not contrary to the rule in Article 38 of the Constitution that the administration may not impose any sanction resulting in restriction of personal liberty.

#### Summary:

Veziirköprü Criminal Court of First Instance applied to the Constitutional Court alleging that Article 112.1 and additional Article 13 of Law no. 4450 (the law amending the Traffic Law no. 2918) were contrary to the Constitution.

According to the objected provisions if any person drives motorized vehicles when he/she is drunk, his/her driving licence shall be taken away temporarily by the administration for a certain period of time. The trial court alleged that the administration may not impose any sanction resulting in restriction of personal liberty (Article 38 of the Constitution).

Under Article 7 of the Constitution legislative power is vested in the Turkish Grand National Assembly on behalf of the Turkish Nation. The legislative power has the discretionary power to remove some competences from the judiciary and transfer them to the administration when new developments arise.

The administration is required to impose sanctions for some actions according to the severity of those actions on the social order. As is accepted by the doctrine, the sanctions directly used by the administration according to administrative law principles are called "administrative sanctions" provided that the competence to impose those sanctions are given by the law. Taking away a driving licence under some circumstances for a certain period of time by the administration is an administrative sanction.

The legislature gave this power, which was a judicial competence before the new regulation, to the administration, namely to the traffic police, thereby using its discretionary power. Recourse to judicial review against those sanctions is without doubt available under general rules as a requirement of the rule of law.

In the reasoning of Article 38.10 of the Constitution, it is stated that imprisonment as a heavy limitation of individual freedom shall be imposed only by the courts. In other words the administration may not impose imprisonment as an administrative sanction, for example as a disciplinary sanction. But other sanctions may be used by the administration.

Therefore, it is not unconstitutional for the administration to impose sanctions other than imprisonment such as fines, disciplinary penalties or temporary deprivation of certain rights provided that they are within constitutional principles and generally accepted legal principles.

As a result, the Constitutional Court did not find the objected provisions unconstitutional and unanimously rejected the demand.