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DIFFICULTIES WITH THE EXECUTION OF THE DRIVING BAN AS A PENAL MEASURE

Abstract

The regulation of the Criminal Code concerning the penal measure in the form of a driving ban has been repeatedly amended in recent years. This does not change the fact that these regulations cause significant interpretive problems, both in theoretical and practical terms. The execution of the imposed ban also entails significant complications. This issue was the subject of a recent ruling by the Constitutional Tribunal in case SK 23/21, which is what the Author reflects on in this article. In particular, this paper presents an analysis conducted to determine whether the ban imposed by a court in a final and binding judgment can be extended by administrative law.

KEYWORDS

driving ban, scope of the driving ban, court ruling, unconstitutionality

SŁOWA KLUCZOWE:

zakaz prowadzenia pojazdów, zakres zakazu prowadzenia pojazdów, orzeczenie sądowe, niekonstytucyjność

The regulation of Article 42 of the Criminal Code, which formalizes the penal measure in the form of a driving ban, has been repeatedly amended in recent years. This has led to an expansion of the grounds for imposing it, a change in the period for which it can be imposed, and an increase in the number of cases in which the imposition of this measure is mandatory¹. It is clear that the driving ban has a primarily preventive and protective nature, and this penal measure itself is aimed at ensuring road safety, which involves excluding from traffic perpetrators who pose a threat to that safety². A natural, but secondary consequence is the repressive effect of a driving ban, which is generally perceived by offenders as being very intrusive into their lives³.

Despite repeated changes to Article 42 of the Polish Criminal Code, the regulation governing the driving ban poses significant interpretative challenges, both in theory and practice. Although the Polish Supreme Court has attempted to address the imperfections of Article 42 of the Polish Criminal Code in its decisions⁴, this has not always been possible, due to constitutional considerations⁵. For the sake of reminder, it should be pointed out that there have been numerous difficulties in establishing a functional connection between the imposed ban and the committed criminal act⁶. Currently, there

¹ This article does not address the regulation of the Act of 20 May 1971 – Code of Misdemeanours (Dz. U. (Journal of Laws) of 2022, item 2151, as amended), which in Article 28 also defines the penal measure of a driving ban.

² See K. Łucarz, *Zakaz prowadzenia pojazdów*, (in:) P. Daniluk (ed.), *Środki karne, przepadek i środki kompensacyjne w znowelizowanym Kodeksie karnym*, Warsaw 2017, pp. 249 ff.

³ See W. Górski, M. Szewczyk, *Uwagi do art. 42*, (in:) A. Zoll, W. Wróbel (eds), *Kodeks karny. Część ogólna. Komentarz do art. 1-52*, Vol. 1, Part 1, Warsaw 2016.

⁴ See, among others, ruling of the Supreme Court of 26 August 2002, I KZP 20/02, OSNKW 2002, Vol. 11-12, item 92; judgment of the Supreme Court of 6 July 2006, IV KK 146/06, OSP 2007, No. 2, item 18; ruling of the Supreme Court of 29 August 2007, I KZP 23/07, OSP 2008, No. 6, item 59; ruling of the Supreme Court of 25 October 2007, I KZP 32/07, OSNKW 2007, Vol. 12, item 8; ruling of the Supreme Court of 21 November 2001, I KZP 27/01, OSNKW 2002, Vol. 1-2, item 5; judgment of the Supreme Court of 6 July 2006, IV KK 146/06, R-OSNKW 2006, item 1358; judgment of the Supreme Court of 20 June 2007, III KK 145/07, R-OSNKW 2007, item 1356; judgment of the Supreme Court of 2 April 2008, V KK 56/08, unpublished; judgment of the Supreme Court of 10 April 2008, WK 6/08, KZS 2008, Vol. 11, item 19.

⁵ For example, see the ruling of the Constitutional Tribunal of 5 May 2009, S 2/09, OTK-A 2009, Vol. 5, item 73.

⁶ See, among others, the judgment of January 10, 2007, III KK 437/06, OSNKW 2007, Vol. 3, item 29, in which the Supreme Court stated that ‘The court’s decision regarding the criminal measure of a ban on driving motor vehicles, based on the provision of Article 42(2) of the Criminal Code, limited only to a specific type of those vehicles that does not include the type of vehicle which the perpetrator of the crime against road safety was driving, only apparently complies with the requirement contained in the aforementioned provision. A purposive interpretation, necessary for the correct determination of the normative content of Article 42(2) of the Criminal Code, leads to the conclusion that the scope of the ruling on the ban on driving motor vehicles should, in the first place, include the entitlement to drive the type of vehicle which the perpetrator committed the offense with’; see also, among others, judgment of the Supreme Court of 13 June 2019, IV KK

is a growing body of opinion pointing to the unconstitutionality of imposing a lifelong driving ban⁷.

However, there are also a number of difficulties that arise “around” a driving ban that has already been imposed. For example, there is the issue of whether the period of driving license suspension should be counted towards the imposed penal measure. Article 63(4) of the Criminal Code provides that “The period of driving license suspension or other relevant document shall be counted towards the imposed penal measure referred to in Article 39(3)”. This suspension is mentioned in Article 135(1)(3) of the Road Traffic Act⁸, which allows a police officer to suspend a driving license issued in Poland against a receipt in the event that there is a reasonable suspicion that the driver has committed a crime or a misdemeanour for which a driving ban may be imposed. Article 135(4) of the Act provides that “The receipt for the suspension of a driving license for reasons referred to in subsection 1(1)(b) and 1(3) entitles the driver to drive a vehicle for 7 days”. The obvious doubt that arises is whether the period of driving license suspension should be counted towards the imposed penal measure of a driving ban from the moment of suspension itself, since the offender was still able to drive a vehicle for 7 days. After all, during this time, the suspension of the document does not prevent the legal driving of a vehicle, which is what a driving ban is intended to do⁹.

Significant complications are also associated with the execution of the imposed ban. These issues are generally regulated in Article 182 and 182a of the Criminal Executive Code. The first of the mentioned articles states, *inter alia*, that in the event of a driving ban, the court shall send a copy of the judgment to the government or local government administration body relevant for the place of residence of the convicted person. This body is obliged, pursuant to Article 182(2) of the Criminal Executive Code, to withdraw the driving license in the imposed scope and may not issue these rights during the ban period. The regulation of

235/18, LEX No. 268768; judgment of the Supreme Court of 20 March 2014, III KK 461/13, LEX No. 1455439; judgment of the Supreme Court of 28 March 2007, II KK 362/06, R-OSNKW 2007, item 730; judgment of the Supreme Court of 4 December 2006, V KK 360/06, R-OSNKW 2007, item 7; judgment of the Supreme Court of 6 July 2006, IV KK 146/06, OSP 2007, No. 2, item 18.

⁷ See, among others, while awaiting the examination of constitutional complaints SK 22/23, SK 104/22, and SK 22/21; however, compare with the judgment of the Constitutional Tribunal of 16 December 2020, SK 46/19, OTK-A 2020, item 71.

⁸ Dz. U. (Journal of Laws) of 2023, item 1047 consolidated text.

⁹ The given example comes from the Supreme Court’s study entitled “Gaps and Irregularities in the Law 2022”. As a proposed solution to the outlined problem, it suggests introducing a provision into the Criminal Code “according to which, in the case of confiscation of documents entitling to drive vehicles based on Article 135(1)(3) of the Road Traffic Act, the period of confiscation would be counted towards the imposed penal measure after 7 days, not from the moment of confiscation by the police officer. This regulation would also correspond with Article 63(3) of the Criminal Code, which provides that the period of actual application of preventive measures of a corresponding type should be counted towards the imposed penal measure referred to in Article 39(2-3) of the Criminal Code”.

the Criminal Executive Code is supplemented by Article 103(1)(4) of the Act of 5 January 2011 on road users¹⁰, which provides that the county executive issues an administrative decision to withdraw the driving license in the case of a driving ban. The development of this regulation is Article 12(1)(2) of the Act, which provides that “A driving license may not be issued to a person against whom a court has imposed a permanent driving ban for mechanical vehicles – in the period and scope of the validity of this ban”, while Article 12(2) of the Act provides that “Paragraph 1(2) applies also to a person applying for the issuance or return of a suspended driving license, as well as for the restoration of the driving license in the scope of the driving license category: 1) B1 or B – during the validity of the driving ban for mechanical vehicles covering the driving license category AM, A1, A2 or A; 2) AM, A1, A2, A, C1, C, D1 or D – during the validity of the driving ban for mechanical vehicles covering the driving license category B; 3) B+E, C1+E, C+E, D1+E or D+E – during the validity of the driving ban for mechanical vehicles covering the driving license category B or, respectively, category C1, C, D1 or D”. In practice, therefore, the law has extended the driving ban for category B to category AM, A1, A2, A, C1, C, D1 and D, while the driving ban for category C1, C, D1 or D has been extended to B+E, C1+E, C+E, D1+E and D+E. The prohibition on issuing, returning or restoring a driving license to a person against whom a court has imposed a permanent driving ban for mechanical vehicles in the scope of certain categories is based on an administrative decision and is mandatory. It should be emphasized that the regulations of the Road Users Act do not provide for administrative recognition, so the administrative body issuing the decision does not have the possibility of taking into account various circumstances that may affect its scope¹¹.

It seemed obvious that the regulations mentioned were designed as a comprehensive solution, guaranteeing the execution of the judgment of the common court in the criminal case, and on the other hand, using administrative law, to ensure that the perpetrator with a driving ban could not in fact drive any mechanical vehicles for which the holding of the categories of driving licenses mentioned above is required¹². The issue of the relationship between the aforementioned provisions was recently the subject of a judgment of the Constitutional Tribunal

¹⁰ Dz. U. (Journal of Laws) of 2023, item 622, as amended, hereinafter: Act on Road Users Act.

¹¹ See judgment of the Administrative Court in Krakow of 9 October 2019, III SA/Kr 644/19, LEX No. 273568.

¹² As correctly pointed out by the Constitutional Tribunal in its judgment of 4 July 2023, SK 23/21, OTK-A 2024, item 57, these provisions are not perfect, as “The legislator, however, is inconsistent, as the prohibition provided for in the contested provisions on issuing or returning the seized driving license, as well as on restoring the entitlement, does not cover the T category driving license, required for driving, among others, agricultural tractors or slow-moving vehicles, as well as a combination of vehicles composed of an agricultural tractor with a trailer (trailers) or a slow-moving vehicle with a trailer (trailers). It is difficult to consider that driving e.g., an

in case SK 23/21¹³. In its judgment of 4 July 2023, the Tribunal found that Article 12(2)(2) and (3) in connection with Article 12(1)(2) of the Act of 5 January 2011 on road users, to the extent that it deprives persons with the right to drive mechanical vehicles of certain driving license categories of the right to recover the document confirming the possession of this type of right in relation to mechanical vehicles, for which a penal measure in the form of a ban on their driving has not been imposed on them, is inconsistent with Article 2 and Article 45(1) of the Constitution of the Republic of Poland, which is primarily due to the violation of the *ne bis in idem* principle read from the Constitution by the aforementioned regulation.

It is important to note that the aforementioned provisions have been repeatedly analyzed in the decisions of administrative courts, which have seemed not to see their defects. On the contrary, administrative courts have had no doubts about the compatibility of Article 12(1)(2) and Article 12(2)(2), (3) and(4) of the 2011 Road Users Act with constitutional patterns¹⁴. It was assumed that the administrative sanction provided for in Article 12(1)(2) and Article 12(2) of the Road Users Act goes beyond the content of the penal measure imposed in the criminal judgment, but does not remain in direct connection with it. This means that although it is conditional on a criminal decision, the regulation of Article 12 of the Act itself means that the competent authority cannot issue or return a driving license for other categories during the period of the driving ban imposed by the criminal court. As pointed out, “This does not change the fact that the same legal event (the fact of the conviction of the complainant and the imposition of a penal measure against him) can have different and independent legal consequences on the grounds of branches of law other than criminal law. In accordance with the established opinion in the legal literature, each legal event is subject to independent assessment from the point of view of the norms of criminal, civil and administrative law. In the Polish legal system, certain legal events can often trigger both criminal, civil and administrative sanctions at the same time. Article 12(2) of the Act does not leave any doubt that the will of the legislator was to trigger an additional, independent of the criminal sanction, administrative sanction by preventing a person with a driving ban for basic categories from recovering a document allowing them to drive vehicles of other categories, even if the criminal court did not deprive the convicted person of the right to drive them”¹⁵. Such an interpretation was to be supported not only by a linguistic, but also teleological

agricultural tractor or a slow-moving vehicle under the influence does not constitute a significant threat to road safety”.

¹³ Judgment of the Constitutional Tribunal of 4 July 2023, SK 23/21, OTK-A 2024, item 57.

¹⁴ See, for example, directly the statements contained in the judgment of the Supreme Administrative Court (NSA) of 6 February 2018, I OSK 1860/17, LEX No. 2467374, with the exception of the position stated in the judgment of the Administrative Court in Poznań (WSA) of 8 March 2017, II SA/Po 1034/16, LEX No. 2258382.

¹⁵ See judgment of the Administrative Court in Gdansk (WSA) of 26 October 2017, III SA/Gd 581/17, LEX No. 2395632.

interpretation. The *ratio legis* of the driving ban was to exclude from road traffic such drivers who have shown that they pose a threat to road safety, especially if they did so while intoxicated¹⁶.

It has been pointed out that although the criminal and administrative spheres are functionally linked in this case, the courts seemed to take the position that the case decided by the administrative authority is a separate case from the case that ended with a criminal judgment. This was to be due to the fact that the way in which the criminal court decides in a case threatened with a driving ban sanction is determined by the specificity of the criminal sanction, which must be very closely linked to the behavior of the perpetrator, while the application of Article 12(2) of the Road Users Act by public administration bodies was to be based on completely different premises, since the aforementioned regulation does not concern a criminal penalty for an offense, but the protection of road safety.

It seems that it is also impossible to ignore the important issue of the so-called legal consequences or consequences of conviction. This is a matter of fundamental importance and is related to the legal barriers that stand before perpetrators of prohibited acts. Interestingly, this issue was also raised in decisions of administrative courts, and it did not wait for development in the judgment of the Constitutional Tribunal. The courts pointed out that under the provisions of the Road Users Act, the effect of conviction by a final judgment, in which a driving ban for mechanical vehicles in the scope of a given category was imposed on a given person, is extended to their other driving rights, while these effects concern both persons who are applying for the issuance of a driving license of a given category, as well as persons who already have such a document. As pointed out, the criminal judgment, and the law *erga omnes*, has an individual impact and it is precisely the law that provides for the complications that are only a further consequence of the penal measure imposed on the party by the criminal court. The assessment of legality made by administrative courts takes into account the application of laws, not criminal judgments. The courts emphasized that judgments in principle do not create law, but constitute an act of application of the law¹⁷.

The above argument was linked to the fact that a conviction by a criminal court can have different, independent legal consequences on the grounds of branches of law other than criminal law. In this view, the Road Users Act was to constitute an independent administrative sanction, by preventing a person with a driving ban for basic categories from recovering a document enabling them to

¹⁶ See judgment of the Supreme Administrative Court (NSA) of 29 October 2015, I OSK 382/14, LEX No. 1985918; judgment of the Supreme Administrative Court (NSA) of 6 February 6, 2018, I OSK 1860/17, LEX No. 2467374; judgment of the Supreme Administrative Court (NSA) of 4 June 2020, I OSK 2575/19, LEX No. 3242341.

¹⁷ See, for example, judgments of the Supreme Administrative Court (NSA) of 8 November 2018, I OSK 20/17, LEX No. 2946182, and judgment of the Supreme Administrative Court (NSA) of 29 April 2020, I OSK 4400/18, LEX No. 3009310.

drive vehicles of other categories, even if the criminal court did not deprive the convicted person of the right to drive them¹⁸.

The theses cited, despite thorough regulation in the decisions of administrative courts, did not convince the Constitutional Tribunal, which in a rather laconic way accepted that the provisions of the Road Users Act are inconsistent, *inter alia*, with the principle of *ne bis in idem*, which derives from Article 2 of the Constitution. In the opinion of the Constitutional Tribunal, despite the lack of a literal expression of the aforementioned principle in the Constitution, there can be no doubt that it belongs to the fundamental principles of criminal law and is an element of the rule of law, as well as one of the elements of the right to a fair trial, manifested in ensuring a fair and just judicial procedure¹⁹. The Constitutional Tribunal maintains in its rulings that the principle of *ne bis in idem* includes a ban on double punishment of the same person for the same act, not only in relation to the imposition of criminal penalties, but also in connection with the use of other repressive measures, including administrative sanctions²⁰. In the opinion of the Tribunal, the procedure for verifying whether certain provisions violate the principle of *ne bis in idem* from the point of view of the prohibition of double (multiple) criminal liability for the same behavior, should be carried out in two stages. First, it is necessary to determine whether certain measures provided by the legislator as a reaction to the specific behavior of an individual have the nature of a sanction. Secondly, if two or more measures have such a nature, it is necessary to verify whether they achieve the same or different goals. The implementation of identical goals by different sanctions should generally lead to the conclusion of a violation of the principle of *ne bis in idem*, which derives from Article 2 of the Constitution²¹.

In assessing the constitutionality of the provisions of Article 12 of the Road Users Act, the Constitutional Tribunal found that the complainant was punished twice for the same prohibited act, i.e. driving a motor vehicle while intoxicated. The court was of the opinion that the complainant was punished by the court on the basis of Article 42(2) and Article 43(1) of the Criminal Code, with a penal measure in the form of a ban on driving motor vehicles for which a driving license of category B is required for a period of five years, and by the county executive

¹⁸ Cf. judgment of the Supreme Administrative Court (NSA) of 30 January 2019, I OSK 2834/17, LEX No. 2670506 and judgment of the Supreme Administrative Court (NSA) of 21 January 2020, I OSK 1882/18, LEX No. 2798782.

¹⁹ See, among others, judgment of the Constitutional Tribunal of 3 November 2004, K 18/03, OTK-A 2004, Vol. 10, item 103 and judgment of the Constitutional Tribunal of 15 April 2008, P 26/06, OTK-A 2008, Vol. 3, item 42.

²⁰ See, for example, judgment of the Constitutional Tribunal of 18 November 2010, P 29/09, OTK-A 2010, Vol. 9, item 104 and judgment of the Constitutional Tribunal of 21 October 2015, P 32/12, OTK-A 2015, Vol. 9, item 148.

²¹ See, both the analyzed judgment and judgment of the Constitutional Tribunal of 21 October 2014, P 50/13, OTK-A 2014, Vol. 9, item 103.

on the basis of the challenged provisions by refusing to issue a driving license of categories AM, A1, A2, A, B1, C1, C, C+E, B+E and C1+E. In the opinion of the Constitutional Tribunal, both sanctions feature a similar degree of severity and achieve the same goal, i.e. protection of road safety, and perform similar functions – preventive and repressive.

It is also impossible to disagree with the observations of the Constitutional Tribunal that the basis for the application of both sanctions in different events is unfounded, because the original event, with which both criminal and administrative law provisions associate legal consequences, is an act that is a crime or a misdemeanour against road safety. The Constitutional Tribunal also pointed out that it is impossible to uncritically accept the claim that there is no identity of sanctions in the case of a ban on driving motor vehicles and a refusal to issue a driving license or return a seized driving license of certain categories. In fact, these sanctions are identical, because the refusal to issue a driving license or to return a seized driving license leads to the same result as a driving ban does, i.e. deprivation of the possibility of legal driving of certain vehicles. However, the Constitutional Tribunal reserved that its assessment of the reviewed provisions would be different if they provided for the application of different sanctions against the same person for the same act, e.g. an administrative sanction in the form of a driving license suspension and a penal measure in the form of a driving ban.

It is difficult to logically question the above line of thought of the Constitutional Tribunal, although from an axiological point of view, the derogation from the legal system of the regulation of Article 12(2)(2) and (3) in connection with Article 12(1)(2) of the Road Users Act must raise reservations. It can be assumed that it was precisely the conviction of the correctness of the regulation of the Road Users Act that was behind the position presented in the decisions of administrative courts. There is a collision of two values here. On the one hand, there can be no doubt that the extension of the criminal penalty on the administrative route is already flawed in its assumptions and shows a lack of trust in the accuracy of the judgments made by common courts. On the other hand, the very idea of not allowing perpetrators who have created a serious threat to road safety to drive motor vehicles is correct. In fact, the cases indicated in Article 12 of the Road Users Act, in which a driving license cannot be issued, do not raise doubts as to their justification. In particular, the justification for their use comes to the fore when they are aimed at excluding a given person from road traffic due to the danger to other road users. It is also impossible to deny that the cases indicated in the Act are interrelated and often follow from each other. For example, since a driving license cannot be issued to a person who, as a result of a medical examination, has been found to have an active form of addiction to alcohol or a substance similar to alcohol (Article 12(1)(1) of the Act), it is all the more so that it cannot be issued to a person who has committed a road traffic crime in a state of intoxication (which falls within the scope of the regulation of Article 12(1)(2) of the Act).

The actual problem in the relationship between the criminal law and administrative law arises from the fact that in the scope of depriving one of the possibility of driving vehicles, the adverse effects caused by the administrative law went further than the adverse effects caused by the judgment of the criminal court. Certainly, it is also difficult to defend the similarity or even identity of the adverse effects arising from the criminal law and the administrative law. Paradoxically, it can be assumed that if the Criminal Code did not contain the penal measure of a driving ban, but the relevant regulations would be in the Road Users Act, such provisions would not raise any major doubts. Due to the lack of identical criminal regulations, such a regulation would be perceived as a consequence of conviction, analogously as it happens for example with the regulation of Article 18(2) of the Commercial Companies Code²². In such a case, the criminal sanction would perform a repressive function, while the administrative sanction would perform a preventive function, which would be in line with the requirements arising from the case law of the Constitutional Tribunal²³.

It seems justified that in case SK 23/21, the problem was not only the regulations of the Road Users Act, but the entire system of depriving a perpetrator of a crime of the right to drive a vehicle (i.e. both the imposition of a penal measure and the subsequent application of the administrative law). This is well illustrated by a fragment of the Constitutional Tribunal's judgment, in which it was rightly pointed out that the challenged provisions lead to a situation in which, regardless of the content of the judgment of the common court imposing on the offender a penal measure of a driving ban of a certain type, they will be deprived of the possibility of legally driving other vehicles by virtue of the challenged provisions. The example given by the Tribunal, which is incidentally the factual situation of the complaint filed with the it, falls within the above line of reasoning. As can be read from the judgment, in the analyzed case, the common court imposed on the convicted person, among others, a penal measure of a driving ban for mechanical vehicles, for which a driving license of category B is required, for a period of five years. The justification for the judgment was to indicate that "The imposed penal measure is not in conflict with the necessary educational, preventive, and also general prevention effects. The accused had not been previously convicted, the Court took into account the personal properties and conditions of the accused and his behavior after committing the crime. The court limited the ban to driving vehicles for which a driving license of category B is required due to the fact that

²² Pursuant to Article 18(2) of the Commercial Companies Code, "A person who has been convicted by a final judgment for an offense specified in Articles 587-587², Article 590, and Article 591 of the Act and Articles 228-231 and Chapters XXXIII-XXXVII of the Act of 6 June 1997 – Criminal Code (Dz. U. (Journal of Laws) of 2021, items 2345 and 2447) cannot be a member of the management board, supervisory board, audit committee, liquidator, or attorney-in-fact.

²³ Refer to judgment of the Constitutional Tribunal of 21 October 2015, P 32/12, OTK-A 2015, Vol. 9, item 148.

the accused is a professional driver who, working in a transport company, supports his family and repays a loan. The accused expressed regret and remorse". Obviously, as a result of the application of Article 12 of the Road Users Act, the public administration body refused to issue a duplicate of the driving license document to the complainant in the categories not covered by the imposed driving ban for mechanical vehicles, thus making a gap in the effects that the criminal court wanted to achieve by such and no other shaping of the conviction.

The point, however, is that following the findings of the above-mentioned judgments of administrative courts, it is impossible to accept the peculiar mercy of the common court and the treatment of the imposition of a penal measure as an unpleasant judicial duty. It is difficult to disagree with the thesis that if the convicted person actually poses a threat to road safety by driving vehicles for which a driving license of category B is required, driving vehicles for which a driving license of higher categories is required will pose an even greater threat. It is impossible to understand why such a perpetrator could legally drive a truck, but would be deprived of the right to drive passenger cars. After all, as the mass of a vehicle increases, so does the potential danger that the vehicle poses to other road users and pedestrians – due to its size, lower mobility, longer braking distance, etc. It is hard to imagine that a rational legislator, depriving the right to drive passenger cars (category B), would allow driving trucks or trucks with a trailer (categories C and C + E)²⁴. Nothing in this regard changes the fact that the convicted perpetrator is a professional driver. On the contrary, this circumstance should be seen as potentially indicating the need for the broadest ban possible. After all, the perpetrator is a professional and knows the risks associated with driving under the influence of alcohol or drugs, or fleeing the scene of an accident. Due to the fact that he took such a risk, he should naturally bear the full consequences of his behavior. Road users should feel safe because of the temporary elimination of such a perpetrator from traffic. The case analyzed by the Constitutional Tribunal therefore shows the weakness of the systemic regulation of the driving ban both from the point of view of the very construction of the provisions and their practical application. The system of depriving offenders of the right to drive vehicles should be structured in such a way that there is no need to rationalize it through further regulations, such as criminal executive law or administrative law. In other words, the optimal regulation should be assessed as one that would mean, in a sense, an automatic ban on driving all mechanical vehicles in a given period of time in the event of committing certain crimes against road safety²⁵. Alternatively, the rule should be

²⁴ Cf. judgment of the Supreme Administrative Court (NSA) of 29 October 2015, I OSK 382/14, LEX No. 1985918.

²⁵ The specific automatic practice in imposing a driving ban should not be perceived as an excess of rigor, considering that the ban on driving is the most frequently imposed criminal measure by common courts – see statistics in: M. Kulik, *Komentarz do art. 42 KK*, (in:) M. Mozgawa (ed.), *Kodeks karny, Komentarz aktualizowany*, LEX/el. 2023.

to structure the provisions in such a way that the functional relationship between the perpetrator's act and the imposed ban in terms of the vehicle driven and the possessed rights is maintained, with the remark that the given perpetrator will be deprived of the possibility of legally driving of all vehicles the driving of which requires a driving license of higher categories. In this view, as already indicated, one can imagine a situation in which the driving ban will continue to be a penal measure, but the provisions can also be structured in such a way that the relevant ban will be a preventive consequence of conviction for a crime against road safety, regulated on the basis of the regulation of administrative law.

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