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THE CONSTITUTIONAL COURT UPHOLDS THE LEGALITY OF IMPOSING CRIMINAL AND ADMINISTRATIVE SANCTIONS TO DRIVERS OF MOTOR VEHICLES WHO LACK A LICENCE OR AN AUTHORISATION OR DO NOT HOLD THE SPECIFIC ONE

The Plenary Session of the Constitutional Court has dismissed, by unanimity, the question of unconstitutionality raised by the Criminal Court no. 1 of Toledo. This question addressed the constitutionality of article 384, § 2, 2nd line of the Criminal Code, due to a potential violation of the principle of criminal legality (article 25.1 of the Spanish Constitution). The Court's jurisdictional order considers that it is in compliance with the constitutional legal order to impose a double sanction (on criminal and administrative grounds) on individuals driving motor vehicles without ever having obtained a permit nor being in possession of the appropriate licence. Indeed, those two constitute two different types of behaviour.

According to the criminal court that raised the question, the Spanish legal order foresees, in matters related to road traffic, a series of behaviours that may be sanctioned either on administrative or criminal grounds. Indeed, lawmakers have allegedly not established a clear separation between both legal regimes, nor have they laid down a neat precedence of the criminal order over the administrative one, or *vice versa*.

The question of unconstitutionality challenged article 384, § 2, 2nd line of the Criminal Code, which imposes a prison sentence, a fine or community services to offenders that drive a motor vehicle without holding a driving licence. Likewise, article 77 k) of Legislative Decree 6/2015, dated October 30th, on Road Traffic, Traffic of Motor Vehicles and Traffic Safety, establishes an administrative infraction of the severest type for those offenders who "*drive a vehicle while they do not hold the appropriate driving licence*". According to the Judge that raised the question, the challenged criminal provision is indeterminate, inasmuch as it does not allow to draw a clear line between the criminal infraction and the administrative one. Moreover, it allows a number of differing interpretations which may jeopardise the legal security of drivers.

The ruling, drafted by Magistrate Cándido Conde-Pumpido, considers that "*the comparison between the behaviours regulated by the criminal provision and the administrative one leads to the natural conclusion that they are not identical. Therefore, this sole fact allows to conclude that the reasoning of the judicial organ that harbours the doubt is erroneous*". Indeed, "*the criminal provision imposes a sanction on any individual driving a motorcycle or a vehicle without the prior issuance of a licence or authorisation that allows them to drive that vehicle, regardless its features. For its part, the administrative infraction foresees a situation where the individual at issue does not hold the specific administrative authorisation to drive a particular motor vehicle. Thus, it does not exclude the eventuality that the driver may hold a valid licence to drive a different vehicle*".

Therefore, the Constitutional Court endorses the arguments put forward by the General

Prosecutor's Office and the Criminal Chamber of the Supreme Court. In particular, it confirms that *"the behaviours described in the two provisions are different, even though the criminal one includes the administrative one, but not vice versa"*. Moreover, the ruling provides another argument to reject the question raised by the criminal court of Toledo. Indeed, the potential doubts arising out of the uncertainty of the said criminal provision have been cleared by the interpretation carried out by the ordinary jurisdiction, and particularly by the Criminal Chamber of the Supreme Court. This interpretation holds that *"the terms of the challenged criminal provision are not imprecise, nor do they admit divergent reasonable interpretations that would make it unpredictable"*.

Madrid, 22 June 2018