



No.: E 003/07/2024.040/003

Kismarton, May 30, 2025

Zoltán Krisztián VARGA, Criminal Case, Hungary

IN THE NAME OF THE REPUBLIC

The Burgenland Regional Administrative Court, through Judge Mag. Aminger, has ruled on the case of Mr. Zoltán Krisztián Varga (born September 3, 1982, resident: 6760 Kistelek, 8 István Törmörkeny Street, represented by the Hevesi Law Firm in Szeged, in his appeal filed on March 4, 2024, against the criminal decision of the Mattersburg District Authority dated February 1, 2024, No. BH-MA/03/233000002222/23, which was initiated for a violation of the Motor Vehicle Act of 1967 (KFG 1967).

It is correctly stated that:

- I. I grant the appeal, set aside the contested penalty decision, and terminate the administrative penalty proceedings pursuant to Section 45(1)(1) of the Administrative Penalties Act. As a result of the annulment, the items seized on July 26, 2023 must be returned to the plaintiff.
- II. Pursuant to Article 133(4) of the Federal Constitution, an ordinary appeal filed with the Administrative Court is inadmissible.

Reasons for the decision

For me:

1. Proceedings:

1.1. In its contested penalty decision, the Mattersburg District Authority (hereinafter: "BH") charged the complainant (hereinafter: "BP") with the following:

"Date/Time: July 26, 2023, 4:00 p.m."

Location: 7210 Mattersburg, Michael Koch-Straße 65 (OMV gas station)

Vehicle involved: Motor vehicle, license plate: LASER 1 (H)

You were driving the vehicle in question, which you recognized as being equipped with a so-called KIYO brand (KDU181281) "radar or laser jammer," even though devices or objects that influence or interfere with technical traffic monitoring equipment are not permitted to be attached to or transported in motor vehicles.

The BH considered this a violation of the legal provision in Section 98a(1) of the 1967 Act on the Transport of Dangerous Goods (BGBl. I, No. 134/2023) and, pursuant to Section 134 (1), imposed a fine of 600 euros or, if this cannot be collected, a prison sentence of 2 days and 12 hours.

Furthermore, the BH seized the equipment found at the scene of the aforementioned crime (1 KIYO (KDU181281) radar/laser jammer control unit and 3 radar/laser jammer sensors) pursuant to Section 134 of the Austrian Federal Data Protection Act of 1967 (KFG)

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Furthermore, pursuant to Section 64 of the German Tax Code of 1991, the taxpayer was required to pay the following:

60.00 euros as a contribution to the costs of the criminal proceedings, which amounts to 10% of the fine, but at least 10.00 euros per offense (100.00 euros are credited for each day of imprisonment). The total amount payable (fine/costs/cash expenses) is therefore €660.00.

1.2. The appeal filed challenges this decision, in which the criminal conviction is contested in its entirety, and the immediate termination of the proceedings, the revocation of the imposed fine, and the return of the confiscated items are requested, since the device installed in the vehicle

It is not capable of influencing or interfering with traffic control systems; therefore, it does not fall under the scope of Section 98a(1) of the Highway Code, and consequently, the alleged act does not constitute an administrative offense.

According to the police officer's on-site statement, the complainant claimed to have installed a radar/laser jammer in the vehicle. He was then asked to drive the vehicle into the courtyard of the Mattersburg police station for laser scanning. The report also noted that the complainant spoke German fluently and that no communication problems were encountered.

The police officer performed the laser measurement while the vehicle was parked with the engine running. During the laser measurement, it was not possible to determine whether the device installed in the vehicle was turned off or not. In fact, the measurement indicated an error rather than the usual speed of 0 km/h. Since it was a radar/laser jammer, the device had to be removed at the officer's request. The complainant only...

noticed during the removal that the sensors displayed the message "parking radar," and explained that the device was not a radar /laser jammer.

According to the criminal judgment, the technical expert was later unable to determine which specific device was involved due to the damaged system. However, based on online research, it can be stated that devices of the "KIYO" brand have numerous potential applications, such as laser detectors, laser jammers, or parking aids.

According to the search warrant, the findings regarding the device's individual components (two front sensors, one rear sensor, and the control unit located in the vehicle) were based on the display, to which photographs were attached. During the interrogation, the police officers described the traffic control system accurately and objectively, and explained the operation and installation locations of the components in a clear manner.

The complainant denied that it was a radar/laser jammer, stating that the device was merely a parking aid, not a speed-measuring device.

It didn't bother me, and it didn't bother me either.

The police assumed that the device installed in the vehicle was indeed capable of interfering with speed detection devices. Although the device was turned off at the time of the offense, according to the defendant's testimony, it could easily be activated by pressing the on/off button.

According to BH, the complainant should have noticed that a device that was clearly non-standard had been installed in the car, and he should have been aware of this, for example, by

By visiting a specialist workshop or studying the instructions, the defendant should have been able to determine what the device or parts in question were and whether they were lawful.

Since the defendant had acquired the vehicle more than four years before the commission of the offense and had not, in the meantime, familiarized himself with the operation of the device, his negligence can undoubtedly be presumed in connection with his lack of knowledge regarding the operation of the device, and he could not be exonerated from this, as he failed to fulfill his duty to inspect the vehicle and did not verify that it complied with the provisions of the Motor Vehicle Act.

The applicant disputes the BH's position, arguing that the BH's findings were not supported at all by the additional evidence obtained during the proceedings, based on which

1. the "Class 5 Expert Report" dated September 28, 2023, No. A5/SVD.K106-10000-153-2023, obtained by the BH;

2. refer to the "information" regarding the electronic unit, the "information" regarding the electronic unit, bearing approval number E7 10R-041302 pursuant to Regulation No. 10, according to which the device in question is the device issued by the National Transport Authority with type approval number E7 10R-041302;

3. According to the description on the kiyo.hu website and the EC type-approval certificate the KIYO D-type device with type-approval number 10R-041302 is a parking assistance system;

4. the manufacturer's declaration dated August 29, 2023, attached by the applicant on August 31, 2023, indicates that the equipment installed in the vehicle is a parking assistance system;

5. the calibration certificate attached by BH along with the current document, bearing the number E21-1093/4 and the designation "calibration certificate," indicates that the laser measuring device used is a "traffic speed measuring device," but this measuring device, called TruSpeed, is not suitable for determining whether a vehicle is whether a laser jammer is installed in a stationary vehicle—that is, in vehicles not in motion—and whether the device in the vehicle is capable of influencing or disrupting automated traffic control systems, as well as determining whether a laser jammer is present in a stationary vehicle (regardless of whether the engine is running, whether the ignition is turned on, etc.).

6. It is not true that the applicant claimed on the spot that the device installed in the vehicle was a laser jammer, and that the applicant never made such a statement.

Instead, the complainant consistently and persistently stated the truth from the outset of the proceedings, namely that the device was a retrofitted parking sensor, as the Porsche GT3 did not come equipped with a parking sensor as standard. Based on these statements, the statements made by the police officers in the course of their official duties cannot be considered evidence against the complainant's contrary assertions.

7. As for Inspector N.'s statement of October 18, 2023, referring to the comments made in point 6 above, it is not true that the applicant claimed on the spot that the device installed in the vehicle was a laser jammer.

Furthermore, the complainant had no idea that the witness or his colleague was conducting a laser measurement in the courtyard of the Mattersburg police station; he was not informed of this, nor did he himself observe any laser measurement.

In this context, it should be noted that the applicant had already at the gas station, and then did not turn it back on, but removed it. There was also no information regarding the alleged laser measurement.

A written document was prepared confirming that such a measurement actually took place.

8.a Regarding BI L.'s statement of October 18, 2023, it emerges that on July 26, 2023, he performed a laser measurement on the aforementioned vehicle in the courtyard of the Mattersburg police station. For stationary vehicles, the laser measuring device displays a speed of 0 km/h.

It was not possible to take measurements on the vehicle in question because the laser measuring device displayed an "Error" message. In his experience, vehicles equipped with such devices only detect measurement errors, since the purpose of a laser jammer is not to send a signal to the measuring device.

8.b The applicant supplements the information contained in the witness statement of October 18, 2023, by noting that the expert from Division 5 cannot subsequently verify whether the device was a parking radar, radar, or laser jammer.

Based solely on these statements, the BH—contrary to the documentation or through an incorrect assessment of the available evidence – concluded that the device in question was capable of influencing or interfering with technical traffic monitoring systems, since the witness statements and the "description of inspection steps" did not prove this beyond a reasonable doubt, therefore, the BH's decision imposing a fine was unlawful and violated Section 98(1) of the Road Traffic Act (KFG).

Since it was not proven beyond a reasonable doubt that the device is capable of influencing or interfering with technical traffic monitoring systems, as it is a parking aid, the findings in the decision regarding the complainant's knowledge—namely, that the complainant must have known that the vehicle was equipped with a radar-laser jammer—are clearly invalid.

The petitioner therefore did not commit the administrative offense described in the notice; consequently, the removal of the device installed in the vehicle was unlawful.

In light of the foregoing, the applicant requests that the arguments presented in the appeal be upheld, that the proceedings be terminated immediately, that the imposed fine be revoked, and that the confiscated property be returned.

2. Facts relevant to the decision:

Based on the administrative offense report submitted by the BH to the LVwG in a letter dated March 21, 2024, the court hearing the case established the following facts.

On July 26, 2023, at 4:00 p.m., officers from the Mattersburg District Police Station stopped the complainant in his Porsche 911 GT3 with license plate number LASER 1 (H) at Michael Koch-Straße 65 in 7210 Mattersburg (OMV gas station) during a routine vehicle inspection.

During the inspection, the police officers on the scene

Two sensors were detected on the bumper and one sensor in the rear license plate holder, none of which were part of the vehicle's standard equipment. The control unit was located under the steering column cover, and an on/off switch equipped with a warning LED was positioned under the steering wheel.

In light of this, the police officers on duty confirmed their suspicion that this was a so-called "radar/laser jammer," thereby violating Section 98a(1) of the Motor Vehicle Rental Act.

According to the complaint dated July 27, 2023, when questioned about the facts of the case, the complainant stated that he had purchased the radar jammer along with the Porsche and had turned the system off. Subsequently, further procedures regarding the radar jammer, whereupon he understood the situation and, in the presence of the two police officers, independently removed the three sensors and the control unit in the courtyard of the Mattersburg police station. These sensors were subsequently confiscated pursuant to Section 98a(3) of the Motor Vehicle Rental Act (KFG), and a certificate was issued to the complainant.

According to the seizure report, the seized items were one KIYO radar/laser jammer (KDU181281) and three KIYO radar/laser jammer sensors bearing the inscription "PARKING SENSOR," with serial numbers KD181477, KD181408, and KD181408, respectively. The applicant denied this in the record with the following comment: "No, that is not true. It was not a radar/laser jammer, but a 'KIYO - PARKING SENSOR,' as indicated on the sticker."

The intervening police officers took photographs of the seized items, which are included in the BH administrative penalty records.

Subsequently, based on the complaint filed, the BH issued a penalty order against the applicant, against which the applicant filed an appeal with a detailed statement of grounds, denying the administrative violation attributed to him, since the device in question was a parking sensor system and not a radar/laser jammer.

On this basis, in a letter dated September 7, 2023, the BH requested Department 5 of the Burgenland Provincial Government Office to investigate whether the complainant's claims were valid or whether the device in question was indeed a laser jammer, as reported by the police.

This department responded in its statement dated September 28, 2023, No. A5/

In document SVD.K106-10000-153-2023, and based on its own internet research, it stated the following:

"The Vehicle Registration Office cannot perform a retrospective (post-removal) inspection of the control unit and sensors.

The enforcement authority could have conducted an inspection directly on-site while the devices were installed.

Based on internet research, the following can be stated: "KIYO" devices appear to be usable in a number of areas. For example, as a laser detector or laser blocker, or as a parking aid, depending on the state of the control unit (see the attached information sheet—"KIYO," similar product).

Subsequently, on October 18, 2023, the BH questioned the two police officers on duty regarding the reported facts and provided the following information to Inspector Peter N.:

"On July 26, 2023, at 4:00 p.m., the driver of a Porsche 911GT3 with Hungarian license plate LASER1 (HU) was stopped at the OMV gas station located at Michael Koch-Straße 65, 7210 Mattersburg, for a driver and vehicle inspection. Based on my observations (field service), I determined that wheel/laser jammer sensors had been installed on the vehicle."

The driver of the vehicle confirmed this and stated that he had turned off the jammer. The driver was informed, in accordance with Section 98a(1) of the Motor Vehicle Safety Act (KFG), that the use of radar or laser jamming devices in the vehicle is prohibited.

I suggested to the suspect that we continue the proceedings in the courtyard of the Mattersburg police station. There, my colleague, Officer L., performed a laser measurement, which yielded no results. The driver also admitted to my colleague that the device was a laser jammer.

So I asked the driver to remove the control unit along with the sensors.

When the seizure receipt was handed over, the driver objected, claiming that it was not a laser jammer because the sensors were labeled "Parking Sensor."

The District L. inspector, who was also interviewed, essentially stated the following:

"[...] I performed a laser measurement on the vehicle in question in the courtyard of the Mattersburg police station. When the vehicle was stationary, the laser measuring device indicated a speed of 0 km/h. It was not possible to take a measurement on the vehicle in question because the laser measuring device displayed an "Error" message. In my experience, vehicles equipped with such devices only produce measurement errors, as the purpose of the laser jammer is to prevent the device from transmitting a signal to the measuring instrument."

Therefore, I confirm the information provided by my colleague, Inspector N."

Confronted with the findings of the report, the petitioner submitted a comprehensive statement in a letter dated November 28, 2023, in which he essentially provided the same justification as in the appeal now filed. Subsequently, on December 13, 2023, the L. District Inspectorate again questioned the applicant regarding his justification. The applicant stated the following:

"It is clear that a Class 5 expert cannot verify after the fact whether the device was a parking radar, radar, or laser jammer; therefore, during the official procedure conducted by my colleague, Inspector N., I performed a laser measurement."

was performed on the specified vehicle (calibration certificate attached).

Furthermore, the defendant confirmed that a wheel or laser jammer was installed in the vehicle. It is noted that the driver spoke German fluently, and no communication difficulties arose during the official proceedings.

At the time the laser measurement was taken, the vehicle was stationary.

In his defense, the driver claims that the device and the engine were turned off. I cannot determine whether the device was turned off at the time of the measurement or whether it can be turned off at all. The fact is that the vehicle's engine was running during the measurement.

"I therefore stand by the statements I made in my complaint and testimony dated October 18, 2023."

The BH also drew the applicant's attention to this statement by the District Inspector of L. during the hearing granted to him, to which the applicant responded in a letter dated January 9, 2024, after which the BH issued the contested penalty order.

3. Assessment of the evidence:

The LVwG obtained the evidence by examining the administrative act submitted by the BH in its letter dated March 21, 2024, including the impeccable documents contained therein (in particular, the minutes of the Mattersburg Police Headquarters (BPK) dated March 27, 2023, PAD/23/01540576/001/VStV; the seizure confirmation dated the same day, including the applicant's comment therein; color photographs of the seized items; the statement of September 28, 2023, from Department 5 of the Burgenland Provincial Government Office, including the review of the online documents attached to the statement, as well as the aforementioned minutes of the Burgenland Provincial Government Office regarding the official questioning of the two police officers on July 26, 2023; the applicant's previous arguments in the proceedings and his complaint).

In this regard, the previously established grounds for the decision

No conclusions can be drawn from this, and no findings or evidence can be derived from it. against.

4. Legal situation and considerations:

4.1. Legal provisions:

The provisions of the Federal Motor Vehicle Act of June 23, 1967 (Motor Vehicle Act of 1967 – KFG 1967) relevant to the present appeal are as follows:

Details:

“Radar or laser jammers

§ 98a. (1) No device or object that is capable of influencing or disrupting the operation of traffic control equipment may be attached to or transported in motor vehicles.

(2) A violation of paragraph 1 is attributable to both the driver and the registered owner of the vehicle [...].

(3) If the devices or objects described in paragraph 1 are discovered on or in vehicles, public safety or traffic authorities are authorized to take coercive measures to prevent further travel until such devices or objects have been removed.

(4) Paragraphs 1–3 shall also apply to components of the devices or objects described in paragraph 1.

§ 134. Penal Provisions

(1) Who

1. this federal law or

2. [...] – 7. [...]

commits an administrative offense and is punishable by a fine of up to 10,000 euros or, in the event of non-payment, by imprisonment for up to six weeks.

(8) Radar or laser jammers referred to in Section 98a, or any parts thereof, found on or in vehicles shall be declared forfeited.

4.2. Points to consider:

1. In the contested criminal judgment, the BH accuses the petitioner of driving the Porsche in question, on which a so-called KIYO (KDU181281) “radar or laser jammer,” although there were no devices or objects capable of influencing or interfering with traffic monitoring equipment...

cannot be attached to or transported in motor vehicles.

2. The applicant filed a comprehensive appeal against the decision and substantiated his position as set forth in Section I.1.2.

3. As mentioned earlier, the statement of the vehicle expert from Department 5 of the Burgenland Provincial Government Office dated September 28, 2023—

as well as from the testimony given by District Inspector L. during his re-examination at the BH on December 13, 2023 —that testing of a control unit and sensors that have already been removed to determine whether or not a radar/laser jammer is involved cannot be performed retroactively.

Law enforcement authorities should have conducted such a test directly on-site while the device was installed, and “KIYO” devices can be used in a variety of applications—such as laser detectors, laser jammers, or parking aids—depending on the configuration of the control unit.

District Inspector L. performed a laser measurement on the Porsche in question in the courtyard of the Mattersburg police station. The TruSpeed laser measuring device used indicated a speed of 0 km/h. Therefore, no measurement could be performed on this vehicle, as the laser measuring device displayed the error message “Error.” During the laser measurement, the Porsche was stationary, and District Inspector L. was unable to determine whether the device was turned off at the time of the measurement or whether it could be turned off at all. Furthermore, the report contains no information regarding when the complainant removed the devices in question, or whether the control unit was turned off (during the laser measurement), and if so, when.

Based solely on these facts, as well as the statements of the vehicle expert from the Office of the Burgenland Provincial Government, as well as the previously cited statements of District Inspector L., the LVwG—contrary to the opinion of the BH—does not prove with the certainty required for administrative penalty proceedings that the complainant had installed a “radar or laser jammer” that could be used to influence or disrupt the operation of traffic monitoring equipment.

According to the “in dubio pro reo” principle applicable in criminal proceedings, an administrative violation is not sufficient grounds for punishment.

It is probable that the defendant committed the crime, but the evidence must be so clear that there is no reasonable doubt that the defendant committed the crime. A "conviction" requires subjective certainty regarding the perpetrator and guilt; the objective minimum is a probability bordering on certainty. Such a degree of probability is legally regarded as truth, and the judge's awareness of this high probability is considered a conviction of the truth. If doubts regarding the perpetrator and guilt persist—as the LVwG determined in the appeal case based on the established facts, particularly the statements of the automotive expert, according to which a control unit that has already been removed and the sensors are radar/laser jammers, and that they cannot be inspected retrospectively, then the evidence is lacking. Therefore, any significant doubt—which undoubtedly exists in the present case—must be resolved in favor of the defendant under the principle of "in dubio pro reo" (in case of doubt, in favor of the defendant). This principle of evidence thus means that, in the event of doubt regarding the perpetrator's identity and guilt, the assumption most favorable to the defendant must be made (see the Foregger Code, The Austrian Code of Criminal Procedure, on Section 258, p. 323).

In light of the facts established by the Administrative Court and the previous statements, the presiding judge is therefore not certain, with the degree of certainty required for criminal proceedings, that the applicant actually (guiltily) committed the administrative offense charged against him, and no evidence or findings of the investigation refute this assumption.

For the reasons set forth above, the petitioner is not liable for the offense with which he was charged; therefore, the contested penalty decision had to be set aside in this regard, and the administrative penalty proceedings

II:

Inadmissibility of ordinary review:

The ordinary appeal is inadmissible because no legal issue of fundamental importance within the meaning of Article 133(4) of the Federal Constitutional Law (B-VG) has arisen. This decision does not deviate from the Administrative Court's previous case law, and there is no lack of precedent. The Administrative Court's current case law on this issue is consistent. There is nothing to suggest that the legal issue to be resolved is of fundamental importance.

Information on Legal Remedies

If the ordinary appeal filed with the Vienna Administrative Court has been declared admissible, an ordinary appeal may be filed within six weeks of the service of this decision. If the ordinary appeal is dismissed, only an extraordinary appeal may be filed with the Administrative Court within this period.

However, if in an administrative or financial criminal case a fine of up to 750.00 euros may be imposed, and no imprisonment is imposed, and the judgment imposed a fine of up to EUR 400.00, then an appeal (ordinary or extraordinary) filed with the Administrative Court on the grounds of a violation of rights is not admissible.

In any case, an appeal against the decision may be filed with the Constitutional Court (Freyung 8, 1010 Vienna) within six weeks of notification.

The aforementioned appeals must be filed by an authorized attorney, and a filing fee of €240.00 must be paid. Appeals to the Constitutional Court must be filed directly with the Court, which (ordinary or extraordinary)

An appeal filed with the Administrative Court must be submitted to the Administrative Court.

In appeal proceedings before the Constitutional Court and in appeal proceedings before the Administrative Court, an application for legal aid may be filed. Exemption from costs must be granted in whole or in part if the party is unable to cover the costs of the proceedings without jeopardizing their basic living expenses, or if neither the party nor the financially affected parties can provide the financial resources necessary for the proceedings, and the proposed legal action or defense does not appear to be manifestly frivolous or futile.

An application for legal aid in proceedings before the Constitutional Court must be filed with the Constitutional Court within the aforementioned deadline.

Court. In appeal proceedings before the Administrative Court, an application for legal aid must be filed with the Administrative Court within the aforementioned time limit if the ordinary appeal is upheld. If the ordinary appeal is dismissed, the application for legal aid must be submitted to the Administrative Court. The application submitted to the Administrative Court must briefly explain, to the extent reasonable for the applicant, why the appeal is considered admissible contrary to the Administrative Court's decision.

Furthermore, the applicant may waive the right to appeal to the Administrative Court and the right to file a complaint with the Constitutional Court. This waiver results in the inability to appeal to the Administrative Court or file a complaint with the Constitutional Court.

Recipient:

1) Hevesi Law Office, 6720 Szeged – Somogyi Street 6, III./12, e-mail:
hevesiui@gmail.com

2) Mattersburg District Authority, Marktgasse 2, 7210 Mattersburg pursuant to the referenced law

Mag. A minger

This document is officially signed. Information regarding the verification of the electronic seal can be found at [http:// www.signaturpruefung.gv.at](http://www.signaturpruefung.gv.at). The authenticity of the printed copy can be verified against the copies submitted to the Burgenland Administrative Court. The logo of the Burgenland Provincial Administrative Court is a trademark.