



LAW REFORM COMMISSION

Issue Paper

Road Traffic Legislation and the Penalty Points System

[December 2011]

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About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of –

- (a) a Chairperson, appointed by the Attorney-General;
- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
- (d) the Director of Public Prosecutions or his representative;
- (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
- (g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
- (h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
- (i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

The Commission may appoint staff on such terms and conditions as it may determine and it may resort to the services of persons with suitable qualifications and experience as consultants.

Executive Summary

Issue Paper on “Road Traffic Legislation and the Penalty Points System” [December 2011]

The Commission has reviewed our law on road traffic legislation and the “penalty point system” from a comparative perspective with a view to ascertaining whether it is in line with best international practices. It has also considered whether the legislative scheme devised for the “penalty point system” complies with the requirements of the Constitution and its human rights guarantees. The Commission is of the view that provisions in the Road Traffic Act which purport to confer on the Licensing Officer the power to suspend a driving licence fall foul of the Constitution and should be redrafted.

The Commission supports the operation of a “penalty point system.” In most jurisdictions, the introduction of a “penalty point system” has led to a significant reduction in road accidents casualties and fatalities, when there is an effective traffic monitoring system.

(A) Introductory Note: Background to this Study

1. At the request of the Hon. Attorney-General, the Commission has reviewed our law on road traffic legislation and the “penalty point system”¹ from a comparative perspective² with a view to ascertaining whether it is in line with best international practices.
2. The Commission has also examined whether the legislative scheme devised for the “penalty point system” complies with the requirements of the Constitution and its human rights guarantees.

(B) Requirements of the Constitution and its Human Rights Guarantees

3. The operation of a penalty point system is meant to deter the commission of road traffic offences by assigning penalty points on conviction for certain road traffic offences. The penalty points which are accumulated over a period of time may lead to the suspension of a driver’s licence.
4. Under our constitutional system, the power to suspend a driving licence is regarded as a judicial function and must be entrusted to courts. In *Durocher v Commissioner of Police* [2008] MR 97, the Supreme Court considered that section 123LA of the Road Traffic Act, which purported to confer on a police officer, not below the rank of superintendent,

¹ Sections 123AG to 123AJ of the Road Traffic Act (added by section 5 of Act No. 9 of 2003 and which are not in force), and the Draft Road Traffic (Penalty Points) Regulations 2011.

² Australia [Victoria] Road Safety Act (section 25) and the Road Safety (Drivers) Regulations; Barbados Road Traffic Act [section 9 and the Sixth Schedule]; EIRE Road Traffic Act 2002 [as amended by Part 5 of the Road Traffic Act 2010]; France Code de le Route [in particular, Articles L223-1 to L223-9 and R223-1 to R223-4 relating to “permis à points”]; Jamaica Road Traffic Act [sections 59A to 59C and the Second Schedule]; South Africa Administrative Adjudication of Road Traffic Offences Act [sections 24 to 29]; UK Road Traffic Offenders Act [sections 28 to 31, and Schedule 2]; Trinidad & Tobago Motor Vehicles and Road Traffic Act [sections 86A to 86C] as well as the Motor Vehicles and Road Traffic (Enforcement and Administration) Act [First Schedule].

the power to request a person charged with a drink-driving offence to surrender his driving licence (which then shall be deemed to be suspended) pending the determination of the charge against him, was unconstitutional.

This is what the Court had to say:

“A scrutiny of the structure and design of the Act leads one to the conclusion that the legislator has provided for a strict demarcation of the powers of the licensing officer and those of the court. And the power to disqualify a person from holding or obtaining a driving licence has been given to the court before which that person is convicted of an offence under the Act. The scheme of the legislation is to provide for disqualification as a penalty inflicted by the court following a conviction. Disqualification as envisaged by the Act is part of the sentencing measures available to the court. Accordingly, the power to order a disqualification is essentially a judicial function, and that too after conviction for an offence under the Act ...

What the legislator has sought to do by the amendment of 2006, by the addition of sections 123LA and 123LB, is to give, by the mechanism of a double deeming provision, to a police officer, admittedly not below the rank of Superintendent of Police, the power to disqualify a licence holder - a power which hitherto had been reserved to the court - and that too for an unlimited period and without any form of judicial control. The only avenue of access to the court is where there is undue hardship to the licence holder, in which case, the licence holder may seek the cancellation of the immediate suspension or deemed disqualification ...

*We take the view that, given the scheme and structure of the Act, this deemed disqualification cannot be assimilated to a preventive measure but in fact amounts to a penalty which no police officer could impose, the more so as, firstly, contrary to what obtains under section 52, the deemed disqualification under section 123LA is not of limited duration, in the sense that the suspension goes on until proceedings for the main offence are discontinued or otherwise disposed of, and secondly, disqualification is not an option available to a court on convicting a licence holder for refusing to submit to a breath test under section 123G. And by providing for a penalty to be imposed by a police officer, section 123LA constitutes a usurpation of a judicial function and breaches the fundamental constitutional principle of separation of powers, as authoritatively laid down by this Court in *Police v Khoiratty* [2004] MR 137 and confirmed by the Judicial Committee of the Privy Council in *State v Khoiratty* [2006] MR 210.”³*

³ The judgment of the European Court of Human Rights in *Escoubet v Belgium* [1999] ECHR 106 was distinguished. In that case, the Court held that the immediate withdrawal of a driving licence (which was used as precautionary measure and is distinguishable from disqualification from driving) was not a breach by the respondent State of its obligations under Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5. The imposition of a penalty point system is criminal in nature and the safeguards in section 10(3) of the Constitution, which is modeled on Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, must be adhered to. A driver must be informed that he is liable to lose points on account of an offence he has committed and he should be given the opportunity to contest the constituent elements of the offence which might be used as the basis for allocation of points. Furthermore, the number of points allocated must be proportionate to the seriousness of the offence.⁴

⁴ Vide judgment of European Court of Human Rights in *Malige v France* [1998].

Vide also French Constitutional Council Décision n° 99-411 DC du 16 Juin 1999. The question arose whether Article L. 11-1 of the Code de la Route, which provides that points shall be automatically docked from a driving licence when offences listed are established by means of either the payment of a fixed fine or a final conviction, and the offender has been duly informed that the payment of the fine constitutes an admission of the offence, and thus entails a number of points being docked from his licence. The Court ruled that

«20. Considérant, en premier lieu, que la procédure instaurée par l'article L. 11-1 du code de la route ne porte pas atteinte à la liberté individuelle au sens de l'article 66 de la Constitution; qu'eu égard à son objet, et sous réserve des garanties dont est assortie sa mise en oeuvre, elle ne porte pas davantage atteinte à la liberté d'aller et venir;

21. Considérant, en deuxième lieu, que, dans l'hypothèse où l'une des infractions énumérées à l'article L. 11-1 du code de la route a été relevée à l'encontre du conducteur, celui-ci est informé de la perte de points qu'il peut encourir ; que cette perte de points, directement liée à un comportement délictuel ou contraventionnel portant atteinte aux règles de la circulation routière, ne peut intervenir qu'en cas de reconnaissance de responsabilité pénale, après appréciation éventuelle de la réalité de l'infraction et de son imputabilité par le juge judiciaire, à la demande de la personne intéressée; qu'en outre, la régularité de la procédure de retrait de points peut être contestée devant la juridiction administrative; que ces garanties assurent le respect des droits de la défense et celui du droit au recours;

22. Considérant, en troisième lieu, qu'en application de l'article L. 11-2 du code de la route, la perte de points, pour la commission de délits, est égale à la moitié du nombre de points initial, alors qu'elle est, en matière contraventionnelle, au plus égale au tiers de ce nombre; que les conditions dans lesquelles les pertes de points peuvent se cumuler sont précisées par cet article; qu'en conséquence, la perte du nombre de points affecté au permis de conduire est quantifiée de façon variable en fonction de la gravité des infractions qui peuvent l'entraîner; que cette sanction, qu'elle soit appliquée en matière contraventionnelle ou délictuelle, y compris au délit institué par l'article L.4-1 du code de la route, n'est pas manifestement disproportionnée par rapport aux faits qu'elle réprime».

(C) Observations on the Proposed Framework for a “Penalty Point System”

6. The provisions in the Act which purport to confer on the Licensing Officer the power to suspend a driving licence fall foul of the Constitution and should be redrafted.⁵ Section 123AJ of the Act is meant to be a preventive measure. The measure prescribed goes beyond what is constitutionally permissible.⁶

7. The Draft Regulations have been written so that the provisions are in compliance with the Constitution and its Human Rights Guarantees. The Draft Regulations are in line with best international practices. One aspect of the Draft Regulations has, however, retained our attention: the penalty points for an offence are allocated according to a scale, whereas in all the other jurisdictions we have surveyed it is a fixed number of points which is allocated. The approach taken is not objectionable as the Court’s determination of the number of penalty points to be allocated for an offence would be based on the circumstances of the commission of the offence.

⁵ Vide section 123AG (2), section 123AH (1), and section 123AI (1) of the Road Traffic Act.

⁶ Vide decision of the European Court of Human Rights in *Escoubet v Belgium* [1999] ECHR 106.

(D) Concluding Remarks

8. The Commission supports the operation of a “penalty point system.” In most jurisdictions, the introduction of a “penalty point system” has led to a significant reduction in road accidents casualties and fatalities,⁷ when there is an effective traffic monitoring system.⁸

⁷ In Italy, for instance, it was estimated - using data on road accidents, traffic fatalities and driving offences taking place in Italy over the period 2001 to 2005 - the introduction in July 2003 of a penalty point system for driving offences had led to a reduction of about 10% of road accidents and of about 25% of traffic fatalities: vide M. De Paola et al., «The Deterrent Effects of Penalty Point System in Driving Licences: A Regression Discontinuity Approach», Working paper No. 4 (2010) Università della Calabria.

In Spain, an assessment of the effectiveness of the penalty points system (PPS) introduced in Spain in July 2006, in reducing traffic injuries, has shown that it was associated with reduced numbers of drivers involved in injury collisions and people injured by traffic collisions: vide A.M. Novoa et al, “Impact of the Penalty Points System on Road Traffic Injuries in Spain: A Time–Series Study” (2010) *American Journal of Public Health* Vol. 100 No. 11. Vide also M. Basili & A. Nicita, “Deterrence and Compliance in a Demerit Point System”, (2005) *American Law & Economics Association Annual Meetings*.

The Alberta Occupant Restraint Program Provincial Steering Committee has considered, after it had conducted a study with non-compliant drivers, that demerits, in addition to the current fine for seat belt offences, are necessary to achieve and maintain Vision 2010’s key goal of a 95% seat belt wear rate by all vehicle occupants in Alberta: vide “The Introduction of Demerit Points to Increase Compliance with Seat Belt and Child Safety Seat Legislation in Alberta: An Alberta Occupant Restraint Program (AORP) Position Paper” (Dec 2005).

⁸ Vide A. Mehmood, “Evaluating impact of demerit points system on speeding behaviour of drivers” (2010) 2 *European Transport Research Review* 25-30.