

THE PRINCIPLE OF PROPORTIONALITY IN ADMINISTRATIVE SANCTIONS: A COMPARISON BETWEEN DOMESTIC REGULATIONS AND EUROPEAN LAW

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ABSTRACT: *The principle of proportionality in administrative law requires public authorities to adopt measures that are necessary and appropriate to their purpose, while avoiding excessive restrictions on private interests. It ensures a balance between the objectives pursued by public authorities and the means employed, thereby limiting their discretionary power.*

There are three relevant criteria in the analysis of proportionality in administrative matters: the appropriateness of the administrative measure, in the sense that the administrative measure must be suitable for achieving the intended objective; the necessity, meaning that the administrative measure must be the least burdensome of those available to achieve the result; and the non-excessiveness, meaning that the restriction imposed on the private individual must not be excessive or disproportionate to the public benefit sought.

The study examines the concept of proportionality, how it contributes to ensuring the fairness of administrative sanctions, and the limits within which a court may review measures imposed in an abusive manner, with the entire assessment of proportionality being conducted in accordance with European standards.

KEYWORDS: *public authorities; administrative action; proportionality; sanctions; fundamental rights.*

JEL Code: K23, K33

DOI: 10.62838/cjjc-2024-0083

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1. THE CONCEPT OF PROPORTIONALITY IN PUBLIC ADMINISTRATION

The definition of the principle of proportionality as applied in public administration, as formulated by German legal doctrine, is well-known and serves as a landmark in German administrative law: proportionality means verifying that the public administration has not used a cannon to shoot sparrows (Fleiner, 1928).

As a general legal principle, proportionality means that acts issued by state authorities must constitute a rational and reasonable use of means to achieve a legitimate objective, without unjustifiably infringing upon the protected rights of individuals or other states.

The principle of proportionality was codified in Romanian administrative law much later than in other countries and in the European Union¹. Furthermore, in our legal system, even after its adoption, both legal doctrine and case law long equated the principle of proportionality with one of its elements, namely *the appropriateness* of the administrative measure.

Consequently, the simultaneous consideration of all three elements specific to the principle of proportionality has long been neglected by the courts. This is all the more so given that the last two characteristics—*the necessity* and *non-excessiveness* of a proportional measure—can enable the administration to take the interests of the addressees into account more effectively and can also allow the judge to conduct a more thorough analysis of the legitimacy of the administrative action, taking into account the impact of the exercise of power on the addressees.

In its case law, the Romanian High Court of Cassation and Justice has held that the principle of proportionality is rooted in the provisions of Article 53 of the Romanian Constitution, which states that “ (1) *The exercise of certain rights or freedoms may be restricted only by law and only if necessary, as the case may be, for: the defense of national security, public order, public health, or public morals, or the rights and freedoms of citizens; the conduct of criminal investigations, the prevention of the consequences of a natural disaster, a catastrophe, or a particularly serious accident. (2) Restriction may be imposed only if it is necessary in a democratic society. The measure must be proportionate to the situation that gave rise to it, applied in a non-discriminatory manner, and without prejudice to the existence of the right or freedom.*”

The Romanian High Court of Cassation and Justice² further states that proportionality plays a significant role in administrative law even when constitutional rights are not at stake, and it can be argued that this is a general principle of law.

Put simply, the principle of proportionality applies to situations where any measure taken must be well-suited and carefully considered in order to achieve its intended objectives (Stein, 1999).

In exercising its powers, the court verifies whether the measure taken is adequate and appropriate to achieve the intended purpose, whether it is necessary, or whether the purpose could have been achieved by a less “intrusive” means, as well as whether it is not

¹ Art. 9 of GEO no. 57/2019 on the Romanian Administrative Code, published in the Official Gazette of Romania no. 555 of 05.07.2019.

² Decision no.604 of February 7, 2023 pronounced by the Administrative Litigation Section of the Romanian High Court of Cassation and Justice, in the magazine *Pandectele Române*, no. 2/2024.

manifestly disproportionate in terms of costs and benefits. In other words, the court is entitled to assess whether there is an appropriate relationship between the means and the ends.

Where there is a choice between several measures deemed appropriate, the least onerous measure must be chosen, and the disadvantages must not be disproportionate to the objective pursued.

Specifically in the administrative sphere, administrative measures must not go beyond what is strictly necessary and must not be accompanied by a penalty disproportionate to the seriousness of the violation.

In this area, the principle of proportionality serves as a criterion for distinguishing the discretionary power of administrative authorities from “abuse of power,” against which the judicial review of administrative acts is assessed.

In essence, the Romanian High Court of Cassation and Justice concludes that proportionality is a flexible principle of law, and administrative courts may invoke it to sanction an abuse of power.

2. ANALYSIS OF THE ELEMENTS CONSTITUTING THE “PROPORTIONALITY” OF AN ADMINISTRATIVE MEASURE

Proportionality has been the subject of numerous specific studies in recent years, as well as of discussions in studies concerning the discretionary power of the administration, abuse of power, the general principles of administrative action, and, in particular, the review of legality conducted by administrative courts.

The three “steps” of the process, developed by the German Bundesverfassungsgericht and subsequently applied by the CJUE (Stoinea), which determine whether a decision is proportionate to the objective it seeks to achieve, require the court to examine:

- a) *its suitability* for achieving the objective, understood as the relationship between the means employed and the objective to be achieved;
- b) *its necessity*, understood as the absence of less intrusive alternatives for achieving the same result;
- (c) *its proportionality* in the strict sense, understood as the acceptability of the intervention implemented by the public administration to the recipient.

The standard model for assessing proportionality, however, consists of four steps, which are carried out by examining the aforementioned elements namely, *suitability*, *necessity*, and *proportionality* in the strict sense (i.e., the absence of excessiveness), with the legality of the measure in question requiring analysis prior to these steps (Mathews, 2017).

For example, let’s suppose that the Minister of Transportation issues regulations prohibiting heavy freight trucks from traveling on highways during the day on weekends. A comprehensive analysis of the proportionality of this measure might look like this:

First, as a preliminary matter, the court should determine whether the contested measure serves a legitimate purpose: that is, a purpose within the public authority’s jurisdiction. This is a standard that is generally met, as there are few situations in which a government measure lacks a legitimate purpose, and few administrative measures are overturned during the review of their legitimacy. The Ministry should be able to justify the

measure as a means of pursuing the objectives for which it is responsible, such as reducing traffic and improving public safety.

Second, the court should determine whether the contested measure is “appropriate,” specifically whether it is suitable for achieving its objective. To be considered appropriate, a measure need not be the best or most suitable possible; it need only contribute to the legitimate objective already identified. If the Ministry can credibly claim that the ban reduces road traffic and improves safety, the measure will pass the test of adequacy, a point that is often easy to demonstrate.

The next question, and effectively *the third step*, is whether the measure is necessary to achieve its stated objective. This necessity test is often operationalized as a least-restrictive means test: in other words, could the government’s goal be achieved through alternative measures that infringe less on the freedom or interests of others? If the answer is yes, the government’s action is a disproportionate measure and, therefore, impermissible. Whether our driving ban passes this test depends largely on the court’s assessment.

If a measure passes the necessity test, the process moves on to the final phase (*the fourth stage*) of the review, namely the analysis of “proportionality” (*stricto sensu*). The court will analyze the benefits of the contested measure (which has already been found to be appropriately tailored to the purpose it serves) in relation to its costs, with regard to infringements of protected rights or interests. Only if its benefits outweigh the burden it imposes will the contested measure pass the proportionality test.

3. LEGAL CONSEQUENCES OF BREACHING THE PRINCIPLE OF PROPORTIONALITY

As noted, the legal framework of the principle of proportionality in administrative law is based on the doctrine of abuse of power. It is unanimously recognized that in this area, a balance must be struck between the public interest of the state and the private interest of the citizen. Furthermore, it is essential to take measures to prevent the disproportionate use of administrative sanctions (Zorzoană A., 2022).

Notable in this regard is Montesquieu’s assertion that “*to prevent the abuse of power, it is necessary that, by the very arrangement of things, power should check power*” (Montesquieu, 1995). ”

Currently, the dynamic nature of social life has led to the executive branch being granted expanded powers, a development that has made it easier for it to take measures, sometimes excessive ones, making it necessary to restore the balance through the courts (Pop, 2022).

Thus, the courts serve as guardians of the principles and values of the rule of law, since public administrative authorities cannot have absolute discretion (Trăilescu, 2023). Consequently, when courts are called upon to adjudicate disputes concerning the review of such actions, the verification of a balance between the pursued objectives and the interests of the individuals who have been harmed is carried out through what legal doctrine has termed the proportionality test. As we have noted, according to this test, the court must verify whether the measure ordered is appropriate, in the sense that it contributes to achieving the legitimate objective; whether it is necessary, that is, whether it causes minimal interference with the individual’s subjective right; and whether there is

proportionality between the objective pursued and the interest harmed (Martin M., 2008, pg. 173-174).

In light of the foregoing, we ask ourselves to what extent judges may review the measures ordered by the administration. In other words, what is the limit to which courts may intervene? Legal scholars have advanced the argument that the principle of proportionality must be analyzed in conjunction with the appropriateness of the administrative act (Trăilescu, Administrative Law. Special Part, 2020, p. 29). Other authors have argued that courts do not rule on the appropriateness of the administrative act (Iovănaș, 1997, p. 51).

Even though legal literature does not agree on this point, a key reference in formulating an answer to the issue under debate is provided by the provisions of Law No.554/2004³ on administrative litigation, which define abuse of power as *“the exercise of the discretionary power of public authorities in violation of the limits of competence provided by law or in violation of the rights and freedoms of citizens.”* Consequently, it can be inferred from these legal provisions as a whole that the administrative court may review the administrative authority’s discretion, this doctrinal debate having been clarified in this regard.

In the same vein, the Romanian High Court of Cassation and Justice⁴ ruled in a decision that the administrative court has jurisdiction to rule “even in cases where the authority has acted with an abuse of power in the performance of its duties.” Furthermore, the High Court held, in the context of the application of sanctions, that these must correspond to the severity of the violation, and that the individualization must be carried out in accordance with the specific circumstances of the case, in order to ensure the proportionality of the measure.

The decision also noted that, regardless of the review conducted in administrative litigation, the authorities are required to tailor the penalty imposed based on certain objective criteria, such as “the severity and duration of the violation, as well as any aggravating or mitigating circumstances.”

In addition to the standard established by the proportionality test, the reasonableness of the imposed sanction is assessed in light of the specific circumstances of the case. For example, in a decision handed down by the Romanian High Court of Cassation and Justice, the criteria for determining the specific penalty included “the nature and severity of the acts, the form of culpability, the financial situation, financial stability, damages caused to third parties, the degree of cooperation with the ASF, and prior violations”.⁵

Without providing an exhaustive overview of what constitutes discretionary power or abuse of power, the present study focuses on the consequences that may arise when the principle of proportionality is not observed.

³ Published in the Romanian Official Gazette no.1154 of 7.12.2004.

⁴ Romanian High Court of Cassation and Justice, Administrative Regulatory Act. Failure to observe the principle of proportionality of sanctions. Abuse of power, Pandectele Romane 2, 2024. <https://sintact.ro/#/publication/151031283?keyword=Consecin%C8%9Bele%20juridice%20ale%20%20Violations%20of%20the%20principle%20of%20proportionality%20of%20sanctions> (accessed: 2026-05-31 15:13).

⁵ Summary of ICCJ Decision No. 3363/2025, available online at: <https://lege5.ro/Gratuit/ge3toojugi3tc/decizia-rezumata-nr-3363-2025-sanctiune-complementara-principiul-proportionalitatii>.

One such consequence is the annulment of the administrative act, a ruling issued by the administrative court following an analysis of the three criteria outlined above, namely the adequacy, necessity, and proportionality of the measure adopted by the public administration.

Also relevant in this context is a ruling issued by the Romanian High Court of Cassation and Justice in which a violation of the principle of proportionality was alleged regarding the existence of double punishment in a case involving European funds; this objection was rejected at first instance and upheld on appeal. The court's reasoning was based on the provisions of Article 6 (3), as well as Articles 27 and 28 of Government Ordinance No. 66/2011; in this case, in addition to the financial correction provided for in the annex to the aforementioned legislative act, a reduction in the scope of the contract was applied, an aspect that does not amount to a double penalty⁶.

At the same time, a finding of nullity is not the only standard of review (Mathews, 2017); consequences may also arise from the violation of guaranteed fundamental rights, in which case the state is obligated to remedy the effects of the measure in question and, where appropriate, award compensation. Moreover, Article 575 of the Administrative Code regulates administrative liability for damages in cases where harm is caused in connection with administrative acts.

4. THE PRINCIPLE OF PROPORTIONALITY IN THE CASE LAW OF THE ECHR

When assessing compliance with fundamental rights, the European Court of Human Rights has established the concept of proportionality as a general standard for reviewing the measures taken. Having become a requirement not only at the national level but also at the European level, the Court examines the extent to which states have succeeded in maintaining a balance between the public interest and the individual's interests. In other words, the European court verifies whether the means used by national authorities were appropriate, and whether there were no other, less restrictive alternatives available to achieve the intended objective (Tridimas, 2006, p. 136).

Originating in German law, the principle of proportionality has been gradually reshaped through the case law of the European Court of Human Rights and the Court of Justice of the European Union (Vogenauer S., 2019, p. 134). A comparative analysis reveals that the concept of proportionality is defined in Article 5 of the Treaty on European Union (TEU).⁷

Although this principle is not expressly enshrined in the European Convention on Human Rights, the ECHR recognizes and applies it when called upon to ensure a "fair balance between various competing interests (Sârcu D., 2013)."

⁶ Romanian High Court of Cassation and Justice, *European Funds. Irregularity. Doubling of administrative corrective measures. The principle of proportionality*, Romanian Journal of Business Law 1, 2024. <https://sintact.ro/#/publication/151031392?keyword=anularea%20actului%20administrativ%20ca%20urmare%20a%20nerespectarii%20principiului%20proportionalitatii%20> (accessed: May 31, 2026, 5:07 p.m.)

⁷ Article 5(4) of the TEU provides that: "In accordance with the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

A key case in this context is *Soering v. the United Kingdom*⁸, in which the European Court held that the provisions of the Convention aim “*to strike a balance between the general interest of the community and the need to protect fundamental individual rights.*”

Similarly, in its judgment in the case of *Handyside v. the United Kingdom*, the Court held that “*any restriction or penalty (...) must be proportionate to the legitimate aim pursued.*”⁹

Furthermore, one aspect the Court examines in its reasoning is the concept of “necessary in a democratic society,” noting, on the one hand, that “necessary” cannot be equated with “indispensable,” and, on the other hand, that states have a margin of appreciation. Nevertheless, the final decision rests with the Court.

Legal doctrine has put forward the argument that the European Court considers two aspects of proportionality: first, assessing potential infringements in the context of restrictive measures imposed by national authorities, and second, interpreting the fundamental rights guaranteed and their scope of application (Sârcu D., 2013).

In this regard, in the case of *Jersild v. Denmark*¹⁰, the Court held that “the authorities must justify the relevance and adequacy of the restriction imposed.”

What can be observed from the case law approach to the principle of proportionality is that there is no fixed framework through which it is analyzed; rather, the European court takes into account the specific circumstances of each case.

5. CONCLUDING REMARKS

It can be said that the principle of proportionality has moved beyond being enshrined in law merely at an abstract level, gradually becoming an effective tool available to administrative courts to curb abuses of power by the public administration. Of course, this principle is not limited to the judicial sphere but must also be applied when imposing administrative sanctions. Furthermore, it has earned its place among the principles of law, being recognized not only in the national legal order but also in the European one.

Measures taken by public administration authorities must meet the proportionality test, and any violations of this requirement cannot go unpunished. This is because an individual's rights cannot be sacrificed by tipping the balance exclusively in the public interest.

REFERENCES

- Charles de Secondat de Montesquieu, *De l'esprit des lois*, Editions Gallimard, Paris, 1995
Fleiner, F. *Institutionen des deutschen Verwaltungsrechts* (Institutions of administrative law), Mohr, Tübingen 1928
Iovănaș I., *Drept administrativ*, Editura Servo Sat, Arad, 1997
Martin M., Horne A., "Proportionality: Principles and Pitfalls - Some Lessons from Germany", în *Judicial Review*, vol. 13, nr. 13/2008

⁸ Judgment of the European Court of Human Rights in the case of *Soering v. the United Kingdom*, of 7 July 1989.

⁹ Judgment of the European Court of Human Rights in the case of *Handyside v. the United Kingdom* of 7 December 1976.

¹⁰ Judgment of the European Court of Human Rights in the case of *Jersild v. Denmark* of 23 September 1994.

- Mathews, Proportionality Review in Administrative Law, in Comparative Administrative Law, 2d ed., Susan Rose-Ackerman, Peter L. Lindseth & Blake Emerson, eds., Edward Elgar Publishing, 2017
- OUG nr. 57/2019 privind Codul administrativ, publicată în Monitorul Oficial al României nr. 555 din 05.07.2019
- Pop A.M., Observații asupra puterii discreționare a administrației prin prisma *principiului proporționalității*, în *Studia Iurisprudentia* nr. 2/2022, disponibil online la adresa: <https://sintact.ro/#/publication/151029051?keyword=Consecin%C8%9Bele%20juridice%20ale%20C3%AEnc%C4%83lc%C4%83rii%20principiului%20propor%C8%9Bionalit%C4%83%C8%9Bii> (access: 2026-05-30 12:51)
- Sârcu D., Morărescu A., Definirea principiului proporționalității în lumina jurisprudenței naționale și internaționale, *Seria „Științe sociale”*, în *Studia Universitatis Moldaviae*, nr. 3(63)/2013
- Stein P., *Roman Law in European History*, Cambridge University Press, Cambridge, 1999
- Stoinea V., Principiul proporționalității: reglementare și origini, publicat pe juridice.ro, disponibil online la adresa: https://www.juridice.ro/832803/principiul-proportionalitatii-reglementare-si-origini.html#_ftnref15
- Trăilescu A., *Drept administrativ. Partea specială*, ed. a 3-a, Ed. C.H. Beck, București, 2023
- Trăilescu, A., *Drept administrativ. Partea specială*, ed. a 2-a, C.H. Beck, București, 2020
- Tridimas T., *The General Principles of EU Law*, Second Edition, Oxford University Press, 2006
- Vogenauer, S., Weatherill, S. *General principles of law. European and comparative perspectives*, Ed. Hart, Oxford, 2019
- Zorzoană A., Florea D., Principiul proporționalității. Aspecte teoretice și practice din jurisprudența Curții de Justiție a Uniunii Europene, a Curții Europene a Drepturilor Omului și a Instanțelor Naționale, *Revista de Drept Public Supliment din 2022*. <https://sintact.ro/#/publication/151029841?keyword=principiul%20proportionalit%C4%83%C8%9Bii%20aspecte%20teoretice%20C8%99i%20practice> (access: 2026-03-22 17:55)

Jurisprudence:

- Decision no.604 of February 7, 2023 pronounced by the Administrative Litigation Section of the Romanian High Court of Cassation and Justice, in the magazine *Pandectele Române*, no. 2/2024.
- Romanian High Court of Cassation and Justice, Administrative Regulatory Act. Failure to observe the principle of proportionality of sanctions. Abuse of power, *Pandectele Române* 2/2024, available online at: <https://sintact.ro/#/publication/151031283?keyword=Consecin%C8%9Bele%20juridice%20ale%20Violations%20of%20the%20principle%20of%20proportionality%20of%20sanctions> (accessed: 2026-05-31 15:13).
- Summary of ICCJ Decision No. 3363/2025, available online at: <https://lege5.ro/Gratuit/ge3toojugi3tc/decizia-rezumata-nr-3363-2025-sanctiune-complementara-principiul-proportionalitatii>.

Romanian High Court of Cassation and Justice, *European Funds. Irregularity. Doubling of administrative corrective measures. The principle of proportionality*, Romanian Journal of Business Law no. 1/2024, available online at: <https://sintact.ro/#/publication/151031392?keyword=anularea%20actului%20administrativ%20ca%20urmare%20a%20nerespectarii%20principiului%20proportionalitatii%20> (accessed: May 31, 2026, 5:07 p.m.)

Judgment of the European Court of Human Rights in the case of Soering v. the United Kingdom, of 7 July 1989

Judgment of the European Court of Human Rights in the case of Handyside v. the United Kingdom of 7 December 1976

Judgment of the European Court of Human Rights in the case of Jersild v. Denmark of 23 September 1994

