

*Decision No 22 of 16 January 2019
on the objection of unconstitutionality of the Law amending and supplementing Law
No 254/2013 on the enforcement of custodial sentences and measures ordered by the
judicial bodies during criminal proceedings,
published in the Official Gazette of Romania, Part I, No 131 of 19 February 2019*

Summary

I. As grounds for the objection of unconstitutionality, the authors of the referral claimed that the Law amending and supplementing Law No 254/2013 on the enforcement of custodial sentences and measures ordered by the judicial bodies during criminal proceedings was unconstitutional in its entirety because it disregarded the *erga omnes* binding effect of the decisions delivered by the Constitutional Court. Although it was aware that this law had been found unconstitutional as a whole, the Romanian Senate reviewed the unconstitutional law. The proof that this procedure was continued is the existence of the same registration number of the law during the legislative process, both before its declaration as unconstitutional and afterwards, during the review procedure. After the law was adopted by the Romanian Senate, the legislative procedure continued before the Chamber of Deputies, where it took place after the publication of Decision No 561 of 18 September 2018 in the Official Gazette of Romania, Part I, No 922 of 1 November 2018, when the Parliament was due to ascertain the automatic cessation of the legislative procedure regarding the law in question.

II. By examining the objection of unconstitutionality, the Court found the existence of a specific context in this case, i.e. the review of a law on which the Court had issued two decisions during the *a priori* review. The first of these, in the chronological order, found the unconstitutionality of certain provisions of the law, and the second one found the unconstitutionality of the law as a whole.

According to the Court's case-law, the review applies only when the Court has found the unconstitutionality of some legal provisions, not when the unconstitutionality concerns the regulatory act as a whole. In such a case, the consequence is the cessation of the legislative process regarding the respective regulation, without having to initiate a separate parliamentary procedure in this regard. Next, it is up to the legislator to decide whether or not it will still legislate in the respective field, and if it maintains its will to regulate, then it must do it *ab initio*, during a new legislative process.

The Court held that, in this case, the law review procedure had been initiated based on the first decision issued regarding this law, i.e. Decision No 453 of 4 July 2018, published in the Official Gazette of Romania, Part I, No 617 of 18 July 2018, by which the Court found that the provisions of points (2) to (5) and (10) of the Sole Article of the impugned law were unconstitutional. The review procedure was continued in Parliament despite the fact that, between the moment of adoption of the reviewed form by the Senate and the moment of its adoption by the Chamber of Deputies, the Constitutional Court issued a new decision by which it found the unconstitutionality of the same law, as a whole, in the form prior to the review, i.e. Decision No 561 of 18 September 2018, published in the Official Gazette of Romania, Part I, No 922 of 1 November 2018. Through this latter decision, the Court found a violation of Article 75 of the Constitution, regarding the principle of bicameralism.

Although it was a known fact that the constitutional court had issued a decision ascertaining the unconstitutionality of the law as a whole, Parliament completed the law review procedure, without ascertaining the cessation of the legislative process. The law

subject to constitutional review is not a different regulatory act, adopted following its own legislative process, distinct from the previous one. It is the same law examined when issuing the two decisions of the Constitutional Court, the only substantial difference being introduced upon its review, but the Court was not vested to state on it in this case.

Therefore, the impugned law is unconstitutional, as a whole, being contrary to the provisions of Article 147 (2) and (4) of the Basic Law, with reference to the Constitutional Court's Decision No 561 of 18 September 2018. The Parliament is bound to ascertain the automatic cessation of the legislative process once the law was found unconstitutional in its entirety. Should a new legislative process be initiated regarding the same regulatory area, the Parliament must comply with this decision and with Decision No 561 of 18 September 2018.

III. For all these reasons, unanimously, the Court upheld the objection of unconstitutionality and found that the Law amending and supplementing Law No 254/2013 on the enforcement of custodial sentences and measures ordered by the judicial bodies during criminal proceedings was unconstitutional in its entirety.