



ROMANIA THE CONSTITUTIONAL COURT

Palatul Parlamentului

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PRESS RELEASE

On 16 July 2020, the Plenum of the Constitutional Court rules upon the following exceptions of unconstitutionality:

A. The exception of unconstitutionality of the provisions of Article 164 (1) of the Civil Code, which read as follows: *“the person who lacks discernment needed to take care for his/her interests, because of alienation or mental debility, will be placed under a judicial ban”*.

Following the deliberations, the Constitutional Court, by unanimous vote, upheld the exception of unconstitutionality and found that the provisions of Article 164 (1) of the Civil Code are unconstitutional.

The Court held that the constitutional provisions of Article 1 (3), Article 16 and Article 50 have been violated, as interpreted in accordance with Article 20 of the Constitution and Article 12 of the Convention on the Rights of Persons with Disabilities.

As grounds for its admission decision, the Court held, in essence, that the protective measure of placing under a judicial ban provided for by Article 164 (1) of the Civil Code is not accompanied by sufficient guarantees to ensure respect for fundamental human rights and freedoms. It does not take into account the fact that there may be varying degrees of incapacity and the

diversity of an individual interests, is not ordered for a specified period of time and is not subject to regular review.

Therefore, the Court noted that any protective measure must be proportionate to the degree of capacity, be adapted to the person's life, be applied for the shortest period of time, be reviewed periodically and take into account the will and preferences of persons with disabilities.

Also, when regulating a protective measure, the legislator must take into account the fact that there may be varying degrees of incapacity and mental deficiency may vary over time. The lack of psychic capacity or discernment may take different forms, for instance total/partial or reversible/irreversible, situation which requires the establishment of protective measures appropriate to reality and which, however, are not found in regulating the measure of the judicial ban.

Therefore, appropriate levels of protection must be attached to the different degrees of disability, the legislator needing to identify appropriate solutions while regulating the legal measures. An incapacity must not lead to the loss of the exercise of all civil rights, but must be examined in each case.

Every person must be free to act in order to develop his/her personality, the state, by virtue of its social character, having the obligation to regulate a normative framework that ensures respect for the individual, full expression of the personality of citizens, their rights and freedoms, equal opportunities, resulting in respect for human dignity.

B. The exception of unconstitutionality of the provisions of Article 41 (1) of Law No 165/2013 on the measures for the completion of the process of restitution, in kind or by equivalent, of the immovable properties abusively taken during the communist regime in Romania, published in the Official Gazette of Romania, Part I, No 278 of 17 May 2013, according to which *“The payment of amounts of money representing compensation in the files approved by the Central Commission for the Establishment of Compensation before the entry into force of this law, as well as of the amounts established by court decisions, remained final and irrevocable on the date of entry into force of this law, shall*

be made within 5 years, in equal annual instalments, starting with 1 January 2014”, criticised in the interpretation made by the High Court of Cassation and Justice – Panel for the Resolution of Points of Law by Decision No 40 of 14 November 2016, published in the Official Gazette of Romania, Part I, No 987 of 8 December 2016, in that they “*are not applicable to entitled persons or to their authors who have obtained compensation titles issued by the Central Commission for the Establishment of Compensation before the entry into force of Law No 165/2013 and did not follow the administrative procedure provided for in Chapter V¹ Section 1 of Title VII of Law No 247/2005 regarding the reform in the fields of property of justice, as well as some adjacent measures, as subsequently amended and completed, not complying with the deadlines for the capitalization of these titles*”.

Following the deliberations, the Constitutional Court, by a majority of votes, upheld the exception of unconstitutionality and found that the provisions of Article 14 (1) of Law No 156/2013, in the interpretation given by Decision No 40 of 14 November 2016 of the High Court of Cassation and Justice - Panel for the Resolution of Points of Law, are unconstitutional.

C. The exception of unconstitutionality of the provisions of Article 524 (3) of the Civil Procedure Code, which read as follows: “(3) *The appeal is resolved by the panel invested with the trial of the case immediately or within 5 days at most, without summoning the parties*”.

Following the deliberations, the Constitutional Court, by unanimous vote, upheld the exception of unconstitutionality and found that the provisions of Article 524 (3) of the Civil Procedure Code are unconstitutional.

The Court found that the criticised legal text violates the provisions of Article 21 (3) and Article 124 (2) of the Constitution, as well as of Article 6 (1) of the Convention for the protection of human rights and fundamental freedoms. In this respect, the Court held that the trial of the appeal regarding the delay of the trial by the same panel which solves the case on the merits is contrary to the right to a fair trial, in its part of the objective impartiality, so that the assessment of the request for delays will be carried out, in the first and last

resort, by the hierarchically superior court.

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The decisions are final and generally binding and shall be notified to the two Chambers of the Parliament, the Government and the law court which brought the matter before the Constitutional Court, respectively Buzău Law Court – II Administrative and Fiscal Litigation Civil Division, and the High Court of Cassation and Justice – Administrative and Fiscal Litigation Division.

The arguments retained as grounds for the solutions delivered by the Plenum of the Constitutional Court shall be presented in the decisions, to be published in the Official Gazette of Romania, Part I.

**External Relations, Press and Protocol Department
of the Constitutional Court**