

Decision No 311 of 20 May 2019
on the objection of unconstitutionality of the provisions of the Law amending and
supplementing Law No 215/2001 on local public administration
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Summary

I. As grounds for the objection of unconstitutionality, it was argued that the impugned law has been adopted in violation of Article 61 (2) and Article 75 (1) of the Constitution, as the prerogative of the Chamber of Deputies has not been observed, which did not put up for debate the texts adopted by the Senate, so the law was passed by a single Chamber. The principle of bicameralism does not allow for a Chamber to be excluded from the law-making mechanism. Furthermore, the texts adopted by each of the two Chambers are different, both formally and in terms of content. The form of the law adopted by the Senate had two articles (the first of which included three points), compared to the form of the law adopted by the Chamber of Deputies, which contained two articles (the first article having two points). At the same time, the Senate, as the decision-making Chamber, prevented changes that concerned essential aspects in the structure and philosophy of the law from being subject to debate and adoption by the Chamber of Deputies, as the first Chamber referred to.

A violation of the principle of the quality of laws was alleged, by reference to Law No 24/2000 on the legislative technique norms for drawing up regulatory acts. Article I (1) of the Law amending and supplementing Law No 215/2001 on local public administration states that “The duration of the term of local councils represents the duration between the date of establishment of a local council, following the general local elections, and the day before the date of establishment of the new local council, as a result of new local general elections.” This contradicts Article 38 (2) of Law No 215/2001, according to which “Local councils shall exercise their term as of the date of their establishment until the date when the newly elected councils shall be declared legally established.” Moreover, the wording of Article I (1) induces the idea of extending the mandate of local councils, beyond those 4 years, until the general local elections, being thus contrary to Article 38 (1) of Law No 215/2001, according to which “Local councils are elected for a term of 4 years, which can be extended, by organic law, in case of war or catastrophe.”

Article I (2) provides the sanction of the dissolution of the local/county council “in case that it does not convene for two consecutive months of mandate”. It was argued that the impugned legal text lacked clarity, accuracy and predictability, as it cannot be established whether or not it refers to a two-month period within the term of a local/county council or to two consecutive terms. In this last situation, respectively the last month of the first term and the first month of the second term, the sanction would be practically emptied of content. This case of dissolution would almost never be applicable and, moreover, the intention of the legislator, i.e. of an effective activity of the local council, would be disregarded. Or, the legal dissolution of a local council is more than a simple sanction of administrative law, it is a measure to overcome an institutional stalemate. The emptying of this sanction of its content represents a violation of the principle of local autonomy.

It was considered that the norm of reference to Article 55 (1) (b) of Law No 215/2001 was not related to Article I (3) of the impugned law, since the case of dissolution that it regulates refers to the fulfilment of a condition, respectively failure to take a decision during 3 consecutive ordinary meetings, and not to the expiry of a term expressed in any time unit. The mentioned reference is an inaccurate one, even if Article 39 (1) of Law No 215/2001 stipulates that, when convened by the mayor, the local council shall meet monthly in ordinary meetings.

II. By examining the objection of unconstitutionality, the Court noted that the legislative proposal has been initiated by a Senator and has been registered with the Standing Bureau of the Senate. The Plenum of the Senate divested itself and approved the sending of the legislative proposal to the Chamber of Deputies, as the first Chamber referred to. The legislative proposal was tacitly adopted by the Chamber of Deputies, in the form proposed by its proponent, as a result of exceeding the 45-day time limit. The draft law was submitted to the Senate, as the decision-making Chamber, and was adopted by it as an organic law. The Court noted that the tacit approval procedure did not represent a disapproval of the original legal content of the draft law by the first Chamber referred to, but rather its passing, in accordance with the third sentence of Article 75 (2) the Constitution.

By comparing the form of the law adopted by the Senate and the form adopted by the Chamber of Deputies, the Court found that the amendments made by the Senate to the draft law did not substantially change the structure and content of the regulation. The differences in structure consisted in the fact that, in the form adopted by the Senate, Article I contained 3 points, compared to 2 points in the form tacitly adopted by the Chamber of Deputies. With regard to the content of the regulation, the form adopted by the Senate has as subject the indication of the date of establishment of a local council and the duration of its term, as well as the method for calculating the time limit for its dissolution - by months of consecutive term, which are usually different from the calendar months, and the form adopted by the Chamber of Deputies establishes the moment from which the time limit for the legal dissolution of the local/county council is calculated. As for the objective pursued by the proponent, it consists in removing the difficulties that have led to the non-unitary practice of the courts of law in solving requests for the legal dissolution of local councils, determined by the method of calculation of the time-limit for the legal dissolution of local councils, respectively by calendar months or by days. Therefore, although the versions of the draft law adopted by the two Chambers are different in form and content, they are not essentially modified and pursue the same objective - the indication of the time limit for the legal dissolution of the local/county council, which, by reference to the essential criteria established in the case-law of the Court, does not lead to a violation of the principle of bicameralism.

The Court noted that the provisions of Article 30 (1), of the second sentence of Article 33, of Article 34 (2) and of Article 38 (1) and (2) of Law No 215/2001 did not indicate the beginning and the end of the term of a local council concretely, being general regulations. Their corroboration leads to the conclusion that the date from which the newly elected local council exercises its term is the date of the decision declaring it legally established, and the date of termination thereof is the date of adoption of a new decision for a newly elected local council. Thus, in order to eliminate any potential theoretical and practical ambiguity regarding the beginning of the term of a local council, the legislator adopted the impugned legal norm as a specification of this date, reason for which it cannot be considered a regulatory parallelism. The clarification was necessary, given the importance of the activity of local councils. The legislator took into account the fact that the number of recipients of the law was very high (voters, local councillors, lawyers) and that their quality varied, so that the degree of understanding of the provisions of the law is different.

With regard to the alleged contradiction of the regulation with Article 38 (2) of Law No 215/2001, as to the date when the term of the local council ends, the Court noted that this provision regulated this date in a general manner, as the date when the newly elected council is declared legally established. Through the impugned legal norm, the legislator established the date in concrete terms as the day prior to the date of establishment of the new local council, thus avoiding the situation that two local councils functioned simultaneously.

Regarding the plea of unconstitutionality of Article I (2), the Court held that, according to Article 55 of Law No 215/2001, in force, the local public authority was deemed dissolved

in case of failure to convene for two consecutive months. The impugned legal norm took into account the fact that, depending on the date of establishment of the local council, the term month could be different from the calendar month.

The interpretation according to which consecutiveness refers to two possible terms of a local council cannot be retained, being vitiated from a logical point of view. It is obvious that the legislator referred only to the current term, resulting from the local elections. It could not anticipate the future outcome of the will of the electorate, in order to regulate, in this context, a situation that should continue during two successive terms. The legal dissolution of a local council is a sanction for failure to fulfil the constitutional role of this autonomous administrative authority, established by Article 121 (2) of the Basic Law. However, the Court emphasized the need that the legislator, when enacting legal norms, pursued the continuity and fluency of the text, using coherent and logical terms to this effect.

With regard to Article I (3) of the impugned law, through it, the legislator mentioned that the term month was, as a rule, different from the calendar month, specifying that, when calculating the time limits referred to, the months of the ongoing term of the local council would be taken into consideration.

The impugned legal provision does not require an express definition within the regulatory act. In regulatory terms, the same notions are expressed using only the same terms, and if a notion or a concept is not consecrated or may have different meanings, its meaning in context shall be established by the regulatory act that enshrines it, within the general provisions or in an appendix intended for the respective lexicon, and it shall become mandatory for the regulatory acts in the same field. Moreover, the date from which the term of the council starts may be different from the first day of a month, this being the reason why the legislator specified that the term month was, as a rule, different from the calendar month.

Regarding the plea according to which the reference made to Article 55 (1) (b) of Law No 215/2001 is not related to the impugned text, the Court held that the legal dissolution of a local council would take place in case of failure to adopt any decision during 3 consecutive ordinary meetings. Considering that the main way for a local council to function is through ordinary meetings, the legislator reported their monthly nature to the term month for the same reasons for which it stated this in the case of the legal dissolution of a local council for failure to meet for two months of consecutive term.

III. For all these reasons, unanimously, the Court dismissed as groundless the objection of unconstitutionality raised by the President of Romania and found that the provisions of the Law amending and supplementing Law No 215/2001 on local public administration were constitutional in relation to the pleas lodged.