

Decision No 394 of 5 June 2019
regarding the objection of unconstitutionality of the provisions of the Law supplementing
Article 12 of Law No 78/2000 on preventing, discovering and sanctioning corruption acts,
Published in the Official Gazette of Romania, Part I, No 597 of 19 July 2019

Summary

I. As grounds for the objection of unconstitutionality, it was argued that, during the procedure for bringing a law in line with a decision of the Constitutional Court, Parliament must take into account both the operative part and the considerations of the decision. To this effect, it was deemed that Parliament, during the review procedure regulated by Article 147 (2) of the Constitution, had ignored the general considerations of Decision No 584 of 25 September 2018. The fact of maintaining certain legal texts that are affected by a flaw of unconstitutionality represents a violation of the principle of loyal cooperation between State authorities and of the principle of legal certainty, derived from Article 1 (3) of the Constitution.

II. By examining the objection of unconstitutionality, the Court recalled that, by Decision No 584 of 25 September 2018, published in the Official Gazette of Romania, Part I, No 1070 of 18 December 2018, the Constitutional Court had upheld the objection of unconstitutionality filed and had found the unconstitutionality of the provisions of point 1 of the Sole Article of the Law amending and supplementing Article 12 of Law No 78/2000 on preventing, discovering and sanctioning corruption acts. The law was brought in line with the Court's decision. The objection of unconstitutionality was raised regarding the new form of the law.

In its original version, the impugned law contained a single two-point Article. Within the *a priori* constitutional review, the referral of the President of Romania referred only to point 1 of the Sole Article of the law, which was found to be unconstitutional by Decision No 584 of 25 September 2018. Following the review carried out through the ordinary procedure, Parliament removed point 1 of the Sole Article, and the resulting law contains a single Article, which maintains, in an identical form, the former point 2 of the Sole Article of the initial law, text that was not the subject-matter of Decision No 584 of 25 September 2018.

The Court ruled that, when reviewing the law under Article 147 (2) of the Constitution, Parliament could also amend other legal provisions only if they are inextricably linked to the provisions found to be unconstitutional, in order to ensure the unity of the regulation. To the extent necessary, the other provisions of the law will also be harmonized, as an operation of legislative technique, and no other substantive changes can be brought to the law in question.

Therefore, no pleas of intrinsic unconstitutionality can be filed against the legal provisions contained in the initial form of the law, prior to the request for review. Such pleas can only be filed with regard to the legal provisions reviewed. If a contrary view were accepted, the procedure for reviewing the law could be extended indefinitely, by filing an unlimited number of objections of unconstitutionality regarding the provisions of the law in question. This rule applies even if the objection of unconstitutionality was filed by a different holder of the right of referral. A different interpretation would lead to abuses of rights. For a new objection of unconstitutionality to be considered admissible, there must be changes made by Parliament to the law during review, which the case-law of the Constitutional Court calls a specific difference between the original law and the reviewed one.

As the objection of unconstitutionality does not refer to that specific difference, it must be dismissed as inadmissible.

III. For all these reasons, by a majority vote, the Court dismissed as inadmissible the objection of unconstitutionality of the Law supplementing Article 12 of Law No 78/2000 on preventing, discovering and sanctioning corruption acts.