Decision No 412 of 20 June 2019
regarding the objection of unconstitutionality of the Law approving Government Emergency Ordinance No 4/2016 amending and supplementing National Education Law No 1/2011
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Summary

I. As grounds for the objection of unconstitutionality, it was stated that the law subject to constitutional review was contrary to the provisions of Article 147 (2) and (4) of the Constitution, as it had been adopted, during review, by disregarding Decision No 624 of 26 October 2016, by which the law in question was declared unconstitutional as a whole. The issuance of such a decision has a definitive effect on that regulatory act, the consequence being the ending of the legislative process concerning the respective regulation. Therefore, the option of the legislator to legislate in the field in which the Constitutional Court upheld a referral of unconstitutionality regarding a law as a whole means going through all the phases of the legislative process set by the Constitution and the standing orders of the two Chambers of Parliament. Thus, the review procedure cannot be applied when in question is a regulatory act declared unconstitutional as a whole. It was deemed that all these considerations also applied to laws approving Government ordinances.

It was stated that Parliament had made amendments, without these having been the subject-matter of the referral of unconstitutionality, and contrary to the solution provided by Decision No 624 of 26 October 2016. By examining the law adopted by Parliament in the form in which it was sent again for promulgation, it appears that certain texts of the impugned law have been deleted and others have been amended, although these had not been the subject-matter of the referral of unconstitutionality, while others have been introduced, without them having anything to do with the original form of the law.

Also, a disregard of the provisions of Articles 61 and 75 of the Constitution was invoked, on the grounds that the competence of the first Chamber referred to, i.e. the Chamber of Deputies, which did not take up for debate the text adopted by the Senate, had been violated. However, the decision-making Chamber can bring amendments and supplements to the legislative proposal, but it cannot substantially modify the regulatory object of the legislative initiative, with the consequence of diverting from the aim pursued by the proponent. Thus, the amendments and supplements made by the decision-making Chamber to the draft law adopted by the first Chamber referred to must relate to the field envisaged by the proponent and to the form in which it was regulated by the first Chamber. Otherwise, this would lead to the situation that only the decision-making Chamber legislated, which is contrary to the principle of bicameralism.

There is a major difference between the forms of the law adopted by the two Chambers of Parliament in terms of legal content, which is not limited to legislative solutions that have not been examined by the first Chamber, but which also aims at establishing a derogation in the field of administrative litigations, which was not regulated by the impugned law. Besides, the form adopted by the first Chamber has a single Article, while that adopted by the decision-making Chamber has a single Article, but with two points. Thus, the form of the law adopted by the Senate introduces new provisions in Law No 1/2011, provisions that were not taken into account by the first Chamber.

II. By examining the objection of unconstitutionality, the Court recalled that, by Decision No 624 of 26 October 2016, published in the Official Gazette of Romania, Part I, No 937 of 22 November 2016, the Constitutional Court had upheld the objection of unconstitutionality filed and had found the unconstitutionality of the Law approving

Government Emergency Ordinance No 4/2016 amending and supplementing National Education Law No 1/2011, as a whole. The law was brought in line with the Court's decision. The objection of unconstitutionality was raised regarding the new form of the law.

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.

According to Article 115 (4) of the Constitution, emergency ordinances are regulatory acts that allow the Government to deal with an extraordinary situation. The Court established that the submission of the emergency ordinance with the Parliament is a condition for the existence of the regulatory act. The act of submission is unique, irrevocable and unrepeatable. In case of non-fulfilment of this condition *ad validitatem*, the emergency ordinance is a non-existent act, which cannot produce any legal effect.

By Decision No 76 of 30 January 2019, the Court ruled that "Parliament has the obligation to ascertain the lawful termination of the legislative process, as a result of finding the law unconstitutional, as a whole, and, in the event that a new legislative process in the same regulatory field is initiated, to comply with the considerations of this decision". Considering that the draft law approving the emergency ordinance was registered with the Parliament according to Article 115 (5) of the Constitution, the finding of the lawful termination of the legislative process does not imply the unfolding of a new legislative process by registering once again the respective draft law with the Standing Bureau of the competent Chamber, but the preservation of the draft law submitted to the above-mentioned Bureau, the elimination of the regulatory contribution of the two Chambers from the content of the adopted law and the resumption of the legislative process from the moment of registration of the draft law, with the content that it had at that moment.

The Court emphasised that its decision ascertaining the unconstitutionality of the law approving the emergency ordinance as a whole could not lead to the divesting of Parliament, as the emergency ordinance would stop to legally exist given that it can no longer be considered as validly submitted with Parliament. Moreover, the Government would be sanctioned for Parliament's errors of assessment, which is unacceptable.

Thus, in the hypothesis subject to analysis, it is obvious that the resumption of the legislative process does not concern the act of registration of the draft law approving the emergency ordinance as well, which remains validly registered. Instead, all the stages of the legislative process subsequent to the time of registration of the draft law in question must be resumed. Therefore, Parliament may, by law, either simply approve or approve with the subsequent amendments and supplements that it deems appropriate, or reject the emergency ordinance.

Through Decision No 624 of 26 October 2016, challenges of extrinsic, as well as of intrinsic unconstitutionality were upheld. As the review was carried out by resuming the legislative procedure, as proven by the fact that new amendments were adopted compared to the initial ones, the Court found that the impugned law did not violate Article 147 (2) and (4) of the Constitution. The review did not only concern the legal provisions found to be unconstitutional, but, given the extrinsic unconstitutionality of the law, Parliament had to fully resume the legislative process from the stage following the registration of the draft law approving the emergency ordinance. Consequently, the Court ruled that its case-law on the limits of the review procedure was not applicable in this case.

With regard to the principle of bicameralism, the Court considered that its application could not lead to the definitive setting, by the first Chamber referred to, of the content of the draft law or legislative proposal (and, in practice, of the regulatory content of the future law).

If this were so, the decision-making Chamber would not be able to amend or supplement the law adopted by the Chamber of sober second thought, but only to approve or dismiss it. Therefore, the principle of bicameralism requires both the cooperation of the two Chambers when drafting laws, and their obligation to express, by vote, their position on the adoption of laws. Bicameralism does not require that both Chambers should decide on an identical legislative solution. To deny the possibility of the decision-making Chamber to move away from the form voted by the Chamber of sober second thought would be equal to restricting its constitutional role, and the decisional nature attached to it would become illusory. However, changes to the form adopted by the Chamber of sober second thought must retain its overall concept.

In this case, both forms of the draft law concerned the procedure for withdrawing a PhD degree. The overall concept of the two forms adopted by the two Chambers is that the annulment/discontinuation of the effects of the PhD degree is done through court ruling. It is true that the two forms differ, but the decision-making Chamber has the right to adopt a regulation that is better rooted in the regulatory system, without changing the philosophy and concept of the law/emergency ordinance. This is a matter of legislator choice and regulation opportunity.

III. For all these reasons, by a majority vote, the Court dismissed as groundless the objection of unconstitutionality and found that the Law approving Government Emergency Ordinance No 4/2016 amending and supplementing National Education Law No 1/2011 was constitutional in relation to the pleas filed.