

Decision No 439 of 10 July 2019
regarding the objection of unconstitutionality of the Law amending Article 109 of
Government Emergency Ordinance No 195/2002 regarding the traffic on public roads,
Published in the Official Gazette of Romania, Part I, No 852 of 22 October 2019

Summary

I. As grounds for the objection of unconstitutionality, it was indicated that the Law amending Article 109 of Government Emergency Ordinance No 195/2002 regarding the traffic on public roads had been subject to review, as a result of the Decision of the Constitutional Court No 684 of 6 November 2018 and, considering that Parliament adopted a series of regulations exceeding the limits of the mentioned decision, it was deemed that the impugned law had been adopted in violation of the provisions of Article 147 (2) and (4) of the Constitution.

It was mentioned that, on 27 July 2018, the President of Romania had filed a referral of unconstitutionality concerning the impugned law. By Decision No 684 of 6 November 2018, the Constitutional Court ruled that the provisions of the Sole Article [with reference to Article 109 (6) to (11), (13) and (14) of Government Emergency Ordinance No 195/2002] of the impugned law were unconstitutional. After going through the procedure of harmonising the law with the Decision of the Constitutional Court No 684 of 6 November 2018, Parliament removed certain texts from the impugned law, although these had not been the subject-matter of the referral of unconstitutionality or of the constitutional review, while others were amended, although they had not been declared unconstitutional and do not correspond to any need of re-correlation with the other provisions of the law.

Thus, by Decision No 684 of 6 November 2018, the Court found that the Sole Article, with reference to the amendment to Article 109 (3) of Government Emergency Ordinance No 195/2002, of the law in the form prior to the constitutional review was constitutional. However, during review, Parliament amended the text of Article 109 (3) of Emergency Ordinance No 195/2002, although it was declared constitutional by the constitutional court, following the constitutional review. Therefore, the amendment of these provisions was made by exceeding the limits of the decision of the Constitutional Court, so the provisions of Article 147 (2) and (4) of the Constitution were violated. It was indicated that the same criticism applied also regarding the way in which the Sole Article, with reference to the amendment to Article 109 (4) of Emergency Ordinance No 195/2002, of the law in the form prior to the constitutional review was brought into line with Decision No 684 of 6 November 2018.

It was also specified that the impugned law lacked the provisions contained in the Sole Article, with reference to the amendment to Article 109 (5) and (12) of Emergency Ordinance No 195/2002, as provided for in the law adopted in the first phase, prior to the constitutional review. These provisions were not the subject-matter of Decision No 684 of 6 November 2018, so that their removal was done by exceeding the limits of the decision of the Constitutional Court. Therefore, following the exceeding, by Parliament, of the limits of the review, Article 147 (2) of the Constitution was violated.

II. By examining the objection of unconstitutionality, with regard to the pleas of unconstitutionality concerning the Sole Article [with reference to Article 109 (3) and (4)] of the law, the Court found that the two amended texts had been the subject-matter of the *a priori* constitutional review conducted by Decision No 684 of 6 November 2018. The Court found that the two texts of law were constitutional and, therefore, no changes could be made to them unless they were inextricably linked to the provisions declared unconstitutional or, although

not inextricably linked to them, they must be re-correlated as a result of the changes made in order to harmonise them with the decision of the Constitutional Court.

The Court noted that, following the review, the Sole Article [with reference to Article 109 (3)] of the law, compared to its original form, included the phrase “*to the certified technical means*”. This is an inadmissible addition to its content, given that the amendment thus made does not concern provisions found to be unconstitutional, is not inextricably linked to them and is not a text that needs to be re-correlated following the amendments made in order to bring it in line with the decision of the Constitutional Court. On the contrary, a new legislative solution is enshrined in the sense that the certified technical means would be a device for measuring speed, which in itself is a terminological confusion. Therefore, although the certified technical means is not and cannot be a speed measuring device, the legislator qualifies it as such, which in itself represents a violation of the provisions of Article 1 (5) of the Constitution in its component referring to the quality of laws. With regard to the Sole Article [with reference to Article 109 (4)] of the law, considering that, during review, the legislator made an amendment to a text that was not found to be unconstitutional, which was not directly linked to any such text and which did not need to be re-correlated as a result of Decision No 684 of 6 November 2018, corroborated with the fact that the text introduced is, in its turn, inaccurate, the Court found that the limits of the review provided for by Article 147 (2) of the Constitution had been exceeded.

With regard to the pleas of unconstitutionality referring to the removal of the regulatory content of the Sole Article [with reference to Article 109 (5) and (12)] of the law in its drafting version prior to Decision No 684 of 6 November 2018, the Court noted that the provisions of the Sole Article [with reference to Article 109 (6) to (11) and (13) of Government Emergency Ordinance No 195/2002] of the impugned law in its initial drafting version were found to be unconstitutional by Decision No 684 of 6 November 2018. These paragraphs are subsequent to those whose removal is subject to criticism in this case. The Court noted that the text of paragraph (5) in the initial wording of the law was directly linked to paragraph (6), found to be unconstitutional, so that the legislator had the constitutional prerogative to remove this text during review. By contrast, the text of paragraph (12) in the initial wording of the law was not directly linked to paragraph (13), found to be unconstitutional, so that the legislator did not have the constitutional prerogative to remove it during review. Furthermore, the removal of this latter text of law, during review, for the purpose of its correlation with a subsequent law adopted in the meantime represents a conduct contrary to the case-law of the Constitutional Court, given that, during review, texts that were not subject to constitutional review and which are not correlated with any other text found to be unconstitutional in the body of the law cannot be amended/supplemented/removed. Therefore, the legislator did not have the constitutional prerogative to remove this text during review in order to correlate it with the existing regulatory reality, having instead the possibility, in such an anachronistic situation, not to adopt the law precisely with a view to initiate another legislative proposal that should shape the regulatory content of the one examined in this case according to the new regulatory framework.

III. For all these reasons, unanimously, the Court upheld the objection of unconstitutionality and found that the Sole Article [with reference to paragraphs (3) and (4) and to the removal of the former paragraph (12)] of the Law amending Article 109 of Government Emergency Ordinance No 195/2002 regarding the traffic on public roads was unconstitutional.

The Court dismissed, as groundless, the objection of unconstitutionality and found that the Sole Article [with reference to the removal of the former paragraph (5)] of the Law amending Article 109 of Government Emergency Ordinance No 195/2002 regarding the traffic on public roads was constitutional in relation to the pleas filed.