

Decision No 682 of 6 November 2018
on the objection of unconstitutionality of the provisions of the Law supplementing Law No 176/2010 on integrity in exercising public offices and dignities, as well as amending and supplementing Law No 144/2007 regarding the establishment, organisation and operation of the National Integrity Agency, as well as amending and supplementing other regulatory acts
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Summary

I. As grounds for the objection of unconstitutionality, it is argued, in essence, that, through its regulatory content, the Law supplementing Law No 176/2010 on integrity in exercising public offices and dignities, as well as amending and supplementing Law No 144/2007 regarding the establishment, organisation and operation of the National Integrity Agency, as well as amending and supplementing other regulatory acts, which is subject to constitutional review, violates the provisions of Article 1 (3) and (5) of the Constitution. It is shown, in essence, that the impugned provisions establish a legislative parallelism, being contrary to the provisions contained in Article 11 of Law No 176 / 2010, which is contrary to Article 1 (5) of the Constitution, in its dimension regarding the quality of the law. Therefore, in the same regulatory act, there are two contradictory provisions regarding the time until which the National Integrity Agency can evaluate the significant differences in wealth, the existence of conflicts of interests or aspects related to incompatibility. Moreover, Article 25 (5), newly introduced by the impugned law, leads to the impossibility of the National Integrity Agency - institution with unique competence in assessing the declaration of assets, data and information on the existing assets, as well as the patrimonial changes occurred or existing during the exercise of public functions or dignities, as well as in assessing conflicts of interests and incompatibilities, followed by confirmation/rejection by the courts - to assess and sanction the non-observance of the legal regime of incompatibilities and of conflicts of interests.

II. By examining the referral of unconstitutionality, considering the legislation and the case-law of the Constitutional Court in this field, the Court noted that Law No 176/2010 on integrity in exercising public offices and dignities, as well as amending and supplementing Law No 144/2007 regarding the establishment, organisation and operation of the National Integrity Agency, as well as amending and supplementing other regulatory acts, published in the Official Gazette of Romania, Part I, No 621 of 2 September 2010, regulated procedures for ensuring integrity and transparency in exercising public offices and dignities. Thus, the law includes, in addition to Title I - *Obligations of integrity and transparency in exercising public offices and dignities*, also Title II - *Procedures for ensuring integrity and transparency in exercising public offices and dignities*, and, in Chapter I, it provides for the *Procedures before the National Agency of Integrity*. The National Integrity Agency carries out an administrative activity of assessing the declarations of assets, the data, the information and the patrimonial changes that have taken place, the interests and incompatibilities for the persons provided for by the law. The National Integrity Agency does not issue judgements vested with the force of *res judicata*, but performs assessments that materialise in reports on facts or situations with legal significance whose purpose grants the right to refer the courts of law or, as the case may be, to other authorities and competent institutions so as to order the measures provided for by law.

In this context, the Court recalls that there is the right of the legislator to enjoy a margin of appreciation regarding the establishment of additional incompatibilities to those provided by the constitutional text for the offices and dignities expressly provided by the Constitution or by the infra-constitutional laws or, on the contrary, to renounce to some already established by infra-

constitutional acts or to opt for an adaptation of the integrity standard, depending on certain circumstances, obviously not and for a removal of the integrity standard, in compliance with the obligations resulting from Romania's membership to the European Union, for example, regarding the establishment of an agency for integrity but, by no means, regarding the obligation of the legislator to establish certain incompatibilities, conflicts of interest or procedures to be followed; in this context, under Article 148 of the Constitution, the legislator is one of the entities that ensures the fulfilment of the obligations resulting from the accession, and the law-making process in this matter falls within this margin of appreciation, in compliance with the constitutional limits regarding constitutional identity, read in conjunction with national sovereignty and with the constitutional obligations arising from Articles 11 and 20 of the Constitution.

Regarding the limitation period for conducting the assessment of conflicts of interest or incompatibilities, the Court, in its case-law, has shown that it was in the logic of the regulation that the assessment of the existence of circumstances likely to generate a conflict of interests or a state of incompatibility referred to the period during which the person concerned held the public office.

The Court noted that the standards, rules and deadlines within which civil liability (non-contractual, for one's own actions), criminal liability or administrative (disciplinary) liability are waived, being impossible to incur, were regulated by the specific rules of these fields. Thus, in civil matters, which also cover the administrative matters, the general limitation period is of 3 years, as stipulated by Article 2517 of Law No 287/2009 on the Civil Code, republished in the Official Gazette of Romania, Part I, No 505 of 15 July 2011, calculated depending on the moment when the deed was committed and, implicitly, on the applicable law. In criminal matters, liability for committing the criminal offence of conflict of interests, incriminated as such in Article 301 of Law No 286/2009 on the Criminal Code (currently, following the series of legislative changes that occurred in the legislative dynamics, Article 301 has the marginal title: *The use of the office held to favour certain persons*), published in the Official Gazette of Romania, Part I, No 510 of 24 July 2009, expires after 5 years, according to Article 154 (1) (d) of the same Code.

Thus, as concerns the elements presented above, through the impugned provisions of the law subject to constitutional review, the legislator gave effectiveness to the solutions in the case-law of the Constitutional Court.

However, given the general principle of law according to which a legal standard must be interpreted in its positive meaning, which produces legal effects, the legal ways to interpret a legal standard must take into account not only the letter, but also the spirit of the law, so that the result of the practical application of the legal standard be as close as possible to the purpose of the legislator, which cannot be presumed *ab initio* to be exercising its law-making role in the sense of denying both the fundamental rights and freedoms enshrined by the Constitution and the constitutional principles, the Court notes that the impugned text, as worded, does not comply with the requirements of the established legal terminology.

Thus, in the regulatory terminology, the same notions are expressed only by using the same words, and if a notion or word is not established or may have different meanings, its meaning in context is established by the regulatory act introducing it, within the general provisions, or in an annex intended for the respective lexicon, and it becomes mandatory for regulatory acts in the same field.

Or, the Civil Code, which includes Book VI "*About the statute of limitations, time limits and the calculation of such*" and which is the general regulation on the statute of limitations, stipulates, in Article 2500 (1), that the substantive right to action expires through limitation, if it has not been exercised within the deadline established by law, respectively within the general limitation period of 3 years, unless otherwise provided for by law (Article 2517 of the Civil Code), while the impugned text refers to actions committed by persons holding public dignities or public offices that determine the existence of a conflict of interests or of a state of incompatibility that

expire within 3 years from the date of their commission. But the statute of limitations is defined as the way of waiving civil liability, consisting in the expiry of the substantive right to action not exercised within the deadline set by law.

As such, it is not the action that expires, but the substantive right to action, if it has not been exercised within the deadline set by law, and, correlatively, legal liability - civil, administrative or criminal, as the case may be - is also waived, as an effect of the expiry of the substantive right to action, respectively if the National Integrity Agency has not achieved any interruption of the limitation, according to the law, making it impossible to incur legal liability if the general limitation period has been exceeded. If, on the other hand, according to Article 2537 of the Civil Code, the prescription period is interrupted by an act of the authority empowered by law in this regard, the provisions of Article 2541 of the Civil Code regarding the effects of the interruption of the limitation period become applicable.

Regarding this circumstance, the Court finds that the Law supplementing Law No 176/2010 on integrity in exercising public offices and dignities, as well as amending and supplementing Law No 144/2007 regarding the establishment, organisation and operation of the National Integrity Agency, as well as amending and supplementing other regulatory acts does not observe the rules of legislative technique regarding the content and legal terminology of the regulatory act. With regard to the use, within the wording of the impugned provisions, of an inadequate regulatory legal terminology, the Court finds that the impugned text is faulty from the perspective of the legislative technique, which led to the violation of the provisions of Article 1 (5) of the Constitution, in its component related to the quality of laws.

III. For all these reasons, the Court upheld the objection of unconstitutionality filed by the President of Romania and found that the provisions of the Law supplementing Law No 176/2010 on integrity in exercising public offices and dignities, as well as amending and supplementing Law No 144/2007 regarding the establishment, organisation and operation of the National Integrity Agency, as well as amending and supplementing other regulatory acts were unconstitutional.