

Decision No 365 of 8 June 2022 on the objection of unconstitutionality of the Law amending Government Ordinance No 2/2001 on the legal regime of administrative offences and Law No 286/2009 on the Criminal Code, published in the Official Gazette of Romania, Part I, No 590 of 17 June 2022

Summary

I. As grounds for the objection of unconstitutionality, the Advocate of the People argued that the Law amending Government Ordinance No 2/2001 on the legal regime of administrative offences and Law No 286/2009 on the Criminal Code contravenes Article 1 (5) of the Constitution, which concerns the quality of the law, and Article 23 (12) and (13) of the Constitution, relating to individual freedom.

Article 39¹ of Government Ordinance No 2/2001, subject to legislative intervention, envisages a situation in which the fine is replaced by a penalty consisting in community service, distinct from that provided for in Article 9 (3) to (6). It was held that, in the absence of correlation between the two articles of the same legislative act, in the process of interpretation and application of the law, the addressees of the legal provision will not be able to determine easily the cases in which failure to comply with the judgement gives rise to criminal liability on the part of the offender who fails to pay the fine or carry out the community service.

Another defect of unconstitutionality, held to exist in respect of breach of the principle of legality, is that relating to the excessively short duration of the period of 30 days laid down by Article I (1) of the contested law.

II. Having examined the objection of unconstitutionality, the Court compared the texts of Articles 9 (3) and 39¹ (1) (as amended) and noted that for the same regulatory situation, namely where the offender ‘has failed to pay the fine within 30 days as of the day when the penalty became final and there is no possibility of forced execution’, there are several legislative solutions which, even if they are covered by different chapters (thus as part of different procedures), are likely to give rise to a confusing legal regime as concerns the regulation and to difficulties in the application thereof.

Thus, if Article 9 (3) expressly refers to the individual offender, Article 39¹ (1) uses the concept of ‘offender’ without distinguishing between the situation where the offender who is a natural person or a legal person, a distinction which is necessary in view of the specific nature of the administrative penalty for carrying out community service, which can only be applied to natural persons.

The Court found that the legislation complained of also posed difficulties in determining the possible effect of the criminal liability of the offender who does not comply with the judgement imposing the penalty of community service.

Thus, Article 287 of the Criminal Code was amended by the law criticised. Subparagraph (h) expressly refers to the provisions of Article 39¹ of Government Ordinance No 2/2001, stating that failure to comply with the court decision ordering the offender to perform community service shall be punishable by imprisonment from 3 months to 2 years or by a fine. However, Article 9 of the Ordinance also regulates a procedure for replacing an administrative fine with community service, finalised by a court decision. However, criminal liability appears to be incurred only in the case provided for in Article 39¹ of Government Ordinance No 2/2001, and not for non-compliance with the court decision referred to in Article 9 of the same legislative act.

The Court held that one of the requirements of the principle of compliance with laws relates to the quality of regulatory acts and that, in principle, any legislative act must satisfy certain qualitative conditions, including foreseeability, which presupposes that it must be

sufficiently clear and precise to be applicable. In the present case, the Court found that the legislator had only formally respected its constitutional competence to legislate, but the normative content of the amended texts did not set out clearly and precisely the conditions under which the criminal liability of the person is to be incurred.

With regard to the 30-day time limit laid down in Article 39¹ (1), granted both for payment of the fine and for finding that forced execution cannot be carried out, the Court observed that the operation of finding that forced execution cannot be carried out follows logically from the failure to comply with the principal obligation imposed on the offender, namely to pay the fine within the period laid down by law. The Court has therefore held that it is necessary to lay down a separate period enabling the person convicted of an offence to fulfil the legal obligation, and only if the legal obligation is not fulfilled within that period, the authorities empowered to carry out, within another period, the procedure for a declaration that forced execution cannot be carried out, by means of specific administrative procedural measures.

A period of 30 days for all those operations is, moreover, too short, contrary to Article 6 (1) of Law No 24/2000 on legislative technique rules for the drafting of legislative acts, republished in the Official Gazette of Romania, Part I, No 260 of 21 April 2010. As regards the impact of the legislative technique rules on the review of constitutionality, the Court held that, although they do not have constitutional value, compliance with those rules ensures legislation which respects the principle of legal certainty.

In conclusion, the Court considered that, in the light of the deficient normative content of the contested law as a whole, both as regards the amendment of Government Ordinance No 2/2001 and Law No 286/2009 on the Criminal Code, it must be held that it is unconstitutional as a whole, having regard to the principle of legality enshrined in Article 1 (5) of the Constitution.

III. For all these reasons, the Court unanimously upheld the objection of unconstitutionality and found that the Law amending Government Ordinance No 2/2001 on the legal regime of administrative offences and Law No 286/2009 on the Criminal Code was unconstitutional in its entirety.