Decision No 366 of 29 June 2022 on the objection of unconstitutionality of the Law amending and supplementing Law No 45/2009 on the organisation and operation of the "Gheorghe Ionescu-Şişeşti" Academy of Agricultural and Forestry Sciences and the research and development system in the fields of agriculture, forestry and food, published in the Official Gazette of Romania, Part I, No 815 of 18 August 2022

Summary

I. As grounds for the objection of unconstitutionality, the President of Romania argued that the Law amending and supplementing Law No 45/2009 on the organisation and operation of the "Gheorghe Ionescu-Şişeşti" Academy of Agricultural and Forestry Sciences and the research and development system in the fields of agriculture, forestry and food industry run counter to Article 1 (5) of the Constitution, in its component on the quality of law. The annexes added to the law transfer certain plots of land from public ownership in private ownership of the State, but nothing in the body of the criticised law so provides.

Similarly, according to Article 139 (2) of Emergency Government Ordinance No 57/2019 on the Administrative Code, decisions on the acquisition of the right of ownership of immovable property are to be adopted by the municipal council by a qualified majority, two thirds of the local advisers acting. In the present case, the absence of any indication of will on the part of Balotești City Council as regards the acquisition of the right to property over that land entails an infringement of Article 120 (1) of the Constitution, which enshrines the principle of local self-government.

II. Having examined the objection of unconstitutionality, the Court held that legislative technique rules do not have constitutional value, but by their legislation, the legislator imposed a number of binding criteria to ensure legislation that complies with the principle of legal certainty, while possessing the necessary clarity and foreseeability. The Court has also stated that the legislative measure must form an organically integrated part of the system of legislation, being correlated to the requirements of legislative acts of higher-level or of the same level as those with which it is correlated.

From the point of view of legislative technique, the Court has held that the annexes, as parts of a legislative act, may be used to determine the meaning of concepts or terms established by the legislative act or to regulate rules which have a predominant technical character.

As regards the annexes to Law No 45/2009, the Court held that they carry out an inventory of the land covered by the rules of the legislative act complained of, but, under Article 31 (2) of that law, in so far as, on the same land areas contained in the annexes, a private property right had been validly restored, those areas were expressly exempted from the public domain.

The Court observed that, by establishing the rule on removing from the centralised inventory of State publicly-owned property certain land areas, by virtue of a precisely individualised judicial decision, the title of Annex No 8.18 constitutes a new legislative hypothesis and there is no framework basis for that legislative solution in Law No 45/2009 or in the law criticised.

As regards the removal of certain land areas from the centralised inventory of State-owned assets, the Court has held that this is a technical, administrative operation distinct from the transfer of publicly-owned land and its entry into the civil circuit, and that that operation is carried out not by law but by secondary regulatory acts issued under the law. However, when analysing the title of Annex 8.18, it is not clear whether the regulated measure concerns the change in the legal regime of the property in question (cessation of State ownership), the updating of the inventory of the State's public assets, or both.

Similarly, the headings of Annexes Nos 10.3 and 10.4, introduced by Article I (9) of the law criticised, establish a legislative solution involving an inter-domain transfer of immovable property (from the public domain of the State into the private domain of municipalities), with a change in the owner of the right, and a transfer of the right to administer that property (from the management of research establishments and units into the management of local councils). It is apparent from an examination of the content of the two annexes that, in reality, they contain the same legislative solution, which is inadmissible in the light of a sound legislative technique.

Moreover, in the absence of a framework basis giving coherence and clarity, the legislative solutions contained in the annexes complained of appear to derogate from the provisions contained in

Article 31 of Law No 45/2009, which govern the legal regime of land given in the management of national institutions, institutes, research and development centres and units in the agriculture field, agricultural and forestry educational establishments and research and development establishments within the structure of agricultural companies, without, however, complying with the specific requirements of derogating rules, which are to be interpreted and applied strictly.

Consequently, although the annexes to Law No 45/2009 form an integral part of that legislation, having the same legal force, that does not justify new legislative solutions being put in place solely by their wording, in the absence of a framework basis in the law. By regulating in this way and in a manner that lacks precision and clarity such as to create confusion as to the legal regime applicable to the immovable property concerned, the legal provisions criticised deviate from the legislative technique rules and thus infringe the provisions of Article 1 (5) of the Constitution, in its component relating to the quality of laws.

Furthermore, the introduction of solutions derogating from the special provisions contained in Article 31 of Law No 45/2009, as well as from the rules on public and private property of the State and of administrative and territorial units, entails the relevance in question also of the provisions of Article 136 of the Constitution on property. The Court has held that the legislator may always introduce derogations from the legislative framework in force, but that the derogating legislative act must not render the constitutional provisions ineffective. By the law complained of, the transfer from the public domain of the State to the private domain of the municipality of assets, which now fall within the category of assets essential to activity of research, development and innovation, as well multiplication of biological material, is carried out exclusively by the titles of Annexes 10.3 and 10.4, without a proper justification, intended to strike the necessary fair balance between, on the one hand, the need to achieve the general interest of society in safeguarding the State's public property right, on the one hand, and, on the other hand, the protection of individual rights. As such, given the inalienable nature of the state's public property, as laid down in Article 136 (4) of the Constitution, the State's right to public property ends only by means of the rules laid down in the law, in compliance with all the conditions laid down by the legislator, and not by means of imprecise legal rules and without proper justification.

The Court also held that the fact that the administrative and territorial units did not consent to the transfer of assets to their patrimony, including those in the public domain, constituted a breach of the principle of local self-government governed by Article 120 (1) of the Constitution.

In the light of the logical interdependence between the annexes analysed and the other provisions of the law complained of, the Court found that the defects of unconstitutionality identified affect the entire legislative act under review, with the result that the law, which is criticised as a whole, is declared unconstitutional.

III. For all these reasons, the Court unanimously upheld the objection of unconstitutionality and found that the Law amending and supplementing Law No 45/2009 on the organisation and operation of the "Gheorghe Ionescu-Şişeşti" Academy of Agricultural and Forestry Sciences and the research and development system in the fields of agriculture, forestry and food was unconstitutional in its entirety.