

Decision No 367 of 29 June 2022 on the objection of unconstitutionality of the Law on the transfer of immovable property intended for sanitary-veterinary assistance activities, owned by the State, from the management of the State Domains Agency in the management of local councils, and for the repeal of Government Emergency Ordinance No 89/2004 on the sale of immovable property in which sanitary-veterinary assistance activities are carried out, as a whole, published in Official Gazette of Romania, Part I, No 815 of 18 August 2022.

Summary

I. As grounds for the objection of unconstitutionality, the author of the referral argued that the Law on the transfer of certain immovable property intended for sanitary veterinary assistance activities, owned by the State, from the management of the State Domains Agency under the management of local councils, and repealing Government Emergency Ordinance No 89/2004 on the sale of real estate where veterinary assistance activities are carried out, infringed the provisions of the Constitution contained in Article 1 (3) and (5) on the characteristics of the rule of law and the obligation to comply with the Constitution, its supremacy and laws, Article 34 (1) and (2) on the right to health protection and the obligation of the State to take measures to ensure public hygiene and public health, and Article 45 on economic freedom.

II. Having examined the objection of unconstitutionality, the Court held that the contested law was intended to regulate two separate legal transactions: on the one hand, the regulation of the transfer of the management of immovable property owned by the State from the State Domains Agency to the local councils and, on the other hand, the repeal of a legislative act.

The Court held that, by application of the provisions of Article 4 of the law criticised, with the entry into force of that law, the regulations contained in Government Emergency Ordinance No 89/2004, approved with amendments and supplements by Law No 111/2005, were repealed. In essence, Government Emergency Ordinance No 89/2004 regulates the sale of immovable property in which sanitary-veterinary assistance activities take place, by determining the categories of property which may be the subject of the sale, those categories being identified in the annex to the ordinance. That legislative act also lays down rules on the sale of the immovable property identified in the Annex, with regard to the vendor authority (the State Domains Agency), the fixing of prices, the provision of guarantees to ensure payment, the prohibition on changing the use of immovable property – buildings and related land – purchased under the terms of the emergency ordinance, the destination of the proceeds from the sale of immovable property – buildings and related land – i.e. the State budget. At the same time, the rule is introduced for the concession of immovable property which cannot be sold.

At the same time, the Court observed that the contested law contains rules relating to the transfer of the management of immovable property intended for sanitary-veterinary assistance activities, property owned by the State, consisting of establishments of veterinary districts, service-housing and inseparable annexes. These assets pass from the management of the State Domains Agency to the management of the local councils within whose jurisdiction they are located. The contested law regulates the obligation of the State Domains Agency to conclude, together with local councils, protocols for the handover and takeover of such immovable property and establishes the possibility for local councils to rent the property in question, while establishing the obligation not to change their destination. Unlike the legislation which it repeals, the law does not contain an annex specifically identifying the assets which are the subject of the administration (name of the current sanitary-veterinary district, address of the building, inventory number, building area).

In its case-law, the Court has held that the rigour inherent to legislative technique rules requires compliance with minimum requirements in order to ensure the legality of the regulated transfer mechanism, namely: an indication, for each item, of the holder of the right of management; the individualisation of the property, in the sense of specifying the land register number, including by carrying out cadastral measurements with a view to entering the property in question in the land register; the establishment of an up-to-date/actual inventory value of the assets transferred and, in general, the use of a clear and concise style specific to regulated legal transactions.

However, the contested law creates uncertainty as to the assets concerned, affecting the constitutional provisions of Article 1 (3) and (5) in terms of legality and legal certainty, in its part relating to the clarity, precision and foreseeability of the law.

In addition, the contested law does not lay down rules on immovable properties subject to the law, which are still subject to concession contracts in accordance with Article 3 (2) of Government Emergency Ordinance No 89/2004 and are affected by the performance of sanitary-veterinary assistance activities, since the legal entity to exercise the rights and obligations of the State Domains Agency arising from these contracts has not been determined, nor the legal effects produced in relation to other regulations existing in the active substance of the legislation. Similarly, the contested law does not lay down a regulatory framework with regard to the situation of sanitary-veterinary districts currently being sold, for which evaluation reports have/are to be drawn up with a view to concluding sales contracts, or with regard to the assets concerned which are the subject of any disputes pending before the courts.

Consequently, the Court found that the legislation was incomplete, lacking precision and foreseeability, which creates legal uncertainty, but also the risk of leaving issues relating to an area of national importance, such as the activity of sanitary-veterinary assistance, in terms of the material conditions under which that activity is carried out, conditions which the State must ensure, in accordance with Article 135 (2) (a) and (f) of the Constitution.

The above shows serious problems of legislative technique, with repercussions on the quality of the law, the addressees of the rule, namely the natural or legal persons carrying out sanitary-veterinary activities, the State Domains Agency and the local councils within whose area of jurisdiction the assets covered by the law are located, since they cannot ascertain objectively and rationally what conduct they must adopt in the light of the new regulatory situation. Such a drafting method demonstrates a lack of consistency of the rules presented with the pre-existing legal framework and creates the prerequisites for a discretionary application of the law, with implications for the private sphere of the state, resulting in the infringement of Article 1 (3) and (5) of the Constitution.

The Court has also held that the provisions of Article 1 of the Law complained of concern the transfer of the management of private property owned by the State, a transfer which takes place from a central public institution (State Property Agency – a public institution with legal personality, financed entirely from the State budget, under the aegis of the Ministry of Agriculture and Rural Development, in accordance with Article 4 of Law No 268/2001) to local public authorities (local councils).

As regards the right of management of State private property, what matters are the provisions of Article 362 (1) and (3) of Government Emergency Ordinance No 57/2019 on the Administrative Code, according to which State private property may be assigned for management and, in that case, the provisions relating to the assigning of management of assets in the public domain of the State or regional or of local authorities shall apply appropriately. In the light of these provisions, and having regard to Article 299 of the Administrative Code and Article 867 of the Civil Code and Article 15 (d) of the Administrative Code, according to which the Government exercises the function of managing State property, whereby it is ensured the management of public and private property of the State, and the management of the services for which the State is responsible, it is noted that the assignment for management of the State's private property is carried out by means of a Government Decision.

In the present case, the legal instrument by which that act of valuing the State's private property is carried out was wrongly chosen. The assignment for management of the State's private immovable property, which is covered by the contested law, cannot be imposed and/or carried out by law, an operation which falls within the scope of the management of the private property of the State, which means that it will be carried out by an administrative act.

Therefore, the Parliament cannot take over the original competence of the Government to manage the private property of the State, and Parliament's legislative intervention in this area is likely to lead to a breach of the constitutional provisions contained in Article 1 (4) on the separation of powers within the State, Article 61 (1) on the role of the Parliament and Article 102 on the role of the Government.

The Court stated that the regulated measure, by which the State retains the right to private property and confers the right of management on a local public authority, presupposes that it is established by means of legal acts of administrative law in the context of subordination relationships. In the absence of the consent of the local councils on the exercise of the management, the premisses of breach of the principle of local autonomy, enshrined in Article 120 of the Constitution, are created.

Similarly, the statutory regulation of the possibility for local councils to make use of the assets concerned only in the form of letting, to the exclusion *de plano* and without any statement of reasons as to the other means of exercising the State's private property right, disregards the prerogatives and role of the local public authorities, in the light of the same principle.

Consequently, the Court found that the contested law, taken as a whole, establishes an imprecise derogation from framework laws on property and the right to management, namely Government Emergency Ordinance No 57/2019 on the Administrative Code and Law No 287/2009 on the Civil Code. The circumvention of the pre-existing legislative framework and the confusing and imprecise way of operation of the derogations carried out by the law criticised constitute a breach by Parliament of the obligations imposed by Article 1 (5) of the Constitution.

The Court also held that the mere regulation, by Article 3 of the Law, of the obligation to retain the intended use of the immovable property which is the subject of the contested law, without the establishment of a predictable and coherent legal framework ensuring the stability of legal relations in the field of sanitary-veterinary health, also entailed an infringement of economic freedom and of the obligation of the State to take measures to ensure public health.

III. For all these reasons, the Court unanimously upheld the objection of unconstitutionality and found that the Law on the transfer of immovable property intended for sanitary-veterinary assistance activities, owned by the State, from the management of the State Domains Agency in the management of local councils, and for the repeal of Government Emergency Ordinance No 89/2004 on the sale of immovable property in which sanitary-veterinary assistance activities are carried out, was unconstitutional in its entirety.