

Decision No 405 of 21 September 2022 on the objection of unconstitutionality of the provisions of Article I (3) and (20) and Article II of Law No 7/1996 on the land register and real estate advertising, as well the law as a whole, published in Official Gazette of Romania, Part I, No 1232 of 21 December 2022

Summary

I. As grounds for the objection of unconstitutionality, its authors argued that the Law amending and supplementing the Law No 7/1996 on the land register and real estate advertising infringed the principle of legality laid down in Article 1 (5) of the Constitution, since the legislative proposal was only formally justified. At the same time, it lacked clarity and foreseeability, since the concepts used in the proposal, in particular that of ‘holder’, were likely to give rise to absurd legal situations.

It was pointed out that Article I (20) of the contested law established that the land adjacent to the dwelling and household annexes, as well as the courtyard and garden surrounding them, shall be the property of the person possessing the land as from the date of submission of such a request. In practice, there is an instantaneous usucaption in favour of the persons currently possessing the land, thus making it sufficient for a person to temporarily possess the land at the time when he or she applies for the right to property to be entered in the agricultural register. Thus, there is a breach of the right to property of the current owner, whether determined or determinable, being preferred the possessor entered in the agricultural register.

Article II of the law subject to review introduces a special period for a salary increase in favour of a very small category of citizens, in relation to the total number of beneficiaries of Framework Law No 153/2017 on the remuneration of staff paid from public funds, which infringes equal rights.

It was further argued that the law complained of infringes Articles 1 (4) and 61 (1) of the Constitution, since Article I (3) extends the National Programme for Cadastre and Land Registry until the systematic registration of properties is completed throughout the country. However, this programme is approved by Government Decision, reason why Government Decision No 294/2015 was adopted. Consequently, changes to the aspects relating to the running of this programme, including its duration, can only be made by means of a government decision.

II. Having examined the objection of unconstitutionality, the Court held that it did not have jurisdiction to examine whether a legislative proposal was justified or whether the statement of reasons for that proposal was justified. Moreover, constitutional review does not concern legislative proposals but the law adopted and not yet promulgated.

As regards the failure to define the concept of ‘possessor’, the Court observed that that concept was used for the first time, in the context under consideration, by Decree-Law No 42/1990 and was the subject of interpretation by public authorities and courts. Thus, the holders of the right to establish ownership are: (a) the owners of the buildings which have built these buildings on lots awarded by the agricultural production cooperatives, if they were members of cooperatives or other entitled persons; (b) purchasers of the builders by means of instruments of disposal concluded with former cooperative members. The new legislation follows the same line of thinking. If the concept of the owner of the building had been used, the law would have become restrictive and would only have covered persons who acquired ownership by entry in the land register. However, the concept also covers those situations of transition between the reality on the ground and the formalism of the law. The Court therefore found that the meaning of the contested concept is determinable in the context of the provisions of Decree-Law No 42/1990 and the Civil Code.

As regards the infringement of the right to property of persons who currently own that right in respect of the land concerned, the Court observed that that complaint is based on the incorrect premise that the contested text governs an atypical form of usucaption. In the present case, it is not a question of a limitation period, but of a method of acquisition of the right to property by operation of law. Moreover, that constitutive effect of the law does not apply to land owned by other persons. Similarly, the right to property was created in accordance with Article 8 of Decree-Law No 42/1990 and the text criticised merely clarifies the technical means by which registration in the land register is carried out,

that is to say, by entry in the land register. Therefore, the incidence of Article 44 of the Constitution cannot be taken into account. The fact that that property right is created on land which is not entered in the land register and whose legal situation is uncertain is a question of interpretation and application of the law.

As regards the introduction of a special period for a salary increase in favour of a very limited category of citizens, the Court noted that Framework Law No 153/2017 was intended to be applied in 5 separate time sequences, in which the amount of salaries of budget staff would be calculated differently. The contested law brings forward the method of calculating salaries applicable from 1 January 2023 to approximately 5 months for the category in question, which indeed amounts to a difference in treatment compared with the other beneficiaries of Framework Law No 153/2017. That difference in treatment was justified by the fact that the succession and the way in which the legislation on remuneration was applied resulted in discrepancies between employees with the same duties, seniority and education. It is true that the aim pursued by the legislator is generous and does not create a privilege for the application of Framework Law No 153/2017, since it was envisaged to correct wage injustice at the level of the National Agency for Cadastre and Land Register. It follows that Article II of the Law does not infringe Article 16 (1) of the Constitution.

As regards the complaint that the law cannot intervene in an area regulated by a Government decision, the Court found that the law under consideration does not amend a Government decision, but sets the deadline for the implementation of the National Programme for Cadastre and Land Register, i.e. until the completion of the systematic registration of buildings throughout the country. The fact that a Government decision previously provided for the period during which this activity was carried out only means that the Government decision is to be adapted to the text of the law, which is not a primary source of constitutional law. Therefore, the Court cannot censure an option on the part of the legislator and establish that certain details of a procedure do not fall within the scope of the law. The Parliament has primary and exclusive competence to decide on the area covered by the legislation, whereas the Government has only a derived, secondary and subsequent competence to organise the implementation of the law. At the same time, the Parliament has the power to rank as law certain elements of content contained in the secondary regulatory acts themselves, if it considers such an operation to be appropriate. Consequently, Parliament has full powers over the choice and subject matter of legislation, and the power of the Government to organise the application of the law is invariably shaped according to the content of the law. In other words, no aspect of social relations can escape the action of the law on the grounds that it is the sole subject of a government decision.

Therefore, the fact that a law has regulated differently a solution which is currently contained in a Government Decision does not infringe Articles 1 (4) and 61 (1) of the Constitution. Moreover, the contested legislative solution was already provided for in a primary rule and the contested text is merely a correlation rule.

III. For all these reasons, the Court unanimously dismissed, as unfounded, the objection of unconstitutionality and found that the provisions of Article I (3) and (20) and those of Article II of Law No 7/1996 on the land register and real estate advertising, as well the law as a whole, were constitutional in relation to the complaints made.