

Decision No 421 of 28 September 2022 on the objection of unconstitutionality of the Law laying down certain measures to complete the administrative procedures for the settlement of claims pending before the county or Bucharest Commissions for the application of Law No 9/1998 on the award of compensation to Romanian citizens in respect of property transferred to the property of the Bulgarian State as a result of the application of the Treaty between Romania and Bulgaria, signed in Craiova on 7 September 1940 and Law No 290/2003 on the award of damage or compensation to Romanian citizens for their property, seized, detained or remaining in Basarabia, Northern Bucovina and the county of Herța, as a result of the state of war and the application of the Peace Treaty between Romania and the Allied and Associated Powers, signed in Paris on 10 February 1947 and amending certain legislative acts, published in Official Gazette of Romania, Part I, No 1048 of 28 October 2022.

Summary

I. As grounds for the objection of unconstitutionality, its authors claimed that there had been a breach of the principles of legality and legal certainty and of the principle of bicameralism, as the law establishing measures for the completion of administrative procedures for dealing with claims pending before the Departmental Committees and the Municipality of Bucharest for the application of Law No 9/1998 on the award of compensation to Romanian citizens in respect of property transferred to the property of the Bulgarian State as a result of the application of the Treaty between Romania and Bulgaria, signed in Craiova on 7 September 1940 and Law No 290/2003 on the award of damage or compensation to Romanian citizens for their property, seized, detained or remaining in Basarabia, Northern Bucovina and the county of Herța, as a result of the state of war and the application of the Peace Treaty between Romania and the Allied and Associated Powers, signed in Paris on 10 February 1947 and amending certain legislative acts, adopted by the decision-making Chamber, consist of two legislative measures which are distinct from, and unrelated to, the regulatory field specific to the law criticised, departing significantly from the content and form adopted by the Senate and from the purpose and intention envisaged by the initiator. Thus, although Law No 24/2007 on the regulation and management of green spaces in the urban area of municipalities and Law No 256/2018 on certain measures necessary for the implementation of oil operations by holders of oil agreements relating to deep offshore and onshore oil areas do not, by their regulatory object, cover compensation for Romanian citizens, the fact remains that the contested law makes a number of amendments, which is contrary to the legislative technique rules contained in Law No 24/2000, the principle of bicameralism and the relevant case-law of the Constitutional Court.

II. Having examined the objection of unconstitutionality, the Court held that the two main complaints of unconstitutionality, have the same source of alleged defects of unconstitutionality, namely the insertion, directly in the decision-making Chamber, of two provisions which, by their own regulatory object, are unrelated to the legislative act adopted, thereby infringing both the principle of a single set of rules arising from the principles of legality and legal certainty and the principle of bicameralism.

The purpose of the legislation is derived from the very title of the law and the purpose of the legislation is that indicated by the authors of the legislative initiative in the explanatory memorandum accompanying the contested law and consists of completing the administrative procedures initiated for the settlement of claims based on Law No 9/1998 and Law No 290/2003.

When comparing the two forms of adoption of the law criticised in the bicameral legislative process, the Court found that if the form tacitly adopted by the Senate operated amendments to two legislative acts directly linked to the regulatory scope of the legislative proposal, namely Law No 164/2014 and Law No 9/1998, the form adopted by the Chamber of Deputies contains, in addition, two further interventions on two legislative acts which, by their own regulatory object and purpose, have no connection with the area of regulation of the law adopted Article 12 of the contested law amends Article 18 (6) of Law No 24/2007 on the regulation and management of green spaces in urban areas, and Article 13 concerns ‘Article 21 (3) (b) and (c) and Article 18’ of Law No 256/2018 on certain measures necessary for the implementation of oil operations by holders of oil agreements relating to deep-sea offshore and onshore oil areas.

As regards such legislative interventions during the parliamentary procedure for the adoption of a law, the Court has held that a law may cover only one regulatory area and areas directly connected with it. That is also true of the provisions in Article 14 of Law No 24/2000 on legislative technique rules for the preparation of legislative acts, which establish that rules of the same level and having the same subject-matter form part of a single legislative measure and that a legislative measure can include rules and other related matters only in so far as they are essential to the attainment of the aim pursued by that measure. The Court has highlighted, in that context, the provisions of Article 74 of the Constitution, which allow Deputies, Senators and the Government to submit, where appropriate, proposals and draft organic and ordinary laws, whatever the field considered, but it goes without saying that the proposal/draft law must refer to homogeneous social relations. Otherwise, the situation would be inadmissible if a proposal/draft law regulates a variety of social relations with or without a link between them, and the law thus adopted does not reflect a single normative unity and purpose.

The Court held that Article 12 of the contested law concerns the regulation of green spaces in urban areas, in that it introduces into Law No 24/2007 an exception extending, in practice, the possibility of changing the use of green spaces in order to carry out strictly defined works of public use, including those relating to social health objectives. Article 13, for its part, intervenes in the field of measures for the implementation of oil operations by holders of oil agreements relating to deep sea offshore and onshore oil areas, in that it replaces the date of 1 January 2023, currently in force in accordance with 'Article 2¹ (3) (b) and (c) and Article 18' of Law No 256/2018, with 1 September 2022, the reference date for amending the oil royalties scheme and the tax regime applicable to the oil sector.

However, when analysing the legal content of Articles 12 and 13 of the contested law, the Court observed that no logical link can be drawn between those texts and the object of the legislation complained of, especially since the amendments corresponding to those texts, proposed by the Committee on Budget, Finance and Banks and the Committee on Legal Affairs, Disciplinary Matters and Immunities in the Chamber of Deputies and voted in the plenary session of the Chamber of Deputies, were not accompanied by a minimum statement of reasons in the Joint Report, reflecting the reasons for the legislator's intention, which in this case is identified exclusively with that of the Chamber of Deputies.

Thus, in the procedure for the adoption of the contested law, the decision-making Chamber did not take into account the principle of a single regulatory object, laid down in Article 14 of Law No 24/2000, which is mandatory in the light of Article 1 (5) of the Basic Law, according to which compliance with the Constitution, its supremacy and laws is mandatory. Although legislative technique rules do not have constitutional value, the Constitutional Court held that, by regulating them, the legislature imposed a number of binding criteria for the adoption of any legislative act, compliance with which is necessary to ensure the systematisation, unification and coordination of legislation, as well as the appropriate content and legal form for each legislative act. Compliance with those rules thus contributes to ensuring legislation which complies with the principle of legal certainty and has the necessary clarity and foreseeability.

Returning to the requirements of the principle of bicameralism, the Court held that the adoption procedure was vitiated by the inclusion, directly before the Chamber of Deputies, as decision-making Chamber, of the provisions of Articles 12 and 13 of the contested law, which do not correspond to the subject matter of the legislation and the original purpose of the legislative proposal adopted by the reflection Chamber, which does not form an organic part of it and thus alters both the legal content and the configuration of the legislative act under consideration. Even though most of the legislative interventions carried out directly by the Chamber of Deputies fall, through their legal content, within the discretion of each Parliamentary Chamber, representing the necessary legislative changes required by legislative technique requirements or for reasons of expediency in the form adopted by the Senate, it cannot be disregarded that two of those interventions, namely Articles 12 and 13, by virtue of their specific legal content, do not serve to achieve the aim of the law adopted, are not in a minimal connection with its regulatory field, but, on the contrary, regulate in two other completely different areas, extending the scope of the legislative proposal adopted by the reflection Chamber. In conclusion, the additions made directly in the decision-making Chamber in the form of Articles 12 and 13 of the law subject to constitutional review infringed both the principle of legality and legal certainty, as required by Article 1 (5) of the Basic Law, and the principle of bicameralism, enshrined in Articles 61 (2) and 75 of the Constitution, so that the law examined was declared unconstitutional in its entirety.

III. For all these reasons, the Court unanimously upheld the objection of unconstitutionality and found that the Law laying down certain measures to complete the administrative procedures for the settlement of claims pending before the county or Bucharest Commissions for the application of Law No 9/1998 on the award of compensation to Romanian citizens in respect of property transferred to the property of the Bulgarian State as a result of the application of the Treaty between Romania and Bulgaria, signed in Craiova on 7 September 1940 and Law No 290/2003 on the award of damage or compensation to Romanian citizens for their property, seized, detained or remaining in Basarabia, Northern Bucovina and the county of Herța, as a result of the state of war and the application of the Peace Treaty between Romania and the Allied and Associated Powers, signed in Paris on 10 February 1947 and amending certain legislative acts, was unconstitutional in its entirety.