

Decision No 432 of 5 October 2022 on the objection of unconstitutionality of the Law amending Law No 17/2014 on certain measures regulating the sale of agricultural land situated outside the built-up area and amending Law No 268/2001 on the privatisation of companies managing State public and private land for agricultural use and the establishment of the Agency for State Domains, published in the Official Gazette of Romania, Part I, No 1047 of 28 October 2022.

Summary

As grounds for the objection of unconstitutionality, the President of Romania argued that the Law amending Law No 17/2014 on certain measures regulating the sale of agricultural land situated outside the built-up area and amending Law No 268/2001 on the privatisation of companies managing State public and private land for agricultural use and the establishment of the Agency for State Domains – a legislative act of an ordinary nature – amended the general system of property ownership previously established by Law No 17/2014 – an organic law – thus violating the constitutional provisions of Article 73 (3) (m) and Article 76 (1) of the second sentence of Article 44 (1) and the second sentence of Article (2), according to which the general legal regime for property is governed by organic law. The right of pre-emption was established, as a limitation of the owner’s right of disposal, by Law No 17/2014, adopted by the Parliament as an organic law, so that the removal of that prohibition also concerns an essential element of the right to property, which also requires its regulation by organic law.

Similarly, the amendment made by the contested law makes it possible to sell to any person agricultural land situated outside the built-up area, on which trees and vines are planted, belonging to natural persons, who may dispose of a maximum area of 3 ha over a period of 3 years. This changes the conditions under which foreign citizens and stateless persons will be able to acquire private ownership of such land, which required the adoption of the law as an organic law.

II. Having examined the objection of unconstitutionality, the Court noted that Law No 17/2014 regulates *ad validitatem* conditions for the transfer of ownership of agricultural land situated outside the build-up area, conditions consisting of the obligation to respect the right of pre-emption and the obligation to respect/maintain the agricultural use of the land from the date of purchase. The critical law removes, for natural persons owning agricultural land situated outside the build-up area on which crops of trees and vines are located, the specific restrictions on the right of pre-emption, governed by Law No 17/2014. In addition, the new provisions lay down another applicable legal regime, with special conditions under which their owners, natural persons, may dispose of an area of up to 3 ha over a period of 3 years.

As regards the complaint of unconstitutionality relating to the error in the adoption of the law criticised as an ordinary law, the Court emphasised the distinction between questions relating to the general legal regime of property ownership which fall within the strict scope of the organic law, in accordance with Article 73 (3) (m) of the Constitution, and the other elements by which the legislator entrusts the content and limits of the right to property and which may also be at the level of the ordinary law.

The Court stated that it is permissible for an ordinary law to be adopted on the provisions of an organic law, provided that the specific provisions concerned do not contain any regulation of the level of the organic law. An organic law may, for reasons of legislative policy, also include rules of the nature of ordinary law, but these rules do not become organic law, since otherwise the areas reserved by the Constitution to organic law would be extended.

The organic nature of Law No 17/2004 is justified by its regulatory purpose, in that it covers a broad category of land in Romania – agricultural land situated outside the build-up area – on which a number of conditions are laid down for disposal by sale-purchase. Since the provisions of Law No 17/2014 contain special rules in relation to the rules of general law on pre-emption contained in the Civil Code – Organic Law, and the legislative technique requirements provide that the derogation may be made only by means of a legislative act of a level at least equal to that of the basic regulation (Article 63 of Law No 24/2000 on legislative technique rules for the drafting of legislative acts), that law was itself adopted as an organic law.

The Court noted that Article 2 (1) of Law No 17/2014, which Article I (1) of the contested law supplements with a new derogating rule, defines the very scope of Law No 17/2014, which is therefore a central element of the design of that law, which cannot be dissociated from its organic nature. From that perspective, the contested law should therefore have been adopted as an organic law and not as an ordinary law. In addition, the rule in Article I (1) of the law under examination applies to agricultural land situated outside the built-up area, on which trees and vines are planted, belonging to natural persons. Even though that category of land represents only one segment of Romanian agricultural land situated outside the built-up area, on which the legal regime governed by Law No 17/2014 currently operates, owing to its quantitative size, that land alone has the capacity to form a significant part of the Romanian land fund. That is why the rules which embody their legal regime of alienation affect the general legal system of property ownership governed by the organic law.

In addition, the Court also noted that the new law is such as to create a significant breach in the uniform application of the general legal regime governing Romanian land ownership. The vote of the relative majority expressed decisively in the Chamber of Deputies for the adoption as ordinary law of the disputed law frustrated the intention expressed by the vote of the absolute majority of each parliamentary Chamber expressed when Law No 17/2014 was adopted as an organic law.

As regards foreigners, stateless persons and legal persons belonging to non-member States, Article 6 of Law No 312/2005 provides, like the rule contained in Article 44 (2), second sentence, of the Constitution, that they may acquire ownership of land under conditions governed by international treaties on a reciprocal basis.

The Court found that Article 2 (2) and (3) of Law No 17/2014 guarantees equal legal treatment between the persons listed and does not lay down specific conditions applicable only to foreign nationals or stateless persons for the purchase of agricultural land in Romania. Thus, after the expiry of the period of 7 years of absolute prohibition (which expired on 1 January 2014), laid down by Law No 312/2005, the legislator did not lay down specific conditions, applicable only to foreign persons or stateless persons. Law No 17/2014 laid down special conditions for the acquisition of the right to property in respect of agricultural land situated outside the built-up area, but those conditions apply equally to every person concerned, irrespective of his nationality. The provisions of Article 44 (2), second sentence of the Constitution are therefore irrelevant.

In conclusion, the Court held that the law subject to constitutional review had been adopted in breach of Article 76, paragraph (1), in the light of Article 73 (3) (m) of the Constitution, the sentence relating to the general legal regime governing property ownership, which is why it was unconstitutional as a whole.

III. For all these reasons, the Court unanimously upheld the objection of unconstitutionality and found that the Law amending Law No 17/2014 on certain measures regulating the sale of agricultural land situated outside the built-up area and amending Law No 268/2001 on the privatisation of companies managing State public and private land for agricultural use and the establishment of the Agency for State Domains was unconstitutional as a whole.