

***Decision No 637 of 23 September 2020 on the objection of unconstitutionality of the Law supplementing Article 5 of Law No 33/1994 on expropriation for reasons of public interest, published in the Official Gazette of Romania, Part I, No 1030 of 4 November 2020***

**Summary**

**I. As grounds for the objection of unconstitutionality**, the authors raised criticisms of extrinsic unconstitutionality in relation to the Law supplementing Article 5 of Law No 33/1994 on expropriation for reasons of public interest, as against the provisions of Articles 8 (4), 36 (1), 37 (2) and 47 (2) of Law No 24/2000 on legislative technique rules for drafting legislative acts, with the result that Article 1 (5) of the Constitution was infringed.

It was argued that, in his request for re-examination, the President of Romania stated that the inclusion in the scope of “works of general public interest” of works on the production and distribution of electricity and heat with the aim of the sustainable use of water resources, a natural monopoly of strategic interest for the realisation of hydropower fittings, generates a lack of predictability and difficulties in implementation. The legislative text adopted by the decision-making Chamber introduces a new category among the grounds for expropriation, namely work of major public interest. This wording is not resumed or defined in the legislative act as a whole and is not associated with its own legal effects. There is a lack of terminological consistency and a breach of the principles of conciseness and precision of the legal text. It was argued that Parliament had adopted the contested law with unclear and unpredictable rules in its content, contrary to the conditions laid down in Article 8 (4) of Law No 24/2000 in conjunction with Article 1 (5) of the Constitution.

The authors of the referral also raised criticisms of intrinsic unconstitutionality in relation to the provisions of Articles 44 (1) and (3) of the Constitution, as well as to those of Article 148 (2) in conjunction with Articles 35 and 135 (2) of the Constitution.

**II. Having examined the referral received**, the Court found, in principle, that the objection of unconstitutionality had been raised within the prescribed period [see Decision No 67 of 21 February 2018, paragraph 70, second sentence], but considered that certain clarifications were necessary as regards the subject matter of the review of constitutionality in the light of the time-limits within which the various provisions of the law could be challenged, whereas a request for re-examination had been made by the President of Romania during its adoption process. The Constitutional Court’s analysis in the present case has been based on the fact that the law, both before and after the request for re-examination, has the same content.

According to the case-law of the Constitutional Court, the request for re-examination made in accordance with Article 77 (2) of the Constitution has the effect of reopening the legislative procedure, but only within the limits of the request for re-examination. For the situation where the Parliament rejects or partially accepts the request for re-examination, the Court held that the non-examined provisions, that is to say, those which have not suffered any legislative modification in the review procedure, cannot form the subject-matter of the review of constitutionality. Therefore, irrespective of whether a request for re-examination has been accepted/partially accepted/rejected, only statutory provisions which are subject to legislative intervention in the re-examination procedure and the procedure for the adoption of the law following the request for re-examination may form the subject matter of the *a priori* constitutional review. In so far as the holders of the right to refer the matter to the Constitutional Court listed in the first sentence of Article 146 (a) of the Constitution raise an objection of unconstitutionality without contesting the specific difference between the amended version of the law subject to re-examination and the original version of the law, the Court will declare it inadmissible. In its case-law, the Court has also held that, if the request for re-examination has

been rejected by Parliament, the objection of unconstitutionality, made within the 10-day period provided for in Article 77 (3) of the Constitution, can only refer to extrinsic aspects of unconstitutionality of the procedure for adopting the law. At this stage of promulgation, in accordance with Article 77 (3) of the Constitution, criticisms of intrinsic unconstitutionality could only be raised in relation to the re-examined legal provisions; in the present case, however, following the rejection of the request for a re-examination, no legal provisions have been re-examined, with the result that there could be no criticism of intrinsic unconstitutionality in relation to the legal provisions contained in the original form of the law prior to the request for a re-examination.

In relation to the present case, the Court found that the request for re-examination of the law under consideration was rejected. Therefore, from a procedural point of view, the Court did not have jurisdiction to review the constitutionality of the normative content of the single article of the re-examined law. In the absence of any objection of constitutionality, persons entitled to bring an action before the Constitutional Court pursuant to the first sentence of Article 146 (a) of the Constitution cannot call into question the constitutionality of that text during the period following the adoption of the law following the request for re-examination. They can only challenge the constitutionality of the specific difference between the initial drafting of the law and the version subsequent to the request for re-examination.

Therefore, in the present case, the review of constitutionality can only concern issues of extrinsic constitutionality. Although the authors of the objection of unconstitutionality expressly state that they raise such criticisms, in reality the reference text relied on and their arguments relate to issues of intrinsic constitutionality relating to the quality requirements of laws: clarity, precision and foreseeability resulting from Article 1 (5) of the Constitution by reference to Law No 24/2000 on the legislative technical rules for drafting legislative acts.

The objection of unconstitutionality was raised within the time limit laid down in the second sentence of paragraph 70 of Decision No 67 of 21 February 2018, with reference to the deadline of 10 days for promulgation, in accordance with Article 77 (3) of the Constitution, but the challenges of unconstitutionality raised do not relate to the procedure for adopting the law following the request for re-examination. In the light of that aspect, which concerns the scope of its jurisdiction, the Court held that it had not been properly notified to adjudicate on the objection of unconstitutionality raised and, consequently, the objection of unconstitutionality was inadmissible.

**III. For all these reasons,** by a majority of votes, the Court dismissed as inadmissible the objection of unconstitutionality of the Law supplementing Article 5 of Law No 33/1994 on expropriation for reasons of public interest.