

Decision No 777 of 28 October 2020 on the objection of unconstitutionality of the Law amending Article 16 (2) of Law No 32/2019 on livestock farming, published in Official Gazette of Romania, Part I, No 1197 of 9 December 2020

Summary

I. As grounds for the objection of unconstitutionality of the Law amending Article 16(2) of the Livestock Law No 32/2019, it was alleged that the provisions of Article 61(2) of the Constitution which enshrine the principle of bicameralism and those of Article 136 (4) of the Constitution on handing over of public property for administration, concession or lease are violated. In that regard, it has been pointed out, in essence, that the form adopted by the Chamber of Deputies, as the decision-making Chamber, differs entirely from the form rejected by the Senate, as the first notified Chamber. Thus, the form of the law rejected by the Senate concerned the sole article amending Article 16 (1) of Law No 32/2019, which merely deletes the term ‘sheep and goats’ from the wording of the rule and, as adopted by the Chamber of Deputies, has undergone substantial amendments as concerns Article 16 (2) of Law No 32/2019, referring mainly to the introduction of a derogation from the application of Article 315 of Government Emergency Ordinance No 57/2019 on the Administrative Code, which provides that public or private property may be leased or subject to concession by means of public tender. Article 16 (2) of Law No 32/2019 provides for the possibility for administrative/territorial units, municipalities and towns, which hold in public/private property or management land for agricultural use, free of contract, to conclude concession/lease contracts, as the case may be, by direct award with the livestock farmers referred to in paragraph (1).

II. Having examined the objection of unconstitutionality, the Court noted that the legislative proposal contained a single article amending Article 16 (1) of Law No 32/2019 on livestock farming, establishing that “By derogation from Articles 211-216 of Law No 268/2001 on the privatisation of companies holding public and private land owned by the State for agricultural purposes and setting up the State Domains Agency, as subsequently amended and supplemented, the State Domains Agency shall conclude concession/lease contracts, as the case may be, for agricultural land, free of contract, by direct award, under the conditions of the law, with livestock farmers, natural persons or legal persons, who do not have land for agricultural use under concession/lease, of the following species: heifers, buffaloes, swine and poultry breeders”. Compared to the initial drafting of Article 16 (1) of Law No 32/2019, the only difference was to remove from the list of animal species, sheep and goats.

The Senate, as the first notified Chamber, rejected the legislative proposal, which was then submitted to the Chamber of Deputies. The Committee on Agriculture, Forestry, Food Industry and Specific Services decided to submit the legislative proposal to the plenary of the Chamber of Deputies after having tabled an amendment consisting, on the one hand, of the deletion of the text proposed for Article 16 (1) of Law No 32/2019 and, on the other hand, of the amendment of Article 16 (2) of the Law, to the effect that, “by way of derogation from Article 315 of Government Emergency Order No 57/2019 on the Administrative Code, the administrative-territorial units, i.e. municipalities and towns, which hold in public/private property or management land for agricultural use, free of contract, may conclude concession/lease/rental contracts, as appropriate, by direct award, with the livestock farmers referred to in paragraph (1)”.

The Court found that the provisions of Article 61 (2) of the Constitution, relating to the principle of bicameralism, have been complied with, although the form adopted by the

Chamber of Deputies refers to a text of law other than that on which the original legislative proposal was adopted by the Senate. Thus, the legislative proposal aimed at eliminating sheep and goat farmers from among the livestock farmers with whom the State Domains Agency could conclude concession/lease contracts, as appropriate, for agricultural land, free of contract, by way of direct award. The Senate rejected that amendment, taking into account the report of the Committee on Agriculture, Food Industry and Rural Development, from which it was apparent, in essence, that sheep and goat farmers should also be given the opportunity to conclude such contracts in order to ensure basic feed for grazing species not only for the growing season but also for the stabulation period. The Chamber of Deputies, acting as a decision-making Chamber, voted on the basis of the report of the Committee on Agriculture, Forestry, Food Industry and Specific Services, which, in the spirit of the same argument which led to the rejection of the law by the Senate, rejected the proposed amendment to Article 16 (1) of Law No 32/2019. It also voted, for reasons of legislative rigour, the amendment consisting in the modification of Article 16 (2) of the same law. The Court noted that Article 16 (2) of Law No 32/2019 allows county councils and administrative/territorial units, which hold in public/private property or management land for agricultural use, free of contract, to conclude concession/lease contracts, as the case may be, by direct award, under the conditions of the legislation in force, with the livestock farmers referred to in paragraph (1). The amendment of this text, voted by the Chamber of Deputies, consisted of removing local councils from its normative content and replacing the words “under the conditions of the legislation in force” with the words “by way of derogation from Article 315 of Government Emergency Ordinance No 57/2019 on the Administrative Code”. The justification for this amendment lies in the fact that Article 315 of the Administrative Code allows the concession by direct award only to certain entities, such as, for example, national companies or undertakings, not to natural or legal persons, such as livestock farmers, where the award of the concession contract can solely take place by means of a public tender. Article 16 (2) of Law No 32/2019, as it stands, specifies that concession/rental/lease contracts shall be concluded by direct award ‘in accordance with the legislation in force’. Until the entry into force of Government Emergency Ordinance No 57/2019 on the Administrative Code, ‘the legislation in force’ was Government Emergency Ordinance No 54/2006 on the regime of contracts for the concession of public property. This allowed for the direct award of concession contracts to natural or legal persons. However, on 9 July 2019, the Administrative Code entered into force, which expressly repealed that emergency ordinance, from which it follows that the reference in Law No 32/2019 on livestock farming was to refer to the provisions thereof.

The Court found that the application of Article 315 of the Administrative Code, which no longer allows for the direct award of concession contracts to natural or legal persons, would render Article 16 (2) of Law No 32/2019 ineffective, which offers this benefit to livestock farmers. Therefore, irrespective of the content of the list of animal species contained in Article 16 (1) of Law No 32/2019, livestock farmers, natural or legal persons, would be unable to conclude such contracts by direct award, that circumventing the very purpose of the law, which is to provide a facility for livestock farmers. The imposition of the tendering procedure would lead to an extension of the period during which livestock farmers could obtain the use of the land needed to obtain the feed, which would have a negative impact on their activity. With this in mind, the introduction, in the legislative process taking place before the Chamber of Deputies, in Article 16 (2) of Law No 32/2019, of the clarification ‘by way of derogation from Government Emergency Ordinance No 57/2019 on the Administrative Code’ is in line with the intention implicitly expressed by the Senate by rejecting the legislative proposal and maintaining sheep and goat breeders on the list of persons who may benefit from the conclusion of concession contracts by way of direct award.

Another amendment to the text of Article 16 (2) of Law No 32/2019 consisted of removing the county councils from the text, retaining only the words ‘administrative and territorial units’, with the mentioning ‘i.e., municipalities and cities’. The Court noted that this change only serves the purpose of a logical reconfiguration of the text, with the county councils not having their place in the original editorial formula, according to which “county councils and administrative territorial units, which hold in public/private property or management land for agricultural use (...)”. This is because county councils are deliberative authorities at county level, so they cannot hold any type of public or private property right over any type of property, movable or immovable. Only administrative and territorial units, i.e. municipalities, towns and counties, as well as municipalities declared in accordance with the law, may have public or private property and, as a result, county councils and local councils, in their capacity as deliberative authorities, cannot have a public property right, but only the right to administer the public or private property of the administrative territorial units. Therefore, in the present case, the Court noted that the deletion of county councils in the text is due to legislative technical reasons, bringing clarity and consistency to the text by removing an unnecessary term which is not applicable in practice.

In the light of the above, the Court recalled that it has ruled through a rich case-law on the principle of bicameralism, invoked by the authors of the objection of unconstitutionality, setting out two main elements which lead to the conclusion of its infringement in the legislative procedure: on the one hand, the existence of major differences in legal content between the forms adopted by the two Chambers of the Parliament and, on the other hand, the existence of a significantly different configuration between the forms adopted by the two Chambers of the Parliament. At the same time, upon setting the limits of the principle of bicameralism, it observed that the application of that principle cannot have the effect of diverting the role as reflection Chamber of the first notified Chamber, in that it is the Chamber which definitively fixes the content of the draft law or legislative proposal (and, in practice, the normative content of the future law), with the consequence that the second Chamber, the decision-making Chamber, would not be able to amend or supplement the law adopted by the reflection Chamber, but merely the possibility of approving or rejecting it. Depriving the decision-making Chamber of its power to amend or supplement the law as adopted by the reflection Chamber, and thus to contribute to the law-making process, would be tantamount to limiting its constitutional role and giving the reflection Chamber a predominant role in relation to the decision-making Chamber in the law-making process. However, the decision-making Chamber cannot alter substantially the subject-matter of the legislation and the structure of the legislative initiative, with the result that it is diverted from the aim pursued by the initiator.

In the present case, the Court found that the existence of major, substantial differences in legal content between the forms adopted by the two Chambers of the Parliament cannot be accepted. Thus, by deleting Article 16 (1) of Law No 32/2019 in the version proposed by its initiators, the Chamber of Deputies, in its capacity as the decision-making Chamber, merely confirmed the position of the Senate which rejected the legislative proposal, in its capacity as the first notified Chamber. As regards the amendments to Article 16 (2) of Law No 32/2019, they do not affect the substance of the law, since they are mere corrections of a technical and legislative nature designed to clarify their drafting.

With regard to the criticism of an intrinsic nature, the Court noted that Article 136 (4) of the Constitution provides that, under the terms of organic law, public property may be handed over for administration to autonomous companies or public institutions or can be subject to concession or lease, without making any distinction according to the status of the party with which the holder of the public property right concludes the concession or lease contract. The constitutional text therefore does not impose any restrictions on natural or legal persons, since they are entitled to obtain the conclusion of such contracts, under certain

conditions laid down by organic law. In this respect, the method recognised by the Administrative Code is that of awarding contracts following public tendering. Law No 32/2019 on livestock farming, which is also an organic law, allows for direct award. This derogation from the provisions of Article 315 of the Administrative Code is not a failure to comply with the provisions of Article 136(4) of the Constitution, but a legal transposition thereof, through the different regulation of the conditions for the conclusion of concession contracts, customised to the specific field of the law, that of livestock farming.

III. For all these reasons, by a majority of votes, the Court dismissed as unfounded the objection of unconstitutionality and found that the Law amending Article 16 (2) of Law No 32/2019 was constitutional in the light of the criticisms made.