

Decision No 496 of 3 October 2023 on the objection of unconstitutionality of the Law amending Law No 287/2009 on the Civil Code,

Published in the Official Gazette of Romania, Part I, No 1016 of 7 November 2023

Summary

I. As grounds for the objection of unconstitutionality, it was stated that the Law amending Law No 287/2009 on the Civil Code established rules on the general regime of property, which must be governed by an organic law, in accordance with Article 73 (3) (m) and Article 136 (5) of the Constitution. However, the law was adopted in the ordinary procedure. During the vote in the Chamber of Deputies, the legislative proposal received only 140 votes “in favour” against the minimum requirement of 166 votes “in favour” for the adoption of an organic law. The legislative procedure was thus manifestly flawed, which renders the law as a whole unconstitutional.

II. Having examined the objection of unconstitutionality, the Court held that whenever a law derogates from an organic law, it must be classified as organic, since it also intervenes in the area reserved for organic laws. In other words, the provisions of an organic law may be amended only by rules having the same legal force.

The Court held that the amendment may also be made by means of ordinary rules if the amended provisions do not contain rules of the nature of the organic law but relate to matters which are not directly connected with the regulatory scope of the organic law. The general regime on property and right to property governs legal relationships of significant social value which require regulation by an organic law, whereas the specific rules for the exercise of the attributes of the right to property are of lesser importance and may be laid down by ordinary laws or, where appropriate, ordinances.

The contested law introduced amendments to Law No 287/2009 on the Civil Code with regard to the contract of lease of agricultural areas, which is in fact a species of the lease contract. In practice, the subject matter of the lease and, by implication, that of the lease of agricultural areas consists of the transfer of the right of use in respect of an asset, and that right is an essential attribute of the right to property.

In the light of the material subject matter of the lease contract, namely agricultural assets (in particular immovable property) and their importance for the provision of food and, therefore, for the survival of human civilisation, and the legal measures adopted by the legislator to limit the duration of that contract in time, the Court held that the matter of lease falls within the general regime on property. This gives rise to the requirement that this matter be regulated only at the level of organic law.

The minimum duration of 7 years established by the legislator for the valid conclusion of a lease makes it possible to classify that contract, in the light of the legal provisions in force which have not been amended by the law complained of, as an act of disposition, an expression of the owner’s right to dispose of his land materially and legally. That effect of the contested law has significant implications for the general legal regime of the right to private property and on a category of land which is particularly important in terms of size and economic value in Romania, namely agricultural land situated in rural areas, and required the adoption of the law in question as an organic law and not as an ordinary law.

In the present case, the contested law was adopted by the Romanian Parliament with the majority provided for in Articles 75 and 76 (2) of the Constitution, i.e. the majority required for the adoption of ordinary laws. Therefore, the provisions of Article 73 (3) (m) and Article

76 (1) have not been complied with, in relation to those of Article 147 (4) of the Constitution, with the result that the law as a whole is unconstitutional.

III. For all those reasons, the Court unanimously upheld the objection of unconstitutionality and found that the Law amending Law No 287/2009 on the Civil Code was unconstitutional in its entirety.