

Whenever there is an overlap between various regulatory solutions or hypotheses contained in two or more articles or laws, there is a legislative parallelism contrary to Article 1 (5) of the Constitution. Therefore, two public authorities cannot concurrently regulate one and the same situation in a particular sphere of social relations.

Keywords: *quality of the law, effects of decisions ascertaining the unconstitutionality*

Summary

I. As grounds for the objections of unconstitutionality, the authors of the referrals argued that the contested law has the same regulatory purpose as Government Emergency Ordinance No 44/2020, which extends the term of office of elected local representatives due to the COVID-19 pandemic. There is a genuine legislative parallelism which affects the principle of legal certainty in its component relating to the quality of the law. Such situations create legal uncertainty as to how citizens would adapt their behaviour in relation to the same rule contained in different acts.

Moreover, the legislation complained of appears as a rule applicable to a single individual case, namely the 2020 local elections, although the primary rule must relate to situations of a general nature.

II. Having examined the objections of unconstitutionality, the Court held that whenever there is an overlap between various regulatory solutions or hypotheses contained in two or more articles or laws, there is a legislative parallelism, contrary to Article 1 (5) of the Constitution. If a law having the same regulatory purpose as a legislative act in force does not contain any provision relating to the settlement of the conflict between those legislative acts, there is a situation of legislative instability and inconsistency, with negative consequences for the application of the law to specific cases.

By comparing the legislative content of Articles 1 to 3 of Government Emergency Ordinance No 44/2020 with that of the contested law, the Court held that the two legislative acts had the same regulatory purpose, namely the extension of the terms of office of the authorities of the local public administration. The differences between them consist of two aspects, namely the date from which they are extended and the date until which those mandates are extended, as well as the authority determining the date of the elections. Thus, the Emergency Ordinance regulates the fact that the date from which the terms of office of the local authorities are to be extended is the date on which they cease as a result of their expiry, and the date until which they are extended shall be the date on which the new local authorities take over the mandates resulting from the elections, but no later than 31 December 2020. By contrast, the contested law provides that those terms of office are to be extended as from the date of termination of the state of emergency for a period not exceeding 6 months. At the same time, the Emergency Ordinance provides that the date of the elections is to be determined by decision of the Government, whereas, according to the contested law, the date of the 2020 local elections is determined by organic law.

The Court has held that there is legislative parallelism both where identical rules are applied in a particular sphere of social relations and where the same issue is regulated differently, as it has been done in the present case. Therefore, two public authorities cannot concurrently regulate one and the same situation in a particular sphere of social relations.

Since the contested law did not expressly repeal the contrary texts of Government Emergency Ordinance No 44/2020 and does not contain any correlation to the Ordinance, it disregards the mandatory requirements for the adoption of a legislative act, compliance with which is necessary to ensure the systematisation, unification and coordination of legislation.

The law creates a legislative parallelism, prohibited by Article 16 of Law No 24/2000, which leads to situations of legislative inconsistency and instability. The situation of legislative inconsistency is all the more evident since, at the time of adoption of the law in question, the draft law approving Government Emergency Ordinance No 44/2020 was under parliamentary procedure and Parliament was able to decide on it on the basis of Articles 61 (1) and 115 (7) of the Constitution.

Under Article 147 (1) of the Basic Law, it is for the Parliament to declare that the legislative process has been automatically terminated, following a declaration that the law is unconstitutional, in its entirety.

III. For all these reasons, by unanimity, the Court upheld the objection of unconstitutionality and found unconstitutional the Law on the extension of the terms of office of local public administration authorities.

Decision No 242 of 3 June 2020 on the objection of unconstitutionality of the Law on the extension of the terms of office of local public administration authorities, published in Official Gazette of Romania, Part I, No 503 of 12 June 2020.