

Decision no. 312 of 9 May 2018
concerning the objection of unconstitutionality relating to the provisions of the Law for the approval Government Emergency Ordinance no.85/2016 amending Government Emergency Ordinance no.23/2008 on fisheries and aquaculture
Published in Official Gazette of Romania, Part I, no. 581 of 9 July 2018

Summary

I. As grounds for the objection of unconstitutionality, the President of Romania pointed out that the impugned law was adopted, pursuant to Article 75 and Article 76 (2) of the Constitution, as an ordinary law, although its normative content contains provisions which fall within the regulatory remit of organic laws (such as offences and penalties, and the general legal regime of property). The violation of the principle of bicameralism has also been invoked, as the Chamber of Deputies, as decision-making chamber, adopted the Law approving the Emergency Government Ordinance no.85/2016 with 21 amendments, many of which generate major differences in the content of versions adopted by the two chambers.

The President of Romania argued that the direct award of concessions, covered by Article I point 7 of the impugned law affects the public interest by eliminating the possibility of submitting more tenders and obtain the highest royalty as results of the competition between bidders.

Article I (12) of the law subject to constitutional review introduces a new paragraph in Article 23 of Government Emergency Ordinance no. 23/2008, according to which staff of hunting organisations are empowered to sanction the acts constituting infringements and to ascertain the perpetration of criminal offences pertaining to fishery. Even though penalties may be imposed, pursuant to Article 15 (2) of Government Ordinance no. 2/2001 on the legal status of infringements, on the basis of a special law, by staff employed by legal entities governed by private law, their empowerment to ascertain the perpetration of criminal offences is contrary to Article 61 of the Code of Criminal Procedure.

II. Having examining the objection of unconstitutionality, the Court held that the area of organic laws was clearly delimited by the text of the Constitution, and it must be interpreted strictly. The Court found that the impugned law is a law for approval of Government Emergency Ordinance no.85/2016, which regulates the legal regime of certain plots of land on which fishing facilities are located, thereby regulating in areas reserved for organic laws. Also the concession regime pertains to the field of organic law, and the impugned law regulates the concession of plots of land on which there are fishing facilities.

As regards land belonging to the public domain of the State, as it is clear from Article 136 (4) of the Constitution, the statutory regulation of the concession of property can only be governed at the level of organic law. In conclusion, since the provisions of Article I (7) of the impugned law regulate in the field of the public property concession, the Court found that the mentioned law should have been adopted as an organic law, in accordance with Article 76 (1) of the Constitution.

Moreover, the entire issue of the privatisation of fishing companies and fishing facilities belongs to the area of organic laws, and the conditions of administration, concession or rental of public property must also be laid down by organic law.

In its case-law, the Court has held that regulation in an area which belongs to organic laws, by adopting a specific derogatory or special law, must comply with the provisions of Article 76 (1) of the Constitution, irrespective of the voting majority in the two Chambers of Parliament. This law was voted by the majority of the Members present in the Chamber of Deputies, a majority accepted only for ordinary laws.

In conclusion, the Law for approval of Government Emergency Ordinance no. 85/2016 amending and supplementing Government Emergency Ordinance no. 23/2008 on fisheries and aquaculture should have been adopted and voted on as an organic law.

With regard to the principle of bicameralism, the Court found that the amendments and additions that the Chamber of Deputies had made to the legislative proposal adopted by the first chamber referred relate to the matter under consideration by the initiator, namely the approval of Government Emergency Ordinance no.85/2016. However, there is a major content difference between the two versions of the adopted law with regard to the legal regime of the plots of land on which the state's public and private property facilities are located. The Court found that the amendments and additions made by the Chamber of Deputies do not maintain the overall conception of the law, by laying down legislative solutions which depart from the version adopted by the Senate and the objectives pursued by the legislative initiative (approval without amendments and additions of Government Emergency Ordinance no.85/2016).

In conclusion, the Court held that the provisions of Article 75, in conjunction with those of Article 61 (2) of the Constitution, concerning the principle of bicameralism, have been violated and has not considered it necessary to analyse also the other criticisms of unconstitutionality.

III. For all these reasons, the Court upheld the objection of unconstitutionality and found that the Law for the approval of Government Emergency Ordinance no.85/2016 amending and supplementing Government Emergency Ordinance no.23/2008 on fisheries and aquaculture is unconstitutional as a whole.