

***Decision No 723 of 7 October 2020 on the objection of unconstitutionality of the provisions of the Law supplementing Law No 53/2003 — the Labour Code, published in Official Gazette of Romania, Part I, No1242 of 16 December 2020***

## **Summary**

**I. As grounds for the objection of unconstitutionality**, it was stated that the Law supplementing Law No 53/2003 — the Labour Code establishes a legislative parallelism, contrary to the mandatory provisions of Article 16 of Law No 24/2000 on legislative technique rules for drafting legislative acts, which infringes Article 1 (3) and (5) of the Constitution on the values of the rule of law and the principles of legality and legal certainty.

Thus, the regulatory measures overlap with those already in force, contained in Article XI-XIII of Government Emergency Ordinance No 30/2020 amending certain legislative acts and laying down measures in the field of social protection in the context of the epidemiological situation resulting from the spread of the coronavirus SARS-CoV-2, published in Official Gazette of Romania, Part I, No 231 of 21 March 2020. Although the legislator did not act to eliminate legislative parallelism, it did not expressly repeal those existing rules, which have virtually the same regulatory purpose.

**II. Having examined the objection of unconstitutionality**, the Court observed that, from the point of view of the subject matter of the legislation, the Law under consideration and Government Emergency Ordinance No 30/2020 contain identical legislative solutions, namely the grant of an allowance paid from the unemployment insurance budget amounting to 75 % of the basic salary corresponding to the position occupied, but not more than 75 % of the average gross earnings used to establish the State social security budget in force, for the duration of the maintenance of the status of siege or the state of emergency.

However, the difference between these rules concerns their action over time. Thus, the measure established by Article XI (1) of Government Emergency Ordinance No 30/2020 refers to a limited period of time, relating to the “period of the state of emergency established by Decree No 195/2020”.

Subsequently, Article 24 of Law No 55/2020 on certain measures to prevent and combat the effects of the COVID-19 pandemic (published in the Official Gazette of Romania, Part I, No 396 of 15 May 2020) extends the applicability of Government Emergency Ordinance No 30/2020 “for all areas of activity in which restrictions are maintained until their lifting, but no later than 31 December 2020”.

Unlike Government Emergency Ordinance No 30/2020, the contested law provides for measures of the same nature, but without a time limit, since those measures are included in their own legislation in the matter — the Labour Code. Therefore, the same legislative solution contained in Government Emergency Ordinance No 30/2020, but for a limited period of time, attains generality, universality and legal stability in the relevant framework law.

Thus, Government Emergency Ordinance No 30/2020 relates strictly to “the context of the epidemiological situation caused by the spread of the coronavirus SARS-CoV-2”, and none of the measures adopted can be applied outside that strict context. On the other hand, the premise of applying the measure provided for in Article 1 53 (1) of the contested law refers generically to the situation of temporary suspension and/or reduction of activity as a result of the decree on the state of siege or the state of emergency. The contested law does not even set out, by way of example, any specific situation giving rise to that measure, but lays down, in general terms, only the condition of the establishment of a state of siege or a state of emergency. Its scope is thus general, universal.

Moreover, also from the point of view of the comparative scope of the two legislative acts, a further difference is evident, namely, on the one hand, that the contested law does not also refer to the state of alert (as a state established after the state of emergency and which leads to the maintenance of restrictions on economic activities) and, on the other hand, that it also expressly refers to the state of siege, which is not specifically regulated as regards the protection measures applicable to employees.

The Court found that there is no legislative parallelism between these rules, as the criticised law will apply for the future, for possible situations in which a siege or state of emergency will be declared. On the other hand, Government Emergency Ordinance No 30/2020 was adopted in the light of a state of emergency already existing in concrete terms. The only common element as hypothesis-situation between the two legislative acts is the state of emergency itself, but, from a temporal point of view, they cannot overlap, since, on the one hand, the law under examination, after the promulgation, will not have retroactive effect and, on the other hand, Government Emergency Ordinance No 30/2020 cannot ultra-activate.

The fact that the legal assumptions for the application of Government Emergency Ordinance 30/2020 were extended until 31 December 2020, beyond the end of the state of emergency and to other post-emergency situations (i.e. the state of alert still in place and still in force), has created confusion of a legislative parallelism, which is not true, since the situations-premises specific to each of the two legislative acts do not overlap over time.

The Court held that there was no need to include in the contested law an express rule repealing Government Emergency Ordinance No 30/2020, its repeal having been implicit with effect from 1 January 2021.

**III. For all these reasons**, by a majority of votes, the Court dismissed as unfounded the objection of unconstitutionality and found that the Law supplementing Law No 53/2003 — the Labour Code was constitutional in the light of the criticisms made.