

ARGUMENTS FOR DECLARING THE UNCONSTITUTIONALITY OF PARAGRAPH (1) OF THE SOLE ARTICLE OF THE GOVERNMENT EMERGENCY ORDINANCE NO. 4/2012

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Abstract

The objective of this study is to present our arguments on the unconstitutionality of para. (1) of the sole article of the Government Emergency Ordinance no. 4/2012 on certain temporary measures to strengthen the regulatory framework necessary for the application of certain provisions of Title VII of the Law no. 247/2005 on the reform in the fields of property and justice, as well as certain related measures. Considering that the deprivation of the main and accessory effects of the right of ownership, guaranteed by the Romanian Constitution and established by law, requires an express regulation and cannot be a consequence of the interpretation of an unclear rule, we consider that the provisions of para. (1) of the sole Article of the aforementioned normative act does not comply with the constitutional requirements of precision, clarity and predictability, as they are liable to be applied contrary to the constitutional provisions protecting both the separation and balance of state powers and the main and accessory effects of the right to property.

Keywords: unconstitutionality, GEO no. 4/2012, Law no. 247/2005, property rights.

JEL Classification: K11, K23

1. Introductory considerations

According to the provisions of the sole Article of the Government Emergency Ordinance no. 4/2012 on temporary measures to strengthen the regulatory framework necessary for the application of certain provisions of Title VII Regime for the determination and payment of compensation for wrongfully taken properties of Law no. 247/2005 on the reform in the fields of property and justice, as well as certain related measures and for the amendment of Art. III of Government Emergency Ordinance no. 62/2010 for the amendment and completion of Law No. 221/2009 on political convictions and administrative measures similar to them, pronounced between 6 March 1945 and 22 December 1989, and for the suspension of the application of certain provisions of Title VII of Law no. 247/2005 on reform in the areas of property and justice, as well as certain related measures (hereinafter “GEO no. 4/2012”), a legislative act that entered into force on 15.03.2012: “(1) On the date of entry into force of this Emergency Ordinance, **it shall be suspended until May 15th, 2013, the issuance of compensation titles, conversion titles, as well as the procedures regarding the valuation of the properties for which compensation is granted, provided for in Title VII ‘Regime of determination and payment of compensation related to wrongfully taken properties’ of Law no. 247/2005 on the reform in the fields of property and justice, as well as certain adjacent measures, published in the Official Gazette of Romania, Part I, no. 653 of 22 July 2005, as subsequently amended and supplemented. (o.u.) (2) During the period referred to in paragraph (1), the staff of the National Authority for Property Restitution shall draw up and keep up to date a record of the compensation files legally registered with it, register new compensation files, analyse the existing documentation in these files with a view to the legal settlement of compensation claims and take the necessary measures for the purpose of inventorying and archiving the compensation files submitted by the entitled persons.**”³.

As we will mention below, we consider that the provisions of para. (1) are unconstitutional in relation to the provisions of Art. 1 para. (4) and Art. 44 para. (1) in conjunction with the

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³ Please see <https://lege5.ro/Gratuit/gmytgmztgi/ordonanta-de-urgenta-nr-4-2012-privind-unele-masuri-temporare-in-vederea-conso-lidarii-cadrului-normativ-necesar-aplicarii-unor-dispozitii-din-titlul-vii-regimul-stabilirii-si-platii-despagubirilor-afe> [last access: 15.05.2021].

provisions of Art. 1 para. (3) and (5) of the Romanian Constitution.

2. General considerations regarding the exceptions of unconstitutionality

The exception of unconstitutionality is a procedural means through which the conformity of certain legal provisions with the Romanian Constitution is analysed, under the law.

According to Article 29 paras. (1) - (3) of Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished, as subsequently amended and supplemented: *“(1) The Constitutional Court shall decide on exceptions raised before the courts or commercial arbitration courts concerning the unconstitutionality of a law or ordinance or of a provision of a law or ordinance in force, which is related to the resolution of the case at any stage of the litigation and whatever its subject matter. (2) The exception may be raised at the request of one of the parties or, of its own motion, by the court or commercial arbitration court. The exception may also be raised by the prosecutor before the court in cases in which he participates. (o.u.) (3) Provisions found to be unconstitutional by a previous decision of the Constitutional Court shall not be subject to the exception.”*⁴

According to the above-mentioned provisions, in conjunction with Article 146 letter d) of the Romanian Constitution, and with the case law of the Constitutional Court of Romania (hereinafter “CCR”), the following cumulative conditions for the admissibility of the exception of unconstitutionality can be inferred:

- the exception must be invoked before a court of law or of a commercial arbitration court;
- the exception must relate either to a law or ordinance or to a provision of a law or ordinance in force at the time the application is made;
- the exception is raised by one of the parties to the dispute;
- the exception relates to a provision which has not been declared unconstitutional by the date of the application;
- the exception relates to legal provisions which are relevant to the resolution of the case in which the objection of unconstitutionality was raised⁵;
- the exception of unconstitutionality must be reasoned, indicating and arguing the violation of constitutional provisions.

3. Relevant legal provisions

On the one hand, the provisions of para. (1) of the sole Article of GEO no. 4/2012 provides that: *“On the date of entry into force of this Emergency Ordinance, it shall be suspended until May 15th, 2013, the issuance of compensation titles, conversion titles, as well as the procedures regarding the valuation of the properties for which compensation is granted, provided for in Title VII ‘Regime of determination and payment of compensation related to wrongfully taken properties’ of Law no. 247/2005 on the reform in the fields of property and justice, as well as certain adjacent measures, published in the Official Gazette of Romania, Part I, no. 653 of 22 July 2005, as subsequently amended and supplemented.”* (o.u.).

⁴ Available online at <https://www.ccr.ro/legea-nr-47-1992/> [last access: 15.05.2021].

⁵ The connection between the provisions of paragraph (1) of the sole Article of GEO No. 4/2012 with the resolution of the case in question, must exist, for example, by the fact that, with the entry into force of the provisions of the aforementioned act, the obligation to issue the compensation and payment order would have been suspended, although this obligation had been established by a final and enforceable court decision. With the entry into force of the provisions of paragraph (1) of the sole Article of GEO no. 4/2012, the execution of the respective court decision should have been suspended until May 15th, 2013. Together with the entry into force, on 20.05.2013, of the provisions of Law no. 165/2013 on measures for the completion of the process of restitution, in kind or by equivalent, of properties wrongfully taken over during the communist regime in Romania (hereinafter referred to as “Law no. 165/2013”), the procedure for granting the compensation to which the person concerned was entitled under the final and enforceable judgment should have been completed in accordance with the provisions of Article 41 paragraph (1) of Law no. 165/2013. Thus, although the judgment should have been enforced within 30 days of its finality, and the damages should have been paid in a single instalment, in accordance with the provisions applicable before the entry into force of Law no. 165/2013, in practice they were awarded in instalments, belatedly, and the injured parties were therefore entitled to the updating of the claim and the payment of penalty interest.

On the other hand, the provisions of Art. 1 paras. (3), (4) and (5) of the Romanian Constitution⁶ establish the following: “(3) Romania is a democratic and social state governed by the rule of law, in which human dignity, the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism are supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989 and are guaranteed. (4) The State shall be organised according to the **principle of the separation and balance of powers - legislative, executive and judicial** - within the framework of constitutional democracy. (o.u.). (5) In Romania, respect for the Constitution, its supremacy and the laws is mandatory”.

Also, the provisions of Article 44 para. (1) of the Romanian Constitution provide as follows: “**The right to property, as well as claims against the State, shall be guaranteed. The content and limits of these rights shall be established by law.** (o.u.)”.

4. Purpose of the GEO no. 4/2012 provisions and their integration into the legislation in force

According to the preamble⁷ of GEO no. 4/2012, the suspension for a limited period of time of the procedure for issuing compensation titles, conversion titles, as well as the procedures for the valuation of the properties for which compensation is granted, served as an aim for the adoption of an institutional and legal mechanism to respect the right of the persons entitled to compensation, namely: “*In the context of the implementation of the pilot judgment delivered by the European Court of Human Rights in the case of Maria Atanasiu and Others v. Romania, having regard to the urgency and necessity of adopting measures to give effect to the right to compensation resulting from the application of the laws on property restitution, so that the persons entitled may benefit from the award of certain, anticipated (o.n. “previzibile” in Romanian) and predictable compensation, in accordance with the practice of the European Court of Human Rights, given the fact that there is currently no institutional and legal mechanism to give concrete expression to the right of persons entitled to compensation, it is necessary to grant a period of time for the Romanian State to identify financial solutions for the continuation of the compensation process, (...) taking into account the fact that failure to adopt this emergency ordinance would make it impossible to maintain a balanced budget and, implicitly, to comply with the domestic and international commitments undertaken by the Romanian Government, including the level of the budget deficit*”⁸.

According to the Judgment of the European Court of Human Rights of 12 October 2010 in the case of *Maria Atanasiu and Others v. Romania*, published in the Official Gazette of Romania no. 778 of 22.11.2010, Part I, the Romanian State was under the following obligation: “*Holds that the respondent State must take measures to ensure effective protection of the rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in the context of all the cases similar to the present case, in accordance with the principles enshrined in the Convention (see paragraphs 229-236 above). These measures must be put in place within eighteen months from the date on which the present judgment becomes final.*”⁹.

Interestingly, the provisions of GEO no. 4/2012 suspended the issuance of compensation titles, conversion titles, as well as the procedures concerning the valuation of properties for which compensation was awarded, for a period of 6 months, starting from 15.03.2012 which is the date of entry into force of GEO no. 4/2012.

Subsequently, GEO no. 4/2012 was approved by Law no. 117/2012 *approving Government Emergency Ordinance no. 4/2012 on temporary measures to strengthen the regulatory framework necessary for the application of certain provisions of Title VII Regime for the determination and payment of compensation for wrongfully taken properties of Law no. 247/2005 on the reform in the*

⁶ Please see online at <https://www.ccr.ro/constitutia-romaniei/> [last access: 15.05.2021].

⁷ Available at <http://www.cdep.ro/proiecte/2012/100/30/8/oug199.pdf> [last access: 15.05.2021].

⁸ Please see <http://www.cdep.ro/proiecte/2012/100/30/8/oug199.pdf>, pp. 1-2 [last access: 15.05.2021].

⁹ Please see <http://hudoc.echr.coe.int/eng?i=001-100989> [last access: 15.05.2021].

fields of property and justice, as well as certain related measures and for the amendment of Art. III of Government Emergency Ordinance no. 62/2010 for the amendment and completion of Law No. 221/2009 on political convictions and administrative measures similar to them, pronounced between 6 March 1945 and 22 December 1989, and for the suspension of the application of certain provisions of Title VII of Law no. 247/2005 on reform in the areas of property and justice, as well as certain related measures¹⁰ (hereinafter “Law no. 117/2012”).

We underline that the amendment ordered by Law no. 117/2012 was to extend the 6-month suspension by another 8 months, i.e. until 15.05.2013.

Thus, the original form of GEO no. 4/2012 was as follows: “On the date of entry into force of this Emergency Ordinance, **it shall be suspended for a 6-month period**, the issuance of compensation titles, conversion titles, as well as the procedures regarding the valuation of the properties for which compensation is granted, provided for in Title VII ‘Regime of determination and payment of compensation related to wrongfully taken properties’ of Law no. 247/2005 on the reform in the fields of property and justice, as well as certain adjacent measures, published in the Official Gazette of Romania, Part I, no. 653 of 22 July 2005, as subsequently amended and supplemented.” (o.u.).

Therefore, GEO no. 4/2012 initially provided for a 6-month suspension, i.e. from 15.03.2012 to 15.09.2012, and subsequently, by the amendment introduced by Law no. 117/2012, the suspension was extended until 15.05.2013.

5. Unconstitutionality of para. (1) of the sole article of GEO no. 4/2012 by reference to the provisions of art. 1 para. (4) of the Romanian Constitution

By virtue of the principle of the separation and balance of powers in the state, the legislature or the executive (in the exercise of legislative delegation) has no right to interfere in the process of achieving justice.

The legislature’s right of control is exercised over the way in which the organs of the judiciary operate, without, however, being able to prevent the courts from exercising their powers to administer justice as provided for in Article 124 of the Constitution¹¹.

The fact that the effect of GEO no. 4/2012 is to suspend any procedure for the enforcement of a final court judgment which establishes the obligation to issue compensation titles and, implicitly, compensation is an interference by the Government in the administration of justice, with the consequence of upsetting the constitutional balance between those authorities.

Only the judicial authority has the power to suspend the execution of a judgment, under the conditions laid down by the legislature in the exercise of its prerogatives under Article 126 para. (2) of the Constitution¹², according to which the jurisdiction¹² of the courts and the procedure for the trial of cases are provided for only by law.

Please note that the Constitutional Court’s Decision no. 6/1992 ruled as follows: “By virtue of the principle of the separation of powers in the State, the Parliament has no right to interfere in the process of achieving justice. Parliament’s right of control is also exercised over the way in which the organs of the judiciary operate, and to this end it lays down the rules governing the conduct of judicial business. According to the Constitution, however, this right can only be exercised with respect for the authority of the judiciary and without preventing the courts from exercising their mission, laid down in Article 125 of the Constitution, to achieve justice. **Any interference by the legislature which would make it impossible for the judicial authority to function, even if only in relation to a certain category of cases and for a certain period of time, would have the effect of upsetting the constitutional balance between those authorities. Therefore, a legal provision suspending the course of the proceedings or the execution of final**

¹⁰ The following of the legislative process of the Law no. 117/2012 is available at http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12723 [last access: 15.05.2021].

¹¹ Please see <https://www.ccr.ro/constitutia-romaniei/> [last access: 15.05.2021].

¹² *Idem*.

judgments relating to certain specific cases is unconstitutional.¹³ (o.u.).

The considerations of the CCR's Decision no. 6/1992 are related to the provisions of Article 5 of the Law on measures prior to the regulation of the legal situation of certain real estates transferred to state ownership after 23 August 1944, according to which: "*Pending the adoption of the future law, the trial of any kind of lawsuits concerning the property covered by Article 1 of the law in question shall be suspended ex officio, as well as the execution of final judgments pronounced on such property*".

The unconstitutionality of legislative provisions which reveal an interference of the legislative power in the act of dispensing justice by suspending the enforceable effects of a final court judgment was also held in the CCR's Decision no. 50/2000, as follows: "*The Court also finds that a legal provision prohibiting - even if only temporarily - the enforcement of a judgment would constitute interference by the legislature in the process of administering justice, contrary to the constitutional principle of the separation of powers in the State*"¹⁴.

The considerations of the CCR's Decision no. 6/1992 were similarly taken into account in other Decisions of the Constitutional Court: Decision no. 259/2003¹⁵, Decision no. 388/2003¹⁶, Decision no. 972/2012¹⁷ and Decision no. 269/2014¹⁸, which sanctioned interference by the legislative or executive power in the process of achieving justice, by adopting legal provisions suspending the enforceable effects of final court decisions.

Regarding this issue, it is also important to mention that the European Court of Human Rights has established in its practice that, by virtue of the principle of the separation of powers in the state, Parliament does not have the right to interfere in the process of achieving justice. The European Court of Human Rights has also consistently held that the enforcement of judgments is an integral part of the civil process and that the obligation to ensure the enforcement of a judgment against the State is primarily incumbent on the State authorities from the date on which the judgment becomes binding and enforceable.

The provisions of para. (1) of the sole Article of GEO no. 4/2013 are similar in terms of their effects to the original ones declared unconstitutional by CCR's Decision no. 6/1992, in both acts, the intervention of the legislator being aimed at modifying, suspending or extinguishing the effects of final and irrevocable court decisions, which is why the reasoning of the aforementioned decisions must also be applied by analogy.

Irrespective of the way in which the legal rule in GEO no. 4/2012 is expressed, "[o]n the date of entry into force of this emergency ordinance, the issuance of compensation titles is suspended until 15 May 2013 (...)", its effects are in reality also to suspend the execution of court judgments which definitively establish the obligation to issue compensation titles.

The effects of the adoption of those provisions make it impossible to enforce a final and irrevocable judgment establishing the right to a compensation order, and it may be held that the effect of GEO no. 4/2012 is to suspend the enforcement of a final judgment, a solution which is moreover in line with the case-law built around the effects of those unconstitutional provisions.

The suspension of the issuance of titles is equivalent to a temporary suspension of the enforcement of a final judgment, thus being an act by which the Government has disregarded the effects enjoyed by a final and irrevocable judgment, namely its enforceability. Even the assertion that GEO no. 4/2012 constitutes a measure capable of strengthening the finality of the judicial

¹³ Published in the Official Gazette of Romania, Part I, no. 48 of March 4th, 1993, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/21110> [last access: 15.05.2021].

¹⁴ Published in the Official Gazette of Romania, Part I, no. 277 din June 20th, 2000, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/22887> [last access: 15.05.2021].

¹⁵ Published in the Official Gazette of Romania, Part I, no. 540 of July 28th, 2003, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/45286> [last access: 15.05.2021].

¹⁶ Published in the Official Gazette of Romania, Part I, no. 604 of August 13th, 2014, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/160649> [last access: 15.05.2021].

¹⁷ Published in the Official Gazette of Romania, Part I, no. 800 of November 28th, 2012, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/143201> [last access: 15.05.2021].

¹⁸ Published in the Official Gazette of Romania, Part I, no. 513 of July 9th, 2014, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/159744> [last access: 15.05.2021].

process is a disregard of the effects enjoyed by a final and enforceable judgment, since the enforceable effect must not be approved or confirmed by acts of exercise of legislative or executive power.

In the light of the foregoing, it is clear that the Parliament or the Government cannot replace the judiciary, i.e. it cannot resolve, by its own decisions, disputes which fall within the jurisdiction of the courts. Nor can the legislator amend, suspend or extinguish the effects of final and irrevocable judgments.

It should be noted that, in line with the reasoning of the ECHR in *Burdov v. Russia*¹⁹, the complexity of the enforcement procedure or of the budgetary system cannot release the State from its obligation under the European Convention on Human Rights to guarantee to every person the right to have a binding and enforceable judgment enforced within a reasonable time, nor can the lack of funds or other resources be invoked as an excuse for non-execution of the obligation established in the judgment. States Parties must organise their legal system in such a way that the competent authorities enforce their obligations in this regard.

Therefore, we consider that the above-mentioned legal provisions are constitutional only if they apply to claims for the issuance of compensation titles, conversion titles, and proceedings concerning the valuation of properties for which compensation is awarded which are not supported by the enforceable effects of a court judgment (claims for compensation addressed to the National Authority for Property Restitution²⁰ and in respect of which no court action has been brought).

6. Unconstitutionality of para. (1) of the sole article of GEO no. 4/2012 by reference to the provisions of art. 1 paras. (3) and (5) in conjunction with the provisions of art. 44 para. (1) of the Romanian Constitution

As regards the unconstitutionality of para. (1) of the sole Article of GEO no. 4/2012 by reference to the provisions of Art. 1 paras. (3) and (5) in conjunction with the provisions of Art. 44 para. (1) of the Romanian Constitution, we will first present (i) the constitutional provisions concerned and their effects, and afterwards (ii) the specific criticisms of unconstitutionality.

The provisions of Art. 1 para. (5) of the Fundamental Law establishes a general obligation imposed on all subjects of law, including the legislative authority which, in its legislative activity, must respect the Constitution and ensure the quality of legislation.

The principle of mandatory observance of laws is enshrined both in Art. 1 para. (5) of the Romanian Constitution, as well as in most of the European constitutions, but in order to be respected by its addressees, the law must meet certain requirements of precision, clarity and predictability.

In this regard, the Court notes that, where a legal text may give rise to different interpretations, it is obliged to intervene whenever those interpretations give rise to infringements of constitutional provisions²¹.

The requirement of foreseeability supposes that the legal rule must be stated with sufficient precision to enable the citizen to control his conduct, to be able to foresee, to a reasonable extent in the circumstances of the case, the consequences which may result from a particular act, even if he/she must seek expert advice on the matter.

The obligation to comply with the law also implies, as already stated, a positive obligation on the legislator to regulate by clear and precise texts, the clarity of the law being assessed in the light of normal legal experience, and the rule must be foreseeable and accessible.

In this regard, according to Article 8 para. (4) first thesis of the Law no. 24/2000 *on the rules of legislative technique for the drafting of normative acts* (hereinafter referred to as "*Law no.*

¹⁹ Please see ECHR, Judgment of May 7th, 2002, in Case *Burdov v. Russia*, available at <http://hudoc.echr.coe.int/eng?i=001-60449> [last access: 15.05.2021].

²⁰ Please see <http://www.anrp.gov.ro/> [last access: 15.05.2021].

²¹ Please see the CCR's Decision No 1092/2012, published in the Official Gazette of Romania, Part I, no. 67 of January 31st, 2013, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/145081> [last access: 15.05.2021].

24/2000”): “*The legislative text must be formulated clearly, fluently and intelligibly, without syntactical difficulties and obscure or equivocal passages. (...)*” (o.u.).

Further, according to Art. 36 para. (1) of Law no. 24/2000: “*Normative acts must be drafted in a specific normative legal language and style, concise, sober, clear and precise, excluding any ambiguity, with strict compliance with grammatical and spelling rules*”.

Therefore, although the rules of legislative technique do not have constitutional value, the Constitutional Court²² has found in its case-law that, by regulating them, the legislature has imposed a series of mandatory criteria for the adoption of any legislative act, compliance with which is necessary in order to ensure the systematisation, unification and coordination of legislation, as well as the appropriate legal content and form for each legislative act. Compliance with these rules thus helps to ensure that legislation complies with the principle of the certainty of legal relations, with the necessary clarity and predictability.

These qualitative requirements of the law have often been highlighted in the rich case law of the European Court of Human Rights and are also reflected in the current case law of the Constitutional Court of Romania²³.

As we can see, in close connection with the general principle of legality laid down in the aforementioned constitutional text, the European Court of Human Rights has ruled in its case law on the importance of ensuring the accessibility and predictability of the law, including in terms of its stability, establishing a series of benchmarks that the legislator must take into account to ensure these requirements²⁴.

Moreover, according to its case law, the Constitutional Court has established the possibility and the obligation to intervene, whenever it is seized, if a legal text may generate interpretations that may prejudice constitutional provisions, without denying the constitutional role of the Parliament as the “*sole legislative authority of the country*” enshrined in Article 61 of the Constitution.

In this regard, the Court holds that²⁵, where a legal text may give rise to different interpretations, it is obliged to intervene whenever those interpretations give rise to infringements of the provisions of the Fundamental Law.

In the light of the above, we consider it necessary to analyse the provisions of para. (1) of the sole Article of GEO no. 4/2012, including from the perspective of the requirements of precision, clarity and predictability.

It is obvious that the provisions of para. (1) of the sole Article of GEO no. 4/2012 generate interpretations contrary to the principle of separation of powers in the state and those that protect and guarantee the right to property and claims on the state.

Such an interpretation of para. (1) of the sole Article of GEO no. 4/2012 is a clear evidence that these provisions are able to be applied in a manner that violates the principle of the separation of powers in the state, namely in the manner that interferes with the creditor’s (the person entitled) right to obtain the enforcement of the obligation to issue compensation titles, enshrined in a court

²² Please see the CCR’s Decision No 681/2012, published in the Official Gazette of Romania no. 477 of July 12th, 2012, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/139594> [last access: 15.05.2021].

²³ Please see, for example [last access: 15.05.2021]: *the case-law of the Romanian Constitutional Court* (Decision no. 903/2010, published in the Official Gazette of Romania no. 584 of August 17th, 2010, Part I, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/121550>, Decision no. 743/2011, published in the Official Gazette of Romania, Part I, no. 579 of August 16th, 2011, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/130799>, Decision no. 196/2013, published in the Official Gazette of Romania, Part I, no. 231 of April 22nd, 2013, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/147213>) and *the case-law of the European Court of Human Rights* (Judgment dated November 15th, 1996, issued in Case no. 17862/91, *Cantoni v. France*, para. 29, available at <http://hudoc.echr.coe.int/eng?i=001-62627>, Judgment dated November 25th, 1996, issued in Case no. 17419/90, *Wingrove v. United Kingdom*, para. 40, available at <http://hudoc.echr.coe.int/eng?i=001-58080>, Judgment dated May 4th, 2000, issued in Case no. 28341/95, *Rotaru v. Romania*, para. 55, available at <http://hudoc.echr.coe.int/eng?i=001-58586>, Judgment dated November 9th, 2006, issued in Case no. 64772/01, *Leempoel & S.A. ED. Cine Revue împotriva Belgiei*, para. 59, available at <http://hudoc.echr.coe.int/eng?i=001-77921>).

²⁴ Please see the Judgment dated November 6th, 1980, issued in Case no. 6538/74, *Sunday Times v. United Kingdom*, available at <http://hudoc.echr.coe.int/eng?i=001-57583>, as well as the Judgment dated May 20th, 1999, in Case no. 25390/94, *Rekvenyi v. Hungary*, available at <http://hudoc.echr.coe.int/eng?i=001-58262> [last access: 15.05.2021].

²⁵ Please see the CCR’s Decision No 1092/2012, published in the Official Gazette of Romania, Part I, no. 67 of January 31st, 2013, available at <http://legislatie.just.ro/Public/DetaliiDocumentAfis/145081> [last access: 15.05.2021].

decision.

In practice, this interpretation also infringes the right to private property, since para. (1) of the sole Article of GEO no. 4/2012 provides for the suspension of the issuance of compensation titles - an administrative operation carried out in execution of the law - but not for the suspension of the obligation to issue such titles, which arises from a court judgment.

As mentioned above, the text of the law does not distinguish whether the suspensive effect applies only to applications for the issuance of compensation titles, conversion titles, and procedures for the valuation of real estate for which compensation is awarded which are not supported by the enforceable effects of a court judgment (applications for compensation addressed to the National Authority for the Restitution of Property and in respect of which no court action has been brought) or also to court judgments containing this obligation, in which case it would be manifestly unconstitutional.

The unclear nature of the contested legal provisions leads to the deprivation of the creditor (the person entitled) of the accessory rights to the claim (penalty interest and/or remuneration) which could be levied in the context of enforcement, in the event that the debtor (the state, through the National Authority for the Restitution of Property) does not fulfil the obligation laid down by the judgment. More specifically, the National Authority for Property Restitution could take advantage of the suspensive effect of the legal provisions subject to constitutionality review in order to refuse to enforce a final court judgment, thus flagrantly infringing the property rights of individuals.

Therefore, the provisions of para. (1) of the sole Article of GEO no. 4/2012, being unclear, are interpreted in practice in a manner contrary to the rights guaranteed by the Constitution, namely in the sense of suspending the enforceability of a final court judgment with the obvious consequence of depriving the creditor of the accessory rights provided for by law and which he/she must benefit from in the event of non-performance by the debtor of the obligation contained in the enforceable title.

We therefore consider that the deprivation of the main and accessory effects of the right of ownership, guaranteed by the Romanian Constitution and established by law, requires express regulation and cannot be a consequence of the interpretation of an unclear rule.

Thus, we consider that the provisions of para. (1) of the sole Article of GEO no. 4/2012 does not comply with the constitutional requirements of precision, clarity and predictability, as they are able to be applied contrary to the constitutional provisions that protect both the separation and balance of state powers and the main and accessory effects of the right of property.

7. Concluding remarks

Therefore, regardless of the wording of para. (1) of the sole Article of GEO no. 4/2012, we cannot ignore the fact that the effects it produces are similar to the provisions declared unconstitutional by the Romanian Constitutional Court decisions above mentioned, so that we are in a situation of violation of the provisions of Article 1 para. (4) of the Romanian Constitution, republished, since there is an interference of the legislature in the process of achieving justice.

We consider that there will certainly be people who have asked and will ask the courts of law to admit the requests made in the cases examined by those courts and, consequently, to order the referral to the Constitutional Court of Romania for a decision on the unconstitutionality of para. (1) of the sole Article of the GEO no. 4/2012. And we strongly believe that for all the reasons presented above, the Constitutional Court shall declare the unconstitutionality of those provisions.

Bibliography

1. Government Emergency Ordinance no. 4/2012 *on temporary measures to strengthen the regulatory framework necessary for the application of certain provisions of Title VII Regime for the determination and payment of compensation for wrongfully taken properties of Law no. 247/2005 on the reform in the fields of property and justice, as well as certain related measures and for the amendment of Art. III of Government Emergency*

Ordinance no. 62/2010 for the amendment and completion of Law no. 221/2009 on political convictions and administrative measures similar to them, pronounced between 6 March 1945 and 22 December 1989, and for the suspension of the application of certain provisions of Title VII of Law no. 247/2005 on reform in the areas of property and justice, as well as certain related measures.

2. Law no. 24/2000 on the rules of legislative technique for the drafting of normative acts.
3. Law no. 47/1992 on the organization and functioning of the Constitutional Court.
4. The Romanian Constitution.