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**on the exception of unconstitutionality of provisions of Article 50¹ of Law
no.10/2001 regulating the legal status of certain immovable property taken by
duress between 6 March 1945 and 22 December 1989**

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Tudorel Toader	- President
Nicolae Cochinescu	- Judge
Aspazia Cojocaru	- Judge
Acsinte Gaspar	- Judge
Petre Lăzăroiu	- Judge
Ion Predescu	- Judge
Puskás Valentin Zoltán	- Judge
Augustin Zegrean	- Judge
Simona Ricu	- Prosecutor
Mihaela Senia Costinescu	- Assistant Magistrate

The case at issue is the settlement of the exception of unconstitutionality of the provisions of Article 50¹ of Law no.10/2001 regulating the legal status of certain immovable property taken by duress between 6 March 1945 and 22 December 1989, exception raised by Marina Salzmann in the File no.3.235/211/2009 of the Cluj-Napoca Trial Court –Civil Division.

Upon the roll call the parties are default, against whom the summons procedure has been lawfully carried out.

As the case is in motion, the President gives the floor to the representative of the Public Ministry, who pleads for the rejection of the exception of unconstitutionality as unfounded, based on the constant case-law of the Constitutional Court.

THE COURT,

taking into account the acts and documents in the case file, holds as follows:

Through the Interlocutory Order of 19 November 2009, delivered in the File no.3.235/211/2009, **the Cluj-Napoca Trial Court – Civil Division referred the Constitutional Court with the exception of unconstitutionality of the provisions of Article 50¹ of Law no.10/2001 regulating the legal status of certain immovable property taken by duress between 6 March 1945 and 22 December 1989**, exception raised by Marina Salzmann.

As grounds for the exception of unconstitutionality, the author considers that the impugned legal provision "violates the principle of equal rights, as for the failure to comply with the Law no.112/1995 upon conclusion of sale-purchase agreements, it only sanctions the buyer, while the same legal treatment should also apply to the seller –the Romanian State, as long as it also failed to comply with the provisions of Law no.112/1995, therefore both parties to the agreement should be sanctioned jointly and proportionally with each one's culpability, according to the shared culpability rules".

On the other hand, by the effect of Article 50¹ of Law no.10/2001, the sanction whereby a category of persons is deprived of the benefit of reimbursement of the market value of properties purchased on the grounds of Law no.112/1995 applies retroactively, because it was not provided at the time when the sale-purchase agreements were entered. The new sanction applies to certain civil relationship that were generated and that ceased to exist prior to the entry into force of Law no.1/2009 introducing Article 50¹ into Law no.10/2001, which is contrary to the provisions of Article 15 of the Constitution.

Furthermore, people who have signed sale-purchase agreements in circumvention of Law no.112/1995 are deprived of the right to get back the amount of the market value of the properties, a right that represents a receivable from the State. This measure is a way too onerous sanction, amounting to a

disguised confiscation of the property, without objective and reasonable justification, contrary to Article 44 of the Constitution.

The Cluj-Napoca Trial Court – Civil Division considers that the exception is unfounded, because the impugned legal provisions do not come against the constitutional provisions invoked by the author, i.e. they do not apply retroactively, they do not set discriminatory conditions for persons on similar legal situations and they do not infringe the right to property.

In accordance with the provisions of Article 30 paragraph (1) of Law no.47/1992, the Interlocutory Order of reference was communicated to the presidents of the two Chambers of Parliament, to the Government, as well as to the Advocate of the People, in order to express their viewpoints on the exception of unconstitutionality.

The presidents of the two Chambers of Parliament, the Government and the Advocate of the People did not communicate their viewpoints on the exception of unconstitutionality.

THE COURT,

having examined the Interlocutory Order of reference, the report drawn up by the judge-rapporteur, the prosecutor's conclusions, the impugned legal provisions, as against the provisions of the Constitution, as well as Law no.47/1992, holds as follows:

The Constitutional Court has been legally referred to and is competent, according to the provisions of Article 146 subparagraph d) of the Constitution, Article 1 paragraph (2), Articles 2, 3, 10 and 29 of Law no.47/1992, to settle the exception of unconstitutionality.

The subject matter of the exception of unconstitutionality is Article 50¹ of Law no.10/2001 regulating the legal status of certain immovable property taken by duress between 6 March 1945 and 22 December 1989, republished in the Official Gazette of Romania, Part I, no.798 of 2 September 2005, as amended and supplemented, a legal text that reads as follows: "(1) *The owners whose sale-purchase agreements, concluded in compliance with the provisions of Law no.112/1995, with subsequent amendments, were cancelled by final and irrevocable court orders, shall be entitled to reimbursement of the properties' market price, established according to the international valuation standards.*

(2) *The value of compensation provided in paragraph (1) shall be established by an expertise."*

According to the author of the exception of unconstitutionality, the impugned legal provisions contravene the constitutional provisions contained in Article 15, Article 16, Article 44 paragraphs (1) and (3) and in Article 46.

Examining the challenge of unconstitutionality, the Court holds that the impugned provisions have been subject to constitutional review before. Thus, by Decision no.1.351 of 10 December 2008, published in the Official Gazette of Romania, Part I, no.881 of 24 December 2008, and by Decision no.1.183 of 17 September 2009, published in the Official Gazette of Romania, Part I, no.727 of 27 October 2009, the Court rejected, for the reasons set forth therein, the exception of unconstitutionality of the provisions of Article 50¹ of Law no.10/2001.

In addition to the reasons substantiating the decisions rendered, the Court also states the groundlessness of the challenges in relation to the provisions of Article 15 of the Constitution, which enshrine the principle of non-retroactivity of civil law. On the application of this principle, the Court finds that the legal situation generated by the invalidated act is characterised as *facta praeterita* or *causae finite*. Thus, in case of succession in time of several normative acts, the time of abatement, i.e. when the nullity produces effects, must be distinguished from the time in relation to which is assessed the existence of the nullity cause. Both cases must be resolved according to the rule *tempus regit actum*: the nullity cause is regulated by the law in force at the time of conclusion of the civil legal act, while the effects of nullity are determined by the law in force at the time of effective annulment, which, in the hypothesis we have to consider, is the new law. Only if an act was concluded and it was effectively annulled under the same law, then it is a *causae finite*, which can no longer be affected by the new law.

Therefore, a law can govern nullity causes while other applies on effects of this civil sanction. A contrary solution would be tantamount to eliminating the principle of immediate application of the new civil law and, therefore, the ultra-activity of the old law, which cannot be allowed unless specifically provided in the new law.

Applying these principle considerations to the subject matter of the constitutional review, the Court holds that the reimbursement of the **updated price** paid by tenants whose sale-purchase agreements were concluded **in circumvent** of the provisions of Law no.112/1995, and not of the **market price** of properties, established according to the international valuation standards, as in case of sale-purchase

agreements, concluded in **compliance with** the provisions of Law no.112/1995, does not represent a new civil sanction, as alleged by the author of the exception of unconstitutionality, but exclusively an affect of nullity of the civil acts, stipulated by the new law. The Court finds that this sanction's scope is limited exclusively to legal situations with persistence over time, therefore integrated in its temporal legitimate field of application, which leads to the conclusion that the exception of unconstitutionality is unfounded.

The distinction made in the impugned legal text in terms of value of the price reimbursed to the purchaser is a consequence of the different legal regime applicable to sale-purchase agreements concluded in breach of the law. Even apart from its possible criminal connotation, such action is a civil offence, which obviously removes any possible legitimacy thereof in consideration of a right or of a liberty and, at the same time, requires establishing, in its respect, a sanctioning legal regime.

Thus, as concerns the alleged infringement of the provisions of Article 16 of the Constitution, because the impugned legal text does not equally protect the right to property acquired by former tenants on the grounds of Law no.112/1995 and the right to property acquired by evading the law, the Court finds that it is unfounded, because the principle of equal rights requires application of the same legal treatment to persons in similar legal situation. However, it is obvious that the mentioned persons find themselves in different legal situations. Thus, it is a fair solution that the first category benefits of payment of compensation as a result of judicial annulment of sale-purchase agreements **validly concluded**, at the market price of the properties, allowing the purchase of a new home, given that, at the time when the respective property was acquired from the State, the buyer the real price of the property, established in accordance with the normative acts in force at that time. As concerns the second category of persons, it is established in matter of principle that, whenever a legal act is aimed at pursuing an illegal purpose, such as **escaping the law**, according to the principle "*fraus omnia corrumpit*", the operation becomes illegal as a whole, so that the related legal act is deprived of legal efficiency, being null and void. The fact that the interested person, although he/she was aware or should have been aware of the provisions of Law no.112/1995 on the settlement of the legal condition for alienation of some buildings designed for dwelling purposes, as well as of the legal consequences for non-observance thereof, failed to comply with the legal requirements, expresses his/her own fault, and, according to the principle "*nemo auditur propriam turpitudinem allegans*", the challenge is devoid of substance.

Furthermore, as grounds for her challenge, the author of the exception starts from a wrong premises consisting in the absolute right to exercise the prerogatives of her right to property, ignoring the provisions of Article 44 paragraph (1) second sentence of the Constitution, which state that the content and limits of the right to property are established by law, as well as those of Article 136 paragraph (5) which enshrine the inviolable nature of private property, "*under the terms of the law*".

For the reasons set forth above, on the grounds of Article 146 subparagraph d) and Article 147 paragraph (4) of the Constitution, as well as of Articles 1-3, Article 11 paragraph (1) subparagraph A.d) and Article 29 of Law no.47/1992,

THE CONSTITUTIONAL COURT

In the name of the law

DECIDES:

Rejects the exception of unconstitutionality of the provisions of Article 50¹ of Law no.10/2001 regulating the legal status of certain immovable property taken by duress between 6 March 1945 and 22 December 1989, exception raised by Marina Salzmann in the File no.3.235/211/2009 of the Cluj-Napoca Trial Court –Civil Division.

Final and generally binding.

Delivered in the public hearing of 11 May 2010.