CONSTITUTIONAL RELEVANCE OF THE LEGISLATIVE TECHNIQUE. THE FORM TAKEN BY THE TRANSFER OF STATE-OWNED PROPERTY

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Abstract

This study presents key benchmarks from the case law of the Constitutional Court of Romania (CCR) that address the legislative requirements concerning the method of transferring goods that fall under specific properties. The purpose of this article is not to analyze the legal framework regarding the property of the State and administrative-territorial units per se, but to provide a "mirror" reflecting how this framework is interpreted through the legislative techniques employed by the CCR in its reasoning, thereby illustrating the relevance of these rules. Additionally, the study highlights the importance of coherence in the interpretations made by constitutional courts. From this perspective, it invites an analysis of the mechanisms and reasoning behind jurisprudential changes, using a comparative law approach.

Keywords: *quality of the legislation, public property, private property, legislative technique, constitutional review*

I. Introduction

This study explore the constitutional relevance of legislative techniques, specifically focusing on the importance of selecting the appropriate form of transfer documents for property owned by the state or administrative-territorial units. It presents key benchmarks from the case law of the Constitutional Court of Romania (CCR) that address, with reference to the requirements of the legislative technique, the form chosen for the transfer of goods that form the object of this properties, for the awareness of the importance of the mentioned requirements and, in this light, the quality of the legislation.

Given the abundance of case law in the matter, as a methodological approach we consider the decisions of the CCR on the matter published in 2024, which refer to the

precedents/jurisprudential line outlined over time (Decision No 726/2023, Official Gazette no. 510 of 31 May 2024, Decision No 729/2023, Official Gazette no. 130 of 15 February 2024 and Decision No 149/2024, Official Gazette no. 497 of 29 May 2024). As regards the constitutional relevance of the legislative technique, these decisions reiterate the established case law of the CCR, noting that «*by* ***regulating rules of legislative technique, the legislator imposed a series of binding criteria for the adoption of any legislative act, compliance with which was necessary to ensure the systematisation, unification and coordination of legislation and the content and legal form appropriate to each legislative act. Compliance with those rules therefore helped to ensure that legislation complied with the principle of legal certainty, with the necessary clarity and foreseeability.*** *At the same time, account should also be taken of the constitutional provisions of Article 142 (1), according to which 'the Constitutional Court shall be the guarantor for the supremacy of the Constitution', and those of Article 1 (5), according to which 'in Romania, compliance with [...] laws shall be mandatory'*». (Decision No 729/2023, paragraph 57); "*Likewise, the Constitutional Court held that the rules of legislative technique relating to the integration of the draft law into the overall legislation state that the normative act must be organically integrated into the legislation system, for which purpose the normative act must be correlated with the provisions of the normative acts of a higher level or of the same level with which it is connected.*" (Decision No 729/2023, paragraph 58)

II. Jurisprudential Benchmarks

The CCR has been referred to several times to rule upon the laws by which the transfer of certain goods from the property of the State or administrative-territorial units was carried out. The decisions pronounced on those occasions created a jurisprudential outline of **the constitutional regime of the acts of transfer of property** of the State or administrative-territorial units, meaning that even the case law published in 2024[1] mentioned above creates a typology that we will follow in the next subsections.

1. Transfer of property from the public domain of state into the public domain of an administrative-territorial unit[2]

With reference to the provisions of Article 136 of the Constitution[3] and also invoking the doctrine in the matter, the CCR distinguished within this hypothesis as follows:

[1] See Decision No 726/2023, paragraph 53

[2] Decision No 149/2024, paragraph 25, see also Decisions No 57/2022, Official Gazette no. 217 of 4 March 2022, and No 58/2022, Official Gazette no. 218 of 4 March 2022, but also the case law established on outlined with regard to situations other than the one expressly analysed in this section, such as Decision No 563/2020, Official Gazette no. 765 of 21 August 2020

[3] Available at https://www.presidency.ro/en/the-constitution-of-romania

a) The situation in which the property forms the exclusive object of the public property of State or of the administrative-territorial unit, based on an organic law

This **category of property "*is individualised in Article 136 (3) of the Constitution, which includes, on the one hand, assets that are the exclusive object of public property by reason of their intended purpose, being by their nature in the public or national interest*** *(the public interest wealth of the subsoil, the airspace, the waters with exploitable energy potential, of national interest, the beaches, the territorial sea, the natural resources of the economic zone and the continental shelf)* ***and, on the other hand, assets which acquire that classification by means of a declaration of the law.***" (***Decision No 563/2020, paragraph 23***);

"given the existence of a legal regime governing property which is the exclusive property of the State which is strictly established at constitutional and legal level, one must exclude de plano the hypothesis raised by the authors of the objection of unconstitutionality, according to which it is impossible for the holder of the right to public property to refuse to decide favourably on the request for the transfer of the immovable property free of charge when, following assignment for free use to the religious cult, it would become the exclusive object of public property, for example on the basis of an organic law or through the discovery of underground riches. In this regard, the Court finds that ***according to Article 136 (4) of the Constitution, the defining characteristic of goods subject to public property is inalienable, so that any acts of disposal of them, irrespective of the rules under which they are concluded, are absolutely null and void****."* (***Decision No 563/2020, paragraph 25***)

"***the transfer from the public domain of the State to the public domain of administrative units or vice versa operates only through an amendment of the organic law,*** *respectively* ***through the adoption of an organic law amending the organic law through which the property was declared to be the sole object of public property****."* (***Decision No 149/2024 paragraph 27***, with reference to the precedent from Decision No 70 of 3 February 2021, published in the Official Gazette of Romania, Part I, no. 269 of 17 March 2021, paragraphs 29 and 30)

[*"according to the Court's case law in the matter, the nomination of assets in Annex no. 2 to the Administrative Code* ***does not mean declaring them as assets that constitute an exclusive object of public property****. The enumeration in the annex is exemplary in nature, and through this an attempt was made to delimit, in principle, the public domain of the State, the public domain of the county and the local public domain of communes, cities and municipalities*" (Decision No 149/2024 paragraph 30 with reference to Decision No 537 of 25 September 2019, published in the Official Gazette of Romania, Part I, no. 907 of 8 November 2019 and Decision No 538 of 25 September 2019, published in the Official Gazette of Romania, Part I, no. 908 of 11 November 2019, paragraph 24)]

b) "***the other cases***", "***when the property can belong, according to their destination, either to the public domain of the State, or to the public domain of administrative-territorial units***"

According to the CCR, *"the transfer from the public domain of the State to that of the administrative-territorial units or vice versa is carried out under the conditions of the law, namely pursuant to Article 292 (1) of the Government Emergency Ordinance No 57/2019 on the Administrative Code, published in the Official Gazette of Romania, Part I, no. 555 of 5 July 2019, namely upon the request of the county council, namely the General Council of the Municipality of Bucharest or the local council, as the case may be,* ***by Government Decision*** *or, symmetrically, upon the request of the Government, by decision of the county council, namely the General Council of the Municipality of Bucharest or the local council*" ***(Decision No 149/2024 paragraph 27***, with reference to Decision No 406/2016, Official Gazette no. 533 of 15 July 2016, paragraph 28); see also Decision No 19/2023, Official Gazette no. 347 of 25 April 2023, paragraphs 85, 86-92)

Therefore, "*the legislative instruments used for carrying out the transfer of property from the public domain of State into the public domain of the administrative-territorial units, are either* ***the organic laws amending the organic law by which the property was declared to be the exclusive object of the public property*** *of the State, or* ***the Government decisions, when the property does not constitute the exclusive object of the public property of the State."(Decision No 405/2016, paragraph 28)***[4]

2. Transfer of property from the public domain of an administrative-territorial unit into the public domain of state

Compared to the same case law cited above, it follows that in this case the transfer is made by **decision of the county council, namely of the general council of the municipality of Bucharest or the local council.**

3. Transfer of assets from the public domain of state into the private domain of state

According to the CCR, "*the mechanism of transfer from the public property of the State to that of the administrative-territorial units must be limited to the one regulated by the provisions of Article 292 (1) of the Government Emergency Ordinance No 57/2019 on the Administrative Code, a procedure referred to in the second sentence of Article 860 of the Civil Code. Thus, the Court has established that the assets in question may be transferred from the public property of the State to that of the administrative-territorial units by Government decision, at the request of the local councils, in accordance with Article 292 (1) of the Administrative Code. At the same time, in accordance with Article 361 (1) of the same legislative act,* ***the transfer of a***

[4] See also Decision No 726/2023 and the reference in paragraph 53 to Decisions No 57/2022, Official Gazette no. 217 of 4 March 2022, and no. 58/2022, Official Gazette no. 218 of 4 March 2022

property from the public domain into the private domain of the same holder of property, in this case from the public domain of the State, is carried out by Government Decision." (***Decision No 149/2024, paragraph 31***)

Likewise, "*the transfer of these assets, according to the case law of the Constitutional Court, must be carried out* ***through secondary regulatory acts****, acts that* ***may order the cessation of national use or public interest of the respective assets, with due justification.*** *To this effect, the provisions of Article 361 (3) of the Administrative Code provide that the transfer of certain assets belonging to the public domain of the State into the private domain of the State is to be carried out with due justification for the cessation of national use or public interest, failing which it will be null and void." [Decision No 149/2024, paragraph 32];* the operation of the inter-domain transfer of forest roads, from the public domain of the State to its private property, for the direct sale to natural or legal persons, owning the entire forest road *"is justified only by the existence of a written request from potential beneficiaries of sales contracts, natural or legal persons (…) cannot constitute a sound justification for the cessation of use or national public interest." [****Decision No 149/2024, paragraph 32****]*

4. Transfer of a property from the public domain of an administrative-territorial unit into the public domain of another administrative-administrative unit[5]

Such a legal operation **cannot be carried out by law** (*Decision No 726/2023 paragraph 53*), **but by administrative acts**, according to the authorities involved.

To this effect, the CCR held that "*the inter-domain transfers of public property that do not form the sole object of public property are made through administrative acts - Government decisions or* ***decisions of county or local councils****, being mandatory to declare the assets as being of national, county or local public interest in order to justify these transfers. The inter-domain transfer of property that form the object of public property of the State and administrative-territorial units* ***is established according to their needs****, subsequent to the transfer of the right of public ownership, the right of administration regarding the property is also established, the transfer request is made by the administrative authority in whose ownership the requested good is transferred and* ***must have a reason/ground, and the act by which the transfer is carried out, namely a Government decision or a decision of the local/county councils, may be challenged before the administrative courts of law*** *(Decision No 384 of 29 May 2019, cited above, paragraphs 44 and 45). The right of administration is carried out, as the case may be, by a Government decision, a decision of the county council, namely of the General Council of the Municipality of Bucharest or of the local council, by administrative acts of an individual nature, entrusting public property to the autonomous regions or, as the case may be, central or local public administration authorities and other public*

[5] See Decision No 726/2023 and the reference in paragraph 53 to Decision No 70/2021, Official Gazette no. 269 of 17 March 2021, paragraphs 33-37.

institutions of national, county or local interest, the authorities that carry it out also having the right to control the way in which the right of administration is carried out by its holder (Decision No 1 of 10 January 2014, published in the Official Gazette of Romania, Part I, no. 123 of 19 February 2014, paragraph 188)".

Likewise, "*in line with the established case law of the Court in the matter,* ***the legal obligation laid down in Article III of the contested law concerning the transfer of immovable property from the county public domain to the public domain of certain administrative-territorial units within the territorial jurisdiction of the county in question is tantamount to ordering a transfer between domains of the property concerned, by law, which means that the legislator intervenes without authorisation in an area falling within the competence of the executive authorities of the administrative-territorial units,*** *infringing Article 1 (4) and (5), Article 61 (1), Article 120 (1), Article 136 (2) and (4) and Article 147 (4) of the Constitution*". (***Decision No 70/2021, paragraph 37***) The form taken by the transfer deed in this case, according to the case law of the CCR, is **a decision of the county council**.

5. Transfer of property from the public domain of the state to the private domain of an administrative-territorial unit[6]

According to Decision No 726/2023 paragraph 53, in this case, "***The Court rejected the possibility of such a transfer either by law or by Government decision",*** sense in which the CCR refers to paragraph 48 of its Decision No 366/2022[7], according to which «*By establishing the transfer of property from the public domain of the State to the private domain of the commune, the legislator departs from the specific rules on 'Transfer of property into the private domain', established by Chapter II of Part V of the Administrative Code.* ***The Administrative Code does not regulate with regard to such a hypothesis, but only establishes the possibility of the transfer of an asset from the public domain to the private domain of the same holder of the property right*** *(the State or administrative-territorial units), according to Article 361 of this normative act, establishing imperatively to present a thorough justification for the cessation of use or the national public interest in the case of the transfer of an asset from the public domain of the State to its private domain.»*

We mention that in the case, analysing a law that carried out this transfer by modifying an annex from its content, the CCR found its unconstitutionality, noting, in addition to the recitals cited above, as follows: "*49. In its case law (see Decision No 1 of 10 January 2014, published in the Official Gazette of Romania, Part I, no. 123 of 19 February 2014, paragraph 173), the Constitutional Court ruled that the legislator may always introduce derogations from the legislative framework in force, by virtue of the*

[6] Decision No 366/2022, Official Gazette no. 815 of 18 August 2022, paragraphs 48-55.
[7] Official Gazette no. 815 of 18 August 2022.

legal principle according to which specialia generalibus derogant, but that the *derogating legislative act must not render the constitutional provisions ineffective, which would* be tantamount to non-compliance with the quality requirements of the law. 50. However, *by the law complained of, the transfer from the public domain of the State to the private domain of the municipality of assets, which now fall within the category of assets essential to activity of research, development and innovation, as well multiplication of biological material (see Annex no. 1.3 to Law No 45/2009, in force), is carried out exclusively by the titles of Annexes 10.3 and 10.4, without a proper justification, intended to strike the necessary fair balance between, on the one hand, the need to achieve the general interest of society in safeguarding the State's public property right, on the one hand, and, on the other hand, the protection of individual rights. 51.*

As such, ***given the inalienable nature of the State's public property, as laid down in Article 136 (4) of the Constitution, the State's right to public property ends only by means of the rules laid down in the law, in compliance with all the conditions laid down by the legislator, and not by means of imprecise legal rules and without proper justification.*** *As a result, the Court found the violation of the provisions of Article 1 (5) and Article 136 (4) of the Constitution. 55. Consequently, the Court found that, in the context of an imprecise regulation of the legal measure ordered with regard to the assets in question, the derogatory mechanism established by the impugned legal provisions, by not complying with the rules of legislative technique, is likely to violate Article 1 (5) of the Constitution, in its component relating to the quality of laws, to impair the legal regime regarding the public property of the State, laid down in Article 136 (4) of the Constitution, as well as to establish the conditions for violating the principle of local autonomy, enshrined in Article 120 paragraph (1) of the Constitution".*

It is thus observed that the CCR established that **a direct transfer from the public property of the State to the private property of the administrative-territorial units is not possible** because **such a hypothesis is not provided for anywhere in the Administrative Code or in the Civil Code**, specifying, by confirming from Decision no. 726/2023[8] that such extinguishment of the right of public ownership and transfer of the asset to the private ownership of another holder was not accepted either by law or by Government decision. We also retain the arguments regarding the lack of quality of the impugned regulation.

6. Transfer of property from the public domain of the state/an administrative-territorial unit into the property of a third entity under private law

According to ***Decision No 726/2023, paragraph 53***, the CCR "*accepted such a transfer, but under the conditions in which* ***the said property is first transferred from***

[8] In the same regard it is also Decision No 19/2023, Official Gazette no. 347 of 25 April 2023, paragraphs 85-86.

the public domain to the private domain" **(according to the regulations applicable to this transfer)** sense in which the mentioned paragraph refers to a decision where the CCR found the constitutionality of the examined law[9]. We mention that the impugned law in the case referred by Decision No 726/2023 had a sole article by which Article 1 (1) of Law No 239/2009 was amended, specifying that the immovable property belonging to the State or to the administrative-territorial units, assigned for free use to religious cults after 1 January 1990, can be transferred free of charge to the property of the holding cult units[10].

The CCR held in that case that *"Article 3 of Law No 239/2007 establishes that requests for* ***the transfer of the right of property shall be settled by the holder of the right of property (administrative-territorial unit or the State) by decision,*** *specifying* that, in the situation where, at the time of assignment, ***the immovable property belongs to the domain public, the decision will also approve its transfer into the private domain of the State or administrative-territorial unit,*** *according to the law.*

As regard the claims of the authors of the objection in the sense that ensuring the constitutional protection of public property requires the performance of certain formalities for the transfer of property from the public domain to the private domain, consisting in the adoption of decisions by the Government or, as the case may be, by the councils of administrative-territorial units, which must be accompanied by supporting notes, namely approval reports, the Court notes that the application of the legal text referred to by the authors of the objection is corroborated with the provisions of Article 361 (1)—(3) of the Government Emergency Ordinance No 57/2019 on the Administrative Code, according to which ***the transfer of an asset from the public domain of the State to its private domain is carried out by a Government decision, if the law does not rule otherwise, and the transfer of an asset from the public domain of an administrative-territorial unit to its private domain is carried out by decision of the county council, namely the General Council of the Municipality of Bucharest or the local council of the commune, of the city or municipality, as the case may be, unless the law provides otherwise.***

Furthermore, Article 361 (3) of the Administrative Code stipulates that ***in the instruments of presentation and motivation of the mentioned decisions, the fundamental justification of the cessation of use or the national or local public interest, as the case may be, must be found.*** *Similarly, this issue was regulated by Law No 213/1998 on public property, amended by Law No 71/2011 for the implementation of Law No 287/2009 on the Civil Code, which, by Article 10 (2), established that the transfer from the public domain to the private domain is carried out, as the case may be, by Government decision, decision of the county council,*

[9] Decision No 563/2020, Official Gazette no. 765 of 21 August 2020.
[10] Ibidem, paragraph 21.

namely the General Council of the Municipality of Bucharest or of the local council, if the Constitution or the law does not provide otherwise." (Decision No 563/2020, paragraph 27)[11].

7. The free transfer of property from the private domain of the state to the property of a third entity under private law for the purpose of making public interest investments

According to ***Decision No 726/2023, paragraph 53,*** "*The Court established that the free transfer may be carried out by law"*, in which sense it refers to Decision No 139/2021[12].

Having examined the decision to which reference is made, it is noted that, unlike the previous situations, in this case an asset belonging to the public domain is not in question, but to the private domain of the State, and the third entity under private law was the Chamber of Commerce and Industry of Romania. By the decision[13] issued by a majority vote and the dissenting opinion of two judges, the CCR found the constitutionality of the law which carried out such transfer, noting, in essence, that "*the transfer of the private property right of the State to a third entity through sale is regulated in the Administrative Code. This regulatory act does not establish all the ways of alienating these assets, being up to the legislator to adopt special normative*

[11] regarding the imprecise drafting of the law and, from this perspective, the damage to the public property regime, two judges of the CCR formulated a dissenting opinion in which they explained the regulatory framework in the matter and the case-law outlined up to the respective decision of the CCR; Mrs. Elena Simina Tănăsescu, judge, Professor PhD, and Doina Stanciu, judge, PhD, stated that*"the amendment made to Law No 239/2007 by the law subject to the constitutional review in this case violates the principle of the protection of public property by law, enshrined in the provisions of Article 136 (2) of the Constitution, because it allows the public authorities, as holders, to make vulnerable any immovable property located in the public domain, by simply assigning them to the free use of religious cults, an act that gives these entities the right to have the respective assets transfered to the private property, on request and free of charge, for an indefinite period. However, ensuring the constitutional protection of public property requires the performance of certain formalities for the transfer of assets from the public domain to the private domain, consisting in the adoption of decisions by the Government or the councils of administrative-territorial units, as the case may be, administrative acts that must be accompanied by supporting notes, namely by approval reports, in accordance with the provisions of Article 30 (1) b) and c) of Law No 24/2000 on the legislative technical rules for drafting normative acts. 9. An example of a method to protect the rights of public property through a law exists in the Administrative Code, which does not regulate a procedure for transferring assets from the public domain of the State or administrative-territorial units directly into the private domain of third parties, but first in the private domain of the same holder of the right of property. Only later, after the respective assets enter the civil circuit and cease to be inalienable, untransferable and imprescriptible, they can be transferred to the private domain of the State or another administrative-territorial unit or can be sold, put into administration, concessioned or rented to other legal or natural persons. Therefore, by imposing a procedure in several stages, each with its own specific actors and rules, the goods in the public domain are protected by law, according to the desired established at the constitutional level. 10. However, in contradiction to this fundamental principle, the law subject to constitutional review in this case provides that, if the immovable property assigned for free use — whose transfer of property, without payment, is requested by the cult unit — is in the public domain, by the same transfer decision, both its transfer into the private domain of the State or the administrative-territorial unit, as well as the transfer without payment into the private property of the requesting cult unit shall be approved".*

[12] Official Gazette no. 302 of 25 March 2021.

[13] Decision No 139/2021, Official Gazette no. 302 of 25 March 2021.

acts to precisely regulate the transfer of the right of property of the State and through other ways of alienation.

Thus, the Administrative Code stipulates that the Government can carry out the transfer operations, for a fee, of the property right, but it has not conferred the legal competence to transfer the property free of charge. The transfer of an immovable property free of charge in the ownership of a private entity is an act of disposition and power, so, by definition, it is for the Parliament to make the decision of opportunity, by virtue of its general law-making power, laid down in Article 61 of the Constitution. In the same regard, the Court notes that ***only the representative body of the people, namely the Parliament, can undertake the decision of free transfer of land from the private property of the State for the purpose of investments regarding the economic development of a certain segment, pursuant to its democratic legitimacy*****".** (paragraph 110)

"*113. The free transfer of the right of ownership over a private property of the State does not fall within the common ways of exercising the right of ownership laid down in Articles 362-364 of the Administrative Code. Considering that the common rule for the transfer of the right of ownership is to obtain a direct and immediate equivalent,* ***the assessment of the opportunity of the free transfer of certain assets from the private property of the State rests exclusively with the Parliament, the only one in a position to be able to assess and decide accordingly, regarding the necessity of such a transfer, by virtue of its general law-making powers, the aim pursued being that of obtaining certain social-economic results or the achievement of some national development objectives.***

114. Therefore, the Courts notes that within the framework of fulfilling the State's obligations provided by the Constitution in Article 47 (1) regarding the taking of economic development measures, respectively in Article 135 (2) a) regarding the creation of a favourable framework for the exploitation of all production factors, the legislator has a freedom of law-making in order to establish the measures to support, in different periods, certain branches of the economy, certain fields of activity, certain categories of entrepreneurs and investments. The legislator's option, in each period, is determined by the directions of the State's economic policy, the needs for development and stimulation of various branches of activity, the available material resources and other factors, without selective support measures being discriminatory [see, in this regard, Decision No 12 of 20 January 2004, published in the Official Gazette of Romania, Part I, no. 115 of 9 February 2004]. The State shall be responsible for orienting the economy towards carrying out those activities that are necessary and creative for individual and collective well-being and adopts measures to support the economy as a whole or partially, in certain fields of activity.

115. The market economy is a living, evolving concept, it takes into account the socioeconomic situation of the State at a given moment and does not have an

invariable content. The State, under its constitutional obligation laid down in Article 135 of the Basic Law, must express a flexible attitude in stimulating economic operators in promoting progress, in the freedom to undertake and increase their efficiency [see, in this regard, Decision No 498 of 10 May 2012, published in the Official Gazette of Romania, Part I, no. 428 of 28 June 2012]. 116. Considering that private property is at the base of the market economy within which the role of the State cannot be denied, it must essentially ensure the economic development of the country by valuing its property, public or private, even by ensuring the development of the private property of the other subjects of law".

The conclusion/solution of the CCR to the effect that such a transfer can only be carried out by law by the Parliament is accompanied by the establishment of certain **criteria** resulting from the recitals of the decision, as follows:

- **the object** of the transfer - only assets belonging to the *private property of the State* (paragraphs 96-98);
- the transfer shall be ***free*** (because "*the free transfer of the right of property over a private property of the State does not fall within the common ways of exercising the right of property laid down in Articles 362-364 of the Administrative Code")* (paragraph 113);
- **the aim** of the transfer - *the legislative policy of the State **to respond to a public interest**, such as economic development measures and the creation of a framework favourable to the exploitation of production factors* (paragraphs 114, 120);
- **the law should not be subject to issues of attribution of certain assets in strictly personal and private interest**, since "*when it was referred to the impossibility of regulation by law of a concretely determined field, in consideration of an individual reason and intuitu personae of the regulation, with the consequence of being applied in a single case, unequivocally predetermined, took into account the purpose of the law and analysed whether it sought to respond to a personal and private demand in itself. The resolution of such personal and concrete issues shall be done under the law, and not by the law, being matters of law enforcement (see, for example, Decision No 600 of 9 November 2005, published in the Official Gazette of Romania, Part I, no.1060 of 26 November 2005, or Decision No 970 of 31 October 2007, published in the Official Gazette of Romania, Part I, no.796 of 22 November 2007). In these cases, it is obvious that **it cannot be regulated by law, since the goal pursued does not relate to the implementation of the legislative policy**, but is limited exclusively to issue of attribution of certain assets in strictly personal and private interest, **with the consequence of the creation of** personal/private **privileges**.*" (paragraph 106);
- **a transfer under the condition of the regulation of "*necessary and sufficient guarantees for the achievement of the goal pursued.*"** (paragraph 120 "*the*

free transfer of the private property of the State can be carried out by law, under the conditions of Article 44, Article 47 and Article 135 of the Constitution, taking into account the constitutional obligation of the State to take measures for economic development and the creation of a framework favourable to the exploitation of factors of production, under the condition of the regulation of some necessary and sufficient guarantees to achieve the goal pursued.")

Examining these criteria - *the constitutionality test* developed by the CCR (which must also be approached in terms of examining the non-discriminatory nature of a law characterized by a "very high degree of concreteness", so that **it does not create privileges**) can, in itself, provide an analysis of the issue of *constitutionality versus expediency* in the exercise of Parliament's law-making power and, in this framework, of the limits of jurisdiction of the CCR in the exercise of the constitutional review, an aspect to which we will return in conclusions.

The decision of the CCR also has a substantial dissenting opinion14, which essentially reveals that "*The provisions of Article III of the law regulate a free transfer of the right of property over certain assets from the private domain of the State to the property of the Chamber of Commerce and Industry of Romania. This legal operation raises three issues of constitutional law, namely: (i)* ***the transfer of the right of private property reveals a normative activity or represents an act of disposal of the asset (ii) if the Parliament, as the sole legislative authority, has the power to carry out a transfer of the right of private property*** *(iii) whether or not the transfer of the right of private property of certain assets to the private domain of the State can be free of charge".*

With regard to the aspects that are of particular interest to the present study, that of the form of the deed that covers the transfer of the right of property, the following are held in the dissenting opinion:*"3. With regard to the first issue of constitutional law, it is found that, in its case law, the Court established that the acquisition of the right of property by convention (in this case, sales contract) by the State must be carried out in the forms laid down in the Constitution. In this regard, the Court held that this can only be achieved through administrative acts, which are classified into authority acts [regulations, ordinances, decisions] and management acts. The acts of authority imply that the administrative authority gives orders, works as a sovereign power towards its subjects, being subject to the review on legality. Instead, the management acts manage the public patrimony and concern the acts relative to that patrimony [increase/decrease/preserve the patrimony], the State behaves like any other citizen, therefore, they are subject to the rules of private law. Consequently, if the State wants to purchase an immovable property, this must be fulfilled through an individual administrative act of management, as it is obvious that* ***individual property cannot be purchased by law and obligations to purchase one/certain immovable property cannot be regulated*** *[see Decision No 777 of 28 November 2017,*

[14] Formulated by Mona-Maria Pivniceru, judge and Professor PhD and Daniel Morar, judge

paragraph 28] 4. It should be noted that ***Article 557 (1) of the Civil Code establishes that the right to private property is acquired "under the conditions of the law", therefore, not by law, and Article 557 (3) of the same code provides that other ways of acquiring the right of private property can be regulated by law, in other words the acquisition of the right of property is not carried out by law, it only establishes the general legal*** *framework. The embodiment of the manifestation of the State's will in terms of acquiring a right of private property is achieved through a management act which, in principle, takes the form of a legal act provided by law (the contract/convention).* ***Thus, the State behaves with regard to the acquisition of the right of private property over the assets in the civil circuit like any other private individual, subject to the general regulations in the field, namely the Civil Code.*** *5. As a result, if the acquisition of the State's right of private property by convention can only be achieved through an administrative act of management, it follows that the transfer of the right of private property by the State is also carried out through a similar legal act. In other words, the way in which the State exercises the powers of the right of property (possession/use/ disposal) are aspects related to the management of the right itself, and the acts undertaken can only be qualified as acts of administration/disposal over the assets included in the private patrimony of the State. 6. Therefore,* ***it clearly results that the acquisition and transfer of the right of property have the nature of acts of civil law, which are carried out under the conditions of the common law. Of course, nothing prevents the Parliament from adopting, in the matter of the transfer of the right of private property of the State, a special law in relation to the Civil Code, however, in this case too, the nature of these acts remains an essentially civil one under the conditions of the special law, but, under any circumstances, the transfer cannot operate through such a law.*** *Moreover, in the aforementioned matter, a special regulation was adopted - Government Emergency Ordinance No 57/2019, which provides the conditions under which the competent administrative authority can transfer the right of private property to the State - transfer which can be carried out, however, only for pecuniary interest, by sale. 7.* ***The acts of disposition related to the private property of the State cannot be the subject of the normative acts, since, in reality, they are individual and substantive measures of their application.*** *The essential and common feature of the normative acts, regardless of the level on which they are placed within the Kelsenian pyramid, is that they include norms, which are defined as rules of conduct, established by the public power or recognized by it, the application of which is ensured by legal conscience, and if necessary, through the coercive force of the State. The legal rule, by its nature, has a general, impersonal, imperative, volitional nature and involves an intersubjective relationship [R. Motica and G. Mihai – The general theory of law, All Beck Publishing House, Bucharest, 2001, pages 80-84]. At the same time,* ***a legal rule has continuous, repeated applicability, in the sense that it regulates all the cases that fall under its scope as long as they are part of the active normative fund. However, the transfer of a right of private property is not and***

cannot be a legal rule, but a legal operation that should be carried out in the forms provided by law (by convention). As a result, it is excluded that such a transfer of property can constitute the subject of a regulatory act. *In other words, by its nature, the legal operation through which the transfer of private property takes place in concreto between the State and other natural/legal persons reflects the exercise of the disposition power over the asset, as an act of administration of the State's patrimony, so it cannot be qualified as an activity resulting in legal rules. 8. In the analysed case, the free transfer of the right of private property is carried out by law, which has the effect of constitutive law, and not by Government decisions, as Article III of the law tries to accredit, because the Government decision adopted under this text is only the technical method by which the asset is handed over, not having the legal nature of a property title. Practically, Article III (1) of the law conveys the State's right of property over certain determinable immovable property, and the Government decision represents the act of handing them over, on which occasion their identification is precisely made. Or,* ***in the case law of the Constitutional Court already established and unified, a regulatory act cannot transfer a right of property ut singuli, such a transfer can be carried out, in principle, through an individual Government decision".***

We mention, in line with this dissenting opinion, **Decision No 600/2005[15], by which the CCR found the unconstitutionality of the transfer of certain assets from the public property of the State directly into the private property of an individual subject of law.** The CCR held on that occasion that "***even in the absence of an express prohibitive provision, it is a principle that the law has, as a rule, a regulatory nature, the primary nature of the regulations it contains being difficult to bring into line with their application to an individual case or cases"; "however, in the hypothesis in which the special regulation, different from the constitutive one of common law, has an individual nature, being adopted intuitu personae, it ceases to have legitimacy, acquiring a discriminatory*** *and, therefore, unconstitutional nature. The courtesy and respect required by a personality of the magnitude of that of the former sovereign of Romania cannot be legally converted into arguments capable of imposing and justifying the establishment of a reparative legal regime intuitu personae, in the absence of the enshrinement of a privileged legal status or, at least, different from that of the other citizens, as far as it is concerned*"; "*the procedure used, as it makes the legislator's intervention in the normal course of procedures for the recovery of some assets taken over by the State in an abusive manner legitimate, procedures established, by imperative rules, by the common law regulation in the matter and which the petitioner initiates, evades them, thus, the judicial review that could be appealed to. This law, as a whole, infringes the principle of free access to justice, in the terms enshrined in Article 21 (1) and (2) of the Constitution."* These recitals reveal substantial issues that

[15] Official Gazette no. 1.060 of 26 November 2005.

involve the use of an appropriate legislative technique, with reference to equality before the law and the principle of free access to justice.

III. Considerations on the constitutional regime of the government decisions and the law as a legal act of Parliament (with reference to the choice of the form of the transfer acts of the property belonging to the State/administrative-territorial units)

1. Government decisions are subject to the control of administrative courts *(so that the injured person has the possibility to refer to a court of law*[16] *against these acts, pursuant to Article 52 of the Constitution)*

This conclusion results from the analysed case law, where it is held, in essence, that *"38. the legislation on the transfer from the public domain of the State to the public domain of administrative units of property which do not form the sole object of public property, by a Government decision,* ***allows the administrative courts to carry out a review of the legality of those administrative acts.*** *In the present case,* ***by regulating the transfer by law, and not by a Government decision, of property which is not the exclusive object of public property, the possibility for a person aggrieved by a public authority, by means of an administrative act, to bring an action before a court is circumvented by rendering the provisions of Article 52 of the Basic Law inapplicable.*** *According to this constitutional text, invoked by the author of the referral, the person aggrieved, by a public authority, in his/her right or in a legitimate interest, through an administrative act or by the non-settlement of a referral within the legal term, is entitled to obtain the recognition of the alleged right or legitimate interest, the annulment of the act and compensation for damage. According to the case law of the Constitutional Court, this constitutional text must be correlated with the constitutional provisions of Article 21, which regulates the free access to justice, and with those of Article 126 (6), first sentence, according to which the judicial review of administrative acts of public authorities, through administrative litigation, shall be guaranteed. At the same time, the Court held that the provisions of Article 52 of the Constitution represent the main constitutional foundation of the administrative litigation, a matter that finds its reflection at the law level in the provisions of Administrative Litigation Law No 554/2004, published in the Official Gazette of Romania, Part I, no.1154 of 7 December 2004, which in Article 1 (1) stipulates that "any person who considers himself/herself aggrieved in his/her right or in a legitimate interest, by a*

[16] Which verifies the legality and appropriateness of the act, i.e. the "discretionary power", see T. Drăganu, Introduction to the theory and practice of the rule of law, Dacia Publishing House, Cluj Napoca, 1992, pages 186-200, D. Apostol-Tofan, Discretionary power and the excess of power of public authorities, ALL-BECK Publishing House, 1999, apud Dacian Cosmin DRAGOŞ, Discussions regarding the possibility of annulling an administrative act on the grounds of inopportuneness

public authority, by means of an administrative act or by the non-settlement of a referral within the legal term, can bring an action before the competent administrative court, for the annulment of the act, the recognition of the alleged right or legitimate interest, the compensation for the damage caused to him/her." (see, in this regard, Decision No 889 of 16 December 2015, published in the Official Gazette of Romania, Part I, no. 123 of 17 February 2016).

39. Thus, in this case, the Court has noted that ***the provisions of point 2 of the sole Article of the impugned law, referring to the amendment of Article 1 (1) (a) of Law No 192/2010, regulating the inter-domain transfer of the assets in question by the effect of the law, and not by a Government decision, prevents the persons aggrieved by a public authority, by means of an act, from bringing an action before a court, in order to exercise their rights.*** *Thus, the right of persons aggrieved by a public authority, by means of an administrative act, in a right or in a legitimate interest, to have effective access to the recognition of the alleged right or legitimate interest, and to obtain the annulment of the act is violated and compensation for damage, enshrined in the constitutional provisions of Article 52 (1) of the Constitution."* (***Decision No 149/2024, paragraphs 38, 39)***

*"****the inter-domain transfers of publicly owned assets****, governed by Articles 292 and 293 of Government Emergency Ordinance No 57/2019* ***are carried out by means of administrative acts — decisions of the Government, at the request of local councils, county council or the General Council of the Municipality of Bucharest, as well as at the request of the Government, by decisions of the said councils, a legislative solution based on the provisions of the final sentence of Article 102 (1) and of Article 120 (1) of the Constitution****. In order to give effectiveness to the constitutional provisions, the legislator regulated a distinct legal regime of the assets that are the object of the public property of the State and the administrative-territorial units. In this regard, the inter-domain transfer is established according to their needs, subsequent to the transfer of the right of public property, and the right of administration regarding the assets is established.* ***The request for transfer, mandatory according to the impugned regulatory act, is made by the Government or the mentioned councils and must have a basis/reason, and the act of transfer, i.e. a decision of the Government or the councils, may be challenged before the administrative courts.*** *The non-existence of the agreement of the administrative-territorial units regarding the transfer of assets in their patrimony, including those in the public domain, represents a violation of the constitutional principle of local autonomy, regulated by Article 120 (1) of the Constitution (Decision No 384 of 29 May 2019, published in the Official Gazette of Romania, Part I, no. 499 of 20 June 2019, paragraphs 43-45)"* (***Decision No 70/2021, paragraph 30)***

The CCR has also explained in detail on other occasions (even if in different matters) the constitutional regime of the Government decisions, and from the relevant case

law it follows that **although the Parliament is the supreme representative body and the sole legislative authority of the country, this constitutional role does not mean discretionary power,** and it allows the ignorance of other constitutional provisions, the violation of the fundamental rights and the basic principle of democracy - the separation of State powers. Thus, we mention the recitals of Decision No 457/2020[17], through which **the CCR found the unconstitutionality of the law that assigned a** *different legal regime to the Government decisions, by establishing the mechanism for their approval by the Parliament, in a context that called into question the limits of the Parliament's powers (in relation to those of the Government). The CCR held on that occasion that*

"49. However, constitutional rules do not distinguish in respect of Government decisions according to their subject matter. Therefore, in the absence of a special constitutional regime for Government decisions establishing the state of alert, such an exceptional regime cannot be conferred by infra-constitutional acts. As a result, the Government Decision establishing the state of alert can only be an administrative legislative act, i.e. a secondary regulatory act implementing a primary regulatory act.

50. Likewise, as long as a parliamentary control of the Government's decisions in the sense of approving/rejecting/amending them does not appear among the constitutional mechanisms established to regulate the relationships between the public authorities within the regime of separation and balance of the State powers, and the Government decisions constitute - as stated - the expression of the original power of the Government, par excellence of an executive nature, by approving/ amending the measures adopted by Government decisions, ***the Parliament would combine the legislative and executive powers, a situation incompatible with the principle of separation and balance of the State powers, enshrined in Article 1 (4) of the Constitution****. Parliament's interference with an act specific to the Government, intended to enforce the law, constitutes an intrusion of the legislator into the secondary regulation for the enforcement of laws, which belongs exclusively to the Government. Or,* ***Parliament cannot exercise its power of legislative authority on a discretionary basis, at any time and under any conditions, by adopting laws creating the framework within which to encroach on constitutional competences which belong exclusively to other powers of the State.***

51. Where the constituent legislator had wanted the legislative acts of the Government to be subject to parliamentary approval, it had expressly laid down it, as in the case of legislative delegation, governed by Article 115 of the Constitution, under which the Government may adopt simple ordinances based on an enabling law, as well as emergency ordinances. (…)

[17] Official Gazette no. 578 of 1 July 2020.

52. However, the Court notes that ***the Government ordinances and emergency ordinances, adopted on the basis of legislative delegation, are normative acts that comprise primary rules, in the field of law****. Thus, in an established case law, the Constitutional Court ruled that "as regards the concept of 'law' (...) it has several meanings depending on the distinction made between the formal or organic criterion and the material one. (....). Consequently, since a regulatory legal act, in general, is defined both by form and by content,* ***the law in a broad sense, thus including the assimilated acts, is the result of combining the formal criterion with the material one (...) Government ordinances and emergency ordinances, from a material point of view, contain primary regulatory rules, having a legal force assimilated to that of the law"*** *(Decision No 405 of 15 June 2016, published in the Official Gazette of Romania, Part I, no. 517 of 8 July 2016, paragraphs 62 and 63).*

Since we are referring to ***rules having the same level of regulation****, the Parliament may approve, reject, approve with amendments, expression of a shared power of the two authorities and a control that the Parliament exercises over the legislative acts of the Government.*

53. ***This form of control cannot be achieved in the case of Government decisions, which are issued only for "organizing the enforcement of laws"*** *[Article 108 (2) - Government Acts in Chapter III - Government]. Unlike the regulatory acts adopted by means of legislative delegation,* ***as regards the decisions of the Government, the framer did not establish any approval by the Parliament, which is why the intervention of the latter authority in the sphere of the mentioned category of administrative acts constitutes an obvious deviation from its constitutional powers enshrined in Article 61 (1) of the Constitution, in terms of the cumulation of some powers of the executive power****. As a result, the "approval" or "amendment" by the Parliament of the measures adopted by the Government by means of decision lacks a constitutional basis and misrepresents the legal regime of the Government decisions, as acts of law enforcement, enshrined in Article 108 of the Constitution.*

54. ***With reference to the legal regime of the Government decisions and the relationships between the Parliament and the Government in this regard, the Court also found that, if Parliament considers that the Government has adopted an inappropriate or unlawful decision, it has constitutional instruments at its disposal, namely information (Article 111), questions, interpellations, simple motions and motions of censure (Articles 112 and 113), which basically represent the positions taken by the Parliament regarding the Government's activity, in carrying out the political control over it****.*

Parliamentary scrutiny thus established by the framer may not extend to the normative content of Government decisions in order to approve, amend or reject them.

An interpretation to the contrary would distort the legal regime of Government decisions enshrined in Article 108 of the Constitution. Such an intervention radically changes the meaning assigned by the framer to the concept of parliamentary scrutiny, as well as the traditional legal nature of the Government decisions, which take on the characteristics of administrative acts regarding the relationships with the Parliament, with consequences in terms of access to justice for challenging them.

55. (…) 56. ***As regards the Government decisions, precisely in consideration of their legal nature, the framer established the control jurisdiction of the courts of law. In this light, the Constitutional Court held that 'the separation of the State powers does not mean the lack of a control mechanism between the State powers, but on the contrary, it implies the existence of mutual control, as well as the achievement of a balance of forces between them. The acts of the executive power shall be censured through administrative litigation*** *(Decision No 594 of 20 May 2008, published in the Official Gazette of Romania, Part I, no. 455 of 18 June 2008). As a result, no matter what verification the Parliament would perform regarding the normative content of the Government decision regarding the establishment of the state of alert (to approve/ amend/reject it), it impermissibly adds to the constitutional texts that regulate the relationships between the Parliament and the Government and violates those which concern the judicial control of the administrative acts of the public authorities. Such a form of parliamentary scrutiny over the acts adopted by the Government for the enforcement of a normative act cannot be carried out by organic or ordinary law, but only by constitutional law. In accordance with the referral made by the Advocate of the People,* ***the Court notes that the Parliament has no constitutional basis to assign, in a discretionary manner, any type of control over the secondary administrative acts, acts which, once approved by a resolution of the Parliament, raise the issue of their exemption from the control carried out by the courts."***

2. The law has a regulatory nature and regulates general social relationships, and "***accepting the idea that Parliament is able to exercise its power of legislative authority on a discretionary basis, at any time and under any conditions, by adopting laws in areas which belong exclusively to acts of an infra-legal and administrative nature, is tantamount to departing from the constitutional prerogatives of that authority, enshrined in Article 61 (1) of the Constitution, and transforming it into an executive public authority".***

In this regard, there are the recitals of the CCR according to which *"by* ***uniform case-law, the Court has held, in principle, the general prohibition, regardless of the field of regulation, of the adoption of individual laws, with the reasoning that the***

law, as a legal act of the Parliament, governs general social relations and is, by its essence and its constitutional purpose, a measure of general application. *By definition, the law, as a legal act of power, is unilateral in nature, expressing exclusively the will of the legislator, the content and form of which are determined by the need to regulate a particular area of social relations and its specificity. In so far as the scope of the legislation is specifically determined, it is of individual scope, since it is designed not to apply to an indeterminate number of specific cases, depending on their classification in the case of the rule, but rather, on a de plano basis, in a single, unequivocal predetermined case. If Parliament exercises its power to legislate, in the circumstances, in the field and with the objective pursued, there is a breach of the principle of separation and balance of the State powers, enshrined in Article 1 (4) of the Constitution, which affects the law as a whole. The Court also held that* ***accepting the idea that Parliament may exercise its power of legislative authority on a discretionary basis, at any time and under any conditions, by adopting laws in areas which belong exclusively to acts of infra-legal, administrative nature, would amount to a deviation from the constitutional prerogatives of that authority, enshrined in Article 61 (1) of the Constitution, and its transformation into an executive public authority.*** *(Decisions of the Constitutional Court No 600 of 9 November 2005, Decision No 970 of 31 October 2007, Decision No 494 of 21 November 2013, Decision No 574 of 16 October 2014, Decision No 406 of 15 June 2016, Decision No 118 of 19 March 2018, Decision No 384 of 29 May 2019, Decision No 537 of 25 September 2019, Decision No 538 of 25 September 2019)" Decision No 70/2021, paragraph 31)*

Decision No 390/2021 refers to "general", "less general" laws, or which have "a regulatory content with a very high degree of concreteness" in the same characterization of the law as a regulatory act

[*105. The legislator has the power to choose a legislative solution that it considers to be in line with the goals of its legislative policy. After identifying the solution that expresses the need for a practical goal of legal regulation, the legislator proceeds to a second operation, i.e. legislation, which includes the legislator's idea or solution, it appreciates the technical-legislative ways through which it can technically transpose its expected legislative solution into law. In order to achieve this legislative solution, the legislator calls for the most suitable technical-legal form for the most direct and concrete implementation of its legislative idea in practice; for this reason, some laws are more or less general, and others can have a regulatory content with a very high degree of concreteness. These represent variable technical-legal forms of expression of the legislator's will in accordance with the subject matter of the regulation and the pursued goal. As a rule, to achieve the pursued goal, the legislator chooses the simplest, direct and most effective forms of technical regulation of its legislative policy*

solutions. Thus, there is a difference between the legislative solution (the substance of the regulation) and the technical solution (the formalization of the regulation) that the legislator chooses to effectively carry out its legislative policy in a certain field.]

IV. Conclusions. Legal certainty and jurisprudential consistency

As we have stated in the *Introduction*, the purpose of this article is not to analyse, *per se*, the legal regime of the property of the State and administrative-territorial units, but to provide a "mirror" of the way in which this regime is reflected through the elements of legislative technique used by CCR in its reasoning, to explain the relevance of these rules.

Thus, we note that the stated jurisprudential benchmarks outline the regime of the acts of transfer of assets from the property of the State and territorial administrative units, including a number of guidelines, solutions and their reasoning. However, just as in the mirror of the legislative technique, the general regime of the property of the State and administrative-territorial units appears to lack the necessary clarity (given the various amendments and competing provisions existing in the Civil Code and the Administrative Code as well as, per se, the issue of their compliance with the provisions Article 136 of the Constitution), in the same way, the case law does not stand out for its clarity. The introduction in the constitutional review of the various subsequent regulations of the Basic Law (such as the Civil Code and the Administrative Code) may create confusion through the way in which they are "attached" to the body of the Basic Law, meaning that both a clearer and more coherent regulation, as well as a clearer methodology of constitutional reasoning (expressing a review in relation to the Constitution and not to the infra-constitutional legislation) would be welcome.

In terms of the legislative technique, wordings such as that of Article 292 (1) of the Administrative Code, according to which "*the transfer of an asset from the public domain of the State to the public domain of an administrative-territorial unit is made at the request of the county council, respectively the General Council of the Municipality of Bucharest or the local council of the commune, city or municipality, as the case may be, by Government decision, initiated by the authorities provided for in Article 287 a), who manage the respective asset,* ***unless the law provides otherwise***"[18]

[18] We note the interpretation of the CCR regarding this wording, by Decision No 901/2020, Official Gazette no. 126 of 5 May 2021, paragraph 26 *"The Court notes that Law No 213/1998 was partially repealed by Article 597 (2) m) of the Government Emergency Ordinance No 57/2019 regarding the Administrative Code, but the legislative solution laid down in Article 9 (1) of Law No 213/1998, which provided that 'the transfer of an asset from the public domain of the State to the public domain of an administrative-territorial unit is done [...] by Government decision', was taken over by the provisions of Article 292 (1) of the repealing regulatory act, being supplemented with the phrase 'if the law does not provide otherwise'. Or, the Court specified, through Decision*

may create legal uncertainty. Thus, despite the detailed regulation contained in Article 292 et seq. of the Administrative Code subject to the matter referred to here, a "window" is left for the regulation of the transfer of the public property of the State, without specifying any conditions/guarantees. The limits of the legislator's margin must be carefully balanced against the characterization of the law as a regulatory act, the exercise of power by the Parliament within the system of separation and balance of the State powers and respect for the principle of equality before the law. As regards the case law presented above, it is noteworthy considering whether, even under the conditions of the circumstances established in the recitals of the cited decisions of the CCR (but with the fragile border between constitutionality and opportunity in assessing the fulfilment of the criteria derived from the recitals that substantiate the transfer of property), a regulation by law in the field concerned cannot open the door to situations that escape the control of both the courts of law and the constitutional court. The Constitution establishes a number of instruments of mutual control between the authorities that exercise power in the State, the limits of competence and legal regime of the acts they adopt, to ensure the balance, sometimes so fragile, of democracy and the Constitutional Court must watch over them functioning as a guarantor of the supremacy of the Constitution. Rules such as the involvement of the executive and the judicial authority in these transfer procedures under the conditions of the legislative monopoly of the Parliament and its role as the supreme representative body (which can induce the erroneous idea that it can legislate anything), are guarantees of democracy and the rule of law, an expression of separation and the balance of the State powers enshrined in Article 1 of the Constitution and ensuring the equality before the law of all its recipients. As a result, a clarification of the legal provisions in the matter of the transfer of the right of property of the State would serve the above-mentioned goal and jurisprudential consistency alike. Through the few jurisprudential and legal benchmarks mentioned, we wanted to emphasize and support the profound and substantial implications of the technical legislative rules and their constitutional relevance. The "mathematics" (in the sense of exact/formal) of the legislative technique is useful to better see those regulatory elements which, being less clear in their formulation, and, consequently, in their interpretation and application, may create legal uncertainty. The principle of legal certainty equally imposes requirements for the legislative procedure, the substance of the legislation, as well as for the practice of the court of law and the constitutional court. From the perspective of constitutional justice, and in relation to the general binding nature of the decisions

No 537 of 25 September 2019, published in the Official Gazette of Romania, Part I, no. 907 of 8 November 2019, that the new legal provision can only be interpreted in accordance with Decision No 384 of 29 May 2019, previously cited, paragraphs 37, 41 and 55, namely that the transfer of an asset that does not constitute an exclusive object of public property, from the public domain of the State to the public domain of an administrative-territorial unit, will be carried out by Government decision."

of the constitutional courts belonging to the European model of constitutional review, an interesting doctrinal research regarding this model can look at the "weight" in terms of the social and institutional acceptance of the decisions taken unanimously by votes and of those taken by a (especially fragile) majority vote, as well as the differences in terms of legal force/effects, of some nuances, such as the mention in the recitals of "case law", "uniform case law" or "established case law", to support the recitals of the decisions. Such an analysis could refer both to the mechanism and the reasoning of the jurisprudential upturns, in a comparative law approach. Moreover, this is an idea that has concerned us for a longer time and which may eventually find its fulfilment in the Codex of unconstitutional legislative solutions[19].

[19] https://www.juridice.ro/essentials/566/codexul-solutiilor-legislative-neconstitutionale