Decision No 153
of 6 May 2020

on the objections of unconstitutionality of the Law repealing provisions on service pensions and old-age pensions, as well as regulating a series of measures in the field of occupational pensions,

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Summary

I. As grounds for the objections of unconstitutionality, the non-observance of the order of referral of the Chambers of Parliamentary was invoked. The law that is the subject-matter of the referral was submitted to the Senate, for debate and adoption, as the first Chamber referred to, and the Chamber of Deputies was the decision-making Chamber. This order of referral is contrary to the provisions of Article 65 (2) (j) of the Constitution, according to which the establishment of "the legal status of Deputies and Senators, their emoluments and other rights" is made in a joint sitting of the Chamber of Deputies and Senate. Besides, the Senate rejected the law, but the Chamber of Deputies adopted it, thus violating the principle of bicameralism.

It was argued that the law in question was incomplete and created a regulatory void, because it limited itself (except for some provisions amending Framework Law No 153/2017 on the remuneration of staff paid from public funds and Law No 227/2015 on the Fiscal Code) to establishing provisions repealing the norms on "special pensions". The existence of this regulatory void is confirmed even by the provisions of Article 15 of the law, which stipulate that, within 6 months, specific laws will be prepared regarding the "occupational pension schemes" for each category of service pension beneficiaries.

Although the legislator's stated intention was to eliminate all categories of so-called "service" or "special" pensions, in reality, the regulation lefts out certain categories of pensions, such as, for example, the special pensions for military and police officers, in view of the "restrictions imposed by law during their activity", although similar restrictions and incompatibilities are imposed on all the professional categories covered by law.

It was also emphasized that the legislator's option to maintain military service pensions and eliminate the magistrates' service pensions was contrary to the clear case-law of the Constitutional Court (Decision No 20 of 2 February 2000, published in the Official Gazette of Romania, Part I, No 72 of 18 February 2000), in which it was held that such a hypothesis was contrary to the provisions of Article 16 (1) of the Constitution. Although the legislator chose to maintain the restrictions and incompatibilities specific to all the professional categories covered by law, it suppressed a statutory right only for some of the categories concerned, without objectively and reasonably justifying, not even in appearance, the measure adopted by the law in question.

Parliament had already tried to eliminate the occupational pensions of certain professional categories before, on which occasion the Constitutional Court, by Decisions Nos 871 and 873 of 25 June 2010, established that special pensions were not a privilege.

According to the Court's case-law, the constitutional statute of magistrates requires the granting of the service pension as a component of the independence of the judiciary, a guarantee of the rule of law.

It was argued that the abolition of the service pension for magistrates, with the exception of military magistrates, introduced an element of discrimination within the body of

magistrates, without there being a reasonable and objective justification for such a situation. The statute of magistrates cannot be differentiated depending on the capacity of the parts of the case-files assigned to them or on the nature of the cases solved.

II. By examining the objections of unconstitutionality, the Court noted that the impugned law also amended the provisions of Law No 96/2006 on the legal status of Deputies and Senators. The separate debate in the Senate and, respectively, in the Chamber of Deputies, violated the provisions of Article 65 (2) (j) of the Constitution, according to which the establishment of the legal status of Deputies and Senators, their emoluments and other rights should be made in a joint sitting of the Chambers of Parliament. Moreover, the order of referral of the Chambers regarding the amendment of Law No 303/2004 on the statute of judges and prosecutors was not observed, in violation of Article 73 (3) (l) of the Constitution.

It was argued that the law had been adopted by the Chamber of Deputies, as the decision-making Chamber, while the Senate had rejected it, and this way of adopting is contrary to the principle of bicameralism.

The Court ruled that the amendments and supplements made by the decision-making Chamber to the draft law adopted by the first Chamber referred to should have related to the field envisaged by the proponent and to the form in which it was regulated by the first Chamber. Otherwise, this would lead to the situation that only one Chamber, i.e. the decision-making Chamber, legislated, which is contrary to the principle of bicameralism.

The Court noted that this act of political will, materialized by the first Chamber's vote of rejection, did not offer the decision-making Chamber the possibility to disregard the original purpose of the law, the conception and philosophy of the legislative proposal. In other words, the fact that a legislative proposal rejected by the Chamber of sober second thought was adopted by the Decision-making Chamber is not such as to infringe, in itself, the principle of bicameralism. Thus, this possibility is regulated by Article 75 (3) of the Constitution, according to which "once a draft law or legislative proposal is passed or rejected by the first Chamber referred to, the draft law or legislative proposal shall be sent to the other Chamber, which will make a final decision".

The authors of the referrals also invoked the deficient nature of the explanatory statement to the legislative proposal. The Court noted that the proponents of the law had as starting point a premise imperatively expressed in the first paragraph of the explanatory statement, according to which "the lack of clear, objective and transparent provisions for determining the professional categories that could benefit from service pensions, as well as the lack of a maximum ceiling for the service pensions turned this system of service pensions into one of the biggest problems in Romania". Next, "the feeling of disapproval, dissatisfaction and frustration with this system of service pensions" is invoked, as well as a sociological research conducted "from 27 November to 5 December 2018", on "a representative sample" (without specifying what this means), which apparently showed that "over 80% of Romania's population requests the abolition of service pensions, known as special pensions". The "feeling" invoked and the study mentioned determine the legislator to intervene in order to "stop this phenomenon that generates dissatisfaction". "Colossal differences" in the amount of the pensions, "outrageous" pensions, "irreversible social anomalies" are then invoked (without presenting any study or other documentary tool), hence the conclusion that "the repeal, as soon as possible, of the legal provisions on the existence of service pensions is necessary and even mandatory". The financial argument is also mentioned, respectively "major imbalances in the pension fund" and the annual expenditure generated by the payment of service pensions, also without presenting any documentation likely to support this conclusion.

In addition to the use of a non-motivating language, noted by the Legislative Council in its Negative Opinion, the Court also found the lack of official documents to objectively

support the data presented and the conclusions stated, such as to justify the regulatory intervention. The socio-economic impact is not presented either, just like the impact on the legal system. Without a reasoning of the adopted law, it is not possible to know why some of the service pensions are abolished, while others are kept.

In its case-law, the Constitutional Court noted that the absence of a thorough reasoning of the regulatory acts and the summary nature of the presentation and motivation tool was contrary to the requirements of clarity of the law and legal certainty.

The Court also found that the previously reported deficiencies led to an incomplete regulation. Objectively, such a regulation, comprising a combination of repealing rules, cannot solve the "problem" stated by the proponents in the explanatory statement, leading instead to legal uncertainty as to the legal regime of pensions.

The adopted regulation repeals provisions included in several laws, referring to numerous professional statutes, essentially different, without proposing any solution or legislative rule to replace these provisions or to correlate them with the legislative system in force. The "perspective" of a future regulation ("within 6 months") established at the end of the law, in the sense of introducing "occupational" pensions, "for each category" is not likely to provide an immediate solution, but to confirm the regulatory void determined by the entry into force of the impugned law. The law in question is contrary to the principle of predictability and does not provide the person adequate protection against arbitrariness.

With regard to non-compliance with the general binding nature of the decisions of the Constitutional Court, the Court emphasized the constant nature of its case-law on both the general legal regime of regulations in the field of pensions and the service pension of magistrates. The Court found that the impugned law disregarded the decisions of the constitutional court.

The law also contradicts the decisions of the Constitutional Court by which it emphasized that, in order to observe the principle of equality, the granting or non-granting of service pensions must be based on an analysis of the specific status of the various professions, in order to establish if such a status justifies a different treatment in terms of pension regulation.

The Court ruled that the law-making process conducted in violation of the decisions of the Constitutional Court was incompatible with the rule of law, enshrined in the provisions of Article 1 (3) of the Constitution.

In conclusion, the impugned law is unconstitutional as a whole. Parliament must ascertain the legal termination of the law-making process and, if a new legislative procedure is initiated, it must comply with the Court's decision.

III. For all these reasons, unanimously, the Court upheld the objections of unconstitutionality and found that the Law repealing provisions on service pensions and old-age pensions, as well as regulating a series of measures in the field of occupational pensions was unconstitutional as a whole.