

*Decision No 58
of 12 February 2020*

*on the objection of unconstitutionality of the provisions of the Law supplementing Article 38
(3) of Framework Law No 153/2017 on the remuneration of staff paid from public funds,*

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Summary

I. As grounds for the objection of unconstitutionality, it was argued that the impugned law violated Article 114 of the Constitution, given that it amends Government Emergency Ordinance No 114/2018 while the law approving it is in an advanced stage of the parliamentary procedure in the decision-making Chamber. This creates the premises for a legal conflict of a constitutional nature between the Government and Parliament, as the Government violated the competence of Parliament as the sole legislative authority. The legitimation of such an act could lead to an institutional deadlock, in the sense that it would become impossible for Parliament to legislate.

Also, the impugned law amends and supplements more than 25 regulatory acts, which regulate various social fields. However, a regulation that is subject to the Government's assumption of liability must contain provisions that clearly refer to only one area.

Assumption of Government's responsibility with respect to a draft law is an extreme solution, which can be resorted to when, for the swift adoption of a draft, neither the emergency procedure nor the emergency ordinance procedure can provide the expected results. Legislative urgency cannot be determined by the amendment or repeal of the existing legislation, but by the absence of legal regulations in a certain field of human activity.

It was also indicated that prohibiting cumulation of retirement pensions paid from the public pension system with salary incomes paid from the State budget violates Article 16 (1), Article 41 (1), Article 44 (1) and Article 47 (2) of the Constitution.

II. By examining the objection of unconstitutionality, the Court ruled that, with regard to assumption of responsibility, by the Government, the risk of the Government falling compensated for the circumvention of the parliamentary legislative procedure. The Court ruled that the Government could assume its responsibility, regardless of the stage of the legislative procedure. The role of such a procedure is to counter the obstructionist acts of the Opposition during the legislative debates. This simplified way of legislating should be resorted to only when the adoption of the draft law in the ordinary procedure or in the emergency procedure is no longer possible or when the political structure of Parliament does not allow this. Furthermore, the assumption of responsibility, by the Government, on a draft law, aims to have it adopted as swiftly as possible, given that the content of the regulation aims to establish urgent measures in an area of the utmost importance, and their application must be immediate.

In its case-law, the Court listed the following criteria imposed by Article 114 of the Constitution for the assumption of responsibility, by the Government:

- 1) the existence of an urgency in adopting the measures contained in the law for which the Government assumed its responsibility;
- 2) the need for the regulation in question to be adopted as soon as possible;
- 3) the importance of the regulated field;
- 4) the immediate implementation of the law in question.

The Court ruled that no provision of the Basic Law prohibited a law from regulating several areas of social relations. Thus, the Government may choose, in a draft law which it submits to Parliament for adoption, either through the ordinary legislative procedure or by assumption of responsibility before Parliament, to propose the regulation of several areas by amending, supplementing or repealing several regulatory acts in force. The legislator can regulate, through a law, a complex group of social relations, in order to obtain a desirable result at the level of the entire society.

However, by examining the third criterion set by Article 114 of the Constitution for the assumption of responsibility, by the Government (the importance of the regulated field), the Court concluded that the draft law imposed had to limit itself to a single area.

Therefore, in order to establish that the Government has assumed its responsibility with respect to a single draft law, it is necessary to assess it both formally and substantially.

The Court noted that, formally, a single draft law had been adopted through the assumption of responsibility. However, when analysing the regulatory content of the Law on a series of fiscal and budgetary measures and amending and supplementing a series of regulatory acts, it is found that its title attests to the fact that the law covers the fiscal and budgetary area, as well as an unspecified number of areas in which a series of regulatory acts are amended and supplemented.

In principle, fiscal regulations aim at the legal framework regarding the mandatory taxes, fees and social contributions; the taxpayers who are bound to pay them; the method of calculation and payment thereof; the procedure for amending these taxes, [fees](#) and social contributions. Instead, budgetary regulations refer to the annual provision and approval of revenues and expenditure or, as the case may be, only of expenditure, depending on the funding system of public institutions. Therefore, fiscal regulations are closely related to the budgetary ones, without overlapping, each of the two areas maintaining its well-defined individuality.

At the same time, the Court noted that the fiscal field was subject to regulation by ordinary laws. These are submitted to the Senate, for debate and adoption, as the first Chamber referred to, and, subsequently, to the Chamber of Deputies, as the decision-making Chamber. Instead, the budgetary field refers to aspects related to the State budget and the State social insurance budget. The drafts of these budgets are drawn up only by the Government and they are approved by Parliament, in a joint sitting, with the vote of the majority of MPs. These aspects highlight the fact that the financial-budgetary measures aim at two distinct regulatory fields, so the adopted law does not have a single purpose.

Furthermore, the Court found that the impugned law repealed, amended and supplemented or prolonged the implementation of 23 regulatory acts. Legislative amendments cover, by way of example, areas such as public investment, salaries of staff paid from public funds, parental leave and child allowance, public pension system, national local development program, traffic on public roads, privately managed pensions, electricity and natural gas, fiscal, administrative and budgetary areas, which leads to the conclusion that this regulatory act does not cover a single area of regulation. Thus, the regulatory act subject to analysis does not have a clear, unique and well-defined regulatory object. It does not modify a single regulatory act, but several provisions from various regulatory acts, heterogeneous in terms of regulatory object. Even if most of the amendments in the law subject to analysis concerned Government Emergency Ordinance No 114/2018, it can be stated that the other amendments and supplements in the law are not related and essential to it.

However, a law can cover only one field of regulation, as well as fields directly related to it. This is also stated by the provisions of Article 14 of Law No 24/2000 on the norms of legislative technique for drawing up regulatory acts, republished in the Official Gazette of Romania, Part I, No 260 of 21 April 2010, which establish that regulations of the same level and having the same object are usually included in a single regulatory act, and a regulatory act

may include regulations from other related matters only insofar as these are essential to the achievement of the purpose pursued by the respective act.

Amending and supplementing such a significant number of regulatory acts cannot be achieved by a single law, a law that is not even an attempt to codify the matter, but one that expresses different legislative options in heterogeneous fields. A draft law must target homogeneous social relations. A different scenario would lead to the inadmissible situation where such a draft law regulated various social relations connected or not, and where the law thus adopted did not reflect regulatory unity and a single purpose.

Consequently, the Court found that, by promoting a draft law containing regulations in a multitude of matters through assumption of responsibility by the Government, Article 114 (1) of the Constitution had been violated. This constitutional text expressly states that a procedure of assumption of responsibility by the Government concerns a single draft law, and the reason for such a regulation lies in the fact that the said procedure is one that limits the legislative role of Parliament, so it must be carried out only under restrictive conditions. Or in this case, the Government did nothing but convert a series of draft laws that would have targeted those more than 20 regulatory acts amended/supplemented/prolonged into a single one precisely in order to comply, formally, with Article 114 (1) of the Constitution. But such a draft laws evades both the letter and the purpose of the constitutional text and, thus, the law adopted through the procedure of assumption of responsibility, by the Government, is unconstitutional.

III. For all these reasons, by a majority vote, the Court upheld the objection of unconstitutionality and found that the Law on a series of fiscal and budgetary measures and amending and supplementing a series of regulatory acts was unconstitutional.