

Decision no. 449 of 24 June 2021

regarding the exception of unconstitutionality of the provisions of Article 38 of the State Budget Law for the year 2021 no. 15/2021

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Summary

I. As grounds for the exception of unconstitutionality, its author specified that the provisions of Article 20 of Law no. 31/2007 on the reorganization and operation of the Romanian Academy of Scientists regulate the financing of its maintenance and operating expenses and allowances from own income and from subsidies granted from the state budget, according to the annual budget laws. The criticized text, Article 38 of the State Budget Law for the year 2021 no. 15/2021, derogates from these provisions, establishing that the financing of the Academy is carried out, until 31 December 2021, only from own funds, without the granting of subsidies from the state budget. The author assessed that the derogation from the provisions of Article 20 (1) of Law no. 31/2007 is likely to affect the stability of the legislation, becoming practically inapplicable in the forms in force and contrary to the principle of the security of legal relations, a fundamental dimension of the rule of law, and the predictability of the law in terms of the consequences it entails, which contravenes the constitutional provisions of Article 1 (3) and (5) regarding the rule of law and the principle of legality.

II. Examining the exception of unconstitutionality, the Court found that the premise of its analysis is that the criticized regulation, which is part of the budget law, establishes a derogation from another regulation contained in a law adopted in separate meetings of the two Chambers of the Parliament, which, in the opinion of the author, is contrary to the rule of law and the principle of legality.

Analyzing the provisions of Article 15 (3) of Law no. 24/2000 regarding the rules of legislative technique for drafting normative acts, the Court found that the criticized text is a derogatory one with limited application in time, namely for the course of 2021, and therefore it must be adopted according to the same procedure as the text from which it is derogated from in the source law.

The state budget and state social security laws are ordinary laws, which means that they are adopted in the joint session of the two Chambers, with the vote of the majority of the deputies and senators present (Article 53 of the Regulation of the joint activities of the Chamber of Deputies and the Senate). According to the case-law of the Constitutional Court, the regulation of the organization and functioning of the Academy is carried out by ordinary law, which means that it is adopted in the separate meeting of the two Chambers, with the vote of the majority of the members present in each Chamber [Article 76 (2) of the Constitution]. It follows that, although the budget law and Law no. 31/2007 are ordinary laws, they are adopted either in a joint session or in separate sessions of the two Chambers, depending on the sphere of regulated social relations, and the proportion of deputies/senators in the composition of the voting majority is not identical since in the first case the majority refers to a number of parliamentarians

present, regardless of whether they are deputies or senators, while in the second case to a distinct and separate number of deputies/senators present. The Court held that in the case of laws adopted in a joint session, the Parliament acts from a procedural point of view as a single Chamber, while in the case of laws adopted in separate sessions, the legislative function of the Parliament is exercised separately by its two Chambers. Consequently, an ordinary law adopted in a joint session, on the one hand, is not adopted by the majority of the members present in each Chamber, but by the joint majority of the deputies and senators present, and, on the other hand, it exceeds from the logic of the successive referral of the two Chambers [Reflection Chamber and Decision Chamber].

Moreover, in continuation of the highlighted formal aspects of the legislative procedure, the state budget law cannot amend/supplement/repeal laws that establish revenues or commit state expenditures, precisely because it is an annual financial plan of the government that is based on the normative acts that are part of positive law.

Thus, systematically analyzing the provisions of Article 2 point 31, Article 3 (1), Article 14 (2), Article 26 and Article 35 (1) of Law no. 500/2002 on public finances, the Court held that the drafting activity of the state budget law is grafted on the legal norms found in the positive law, and the proposals of the main authorizing officers on the basis of which the budget is drawn up are carried out according to the existing legal norms, and not the future ones, which at least at the time of drafting budget proposals are non-existent. If the Government notices that these proposals exceed the economic possibilities of the country, and the budget thus established would be unrealistic, it can amend or propose the amendment of the legal provisions that lead to such a budgetary imbalance through an emergency ordinance/draft law, as the case may be, therefore, through an act distinct from the state budget law. The budget law is nothing more than a centralizing act of the state's revenues and expenses existing in positive law because the budget is drawn up based on the proposals of the main authorising officers, proposals that are always based on the law. Moreover, the constituent legislator established a different and unique way of adopting the state budget law (being the only law adopted exclusively at the proposal of the Government and also the only ordinary law adopted in the joint session of the two Chambers), precisely due to the particular nature of the subject of its regulation.

Therefore, the Court found that the state budget law, through the derogation made, amended, for the year 2021, a law in force, exceeding the scope of social relations that it has the constitutional ability to regulate. Thus, the criticized text, instead of submitting to the regulatory scope of a budget law, in the sense of identifying the budget revenues that support the budget expenditure regulated by Law no. 31/2007, proceeded to eliminate this expenditure. Moreover, the phrase "according to the annual budget laws" contained in Article 20 (1) of Law no. 31/2007 cannot be interpreted in the sense that these laws determine whether or not the subsidy is granted, because (i) the granting itself of the subsidy is regulated by Law no. 31/2007 and (ii) a budget law cannot void the normative consistency of a legal text that must be taken into account for the budget construction. Therefore, this phrase expresses the idea of concretely establishing the annual amount of this subsidy to ensure the functioning of the Academy, and not of withdrawing/temporarily eliminating this subsidy for various years.

It follows that Article 38 of Law no. 15/2021 violates the principle of legality from a double perspective: (i) procedurally - subordinated to the requirements of the laws adopted in joint or separate sittings of the two Chambers and, implicitly, of the required majority vote of the deputies and senators [Article 65 (1) and (2) (b) and Article 76 (2) of the Constitution] and (ii) materially - subject to the fact that it exceeds the sphere of social relations that the budget law has the constitutional ability to regulate [Article 138 (2) of the Constitution]. Therefore, the criticized text violates the principle of legality, in its component relating to the supremacy of the Constitution, enshrined by Article 1 (5) of the Constitution, by reference to Article 65 (1) and (2) (b), Article 76 (2) and Article 138 (2) of the Constitution.

In its case-law, the Court held that the principle of legality is one of constitutional rank, so that the violation of the law has as an immediate consequence the violation of Article 1 (5) of the Constitution, which stipulates that compliance with the applicable laws is mandatory. At the same time, the same conclusion is imposed when the adopted law violates the provisions of the Constitution. Violation of this constitutional obligation implicitly affects the principle of the rule of law, enshrined in Article 1 (3) of the Constitution. The essential feature of the rule of law is the supremacy of the Constitution and the obligation to observe the law. Also in its case-law, the Court emphasized the fact that an essential condition of the rule of law is that the powers/competences of the authorities are defined by law, which means that the exercise of their powers must also be done in accordance with the law and the Constitution. Or, in the hereby case, the criticized text could neither be adopted according to the specific procedure of the budget laws, nor could it be part of their content, its normative content not falling within their scope. Therefore, the criticized text violated the principle of the rule of law enshrined in Article 1 (3) of the Constitution.

III. For all these reasons, by a majority of votes, the Court upheld the exception of unconstitutionality and found that the provisions of Article 38 of the State Budget Law for the year 2021 no. 15/2021 are unconstitutional.