

Decision no. 242 of 8 April 2021 regarding the exception of unconstitutionality of the provisions of Article 55¹ of Law no. 254/2013 regarding the execution of punishments and custodial measures ordered by judicial bodies during the criminal process, in the interpretation given by Decision no. 7 of 26 April 2018, pronounced by the High Court of Cassation and Justice - Panel for resolving legal issues in criminal matters, published in the Official Gazette of Romania, Part I, no. 677 of 8 July 2021.

Summary

I. As grounds for the exception of unconstitutionality, it was shown that, by Decision no. 7 of 26 April 2018, the High Court of Cassation and Justice - the Panel for resolving legal issues in criminal matters established that the provisions of Article 55¹ of Law no. 254/2013 on the execution of punishments and detention measures ordered by the judicial bodies during the criminal trial are also applied to the sentences served before the entry into force of Law no. 169/2017, in the event that a crime was committed during the trial period of conditional release from that sentence. In order to judge in this sense, the High Court of Cassation and Justice held that, within the provisions of Article 55¹ (1) and (8) of Law no. 254/2013, the legislator does not distinguish, in granting the compensatory measure in the case of accommodation under inappropriate conditions, between persons released conditionally and persons deprived of liberty serving a prison sentence at the time of entry into force of Law no. 169/2017 (through which Article 55¹ was introduced).

Through the interpretation given by the High Court of Cassation and Justice of the provisions of Article 55¹ of Law no. 254/2013, the requirements of clarity, precision and predictability of the rule, imposed by Article 1 (5) of the Constitution, are not observed, and the security of legal relations may be affected.

Also, only the rules of substantive criminal law can be under the scope of the constitutional regulation enshrined in Article 15 (2) regarding the retroactivity of the more favorable criminal or administrative-offence legal provisions, and by no means those of procedural criminal law, which are of immediate application. Through the given interpretation, we come to the retroactive application of the provisions in question, a circumstance that affects substantive criminal law institutions and could produce effects in definitively settled cases.

II. Examining the exception of unconstitutionality, the Court found that, in the matter of criminal enforcement law, the legislator made a distinction between "institutions"/"measures" for which enforcement is equivalent to restricting the exercise of personal freedom and those that do not have this trait.

Regarding the institution of conditional release, the Court held that it can be divided into two stages, depending on the situation of the convicted person. Thus, the first stage refers to the situation of the convicted person serving a sentence in a penitentiary. The second stage refers to the situation of the convicted person, for whom conditional release has been ordered, who is under probation. After the expiry of the probation period, if the convict has not committed a new crime discovered before its expiry, the revocation of conditional release has not been ordered and no cause for cancellation has been discovered, the sentence is considered fulfilled.

Regarding the first stage of conditional release, it must be seen in correlation with the fulfillment of certain specific conditions, which, among others, refer to the mandatory execution of certain fractions of the sentence. This stage of conditional release is inextricably linked to the physical placement of the convict in a penitentiary, a fact that implies the restriction of the exercise of the convict's personal freedom.

The second stage of the conditional release is inextricably linked to the release of the convicted person, only in this framework can we talk about the convict's compliance with the probation measures and the obligations established by the court.

With regard to the quality conditions of the law, the Court found that the provisions of Article 55¹ of Law no. 254/2013 cannot be interpreted strictly grammatically and in isolation from the whole normative act of which they are a part. The provisions relating to compensation in case of accommodation in inadequate conditions are part of the normative set relating to the implementation of those "institutions"/"measures" which imply the restriction of the exercise of personal freedom. Therefore, any amendment or addition to the law must maintain the connection with the amended/supplemented normative act, regardless of its location in the whole of the law in question. However, in the context where Law no. 254/2013 regulates only in the sphere of issues related to the state of custody, the logical conclusion that follows from its systematic interpretation is that the provisions regarding compensation in case of accommodation in inappropriate conditions are circumscribed to the first stage of the conditional release, these representing, in fact, another method of calculation that must be taken into account when verifying the fulfillment of the condition regarding the fractions of the sentence that must be served.

The Court held that Article 55¹ is part of Chapter IV - "Detention conditions" - of Title III - "Execution of custodial sentences". The entire Title III, as well as the entire normative set of Law no. 254/2013, refers to measures/procedures/situations arising from or related to the state of custody of the convicted person.

In these conditions, considering the normative scope of Law no. 254/2013, the Court considered that the legislator should not have made the express specification, in the sense that Article 55¹ will only apply to persons who are in a penitentiary at the time the adoption of this provision. This conclusion follows logically, on the one hand, from the regulatory subject of the amended law and, on the other hand, from the legislator's option to legislate separately, through two separate normative acts, the implementation of those "institutions"/"measures" which presuppose the restriction of the exercise of personal freedom and the implementation of those "institutions"/"measures" which are carried out through other procedures, which, although they may determine the restriction of the exercise of certain rights or fundamental freedoms, do not produce effects in the sphere of personal freedom, in the sense of restricting its exercise.

Considering these aspects, the Court found that the arguments adopted by the supreme court cannot be retained, so that the conclusion found in the operative part of Decision no. 7 of 26 April 2018 appears to be unsupported.

Next, the Court analyzed to what extent the criticized provisions can be seen as falling into the category of substantive criminal laws whose more favorable retroactive application is mandatory.

The constitutional court, referring to the criteria for delimiting the norms of criminal law from those of criminal procedure, found that the subject of regulation, the purpose and the result to which the norm in question leads are what prevails in establishing this trait. Regarding the regulatory subject of the criticized provisions, the Court held that they refer to the establishment of a mechanism for calculating the sentence actually served in the case of placing the convicted person in inadequate accommodation conditions, a mechanism applicable in the case of analyzing the conditions for granting conditional release. With regard to the purpose of the regulation, it consists in granting a compensation to persons serving custodial sentences in conditions of severe overcrowding, contributing, at the same time, to the relief of penitentiaries. The entry into force of Law no. 169/2017 results in the calculation of the penalty fractions that must be served (to be eligible for conditional release), including by applying the provisions of Article 55¹ (1) of Law no. 254/2013.

Therefore, the Court ruled that the provisions of Article 55¹ of Law no. 254/2013 do not represent a rule of substantive criminal law, but a rule that regulates the execution of punishments, so that the principle of applying the more favorable criminal law, enshrined in Article 15 (2) from the Constitution, cannot be applied by reference to the criticized norm.

If the interpretation given by the High Court of Cassation and Justice were to be accepted, a situation would be reached where the criteria that were the basis of the pronouncement of the court decision by which the conditional release was ordered would be put back into question. Therefore, a recalculation of the sentence that is considered served should be carried out for any legislative change that has occurred regarding Article 96 of Law no. 254/2013 (regarding the part of the duration of the sentence that is considered served based on the work performed and/or school training and professional training), favorable to the individual for whom conditional release was ordered. Or, this fact would mean a reevaluation of the very court decision by which the measure of conditional release was ordered, in violation of the principle of security of legal relations.

In conclusion, by issuing Decision no. 7 of 26 April 2018, the High Court of Cassation and Justice gave the provisions of Article 55¹ of Law no. 254/2013 an unpredictable trait. This unpredictability has implications for the individual for whom the conditional release was ordered, as it is impossible for them to know the date on which the sentence will be considered as served, and, consequently, to regulate their behavior.

III. For all these reasons, unanimously, the Court upheld the exception of unconstitutionality and found that the provisions of Article 55¹ of Law no. 254/2013 regarding the execution of punishments and custodial measures ordered by judicial bodies during the criminal trial, in the interpretation given by Decision no. 7 of 26 April 2018, pronounced by the High Court of Cassation and Justice - the Panel for resolving legal issues in criminal matters, are unconstitutional.