

Decision no. 298 of 6 May 2021 regarding the exception of unconstitutionality of the provisions of Article 21 (5) of Law no. 360/2002 on the Statute of the Policeman, published in the Official Gazette of Romania, Part I, no. 669 of 7 July 2021.

Summary

I. As grounds for the exception of unconstitutionality, the author argued, in essence, that the provisions of Article 21 (5) of Law no. 360/2002 on the Statute of the Policeman, which refers to the granting of the professional rank depending on seniority in the structures of the Ministry of Internal Affairs, are contrary to Article 16 (1) of the Constitution regarding the equal rights of citizens, insofar as it is interpreted as applying only to a graduate with a bachelor's degree of a study program organized as reduced-attendance education within the "Alexandru Ioan Cuza" Police Academy of the Ministry of Internal Affairs, but excludes the graduate with a bachelor's degree of a public order and safety study program, or law, organized by the same educational institution of the Ministry of Internal Affairs, as full-time attendance education.

II. Examining the exception of unconstitutionality, the Court found, analyzing the regulation of Law no. 360/2002, that the legislator created two distinct legal regimes. The premise that constituted the basis of this differentiation was that the new graduates of the full-time courses of higher education - referred to in Article 21 (1) and (3) - will be recruited as police officers, in the lowest rank, namely that of a police sub-inspector, since they have no seniority previously accumulated in the structures of the Ministry of Internal Affairs, nor could they have acquired it during their higher education, given the mandatory attendance of the courses. The fact that the legislator takes into account the absence of experience in the field is also confirmed by the provision according to which these graduates are initially classified as beginners, for a 12-month internship period, after which they will take a final exam [Article 21 (12)]. It is important to emphasize that the legislator institutes the same legal treatment both for the graduates of the full-attendance higher education of the "Alexandru Ioan Cuza" Police Academy, as well as for the graduates of other higher education institutions.

On the contrary, the hypothesis of Article 21 (5) refers to persons who, before graduating from higher education, accumulated seniority in the structures of the Ministry of Internal Affairs (namely they were police officers and later graduated with a bachelor's degree or equivalent from higher education institutions with a profile corresponding to the specialties required by the police, or took the reduced-attendance courses of the "Alexandru Ioan Cuza" Police Academy, holding at the same time a position within the structures of the Ministry of Internal Affairs), because the way of organizing the courses allowed the simultaneous development of the professional activity and of the educational one. Considering the accumulated seniority in the structures of the Ministry of Internal Affairs, the legislator provided the possibility of capitalizing it on the occasion of the establishment of the professional rank that is granted after graduating from the higher education institution.

The author of the exception of unconstitutionality, who accumulated more than 5 years of experience as a police officer before starting his full-attendance studies at the "Alexandru Ioan Cuza" Police Academy, highlighted the existence of a hypothesis that is not regulated by any of the texts of the law mentioned above, namely points (1), (3) and (5) of Article 21 of Law no. 360/2002. Thus, although by the fact that he has seniority as a police officer he should fall within the hypothesis of Article 21 (5) of Law no. 362/2002, the express provisions of this legal text which refer only to graduates of the Police Academy's reduced-attendance studies exclude their application in the situation of the author of the exception. On the contrary, according to

the current regulations, the author of the exception falls within the hypothesis of Article 21 (1) of Law no. 360/2002, which does not provide the benefit of capitalizing on previously accumulated seniority in the structures of the Ministry of Internal Affairs.

One cannot understand the reasons why the legislator excluded for the persons in the situation of the author of the exception of unconstitutionality the possibility of capitalizing on seniority in the structures of the Ministry of Internal Affairs acquired before the beginning of full-attendance studies with the "Alexandru Ioan Cuza" Police Academy, thus creating a difference in treatment in relation to law enforcement agencies policemen who graduated with a bachelor's degree or equivalent from higher education institutions with a profile corresponding to the specialties required by the police or those who took the reduced-attendance courses of the "Alexandru Ioan Cuza" Police Academy, having at the same time positions within the structures of the Ministry of Internal.

In its case-law, the Constitutional Court ruled that the principle of equal rights requires the establishment of equal treatment for situations which, depending on the goal pursued, are not different. However, as it was noted above, to the extent that it is deemed that the purpose of the legislator was to create a distinct legal treatment depending on the length of time they had prior to the completion of their higher education that allows them to be hired as police officers, the exclusion of the persons in the situation of the author of the exception from among those who enjoy the possibility of capitalizing on this seniority according to the provisions of Article 21 (5) appears to be devoid of an objective and rational justification.

The Constitutional Court emphasized in its case-law that the situations in which certain categories of people find themselves must differ materially in order to justify the difference in legal treatment, and this difference must be based on an objective and rational criterion. The need for the existence of an objective and reasonable justification was also emphasized in the case-law of the European Court of Human Rights in which it was held, in the application of the provisions of Article 14 on the prohibition of discrimination from the Convention on the Protection of Human Rights and Fundamental Freedoms, that any difference in treatment by the state between individuals in similar situations, without an objective and reasonable justification, represents a violation of these provisions.

In the light of what has been seen in the hereby case, the Court has found, however, that the form of education - with full attendance or with reduced attendance - which determines the legal hypothesis applicable to the author of the exception, cannot be evaluated as a criterion that meets the requirements shown above. Thus, the form of full attendance education does not exclude the hypothesis that a person has accumulated seniority in the structures of the Ministry of Internal Affairs before starting these studies. Furthermore, the Court observed that, in the case of persons under Article 21 (5) the first sentence of Law no. 360/2002, namely police officers who graduated with a bachelor's degree or equivalent from higher education institutions with a profile corresponding to the specialties required by the police, no distinction is made according to the form of education completed.

The Court also noted that, although there is the possibility of simultaneously carrying out the professional activity as a police officer and taking the reduced-attendance courses of the "Alexandru Ioan Cuza" Police Academy, as allowed by the provisions of Article 21 (5) of Law no. 360/2002, such an option cannot be converted into an obligation of the police officer to enrol only in higher education courses with reduced-attendance and to continue the professional activity, under the penalty of losing the right to capitalize on seniority achieved in the structures of the Ministry of Internal Affairs. Combining two demanding activities, such as the professional and the educational ones, must remain only as an option for the person, who will judge, depending on his capacity and personal interests, if he can sustain such an effort or if he dedicates himself exclusively to only one of these activities. The option of devoting yourself only to higher studies, by taking full-attendance courses at the "Alexandru Ioan Cuza"

Police Academy, cannot be considered as representing an objective and rational criterion to exclude the benefit of capitalizing on the seniority previously accumulated in the structures of the Ministry of Internal Affairs.

The Court found that Article 21 (5) of Law no. 360/2002 does not establish a privilege for the persons under the hypothesis of the norm, namely police officers who graduated with a bachelor's degree or equivalent from higher education institutions with a profile corresponding to the specialties required by the police, and graduates with a bachelor's degree of a study program organized as reduced-attendance education within the "Alexandru Ioan Cuza" Police Academy, since the legislative solution gives expression to both the legal provisions that establish the ranks that are awarded according to the level of studies, as well as the legislator's conception according to which accumulated seniority in a certain rank opens the possibility of advancement to a higher rank. Therefore, the objectively and rationally unjustified exclusion of the graduates of full-attendance courses with the "Alexandru Ioan Cuza" Police Academy of the Ministry of Internal Affairs from the benefit of capitalizing on previously acquired seniority in the structures of the Ministry of Internal Affairs, upon establishing the professional rank awarded after graduation must be viewed from the perspective of discrimination against this category of persons, the constitutional remedy being that of granting this benefit also to the persons in the situation of the author of the exception.

III. For all these reasons, unanimously, the Court upheld the exception of unconstitutionality and found that the legislative solution of Article 21 (5) of Law no. 360/2002 on the Statute of the policeman, which excludes graduates with a bachelor's degree from a public order and safety study program, or law, organized as full-attendance education within the "Alexandru Ioan Cuza" Police Academy of the Ministry of Internal Affairs from the possibility of capitalizing on seniority in the structures of the Ministry of Internal Affairs in order to establish the professional rank awarded after graduation is unconstitutional.