

Decision no. 904 of 28 December 2021 regarding the objection of unconstitutionality of the provisions of Article 6 (2) and of Article 54 and Article 56 of the State Budget Law for the year 2022, published in the Official Gazette of Romania, Part I, no. 1236 of 28 December 2021.

Summary

I. As grounds for the objection of unconstitutionality, Article 6 (2) of the State Budget Law for the year 2022 is criticized by the authors, through the lens of an alleged disadvantage of district 1 of the municipality of Bucharest due to the allocation algorithm of the sums of money resulting from the income tax estimated to be collected in the state budget, at the level of the municipality of Bucharest, according to which it was concluded that the provisions of Article 1 (5) and Article 16 (1) and (2) of the Constitution are violated.

It was also argued that the criticized law is unconstitutional as a whole, violating Article 1 (5) regarding the principle of legality and Article 32 regarding the right to education of the Constitution, because the amounts necessary to ensure the transportation of students were not provided in its text. These funds are regulated by Article 84 (1¹) of the National Education Law no. 1/2011 and represent a concrete form through which substance is given to the right to education. It was mentioned that, according to Law no. 226/2020, financing is ensured from local budgets, receiving the necessary amounts from the state budget, through the mechanism of budgetary transfers; however, for the year 2022, the funds referred to in Article 56 of the law were not included in the criticized law, which means that this text is in contradiction with Article 4 (b) and Article 5 (3) of the same law which establish the destination the amounts granted to local authorities. Moreover, Article 56 refers exclusively to local transportation, and there are no funds or other dispositions provided for the county-level transportation of pupils. In the absence of funds from the state budget, until now, the county councils have effectively refused to apply the provisions of Article 84 (1) of Law no. 1/2011, even in the context in which enforceable/final judgments have been issued against the county authorities.

Regarding the criticism of the unconstitutionality of Article 54 of the law, it was shown that it was included in the criticized law through the admission of an amendment initiated by 4 parliamentarians of a political formation that is the sole beneficiary of the derogatory funding it institutes, namely the Party of the Humanist-Social Liberal Power (PPU-SL). The amendment was not motivated and produces *intuitu personae* effects. The criticized text does not contain clear, necessary and sufficient rules, the legislative solution promoted is not substantiated from the perspective of social interest. This situation is inconsistent with Law no. 24/2000, which has the consequence of violating the constitutional principle of legality. Thus, due to its deficient drafting, the criticized law violates the demands of Article 1 (5) of the Constitution in its component related to the quality of the law, with the consequence of the unconstitutionality of the law as a whole. It was assessed that the criticized law also violates Article 74 and 75 of the Constitution, with reference to the principle of bicameralism. Since the state budget law includes an amendment to Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns, which could not be adopted in the joint meeting of the two Chambers, but only in the procedure regulated by Article 75 of the Constitution, it was concluded that Article 54 of the criticized law is unconstitutional.

II. Examining the objection of unconstitutionality, in relation to the criticism of Article 6 (2) of the State Budget Law for the year 2022, the Court held that the law establishes a unique and unitary criterion for financing all districts of the municipality of Bucharest and makes an identical allocation of principle regarding them, so that a financing preferential

treatment of a district or another is excluded. The fund allocation algorithm is clear and comprehensible, but the dissatisfaction of the authors of the objection of unconstitutionality does not concern this aspect, but an alleged insufficiency of the funds allocated to district 1 through the lens of some factual situations. However, such claims do not represent genuine criticisms of unconstitutionality, the Court not having the power to censor an option of the legislator in the sense of regulating a certain way of allocating financial resources for administrative-territorial units. Thus, the Court found that this criticism concerns aspects related to the option of the legislator and the appropriateness of the legislative act, so that the objection of unconstitutionality of the provisions of Article 6 (2) of the law is inadmissible

Regarding the text of Article 54, the Court found that it makes a derogation for the year 2022 from Article 18 (3) (a), (4) and Article 19 of Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns. In line with the logic of Law no. 334/2006, the annual budget granted to political parties is divided among political parties in proportion to the number of votes received in the parliamentary elections, namely the average of validly cast votes for the Chamber of Deputies and the Senate, if they have achieved the electoral threshold. In other words, it is necessary for the respective political party to have participated in the elections and to have achieved the electoral threshold. This is the general rule regarding the financing of political parties that are represented in Parliament.

However, the criticized text establishes that, by derogation from the provisions of Article 18 (3) (a), (4) and Article 19 of Law no. 334/2006, in the year 2022, 75% of the annual budget granted to political parties will be distributed to political parties that had as members at least one deputy or senator affiliated to a parliamentary group at the end of the first parliamentary session of 2021. In other words, another category of political parties that will be financed in 2022 is added to the general rule already stated, namely those that became represented in Parliament as a result of political migration. Thus, to the extent that a deputy/senator becomes a member of a political party that did not participate in the elections or did not reach the electoral threshold and does not become affiliated with any of the existing parliamentary groups, said political party will be granted the subsidy from the budget of state. This regulation obviously represents an addition to Article 18 (3) (a), (4) and Article 19 of Law no. 334/2006, an addition to be applied during the year 2022.

The case-law of the Constitutional Court is very clear in the sense that 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 authorizing officers, proposals that are always based on the law. Thus, it follows from this case-law that such a law cannot include provisions amending or supplementing the laws that commit budgetary expenditures. Those laws can only be amended through the general legislative procedure, and not through the state budget law. Therefore, until a possible amendment/supplementing of Law no. 334/2006, the criticized regulation is inapplicable.

Since the unconstitutionality of a legal norm is a constitutional sanction of last resort, and also taking into account the fact that in the *a priori* review of constitutionality, conditions and requirements can be imposed to guide the legal norm during its activity, the Court issued a dismissal decision of the objection of unconstitutionality under a condition, namely that the application of this rule can be achieved only if Law no. 334/2006 is amended/supplemented accordingly and only from the date of entry into force of this amendment/addition. In this way, the criticized text will no longer contain an innovative legislative solution, but will constitute a resumption of the legislative solution from Law no. 334/2006 which will apply strictly in the 2022 budget year, which is included in the logic of a budget law.

With regard to the criticisms of unconstitutionality whereby the regulation invoked in this case does not cover the expenses incurred with county-level road transportation, the Court observed that the expenses incurred with this type of transportation, as well as with the railway

or the subway, are to be settled from the state budget, by transfer, to the administrative-territorial units, according to the common law rule contained in Article 84 (1¹) of the National Education Law no. 1/2011. In other words, the criticized law regulated the indirect taking over by the state budget of certain expenses made from local budgets, precisely to ensure the budgetary sustainability of the pre-university education students' right to free transport.

Therefore, the Court found that the authors of the objection of unconstitutionality started from a wrong assumption, namely that funding from the state budget would have been provided only for local road and water transportation. Or, in reality, these are ensured through local budgets, with the restitution from the state budget (towards the local budgets) of the amounts used, and the other gratuities are settled from the state budget, by transfer, to the administrative-territorial units. These aspects constitute legislative options, which the Court has no power to censor.

Therefore, it was not possible to uphold the violation of the principle of legality provided by Article 1 (5) of the Constitution through the fact that the legislator resorted to different technical ways of covering the expenditure regarding the free transportation of students contained in Article 84 (1¹) of the National Education Law no. 1/2011. The Court found that Article 32 of the Constitution regarding the right to education is not applicable in this case, taking into account the fact that what is in question here is the technical way of realizing and supporting the expenses that this right involves, not the legal right to free transportation of students. Considering the above, the Court found that the objection of unconstitutionality of the provisions of Article 56 of the law is unfounded.

III. For all these reasons, by unanimity, the Court dismissed, as inadmissible, the objection of unconstitutionality of the provisions of Article 6 (2) of the State Budget Law for the year 2022.

The Court dismissed, as unfounded, the objection of unconstitutionality and found that the provisions of Article 54 of the State Budget Law for the year 2022 are constitutional in relation to the criticism of extrinsic unconstitutionality formulated only to the extent that their application is carried out after a possible amendment or supplementing of Law no. 334/2006 on financing the activity of political parties and electoral campaigns.

The Court rejected, as unfounded, the objection of unconstitutionality and found that the provisions of Article 56 of the State Budget Law for the year 2022 are constitutional in relation to the criticisms made.