

Decision No 408 of 21 September 2022 on the objection of unconstitutionality of the provisions of the Law amending and supplementing Framework Law No 153/2017 on the remuneration of staff paid from public funds and establishing certain fiscal and budgetary measures, published in the Official Gazette of Romania, Part I, No 1202 of 14 December 2022

Summary

I. As grounds for the objection of unconstitutionality, it was argued that the Law amending and supplementing Framework Law No 153/2017 on the remuneration of staff paid from public funds and establishing certain fiscal and budgetary measures infringes Article 1 (3) and (5) on the rule of law and the quality of the law, Article 61 on the role of the Parliament, Articles 75 and 76, both on the procedure for the adoption of laws and Article 138 (5) on the determination of the source of financing of budgetary expenditure.

II. Having examined the objection of unconstitutionality, the Court found that the decision-making chamber (Chamber of Deputies) made several changes to the form adopted by the reflection Chamber. Thus, points 2 and 3 of Article I, and Article II were adopted. The Court found that, since these amendments concerned the Law on remuneration, namely Framework Law No 153/2017, and the Law on the remuneration of staff paid from public funds for 2022, namely Article I of Government Emergency Ordinance No 130/2021, they governed a uniform body of legal rules on remuneration. The Court examined whether the distinction between the legal content and the form adopted in the first Chamber (which concerned Framework Law No 153/2017 alone) is major or whether the legal configuration of the law adopted is significantly different.

In this context, the Court noted that there was a high degree of deviation in the form adopted by the Chamber of Deputies from that adopted by the Senate, with the new text of points 2 and 3 of Article I referring to the salary of certain positions not envisaged in the form of the law adopted by the Senate, positions which are part of a job family different from that envisaged by the reflection Chamber. Thus, the reflection Chamber referred to the 'Education' job family and the decision-making Chamber also added positions specific to the 'Administration' job family. Therefore, points 2 and 3 of Article I enshrine a legislative solution not envisaged by the reflection Chamber, which departed from the form adopted by it. Such a deviation can be qualified as major, which implicitly entails a significantly different configuration of the law from the form adopted in the reflection Chamber.

At the same time, by the introduction of Article II, which concerned the remuneration of all staff paid from public funds for 2022, the decision-making Chamber clearly added new and significantly different normative content to the law adopted, which also resulted in a change in the title of the law. Although, in the form adopted by the reflection Chamber, the law referred to the remuneration of teaching staff acting as senior lecturer, teacher/coach of the performance group of school sports clubs or university sports clubs, teachers, educators, instituters, teachers for primary education, teachers for pre-school education who were to benefit from a salary increase of 10 %, Article II concerned the entire spectrum of budget staff, and the increase in the monthly employment allowances they receive. However, such an amendment could not be adopted by the decision-making Chamber alone, since it has no link of complementarity/connection with the legislative solution initially adopted by the reflection Chamber.

Thus, the Court found that the adoption of points 2 and 3 of Articles I and II of the Law infringed the principle of bicameralism laid down in Article 61 (1) in conjunction with Article 75 of the Constitution.

With regard to the criticisms of unconstitutionality in relation in Articles 1 (5) and 76 of the Constitution, the authors of the objection claiming that the parliamentary procedure for the adoption of laws had been infringed by the fact that there was only one day between the date of submission of the favourable report of the Committee on Labour and Social Protection and the date on which the law was adopted, the Court found that this complaint only reveals aspects of parliamentary procedure, which are of no constitutional relevance.

Another criticism concerned the infringement of the parliamentary procedure for the adoption of laws in so far as, after the adoption of the law, by means of a note sent by the acting chairman, two amendments were made to the law adopted at the sitting of the Chamber of Deputies, having regard to

the fact that, as regards the report submitted, it was found, first, that it did not include the amendment of Article II of the Law in the version approved at the Committee's meeting and, second, that it contained an incorrect reference. The Court held that, given that the unconstitutionality of the law had been found by reference to the principle of bicameralism, and that this unconstitutionality also covered Article II as a whole, the analysis of the criticism raised was no longer relevant.

With regard to the criticisms of unconstitutionality referred to in Article 138 (5) of the Constitution, alleging that the contested law was adopted in the absence of a financial statement, neither the initiators nor the Chambers of the Parliament having asked the Government to draw up it, the Court noted that, according to the legislative statement of the legislative proposal, following the decision of the Standing Bureau of the Senate at its meeting of 15 November 2021, the following were requested: (a) the Government's point of view and information to the Government on the budgetary implications, in accordance with Article 111 (1) of the Constitution; (b) the financial statement, in accordance with Article 15 of Law No 500/2002 on public finances and Article 15 of Law No 69/2010 on fiscal and budgetary responsibility. The Court therefore found that the arguments put forward by the authors of the objection of unconstitutionality – in the sense that the financial statement had not been requested – were not substantiated.

III. For all these reasons, the Court unanimously upheld the objection of unconstitutionality and found that the provisions of Articles I (2) and (3) and II of Law No 153/2017 amending Framework Law No on the remuneration of staff paid from public funds and establishing certain fiscal and budgetary measures were unconstitutional.