

Decision No 431 of 5 October 2022 on the objection of unconstitutionality of the provisions of point 1 of the Single Article [with reference to Article 16 (2²)] of the Law amending Framework Law No 153/2017 on the remuneration of staff paid from public funds, and the Law as a whole, published in Official Gazette of Romania, Part I, No 1229 of 21 December 2022.

Summary

I. As grounds for the objection of unconstitutionality, it was argued that, in order to comply with Article 15 (1) of Law No 69/2010 on financial and accounting responsibility, as well as with those of Article 15 (1) of Law No 500/2002 on public finances, it is necessary that the initiators of the Law amending Framework Law No 153/2017 on the remuneration of staff paid from public funds (Pl-x no.492/2021) submit the financial statement and indicate the financial means meant to cover the expenditure that the proposed measures will entail. The author of the referral pointed out that the law under consideration could infringe the provisions of Article 138 (5) of the Constitution, if the financial statement at the time of its adoption were to be absent, in accordance with Article 15 (3) of Law No 500/2002, or if Government's information would not be sought, in accordance with the second sentence of Article 111 (1) of the Constitution.

With reference to Article 1 (5) of the Constitution, it was essentially criticised that point 1 of the Sole Article (with reference to Article 16 (2²) of the law subject to review provides that the amounts required for the salary increase referred to in paragraph (2¹) shall be borne from the budget of the project financed by non-reimbursable European funds, whereas such expenditure relating to a project can be carried out only if it provides for and allows it.

II. Having examined the objection of unconstitutionality, concerning the complaint of infringement of the second sentence of Article 111 (1) and Article 138 (5) of the Constitution, the Court noted that, according to the legislative statement of the legislative proposal, the following were requested: a) the Government's point of view and the Government's information on the budgetary implications, in accordance with Article 111 (1) of the Constitution, and 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, and therefore the claims made by the author of the objection of unconstitutionality – in the sense that the financial statement would not have been requested – were not substantiated.

As regards the criticisms of unconstitutionality referred to in Article 1 (5) of the Constitution, the Court noted that, in reality, point 1 of the Single Article (with reference to Article 16 (2¹)) of the Law establishes that the increase in the salary entitlements of the staff nominated to the project teams financed by non-reimbursable European funds (referred to in Article 16 (1) of the law in force) is no longer capped at the level laid down in Article 11 (4) of Framework Law No 153/2017 on the remuneration of staff paid from public funds, but at the latter level, increased in accordance with Article 16 (2), i.e. up to 25 %. In other words, the increase was already provided for in the law in force, but was capped at the level laid down in Article 11 (4) of Framework Law No 153/2017. According to the text criticised, the sums required for this salary increase are borne from the budget of the project financed by non-reimbursable European funds; however, this text must be read in conjunction with paragraph (9) of the same article, according to which expenditure on monthly salaries, monthly indemnities/monthly salaries and staff allowances in the project teams, including the related salary contributions, may be reimbursed by the granting authority, in accordance with the applicable eligibility rules and reimbursement procedures, as well as the co-financing percentage laid down in the financing contract/agreement/order signed with the granting authority.

In other words, the text criticised determines the source of the grant of that increase generated by the increase in the ceiling, namely the budget for the project financed by non-reimbursable European funds, and not the obligation to grant the increase. In so far as the project in question does not provide for or does not allow salary entitlements from its budget, it is clear that the increase is not granted or is granted within the limits of the budget of the project in question. Thus, this text should not be read in isolation, but in conjunction with Article 16 (9) of Framework Law No 153/2017. The Court found that the text criticised was clear, precise and foreseeable, in compliance with the requirements of Article 1 (5) of the Constitution.

III. For all these reasons, the Court unanimously dismissed, as unfounded, the objection of unconstitutionality and found that the provisions of point 1 of the Sole Article [with reference to Article 16 (2²)] of Law amending and supplementing Framework Law No 153/2017 on the remuneration of staff paid from public funds and the law as a whole were constitutional in relation to the complaints made.