

***Decision No 443 of 12 October 2022 on the objection of unconstitutionality of the Law amending Law No 78/2018 on the exemption of staff paid from public funds from payment of sums representing salary income, published in Official Gazette of Romania, Part I, No 1138 of 25 November 2022***

## **Summary**

**I. As grounds for the objection of unconstitutionality**, the President of Romania argued that the Law amending Law No 78/2018 on the exemption of staff paid from public funds from the payment of sums representing salary income was adopted in breach of Articles 111 (1) and 138 (5) of the Constitution. The constitutional obligations to request a financial statement and to request information from the Government lie with the Parliament irrespective of when the amendments with budgetary impact or in the legislative cycle take place, in the initial adoption procedure or in the review procedure at the request of the President of Romania.

The second complaint of unconstitutionality concerns the provisions of Article I (2) of the law under review by reference to Articles 77 (2) and 147 (4) of the Constitution. The author of the referral stated that, when comparing the two forms of the law submitted for promulgation – the one before and the one after the request for re-examination made by the President of Romania – it appears that the legislator supplemented the normative content of Article 2 (1) by introducing the words ‘or representing other elements of the remuneration system which, according to the law, form part of the gross monthly salary’. The addition of the amounts granted in respect of the daily allowance and travel expenses represents an extension of the scope of the law, not requested by and unrelated to the request for review.

Similarly, the President of Romania considered that the regulatory purpose of the law deprives of legal effects the acts issued by the Court of Auditors in carrying out constitutional tasks of monitoring the use of public funds. In the case of an authority of constitutional rank, the organisation and functioning of which are required to be regulated by organic law, in accordance with Article 73 (3) (1) of the Basic Law, matters relating to acts of the Court of Auditors must also be governed by an organic law. In other words, in reshaping the legal effects of the reports of the Court of Auditors, Parliament should have adopted the law criticised in accordance with Article 76 (1) of the Constitution, as an organic law.

**II. Having examined the objection of unconstitutionality**, the Court observed that, by Law No 78/2018, the Romanian Parliament approved the exemption from payment for amounts representing salary income received on the basis of administrative acts or clauses of collective agreements in force on the date of payment of those rights, amounts deemed to have been unlawfully collected, for staff whose salary income was determined on the basis of the statutory acts on the remuneration of staff paid from public funds applicable before the entry into force of that law, i.e. until 31 March 2018.

Noting that this legislative act was not uniformly applied to all categories of staff within the public administration authorities and institutions, but only to staff paid in accordance with Framework Law No 153/2017 on the remuneration of staff paid from public funds, a group of parliamentarians initiated a legislative proposal amending Law No 78/2018. On the other hand, the initiators of the legislative proposal observed that the provisions of Law No 78/2018 had taken into account the damage established up to the date of entry into force of the legislative act. Thus, on the basis of a mere temporal criterion, the prerequisites for discriminatory treatment had been created, since two approaches had been applied to rights of the same nature, with diametrically different effects, namely either the amnesty of those sums or their determination as damage to be recovered from employees.

As a result, the Parliament adopted the Law amending Law No 78/2018, in which it expressly provides as the beneficiary of the exemption the staff ‘within the public administration authorities and institutions whose budgets are provided for in Article 1 (2) of Law No 500/2002 on public finances, as subsequently amended and supplemented, and in Article 1 (2) of Law No 273/2006 on local public finances, as amended’. The law also sets a new threshold for the temporal effect of the exemption, providing that it applies to all sums paid, on account of the acts which gave rise to the payments considered as damage, issued or concluded before the entry into force of the new law, up to the time of the declaration, by the Court of Auditors or other audit institutions, as damage.

The Court established that the intention of the legislator was to waive recovery of amounts considered as damage to the budgets of the chief authorising officers, employers of exempt staff. This waiver has a budgetary impact, namely in terms of budgetary revenue, which is to be reduced in proportion to the amounts not recovered. However, the act of financial leniency cannot have an impact on future budgetary expenditure, since, by definition, the law refers to expenditure already incurred. Therefore, the law does not regulate new budgetary expenditure, so the provisions of Article 138 (5) of the Constitution have no bearing on the matter.

Next, the Court held that, from the point of view of the addressees, the new legislation extends the categories of staff benefiting from the effects of the law. It also broadens the scope of the law exempting budgetary revenue in the legal nature of claims that will no longer be collected as a result of the waiver, with a significantly greater impact on the State budget than envisaged in the old legislation. On the other hand, a new deadline is foreseen for the leniency act, i.e. until the entry into force of the law, that is to say for a period of at least 4 years

As regards the effects of the three legislative interventions, which are directed at the recipients of the benefit, the purpose of the payment exemption, namely the period of impact of the exemption, entails an additional reduction in the revenue of the State budget or in the State social security budget. Therefore, the adoption of the amending law created a new obligation for the Parliament to request information from the Government on the implications for the provisions of these budgets, as well as the obligation for the initiators of the law to request the financial statement. The Court found that the legislative initiative was accompanied by evidence of the Government's request for Parliament's information, made by the President of the Senate, and that this information was subsequently requested, during the parliamentary procedure, by the President of the Senate's Committee referred on the merits. Furthermore, the Court noted that, even later, in the context of the re-examination of the law, the Parliament complied with its constitutional obligation by requesting information from the Government. In conclusion, the second sentence of Article 111 (1) of the Constitution was complied with.

With regard to the completion of the legislative content of Article I (2), the Court found that, by expressly providing, in the context of the subject matter of the exemption from payment, 'amounts representing other elements of the remuneration system which, by law, form part of the gross monthly salary', the legislator made an amendment to the provisions of the law which was not expressly referred to in the request for re-examination, but which is inextricably linked to the rules requested to be re-examined.

In accordance with Article 7 (e) of Framework Law No 153/2017, the monthly salary shall comprise the basic salary or, where applicable, the monthly or employment indemnity, compensation, allowances, supplements, bonuses, prizes and other elements of the salary system corresponding to each category of staff in the budget sector. In the light of those legal provisions, the Court found that, *in concreto*, the rule, as amended after re-examination, does not bring about any new element as regards the subject matter of the exemption from payment. Since the newly introduced term does not refer to a new category of income introduced in the scope of the law, it cannot be considered as a separate legislative solution unrelated to the requests made in the request for re-examination. It is intended to bring the scope of the exemption into line with the scope of beneficiaries of the exemption, which has been extended following the acceptance of the President of Romania's request for re-examination. Therefore, the Court considered that the provisions of Article I (2) of the law subject to review were adopted in compliance with Articles 77 (2) and 147 (4) of the Constitution.

As regards the third complaint of unconstitutionality, the Court noted that, when the constituent legislator referred to the establishment of an administrative authority by means of organic law, it took into account both the establishing provision itself and those intrinsically associated with it, namely those determining the powers, the categories of administrative acts issued and their effects.

The Court held that the exemption of staff from payment of the sums provided for by law applies to all sums paid, on the basis of the acts giving rise to the payments regarded as damage, issued or concluded before the entry into force of the contested law, by the Court of Auditors or by other institutions responsible for auditing. Such legislation cannot be classified as depriving of legal effects acts issued by the Court of Auditors in carrying out their constitutional powers to monitor the use of public funds. The act of financial leniency also has no impact on the obligations of the management of the audited entities after the disclosure of the audit report. In accordance with the law, after taking note of the measures communicated by the Court of Auditors in the audit reports, they determine both the

person to whom an undue payment has been made and the extent of the damage. If those findings fall cumulatively within the situations provided for in the legislative act providing the exemption, the management of the audited entity shall, on the basis of that legislative act, order that the debt be extinguished by exempting the debtor from payment.

The exemption of sums due to the public budget constitutes a means of extinguishing State debts, which the Parliament is free to order for objective and reasonable reasons. In the present case, the waiver of recovery of damage caused by the payment of unlawfully established salary entitlements does not in any way alter the effects of the acts of the Court of Auditors, which remain valid.

Since the contested law did not alter the legal regime governing the acts of the Court of Auditors laid down by Law No 94/1992, the Constitutional Court found that the criticisms referred to in Article 76 (1) in conjunction with Article 73 (3) (h) and (l) of the Constitution were unfounded, since the legislative act's nature was that of ordinary law, like the one of the basic act it amended.

**III. For all these reasons,** the Court unanimously dismissed, as unfounded, the objection of unconstitutionality and found that the Law amending and supplementing Law No 78/2018 on the exemption of staff paid from public funds from payment of sums representing salary income was constitutional in relation to the complaints made.