

Decision No 446 of 12 October 2022 on the referral of unconstitutionality of the provisions of point 4 of the Sole Article concerning the introduction of Article 254² of the Law amending Law No 1/2011 on national education, published in Official Gazette of Romania, Part I, No 1070 of 4 November 2022.

Summary

I. As grounds for the objection of unconstitutionality, the President of Romania argued that the Law amending Law No 1/2011 on national education, by point 4 of the Sole Article, lays down specific conditions for occupying teaching positions and reserved/vacant teaching positions in breach of the constitutional principles relating to the quality of rules, the certainty of legal relationships and the equality in the rights of citizens. Thus, in order to fill vacant/reserved teaching positions/posts requiring additional attestations and endorsements, applicants, including tenured teachers, must submit, during the periods of registration and verification of files/validation of the registration sheets at these stages, a series of endorsements/supporting documents/agreements of third parties, whether public authorities or legal persons of public interest – cults officially recognised by the State, as the case may be.

The author of the objection stated that it is not apparent what the effects of obtaining/not obtaining these endorsements are. An unclear situation is also created by the use of the notion of ‘endorsement’ in some cases, that is to say, the concept of ‘agreement’ in others, without specifying a distinction between the two types of acts. Moreover, the provisions newly introduced by the contested law are also not consistent with the provisions of other legislative acts governing the teaching of religion classes, namely Article 32 (2) of Law No 489/2006 on freedom of religion and the general regime of religious denominations.

Given that Article 254² (e), introduced by point 4 of the Sole Article, refers exclusively to the pedagogical profile, the President of Romania considered that the difference in legal treatment thus established was unjustified and was not based on objective and rational criteria. Although successful applicants or teachers are in the same legal situation, regardless of the profile of upper secondary education, only those who intend to occupy a position in the vocational sector – the pedagogical profile must obtain the agreement of the director of the secondary school concerned, being thus placed in an unfavourable situation, contrary to Article 16 (1) of the Constitution.

II. Having examined the objection of unconstitutionality, the Court held that, by introducing Article 254² into Law No 1/2011, the Parliament had established as a legal rule the provision of the framework methodology drawn up by the Ministry of National Education governing the obligation for candidates, including tenured teachers, to submit endorsements and supporting documents required when registering for the competition to fill teaching/vacant/reserved positions requiring additional attestations and endorsements. The legislative provisions criticised govern an important aspect of the creation of employment relationships, which must comply with certain requirements of stability and predictability. The delegation of the power to lay down such rules to a member of the government, by issuing administrative acts of an infra-legal nature, gave rise to legal uncertainty, such acts generally presenting an increased degree of successive changes over time.

As regards the criticism relating to the unclear legal nature of the endorsements to be obtained by the applicants in the context of the procedure for occupying teaching positions, the Court held that endorsements issued by cults officially recognised by the State, endorsements of the Romanian Police/Road Traffic Authority and endorsements of the Ministry of National Defence, the Ministry of the Interior or the Ministry of Justice constitute individual administrative acts attesting to a certain degree of specialisation on the part of the experienced person. As the specific nature of all those teaching activities implies greater specialisation, the Court found that the legislator introduced that rule to serve the stated purpose of the law – the quality of education. In the light of those considerations, the Court held that the legal provisions criticised governed an essential condition for registration of the candidate in the competition procedure in order to fill the teaching/vacant/reserved position requiring additional attestations and endorsements, the failure of which entails the rejection of the file/invalidation of the

application form for the competition. In that regard, the rule at issue is clear and foreseeable, since the person to whom it is addressed can easily anticipate the consequences of failure to comply with the legal condition laid down in that provision.

With regard to the use of the concept of ‘endorsement’ in the situations referred to in Article 254² (a) to (d) and ‘agreement’ in the situation covered by Article 254² (e), the Court stated that, in order to fill the positions listed by law, the administrative board of the educational establishment (college for primary and elementary school teachers) establishes a number of criteria relating to the subjects covered by the Framework Regulation, and following verification of the applicant’s compliance with those criteria, the head of the educational establishment consents to his or her enrolment in the competition. This agreement is subject to the approval of the school inspector who coordinates the work of colleges for primary and elementary school teachers. Having regard to the way in which those operations are carried out, depending on the powers of each intervening authority, the legislator’s choice of the concepts it uses appears not only natural but also necessary in order to distinguish between the acts issued in those proceedings.

As regards the complaint of inconsistency with the provisions of other legislative acts governing the teaching of religion classes, the Court, accepting the similarity of the semantic content of the concept of ‘endorsement’ to that of the concept of ‘agreement’, the meaning of which is that of approval, held that that inconsistency cannot constitute a ground for the unconstitutionality of the contested provision, since it is not such as to give rise to confusion and unpredictability in the application of the legal provision.

The Court therefore ruled that the provisions of point 4 of the Sole Article, concerning the introduction of Article 254², of the Law amending Law No 1/2011 on national education comply with Article 1 (5) of the Constitution, in compliance with the quality requirements of the rules and, implicitly, with the principle of legal certainty.

As regards the complaint of infringement of the principle of equal rights for citizens, the Court observed that the obligation to submit the agreement by the head of the college for primary and elementary school teachers, endorsed by the school inspector coordinating the activity of colleges for primary and elementary school teachers, is incumbent solely on applicants who choose to fill vacant/reserved teaching positions/chairs at classes/groups in the pedagogical profile, secondary schools with pedagogical profile, kindergarten teacher, primary school teacher and elementary school teacher qualifications. Unlike all other teaching positions, for which the law requires initial theoretical training in higher education, the teaching positions listed in the rule complained of may be filled by persons who only prove that they have completed a college for primary and elementary school teachers. The persons in these positions are responsible for the initial training of those who will be the future kindergarten, primary and elementary school teachers. In the light of that responsibility, the Court held that those staff are not in the same legal situation as the rest of the secondary school teaching staff.

Since that different legal situation justifies a different legal treatment, the Court has held that the contested provisions do not conflict with the principle of equal rights of citizens.

III. For all these reasons, the Court unanimously dismissed, as unfounded, the objection of unconstitutionality and found that the provisions of point 4 of the Sole Article concerning the introduction of Article 254² of the Law amending Law No 1/2011 on national education were constitutional in relation to the criticisms made.