

Decision no. 298 of 26 April 2018
on the objection of unconstitutionality of the provisions of the Law amending and
supplementing Law no. 7/2006 on the statute of parliamentary civil servants
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Summary

I. As grounds for the objection of unconstitutionality, the President of Romania considered that the legislative interventions made by the Chamber of Deputies had substantially altered the object of the legislative initiative, thus leading to a departure from the aim pursued by the initiator, i.e. the sole amendment of the provisions of Article 94 (1) of Law no. 7/2006. Thus, the provisions of Article 61 (2) and Article 75 (3) of the Constitution were violated.

Besides, the introduction of the possibility to temporarily exercise a vacant management parliamentary public function by a person employed under an individual employment contract is contrary to the provisions of Article 1 (5) of the Constitution as it does not meet the requirements of foreseeability and clarity of the rule.

It would result from the wording of the newly-introduced provisions, respectively of the phrase “by way of exception to the provisions of Article 66”, that the dismissal from the parliamentary public position of head of department or general director may be ordered by the Secretary General with the opinion of the Standing Bureau, without considering the cases limitatively provided for in Article 66. The conferral of a discretionary power on the Secretary General of the Chamber of Deputies or the Senate, as the case may be, to dismiss high-ranking parliamentary civil servants is contrary to the principle of stability of their employment relationships. At the same time, the establishment of derogatory rules for the dismissal from office only in the case of the parliamentary civil servants heads of department and general directors creates a discriminatory regime, contrary to Article 16 (1) of the Constitution.

Another discrimination is also invoked with respect to Article II of the impugned law. The author of the referral argued that this text of law provided for a benefit for the holders of the service pension established under Article 73¹ of Law no. 7/2006, calculated until the entry into force of the provisions of Government Emergency Ordinance no. 59/2017 amending and supplementing certain regulatory acts in the field of service pensions, namely that the adjustment of the pension depended on the increase of the basic salary received by the parliamentary civil servant in office, by the same level of salary and for the same public function. These provisions do not apply to persons receiving an adjusted service pension under a court order.

II. Having examined the objection of unconstitutionality, the Court invoked Decision no. 1 of 11 January 2012, published in the Official Gazette of Romania, Part I, no. 53 of 23 January 2012, establishing the limits of the principle of bicameralism. In this decision, the Court held that “it is indisputable that the principle of bicameralism implies both the cooperation of the two Chambers in the drafting of laws and their obligation to express their position on the adoption of laws by vote; therefore, depriving the decision-making Chamber of its competence to amend or supplement the law as adopted by the reflection Chamber, thus preventing it from contributing to the law-making process, would amount to a limitation of its constitutional role and to giving a predominant role to the reflection Chamber compared to the decision-making one in the drafting of laws. In such a situation, the reflection Chamber would eliminate the possibility of the decision-making Chamber to cooperate in the drafting of regulatory acts, the latter being only able to express by vote its position on the legislative proposal or draft law already adopted by the reflection Chamber, which is unthinkable”.

However, although there may be deviations from the form adopted by the reflection Chamber, the essential purpose of the draft law should not be changed. By Decision no. 429 of 21 June 2017, published in the Official Journal of Romania, Part I, no. 592 of 24 July 2017, the Court held that the changes to the form adopted by the reflection Chamber “must include a legislative solution that preserves its overall purpose, and be appropriately adapted, by establishing an alternative/complementary legislative solution that does not deviate from the form adopted by the Reflection Chamber”.

The Law amending and supplementing Law no. 7/2006 on the statute of parliamentary civil servants, adopted by the Chamber of Deputies, contains new regulations, different from those submitted to the debate of the Senate. They go beyond the purpose proposed by the initiators, i.e. to cover a legislative omission concerning the granting of rights to the specialised staff of the Permanent Electoral Authority having the same statute as the staff of the Parliament’s apparatus. The Court also found that, by their content, these regulations did not represent alternative or complementary legislative solutions to the form of law analysed by the reflection Chamber.

Therefore, the impugned law was adopted by the Chamber of Deputies in violation of the principle of bicameralism, a flaw of constitutionality that affects the regulatory act as a whole, which is why it is no longer necessary to examine the other grounds of unconstitutionality invoked by the author of the referral.

III. For all these reasons, the Court upheld the objection of unconstitutionality filed and found that the provisions of the Law amending and supplementing Law no. 7/2006 on the statute of parliamentary civil servants were unconstitutional.