

Decision no. 306 of 8 May 2018
concerning the exception of unconstitutionality of the second sentence of Article 10 (5) of
Law no.360/2002 on the status of police officers
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Summary

I. As grounds for the exception of unconstitutionality, the author argued that the police officer is a civil servant with special status, being subject to an employment relationship which is initiated, executed and ceases under special conditions. Therefore, the essential aspects, concerning also the filling of police officers positions, relate intrinsically to the status of the police officer, which should be regulated by organic law, in accordance with Article 73 (3) (j) of the Constitution. The impugned rule delegates the regulation of the organisation of the competitions to the Ministry of the Interior, who has the power to adopt orders.

II. Having examined the exception of unconstitutionality, the Court invoked Decision no. 172 of 24 March 2016, published in the Official Gazette of Romania, Part I, no. 315 of 25 April 2016, in which it accepted the exception of unconstitutionality of Article 18 of Law no.360/2002, according to which “Management positions shall be occupied by examination or competition, as the case may be, in the situations and under the conditions established by Order of the Minister for Administration and the Interior”.

On that occasion, the Court held that the occupation of management positions refers to the manner in which service relationships were carried out, involving an amendment to these relationships. Issues concerning the filling of management positions are clearly related to the career of the police officer and entail a change in both duties (work arrangements) and pay. The police officer’s service relationship is conducted from its initiation, through the act of appointment, until its termination, in accordance with the law. Given that the status of civil servants is governed by organic law and bearing in mind that the essential aspects concerning the occupation of management positions concern an amendment to the employment relationship, these essential aspects — such as the general conditions of participation in the examination/competition, the seniority requirements for participation in the tests, the type of examination/competition, the conditions under which candidates are declared “admitted” and the possibility of appeal — must be regulated by means of organic law, and the rules specific to the procedure for the occupation of management positions are to be explained and detailed by order of the minister responsible. Consequently, the Court found that the impugned legal provisions which lay down the regulation of these matters by means of administrative acts are contrary to Article 73 (3) (j) of the Constitution.

Following this decision, Government Emergency Ordinance no.21/2016 amending and supplementing Law no.360/2002 on the status of police officers, published in the Official Gazette of Romania, Part I, no. 459 of 21 June 2016, and Law no.118/2017 for its approval, published in the Official Gazette of Romania, Part I, no. 408 of 30 May 2017 were adopted, and these legislative acts amended the provisions of Law no.360/2002 in line with the decision of the Constitutional Court. However, these legislative acts have not modified the impugned provision. The Court therefore took the view that the essential aspects concerning the occupation of operating positions pertain to the careers of the police officer and found that the recitals of Decision no. 172 of 24 March 2016 relating to the occupation of management positions were applicable in this case. The Court has therefore found that Article 73 (3) (j) of the Constitution had been breached.

Moreover, the provisions of the law subject to criticism are also contrary to the provisions of Article 1 (4) and (5) of the Constitution, since a key point concerning the initiation of the service relationship is regulated by an administrative act. The rules governing the filling of operating positions must comply with certain requirements in terms of stability and foreseeability. Thus, the delegation of power to lay down these rules to a member of the Government, by issuing administrative acts of an infra-legal nature, results in a state of legal uncertainty, as such acts are usually subject to a greater degree of change over time. In addition, normative orders are issued only on the basis and in enforcement of the law, must be strictly limited to the framework laid down by the acts on the basis of which they were issued, without supplementing the law.

III. For all these reasons, the Court upheld the exception of unconstitutionality and found unconstitutional the provisions of Article 10 (5) second sentence of Law no.360/2002 on the status of police officers.