

Decision no.307 of 8 May 2018
concerning the exception of unconstitutionality of the provisions of Article 5 (2) and
Article 109 (3) of Law no.80/1995 on the status of military personnel and of Article 37 (3)
of Law no.1/2011 on national education
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Summary

I. As grounds for the exception of unconstitutionality, the author argued that the military staff is a category of civil servants whose status has to be regulated by organic law, but the criticised texts confer on the Government the right to approve the Military Career Guide for the Ministry of National Defence and do not establish rules for the regulation of the career of military staff in the Ministry of the Interior and in other institutions of a similar nature. In addition, by the way in which the organic law was adopted, it creates conditions for the rules on the advancement of military staff to be adopted by legal rules of different ranking in a discriminatory way — those applicable to the military staff of the Ministry of National Defence through Government Decision and those applicable to the military staff of the Ministry of the Interior by order of the Ministry of the Interior.

II. Having examined the exception of unconstitutionality, the Court found that the author of the exception had a teaching position at a military school of gendarmerie sub-officers, thus belonging to the military staff of the Ministry of the Interior. Consequently, the criticised provisions of Law no.80/1995, under which the Military Career Guide, approved by Government decision, is drawn up exclusively for the military staff of the Ministry of National Defence. Therefore, the exception of unconstitutionality of the provisions of Article 5 (2) and Article 109 (3) of Law no.80/1995 on the status of military staff is inadmissible, as it is not related to the settlement of the case.

It appears from the analysis of the legal and infra-legal rules concerning military instructors that with access to the Corps of Military Instructors, they become military staff. Essential aspects relating to military staff service relationships, including access, promotion and advancement to military degrees, must be regulated by means of an organic law, not by means of lower rank regulations.

Since, pursuant to Article 73 (3) (t) in conjunction with Article 118 (2) of the Constitution, the status of military staff is determined by organic law, the Court relied upon the arguments contained in its case-law concerning the regulation by means of lower statutory regulations of the status of certain categories of staff for which the Constitution requires the adoption of an organic law (in particular Decision no. 172 of 24 March 2016, published in the Official Gazette of Romania, Part I, no. 315 of 25 April 2016). They are also applicable to the text of Article 37 (3) of Law no.1/2011 on national education, relating to the occupation of teaching, operating and management positions by military instructors.

Taking into account that the key issues concerning the filling of operating positions relate to the initiation of the service relationship and that the filling of the management positions concerns a change in the service relationships, these essential aspects should be regulated by organic law, while the rules specific to the procedure for the occupation of military instructors positions are to be explained and detailed by order of the minister responsible.

The rules on the occupation of operating and management positions must also comply with certain requirements in terms of stability and foreseeability. In this respect, the delegation of powers to lay down these rules to a member of the Government, by issuing administrative acts of an infra-legal nature, results in legal uncertainty, and such acts usually have a high

degree of change over time. In addition, the provisions of Article 1 (4) and (5) of the Constitution are also infringed upon because orders of a normative nature 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 dismissed, as inadmissible, the exception of unconstitutionality against the provisions of Article 5 (2) and Article 109 (3) of Law no.80/1995 on the status of military personnel. The Court upheld the exception of unconstitutionality against the provisions of Article 37 (3) of Law no.1/2011 on national education and found that these were unconstitutional.