

Decision No 258 of 27 April 2023 on the exception of unconstitutionality of Article 70 of Law No 360/2002 on the statute of the police officer, in the version prior to the amendment by Article 26 of Government Emergency Ordinance No 53/2018 amending Law No 360/2002 on the statute of the police officer, and of Article 9, final sentence, of Government Ordinance No 121/1998 on the material liability of military personnel, Published in the Official Gazette of Romania, Part I, No 471 of 29 May 2023

Summary

I. As grounds for the exception of unconstitutionality, concerning the unconstitutionality of Government Ordinance No 121/1998 on the material liability of military personnel as a whole, the author stated that this legislative act was not applicable to police officers, who, in accordance with Article 1 (1) of Law No 360/2002 on the statute of police officers, are civil servants with special status, whereas it is applicable in the event of damage created in connection with the training, administration and management of the financial and material resources caused by the military staff due to their fault and in connection with the performance of their military service or duties. Government Ordinance No 121/1998 is a special regulation derogating from the provisions of labour and civil law, so that the police officer's liability may be incurred in accordance with ordinary law and not on the basis of that legislative act. The author of the exception claimed the unconstitutionality of Government Ordinance No 121/1998 as a whole, in so far as it also applies to situations concerning the termination of the service of police officers with the Ministry of the Interior and which, in accordance with Article 73 (3) (j) of the Constitution, is regulated by organic law and not by government ordinance.

As regards the provisions of Article 70 of Law No 360/2002, the author of the exception argued that the contested legal text, which governs the obligation to reimburse the costs incurred in preparing a police officer and charged to the latter in the event of the termination of his/her employment relationship earlier than 10 years after graduating from a higher education institution belonging to the Ministry of the Interior, is incomplete and unpredictable in determining the method for calculating those costs and the procedures applicable in that situation as these aspects, which relate to the definition of the statute of civil servants, are not laid down by organic law, as required by Article 73 (3) (j) of the Constitution and the relevant case-law of the Constitutional Court, but are laid down in administrative legislative acts of an administrative nature, issued by the competent minister – thus a representative of the executive power.

II. Having examined the exception of unconstitutionality, the Court found that the subject matter of the complaints was, in reality, not Government Ordinance No 121/1998, as a whole, but only the provisions of the final sentence of Article 9 thereof, which provide that the provisions of the Ordinance also apply to military staff on mission outside the borders of the country, as well as to civilian employees in the structure of public institutions referred to in Article 2. Article 2 establishes that material liability is incurred for damage in connection with the training, administration and management of financial and material resources caused by military personnel by their fault and in connection with the performance of military service or duties within the Ministry of National Defence, the Ministry of the Interior, the Romanian Intelligence Service, the Protection and Guard Service, the Foreign Intelligence Service, the Special Telecommunications Service and the Ministry of Justice.

It follows from a systematic interpretation of the relevant legislative texts that the final sentence of Article 9 of Government Ordinance No 121/1998 applies to the determination of the material liability of police officers, which are included in the words ‘as well as civil employees in the structure of public institutions referred to in Article 2’, in this case the Ministry of the Interior.

In its case-law, the Constitutional Court, by Decision No 649 of 15 December 2022, held, with regard to the applicant’s complaint, that Government Ordinance No 121/1998 regulates, separately, material liability according to the statute of the person (military staff), that it is for the legislator to adopt special rules in relation to a certain category of staff, taking into account the particular legal situation in which the latter find themselves, in a context in which the Court stated that police officers – classified as civilian personnel of the Ministry of the Interior – are in an objectively different situation from military personnel. By Law No 360/2002, an organic law, the police officer was defined for the first time as a civil servant with special status. The special status expressly reserved by Law No 360/2002 to police officers relates to the particular duties and risks, the carrying of weapons and the other differences required by the specific nature of the exercise of official authority, laid down in their own statutes.

Although the principle of hierarchical subordination, specific to the military system, has been maintained in the organisation and functioning of the Romanian Police, it does not mean that this separate socio-professional category can be covered, by a simple rule of reference, by all the legislation specific to military personnel, let alone that in a field specific to private law, namely the establishment of the police officer’s material liability for damage to the assets of the employing unit within the Ministry of the Interior. In view of the systematic and teleological interpretation of the provisions of Law No 360/2002, the legal meaning of Article 63 (1) of that law, according to which the police officer is liable for damage caused to the assets of the unit, in accordance with the legislation applicable to the civilian staff of the Ministry of the Interior, can only be that, after the adoption of this organic law and following the reform of his or her legal status, the police officer, as civilian staff of the Ministry of the Interior, can no longer be subject to the previous legislation, the legislation specific to military personnel. However, the legislative act currently in force, issued to that effect by the Minister for the Interior, is represented by Instructions No 114 of the Minister for the Interior of 22 July 2013 on the material liability of staff for damage caused to the Ministry of the Interior, an administrative act of a legislative nature, which, however, refers, according to the preamble, to the provisions of Government Ordinance No 121/1998, approved by Law No 25/1999, and not those of Article 63 (1), contained in Section 2 – Legal liability and penalties, Chapter IV – Rewards, legal liability and penalties of Law No 360/2002, which should govern the detailed determination of the substantive liability of police officers, by an infra-legal act.

Thus, the Court held that the maintenance of equal legal treatment, at the level of the applicable legislation on the determination of material liability for damage to the assets of the employing unit, between the socio-professional category of military personnel, on the one hand, and that of police officers, on the other, was contrary to the principle of equality laid down in Article 16 of the Constitution, which requires, for objectively different situations, the provision of different legal treatment adapted to the specific nature of the activity of each category of staff. Government Ordinance No 121/1998 is addressed to military personnel, whereas police officers fall within the category of civilian staff, being civil servants with special status, so that the term ‘as well as civil employees in the structure of public institutions referred to in Article 2’ in Article 9 of Government Ordinance No 121/1998 is unconstitutional by reference to the socio-professional category of police officers.

The Court also found a legislative incompatibility between the provisions of Government Ordinance No 121/1998 – a legislative act similar to the ordinary law, in

accordance with Law No 25/1999 for approval – and those of Law No 360/2002, an organic law, in terms of infringement of Article 73 (3) (j) of the Constitution, which establishes the status of organic law for the regulation of the statute of civil servants. Thus, it is unconstitutional that, after the adoption of Law No 360/2002, by which police officers were classified as civil servants, a decisive element of their statute, namely material liability, as part of the legal liability which must specifically define the legal status of a particular socio-occupational category and which, in the present case, must be incorporated into an organic law, continues to be governed by an ordinary law, even by the use of a mere reference rule/phrase. The phrase ‘as well as civil employees in the structure of public institutions referred to in Article 2’ in Article 9 of Government Ordinance No 121/1998 – a legislative act prior to Law No 360/2002 – no longer corresponds to the new legislative choice expressed by establishing a new legal statute of the police officer by the latter law, thus becoming anachronistic and generating legislative inconsistency, incompatible with the requirements of the supremacy of the Constitution, legality and legal certainty, enshrined in Article 1 (5) of the Constitution..

With reference to the exception of unconstitutionality of the provisions of Article 70 of Law No 360/2002 (prior to their amendment by Article 26 of Government Emergency Ordinance No 53/2018 amending and supplementing Law No 360/2002), the Court held that they governed the obligation to reimburse expenditure incurred in preparing a police officer and charged to him/her in the event of the termination of his/her employment relationship earlier than 10 years after graduating from a higher education institution belonging to the Ministry of the Interior.

As regards the status of an occupational category which, by virtue of the constitutional provisions, benefits from regulation by organic law – such as the socio-professional category of police officers who, in accordance with Article 1 of Law No 360/2002, are civil servants with special status – the Constitutional Court has established, in its case-law, that the essential elements and those which have a decisive influence on the conclusion, execution, amendment, suspension and termination of the service relationship of those subjects of law must be governed by organic law and not by legislative acts of an infra-legal nature, of the level of regulations laid down by administrative acts of the institutions or the executive authority. It is only on the basis and after these essential elements/aspects have been determined by organic law that they may be regulated in detail by infra-legal administrative acts issued, for example, by the competent minister, containing the specific procedural rules applicable to each essential element of the statute of civil servants laid down by the organic law.

However, the Court observed that the text criticised in the present case, Article 70 of Law No 360/2002, does not contain any express references by which the primary legislator – the Parliament – delegates to the Government, through the competent minister or other representative of the executive, the regulation of essential elements defining the statute of the police officer, since those elements are contained in the legal provisions complained of. They lay down the payment obligation and the circumstances in which it arises, with reference to the principle of proportionality on which the calculation of the amount of money owed is based, referring, in that regard, to the commitment which the police officer entered into with the employing public establishment at the time when the employment relationship arose. In other words, the organic law itself lays down, by the contested legal text, the general conditions giving rise to that payment obligation, the person to whom it is addressed and the principle on the basis of which the amount owed is calculated. The fact that subsequent legislative acts, issued by the executive, detail specific applicable conditions and procedures cannot constitute a breach of the legislator's obligation to establish the statute of civil servants by organic law, as required by Article 73 (3) (j) of the Constitution, or a breach of the principle of balance and separation of powers enshrined in Article 1 (4) thereof, the Government, through its

representatives, merely issuing administrative acts in the application and enforcement of the law, pursuant to Article 108 of the Constitution.

At the same time, the Court found that the provisions of Article 70 of Law No 360/2002 contain sufficient information, expressed by clear concepts and in coherent, simple and concise language, which meets the legislative quality requirements laid down by Law No 24/2000 on the legislative technique rules for the drafting of legislative acts, so that the addressee of those acts can adapt consciously his conduct, without it being possible to claim that it is impossible to know and understand the text complained of, which governs the obligation to reimburse the education costs incurred by the Ministry of the Interior during the preparation of the police officer in a higher education establishment. On the other hand, with reference to the alleged unforeseeability and inaccessibility of regulatory administrative acts containing procedures and methods for calculating the amounts of money owed, the Court observed that this complaint did not in fact relate to the provisions of Law No 360/2002, but to those contained in legislative acts of an infra-legal nature, which, in accordance with Article 146 (d) of the Constitution and Article 29 (1) of Law No 47/1992, cannot constitute the object of the review of constitutionality. The exception of unconstitutionality of Article 70 of Law No 360/2002 was therefore dismissed as unfounded.

III. For all those reasons, the Court unanimously upheld the exception of unconstitutionality and found that the final sentence of Article 9 of Government Ordinance No 121/1998 on the material liability of military personnel was constitutional in so far as it did not apply to police officers.

Again unanimously, the Court dismissed, as unfounded, the exception of unconstitutionality and found that the provisions of Article 70 of Law No 360/2002 on the statute of the police officer, in the version prior to the amendment by Article 26 of Government Emergency Ordinance No 53/2018 amending Law No 360/2002 on the statute of the police officer, were constitutional in relation to the complaints raised.