

DECISION No. 1.182 of 13 December 2007

regarding the unconstitutionality exception of the provisions of Art. 5, para.(6) of Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest

ISSUING AUTHORITY: THE CONSTITUTIONAL COURT

PUBLISHED IN: THE OFFICIAL JOURNAL No. 42 of 18 January 2008

Acsinte Gaspar - President
Nicolae Cochinescu - Judge
Aspazia Cojocaru - Judge
Ion Predescu - Judge
Puskas Valentin Zoltan - Judge
Augustin Zegrean - Judge
Simona Ricu - Prosecutor
Valentina Bărbăteanu - Assistant-magistrate

The case pending refers to an unconstitutionality exception regarding the provisions of Governmental Emergency Ordinance 120/2006, which modify Art. 5, para. (6) of Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest. The exception was raised by the Iași County Council in File No. 1.225/99/2007, before the Iași Tribunal - Commercial and Administrative Appeal Section.

For the Sculeni Medico-Social Unit, its director, Mr. Ioan Munteanu, replies to the roll call. It is noticed that the other parties are missing and that the subpoena procedure was legally fulfilled in relation to them.

Since the case is pending before the Tribunal, the President of the Court grants the floor to the party that is present. The representative of the Sculeni Medico-Social Unit requests the rejection of the unconstitutionality exception as being ungrounded, and for this purpose he submits written notes.

The representative of the Public Ministry submits conclusions for rejecting the unconstitutionality exception as being ungrounded. It states that presently the law provides the means of financing the activities of medico-social assistance that have been transferred to the administrative and financial responsibilities of the County Councils.

THE COURT,

considering the documents and proceedings concerning the file, holds the following:

By the Interlocutory Order of 27 April 2007, issued in File No. 1.225/99/2007, the Iași Tribunal - Commercial and Administrative Appeal Section referred to the Constitutional Court the unconstitutionality exception regarding the provisions of the Governmental Emergency Ordinance 120/2006, which modify Art. 5, para.(6) of Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest. The exception was raised by the Iași County Council in the trial proceedings of an administrative appeal whose object was the quashing of an administrative document.

In the explanatory statement for the unconstitutionality exception it is shown that the Ordinance in discussion disregards the right to protection of health, which is safeguarded at constitutional level. To this matter, it is shown that the obligation was imposed on County Councils to take over the administrative and financial responsibilities of the medico-social health units established by Decisions of the Local Councils in the municipalities. However, the Ordinance did not ensure the necessary financing source for appropriately carrying out these activities. At the same time, it is claimed that the need for adopting this measure by way of an Emergency Ordinance was not justifiable according to Art.115, para.(4) of the Constitution.

The Iași Tribunal - Commercial and Administrative Appeal Section considers that the unconstitutionality exception is ungrounded. It specifies that the means employed by the Governmental Emergency Ordinance No. 120/2006 aimed at protecting the population's health, since the local budget of the administrative divisions or cities with less than 5.000 citizens do not have sufficient resources to ensure the functioning of these units.

According to Art. 30, para.(1) of Law No. 47/1992, the Interlocutory Order was communicated to the Presidents of Both Chambers of Parliament, to the Government and the Ombudsman, in order for them to submit viewpoints on the unconstitutionality exception.

The Government considers that the unconstitutionality exception is ungrounded. To this matter, they state that the provisions of Art. 34, para.(3) of the Constitution imply that the organization of the health care system, including the administration and financing of the medico-social health units, falls completely under the responsibilities of the Legislator. They consider that the means established by the challenged legal text regard the establishment of conditions for ensuring the exercise of the right to the protection of health. Finally, they consider that the preamble and the explanatory statement of Governmental Emergency Ordinance No. 120/2006 show the cumulative compliance with the requirements provided by Art. 115, para.(4) of the Constitution.

The Ombudsman considers that the measure taken through the present Ordinance "aims at avoiding the violation of the right to the protection of health for those persons who, irrespective of their will, would not benefit from medical care because of deficiencies regarding the necessary resources". At the same time, they show that the issuing of the Ordinance was imposed by the great importance and financial urgency regarding the activities of these units, and also because of the need to "avoid creating pressure on the local budgets, which cannot be resolved in the context of insufficient annual financial resources".

The Presidents of the two Chambers of Parliament did not submit viewpoints regarding the unconstitutionality exception.

THE COURT,

examining the unconstitutionality exception, the viewpoints of the Government and of the Ombudsman, the report presented by the Judge-rapporteur, the conclusions submitted by the Prosecutor, the provisions of the law under discussion, in relation to Constitutional provisions and Law No. 47/1992, holds the following:

The Court was legally vested with the case and is competent, according to Art. 146, pt.(d) of the Constitution and Art. 1, para.(2), Art. 2, 3, 10 and 29 of Law No. 47/1992 on the Organisation and Operation of the Constitutional Court, to resolve the unconstitutionality exception.

The object of the unconstitutionality exception is represented, as shown in the Interlocutory Order, by the provisions of Governmental Emergency Ordinance 120/2006, which modify Art. 5, para.(6) of Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest, published in the Romanian Official Journal, Part I, No. 1.036 of 28 December 2006, more precisely Art. I, which reads as follows:

- Art. I: “Para.(6) of Art. 5 of the Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest, published in the Romanian Official Journal, Part. I, No. 648 of 31 August 2002, amended and approved by Law No. 99/2004, subsequently modified and amended, shall be modified and shall have the following contents:

«(6) The medico-social health units established by Decisions of the Local Councils in municipalities, and those established by Decisions of the Local Councils of cities with a population less than 5.000, are transferred to the administrative and financial responsibilities of County Councils, if the Local Councils do not decide otherwise, undertaking themselves the financial obligations»”.

In reality, the object of the unconstitutionality exception is represented by Art. 5, para.(6) of Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest, published in the Romanian Official Journal, Part. I, No. 648 of 31 August 2002, modified by pt. 2 of the sole article of Law. 95/2007 on the Approval of Governmental Emergency Ordinance No. 120/2006 which modifies Art. 5, para.(6) of Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest, published in the Romanian Official Journal, Part. I, No. 267 of 20 April 2007.

The content of Art. 5, para.(6) of Governmental Ordinance No. 70/2002 read as follows: “The medico-social health units established by Decisions of the Local Councils in municipalities, and those established by Decisions of the Local Councils of cities with a population less than

5.000, are transferred to the administrative and financial responsibilities of County Councils, if the Local Councils do not decide otherwise, undertaking themselves the financial obligations.”

The Court notes that the challenged legal text had the same content at the moment when the unconstitutionality exception was raised (27 April 2007), although the exception that was submitted to the Court contained objections towards this particular legal text previous to its modification made by Law 95/2007.

According to the author of the unconstitutionality exception, the provisions of the challenged Ordinance are contrary to the constitutional provisions of Art. 34 on the right to protection of health and to Art. 115, para.(4), which state that the Government can only adopt Emergency Ordinances in exceptional cases, the regulation of which cannot be postponed, and has the obligation to give the reasons for the emergency status within the Ordinances’ contents.

Examining the unconstitutionality exception, the Court finds that the text which forms the object of the exception fully complies with the provisions of Art. 34 of the Constitution, which safeguard the right to the protection of health. The aim of these legal provisions is to create better conditions for exercising this right.

The measure of transferring health units into the administrative and financial responsibility of County Councils is accompanied by financial regulations necessary for supporting the costs involved by the taking over of these medico-social centres. [Art.5, paras.(7) and (8), introduced by Law 95/2007].

The provisions of Art. 5, para.(6) of Governmental Ordinance No. 70/2002 are constitutional and comply with Art. 115, para.(4) of the Constitution, since they were introduced by an Emergency Ordinance which, according to its preamble and explanatory note, complies with the constitutional requirements imposed on the Government, and was subsequently approved by law.

According to Art. 146, pt.(d) and Art. 147, para.(4) of the Constitution, and Art. 1-3, Art. 11, para.(1), pt.A.d) and Art. 29 of Law No. 47/1992

THE CONSTITUTIONAL COURT

In the name of law

DECIDES:

Rejects the unconstitutionality exception of Art. 5, para.(6) of the Governmental Ordinance No. 70/2002 on Administering Public Health Units of Local and County Interest, raised by the Iași County Council in File No. 1.225/99/2007 before the Iași Tribunal - Commercial and Administrative Appeal Section.

Final and generally enforceable.

Issued in public hearing on 13 December 2007

PRESIDENT,

ACSINTE GASPAR

Assistant-magistrate

Valentin Bărbăţeanu
