

DECISION No. 1.240 of 7 October 2010

regarding the unconstitutionality exception of the provisions of Art. 211, paras.(1) and (1[^]1) and Art. 259, para.(7) of Law No. 95/2006 on the Health Sector Reform

ISSUING AUTHORITY: THE CONSTITUTIONAL COURT

PUBLISHED IN: THE OFFICIAL JOURNAL No. 824 of 9 December 2010

Augustin Zegrean	- President
Aspazia Cojocaru	- Judge
Acсите Gaspar	-Judge
Petre Lăţăroiu	-Judge
Mircea Ştefan Minea	-Judge
Ion Predescu	-Judge
Puskas Valentin Zoltan	-Judge
Tudorel Toader	-Judge
Patricia Marilena Ionea	-Assistant-magistrate

With the participation of the Public Ministry's representative, Prosecutor Carmen-Căţălina Gliga

The case pending refers to the unconstitutionality exception regarding the provisions of Art. 211, para.(1) and (1[^]1) and Art. 259, para.(7) of Law No. 95/2006 on the Health Sector Reform. The exception was raised by Gidro Stanca Ioana in File No. 1.566/177/2009 before the Cluj Tribunal – Joint Section of Administrative and Tax Appeal, Social Security and Work-related Conflicts.

Mrs. Andreea Ştefania Petcu, Practicing Attorney, replies to the roll call on behalf of the unconstitutionality exception's author. It is noticed that the Cluj County Health Insurance Fund is not present at the hearing and that the subpoena procedure was legally fulfilled in relation to them.

The President of the Court decides on a roll call in Files No. 1.579D/2010 and 1.684/2010, which have the same object, namely the unconstitutionality exception raised by Mircea Cupcea and Toader Şuştic in Files No. 622/100/2010 and No. 6.664/100/2009 before the Maramureş Tribunal – Commercial Section.

The parties are not present at the roll call. The subpoena procedure was legally fulfilled in relation to them.

The Court, taking notice that the object of the unconstitutionality objections raised in Files No. 219D/2010, No. 1.579D/2010 and No. 1.684D/2010 are identical, discussed *ex officio* the issue of connecting the cases.

The representative of the exception's author does not oppose connecting the cases.

The representative of the Public Ministry agrees with connecting the cases.

The Court, in conformity with Art. 53, para.(5) of Law No. 47/1992 on the Organisation and Operation of the Constitutional Court, decides on connecting Files No. 1.579D/2010 and No. 1.684D/2010 with File No. 219D/2010. The latter was the first to be registered.

The Case is pending before the Cluj Tribunal.

The Attorney of the exception's author requests admitting the exception, showing that the challenged legal provisions are unconstitutional, since they impose upon the policyholders who failed to pay their Health Insurance contributions, the obligation to retrospectively pay their dues, in order to benefit from the health care package provided in exchange for those contributions.

The Public Ministry's representative submits conclusions for dismissing the unconstitutionality exception as being unfounded, invoking, in this matter, the case-law of the Constitutional Court.

THE COURT,

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

By the Interlocutory Order of 15 January 2010, issued in File No. 1.566/117/2009, the Cluj Tribunal – Joint Section of Administrative and Tax Appeal, Social Security and Work-related Conflicts referred to the Constitutional Court the unconstitutionality exception of the provisions of Art. 211, paras.(1) and (1¹) and Art. 259, para.(7) of Law No. 95/2006 on the Health Sector Reform. The exception was raised by Stanca Ioana Gidro 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, the authors show that, basically, the challenged legal texts are contrary to the provisions of Arts. 4, 16, 22 and 47 of the Constitution. To this matter, they argue that although all citizens are equal, in solidarity and without any discrimination, are guaranteed the right to life, physical integrity and right to protection of health through medical assistance, they are required to contribute to the Health Insurance Fund, which can be enforced by means of default fees. However, they do not acquire the status of insured person up until the full amount which is retroactively due is paid for a service that has not been granted and cannot be granted anymore. The authors consider that the Law would be correct and would comply with the Constitution if all citizens would benefit from the basic package of health services, regardless of the date when the contribution was paid, since the delays have already been penalized by default fees.

The Cluj Tribunal - Joint Section of Administrative and Tax Appeal, Social Security and Work-related Conflicts considers that the provisions of the challenged law are unconstitutional, since they are in violation of Art. 16 and Art. 34 of the Constitution.

The Maramureş Tribunal – Commercial Section considers that the unconstitutionality exception is unfounded.

According to Art. 30, para.(1) of Law No. 47/1992, the Interlocutory Orders were 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 Presidents of Both Chambers of Parliament, the Government, and the Ombudsman did not submit viewpoints regarding the unconstitutionality exception.

THE COURT

examining the unconstitutionality exception, the reports presented by the Judge-rapporteur, the claims of the exception's author, the conclusions submitted by the Prosecutor, the provisions of the law under discussion, in relation to the 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), Arts. 2, 3, 10 and 29 of Law No. 47/1992, to resolve the unconstitutionality exception.

The object of the unconstitutionality exception refers to the provisions of Art. 211, paras. (1) and (1[^]1) and Art. 259, para.(7) of Law No. 95/2006 on the Health Sector Reform, published in the Romanian Official Journal, Part I, No. 372 of 28 April 2006, subsequently modified and amended, which read as follows:

- Art. 211, para.(1) and (1¹): “(1) The following are considered policyholders under the present law: all Romanian citizens residing in the country, foreign nationals and stateless persons who have requested and obtained an extension of the temporary right of residence or domicile in Romania, all of which have proof of the payment of contributions to the Fund, according to the present law. In this capacity, the person enters into a contract of insurance with the Health Insurance Funds, directly or mediated by an employer, whose model is established by order of President of the National Health Insurance Fund, with the advisory opinion of the Administration Board.

(1¹) Policyholders are entitled to a basic health care package from the moment of the initial payment of contributions to the Fund, following that the outstanding amounts will be recovered by the Health Insurance Funds and the National Tax Administration Agency, according to the law, including accessories applied to the budgetary claims.”

- Art. 259, para.(7): “Persons who have the obligation to be insured and cannot prove payment of contributions are required in order to obtain the capacity of a policyholder:

a) to pay the monthly statutory contribution for the last 6 months, if they did not realize taxable income for the periods represented by the time limits on tax liabilities, calculated on the gross national minimum wage in force at the date of payment; in this situation, default fees are calculated;

b) to pay for the entire periods represented by the time limits on tax liabilities, the monthly statutory contribution calculated on taxable income, and pay accessory tax obligations stipulated by Governmental Ordinance No. 92/2003 on the Tax Procedure Code, republished, subsequently amended and modified, if the contributors have realized taxable income throughout this period;

c) to pay both the monthly statutory contribution and the accessory tax obligations referred to in point b) for the period in which they realized taxable income, and monthly statutory contribution and default fees referred to in point a) or, where appropriate, to pay accessory tax obligations for the period in which taxable income was not realized for more than 6 months. This applies to situations where, within the time limits on tax liabilities, there are periods when the contributors realized taxable income and periods when no such income was realized. If there was no taxable income realized in a period less than 6 months, the monthly statutory contribution shall be paid proportional to that period, including the default and accessory tax obligations, as appropriate.”

The authors of the exception consider that these legal provisions are contrary to the following constitutional texts: Art. 4 on the Unity of the people and equality among citizens, Art. 16 on the Equality of rights, Art. 22 on the Right to life, to physical and mental integrity, Art. 34 on the Right to protection of health and Art. 47 on living standard.

Examining the unconstitutionality exception in relation to the arguments regarding the violation of the principle of non-discrimination and equality among citizens, the Court finds that the hypotheses raised by the author of the exception are different, so differential legal treatment is reasonably justified and proportionate to the circumstances considered. To this end, it should be noted that the law not only establishes the right of citizens to receive public health services, but it also stipulates their obligation to contribute to the Health Insurance Fund. Persons exempt from this contribution are set out in Art. 213 of Law no. 95/2006, so that, apart from them, all other citizens have the abovementioned obligation. Once this obligation arises and the policyholder pays the contribution, the law grants him the right to benefit from the medical services package provided in the public health system. There cannot be equality between this situation and the case of the unconstitutionality exception's author. Consequently, when the person liable to contribute to the Health Insurance System ignores this requirement, it is clear that access to the public Health Insurance System should be different from the first hypothesis. Such a solution is therefore non-discriminatory, it does not affect the physical or mental integrity of person, and it does not restricting the right to protection of health; instead, it rules differently on the right to protection of health, given the particular situation of a person who did not comply with the statutory obligation to contribute to the Health Insurance Fund.

The fact that the author of the exception has a different view on how this matter should be regulated, which is more favorable towards her situation, does not give an unconstitutional character to the challenged legal provisions.

As to the provisions of Art. 47 of the Constitution, the Court considers that they are not violated. Moreover, as seen from the wording of Art. 259, para.(7) of Law no. 95/2006, the Legislator sought to create a different legal treatment that takes into account the policyholder's liability, so that access to medical services in the public system is not hindered by a disproportion between contributions and income. Relevant to this matter are the arguments held in Decision No. 1.304 of 13 October 2009, published in the Romanian Official Journal, Part I, No. 36 of 18 January 2010.

As to the aforementioned, 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 as unfounded the exception of unconstitutionality regarding the provisions of Art. 211, paras.(1) and (1[^]1) and Art. 259, para.(7) of Law No. 95/2006 on the Health Sector Reform, raised by Gidro Stanca Ioana in File No. 1.566/177/2009 before the Cluj Tribunal – Mixed Section of Administrative and Tax Appeal, Social Security and Work-related Conflicts and by

Mircea Cupcea and Toader Şuştic in Files No. 622/100/2010 and No. 6.664/100/2009 before the Maramureş Tribunal – Commercial Section.

Final and generally enforceable.

Issued in public hearing on 7 October 2010.

THE PRESIDENT OF THE CONSTITUTIONAL COURT,

AUGUSTIN ZEGREAN

Assistant-magistrate

Patricia Marilena Ionea