

DECISION No. 1.657 of 28 December 2010
regarding the constitutionality review of the provisions of the 2011 State Budget Law

ISSUING AUTHORITY: THE CONSTITUTIONAL COURT

PUBLISHED IN: THE OFFICIAL JOURNAL No. 33 of 13 January 2011

The case pending refers to the constitutionality review regarding the 2011 State Budget Law. The case was introduced by a group of 54 deputies, according to Art. 146, pt. (a) of the Constitution.

By Communication No. 51/6.183 of 23 December 2010, the General Secretary of the Chamber of Deputies submitted to the Constitutional Court, according to the provisions of Art. 146, pt. (a) of the Constitution and Art. 15, para.(1) and (4) of Law No. 47/1992 on the Organisation and Operation of the Constitutional Court, the submission for constitutionality review regarding the 2011 State Budget Law, drafted by a group of 54 deputies.

The list containing the signatures of the 54 deputies, authors of the submission of constitutionality review, was attached to the application. According to this list, the authors of the unconstitutionality objection are the following: Cristian Mihai Adomniței, Marin Almăjanu, Teodor Atanasiu, Vasile Berci, Viorel-Vasile Buda, Daniel-Stamate Budurescu, Cristian Buican, Mihăiță Calimente, Mircea Vasile Cazan, Daniel Chițoiu, Tudor-Alexandru Chiuariu, Horia Cristian, Ciprian Minodor Dobre, Victor Paul Dobre, Mihai-Aurel Donțu, Gheorghe Dragomir, George Ionuț Dumitrică, Relu Fenechiu, Gheorghe Gabor, Grațela Leocadia Gavrilăscu, Andrei Dominic Gereă, Alina-Ștefania Gorghiu, Titi Holban, Pavel Horj, Mircea Irimescu, Nicolae Joța, Mihai Lupu, Dan-Ștefan Motreanu, Gheorghe-Eugen Nicolăescu, Ludovic Orban, Ionel Palăr, Viorel Palașcă, Cornel Pieptea, Gabriel Plăiașu, Cristina-Ancuța Pocora, Virgil Pop, Octavian-Marius Popa, Călin Constantin Anton Popescu-Tăriceanu, Ana Adriana Săftoiu, Nini Săpunaru, Adrian George Scutaru, Ionuț-Marian Stroe, Radu Stroe, Gigel Sorinel Știrbu, Gheorghe-Mirel Taloș, Adriana Diana Tușa, Claudiu Țaga, Radu Bogdan Țîmpău, Ioan Țintean, Florin Țurcanu, Horea-Dorin Uioreanu, Lucia-Ana Varga, Mihai Alexandru Voicu and Mariana Câmpeanu.

A copy of the 2011 State Budget Law was annexed to the submission.

The submission was registered at the Constitutional Court under No. 17.952 of 23 December 2010 and has become the object of File No. 4.805A/2010.

The authors of the submission ask the Court to rule on the constitutionality of the 2011 State Budget Law, in relation to the Constitutional provisions prescribed by Art. 1, para.(5), Art. 61, para.(1), Art. 138, para.(5), Art. 53, Art. 49, para.(2), Art. 47 and Art. 34, paras.(1) and (2).

The submission shows that the draft law currently under constitutional review was submitted to be debated by Parliament on 7 December 2010, through Government Communication No. E.262, registered under No. BPI 1.198 of 7 December 2010.

Regarding the violation of Constitutional provisions stipulated under Art. 1, para.(5), read with Art. 61, para.(1) and Art. 138, para.(5), the authors of the submission show that the Government submitted the 2011 State Budget Law to be approved by Parliament on 6 December 2010, which violates the provisions of Art. 35, para.(4) of Law No. 500/2002 on Public Finance, which states that the Budget shall be submitted for approval “no later than the 15 October of every year”. The Government’s disregard of this time limit causes, by lack of appropriate debate and analysis of the law, a limitation of the Parliament’s powers, thus censoring the expression of the legislative voters’ will. Furthermore, the application’s authors show that the 2011 State Budget Law is based on draft laws that are currently in different stages of approval: the Law on Wages from Public Funds for Personnel in 2011, the Law on the Unified System of Public Retirement Benefits and the Law on National Education. Hence, “the State Budget Law provides and engages sums of money for the payment of wages, of retirement benefits and other allowances, although the laws which establish the legal framework for granting these sums are not in force at the time of the Government notification of Parliament on the 211 State Budget Law, through Communication No. E.262 of 6 December 2010.”

Furthermore, the authors invoke the violation of Art. 53 of the Constitution, showing that “grounding the state budget on a salary increase of only 15%, and not on the ceasing of the 25% reduction of salary rights, obviously grants a permanent character to the measures reducing salary rights”, which is contrary to the Decisions of the Constitutional Court No. 1.414 of 4 November 2009 and No. 872 of 25 June 2010, which established “the exceptional and temporary character” of the restriction of rights and liberties.

The authors of the submission consider that the law presently challenged is contrary to the constitutional provisions of Art. 49, para.(2), joined with Art. 47, since it stipulates “drastic reductions of allowances and incentives for demographic growth”, which “causes, on the long term, the impossibility of economic development in a State of Law.”

Lastly, the authors claim that, since the presently challenged law stipulates a reduction of 38% on the sums granted for the health sector, “while it is unanimously accepted that the health sector has suffered from permanent under-financing”, there is a violation of Art. 34, paras.(1) and (2) of the Constitution.

According to Art. 16, para.(2) of Law No. 47/1992 on the Organisation and Operation of the Constitutional Court, the submission was notified to the Presidents of the two Chambers of Parliament and to the Government, in order for them to submit their viewpoints on the unconstitutionality objection.

The President of Senate submitted a viewpoint under No. I/2.685 of 27 December 2010, registered at the Constitutional Court under No. 18.015 of 27 December 2010. Reaffirming the

argument of the submission for constitutionality review's authors, the President of Senate considers that the submission is well founded.

The President of the Deputies Chamber submitted a viewpoint through Communication No. 51/6.210 of 24 December 2010, registered at the Constitutional Court under No. 17.983 of 24 December 2010, considering that the submission for review on the constitutionality is ungrounded. To this matter, she shows that basically, the measures employed by the challenged law are in conformity with the constitutional provisions that have been invoked and are necessary for the "safeguarding of national security and the rights and liberties of citizens. The lack of such measures would have serious effects of disrupting the exercise of fundamental rights and freedoms".

The Government submitted their viewpoint through Communication No. 5/10.006 of 27 December 2010, registered at the Constitutional Court under No. 17.996 of 27 December 2010, considering that the objection is unfounded. Referring to the Government's obligation to submit drafts of budget laws to Parliament for adoption, no later than 15 October of each year, they claim that this is not a constitutional obligation. At the same time, regarding the rest of the criticisms, the Government considers that these refer to aspects of opportunity, and not to aspects of unconstitutionality of the 2011 State Budget Law.

THE COURT,

examining the objection of unconstitutionality, the viewpoints of both Chambers of Parliament and of the Government, the report presented by the Judge-rapporteur, the provisions of the law under review, in relation to the Constitutional provisions and Law No. 47/1992, hold the following:

The Court was legally vested with the case and is competent, according to Art. 146, pt. (a) of the Constitution and Arts. 1, 10, 15, 16 and 18 of Law No. 47/1992 on the Organisation and Operation of the Constitutional Court, to resolve the submission for constitutionality review formulated by the 54 Deputies.

The object of the constitutionality review is the 2011 State Budget Law, which, according to the submission's authors, violates the following constitutional provisions: Art. 1, para.(5), Art. 61, para.(1), Art. 138, para.(5), Art. 53, Art. 49, para.(2), Art. 47 and Art. 34, paras.(1) and (2). These articles stipulate that:

- Art. 1, para.(5): "In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory."

- Art. 61, para.(1): "Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country."

- Art. 138, para.(5): “No budget expenditure shall be approved unless its financing source has been established.”

- Art. 53: “(1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe.

(2) Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.”

- Art. 49, para.(2): “The State shall grant allowances for children and benefits for the care of ill or disabled children. Other forms of social protection for children and young people shall be established by law.”

- Art. 47: “(1) The State shall be bound to take measures of economic development and social protection, in order to ensure a decent living standard for its citizens.

(2) Citizens have the right to pensions, paid maternity leave, medical care in public healthcare units, unemployment benefits, and other forms of public or private social security, as stipulated by the law. Citizens have the right to social assistance, according to the law.”

- Art. 34, paras.(1) and (2): “(1) The right to the protection of health is guaranteed.

(2) The State shall be bound to take measures to ensure public hygiene and health.”

Proceeding to the examination of the claims made by the authors of the submission, the Constitutional Court notes that the 2011 State Budget Law reads in Art. 1 that it “stipulates and authorises, for the year 2011, the income of the state budget, in chapters and sub-chapters, and the expenditures according to their destination, and the main authorising officers of the state budget, the National Unified Fund for Social and Health Security, external loans, non-refundable external loans and activities fully financed by the state’s own income.”

According to Art. 137 of the Constitution, which states that “Formation, administration, use and control of the financial resources of the State, of territorial-administrative units and public institutions shall be regulated by law.”, the Law No. 500/2002 on Public Finance was adopted and published in the Romanian Official Journal, Part I, No. 597 of 13 August 2002. This law stipulates the principles, the general framework and the procedures for the formation, administration, use and control of public funds, and also the responsibilities of public authorities that are involved in the budgetary proceedings. The Constitutional rules and the legal provisions aforementioned imply that the budget is established as the State’s financial plan, which is approved by law and contains the public income and expenditures established annually, necessary for the fulfilment of the State functions and duties. Consequently, in this section,

according to Art. 138, paras.(1) and (2) of the Constitution, the Government ensures the elaboration of annual budgetary draft laws and submits them to the Parliament for adoption.

In this case, the 2011 State Budget Law proposed by the Government was amended and adopted, although the Government failed to comply with the time limit recommended by Art. 35, para.(4) of Law No. 500/2002, and in spite of the fact that on the same date when the State Budget Draft Law was being submitted to Parliament, 3 important laws were not yet approved. These two shortcomings are not being punishable either constitutionally, or legally.

Under such conditions, the Court cannot hold the violation of Art. 61, para.(1) of the Constitution, regarding the role of the Parliament, because the Government has only the obligation to draft and submit the State Budget Draft Law to the Parliament, which, as the sole legislative authority of the state, debates it and approves it by vote.

According to Art. 138, para.(2) of the Constitution, the budget is drafted annually. This principle applies not only to the document called “Budget”, but also to all its components, which after being summed up cannot differ from it.

The requirement stated by Art. 138, para.(5) implies establishing the budget expenditure and its financing source at the same time, which means establishing the necessary income for covering the expenditure, in order to avoid the profoundly negative economic and social effects of establishing a budgetary expenditure that is not covered. The 2011 State Budget Law does not contain such inconsistencies or other discrepancies which might affect the balance between income and expenditure, and therefore it cannot be held that the aforementioned constitutional provision has been violated.

Another issue regards the claim that “grounding the state budget on a salary increase of only 15%, and not on the ceasing of the 25% reduction of salary rights, obviously grants a permanent character to the measures reducing salary rights”, which is contrary to Art. 53 of the Constitution and to the Constitutional Court’s case-law that stated on “the exceptional and temporary character” of the restriction of rights and liberties.

To this matter, the Court notes that the obligation imposed by the Constitutional jurisdiction upon the Legislator is to cease the reduction by 25% of the salary rights, after 1 January 2011, an obligation which is based on the demands of Art. 53.

Consequently, it depends on the Legislator to establish the means to implement the process of gradual reversion of salary rights quantum to the level attained before the 25% reduction, taking into consideration the economic and financial situation of the country.

For the year 2011, the Legislator provided a reversion of 15% as opposed to the 25% reduction approved by Law 118/2010 on the necessary measures for re-establishing the budgetary balance, published in the Romanian Official Journal, Part I, No. 441 of 30 June 2010.

Lastly, in the authors' opinion, the 2011 State Budget Law violates Arts. 49 and 47 and Art. 34, paras.(1) and (2) of the Constitution, by drastically reducing allowances and incentives for demographic growth and by cutting 38% of the sums granted for the health sector.

Social protection represents a set of actions, decisions and measures undertaken by the society to prevent, diminish and eliminate the consequences of certain events that are considered social risks to the life conditions of the population.

A strategy that would be limited to easing the situation of the most vulnerable persons would risk not being supported by the rest of the population that is constantly feeling deprived of necessary resources to live decently. The focus is especially on deprivation of economic resources.

As to the aforementioned, the Court states that the Law regarding the state budget for the year 2011 does not violate the constitutional provisions invoked by the authors of this complaint.

According to Art. 146, pt. (a) and Art. 147, para.(4) of the Constitution, and Art. 11, para.(1), pt. (a), Art. 15, para.(1) and Art. 18, para.(2) of Law No. 47/1992, by majority of votes,

THE CONSTITUTIONAL COURT

In the name of law

DECIDES:

Holds that the 2011 State Budget Law is constitutional.

Final and generally enforceable.

The Decision shall be notified to the President of Romania, to the Presidents of both Chambers of Parliament and to the Prime Minister, and shall be published in the Romanian Official Journal, Part I.

The debate took place on 28 December 2010. The participants to the debate were: Augustin Zegrean, President, Aspazia Cojocaru, Acsinte Gaspar, Petre Lăzăroiu, Mircea Ștefan Minea, Iulia Antoanella Motoc, Ion Predescu, Puskas Valentin Zoltan and Tudorel Toader, Judges.

THE PRESIDENT OF THE CONSTITUTIONAL COURT,

AUGUSTIN ZEGREAN

Chief-assistant-magistrate

Doina Suliman

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