

DECISION No. 838 of 24 June 2010

regarding the unconstitutionality exception of the provisions of Art. 208, para. (1), para. (3), pt. e) and para. (6), Art. 215, para. (1) and (3), Art. 257, para. (2), pt. b) and Art. 259, para. 7, pt. b) and para. (8) of Law No. 95/2006 on the Health Sector Reform and Art. 91, para. (1) of Governmental Ordinance No. 92/2003 on the Tax Procedure Code.

ISSUING AUTHORITY: THE CONSTITUTIONAL COURT

PUBLISHED IN: THE OFFICIAL JOURNAL No. 566 of 11 August 2010

Augustin Zegrean - President

Aspazia Cojocaru - Judge

Accinte Gaspar -Judge

Petre Lătăroiu -Judge

Mircea Ștefan Minea -Judge

Iulia Antoanella Motoc -Judge

Ion Predescu -Judge

Puskas Valentin Zoltan -Judge

Tudorel Toader -Judge

Simona Ricu -Prosecutor

Benke Karoly -Assistant-magistrate

The case pending refers to an unconstitutionality exception regarding the provisions of Art. 208, para. (1), para. (3), pt. e) and para. (6), Art. 215, para. (1) and (3), Art. 257, para. (2), pt. b) and Art. 259, para. 7, pt. b) and para. (8) of Law No. 95/2006 on the Health Sector Reform and Art. 91, para. (1) of Governmental Ordinance No. 92/2003 on the Tax Procedure Code. The exception was raised by George Răzvan Ionescu in File No. 2.439/205/2009 before the Câmpulung Court.

The Legal Advisor appointed to the File replies to the roll call on behalf of the Argeş National Insurance Fund. It is noticed that the other parties are 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 File No. 8.108D/2009, which has the same object as the unconstitutionality exception regarding Art. 208, para. (1), para. (3), pt. e) and para. (6), Art. 215, para. (1) and (3), Art. 257, para. (2), pt. b) and Art. 259, para. 7, pt. b) and para. (8) of Law No. 95/2006 on the Health Sector Reform and Art. 91, para. (1) of Governmental Ordinance No. 92/2003 on the Tax Procedure Code.

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 exceptions raised in the abovementioned Files are similar, discussed *ex officio* the issue of connecting File No. 8.108D/2009 with File No. 7.910D/2009, which was registered first.

Since the case is pending before the Câmpulung Court, the President of the Constitutional Court grants the floor to the representative of the Argeş National Insurance Fund, who considers that the unconstitutionality exception is ungrounded.

The representative of the Public Ministry requests the dismissal of the unconstitutionality objection, invoking 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 19 October 2009 and 6 November 2009, issued in Files No. 2.439/205/2009 and No. 2.501/117/2009, the Câmpulung Court and the Cluj Tribunal - Joint Section of Administrative and Tax Appeal, Social Security and Work-related Conflicts referred to the Constitutional Court the unconstitutionality exception regarding Art. 208, para. (1), para. (3), pt. e) and para. (6), Art. 215, para. (1) and (3), Art. 257, para. (2), pt. b) and Art. 259, para. 7, pt. b) and para. (8) of Law No. 95/2006 on the Health Sector Reform and Art. 91, para. (1) of Governmental Ordinance No. 92/2003 on the Tax Procedure Code. The exception was raised by George Răzvan Ionescu and Luiza Iuliana Buduşan in cases regarding an appeal against enforcement, respectively a quashing of an administrative tax document.

In the explanatory statement for the unconstitutionality exception it is shown that the challenged legal texts are unconstitutional because they provide mandatory Social Security contributions, whereas the capacity of being a policyholder cannot be imposed upon a person against their will. Although allowing the functioning of an alternative Health Insurance System, the challenged provisions do not enable citizens to choose the one considered most convenient. It also shows that although the rights are acquired as a result of payment of contribution to the Health Insurance System are equal, the contribution paid for acquiring these rights is uneven.

Referring to Art. 91 of Governmental Ordinance No. 92/2003, it is shown that this legal text is unconstitutional, because the State acquires a privileged position as opposed to the tax payers, since its rights of claim benefit from longer time limitation than those stipulated by general statutory rules.

The Câmpulung Court considers that the unconstitutionality objection is ungrounded.

The Cluj Tribunal - Joint Section of Administrative and Tax Appeal, Social Security and Work-related Conflicts considers that the unconstitutionality objection is ungrounded.

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 Government, in File No. 7.910D/2009, considered that the unconstitutionality exception is ungrounded, and in File No. 8.108D/2009, it did not communicate its viewpoint.

The Presidents of both Chambers of Parliament and the Ombudsman did not submit viewpoints regarding the unconstitutionality exception.

THE COURT,

examining the Interlocutory Order, the viewpoint of the Government, the report presented by the Judge-rapporteur, the conclusions submitted by the Prosecutor and 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), Art. 2, 3, 10 and 29 of Law No. 47/1992, to resolve the present unconstitutionality exception.

The object of the unconstitutionality exception refers to the provisions of Art. 208, para. (1), para. (3), pt. e) and para. (6), Art. 215, para. (1) and (3), Art. 257, para. (2), pt. b) and Art. 259, para. 7, pt. b) and para. (8) of Law No. 95/2006 on the Health Sector Reform. Published in the Romanian Official Journal, Part. I, No. 372 of 28 April 2006 and Art. 91, para. (1) of Governmental Ordinance No. 92/2003 on the Tax Procedure Code, republished in the Romanian Official Journal, Part I, No. 513 of 31 July 2003. Regarding Art. 91 of Governmental Ordinance No. 92/2003, the Court finds that, in reality, the unconstitutionality exception targets only para. (1) of the article; hence, the Court will only analyse the constitutionality of Art. 91, para. (1) of the Tax Procedure Code. Consequently, the challenged legal texts read as follows:

- Art. 208, para (1), para (3), pt. e) and para. (6): "(1) Social Health Insurance represents the main system of health care financing that provides access to a basic package of services for the policyholders. [...]"

(3) Social Health Insurance is mandatory and operates as a unified system, and the objectives referred to in para. (2) are based on the following principles: [...]

e) mandatory participation to the payment of health insurance contributions for building the unified National Social Health Insurance Fund; [...]

(6) Voluntary health insurance does not exclude the obligation to pay contributions for Social Health Insurance. "

- Article 215 para. (1) and (3): "The obligation to pay the Social Health Insurance contribution falls under the responsibility of the natural or legal persons who employ persons based on an individual employment contract or under a special status provided by law, as well as of the individuals, accordingly. [...]"

(3) The provisions of para. (1) and (2) shall also apply to persons who perform liberal professions or those who are authorized by law to perform independent activities. ";

- Article 257 para. (2), pt. b): "(2) The monthly contribution of the policyholder shall be established as a quota of 6.5%, which applies to: [...]"

b) taxable income realized by persons who perform independent activities that are subject to income tax; if this income is the only one taken into consideration when calculating the contribution, the latter cannot be less than a contribution calculated based on a minimum gross salary per country, per month;“;

- Article 259 para. (7), pt. b) and para. (8): "(7) persons who are required to become policyholders and cannot prove payment of the contribution are required, in order to obtain the capacity of a policyholder: [...]"

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. [...]"

(8) For situations described in para. (7), the time limitations on tax obligations are calculated starting from the date of the first application for medical services, the notification of the Health Insurance Funds or the persons' request to acquire the policyholder capacity, accordingly. "

- Article 91. (1) of Governmental Ordinance no. 92/2003: "(1) The Taxation Body's right to establish tax obligations has a time limitation of 5 years unless otherwise provided by law."

The exception's authors claim that the challenged legal stipulations are contrary to the constitutional provisions of Art. 1, para (3) on human dignity, Art. 15, para. (2) which states that the law shall not act for the future, Art. 16 on the Equality of rights, Art. 23 on Individual freedom, Art. 34 on the Right to protection of health, Art. 45 on Economic freedom, Art. 53 on the Restriction on the exercise of certain rights or freedoms, and Art. 56, para (1) and (2) on Financial contributions. At the same time, it is mentioned, in support of the exception, Art. 1 of Protocol 12 to the European Convention of Human Rights on the general prohibition of discrimination.

Examining the unconstitutionality exception and the challenged legal texts in relation to the Constitutional provisions that have been invoked, the Court finds the following:

By the Decision No. 705 of 11 September 2007, published in the Romanian Official Journal, Part. I, No. 736 of 31 October 2007, and Decision No. 1.011 of 7 July 2009, published in the Romanian Official Journal, Part I, No. 547 of 6 August 2009, the Constitutional Court held that the challenged legal provisions are constitutional in relation to the same unconstitutionality arguments.

The Court held that "The Health Insurance System can achieve its main objective due to the solidarity of those who contribute, so Art. 208 para. (1), para. (3), pt. e) and para. (6) of Law no. 95/2006 are in fact an expression of constitutional provisions governing the protection of health and of the provisions that enshrine the State's obligation to ensure social protection of its citizens".

As to the compliance of the challenged legal texts with Art. 23, para. (1) of the Constitution, the Court held that "compliance with the citizens' obligations under the law currently in force cannot be regarded as a violation of individual freedom and personal security".

Referring to the Constitutionality of Art. 257, para. (2), pt. b) of Law No. 95/2006, the Court found that "It is natural for contribution value to vary from person to person, depending on the amount of revenue realised. This difference is reasonable and justified by the special objective situation of the persons who have a higher income than those whose incomes are at a lower level, and by the principle of solidarity and subsidiarity in the collection and use of funds, applicable in relation to social security and health insurance".

At the same time, the Court held that "the constitutional principle of fair distribution of the tax burden for the bearing of public expenditure implied the differentiation of the contribution of persons who realise more income. In fact, the contribution quota, expressed as a percentage, is

unique and does not have a progressive nature, so that the difference in value is determined by the different levels of income".

The Court stated that "The Legislator, considering the specific situations of different categories of policyholders, depending on the source of their income, sought to establish a differential legal treatment in terms of revenue which is used to establish the monthly contribution" and found that "not only in the case of people who acquire income from liberal professions, the minimum income used for calculating the contribution is the country's minimum gross wage, but also in the case of the persons stipulated by art. 257, para. (2), pt. e) of Law no. 95/2006." For the same reasons as the above, the Court held that neither the provisions of art. 215, para. (1) and (3) of the same law - which stipulate the obligation for natural or legal person who hire people based on individual employment contract or under a special status to transfer contributions to the Social Health Insurance Funds – are not contrary to the Constitution.

As to the unconstitutionality arguments regarding the provisions of Art. 259, para. (7), pt. b) and Para. 8 of Law No. 95/2006 and Art. 91, para. (1) of Governmental Ordinance No. 92/2003, the Court held that "as to the difference of legal treatment established by the Legislator between the rights of claim of the public institutions and the rights of claim of other persons, the Court considers to be relevant the Decision no. 158 of 10 November 1998, published in the Romanian Official Journal, Part I, No. 77 of 24 February 1999, which held, essentially, that compliance with constitutional requirements regarding the protection of national interests, of public interest, which are based on the citizen's tax contributions to the public expenditure, justify the privileged position of State in relation to other subjects of law, in terms of the protection granted to rights of claim. "

In this Case, the Court noted that "Public institutions that collect contributions to the National Unified Social Security and Health Insurance Fund, aim at insuring a general interest, namely the State's compliance with the obligation to protect public health, which also warrants special protection granted to the rights of claim of these institutions."

Finally, analysing the exception's authors claim, regarding the violation of the constitutional principle, stating that the law shall not act for the future, the Court found that "the challenged law provisions require the payment of Health Insurance contribution for a previous period only for those who were under this obligation but failed to meet it. Thus, the Court holds that the obligation to pay statutory contributions previously stipulated cannot be seen as having the nature of a law acting for the future".

Since there are no new elements to the present case, which might justify a review of the Court's case-law, both the solution and the elements of the Decision invoked are still valid in the present case.

THE CONSTITUTIONAL COURT

In the name of law

DECIDES:

Rejects as ungrounded the exception of unconstitutionality regarding the provisions of Art. 208, para. (1), para. (3), pt. e) and para. (6), Art. 215, para. (1) and (3), and Art. 259, para. (7), pt. b) of Law No. 95/2006 on the Health Sector Reform, raised by George Răzvan Ionescu in File No. 2.439/205/2009 before the Câmpulung Court. Rejects as ungrounded the exception of unconstitutionality regarding the provisions of Art. 208, para. (1), para. (3), pt. e) and para. (6), Art. 257, para. (2), pt. b) and Art. 259, para. (7), pt. b) and para. (8) of Law No. 95/2006 on the Health Sector Reform Art. 91, para. (1) of Governmental Ordinance No. 92/2003 on the Tax Procedure Code, raised by Luiza Iuliana Buduşan in File No. 2.501/117/2009 of Cluj Tribunal - Joint Section of Administrative and Tax Appeal, Social Security and Work-related Conflicts.

Final and generally enforceable.

Issued in public hearing on 24 June 2010.

THE PRESIDENT OF THE CONSTITUTIONAL COURT,

AUGUSTIN ZEGREAN

Assistant-magistrate

Benke Karoly