



R O M A N I A CONSTITUTIONAL COURT

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PRESS RELEASE

On 25 June 2020, the Plenum of the Constitutional Court ruled on the following exceptions of unconstitutionality raised directly by the Advocate of the People:

A. The exception of unconstitutionality against the provisions of Article 25 (2) of Law No 95/2006 on healthcare reform and Article 8 (1) of the Government Emergency Ordinance no.11/2020 on medical emergency stocks, as well as some measures related to the establishment of quarantine;

The provisions criticised read as follows:

- Article 25 (2) of Law No 95/2006: *“Measures concerning the prevention and management of epidemic emergencies and communicable diseases for which declaration, treatment or admission are mandatory shall be determined by order of the Minister of Health.”*;

- Article 8 (1) of the Government Emergency Ordinance No 11/2020: *“(1) In the case of epidemics/pandemics or international public health emergency situations declared by the World Health Organisation, if there was an imminent risk to public health, in compliance with the International Health Regulations (2005), the Minister of Health shall, at the proposal of the Technical Group of Experts of the Ministry of Health, set up a quarantine for persons entering Romania’s territory from affected areas as a measure to prevent and limit the spreading of the disease.”*

Following the deliberations, the Constitutional Court ruled:

With unanimity of votes,

1. Dismissed, as unfounded, the exception of unconstitutionality against the provisions of the first sentence of Article 25 (2) of Law No 95/2006 on healthcare reform.

2. Upheld the exception of unconstitutionality against the provisions of Article 8 (1) of the Government Emergency Ordinance no.11/2020 on medical emergency stocks, as well as some measures related to the establishment of quarantine.

By a majority of votes,

3. Upheld the exception of unconstitutionality against the provisions of the second sentence of Article 25 (2) of Law No 95/2006 on healthcare reform.

In reaching the said decision, the Court found that the provisions of the second sentence of Article 25 (2) (*“and communicable diseases for which declaration, treatment or admission are mandatory shall be determined by order of the Minister of Health”*) of Law No 95/2006 and those of Article 8 (1) of the Government Emergency Ordinance No 11/2020 are unconstitutional because these legal norms do not meet the requirements of clarity and foreseeability of the legal rule imposed by Article 1 (5) of the Constitution and infringe upon fundamental rights and freedoms, as those provided by Article 23 (1), Article 25 and Article 26 of the Constitution, without complying with the constitutional requirements concerning the restriction on the exercise of certain fundamental rights and freedoms.

B. The exception of unconstitutionality against the provisions of Article 4 (3) and (4), Article 65 (s), (ş), Article 66 (a), (b) and (c) and Article 67 (2) (b) of Law No 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic.

The provisions criticised read as follows:

- Article 4 (3) and (4): *“When the state of alert is established on at least half of the administrative-territorial units of the country, the measure shall be subject to the approval by the Parliament. The Parliament shall decide in joint session of the Chamber of Deputies and Senate within 5 days from the date of the request*

for approval. If Parliament rejects the request for approval, the alert shall cease immediately.”

- *(4) Parliament may approve the measure adopted by the Government in full or with amendments.”*

- *Article 65 (s) and (ş): “Insofar as they are not committed under such circumstances as to be considered criminal offences under criminal law, the following actions or inactions committed during the state of alert shall constitute administrative offences: (...)*

(s) failure by natural or legal persons or by the staff of public institutions and authorities designated in accordance with Article 5 (4) (g) to perform works for the partial or total demolition of some constructions, installations or facilities, for the moving/dismantling of movable goods/means or for the controlled flooding of some land, crops, plantations or forests;

(ş) prevention by any natural persons of the performance of works for the partial or total demolition of some constructions, installations or facilities, for the moving/dismantling of movable goods/means or for the controlled flooding of some land, crops, plantations or forests, established under Article 5 (4) (h).”

- *Article 66 (a), (b) and (c): “Administrative offences under Article 65 shall be subject to the following penalties:*

a) a fine from 500 lei to 2.500 lei for the administrative offences under Article 65 (c), (d), (e), (g), (h), (k), (m), (n) and (ş);

b) a fine from 1.000 lei to 5.000 lei for the administrative offences under Article 65 (a), (b), (f), (i), (o), (q) and (s);

c) a fine from 2.000 lei to 10.000 lei for the administrative offences under Article 65 (l), (r) and (t).”

- *Article 67 (2) b): “(2) The administrative offences referred to in Article 65 shall be established and the penalties provided for in Article 66 shall be applied by: (...)*

b) the control personnel of the Department for Emergency Situations, as well as non-commissioned officers and officers in the fire department and civil protection

units in case of the offences referred to in Article 65 (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (s), and (t).”

Following the deliberations, the Constitutional Court unanimously upheld the exception of unconstitutionality and found unconstitutional the provisions of Article 4 (3) and (4), Article 65 (s) and (ş), Article 66, (a), (b) and (c) as concerns the references to Article 65 (s), (ş) and (t), and Article 67 (2) (b) as concerns the references to Article 65 (s), (ş) and (t) of Law No 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic.

The Court found well-founded the challenges brought by the Advocate of the People, mainly for the following reasons:

I. Article 4 (3) and (4) of the Law No 55/2020 comes against the provisions of Article 1 (4), Article 21, Article 52, Article 108 and Article 126 (6) of the Constitution, whereas, under these legal texts:

- Parliament cumulates legislative and executive functions, which results in the violation of the principle of separation and balance of powers in the State, as enshrined in Article 1 (4) of the Constitution;

- the legal regime of Government decisions, as acts implementing the law, is distorted, which results in the violation of Article 108 of the Constitution ;

- a confusing legal regime of Government decisions is created, which raises the issue of their exemption from judicial review, which results in the violation of the provisions of Article 21, Article 52 and Article 126 of the Constitution, which enshrine free access to justice, the right of a person aggrieved by a public authority and the guarantee of judicial review of administrative acts of public authorities, through administrative litigation procedures, except for those concerning relations with the Parliament, as well as military command acts.

II. Article 65 (s), (ş), Article 66 (a), (b) and (c) as concerns the references to Article 65 (s), (ş) and (t) and Article 67 (2) b as concerns the references to Article 65 (s), (ş) and (t) of Law No 55/2020 come against the provisions of Article 1 (5) of the Constitution, in the component concerning the quality of the law.

Thus, as long as Article 5 of Law No 55/2020 consists of 3 paragraphs, it cannot be determined which are the institutions and public authorities “designated according to Article 5 (4) (g)”, mentioned in Article 65 (s) of the law, or which are the “works for the partial or total demolition of some constructions, installations or facilities, for the moving/dismantling of movable goods/means or for the controlled flooding of some land, crops, plantations or forests established under Article 5 (4) (h)”, mentioned in Article 65 (s) of the law, as to establish the constituent elements of the administrative offences under the mentioned legal texts. This inaccuracy also affects, accordingly, the provisions that refer to Article 65 (s) (s) of the law, i.e. Article 66 (a) and (b) and Article 67 (2) b), which have also been criticised. Likewise, since there is no subparagraph (f) under Article 65, the provisions of Article 66 (c) and Article 67 (2) (b) that refer to a subparagraph (f) of Article 65, which does not exist, are practically without object.



The decisions are final and generally binding and shall be communicated to the two Chambers of the Parliament, the Government and the Advocate of the People, i.e. the author of the referral to the Constitutional Court.

The reasons underlying the solutions pronounced by the Plenum of the Constitutional Court will be included in the decisions, which will be published in the Official Gazette of Romania, Part I.

**Foreign Relations, Press and Protocol Unit
of the Constitutional Court**