

Decision No 368 of 5 July 2022 on the exception of unconstitutionality of the phrase “in urban areas” contained in Article 2 (27) of Law No 61/1991 for sanctioning violations of certain norms of social coexistence, of public order and peace, published in the Official Gazette of Romania, Part I, No 1146 of 29 November 2022

Summary

I. As grounds for the exception of unconstitutionality, it was argued that the provisions of Article 2 (27) of Law No 61/1991 for sanctioning violations of certain norms of social coexistence, of public order and peace, according to which having private parties and using musical equipment at an intensity likely to disturb the peace of the residents, in tents, other facilities or in uncovered premises, located in the close proximity of residential or social buildings, in urban areas, is considered misdemeanour unless committed under such conditions that, according to criminal law, is considered a criminal offence, infringed the principle of equality of citizens before the law. It results from the definition of misdemeanours, regulated in Article 2 (27) of Law No 61/1991, that the protected social value is the public peace of the residents, but the impugned text ensures only the protection of urban residents, excluding those living in rural areas. Therefore, citizens in rural areas, whose rights should be protected through the intervention of misdemeanour officers, find themselves unable to request the safeguarding of this protected social value, i.e., public peace.

II. By examining the exception of unconstitutionality, the Court noted that the text of law including the impugned phrase “in urban areas” regulated a misdemeanour which, in order to be classified as such, must cumulatively meet several conditions, namely: to have a private party and to use musical equipment at an intensity that disturbs the peace of the residents, in tents, other facilities or in uncovered premises, located in the close proximity of residential or social buildings and, finally, to be committed only in urban areas.

The Court found that the last condition for a deed to be considered misdemeanour was to be committed solely in urban areas, thus territorially restricting the sanctioning of an antisocial behaviour that has, for all inhabitants – whether they live in urban or rural areas –, the same consequence – disturbing their peace.

Regarding the social value protected by the deed qualified as misdemeanour, the Court noted that the phrase “peace of the residents” referred to an essential component of both public peace and private life, in the absence of which their right to health protection could be affected, including in terms of the right to mental integrity. Thus, through the regulated misdemeanour, the legislator aimed both at guaranteeing public peace and at protecting the privacy of the residents within the meaning of Article 26 of the Constitution, according to which public authorities respect and protect intimate, family and private life.

However, the Court also found that the legislator did not guarantee the equality of the persons benefiting from the observance of the constitutional right to the protection of private life in terms of its quiet conduct – that is, without being subjected to an excessive noise level –, qualifying as misdemeanours only the deeds committed in urban areas, which disturbed the persons living there. As a result of this distinction between people living in rural areas and those living in urban areas, an inequality arises in terms of one of the guarantees of the right to privacy.

According to the case-law of the Constitutional Court, the principle of equality before the law implies the establishment of equal treatment for situations which, depending on the aim pursued, are not different. That is why it does not exclude, but, on the contrary, implies, different solutions to different situations. Consequently, a different treatment cannot be just the expression of the legislator’s exclusive appreciation; instead, it must be rationally justified, in compliance with the principle of equality of citizens before the law and public authorities. Also, with regard to the non-observance of equal rights, the Constitutional Court has held in its case-law that a different legal treatment was acceptable in different situations, if rationally and objectively justified.

By applying those considerations to this case, the Court held that an inequality was created between urban and rural inhabitants in terms of protection of one of the components of the right to privacy, i.e., the safeguarding of peace within the living premises, a discrimination that was not based

on an objective and rational criterion since the result of the wrongful deed – disturbance of peace – is the same for all inhabitants, whether they live in rural or urban areas.

III. For all these reasons, unanimously, the Court upheld the exception of unconstitutionality and found that the phrase “in urban areas” contained in Article 2 (27) of Law No 61/1991 for sanctioning violations of certain norms of social coexistence, of public order and peace was unconstitutional.