

DECISION No.1.225
of 20 December 2007

on the exception of unconstitutionality of Article 45 paragraph (1) subparagraph e) of Law no. 360/2002 on the status of police officers

Published in the Official Gazette no.100 of 8 February 2008

Ioan Vida	President
Nicolae Cochinescu	- Judge
Aspazia Cojocaru	- Judge
Acsinte Gaspar	- Judge
Petre Ninosu	- Judge
Ion Predescu	- Judge
Puskás Valentin Zoltán	- Judge
Tudorel Toader	- Judge
Augustin Zegrean	- Judge
Ion Tiucă	- Prosecutor
Valentina Bărbăteanu	- Assistant-Magistrate

The case at issue is the settlement of the exception of unconstitutionality of the provisions of Article 45 paragraph (1) subparagraph e) of Law no 360/2002 on the status of police officers, exception raised by the National Union of Customs and Police Officers in the File no. 2.338/2/2007 pending before the Bucharest Court of Appeal – 8th Contentious Administrative and Fiscal Division.

Upon the roll call, the parties are default, against whom the summons procedure has been lawfully carried out.

As the case is in motion, the President of the Court gives the floor to the representative of the Public Ministry, who requests the rejection of the exception of unconstitutionality as unfounded, considering that the legal text does not come against the invoked provisions of the Basic Law.

THE COURT,

taking into account the documents and acts in the case file, holds as follows:

Through the Interlocutory Order of 8 May 2007, delivered in the File no. 2.338/2/2007, the **Bucharest Court of Appeal – 8th Contentious Administrative and Fiscal Division referred the Constitutional Court with the exception of unconstitutionality of the provisions of Article 45 paragraph (1) subparagraph e) of Law no 360/2002 on the status of police officers**, exception raised by the National Union of Customs and Police Officers in an administrative litigation concerning the ascertainment of the right to strike of its members, employees of the General Inspectorate of Romanian Police.

As grounds for the exception of unconstitutionality, the author claims that, by excluding the social category of police officers from the right to strike, the impugned legal text infringes the provisions of Article 43 of the Constitution. The author of the exception specifies that, unlike police officers, in case of the employees of other services that are indispensable to society, such as doctors or employees in the energetic system, the right to strike is not forbidden but only limited, given the obligation to ensure optimal functioning of services during strike.

The Bucharest Court of Appeal – 8th Contentious Administrative and Fiscal Division considers that the exception of unconstitutionality is unfounded.

According to the provisions of Article 30 paragraph (1) of Law no. 47/1992, the Interlocutory Orders of reference was communicated to the Presidents of the two Chambers of Parliament, to the Government and to the Advocate of the People, in order to express their viewpoints on the exception of unconstitutionality.

The Government considers that the exception of unconstitutionality is unfounded. In support of this view, it states that the legislator has established for police officers this interdiction on the right to strike given the importance and complexity of work performed by them and the large negative consequences

that a disruption would cause. It also points out that the special legal regime applicable to police officers, including the right to strike is justified by their special status in relation to other categories of employees.

The Advocate of the People considers that the impugned legal text is constitutional. In this regard, he states that police officers are public servants with a special status, working in the interest and support of individuals, communities and State institutions so that disruption of their activity would affect an essential service to society, namely assurance of public order.

Presidents of both Chambers of Parliament did not communicate their viewpoints on the exception of unconstitutionality raised.

THE COURT,

having examined the Interlocutory Order of reference, the viewpoints of the Government and of the Advocate of the People, the report drawn up by the judge-rapporteur, the prosecutor's conclusions, the legal provisions impugned as against the provisions of the Constitution, as well as Law no. 47/1992, holds as follows:

The Constitutional Court has been legally referred and is competent, according to the provisions under Article 146 subparagraph d) of the Constitution, as well as of Article 1 paragraph (2), Articles 2, 3, 10 and 29 of Law no. 47/1992, to settle the exception of unconstitutionality.

The subject matter of this exception of unconstitutionality are the provisions of Article 45 paragraph (1) subparagraph e) of Law no 360/2002 on the status of police officers, published in the Official Gazette of Romania, Part I, no 440 of 24 June 2002, which read as follows:

- Article 45 paragraph (1) subparagraph e): *"(1) The police officer must refrain from: (...)
e) going in or taking part in strikes, as well as rallies, demonstrations, processions or any other political meetings.*

In the author's opinion, the provisions of the impugned law come against the provisions of Article 43 of the Constitution concerning the right to strike.

Having examined the exception of unconstitutionality raised, the Court notes that, by the challenge of unconstitutionality brought to its attention, it is claimed that "exclusion of the police office, as social category, from the constitutional right to strike, seriously violates the fundamental right enjoyed by every citizen of Romania, including the police officers, as citizens are equal before the law". In addition, the author of the exception claims that, in his opinion, limiting the right to strike for certain categories of employees allowed by paragraph (2) of Article 43 of the Basic Law is not depriving this right of its substance, but amounts, practically, with a restriction of the respective fundamental right, which can be made only in accordance with Article 53 of the Constitution.

Analysing these challenges, the Constitutional Court holds as follows:

Article 43 paragraph (1) of the Constitution of Romania enshrines the right to strike only for employees stipulating in this regard that *"(1) Employees have the right to strike in defence of their professional, economic and social interests"*. Paragraph (2) of Article 43, which covers all employees, provides that *"The law shall determine the terms and limits relative to the exercise of that right as well as the necessary safeguards in order to ensure essential services for society"*.

The Court finds that the international instruments that are relevant on the case at hand are the following:

1. The International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966 (ratified by Romania through Decree no. 212/1974, published in the Official Bulletin, Part I, no. 146 of 20 November 1974), which regulates under Article 8 paragraph 1 subparagraph d), the right to strike, exercised in conformity with the laws of the particular country. According to paragraph 2 of the same text, acknowledgement of the right to strike shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

2. ILO Convention no. 87/1948 on Freedom of Association and Protection of the Right to Organise (ratified by Romania through Decree no 213/1957, published in the Official Gazette, Part I, no. 4 of 18 January 1958) which provides in Article 9 pt.1 „The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.”

3. The Revised European Social Charter, adopted in Strasbourg on 3 May 1996 (ratified by Romania by Law no. 74/1999, published in the Official Gazette of Romania, Part I, no. 193 of 4 May 1999), which in Article 5, second sentence, provides that: „The extent to which the guarantees provided for in this article

shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.”

The Court notes that none of the international instruments listed does contain an express interdiction on the right to strike for police officers, giving the States the opportunity, through national legislation, to determine the extent to which the guarantees provided by these documents shall apply to the police.

The constituent legislator has recognized the right to strike, expressly, only in terms of employees. The rule is, therefore, that the right to strike belongs to employees. There are some exceptions from this rule, resulting in legal provisions stipulating that the right of employees to strike is limited. The right to strike is exercised, as provided by Article 43 paragraph (2) of the Basic Law, subject to the law. However, the legislator has established certain interdictions and restrictions on the right to strike, aimed at ensuring the smooth functioning of economic and social activity and safeguarding the general interests. In this spirit, the interdictions established by the Romanian legislator appear as natural and fully justified, and such include both Article 45 paragraph (1) subparagraph e) of Law no 360/2002 on the status of police officers, subject to constitutional review, and Article 63 of Law no. 168/1999 concerning the settlement of labour disputes, as amended by Law no. 261/2007 amending and supplementing Law no. 168/1999 concerning the settlement of labour disputes, published in the Official Gazette, Part I, no. 493 of 24 July 2007, which provide that "*The following shall refrain from declaring strike: prosecutors, judges, staff of the Ministry of Defence and of the institutions and structures in its subordination or coordination, the staff hired by foreign armed forces stationed in Romania, military personnel and civil servants with special status within the Ministry of Interior and Administrative Reform and within institutions and structures in its subordination or coordination, (...)*". As also pointed out by the Advocate of the People in his viewpoint submitted to the Constitutional Court, "such regulation is also justified by the fact that police officers are civil servants with special status, working in the interest and support of individuals, community and State institutions, solely on the basis and in observance of the law, so disruption in their activity affects an essential service to society, respectively assurance of public order".

Moreover, the Court notes that the interdiction on the exercise of the right to strike does not place this socio-professional category in the impossibility to defend its professional and social interests and legitimate rights. Thus, police officers, through the National Police Corps, in order to meet those interests, have the opportunity to resort to peaceful means of settling labour disputes in relations with central government, consisting of conciliation, mediation and arbitration, but without resorting to strike.

The Court holds that it can neither agree with the alleged violation of the constitutional principle of equality before the law and public authorities, whereas police officers have a special status compared to other categories of employees so that, considering the importance of their activities for the whole society, a special treatment regarding the right to strike is justified. In its case-law, the Constitutional Court has constantly held that equality is not uniformity and that it is allowed to establish differential legal treatments for certain categories of people, if there is an objective and reasonable justification.

Regarding Article 53 of Constitution, considered also as violated, for the reasons mentioned in the allegations above, the Court holds that constitutional provisions governing restriction on the exercise of certain rights or freedoms of citizens are not applicable in the case subject to constitutional review.

Therefore, the Court finds that the provisions of Article 45 paragraph (1) subparagraph e) of Law no. 360/2002 on the status of police officers, are constitutional.

For the reasons set forth herein, on the grounds of Article 146 subparagraph d) and Article 147 paragraph (4) of the Constitution, as well as Articles 1 to 3, Article 11 paragraph (1) subparagraph A.d) and Article 29 of Law no. 47/1992,

THE CONSTITUTIONAL COURT

In the name of the law

DECIDES:

Dismisses the exception of unconstitutionality of the provisions of Article 45 paragraph (1) subparagraph e) of Law no. 360/2002 on the status of police officers, exception raised by the National Union of Customs and Police Officers in the File no. 2.338/2/2007 pending before the Bucharest Court of Appeal – 8th Contentious Administrative and Fiscal Division.

Final and generally binding.

Delivered in public hearing on 20 December 2007.