[RO] Constitutional Court Declares Insolvency Code Unconstitutional

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On 29 October 2013, the Romanian Constitutional Court decided that the Ordonanţa de urgenţă a Guvernului nr. 91/2013 privind procedurile de prevenire a insolvenţei şi de insolvenţă (Government Emergency Decree no. 91/2013 on the procedures to prevent insolvency and on insolvency - OUG) is unconstitutional. The decision of the Court, which is final and generally binding, suspended the effects of the entire OUG. The document had been adopted by the Romanian Government on 2 October 2013 and entered into force on 25 October 2013 (see IRIS 2013-10/35).

The OUG was harshly criticised by the President of Romania, by several non-governmental organisations for civil rights, by the Judges Union of Romania, and many Romanian media corporations, journalists and an opposition party because of two stipulations which were seen as possibly triggering discriminatory and abusive measures against audiovisual media companies in insolvency (Articles 81 (3) and Article 384 (2)).

The Romanian Ombudsman challenged the OUG on 9 October 2013 before the Constitutional Court. He alleged the Emergency Decree breached Article 1 (5) and Article 15 (2) of the Romanian Constitution with regard to the mandatory observance of the Constitution, its supremacy and the supremacy of the laws, the predictability, availability and stability of the laws, the legal security for the beneficiaries of the laws, and, respectively, to the fact that the law must not be retrospective.

The Constitutional Court agreed with the two criticisms issued by the Ombudsman, but enlarged the list of violations of the Constitution. The Constitutional Court decided that the entire Government Emergency Decree violates the fundamental law. The Court considered that the OUG breaches Article 115 (4) and (6) of the Constitution. According to Article 115 (4) the Government can adopt Emergency Decrees only in extraordinary situations. Furthermore, according to Article 115 (6) the Emergency Decrees can not be issued in the field of the constitutional law and cannot impact the state’s fundamental institutions, the civil liberties, rights and obligations enshrined in the Constitution, the people’s electoral rights and cannot establish measures of forcible transfer of assets to public ownership.

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The Court also found the lack of clarity and predictability of the legal document to directly infringe the right to information provided by the Article 31 of the Constitution and freedom of expression provided by Article 30 of the Constitution. Another constitutional article breached by the OUG is Article 135 (2) a), which requires the State to ensure freedom of trade and protection of fair competition. At the same time, the Constitutional Court considered that the document does not comply with the norms of legislative procedure.

Decizia nr. 447 din data de 29.10.2013 referitoare la excepţia de neconstituţionalitate a dispoziţiilor Ordonanţei de urgenţă a Guvernului nr. 91/2013 privind procedurile de prevenire a insolvenţei şi de insolvenţă

http://www.ccr.ro/files/products/Decizia_447-2013_opinie.pdf

Decision no. 447 of 29 October 2013 with regard to the exception of unconstitutionality of the provisions of the Government Emergency Decree no. 91/2013 on the procedures to prevent insolvency and on insolvency

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