

DECISION N°47
of 17 May, 1994

on the constitutionality of certain provisions of the Law^{*}
regarding the war veterans, as well as certain
rights of the war invalids and widows

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The Constitutional Court was petitioned on 7 April, 1994 by 55 Deputies (namely ...) on the unconstitutionality of the specification "if they did not fight against the Romanian army" under Article 2 sub-paragraph b) of the Law regarding the war veterans, as well as certain rights of the war invalids and widows.

By the claim, the group of Deputies essentially points that the exclusion from the law benefit of the conscripted or compulsorily mobilized inhabitants, from the Romanian provinces temporarily occupied during 1940-1945, if they fought against the Romanian army is discriminating, taking into account that this condition has not been provided as to the German ethnics conscripted in the German army during the Second World War. Also, it is pointed that there has not been such a discrimination in the legislation of Romania up to present, and in the French legislation the quality as a war veteran has been denied only for the persons who voluntarily conscript in the foreign army.

By another claim, registered on 12 April, 1994, formulated by a group of 26 Senators (namely ...) the constitutionality of the specification "if they did not fight against the Romanian army" under Article 2 sub-paragraphs a) and b) of the above mentioned law.

By the claim, the group of Senators essentially points that the provision "if they did not fight against the Romanian army" under Article 2 sub-paragraphs a) and b) of the law acts contrary to the provisions under Article 4 paragraphs (1) and (2) of the Constitution according to which the social state foundation is laid on the unity of the Romanian people, and there may not be any discrimination on account of race, nationality, ethnic origin, etc. Accordingly, it is pointed that the difference in treatment of the German ethnics, in the case of whom, according to Article 2 sub-paragraph c) of the law, this condition is not requested, is a discrimination on the ethnic criterion which is unconstitutional and contrary to the provisions of the Treaty of peace with the allied and associated powers, ratified by the Law n°304 of 30 August, 1947, on the grounds of which, by Article 3 point 2, Romania assumed the obligation not to institute any discrimination between its citizens as to the political or civil rights or to any other matter, on account of race, sex, language or religion. All the same, it is mentioned that, according to the Law n°772/1946, the inhabitants of Northern Ardeal, compulsorily conscripted or mobilized in the Magyar army, are considered as having satisfied their military duties for the Romanian state.

A group of war veterans lodged an "objection" by which they oppose to the formulated unconstitutionality objections, also requesting the amendment of the law with some new provisions. Accordingly, regarding some new amendments, there is also an "open letter" of the "War Military Virtue" Association of Sibiu, as well as the point of view of the War Veterans National Association, communicated to the Constitutional Court by the Presidency of Romania.

Also, Senator Ioan Lup, vice-president of the Senate, lodged, for sustaining the claim, a letter which, in essence, shows that the law text adopted is of a nature to produce political prejudices to the country, as it would mean the admittance of certain juridical effects of the Viena Dictate of 1940, which is null and void, and the respective measure "affects approximately 7 000 Romanians and 6 000 Magyars, which is not ethic or human either, because they are in this situation by a guilt of history that may be imputed to us, as well".

According to Article 19 paragraph (1) of the Law n°47/1992, the Presidents of the two Chambers of Parliament, as well as the Government have been asked for their points of view about the two claims. Also, the opinion of the Ministry of National Defence has been requested, including information on the applying of the Law n°772/1946.

^{*} The Law n°44/1994 regarding the war veterans, as well as certain rights of the war invalids and widows, is published in the "Official Gazette" of Romania, Part I, n°172 of 7 July, 1994.

In the point of view of the President of the Senate the rejection of the claims has been asked for, considering that the invoked arguments are not valid in order to hold the infringement of the constitutional texts, since the ones who fought against the Romanian army infringe on their fidelity obligation to the country, which has the significance of disregarding the unity of the Romanian people. Therefore it is considered that the criticized text is not a discrimination as long as it makes a distinction between the ones who fought for the country or against it. Also it is considered that the persons provided for by Article 2 sub-paragraph c) of the law did not infringe on their fidelity obligation towards the country, and the invoking of the Law n°772/1946 is not relevant for the case, to the extent to which it refers to the persons taken in compulsory labour detachments.

The Government appreciates, in its point of view, that the exclusion of Romanian citizens who fought against the Romanian army – indifferently whether they were volunteers or drafted or mobilized in the armies of other states – from the right to acquire the quality of war veteran has not a discriminating character, the legislator making no difference between this category and the other Romanian citizens, on account of race, nationality, ethnic origin, etc., and this exclusion is a moral measure “as it would be unconceivable that the Romanian state should give rights to the people who infringed upon its independence and integrity”. All the same, it considers that the omission of the mention “if they did not fight against the Romanian army” under Article 2 paragraph c) of the law does not produce a discrimination, as the text refers to persons of German nationality enrolled in the German army “but who did not participate in fight actions”.

The opinion of the Ministry of National Defence holds that the texts in case do not express any discrimination as they concern a sanction – moral and juridical – of the ones who fought against the Romanian army, for the disloyalty towards homeland and people. In case the legislator shall settle the proposal differently, it is pointed that the Ministry of National Defence “shall understand this act as an additional proof for the generosity and tolerance spirit of the Romanian society, present in so many circumstances throughout its history”.

The President of the Chamber of Deputies has not communicated its point of view.

The Constitutional Court, on the grounds of Article 3 paragraph (2) of the Law n°47/1992, ascertains its ability to settle the received claims, which have been done with the observance of Article 144 sub-paragraph a) of the Constitution and of Article 17 paragraph (1) of its organic law.

By the Interlocutory judgment of 27 April, 1994, ascertaining that these claims concern the same law, their connection was disposed.

Having regard to the above reasons,

The Constitutional Court,

examining the formulated claims, the points of view from the President of the Senate and from the Government, the opinion of the Ministry of National Defence and the other acts of the file, as well as the concordance between the texts that are the object of the claims and the constitutional provisions, holds the following:

The first claim considers as unconstitutional to condition the war veteran quality for the inhabitants from the Romanian provinces, temporarily occupied during 1940–1945, compulsorily conscripted or mobilized in the Magyar army, on their having fought against the Romanian army.

The Constitutional Court ascertains that the persons whom the intimation refers to were compulsorily conscripted or mobilized in the Magyar army, since they lived in a territory temporarily occupied on account of the Viena Dictate of 1940, which is null and void. In this circumstance, the Romanian state was, on that date, in impossibility of disposing their conscription or mobilization, and if, at present, an incapacity were deduced out of this circumstance, it would mean the admittance, within the mentioned limits, of the juridical effects of a null and void act. That is precisely why the exclusion of the respective persons is a discrimination, as the unfulfillment of an obligation, impossible to execute, may not be imputed to anybody, especially that under Article 1 sub-paragraph b) of the Law n°772/1946 it was considered that they “satisfied the military obligations towards the Romanian state”. Among the persons who are considered, according to the law, as having fulfilled the military obligations, any exclusion is a discrimination.

The same conclusion may be also drawn out of Article 3 point 3, of the Peace Treaty signed by Romania with the allied and associated powers, according to which our state

pledged that the laws in force should not establish or imply within their content or applying any discriminatory difference between the persons with Romanian citizenship. This obligation corresponds with the constitutional principle provided under Article 4 paragraph (2) according to which Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.

The mentioned reasons converge to the conclusion that the criticized text infringes on the provisions of Article 16 paragraph (1) of the Constitution according to which all citizens are equal before the law and public authorities, without any privileges or discriminations, as well as the corresponding provisions under Article 7 of the Universal Declaration of Human Rights and under Article 26 of the International Pact on civil and political rights which, on the grounds of Article 20 of the Constitution are compulsory for interpreting domestic law or when it comes into conflict with it.

The second claim, besides Article 2 sub-paragraph b) of the law, also contests the constitutionality of the specification under sub-paragraph a) regarding the condition of not having fought against the Romanian army. The hypothesis of these provisions is another one than that under Article 2 sub-paragraph b) of the law. It concerns the Romanian citizens who conscripted voluntarily.

But, in connection with the definition of the juridical statute as a war veteran of those who conscripted voluntarily in foreign armies there is a lack of correlation between the provisions under Article 2 sub-paragraph a) of the law, which refer only to the ones who fought against the Romanian army, and the provisions under Article 7 sub-paragraph b) thesis 1 of the law, which refers to the ones who fought against the country which is liable to be interpreted in a wider meaning, not only as a direct fight against the Romanian army, and with the provisions under Article 2 sub-paragraph c) of the law, which, as it does not institute any condition, is completely contradicting Article 7 sub-paragraph b) thesis 1 of the law, which refers, as it has been enhanced, to Romania, but also to the United Nations. This lack of correlation may lead to arbitrary interpretations regarding the grant of war veteran quality, which is contrary to the provisions under Article 16 paragraph (1) of the Constitution on the equality of citizens before the law. Also, referring to Article 2 sub-paragraph c), this lack of correlation has the significance of a privilege forbidden by the same constitutional text, as during the concerned period the German army was fighting against the United Nations.

Since the provisions which made the object of the claim under Article 2 sub-paragraph a) may not be dissociated of the provisions under sub-paragraph c) of the same Article and of the ones under Article 7 sub-paragraph b) thesis 1 of the law, the Court considered, on the grounds of Article 20 paragraph (1) of the Law n°47/1992 that all these texts are unconstitutional, following to be correlated, within the framework of the re-examination proceeding in order to ensure the treatment equality towards all who voluntarily conscripted in foreign armies.

The arguments invoked in the combat of the claims examined by the Court, referring to the events that took place during 1940–1945 in temporarily occupied territories, with their moral co-notations, are in no way annulled by the present decision, which was imposed in order to ensure the concordance of the provisions of the law with the Constitution. The constitutional juridical solution given for the problem does not distort in any way the historic reality, nationally and internationally known.

With regard to the letters forwarded to the Court by some war veterans associations, it is necessary to make a distinction. The arguments invoked in favour for rejecting the claims have been examined as they are to be found, in one form or another, in the opinions transmitted by the President of the Senate, by the Government and by the Ministry of National Defence.

On the propositions for modifying the law, the Constitutional Court may not yet pronounce, its control competence being exclusively induced by the claims received in the conditions under Article 144 sub-paragraph a) of the Constitution.

Having regard to the mentioned facts, observing the provisions under Article 144 sub-paragraph c) and under Article 145 paragraph (2) of the Constitution, as well as the provisions under Article 20 paragraphs (2) and (3) of the Law n°47/1992,

The Constitutional Court,
In the name of the law,
DECIDES:

1. Article 2 sub-paragraph b) of the Law on the war veterans, as well as certain rights of the war invalids and widows, referring to the ones who were compulsorily conscripted or mobilized, it is unconstitutional as to the condition "if they did not fight against the Romanian army".

2. Article 2 sub-paragraphs a) and c), as well as Article 7 sub-paragraph b) thesis 1 of the law are unconstitutional as to defining the war veteran quality. Within the framework of re-examination procedure, their correlation is necessary, in order to ensure the observance of the principle of citizens' rights equality.

3. The decision shall be notified to the President of Romania, as well as to the President of the Chamber of Deputies and to the President of the Senate, in order to institute the proceeding provided by Article 145 paragraph (1) of the Constitution, and shall be published in the "Official Gazette" of Romania, Part I.

The deliberation took place on May, 17, 1994 and it was attended by Vasile Gionea, chairman, Viorel Mihai Ciobanu, Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Florin Bucur Vasilescu and Victor Dan Zlătescu, judges.