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# Legal News

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September 2016

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**I. Abrogation by the Constitutional Court of the decision on base salary for the purpose of calculation of social and health contributions for freelance professionals - Legal perspective**

On 16.09.2016, the Constitutional Court, with the Decision no. 60, ruled on the unconstitutionality of article 4 of the law no. 143/2015, dated 17.12.2015 “On some amendments and additions to the law no. 9136, dated 11.9.2013, “On collection of obligatory contributions of social and health insurances in the Republic of Albania” and the Decision of the Council of Ministers no. 37, dated 21.01.2016, “On determining the monthly salary for purposes of calculation of obligatory social and health contributions for persons registered as self-employed, who perform professional economic activities and unpaid family employees that work and live with them”.

The decision of the Constitutional Court has been published with the Official Gazette no. 172, dated 20.09.2016 and shall be effective as of the date of its publication. The Constitutional Court has chosen not to resolve on a different date of entry into force, despite having this power.

The Constitutional Court, in ruling on the unconstitutionality of the law provisions, moves along three arguments brought by the petitioner, the Albanian Bar Association, (i.e. the court rejected other petitioner’s claims).



*(i) Violation of principle of equality and non-discrimination*

The court on the matter stipulates that the law provision under examination not only fails to unify [social and health contribution] obligations, but on the contrary, the new formula for calculating the contributions collides with the principle of equality and non-discrimination.

The court observes that the criteria set for calculating and differentiating contributions is not based in a technical analysis or previous experience. Such criteria create new elements of inequality, new administrative burdens for the taxpayers, technical difficulties and judicial uncertainty.

To this effect, concludes the court, the claim of the petitioner is grounded given the different treatment of the self-employed persons who exercise professional economic activities is not justified by reasonable and objective grounds, therefore resulting in violation of the constitutional principle of equality.

*(ii) Violation of the principle of legal certainty*

On this claim of the petitioner, the Constitutional Court asserts that the lack of harmonization of the provisions of a law with those of other laws does not per se imply automatic unconstitutionality, but when uncertainties in the legislation create problems that lead to the incorrect application of the law provision, certainly those are in contrast with the Constitution. Therefore, the Court argues that it is the principle of legal certainty that guarantees the predictability of the legal framework as a whole.

The arguments in defence of the legislative intervention brought by the Council of Ministers and the Social Insurance Institute, such as the necessity of accelerating the pace for achieving the social objectives, avoidance of the collapse of the social insurance scheme, etc., were challenged by the court on the grounds that the deterioration of the financial situation for the self-employed persons, by increasing with almost 300% the amount of obligatory contribution, does not comply with constitutional requirements. In fact, this is considered not a proportional legislative intervention, because in the present case, the measures to be taken do not serve to create a stable social insurance scheme or even avoid the present irregularities.

On these basis (i.e. and other arguments), the court held that the legislative intervention violates the principle of legal certainty as well.

*(iii) Violation of the hierarchy of normative acts*

Concluding, the Constitutional Court accepted also this claim raised by the petitioner as, in the opinion of the court, the Council of Ministers, with the Decision 37/2016, sets out a categorized reference salary level, not a minimum and maximum salary as required under the applicable law, resulting by this way in breach of the hierarchy of normative acts.

Based on the decision of the Constitutional Court, starting from 20.09.2016, article 4 of the law no. 143/2015 and Decision of the Council of Ministers no. 37, dated 21.01.2016 shall no longer be in force and applicable.

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