



To the Ombudsman
To the attention of Mr. Victor Ciorbea

Mr. Ombudsman Victor Ciorbea,

Signatory union confederations ask you to support the exercise of Constitutional Court to review the rear of Article 5 of GEO 86/2014 constitutionality, establishing measures by the Government that abolishes the Labour Inspectorate and the National Agency for Payments and Social Inspection at the central level, and creates, by merging, a new structure called the National Agency for Labour and Social Security Inspectorate.

The constitutional provisions violated when adopting the GEO no. 86/2014 are art. 115 para. (1) and (4).

According to art. 115 para. (4) of the Constitution, *"Government can only adopt emergency ordinances in exceptional cases, the regulation of which can not be postponed, having the obligation to motivate the urgency in the Guidelines"*.

From this constitutional provision it results that the Government may adopt an emergency ordinance if the following conditions are cumulatively fulfilled:

- *The existence of extraordinary circumstances;*
- *Its regulation can not be postponed;*
- *The urgency must be justified in the wording of the ordinance.*

In the preamble of GEO no. 86/2014, the urgency is motivated by *"the need to establish measures to enable deployment, as soon as possible, in the new organizational framework, of the work of the Government, ministries, specialized bodies of the central public administration, public institutions and structures within the central government. "*

Currently, the organization and functioning of the Labour Inspectorate are regulated by Law no. 108/1999 on the establishment and organization of the Labour Inspection, republished in the Official Gazette of Romania, Part I, no. 290 on the 3rd of May 2012.

The preamble to OUG 86/2014 does not mention why changing the existing legal framework on the organization and functioning of the Labour Inspection is determined by the existence of an

extraordinary circumstance, its regulation can not be delayed and is urgent. In these conditions are violated the provisions of Art. 115 para. (4) of the Constitution.

There are also violated other provisions of art. 115 para. (2) of the Constitution allowing legislative delegation only in areas of non organic laws.

GEO 86/2014 violates also Art. 81/1947 6 of the Convention of the International Labour Organisation, which says that *"Inspection staff will be composed of public officials whose status and working conditions ensures their stability and independence according to any unforeseen changes in the government and any outside influence"*.

In accordance with Art. 73 para. (3) p) of the Constitution, the status of civil servant is determined by an organic law. Therefore, the status of civil servants in the Labour Inspection must be regulated by an organic law.

The GEO no. 86/2014 stipulates in art. 5 paragraph. (10) that the organization and functioning of the National Agency for Labour and Social Security Inspection and specific duties are approved by Government Decision. So, we get into a situation where the civil servant status is governed by a governmental act and not by an organic law as provided in the Constitution.

However, being regulated at governmental level, the organization and functioning of the newly Agency created could be modified whenever the government will change its structure so that is no longer provided stability of employment of labor inspectors nor independence from any governmental changes.

We would also like to emphasize that Labor Inspection is provided in the Labour Code, which regulates in art. 239 that *"the establishment and organization of the Labour Inspectorate are regulated by a special law."*

Given all these considerations and on the basis of Article 146 (d) of the Constitution which says that the exception of unconstitutionality may be raised directly by the Ombudsman, we ask you to support us by invoking the exception of unconstitutionality of art. 5 from GEO no. 86/2014.

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