DECISION No. 328
of 10 May 2017

on the objection of unconstitutionality relating to the provisions of the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance

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Petre Lăzăroiu	— Judge
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Varga Attila	— Judge
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1. The case at issue concerns the objection of unconstitutionality of the provisions of the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance, objection formulated by 124 Deputies belonging to the parliamentary groups of the National Liberal Party, the Save Romania Union and the People's Movement Party under the provisions of Article146 (a) of the Constitution and Article 15 of Law no. 47/1992 on the organisation and functioning of the Constitutional Court.

2. By Letter no. 2/4.058 of 20 April 2017, the Secretary General of the Chamber of Deputies sent to the Constitutional Court the above-mentioned referral of unconstitutionality, which has been registered at the Constitutional Court under no. 4.970 of 20 April 2017 and is the subject of file no. 1.478A/2016.

3. **As grounds for the referral of unconstitutionality**, the authors of the objections formulated challenges of extrinsic and intrinsic unconstitutionality.

4. The grounds of extrinsic unconstitutionality cover, on the one hand, the adoption of organic rules (the criteria used to determine the threshold above which an administrative-territorial unit is obliged to hire specialised staff with knowledge of the language of national minorities are set out in Law no. 215/2001, an organic law) as part of a Law which was debated and adopted as an ordinary law, and, on the other hand, the drafting of the legal provisions without respecting the rules of legislative technique in the sense that the same need to be clear, fluent and readable. In regard to that last point, the legal text does not specify unequivocally if it refers to health care professionals or social workers with knowledge of the language or languages spoken by national minorities and whether it refers to a single national minority with a share exceeding 20% or at least 5,000 of the number of inhabitants or the representatives of several national minorities, which together have a share above the threshold specified by law. These issues are likely to affect the legality principle, set out in Article 1 (5) of the Constitution.

5. A first plea of intrinsic unconstitutionality refers to the insertion of a new

criterion, subsidiary, based on which healthcare units in Romania are obliged to ensure social workers or medical specialist staff proficient in minority languages, namely the number of inhabitants who need to be at least 5,000. The provisions of the new legal text are in contradiction with the welfare feature of the Romanian States laid down in Article 1 (3) of the Constitution, which "presupposes that the State should not remain indifferent to its citizens' demands, regardless of their ethnic, cultural, linguistic or religious identity, and regardless of their number on the territory of the Romanian State". The State must intervene to take measures as to ensure all that is necessary for all its citizens, not to measure their share and then take such measures. Moreover, even in other areas of State activity, such as energy, gas distribution, etc., the State must act not based on profit, but on the basis of the need to ensure human demands. In the same way, the State must ensure social and healthcare assistance under the same conditions, without discrimination and in compliance with the principle of the welfare State. The alternative criterion of 5,000 inhabitants is in breach of the principle of legality under Article 1 (5) of the Constitution, as well as of the principle of equal rights under Article 16 (1), as it enters into conflict with other legal provisions in force (Article 19 of Law no. 215/2001 on local public administration), which stipulate a single criterion for providing staff with knowledge of national languages in the administrative-territorial units, namely the share of more than 20% of the number of inhabitants.

6. The authors of the objection of unconstitutionality claim that the provisions subject to criticism violate the provisions of Article 6 of the Constitution, since the threshold of 20% or 5,000 citizens "generates serious discrimination against other Romanian citizens of other ethnicities, who do not satisfy such a criterion, although, according to the Constitution, equality and non-discrimination must be ensured in relation to all the other Romanian citizens".

7. Finally, the objection of unconstitutionality concerns also the violation of the provisions of Article 138 (5) of the Constitution since the legal provisions establish obligations of a financial nature for local public administrations, without indicating the source of funding. They arise from the obligation of hiring specialised staff with knowledge of the national minorities languages on positions that currently do not exist in the organisation chart of local authorities falling under the second alternative criterion to be met (5,000 inhabitants). The new positions can be created only based on additional funding sources, which the legislator does not specify. In support of their objection, the authors invoke the case-law of the Constitutional Court.

8. For these reasons, the authors of the referral ask the Court to uphold the challenges brought and declare unconstitutional the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance.

9. In accordance with the provisions of Article 16 of Law no. 47/1992 on the organisation and functioning of the Constitutional Court, the referral was notified to the Presidents of the two Chambers of Parliament, to the Government and to the Advocate of the People, as to communicate their viewpoints.

10. The public authorities have not communicated their points of view on the objection of unconstitutionality.

THE COURT,

having examined the objection of unconstitutionality, the report drawn up by the

judge-rapporteur, the provisions of the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance, and the provisions of the Constitution, holds as follows:

11. The Court has been legally notified and is competent, pursuant to Article 146 (a) of the Constitution and Articles 1, 10, 15, 16 and 18 of Law no. 47/1992, to adjudicate on the constitutionality of impugned legal provisions.

12. The subject matter of the objection of unconstitutionality is the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance, reading as follows:

"***Article I.*** *— Law no. 95/2006 on the healthcare reform, republished in Official Gazette of Romania, Part I, no. 652 of 28 August 2015, as subsequently amended and supplemented, shall be supplemented as follows:*

1. ***In Article 7, after point (l), a new point (m) is added, worded as follows:***

'm) ensuring in healthcare establishments also medical staff or social workers, as the case may be, with knowledge of the language of national minorities in the administrative-territorial units where national minorities' citizens have a share of more than 20% of the number of inhabitants, or their number is at least 5,000, in compliance with the other provisions of job description.'

2. ***In Article 7 (1), after point (k), a new point (l) is added, worded as follows:***

'l) lays down the rules relating to the organisation and functioning of establishments providing public health care, taking into account the provisions of Article 7 (m), authorises and monitors the activity of public health institutions and ensure the operation of establishments subordinated thereto.'

Article II. *— After paragraph (5) of Article 41 of Law no. 292/2011 on social assistance, published in Official Gazette of Romania, Part I, no. 905 of 20 December 2011, as amended, a new paragraph (6) is added, to read as follows:*

'(6) In administrative-territorial units where national minorities' citizens have a share of more than 20% of the total number of inhabitants, or count at least 5,000 citizens, by the care of local public authorities, social assistance institutions and units shall ensure also staff knowing the language of the respective national minorities, in compliance with the other provisions of the job description.'

Article III. *— This Law shall enter into force on 1 January 2018."*

13. The authors of the referral argue that the impugned legislative act is contrary to the constitutional provisions of Article 1 (3) and (5), which enshrine the welfare State and the obligation of complying with the law and the Constitution, Article 6 regarding the national minorities' right to identity, Article 16 (1) on the principle of equal rights, Article 76 (1) on the procedure of adoption of organic laws and Article 138 (5) on specifying the source of financing of budgetary expenditure.

14. In order to settle the present referral, the Court proceeds, first, to the verification of its admissibility. The analysis on whether the admissibility criteria as to this referral are met must be made by reference to Article 15(1) of Law no. 47/1992, according to which "*The Constitutional Court shall rule on the constitutionality of laws prior to their promulgation, on referral by the President of Romania, the President of either of the Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, or at least 50 Deputies or 25 Senators*." Thus, it results that the act subject of the review of constitutionality is a law adopted by the Romanian Parliament, and the referral was made by 124 Deputies belonging to the parliamentary groups of

the National Liberal Party, the Save Romania Union and the People's Movement Party, who according to the legal provisions, have the capacity to formulate the referral.

15. The legislative proposal as to the supplement of Law no. 95/2006 on the healthcare reform, as well as of Article 41 of Law no. 292/2011 on social assistance, was submitted to the Senate of Romania, as first Chamber notified, on 26 April 2016. According to the *Explanatory Statement*, the justification behind the said legislative proposal was the need to transpose into national law the provisions of the European Charter for Regional or Minority Languages of 5 November 1992, ratified by Romania by Law no. 282/2007, in the field of social and health service provision, and Article 13 point 2 (c), which provide for the commitment of signatory States to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age, etc.

16. On 17 May 2016, *the Economic and Social Committee* delivered an unfavourable opinion on the legislative proposal, on the grounds that the current legislation does not prohibit the employment of staff speaking the national minorities languages in the medical establishments, and that employment should be based on the criterion of professional competence. On 2 June 2016, *the Legislative Council* delivered a favourable opinion on the legislative proposal, framing it as ordinary law, and establishing, pursuant to Article 75 (1) of the Constitution, the Senate's capacity of first Chamber notified.

17. In its viewpoint submitted to the Senate on 20 September 2016, *the Government* stated that it does not support the adoption of the legislative proposal. It claimed that, whereas Law no. 215/2001 provides that in administrative units in which citizens belonging to national minorities have a share of more than 20% of the number of inhabitants, the local public administration authorities, public institutions in their subordination, and devolved local public services shall ensure, in relation with them, also the use of their mother tongue, in accordance with the provisions of the Constitution, this Law and the international treaties to which Romania is a party, the proposed legislative amendments are not justified. On the other hand, it was stated that the legislative proposal introduces an alternative criterion to the share of over 20% of the number of inhabitants, i.e. 5,000 inhabitants, which was not envisaged by the European Charter for Regional or Minority Languages.

18. The legislative proposal was approved in silence procedure by the Senate on 22 December 2016 and sent to the decision-making Chamber on 1 February 2017. On 11 April 2017, ***the Chamber of Deputies, on the grounds of Articles 75 and 76 (2) of the Constitution, passed the law with 263 votes in favour, 0 against, 0 abstentions*** and send it to the President of Romania for promulgation, on 24 April 2017.

19. Within the legal deadline, the Secretary General of the Chamber of Deputies sent to the Constitutional Court the referral formulated by 124 Deputies on this objection of unconstitutionality.

20. As regards the criticism formulated by reference to the provisions of Article 76 (1) of the Constitution, the authors argue that the contested law, adopted as ordinary law, contains provisions which determine the threshold above which an administrative-territorial unit is obliged to hire specialised staff with knowledge of the language of national minorities, provisions partly taken from Law no. 215/2001, an

organic law.

21. Having examined the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance, subject in the case to the review of constitutionality, the Court notes that it provides, **on the one hand**, the supplementation of the principles underpinning the public health care with *the principle of ensuring in healthcare establishments also medical staff or social workers, as the case may be, with knowledge of the language of national minorities in the administrative-territorial units where national minorities' citizens have a share of more than 20% of the number of inhabitants, or their number is at least 5,000*, in compliance with the other provisions of the job description, and, **on the other hand**, *the obligation of social assistance institutions and establishments to ensure*, in the administrative-territorial units where national minorities' citizens have a share of more than 20% of the total number of inhabitants, or count at least 5,000 citizens, *staff proficient in the language of the respective national minorities*, in compliance with the other provisions of the job description.

22. Therefore, the Court holds that, for both scenarios, the mentioned provisions aim to ensure, in the relations between the public institutions subordinated to the local public administration authorities and the citizens belonging to national minorities, the use of their mother tongue, in accordance with the terms of the Constitution and of the international treaties to which Romania is party.

23. The framework legislation establishing the rules applicable to the use of language in the administrative-territorial units in which citizens belonging to national minorities live is represented by Law no. 282/2007 for the ratification of the European Charter for Regional or Minority Languages, adopted in Strasbourg on 5 November 1992, published in the Official Gazette of Romania, Part I, no. 752 of 6 November 2007. Pursuant to Article 7 of the law, "*The phrase area in which a regional or minority language is used, provided by Article 1 (b) of the Charter, means the administrative-territorial units in which a regional or minority language is used at least 20% of the number of inhabitants of that administrative-territorial unit*".

24. Law no. 282/2007 has an ordinary character, as it clearly results from its final mention, attesting that "*the law was adopted by the Parliament of Romania in compliance with the provisions of Articles 75 and 76 (2) of the Constitution of Romania, republished*".

25. The Court notes that the rules contained in the criticised law, referring to the use of the mother tongue of national minorities, particularises the rules established by Law no. 282/2007 to the specific areas of public health and social assistance. This particularisation is not, however, a mere conversion of the general rules to the mentioned field. By the criticised law a new rule is introduced, different from that established by the framework regulation, namely the threshold of at least 5,000 persons, alternatively to that of over 20% of the existing population. In this respect, the Constitutional Court has held, in its case-law, that whenever a new law derogates from another law or amends it, it shall have at least the same legal force with the previous law (see, in that regard, Decision no. 442 of 10 June 2015, published in Official Gazette of Romania, Part I, no. 526 of 15 July 2015, paragraph 29). Therefore, the rules to be introduced in Law no. 95/2006 on the healthcare reform, as well as those of the Law no. 292/2011 on social assistance, by the criticised law, must have at least the same legal force as those for whose detailing and supplementing are enacted,

respectively Law no. 282/2007. In other words, the changes to the two regulatory acts may be achieved by a regulatory act adopted under Article 76 (2) of the Constitution.

26. In the present case, the Court finds that the law subject to constitutional review meets these requirements, having an ordinary character, as it clearly results from its final words, attesting that the law "*has been adopted by the Parliament of Romania in compliance with the provisions of Articles 75 and 76 (2) of the Constitution of Romania, republished*." The Verbatim report of the plenary session of the Chamber of Deputies indicates that the law was adopted with 263 votes in favour, from a number of 329 deputies, members of the Chamber of Deputies, during 2016 to date. In its case-law, the Court gave precedence to those entered in the formula attesting the authenticity of the law, which, pursuant to Article 40 in conjunction with Article 46 (5) and (6) of Law no. 24/2000 on rules of legislative technique for the elaboration of regulatory acts, republished in Official Gazette of Romania Part I, no. 260 of 21 April 2010, as subsequently amended and completed, includes the formula of attestation of the legality of the adoption of the draft law, used by each Chamber of the Parliament. The importance of this mention lies in the fact that it constitutes an essential clue on the observance of the procedure for the adoption of laws, as it is enshrined in the Basic Law. Thus, the order in which the two Chambers of Parliament will debate the draft law or the legislative proposal also depends on the characterisation of the law as organic or ordinary, in light of this characterisation following to be determined the competent Chamber to adopt the law as Chamber of reflection, respectively deciding Chamber, pursuant to Article 75 (1) of the Constitution. Therefore, the qualification *ab initio* of the law to be adopted, as organic or ordinary, has an influence on the legislative process, determining the course of the draft law or legislative proposal. In the present case, the law has been considered as belonging to the category of ordinary laws, which attracted the Senate competence as first Chamber seized and that of deciding Chamber of the Chamber of Deputies.

27. As regards the reliance on the provisions of the Law no. 215/2001 on local public administration, republished in the Official Gazette of Romania, Part I, no. 123 of 20 February 2007, as representing the rule laying down the criteria determining the threshold above which an administrative-territorial unit is obliged to hire specialised staff with knowledge of the language of national minorities, the Court holds that these provisions are not only transpositions of the same framework rule, represented by Law no. 282/2007, in their respective field of incidence - local public administration. Even if, according to the Article 73 (3) (o) and Article 120 (2) of the Constitution, Law no. 215/2001 regulates in a field reserved for organic law, which prompted its adoption in accordance with the procedure set out in Article 76 (1) of the Constitution, such a circumstance is not such as to implicitly confer the character of organic rule to the provisions on the use of minority language in Romania.

28. In conclusion, in the light of the arguments above, the Court notes that the Law supplementing Law no. 95/2006 on the healthcare reform, and Article 41 of Law no. 292/2011 on social assistance has been adopted as ordinary law, subject to the provisions of Articles 75 and 76 (2) of the Constitution.

29. The challenge of unconstitutionality of the Law supplementing Law no. 95/2006 on the healthcare reform, and Article 41 of Law no. 292/2011 on social assistance, in relation to Article 1 (5) of the Constitution, has in view the defective way in which the legislator has exercised the power to legislate, in violation of the requirements

referring to the predictability which a regulatory act must have. The notion of predictability of the law can be assessed in terms of way in which the addressee of the rule receives the regulatory content adopted by the legislator, its ability to understand the rule in order to match the behaviour, to comply with the statutory limitation period. From this perspective, the predictability of the law requires for the legislator to enact clear, understandable, precise rules, without an ambiguous content, in correlation with the whole legislation.

30. As for the requirements of clarity, precision and predictability of the law, the Constitutional Court held in its case-law, by Decision no. 732 of 16 December 2014, published in the Official Gazette of Romania, Part I, no. 69 of 27 January 2015 (paragraph 29), that the essential feature of the rule of law is the supremacy of the Constitution and the obligation to observe the law (see, in this respect, Decision no. 232 of 5 July 2001, published in the Official Gazette of Romania, Part I, no. 727 of 15 November 2001, Decision no. 234 of 5 July 2001, published in the Official Gazette of Romania, Part I, no. 558 of 7 September 2001, Decision no. 53 of 25 January 2011, published in the Official Gazette of Romania, Part I, no. 90 of 3 February 2011) and that "the rule of Law ensures the supremacy of the Constitution, the correlation of all the laws and regulatory acts with this one" (Decision no. 22 of 27 January 2004, published in the Official Gazette of Romania, Part I, no. 233 of 17 March 2004), which means that it "involves as a priority the compliance with the law, and the democratic state by excellence a state in which the rule of law is manifested" (Decision no. 13 of 9 February 1999, published in the Official Gazette of Romania, Part I, no. 178 of 26 April 1999). In this respect, by Decision no. 1 of 10 January 2014, published in the Official Gazette of Romania, Part I, no. 123 of 19 February 2014, paragraph 225, the Court held that one of the requirements of the principle of compliance with the laws concerns the quality of the regulatory acts and that, as a matter of principle, any regulatory act must meet certain qualitative conditions, including predictability, which implies that it must be sufficiently clear and precise to be applied. Thus, the sufficiently precise wording of the regulatory allows the persons concerned – who can seek expert advice if necessary - to foresee to a reasonable extent, in the circumstances of this case, the consequences that may result from a given act (see, in this respect, Decision no. 903 of 6 July 2010, published in the Official Gazette of Romania, Part I, no. 584 of 17 August 2010, Decision no. 743 of 2 June 2011, published in the Official Gazette of Romania, Part I, no. 579 of 16 August 2011, Decision no. 1 of 11 January 2012, published in the Official Gazette of Romania, Part I, no. 53 of 23 January 2012, Decision no. 447 of 29 October 2013, published in the Official Gazette of Romania, Part I, no. 674 of 1 November 2013).

31. By reporting these considerations of principle to the present case, the Court appreciates that cannot be accepted the criticism according to which the legal texts do not specify unequivocally whether it is about health care or social assistance professionals knowing the language of a minority or several languages spoken by national minorities or whether it refers to a single national minority of more than 20% or of at least 5,000 of the number of inhabitants or it is about the representatives of several national minorities which together are above the thresholds mentioned by the law, which may affect the principle of legality provided by Article 1 (5) of the Constitution.

32. From the analysis of the criticised rules it clearly follows that the legislator's

intention was to create the necessary legislative framework for using the mother tongue of the citizens belonging to national minorities in the relations with certain public institutions, by transposing into the national law the provisions of Article 13 (2) (c) of the European Charter for Regional or Minority Languages. These provisions enshrine the commitment of the signatory States, in the field of economic and social activities, "*in so far as the public authorities are competent in the area where regional or minority languages are used and if this is possible [...] to ensure that social institutions such as hospitals, nursing homes, asylums offer the possibility to receive and take care, in their own language, for the regional or minority language speakers, who need care for reasons of health, age, etc*." Within the meaning of Law no. 282/2007, regional or minority languages are the languages of national minorities, and according to the provisions of Article 2 of the law, minority languages used in Romania are: Albanian, Armenian, Bulgarian, Czech, Croatian, German, Greek, Italian, Yiddish, Macedonian, Hungarian, Polish, Romani, Russian, Ruthene, Serbian, Slovak, Tatar, Turkish and Ukrainian languages. The criticised rules provide for employing in the healthcare facilities and social welfare institutions and establishments specialised staff of social healthcare with knowledge of national minorities language in the administrative-territorial units where national minority citizens are more than 20% of the number of inhabitants or their number is at least 5,000. ***In other words, in all the administrative-territorial units in which a national minority exceeds one of the thresholds established by law, public institutions provided for in the legal rule have the obligation to undertake steps in order to ensure communication with citizens belonging to that minority, in their own language,*** through qualified staff with knowledge of that language. Thus, the competent bodies in these institutions must do everything in order to create appropriate positions for the employment of new staff, on the one hand, and the achievement of the statutory procedures with a view to occupy them, on the other hand. This work should be done to effectively and cumulatively ensure both the respect for the minority's right to use their mother language in the relation with the public institution and the access to high quality medical or social assistance, thus complying with the requirements of professional competence laid down in the job description.

33. Obviously, the obligation must be performed by ensuring qualified personnel proficient in the minority languages ***for all national minorities which meet, each in their turn, the threshold condition*** in that administrative-territorial unit. Taking into account that the medical and socio-medical services are characterised by a high degree of personalisation, are services in which communication patient-physician and beneficiary-carer has an overwhelming role, making the difference between life and death, there must be ensured the right of the patient, respectively of the person receiving social assistance, to be informed about his health, the treatments on which agreement is required, to have access to social assistance in the language he/she knows. In this perspective, ***the purpose of the law is achieved if, in compliance with the legal obligation, the public institutions hire staff proficient in the national minority/minorities' language(s), being irrelevant whether a person knows one or more minority languages or whether he/she belongs to a national minority or to the Romanian majority***. The Court notes that any interpretation to the contrary would lead to discrimination on grounds of nationality between Romanian citizens, expressly prohibited by Article 4 of the Basic Law. Therefore, this objective is reached if, in

addition to the professional skills required by the job description, ***the personnel have the necessary language skills to use the minority language in the relations between public institutions and the citizens belonging to national minorities.***

34. For these reasons, the Court notes that the objection of unconstitutionality as to the provisions of Article 1 (5) of the Constitution is ungrounded.

35. As for the plea of unconstitutionality, according to which the introduction of a new alternative criterion, based on which medical care or social assistance facilities in Romania are bound to provide specialised medical or social staff proficient in minority languages, i.e. the criterion of the number of inhabitants, which must be of at least 5,000, is contrary to Article 1 (3) and (5), enshrining the social state and the obligation to observe the laws and Constitution, to Article 6 on the national minorities' right to identity, to Article 16 (1) on the principle of equal rights, the Court deems it groundless as well.

36. When regulating the rights of national minorities, aimed at preserving the right to identity, according to Article 6 of the Constitution, the State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity, in compliance with the principles of equality and non-discrimination in relation to the other Romanian citizens. According to the Preamble to the European Charter for Regional or Minority Languages of 5 November 1992, the Council of Europe shows, on the one hand, that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and, on the other hand, that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them. According to **Article 7 — *Objectives and principles*** thereof, "*The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages*." Moreover, **Article 10 — *Administrative authorities and public services*** of the Charter states, in point 3, that "*With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible: a) to ensure that the regional or minority languages are used in the provision of the service; or b) to allow users of regional or minority languages to submit a request and receive a reply in these languages; or c) to allow users of regional or minority languages to submit a request in these languages*". Finally, **Article 13 — *Economic and social life*** states, in point (2) c), that "*With regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible, to ensure that social*

care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons".

37. In application of the provisions of the European Charter for Regional or Minority Languages, which Romania has ratified through Law no. 282/2007, the Romanian legislator can freely establish the criteria based on which the State is bound to provide protection to the Romanian citizens belonging to national minorities. Such criteria are adopted considering the specific conditions and historical traditions of the different regions of the State and represent the foundation of the measures aimed at promoting equality between the users of minority languages and the rest of the population. The legislator's option so as to preserve/amend the threshold already set by the legislation in force or to introduce an alternative threshold is not contrary, in itself, to the constitutional provisions invoked by the authors of the referral, insofar as the amendments made are not likely to affect the rights of the Romanian citizens belonging to national minorities. Furthermore, as established by the European Charter for Regional or Minority Languages in principle, ***the adoption of any special measures in favour of the regional or minority languages cannot be deemed as an act of discrimination towards the users of the majority language, but are aimed precisely at ensuring equal opportunities in their relations with the public authorities, being intended to promote the principle of equality and non-discrimination in relation to the other Romanian citizens.*** Moreover, the Court notes that, by using the phase "***specialised*** *medical or social assistance staff*", the legislator set, as a *prerequisite* for hiring staff proficient in minority languages, the meeting of the professional competence criteria, established in compliance with the tasks/powers/requirements listed in the job description. This legal condition observes the right of every citizen, regardless of their nationality, to receive high-quality medical or social assistance, but also the right of the national minority to use their mother tongue in their relation with the institution providing the medical or social assistance public service.

38. In this context, the Court holds that the provisions of the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance are an expression of the constitutional provisions on the right to health protection, enshrined in Article 34, which states, in paragraph (3), that "*The organization of the medical care and social security system in case of illness, accidents, motherhood and recovery, the supervision of the exercise of medical professions and paramedical professions, as well as other measures to protect physical and mental health of a person shall be established according to the law*".

39. The Court notes that the fields of public health and social assistance are not the only fields in which the legislator has created a normative framework more favourable to the preservation of the linguistic identity of Romanian citizens belonging to national minorities. Law no. 1/2011 on national education states in Chapter II: *The structure of the national pre-university educational system*, section 12: *Education for persons belonging to national minorities*, Article 45 (1) that "*Persons belonging to national minorities have the right to study and receive instruction in their mother tongue, at all levels and for all types and forms of education, in compliance with this law.*" Furthermore, according to the same law, national minorities are entitled to a

representation proportional to the number of classes within the management bodies of teaching units, school inspectorates or equivalent institutions, according to the professional competence criteria [Article 45 (8)]. At the level of the school units where the teaching process is conducted also in the minority language, one of the headmasters shall be a teacher belonging to the respective minority, according to the professional competence criteria [Article 45 (9)], and the institutions related to pre-university education in the counties with minority languages-based forms of education shall hire specialists belonging to the national minorities, according to the professional competence criteria [Article 45 (10)].

40. As for the plea of unconstitutionality concerning the violation of the provisions of Article 138 (5) of the Constitution, given that the legal provisions establish financial obligations for the local public administrations without indicating the source of their funding, the Court finds it to be groundless as well.

41. With regard to Article 138 (5) of the Constitution, the Court held, in its case-law, that it "differentiates between establishing the source of the funding and the sufficiency of the financial resources deriving from the source thus established. The first aspect relates to the requirements of Article 138 (5) of the Constitution (see Decision no. 47 of 15 September 1993, published in the Official Gazette of Romania, Part I, no. 233 of 28 September 1993, or Decision no. 64 of 16 November 1993, published in the Official Gazette of Romania, Part I, no. 310 of 28 December 1993). Article 138 (5) of the Constitution requires the simultaneous setting of the budgetary allotment, which is tantamount to an expenditure, and of the source of the funding, which is tantamount to the income necessary to incur it, in order to avoid the negative, economic and social, consequences, of setting a budgetary expenditure without coverage (see Decision no. 36 of 2 April 1996, published in the Official Gazette of Romania, Part I, no. 75 of 11 April 1996). The increase in the expenditure resulting from the indicated source can be achieved during the financial year provided that it be kept in the source-related allotment (Decision no. 6 of 24 January 1996, published in the Official Gazette of Romania, Part I, no. 23 of 31 January 1996, or Decision no. 515 of 24 November 2004, published in the Official Gazette of Romania, Part I, no. 1.195 of 14 December 2004). The Constitution talks only about choosing the funding source before approving the expenditure, and not about the obligation of the law to indicate the respective source (Decision no. 173 of 12 June 2002, published in the Official Gazette of Romania, Part I, no. 492 of 9 July 2002, Decision no. 320 of 19 June 2013, published in the Official Gazette of Romania, Part I, no. 411 of 8 July 2013, or Decision no. 105 of 27 February 2014, published in the Official Gazette of Romania, Part I, no. 371 of 20 May 2014). The failure to expressly indicate the funding source does not implicitly mean that the funding source does not exist (Decision no. 1.056 of 14 November 2007, published in the Official Gazette of Romania, Part I, no. 802 of 23 November 2007, Decision no. 320 of 19 June 2013, cited above, Decision no. 1.092 of 15 October 2008, published in the Official Gazette of Romania, Part I, no. 712 of 20 October 2008, or Decision no. 1.093 of 15 October 2008, published in the Official Gazette of Romania, Part I, no. 711 of 20 October 2008).

42. In exchange, the assessment of the sufficiency of the financial resources does not reside in Article 138 (5), being exclusively a matter of political opportunity concerning, in essence, the relations between the Parliament and the Government. If the Government does not have sufficient financial resources, it can propose the

amendments necessary to ensure them, based on its right of legislative initiative (see Decision no. 47 of 15 September 1993, cited above, or Decision no. 64 of 16 November 1993, cited above). The Court also added that "the indicated funding source [must — e.n.] be actually able to cover the expenditure under the annual budget law. Consequently, the constitutional text [Article 138 (5) of the Constitution — e.n.] refers to the objective and effective nature of the funding source and it operates with elements of budgetary certainty and predictability, […] Article 138 (5) of the Constitution does not refer to the actual existence of sufficient funding sources upon the adoption of the law, but to the fact that the respective expenditure be provisioned in full awareness in the State budget in order to be covered with certainty during the financial year".

43. Given these considerations, in connection with the constitutional provisions of Article 138 (5) of the Constitution, the Court finds that the impugned law was adopted on 11 April 2017 and would enter into force, according to Article III thereof, on 1 January 2018, i.e. during the next fiscal year. Moreover, it should be noted that, in this case, the budgetary allotment does not need to be created, it already exists; the impugned law concerns only an increase in the wage fund of the public institutions covered by the new regulations, increase aimed at covering the wages of the staff to be hired, under the law. Or, the Court, through Decision no. 22 of 20 January 2016, published in the Official Gazette of Romania, Part I, no. 160 of 2 March 2016, paragraph 60, has expressly pointed out that "it cannot assess whether or not the budgetary allotment is exceeded, as this aspect does not fall under its competence". Furthermore, the Court is not competent to assess the sufficiency of the financial resources, because such an operation does not reside in Article 138 (5) of the Constitution, being exclusively a matter of opportunity, which, in essence, concerns the relations between the Parliament and the Government.

44. Independently from the pleas raised, but based on them, the Court deems it necessary to make the following observation: the rights of the national minorities, expression of the right to identity, recognized and guaranteed by the Romanian State through the provisions of Article 6 of the Basic Law, are enshrined in the infraconstitutional legislation in a series of legal acts regulating the fields of education, justice, administrative authorities and public services, means of communication, cultural activities and facilities, etc. According to Article 73 (3) (r), the framers expressly provided for the regulation, through organic law, of the statute of national minorities in Romania. Or, the Court finds that the indicated constitutional norm has not been transposed into a legal act of the ordinary legislator, as, currently, there is no law to unitarily, coherently and predictably regulate this field. Furthermore, the Court holds that Article 73 (3) (r) is the only provision listed in this paragraph without a correspondent in the legislation, and so, the statute of national minorities in Romania, although constitutionally acknowledged, as an expression of the historical tradition of the Romanian State, based on the principles of democracy and cultural diversity, as part of national sovereignty and territorial integrity, is not legally regulated as required by the constitutional provision.

45. For the reasons set forth herein, on the grounds of Article 146 (a) and Article 147 (4) of the Constitution, as well as Article 11 (1) A.a), Article 15 (1) and Article 18 (2) of Law no. 47/1992, unanimously,

THE CONSTITUTIONAL COURT

In the name of the law

DECIDES:

Dismisses, as groundless, the objection of unconstitutionality formulated by 124 Deputies belonging to the parliamentary groups of the National Liberal Party, the Save Romania Union and the People's Movement Party and finds that the Law supplementing Law no. 95/2006 on the healthcare reform, as well as Article 41 of Law no. 292/2011 on social assistance, is constitutional in relation to the pleas raised.

Final and generally binding.

The decision will be communicated to the President of Romania and will be published in the Official Gazette of Romania, Part I.

Delivered in the proceedings of 10 May 2017.