

***Decision No 391 of 14 September 2022 on the objection of unconstitutionality of the Law approving Government Ordinance No 18/2021 amending Law No 95/2006 on health reform and amending certain legislative acts in the field of health and repealing Article 4 of Law No 584/2002 on measures to prevent the spread of AIDS disease in Romania and to protect people infected with HIV or suffering from AIDS, published in Official Gazette of Romania, Part I, No 1214 of 19 December 2022***

## **Summary**

**I. As grounds for the objection of unconstitutionality**, it was argued that the provisions of the Law approving Government Ordinance No 18/2021 amending and supplementing Law No 95/2006 on health reform and amending certain legislative acts in the field of health and repealing Article 4 of Law No 584/2002 on measures to prevent the spread of AIDS disease in Romania and to protect persons infected with HIV or AIDS, as well as the provisions of Article V of Government Ordinance No 18/2021 were contrary to the constitutional provisions of Article 1 (3) and (5) on the rule of law and the principles of legality and legal certainty, Article 34 (1) and (2) on the right to health protection and Article 108 (3) on the issuing of Government Ordinances on the basis of a specific enabling laws, under the limits and conditions provided therein.

**II. Having examined the objection of unconstitutionality**, concerning the complaint of infringement of the provisions of Articles 1 (3) and (5) and 34 (1) and (2) of the Constitution, the Court noted that the Advocate of the People had criticised the fact that the abolition of the National Commission for Monitoring, Control and Prevention of HIV/AIDS infection was not followed by the taking over of its powers by the National Inter-sectoral Committee for the Control of Tuberculosis and HIV/AIDS, which, despite its title, is intended solely to carry out tasks relating to tuberculosis.

With regard to this criticism, the Court noted that Article 4 of Law No 584/2002 established the National Commission for Monitoring, Control and Prevention of HIV/AIDS, organised as an inter-ministerial body without legal personality, attached to the Ministry of Public Health, which also provides it with the technical secretariat. Its main tasks were aimed at: working continuously with Romanian governmental and non-governmental bodies and international associations as a measure to prevent the transmission of HIV infection; establishing the methodology for occupational post-exposure prophylaxis; development of the Therapeutic Guide for HIV infection; development of rules for the diagnosis, treatment and monitoring of hospital and outpatient therapy.

The Court noted that, by Article 19 (3) of Law No 302/2018 on tuberculosis control measures, the National Inter-sectoral Committee for the Control of Tuberculosis and HIV/AIDS was set up as an advisory body, without legal personality, under the coordination of the Ministry of Health. Looking at the normative content of Law No 302/2018, the Court found that it governs only the Committee's tasks relating to the integrated coordination at national level of all measures for the control of tuberculosis and associated conditions. Contrary to the Committee's name, the law therefore does not regulate any of its powers in the field of HIV/AIDS monitoring, control and prevention.

The Court also noted that the National Commission for Monitoring, Control and Prevention of HIV/AIDS infection was abolished by Article V of Government Ordinance No 18/2021. In the explanatory memorandum to that legislative act, it was stated that Law No 302/2018 on tuberculosis control measures regulated the legal framework for the establishment, by Government Decision, of the National Inter-sectoral Committee for the Control of Tuberculosis and HIV/AIDS, with a view to the integrated coordination at national level of all measures for the coordination of tuberculosis, HIV/AIDS infection and associated diseases, and to avoid confusion in the application of legal rules, in order to ensure legislative accuracy, in view of the fact that the two structures have similar powers, it was proposed to repeal the provisions of Article 4 of Law No 584/2002 on measures to prevent the spread of AIDS disease in Romania and to protect people infected with HIV or suffering from AIDS.

With reference to the above, the Court found that while the Commission operated 'attached' the Ministry of Health, the Committee operates 'under the coordination' of the Ministry of Health. If the first body had statutory powers in the area of HIV/AIDS monitoring, control and prevention, the latter does not have such powers detailed by law. However, the Ministry of Health is a specialised body of the central public administration with legal personality under the authority of the Government and is

the central authority in the field of public health care. The Court found that, primarily, the area of HIV/AIDS monitoring, control and prevention falls under the general competence of the Ministry of Health. The creation by law of bodies integrated – in whole or in part – into or adjacent to the Ministry and providing them with the exercise of certain specific powers falling within the Ministry’s general scope does not mean that the Ministry loses that competence. On the contrary, competence remains with the Ministry, but it is exercised by the body created by law. By the subsequent abolition of that body, the exercise of the specific competence lies with the Ministry, the holder of general competence in health matters. Therefore, the abolition of a commission belonging, in one way or another, to a ministry does not lead to a regulatory vacuum as regards the exercise of the powers conferred on it.

In the present case, the Court held that the Commission operated from 2002 to 2018 as the sole body exercising the Ministry’s competence in the field of HIV/AIDS monitoring, control and prevention. After the Committee was set up, these two bodies operated in parallel, both of which had, according to their name, the role of monitoring cases of HIV/AIDS infections; however, the Commission alone exercised the Ministry’s competence in the area of HIV/AIDS monitoring and prevention. In 2021, following the abolition of the Commission, the function to monitor cases of HIV/AIDS remained within the Committee’s remit and the Ministry of Health was responsible for monitoring and preventing HIV/AIDS infections. Even though the Committee has the role of monitoring HIV/AIDS infections only according to its name, without there being any legal regulation detailing that role, this does not mean that it does not have the power to exercise this role.

In view of the above, the Court found that the problem raised by the author of the objection of unconstitutionality is a question of correlation between the legislative acts, the role of the Commission being taken over *pro parte* by the Committee – in respect of the monitoring of cases of HIV/AIDS infection – and *pro parte* by the Ministry of Health – in respect of monitoring and prevention of HIV/AIDS infection. Consequently, the Court found that the legislation complained of – which abolishes the Commission – does not raise questions of constitutionality with regard to the breach of the principles of legality and legal certainty or of the right to health protection.

As regards the complaint of unconstitutionality concerning the infringement of Article 108 (3) of the Constitution, the Court held that the author of the objection of unconstitutionality argued that, although the Enabling Law allowed for the adoption of ordinances amending and supplementing other legislative acts, with the force of law, in the field of health, the Government had repealed the provisions of those acts, thus breaching the enabling limits.

With regard to this claim, the Court noted that the Government, by Ordinance No 18/2021, repealed only one article – Article 4 – of the 21 articles of Law No 584/2002. That situation therefore relates not to a total repeal but to a partial repeal. According to Article 64 (5) of Law No 24/2000 on legislative technique rules for the preparation of legislative acts, partial repeals are to be assimilated to amendments of legislative acts, the partially repealed legislative act remaining in force by its provisions which have not been repealed.

The Court also noted that Government Ordinance No 18/2021 was adopted on the basis of Article 1 (V) (2) and (4) of Law No 195/2021 enabling the Government to issue ordinances.

The Court therefore found that the repeal of a single article of that law, which concerns the health sector, being a partial repeal, is assimilated to the amendment of the legislative act, and the enabling law expressly provides that the Government is empowered to amend legislative acts, with legislative force, in the field of health. Consequently, the Court found that the Government had not breached the enabling limits, as granted by Law No 195/2021, so that the provisions of Article 108 (3) of the Constitution were not found to have been infringed.

**III. For all these reasons,** the Court, by a majority vote, dismissed as unfounded the objection of unconstitutionality and found that the Law approving Government Ordinance No 18/2021 amending Law No 95/2006 on health reform and amending certain legislative acts in the field of health and repealing Article 4 of Law No 584/2002 on measures to prevent the spread of AIDS disease in Romania and to protect people infected with HIV or suffering from AIDS was constitutional in relation to the criticisms made.