

**DECISION No. 114**  
**of July, 20, 1999**

**on the constitutionality of the Law on the approval  
of the Government Urgency Ordinance  
No. 36/1997 for the modification and completion  
of the Education Law No. 84/1995**

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The Constitutional Court has been referred to, based on the provisions under Article 144 sub-paragraph a) of the Constitution, to adjudicate on the unconstitutionality of the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995, by a group of eighty-six Deputies, namely: A.N., M.T.M., V.A., T.D., M.I.P., N.G., D.P., M.I., P.B., M.S., E.M., M.C., A.Gh., P.N., L.C., R.I.M., Gh.O., G.D., M.H., V.T.M., D.N., I-F.S., R.L.B., V.S., O.C.P., M.I., Gh.A. E.A., P.G., I.M., M.S., I. M., M.N., D.P., V.N., Gh.I., C.T., Gh.V., Gh.A., N.G., I.P., A.L., D.B., A.G., F.G., D.C.O., V.H., M.V., I.G., V.C, M.P., P.Ş.M., T.S., D.B., D.I.P., A.S., V.P., S.D., F.S., A.A., M.I.F., I.N., F.B., I.S., M.B., I.D., M-A.D., V.M., N.N.A., D.B.A., Gh.M., V.Ş.B., C.B., N.L., .N.V., V.B., I.H., A.S., C.C., T.J., N.I., C.E.C., L.Ş. and L.L.I..

Through the Letter No. XIV/552 dated July 6<sup>th</sup> 1999, the General Secretary of the Chamber of Deputies submitted to the Constitutional Court the reference which constitutes the subject matter of the File No. 140A/1999.

The reference requests the Court to rule upon the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995 as unconstitutional in its entirety and, in subsidiary, to find the unconstitutionality of the provisions under Article 123 of the same law. The request is founded on the following reasons:

I. The issuing of the Government Urgency Ordinance No. 36/1997 has breached upon Article 114 paragraph (4) of the Constitution, which requires that such a normative act to be issued only under exceptional situations.

This assertion is based on the Constitutional Court jurisdictional practice in the area, namely the Decision No.65 of June 20<sup>th</sup> 1995, published in the Official Gazette of Romania, Part I, No. 129 of June 28<sup>th</sup> 1995, which rules that an exceptional case on which the constitutional legitimacy of an Urgency Ordinance depends, is justified "on the necessity and urgency to pass regulations in a situation which, due to its exceptional circumstances, calls for the adoption of immediate solutions in order to avoid serious prejudice be caused to the public interest". In this context, it is argued that the Note accompanying the bill had actually substantiated "neither the existence of an exceptional situation, nor the necessity to take urgent measures as may be provided by the ordinance, so as to put into question the prevention of serious prejudice against the public interest". While pursuing its goal to implement programme, the Government has the constitutional obligation to ensure the adoption of normative regulations by the Parliament, through laws. It is affirmed that here the purpose of the Government was been to institute directly enforceable regulations, thus breaching upon the Parliament competence as the country's sole legislative authority, as stipulated by Article 58 of the Constitution. The subject matter of the Government Urgency Ordinance No. 36/1997 is, as it results from the Substantiation Note: "to improve and harmonise the Law No. 84/1995 with the provisions of the Romanian Government Programme with a view to introducing and speeding up the reform of education". However, the Decision No. 34 of the Constitutional Court, dated February 17<sup>th</sup> 1998, published in the Official Gazette of Romania, Part I, no. 88 of February 25<sup>th</sup> 1998, ruled that the "modification or unification of the body of legislation in one or another areas does not justify, in itself, the issuance of an urgency ordinance". As a matter of fact, the delay of debates over its approval law in the Parliament, since 1997 until June 1999, has invalidated the urgency of regulations provided in the Government Urgency Ordinance No. 36/1997.

II. The provisions under Article 123, comprised under item 48 of the Law on approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995, are unconstitutional as they conflict with Articles 6 and 13 of the Constitution.

II. 1. Article 6 of the Constitution of Romania stipulates, at paragraph (1), that the persons belonging to national minority groups are acknowledged and safeguarded their right to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity. The provisions under paragraph (2) under the same Article “regulate the obligation of the protection measures taken by the State for the preservation, development and expression of the ethnic, cultural, linguistic and religious identity of the persons belonging to national minority groups, to be in accordance with the principles of equality and non-discrimination in relationship to the other Romanian citizens”.

II. 2. Article 13 of the Constitution enshrines that Romanian is the official language in Romania.

From the relation existing between these constitutional texts and the provisions under Article 123 of the Law No. 84/1995, in the redaction of the Law on the approval of the Government Urgency Ordinance No.36/1997, it results that the said provisions are unconstitutional for the following reasons:

a) The possibility is offered to set up, upon request and by the law, multicultural higher education institutions, in which that specific law, which may also exclude the use of the Romanian language, shall establish the teaching languages. Taking into account that a university is, by its very destination, a multicultural one, the wording “multicultural university” is not likely to ensure Romanian as a teaching language.

b) The legal provisions criticised also contradict the recommendations of the European Charter for Regional or Minority Languages and of the Framework-Convention for the Protection of National Minorities, which recommend States to ensure the possibility of training and education in one’s mother tongue, without prejudice to the learning or teaching of the official language. That is why Article 123 “exceeds both the constitutional provisions, and the recommendations in this area on a European level”.

Based on the provisions under Article 19 of Law No. 47/1992 on the organisation and functioning of the Constitutional Court, republished, the presidents of the two Chambers of Parliament and the Government were requested to give their viewpoints.

The President of the Chamber of Deputies, in his viewpoint, states as follows:

I. As regards the constitutionality invoked at item I of the reference, relative to a breach upon Article 114 paragraph (4) of the Constitution of Romania, which means that not any one of the two characteristics of an urgency ordinance (the urgency character and the exceptional situation) have been met, the reference is claimed to be unfounded.

The reasons that called for the issuance of the Urgency Ordinance No. 36/1997 by the Romanian Government were such as to impose the adoption of this legislative solution. The will of the Government, when making its choice of the manner of legislative delegation, provided by Article 114 paragraph (4) of Romanian Constitution and, at a later point in time, the will of the legislature, when approving the urgency procedure, had envisaged to speed up the education reform, with applicability as from the next following school-year, respectively 1997/1998. The need to have reform measures implemented with utmost urgency, their adoption by a law in due course so as to be applied in the 1997/1998 school-year, knowing that each school-year starts in September, when the school plans, curricula, textbooks should have been already brought to the knowledge of anyone concerned, all of that has led to an exceptional and urgency character of this normative act. Taking legal steps towards implementing the reform measures envisaged for the Romanian education system cannot be viewed as similar to a “unification of the body of legislation” in this area or to a mere “modification” of the aforesaid legislation. At the time of putting forward legislation, the idea was to improve the provisions comprised in the Law No. 84/1995, to introduce and speed up the education reform with utmost urgency, starting with the following school-year and academic year.

II. It is also stated that the criticism according to which “the provisions under Article 123 of the Education Law No. 84/1995, comprised under Item 48 of the Law on the approval of Government Urgency Ordinance No.36/1997 for the modification and completion of the Education Law No. 84/1995” contradict Articles 6 and 13 of the Constitution of Romania, is unfounded as well, for the following reasons: within Chapter XII regarding the education for the national minorities, under Article 123, the new regulations have eliminated all restrictions on the right of the persons belonging to national minority groups, to a variety of forms and levels of education, whose access is allowed, as a general rule, under the provisions of Article 118 of the Law No. 84/1995, republished, however restricted, in particular in what concerns universities, through Article 123, in its initial wording, to “groups, sections with teaching in the

mother tongue, intended for training the staff required for didactic and cultural-artistic activities". As regards the Romanian language, the texts under Article 123 do not exclude its utilisation in multicultural higher education institutions. On the contrary, Article 122 and paragraph (1) of Article 123, in their new redaction, emphasise upon the obligation to acquire specialised terminology in Romanian, while the teaching languages in such institutions are to be established under the setting-up laws, which shall then take into account the opportunity of any such requests.

In his viewpoint, the President of the Senate shows that the reference of unconstitutionality is unfounded for the following reasons:

1. According to Article 114 paragraph (4) of the Constitution, an urgency ordinance may be issued in exceptional cases.

The assessment of the necessity and urgency to regulate a situation that, due to its exceptional circumstances, calls for the adoption of urgent solutions so as to avoid a serious prejudice to the public interest, rests exclusively with the initiator of the urgency ordinance, since it alone may be in a position to know the actual situation in the area for which new regulations are being proposed.

2. The argument according to which Article 123 of the Law No. 84/1995, in the wording of the Law on the approval of the Government Urgency Ordinance No.36/1997, would be unconstitutional, as it gives a possibility for multicultural higher education institutions to be established, is unfounded, as nowhere in this law has been specified that the utilisation of the Romanian language as a teaching language in such higher education institution would be excluded.

3. In this interpretation, the Law on approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No.84/1995 is in accordance with the provisions under the Framework-Convention for the Protection of National Minorities, ratified by Romania through a law, with the European Charter for Regional or Minority Languages, with the recommendations in this area at a European level, as well as with our national legislation.

As a conclusion, it is appreciated that Article 123, in the redaction of item 48 of the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No.84/1995, as well as the law in its entirety are in accordance with the provisions of the Constitution of Romania, therefore it is requested to have the objection of unconstitutionality dismissed, as being unfounded.

In its viewpoint, the Government essentially stated as follows:

Article 114 paragraph (4) of the Constitution does not have any incidence on the case constituting the subject matter of this reference, wherein the Constitutional Court is to adjudicate on the constitutionality of a law – namely the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995, based on Article 144 sub-paragraph a) of the Constitution. The unconstitutionality of the Government Urgency Ordinance No. 36/1997 being invoked as against Article 114 paragraph (4) of the Constitution cannot be a reason for which the law approving this ordinance is unconstitutional, as the review of constitutionality has been called on the law itself.

As regards the unconstitutionality of Article 123, mentioned under item 48 of the law, in relationship to Article 6 and Article 13 of the Constitution, it is alleged as follows:

a) Not only are these legal provisions in full accord with those under Article 6 paragraph (1) of the Constitution, subject to which "the State acknowledges and guarantees to the persons belonging to national minority groups the right to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity", but they also offer a guarantee that the aforesaid constitutional provisions find their applicability in a concrete and efficient manner. The possibility to organise higher education institutions where the languages of the national minorities are used, as well as to establish multicultural higher education institutions does not create any discrimination against the other Romanian citizens, quite conversely, it is meant to assure the equality of the citizens belonging to national minorities, with members of the Romanian ethnicity for whom there exists an appropriate institutional framework for education.

b) It is also claimed that, in relation to Article 13 of the Constitution, according to which "In Romania, the official language is the Romanian language", the provisions under Article 123 of the law criticised are constitutional. It should be noted that paragraph (1) of this Article provides that within the State-run academic institutions "the acquirement of the specialised terminology in Romanian language shall be ensured" at any groups, sections, colleges and faculties having a

national minorities language as a teaching language. Likewise, with regard to multicultural higher education institutions, it is provided that the teaching languages shall be established by the setting-up law, which does not exclude the possibility that one of these languages shall be Romanian. At the same time, it is asserted that Article 123 of the Law on the approval of the Government Urgency Ordinance No. 36/1997 does not contravene the recommendations of the European Charter for Regional or Minority Languages, to ensure the possibility for training and education in the mother tongue, without prejudice to the learning or teaching in the official language, since the organisation of groups, sections, colleges and faculties within State-run academic institutions does not cause prejudice to the learning and teaching in the official language within the other faculties of the same educational institution.

According with the provisions under Article 5 of the Law No. 47/1992, republished, the Constitutional Court requested a report from the National Education Ministry, to state its position with regard the objection of unconstitutionality addressed by the group of Deputies.

The National Education Ministry, by its Letter No.36.271 of July 16<sup>th</sup> 1999, asserts that the Law on the approval of the Government Urgency Ordinance No.36/1997 for the modification and completion of the Education Law No. 84/1995 is in accordance with the provisions of the Constitution of Romania and the international legal norms, stating as follows:

1. There is a discrepancy between the subject matter of the reference and its arguments of unconstitutionality: the subject matter of the reference is the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995, while the argument of unconstitutionality mentioned at item 1 of the reference is directed against the Government Urgency Ordinance No. 36/1997. The urgency ordinance was debated in the Romanian Parliament, passed through the stages provided by the law, and obtaining a majority vote. In this manner, the Law on the approval of the Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995 has been adopted. The statement under item 1, according to which the constitutional competence of the Parliament has been infringed upon, cannot possibly refer to this one law.

2. The Constitution of Romania allows that an organic law is modified by an urgency ordinance under exceptional circumstances, which concern the public interest. The National Education Ministry asserted, in its substantiation note and interventions of its representatives, during debates held over the Government Urgency Ordinance No. 36/1997 within the specialised standing committees and in the Plenary of the two Chambers of Parliament, that such situations were the structural reforms it was embarked upon, comprising:

“a) the necessity to introduce a new national curriculum for pre-university education; b) the necessity to step over to a new type of – global – funding in the higher education; c) the necessity to introduce a new performance management in schools and higher education institutions; d) the decentralisation of the education system, an increased institutional autonomy; e) the insertion of the education system within the local communities and the building up of a social partnership; f) the extension of the compulsory education period, in accord with the trends existing at the international level and with the necessity to increase the population’s degree of education.”

3. As regards the assertion of unconstitutionality of the provisions under Article 123 of the Law on the approval of the Government Urgency Ordinance No.36/1997 for the modification and completion of the Education Law No. 84/1995, as against Articles 6 and 13 of the Constitution, it is ascertained that two categories of arguments have been formulated:

a) The first argument is that multicultural education institutions may be established inside of which the utilisation of the Romanian language can be excluded, thereby infringing upon Articles 6 and 13 of the Constitution. In the opinion of the National Education Ministry, this argument is unfounded as:

– it does not contradict Article 6 paragraph (1) of the Constitution, which provides guarantees for the right of persons belonging to national minority groups to the preparation, development of their specific identity, quite conversely, it contributes to the expression of this right;

– it does not contradict Article 6 paragraph (2), whereas it does not discriminate against other Romanian citizens;

– under Article 123 paragraph (3) of the law, it is provided that universities are encouraged to develop multicultural structures and mechanisms, in accordance with the idea, shared by the authors of the reference, that a university is, by its very mission, multicultural. A multicultural university, contemplated through the meaning attached by a political thinking, is

an institution where those who partake are persons who have different cultural identities, built on the grounds of their belonging to different national, ethnic, racial or religious groups, within which: 1) those who partake benefit from being together; 2) there are mechanisms created for the promotion of different cultural institutions;

– the provisions under Article 123 do not contradict Article 13 of the Constitution, that establishes the Romanian language as the official language in Romania. The argument brought into question by the authors of the reference is that the application of paragraph (1) makes it possible that Romanian is no longer a teaching language in a multicultural university. Or else, paragraph (1) explicitly provides that in each university of this kind, the setting-up law of that respective university shall establish the teaching languages. Consequently, the objection of the unconstitutionality may not concern Article 123 paragraph (1) of the ordinance, but a would-be setting-up law of a multicultural university where the use of the Romanian language would be excluded.

b) The second category of arguments put forward by the authors of the reference, as regards the unconstitutionality of Article 123, is that the legal text comes against the recommendations of the European Charter for Regional or Minority Languages, reaching beyond recommendations at a European level. In the opinion expressed by the National Education Ministry, the fact that regulations exceed a certain provision or recommendation may not lead to a conclusion that it would contradict the observance of the said provision or recommendation.

As a consequence, it is considered that both categories of arguments do not support the assertions of the reference of unconstitutionality.

#### THE CONSTITUTIONAL COURT,

taking into account the objection of unconstitutionality it has been referred to, the viewpoints from the presidents of the two Chambers of Parliament and from the Government, the considerations of the National Education Ministry and the provisions comprised by the Law on the approval of the Government Urgency Ordinance No.36/1997 for the modification and completion of the Education Law No. 84/1995, in relationship to the provisions of the Constitution, international treaties, covenants and conventions in the field of education, to which Romania is a party, as well as the Law No. 47/1992, holds as follows:

The Constitutional Court is competent to settle the objection of unconstitutionality formulated in accordance with the provisions under Article 144 sub-paragraph a) of the Constitution and of those under Article 17 and seq. of the Law No. 47/1992, republished.

The subject matter of the reference of unconstitutionality concerns two categories of aspects, as follows:

I. Infringement of the constitutional provisions under Article 114 paragraph (4) of the Constitution, according to which an urgency ordinance should be issued only in exceptional situations and with observance of the constitutional competence of the Parliament, provided under Article 58 of the Constitution, as being the country's sole legislative authority – whereas in the Substantiation Note accompanying the draft ordinance there was nothing to account for any exceptional situation or for the necessity to take urgent measures as provided in the ordinance, in order to avoid serious prejudice to the public interest.

II. The unconstitutionality of Article 123 mentioned at item 48 of the law, breaching upon Articles 6 and 13 of the Constitution of Romania and exceeding "recommendations in the area at the European level". The legal text criticised by the objection of unconstitutionality reads as follows: "(1) Within State-run academic institutions, groups, sections, colleges and faculties having as teaching languages those of the national minorities can be organised, according to the law, upon request. In this situation, the acquirement of the specialised terminology in the Romanian language shall be assured. Upon request, and by law, multicultural higher education institutions can be established. The teaching languages within these institutions shall be established under the setting-up law.

(2) Persons belonging to national minorities are acknowledged the right to establish and administer their own private higher education institutions, according to the law.

(3) Higher education institutions having multicultural structures and activities are encouraged for the promotion of harmonious interethnic living together and of integration at the national, and European level.

(4) At all education forms in Romanian language or in the languages of the national minorities, any Romanian citizen, irrespective of his or her mother tongue and of the language of the previously attended education institutions, may be registered and trained". It is considered that

Article 123 of the Education Law No.84/1995, in the wording given by the Law on the approval of the Government Urgency Ordinance No. 36/1997, conflicts with Articles 6 and Article 13 of the Constitution, as the possibility is created, upon request and by law, to set up multicultural higher education institutions, where the teaching languages are established under the setting-up law, which excludes the use of the Romanian language, being unlikely to assure Romanian as a teaching language. Likewise, it is affirmed that Article 123 goes beyond and contradicts the recommendations of the European Charter for Regional or Minority Languages, and of the Framework-Convention for the Protection of National Minorities, both of which recommend to ensure training and education in the mother tongue, without prejudice to the learning or teaching in the official language.

Having examined these two categories of criticism, the Constitutional Court finds:

I. As concerns the criticism as regards the infringement of Article 114 paragraph (4) of the Constitution by the adoption of the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995:

According to Article 114 paragraph (4) of the Constitution, "In exceptional situations, the Government may adopt urgency ordinances. These ones enter into force only after being forwarded for approval to the Parliament. Where the Parliament is not in session, it shall be compulsorily convened".

From this constitutional text it results that an urgency ordinance must fulfil two conditions: it should be issued in "exceptional situations", and the adopted measures should have an urgent nature. The Constitution does not specifically state the content of the term "exceptional situations", therefore a systematic interpretation of all relevant texts is necessary. To this effect, in the Decision No. 65 of June 20<sup>th</sup> 1995, published in the Official Gazette of Romania, Part I, No. 129 of June 28<sup>th</sup> 1995, the Constitutional Court ruled that "exceptional situations, as meant by Article 114 paragraph (4) of the Constitution, are the situations that cannot fall under those explicitly mentioned by the law. Consequently, if the law-maker has not instituted specific norms for an exceptional circumstance, it would be against its own will if existing rules were applied to the exceptional situations mentioned under Article 114 paragraph (4) of the Constitution". The same Decision held that, in consideration of such extreme situations, the Government's intervention by means of an urgency ordinance, on the grounds of Article 114 paragraph (4) of the Constitution, is justified by the public interest in connection with the abnormal excessive nature of such exceptional situations; this is why a measure of this kind can be founded only on the necessity and urgency to regulate a situation which, due to its exceptional circumstances, requires the adoption of immediate solutions with a view to avoiding a serious prejudice to the public interest. In the same sense, in the Decision No. 83 of May 19<sup>th</sup> 1998, published in the Official Gazette of Romania, Part I, No. 211 of June 8<sup>th</sup> 1998, the Constitutional Court emphasised the objective character of this exceptional situation, "meaning that its existence does not depend on the Government's will which, under such circumstances, is constrained to promptly react in order to defend a public interest, by means of an urgency ordinance", but on the necessity or existence of certain circumstances that justify the exceptional situation, while the urgency of such regulations must arise from the Substantiation Note of the urgency ordinance or from justifications presented by the Government upon the parliamentary debates on the bill for the approval of the urgency ordinance. Consequently, a Government urgency ordinance is not conditional on the possibility to make use of any other constitutional means, such as the adoption of a legislative initiative within regular legislative procedures.

In the light of these reasons, after examining the Substantiation Note of the Government Urgency Ordinance No. 36 of July 10<sup>th</sup> 1997, the Court finds that the Government had envisaged, upon issuing this ordinance, the improvement of the Education Law No.84/1995 and its harmonisation with the provisions under the Romanian Government Programme, with the treaties and conventions to which Romania is a party, with a view to introducing and speeding up the education reform. As general norms of the law, in the chapter dedicated to the education for national minorities, there were proposed provisions meant to extend the access of national minorities to various forms and levels of education. Regard has also been given to making admission to pre-university and higher education more flexible, to increased exigencies in their respective final stages, as well as to creating a legislative framework for social partnership and motivation of investment in the vocational training – all these being applicable starting with the 1997/1998 school/academic year. At the same time, the Government's Programme has also included guidelines for the education reform, based on which measures have been taken, at the earliest time, for the improvement of the Education

Law No. 84/1995, this being the reason why in the Substantiation Note of the Government Ordinance No. 36/1997, the wording “introduction and speeding up of the education reform” has been used. The National Education Ministry, through its representatives, affirmed, during debates held in a Joint Session of the two Chambers of Parliament, on the draft law for the approval of the Government Urgency Ordinance No. 36/1997 for the alteration and completion of the Education Law No. 84/1995, that the exceptional circumstances affecting the public interest consisted in the structural reforms embarked on, which comprise: a) the necessity to introduce a new national curriculum for pre-university education; b) the necessity to step over to a new type of – global – funding in the higher education; c) the necessity to introduce a new performance management in schools and higher education institutions; d) the decentralisation of the education system, an increased institutional autonomy; e) the insertion of the education system within the local communities and the building up of a social partnership; f) the extension of the compulsory education period, in accord with the trends existing at the international level and with the necessity to increase the population’s degree of education.

All these reasons are sufficient to hold that the concrete circumstances considered by the initiator of the Government Urgency Ordinance No. 36/1997 represented an exceptional situation, which called for urgent measures, aimed at taking on the education reform as early as possible, so that to make it applicable starting from September 1997.

The Constitutional Court notes that the public interest must be assessed in relationship with the date of issuance of the urgency ordinance, and not with the date of the debates in the Parliament on the bill for approval of the urgency ordinance, or with the date when this debate was concluded. In the case of the Government Urgency Ordinance No. 36/1997, a significant point was that the measures for the introduction and speeding up of the education reform should enter into force immediately; this outcome could not have been reached, as a matter of fact, during an ordinary session, after the beginning of the school- year.

The Court also finds that, by the adoption of this normative act, the constitutional competence of the Parliament has not been trespassed, as the Government Urgency Ordinance No. 36/1997 for the alteration and completion of the Education Law No. 84/1995 does not regulate the general organisation of the education, an area which is reserved for organic laws, according to the provisions under Article 72 paragraph (3) sub-paragraph m) of the Constitution, but other aspects, related to the application of reform programme in the area of national education, essentially comprising the ways and means in which the improvement of the national educational process be effected. To that, the Constitutional Court ruled, through Decision No. 718 of December 29<sup>th</sup> 1997 regarding the constitutionality of certain provisions of the law on the Government’s ability to issue ordinances, published in the Official Gazette of Romania, Part I, No.396 of December 31<sup>st</sup> 1997, that the delegation of legislative powers for the application of the reform programme in the field of national education, which also concerns other aspects than those on the general organisation of the education – such as the means to improve the national educational process, within the global regime of education and in conformity with the provisions of the legislation in force – does not fall under the subject area of an organic law, therefore, such can be undertaken under an ordinance issued on the basis of the empowering law. Consequently, if regulations of this kind can be laid down via an ordinance issued on the basis of an empowering law, the more so could they via an urgency ordinance. Likewise, through the Decision No. 34 of February 17<sup>th</sup> 1998, published in the Official Gazette of Romania, Part I. No. 88 of February 25<sup>th</sup> 1998, the Constitutional Court ruled that the interdiction to issue ordinances in the area of organic laws applies exclusively to ordinances adopted based on an empowering law, which does not include urgency ordinances, whereas “the exceptional situation” which calls for the adoption of urgent measures to safeguard public interests, might require regulations falling under the area of organic, not only ordinary laws, otherwise, in the absence of such possibility of adoption, the public interest would be sacrificed, against the very constitutional goal of this institution. It has been stated that the urgency ordinance is not a variety of ordinance based on any empowering law, but a measure of constitutional nature that enables the Government, under the strict control of the Parliament, to cope with exceptional situations, being justified by the necessity and urgency of regulating situations in which, due to exceptional circumstances, call for the adoption of immediate solutions in order to avoid serious prejudice the public interest.

Moreover, it is worth noting in this case, that the Parliament amended the Government Urgency Ordinance No. 36/1997 for the alteration and completion of the Education Law No.

84/1995 at 79 positions (items), incorporating certain provisions characteristic for an organic law, for which reason it has been voted while keeping with the provisions under Article 74 paragraph (1) and under Article 76 paragraph (2) of the Constitution, therefore with the constitutional majority vote provided the adoption of organic laws.

With regard to the argument stated in the Government's viewpoint and in the considerations expressed by the National Education Ministry, that Article 114 paragraph (4) of the Constitution is not pertaining to the case which forms the subject matter of the aforesaid reference, as this one regards the unconstitutionality of the law for the approval of the urgency ordinance, and not the unconstitutionality of the latter, the Constitutional Court finds that, based on the prerogatives under Article 144 sub-paragraph a) of the Constitution, it is competent to adjudicate on the constitutionality of Government urgency ordinance, approved through Article I of the Law on the approval of the Government Urgency Ordinance No.36/1997 for the alteration and completion of the Education Law No. 84/1995. Indeed, Article 51 on the supremacy of the Constitution, and Article 114 paragraph (5) of the Constitution impede the Parliament from approving an ordinance issued on the basis of legislative delegation, if that specific ordinance had been adopted in violation of the relevant constitutional provisions. As soon as the ordinance has been approved by the Parliament, its entire content becomes the law, thus appearing as a legal act distinct from the former ordinance, whose provisions – maintained under the approval law – operate as legal provisions as from the effective date of the law. In this respect, the Constitutional Court delivered the Decision No. 46 of April 24<sup>th</sup> 1996, published in the Official Gazette of Romania, Part I, No. 108 of May 28<sup>th</sup> 1996.

Consequently, the criticisms formulated through the objection of unconstitutionality regarding the breaching of Article 114 paragraph (4) and, implicitly, Article 114 paragraph (5) of the Constitution, are unfounded.

II. With respect to the criticism according to which Article 123, in the wording of the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the alteration and completion of the Education Law No.84/1995, breaches upon Articles 6 and 13 of the Constitution of Romania and exceeds "recommendations in the area at the European level":

The Constitutional Court has also before adjudicated on the constitutionality of Article 123 of the Education Law No. 84/1995, in the initial redaction of this legal text, namely: "Within the State-run university education system, there can be organised, upon request and under the conditions of this law, groups and sections using the mother tongue as teaching language for the training of the necessary staff for didactic and cultural-artistic activities". Through the Decision No. 72 of July 18<sup>th</sup> 1995, published in the Official Gazette of Romania, Part I, No. 167 of July 31<sup>st</sup> 1995, the Constitutional Court found that these legal provisions were constitutional.

At a later point in time, item 37 of Article I of the Government Urgency Ordinance No. 36/1997 amended Article 123 of the Education Law No. 84/1995, which now reads: "(1) Within the State-run higher education, groups, sections, colleges, faculties and education institutions having mother tongues as teaching languages can be organised, according to the law, upon request. In this situation, the acquirement of the specialised terminology in the Romanian language shall be assured.

(2) Higher education institutions having multicultural structures and activities are encouraged for the promotion of harmonious interethnic living together and of integration at the national, and European level.

(3) Training of Romanian specialists in national minorities' languages shall be encouraged, upon request."

During debates in the Parliament on the bill for the approval of the Government Urgency Ordinance No.36/1997, Article 123 was again redrafted, into the wording reproduced hereinabove, which now constitutes the subject matter of the reference of unconstitutionality addressed by the group of 86 Deputies.

Upon examining Article 123 of the Education Law, in this final wording, the Constitutional Court finds that the legal text is in accordance with the provisions under Articles 6 and Article 13 of the Constitution, alleged to have been breached upon through the objection of unconstitutionality. Article 123, in its new redaction, is also consistent with the international covenants to which Romania is a party.

II.1. Subject to Article 6 of the Constitution, "(1) The State recognises and guarantees to the persons belonging to national minorities, the right to the preservation, development and expression of their ethnical, cultural, linguistic and religious identity.



(2) The protection measures taken by the State for the preservation, development and expression of the identity of persons belonging to national minorities shall be in accordance with the principles of equality and non-discrimination against the other Romanian citizens”.

The Court notes that, in relationship to the previous legal regulations – equally constitutional –, the legal text now criticised under this reference of unconstitutionality has extended access granted to national minorities to various education forms and levels. The possibility to organise higher education institutions in the national minorities’ languages, as well as to set up multicultural higher education institutions does not discriminate against other Romanian citizens, but is, quite conversely, intended to ensure equality of citizens belonging to national minorities with members of the Romanian ethnicity, in what concerns the existence of an adequate institutional framework in the field of education.

In this respect, paragraph (4) of Article 123 provides that “At all education forms in Romanian language or in the languages of the national minorities, any Romanian citizen, irrespective of his or her mother tongue and of the language of the previously attended education institutions, may be registered and trained.” These provisions are “consistent with the principles of equality and non-discrimination as against the other Romanian citizens” [Article 6 paragraph (2) of the Constitution].

The Court finds that the text of Article 123 is also in accordance with Article 32 paragraph (3) of the Constitution, according to which: “The right of persons belonging to national minorities to learn their mother tongue and the right to have the possibility to be educated in this language are guaranteed; the manner of exercising these rights shall be established by law”.

Indeed, it has been Article 123, as amended by the Law on the approval of the Government Urgency Ordinance No. 36/1997, which has specifically instituted the manner in which the right of the persons belonging to national minorities to learn their mother tongue and the right to be educated in that language.

Nor could there exist any grounds for the assertion that, through the setting-up law, the use of Romanian as a teaching language might be excluded, since, according to the final part of paragraph (1) of Article 123 “The teaching languages in these higher education institutions shall be established under the setting-up law”. Out of the entire body of provisions under Article 123 there does not arise any norm that may impose the exclusion of the Romanian language, and to anticipate a hypothetical substance of some would-be setting-up laws for multicultural higher education institutions, based on which the objection of unconstitutionality is actually grounded, is but a procedure which cannot be used within the review of constitutionality, for obvious reasons. On the other hand, there is a presumption that any future law shall be adopted in accordance with the Constitution, and not for trespassing purposes. Notwithstanding these considerations, it should be noted that, according to paragraph (1) of Article 123, where within the State-run university institutions, certain groups, sections, colleges, or faculties teaching in national minorities’ languages are organised upon request “[...], the acquirement of the specialised terminology in the Romanian language shall be ensured”. For the same reasons and because of the need for a systematic interpretation within one and the same legal text, these provisions are, of course, equally applicable in the hypothesis provided in the final part of the same paragraph, on multicultural education institutions, in which the acquirement of the specialised terminology in the Romanian language shall be also ensured.

II.2. In the objection of unconstitutionality, it is also stated that the provisions under Article 123 of the law would contradict Article 13 of the Constitution, according to which: “In Romania, the official language is the Romanian language”, as well as “European regulations in this area”, reaching far beyond.

The Constitutional Court finds that this objection is also unfounded.

II.2.a. In this respect, the Court holds that Article 123 paragraph (1) uses the concept of “teaching languages”, which is different from that of “official language” mentioned by Article 13 of the Constitution. Neither in Article 123, nor elsewhere in the Law on the approval of the Government Urgency Ordinance No.36/1997 for the alteration and completion of the Education Law No. 84/1995 is provided that multicultural universities would be authorised to use an “official language” other than the Romanian one. Therefore, the use of a “teaching language” is confined to didactic activities “of teaching” (in courses, seminars, or related scientific activities etc.), while the other activities of the multicultural higher education institutions (for example: the preparation of documents on behalf of the education institution, including certificates of studies, the official correspondence etc.) shall continue to be carried on in “the official language” which, according to the Constitution, is Romanian – viz. such

other activities shall be conducted in the same conditions just like in any other higher education institution in Romania.

II.2.b. With regard to the conformity of Article 123 with the “European regulations in this area”, the Court notes that the matter enters the scope of the constitutional review only insofar it pertains to Article 20 of the Constitution, according to which: “(1) The constitutional provisions regarding the rights and freedoms of the citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party.

(2) Where inconsistencies exist between the covenants and treaties on fundamental human rights, to which Romania is party, and the domestic laws, the international regulations shall prevail”.

In this context, the Constitutional Court does not find that by the content of Article 123, any of the provisions comprised in the international documents to which Romania is a party have been come against. These international documents represent a wide framework, on the basis of which the legislature has the possibility to issue regulations on the right of persons belonging to the national minorities to learn their mother tongue and to be educated in this language, while observing the general interest and without breaching upon the constitutional provisions.

The Court further on finds that, since the European Charter for Regional or Minority Languages (done in Strasbourg on June 22<sup>nd</sup> 1992 by the Council of Europe) and the Framework-Convention for the Protection of National minorities (done in Strasbourg on February 1<sup>st</sup> 1995 by the Council of Europe), both being explicitly invoked in the objection of unconstitutionality, have not been ratified by Romania, it follows that, in the light of Article 21 of the Constitution, these two international documents fall outside the review of constitutionality. Nevertheless, the Constitutional Court holds that the text of Article 123 (which, as shown above, provides “the acquirement of the specialised terminology in the Romanian language” and does not in any way remove the use of the official language) is, too, in accord with the aforesaid international instruments, subject to which no measures related to national minorities languages shall be taken to the prejudice of the acquirement and utilisation of the official language (paragraph 6 of the Charter’s preamble and, respectively, Article 14 of the Framework-Convention).

As a conclusion, the provisions under Article 123 of the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the alteration and completion of the Education Law No. 84/1995 are constitutional.

Taking into account the reasons set forth in this decision, on the grounds of the provisions under Article 144 sub-paragraph a) and Article 145 paragraph (2) of the Constitution, as well as of those under Articles 17–20 of the Law No. 47/1992, republished, by a majority vote,

THE CONSTITUTIONAL COURT,  
In the name of the law  
DECIDES:

1. Finds that the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the alteration and completion of the Education Law No. 84/1995 has been adopted while observing the provisions under Article 114 paragraphs (4) and (5) of the Constitution.

2. Finds that the provisions under Article 123, comprised in Article I item 48 of the Law on the approval of the Government Urgency Ordinance No. 36/1997 for the alteration and completion of the Education Law No.84/1995, are constitutional.

The decision will be forwarded to the President of Romania and it will be published in the Official Gazette of Romania.

Final.

The proceedings took place on July 20<sup>th</sup> 1999 and were attended by: Lucian Mihai – president, Costică Bulai, Constantin Doldur, Kozsokár Gábor, Ioan Muraru, Nicolae Popa, Lucian Stângu, Florin Bucur Vasilescu and Romul Petru Vonica – judges.