



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

Constitutional Case No. 21/2023

LIMITATIONS OF THE RIGHT TO WORK, FREE CHOICE OF PROFESSION
AND PLACE OF WORK

REJECTED REFFERALS TO THE CONSTITUTIONAL COURT

LIMITATION TO RIGHT TO WORK AND FREE CHOICE OF PROFESSION AND PLACE OF WORK – challenging the restriction that a trainee lawyer is entitled to sit for the bar examination up to three times



- Request for establishing the unconstitutionality of Art. 300(3) of the Judiciary Act stipulating that, in the event of a failing grade, a trainee lawyer is entitled to sit for the bar examination up to three times after an additional two-month period of training under Art. 297, para 2, item 1. According to the Ombudsman, such a restriction on the acquisition of legal capacity upon completion of legal education violates Art. 4 (principle of the rule of law), Art. 32, para 1 (inviolability of private life), Art. 48, paras 1 and 3 (right to work and free choice of profession and place of work) and Art. 53 (right to education) of the Constitution, as well as the fundamental right to freely choose and exercise a profession under the EU Charter of Fundamental Rights. Restrictions that may be imposed on a fundamental right such as the right to work, or the right to free choice of occupation and the choice of place of work, must always be balanced, i.e. not only pursue a legitimate aim in the public interest, but also be appropriate and proportionate.
- According to the Ombudsman, there is no legitimate aim of the restriction established by Art. 300(3) of the Judiciary Act. The effect of the provision is to penalise prospective lawyers provided they have passed the theoretical knowledge test. After failing three legal aptitude examinations, a trainee lawyer who already has a law degree effectively ends up with an unrecognised degree, in breach of Art. 53 of the Constitution. This renders the law graduate's higher education meaningless. It violates Art. 48(3) of the Constitution regarding the guaranteed right to work, to freely choose a profession and place of work. The contested provision infringes the principle of proportionality and may affect two of the fundamental freedoms established in the TFEU: the freedom of establishment (Art. 49) and the freedom to provide services (Art. 56), since the acquisition of legal capacity does not affect only Bulgarian citizens. According to the Ombudsman, with the contested provision, the legislator violates the limits of the freedom of permissible restriction on the freedom of establishment and the freedom to provide services, not only to their unacceptable prejudice, but also to the prejudice of the fundamental rights: Art. 14 (right to education) and Art. 15 (right to choose an occupation and right to engage in work) of the EU Charter.
- **Case No. 21/2023 was initiated on the request.**
- **By Decision No. 8 of 4 June 2024 the Constitutional Court rejected the request.**