



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

Constitutional Case No. 14/2022

ACCESS TO JUSTICE AND RIGHT OF DEFENCE

SUCCESSFUL REFFERALS TO THE CONSTITUTIONAL COURT



- **ACCESS TO JUSTICE AND RIGHT OF DEFENCE** – challenging the introduction of videoconference procedure for placement of persons with mental disorders in any form of force majeure and state of emergency
- The Ombudsman addressed a request for establishing the unconstitutionality of Art. 158(5), third sentence of the Health Act (SG No. 70 of 2004, last amended and supplemented SG No. 62 of 2022) regulating the procedure for placement of persons with mental disorders, required by a court to be admitted to a medical institution for compulsory treatment. The person whose placement is sought must be questioned personally and, if necessary, brought in by force. Where the person's health does not permit them to appear at the hearing, the court must obtain a direct impression of their condition. Under the contested third sentence of Art. 158(5) of the Health Act, in those cases and in the event of a declared state of emergency, a state of war, a disaster, an epidemic, an extraordinary epidemic situation or any other force majeure, **the person whose placement is sought and the expert appointed to give an opinion may do so by videoconference** and their identity is certified by the director of the hospital or another authorized person.
- According to the Ombudsman, the text is contrary to the rule of law (Art. 4(1) of the Constitution), the right to personal liberty and immunity (Art. 30(1) of the Constitution) and the constitutional right to defence of every citizen at all stages of the process (Art. 56 in conj. with Art. 122 of the Constitution).
- **Constitutional case No.14/2022** was instituted on the request. found the contested provision unconstitutional.
- **With Decision No. 14 of 17 November 2022 the Constitutional Court declared unconstitutional the challenged provisions. In the grounds for issuing the decision, the Constitutional Court accepted the Ombudsman's arguments** that the inability to be physically present in the courtroom prevents the person whose compulsory treatment is sought from fully enjoying all the opportunities of participation afforded to him/her by law as a party to the proceedings, relating to access to and acquaintance with evidence, the possibility of making requests for evidence, expressing an opinion on the subject-matter of the case, direct contact with his/her counsel, etc. His/her vulnerable mental and physical state constitutes an additional obstacle to full participation in this way via video conference, insofar as it may hinder his/her ability to perceive the facts of the objective reality related to the trial.