

Constitutional Case No. 12/2021

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 in the event of an emergency detention of defendants in pre-trial proceedings



- The Ombudsman addressed a request for establishing the unconstitutionality of Art. 64, para 2, second sentence of the Criminal Procedure Code (CPC) providing for a videoconference in the event of an emergency detention of defendants in pre-trial proceedings, in the events of a state of emergency, martial law, disaster, epidemic, other force majeure, or upon expressed written consent of the accused person and his protector. In such cases the identity of the accused person shall be certified by the prison director or the detention facility director or by an employee appointed by them.
- According to the Ombudsman, this part of the provision is in conflict with Art. 56 (the right of defence of the individual where his rights or legitimate interests are infringed or threatened) in connection with Art. 122 (the right to defence at all stages of the trial) , Art. 29, para 1 (the right of individuals not to be subjected to torture, cruel, inhuman or degrading treatment) and Art. 30, para 1 (the right to personal freedom and inviolability) of the Constitution.
- The Ombudsman emphasize that the right to defence is a fundamental right and the first step of the criminal process, which requires not only the establishment and guarantee through the establishment of criminal law institutes, but also a ban in case of settlement of any criminal law institute to lay down situations which may restrict or impede the exercise of this right.
- **Constitutional case No.12/2021** was instituted on the request.
- **By Decision No.13 of 5 October 2021 the Constitutional Court found that the provision challenged by the Ombudsman contradicts Article 4, paragraph 1, Article 30, Article 56 and Article 122 of the Constitution and declared unconstitutional the provision of Article 64, paragraph 2, second sentence of the CPC (published in the State Gazette, No.86 of 28.10.2005, last amended and supplemented No. 80 of 24.09.2021).**