



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

Constitutional Case No. 3/2022

CHILD'S RIGHT TO A STABLE AND SECURE FAMILY ENVIRONMENT

REJECTED REFFERALS TO THE CONSTITUTIONAL COURT

INFRINGMENT OF CHILD'S RIGHT TO A STABLE AND SECURE FAMILY ENVIRONMENT – challenging the granting of the right to claim origin retroactively



- Request for establishing the unconstitutionality of Art. §5 of the transitional and final provisions of the Act amending and supplementing the Family Code (SG No. 103 of 2020) to the disputed provision, regulating filing a claim to contest paternity upon proof that the child could not have been conceived by the mother's husband, after one year has passed from the knowledge of the birth.
- According to the Ombudsman, the contested provision retroactively grants the right to a claim to contest origin, but at the same time affects already acquired and exercised parental rights, as well as the child's right to a stable and secure family environment. It is permissible, as of the date of entry into force, to contest the origin of a child whose birth was known indefinitely back in time. The adoption of this text is explained by the implementation of the recommendation of the Department for the Execution of Decisions of the Council of Europe in a letter dated 27 June 2018 to the Permanent Representation of Bulgaria in Strasbourg, which states the following: to provide for provisions "that would regulate the situation of alleged biological fathers who have never lost their interest in establishing their own paternity in relation to children born years ago out of wedlock and recognised by other men." However, there is no explanation for its introduction in relation to unrecognised children whose origin is established. The adopted norms actually concern challenging the presumption of paternity of the mother's husband, not the hypothesis of recognizing a child.
- **Constitutional case No. 3/2022** was instituted on the request.
- **By Decision No. 11 of 28 July 2022 the Constitutional Court rejected the request of the Ombudsman to establish the unconstitutionality of §5 of the transitional provisions of the Act amending and supplementing the Family Code.**