



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

REFERRALS TO THE CONSTITUTIONAL COURT BY THE OMBUDSMAN OF THE REPUBLIC OF BULGARIA

**REVIEW
2019 - 2024**

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).**

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.

SUCCESSFUL REFFERALS TO THE CONSTITUTIONAL COURT



LIMITATIONS TO THE CONSTITUTIONAL RIGHT TO WORK, REMUNERATION AND SOCIAL SECURITY AND ACCESS TO PUBLIC SERVANT POSITIONS - challenging deprivation of persons who have exercised their right to pension of the possibility to assume a public servant position and to receive remuneration

- The Ombudsman addressed a request for establishing the unconstitutionality of §14 and §15 of the Transitional and Final Provisions of the 2019 State Budget of the Republic of Bulgaria Act, creating and amending provisions of the Public Servants Act (promulgated, State Gazette, issue 103 of 13 December 2018, in force as of 1 January 2019). The challenged texts deprive persons who have exercised their right to pension of the possibility to assume a public servant position and to receive remuneration for it. Public servants appointed before the entry into force of the act need to notify the appointment authority of inadmissibility grounds.
- According to the Ombudsman, the provisions are contrary to: the rights and dignity of the person (paras 3 and 5 of the Preamble) and the principle of rule of law (Art. 4 of the Constitution); the constitutional right to labour, remuneration and social security and access to public servant positions (Art. 48, para 1 and 5, Art. 51, para 1 and Art. 116, para 2 of the Constitution).
- **Constitutional case No. 2/2019** was initiated upon the request which was joined to constitutional case No. 16/2018.
- **By Decision No. 3 of 7 March 2019 the Constitutional Court found Art. 7, para 2, item 8 of the Public Servants Act and § 15 of the Transitional and Final Provisions of the 2019 State Budget unconstitutional.**

SUCCESSFUL REFFERALS TO THE CONSTITUTIONAL COURT

LIMITATIONS TO THE FREEDOM OF MOVEMENT



- The case was based on a complaint by the Ombudsman in the summer of 2020 when the Ministry of Interior launched large-scale checks at border crossings whether travellers to Greece for a holiday had outstanding fines. The Ombudsman challenged specific provisions of the Road Traffic Act, i.e., Article 171(1)(e) and Article 171(2)(k) setting out the involuntary administrative measures applied to ensure road safety and eliminate administrative violations, namely: temporary withholding of the driving licence of a driver with unpaid fines and temporary seizing of the vehicle of a such a driver until the fine due is paid.
- According to the Ombudsman, the disputed texts contradict the Constitution as follows: the principle of the rule of law (Article 4, paras 1 and 2); the constitutional guarantees the protection and inviolability of private property (Article 17, para 1 and 3); the right to inviolability of private life (Article 32, para 1); the right to free movement and exiting the territory of the country (Article 35, para 1); the inalienability of fundamental rights (Article 57, para 1 of the Constitution). For the Ombudsman an economic interest to collect receivables of the State (unpaid fines) cannot justify the infringement upon fundamental constitutional rights such as the right to free movement and exiting the country. These rights can only be restricted by law for the protection of national security, public health and the rights and freedoms of other citizens. The Ombudsman also notes that the involuntary administrative measures imposed by the contested provisions contradict the right to move and reside freely within the territory of EU Member States (Art. 21 of the TFEU) and the principle of good administration (Article 41 of the EU Charter) without it being justifiable on considerations related to public order, public security or public health.
- **Constitutional case No. 11/2020** was initiated upon the request.
- **By Decision No. 3 of 23 March 2021, the Constitutional Court held unanimously that suspending a driver's licence for unpaid traffic fines, removing number plates, and seizing vehicles at border crossings for unpaid fines constituted a violation of citizens' fundamental constitutional rights.**

SUCCESSFUL REFFERALS TO THE CONSTITUTIONAL COURT

LIMITATIONS TO THE RIGHT OF PROPERTY – challenging the requirement that certain categories of motor vehicles may be registered only by a legal entity, a sole trader or a farmer



- Request for establishing the non-compliance of Article 143, paragraph 1, sentence 2 of the Road Traffic Act with the Constitution.
- The provision of the Road Traffic Act challenged by the Ombudsman regulates that certain categories of motor vehicles may be registered only by a legal person, a sole trader or a farmer - these are vehicles of categories M2, M3 and N32, as well as special purpose vehicles, with the exception of camping cars, camping trailers, armoured vehicles and wheelchair accessible vehicles. Pursuant to the contested provision, the registration of unregistered vehicle categories M2, M3 and N3 and special purpose vehicles shall be terminated ex officio as of 31 December 2021 in accordance with the requirement of Art. 143(1) of the LRA. (1), second paragraph, of the Road Traffic Act. The rationale for adopting these texts is that there are cases of such vehicles registered to individuals which are actually used commercially - for unregulated transport in the “grey sector” of the economy.
- According to the Ombudsman, these texts contravene Art. 4, para. 1 (the principle of the rule of law), Art. 17 para. 1 and Art. 3 (right to property and inheritance and inviolability of private property) and Art. 57 para. 1 (principle of inalienability of fundamental rights) of the Constitution. It is also protected by the European Convention for Human Rights.
- **Constitutional case No.7/2021** was instituted on the request.
- **By Decision No. 11 of 30 September 2021**, the Constitutional Court found that the provisions challenged by the Ombudsman are in conflict with Article 4, paragraph 1 and Article 17, paragraphs 1 and 3 of the Constitution and declared unconstitutional the challenged provisions.

SUCCESSFUL REFFERALS TO THE CONSTITUTIONAL COURT

LIMITATIONS TO THE RIGHT OF PROPERTY - text of the Criminal Code which provide for the confiscation of certain types of vehicles in favor of the state



- The Ombudsman addressed a request for establishing the unconstitutionality of Art. 234d (3), in the part “*regardless of its ownership*”, Art. 242 (8) in the part “*and where it is not owned by the perpetrator*”, Art. 280 (4) in the part “*or has been provided voluntarily thereto*” and Art. 281 (3) in the part “*or has been provided voluntarily*“ of the Criminal Code (CC).
- According to the Ombudsman, the texts contradict Art. 17, paragraphs 1 and 3 (the right to property and inheritance and the inviolability of private property) and Art. 56 (the right to protection of the citizen, when his rights or legal interests have been violated or endangered) and Art. 57 (the principle of irrevocability of fundamental rights) of the Constitution, in the context of the principle of the rule of law (Article 4 of the Basic Law) and the right to defense in court proceedings (Article 122 of the Basic Law).
- The Ombudsman points out that in the mentioned cases it is a matter of confiscation of property from persons who are not perpetrators of a crime. In criminal proceedings, confiscation of property may be carried out through the penalty of “confiscation” applicable only to the perpetrators of a crime. The confiscation of items is conditioned by the establishment that they belong to the perpetrator and that their confiscation is provided for in the special part of the Criminal Code. Deviation from this requirement can be made only in respect of items that, on the one hand, are the subject or means of the crime, but on the other had, their possession is prohibited.
- **Constitutional case No.10/2021 was instituted on the request.**
- **By Decision No.12 of 30 September 2021, the Constitutional Court accepts that the partially disputed provisions of the Criminal Code constitute constitutionally intolerable interference of the state in the right to private property of the persons and determine the existence of the contradiction alleged by the petitioner with Article 17, paragraphs 1 and 3 and with Articles 56 and 122 of the Constitution.**

SUCCESSFUL REFFERALS TO THE CONSTITUTIONAL COURT

LIMITATIONS TO THE RIGHT OF PROPERTY - prohibition for putting a construction site into operation when the measures for construction of streets, roads or alleys in the territories with medium- and high-rise development are not accomplished



- The provision of Article 148, paragraph 16 of the Spatial Development Act (SDA), disputed by the Ombudsman, introduces as a requirement for issuing a construction permit in a regulated land property the application of a detailed zoning plan regarding the regulation, including street regulation, connecting the site with the street or road network and providing access to the land property.
- According to the Ombudsman, these texts of the Spatial Development Act interfere excessively with the right to property and violate the constitutional guarantees for its protection and inviolability of private property (Article 17, paragraphs 1 and 3 of the Constitution), as obstacles are created for exercising the powers of the owner in terms of construction of the regulated land property and use of the completed building.
- The Ombudsman argues that the restriction of the right to property must be in accordance with the existence of a legitimate interest and the proportionality of the imposed legal and administrative measures, which is not envisaged in this case.
- **Constitutional case No.11/2021** was instituted on the request.
- **By Decision No.17 of 4 November 2021, the Constitutional Court found unconstitutional the challenged provisions.**

SUCCESSFUL REFFERALS TO THE CONSTITUTIONAL COURT

LIMITATIONS TO THE FREEDOM OF MOVEMENT - challenging the requirement that vignette and toll fees are paid prior to the regular periodic technical inspection of a road vehicle



- The Ombudsman addressed a request for establishing the unconstitutionality of Art. 10, para 16 of the Roads Act, providing for the payment of a vignette and road toll as a condition for the regularity of a periodic technical inspection of a motor vehicle. The payment of the due toll is certified through a check in an automated exchange of information between the information system for electronic registration of performed periodic inspections of motor vehicles, maintained by the Ministry of Transport, Information Technologies and Communications and the electronic system for the collection of road tolls.
- According to the Ombudsman, this provision is contrary to Art. 4, para 1 of the Constitution (the rule of law) and Art. 35, para 1 of the Constitution (the principle of freedom of movement within the country).
- Constitutional case No.19/2022 was instituted on the request. The *CC admitted for examination on the merit the request of the Ombudsman to establish the unconstitutionality of Article 10, paragraph 16 of the Roads Act (SG No. 26 of 29.03.2000, last amended and supplemented SG No. 23 of 19.03.2021)*
- **The contested provision was repealed at a session of the 48th National Assembly on 1 February 2023. The amending bill to the Road Act was promulgated in the Official Gazette, No. 14 of 10 February 2023.**
- Following the legislative change, the Constitutional Court's ruling of 28 February 2023 dismisses the Ombudsman's request on the subject matter of constitutional case No. 19/2022 having become devoid of purpose.

REJECTED REFFERALS TO THE CONSTITUTIONAL COURT



LIMITATION OF EQUAL ACCESS TO HIGHER EDUCATION – challenging the prohibition of the state providing scholarships to students in private higher education institutions

- Request for establishing the unconstitutionality of Art. 8, item 3 in the part “state” of the Higher Education Act regulating the subsidies for the education of students by the State only in public higher education institutions, granting them scholarships, dormitories and canteens. The State is not allowed to provide scholarships to students in private higher education institutions.
- According to the Ombudsman, this contradicts fundamental constitutional rights set out in Art. 53, paragraphs 1 and 6 of the Constitution (right to education) and Art. 6 of the Constitution (equality of citizens before the law).
- **Constitutional Case No. 20/2022** was instituted on the request. The Constitutional Court admitted the case for examination on the merit the request of the Ombudsman to establish the unconstitutionality of the provision of Article 8, item 3 of the Higher Education Act (SG No. 112 of 27.12.1995, last amended and supplemented SG No. 102 of 23.12.2022) in the part regarding “State”.
- **By Decision No. 5 of 9 April 2024 the Constitutional Court rejected the Ombudsman’s request.**

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.**

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.**

REJECTED REFFERALS TO THE CONSTITUTIONAL COURT



LIMITATION OF RIGH TO PENSION – challenging the reduced pension for life in the occasion of earlier retirement even if with required insurance length of service

- Request for establishing the unconstitutionality of Art. 68a, para 1, sentence 2 in the part “for life” of the Social Insurance Code (SIC) stipulating the possibility for citizens who have the required insurance length of service to retire one year earlier than the age required in Art. 68 (1) SIC and in case they exercise this right, they will receive a reduced pension for life.
- According to the Ombudsman, the disputed text does not contribute to the protection of the right to work and puts the citizens who have chosen to take advantage of the opportunity in a less favourable position than other citizens, which contradicts the provisions of Art. 6, paragraphs 1 and 2 (the principle of equality before the law), Art. 16 (the principle of guarantee and protection of work), Art. 4, paragraphs 1 and 2 (the principle of the rule of law) of the Constitution, as well as of its Preamble.
- **Constitutional case No.14/2021** was instituted on the request.
- **By Ruling No. 4 of 19 April 2022 the Constitutional Court rejected the request.**

REJECTED REFFERALS TO THE CONSTITUTIONAL COURT



LIMITATION OF ECONOMIC ACTIVITY RIGHTS – challenging the restrictive regulatory requirements for whole-sale traders and retailers in oil and petroleum products

- Request for establishing the unconstitutionality of Art. 8, paras 1-6, Arts. 9-15, Art. 17, para 1, item 4, Art. 22, para 2, item 12, Art. 30 and § 1, item 8 of the Additional Provisions to the Administrative Regulation of the Economic Activities Related to Oil and Petroleum Products Act (promulgated, State Gazette, issue 62 of 27 July 2018, in force as of 28 January 2019).
- According to the Ombudsman, the disputed texts restrict the scope of economic subjects by introducing restrictive regulatory requirements for whole-sale traders and retailers in oil and petroleum products as well administrative requirements for trading in petroleum products. The provisions are considered contrary to the guaranteed consumer protection by ensuring equal legal terms for all to carry out economic activities and preventing abuse of monopoly and distorted competition (Art. 19, para 1 and 2 of the Constitution) and the citizen' right to association (Art. 44 of the Constitution).
- **Constitutional case No. 1/2019** was initiated upon the request.
- **By virtue of a ruling of 21 February 2019, the Constitutional Court dismissed the Ombudsman's request.**

REJECTED REFFERALS TO THE CONSTITUTIONAL COURT

LIMITATION TO POLITICAL RIGHTS – challenging the amendments of the Election Code



- Request of the Ombudsman to establish the anti-constitutionality of Article 53, para 5, Article 58, para 1, Article 70, para 5, Article 73, para 1, Article 85, para 5, Article 88, para 1 and Article 201, para 1 of the Election Code. The texts challenged:
 - Limit the acts of the Central Elections Commission which are subject to appeal before the Supreme Administrative Court;
 - Allow the Central, District and Municipal Election Commissions to issue decisions with a majority of more than half of their members in the event of a repeal of a rejection decision after the necessary majority of two-thirds of the Commissions members has not been achieved;
 - Introduce a change in relation to jurisdiction of the cases challenging acts of election commissions – instead of the Supreme Administrative Court, the decisions of District and Municipal Election Commissions will first be challenged before the Central Election Commission and, should they be affirmed by the Central Election Commission – before a three-member panel of the administrative court as per the location of the respective election commission.
- According to the Ombudsman, the provisions of the Election Code challenged are contrary to the principles of a democratic state and rule of law – Article 1, Article 2, Article 4, para 1, political pluralism – Article 11, para 1 and Article 120 of the Constitution.
- **Constitutional case No. 6/2019** was initiated upon the request.
- **By virtue of judgment No. 6 of the Constitutional Court of 6 July 2019, the Ombudsman's request was rejected.**

REJECTED REFFERALS TO THE CONSTITUTIONAL COURT



RIGHT TO A HEALTHY ENVIRONMENT – restrictive regulatory provisions for “free camping”

- Request for establishing the unconstitutionality of Art. 10a, Art. 17a and Art. 24c of the Black Sea Coast Planning Act (BSCPA), introducing restrictive regulatory provisions for “free camping” – possibility to pitch tents and camper vans outside camping grounds set out in line with the Tourism Act.
- According to the Ombudsman, the BSCPA provisions are contrary to the principles enshrined in Art. 1, para 2 (democratic state), Art. 4, para 1 (rule of law), Art. 15 (state obligation to ensure safekeeping and reproduction of the environment and reasonable use of natural resources), Art. 22, para 3 (obligation to lay down the land regime in a law) and Art. 55 (right to a health and adequate environment) of the Constitution.
- **Constitutional case No. 10/2019** was initiated upon the request.
- **By virtue of judgment No. 6 of the Constitutional Court of 16 June 2020, the Ombudsman’s request was rejected**