



**3<sup>rd</sup> Congress of the World Conference on Constitutional Justice  
'Constitutional Justice and Social Integration'  
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**Questionnaire – Replies by**

**CONSTITUTIONAL COURT OF THE REPUBLIC OF BULGARIA**

**B. Social Integration**

**1. Challenges of social integration in a globalised world**

1.1. The Constitutional Court has had numerous occasions to adjudicate cases involving taxation law and social security law. In the social field, the Court has decided questions concerning the right to affordable medical care, health insurance, retirement insurance, pregnancy and child-birth benefits, family allowances for children. In the field of discrimination, the Court has been apprised on numerous occasions of cases regarding restrictions of the rights of persons affiliated to the former State Security to occupy particular positions. The Court has not adjudicated cases coming under the Asylum and Refugees Act. The possibility of the Constitutional Court being apprised not only by political actors like the Members of Parliament and the Government but also by the Ombudsman, the supreme courts and the Prosecutor General is an adequate guarantee against needless politicisation in transforming social issues into legal questions addressed to the Court. In a social State like the Republic of Bulgaria, where all social rights are protected by the law, addressing social issues by legal means cannot be underestimated.

1.2. The parties represented in Parliament, acting by not fewer than 48 Members of the National Assembly, can approach the Court. Precisely the opposition parties, which represent their constituents' interests and react against laws that, in their opinion, restrict social rights, quite often avail themselves of this right. The Ombudsman is also part of this process. When alerted by members of the public, the Ombudsman, too, can approach the Constitutional Court if he determines that the alert concerns significant social issues. The same right also vests in the supreme judicial institutions. These are the principal mechanisms through which issues of a social nature with great social repercussions are transformed into questions before the Constitutional Court. The Court is the only body competent to provide a universally binding

interpretation of the constitutional provisions, including those relevant to social rights. Last but not least, the Court settles disputes as to constitutionality of the laws passed by the parliamentary majority and thus guarantees that the constitutional rights of all citizens may not be abridged.

1.3. We have not observed a trend towards an increase in cases on legal issues relating to social integration that are brought before the Court. Certainly, this does not mean that such cases are lacking. As a result of one of the most recent cases in the Court, the State was obliged to adopt a mechanism to prevent the commingling of social security contributions and tax payments upon the collection of State receivables. This had to be done in order to prevent any potential compromise with the right to social security. In a number of its judgments, the Court has evolved a case-law safeguarding Bulgarian citizens' rights to social and health insurance, maternity and child benefits, and the pension system.

For examples of cases in the CODICES database, please see

- **Bulletin 1997/03 – Decision No. 12/25.09.1997 – Case No. 6/1997**

## **2. International standards for social integration**

2.1. The Constitution now in force was adopted in 1991 as a result of the implementation of democratic changes and is fully consistent with the most rigorous international standards in the protection of citizens' social rights. Apart from its own rigorous standards, the Constitution guarantees that the international treaties to which the Republic of Bulgaria is a party take priority over any conflicting acts of domestic legislation. This ensures protection of Bulgarian citizens' social rights in accordance with the most rigorous international standards.

2.2. In its case-law, the Court has the right to apply not only the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms but also of any international treaty to which the Republic of Bulgaria is a party. An inexhaustive list of these treaties includes the INTERNATIONAL COVENANT on Economic, Social and Cultural Rights, the EUROPEAN SOCIAL CHARTER, International Labour Organisation CONVENTION No. 183 of 2000 concerning the revision of the Maternity Protection Convention (Revised), 1952, the CONVENTION on the Rights of Persons with Disabilities, the CONVENTION Relating to the Status of Refugees.

2.3. It does, provided that the relevant international treaties have been ratified by the Republic of Bulgaria and have entered into force.

2.4. The Bulgarian Constitution expressly empowers the Constitutional Court to vacate the effect of any legal provision as long as the Court finds that such provision is in conflict with

an international treaty which has entered into force for the Republic of Bulgaria. In such cases, the Court expressly refers to the relevant provisions of the international treaties and applies them.

2.5. On numerous occasions the Court has been apprised of a conflict between particular provisions of laws and the international treaties to which the Republic of Bulgaria is a party. When it has established any such conflict, the Court has proclaimed it by its judgment. The effect of this is that the legal provisions concerned cease to apply and Parliament is supposed to take the appropriate legislative measures in order to settle the legal consequences that have arisen from the judgment of the Court.

For examples of cases in the CODICES database, please see

- **Bulletin 2000/02 – Decision No. 5/29.06.2000 – Case No. 4/2000**
- **Bulletin 2012/02 – Decision No. 7/19.06.2012 – Case No. 2/2012**

### **3. Constitutional instruments enhancing/dealing with/for social integration**

3.1. The Court applies both specific constitutional rules and rules implementing principles and values of the Constitution: State committed to the rule of law, separation of powers, social State, respect for human dignity, humanity and democracy. As indicated above, the Court may also decree that a given legal provision will no longer apply where it comes into conflict with particular provisions of international treaties to which the Republic of Bulgaria is a party.

3.2. The Bulgarian Constitution does not entitle individuals to apprise the Constitutional Court. This circumstance is partly offset by the right of the National Ombudsman to approach the Constitutional Court about matters concerning citizens' rights.

3.3. The Constitution does not allow individuals or groups of individuals to apprise the Constitutional Court. On such questions, it may be apprised by one-fifth of the Members of the National Assembly, the President of the Republic, the Government, the supreme courts, the Prosecutor General and the Ombudsman.

3.4. When examining petitions to establish unconstitutionality of laws, the Court may pronounce such laws as being in conflict with the Constitution or with an international treaty to which the Republic of Bulgaria is a party. In such case, the legal provisions concerned no longer apply and are in practice considered repealed.

3.5. The Court may not adopt judgments acting *sua sponte*. It must be apprised by one of the entities specified in the Constitution. The Court, however, enjoys a special right: to interpret the Constitution. The judgments which provide an interpretation of the Constitution are mandatory for all. The relevant understanding of the Court, contained in the interpretative

judgment, is binding on all State bodies and in a sense predetermines their policy on the matter concerned.

3.6. No. The Bulgarian Constitutional Court has never encountered any difficulties whatsoever in applying these tools.

3.7. As indicated above, the Constitutional Court may be apprised by a limited range of entities. In any case, if a legal provision gives rise to social conflict and contravenes the Constitution, the parliamentary opposition, the Ombudsman or the supreme courts and the Prosecutor General could approach the Court.

For examples of cases in the CODICES database, please see

- **Bulletin 1997/03 – Decision No. 19/21.11.1997 – Case No. 13/1997**
- **Bulletin 2011/03 – Decision No. 11/22.11.2011 – Case No. 8/2011**

#### **4. The role of constitutional justice in social integration**

4.1. The Constitution enables the Constitutional Court to settle social conflicts in two cases: when the Court declares the unconstitutionality of legal provisions restricting social rights granted to citizens by the Constitution or international law, or when it interprets the Constitution itself, as well as when it settles election disputes. The Court does not have the right to determine in advance the constitutionality of draft laws. It may not issue preliminary opinions. In just one case the Court has the right to rule proactively: if approached to establish whether an international treaty is consistent with the Constitution, prior to the ratification of that treaty.

4.2. The Bulgarian Constitutional Court does not act as ‘social mediator’ under the Constitution and has never been perceived as such.

4.3. Suspicions to this effect have always existed. In early 2014 the Court declared unconstitutional a resolution of Parliament which imposed a moratorium on the acquisition of agricultural land by aliens. To this end, the Constitutional Court was apprised by representatives of parliamentary forces which command a majority in Parliament and could secure a repeal of the resolution in question by their votes rather than take the matter to the Constitutional Court. Such cases are not frequent.

For examples of cases in the CODICES database, please see

- **Bulletin 1998/01 – Decision No. 2/18.02.1998 – Case No. 15/1997**