In line with Resolution II adopted by the Circle of the Presidents at its meeting held on 13 June 2018 in Prague, the theme of the XVIII Congress of the Conference of European Constitutional Courts to be held in Prague from 26 to 29 May 2020 will be:

**HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS:**

**THE RELATIONSHIP OF INTERNATIONAL, TRANSNATIONAL AND NATIONAL CATALOGUES IN THE**

**21ST CENTURY**

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QUESTIONNAIRE FOR THE XVIII CONGRESS

OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

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# I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

## I.I. International catalogues of human rights (ECHR, UDHR and ICCPR)

- *In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?*

The Constitution of Republic of Bulgaria is open to International law.

The Preamble sets out the key principles which shall serve for the interpretation of the Constitution. One of these key principles is the “allegiance to the universal human values of liberty, peace, humanism, equality, justice and tolerance”.

Article 5, par. 4 shows the mechanism for the functioning of its monistic system. International treaties in general that were duly signed, ratified and promulgated are directly applicable and in case of contradiction between such treaty and a piece of the national legislation, the treaty has primacy. Article 24 of the Constitution enshrines the devotion of the State to the establishment of a just international order.

The protocols from the preparatory work on the drafting of the 1991 Constitution show that the catalogue of basic rights was based on the ECHR and that the drafters relied on the compliance with the international human rights standards.

The case-law of the Constitutional Court of Bulgaria opened the Supreme Law of the land even more towards the International legal order. It finds that constitutional rights should be interpreted in the light of the European Convention on Human Rights and the other International treaties signed, ratified and promulgated (Decision № 2 from 1998 on constitutional case № 15/1997, and Decision № 11 from 1998 on c.c. No 10/1998).

- *What mechanism is used to invoke the international treaties in national court decision-making?*

There is no specially designated mechanism or procedure. International treaties could be invoked by the parties or ex officio- by the court. In their work prosecutors, who are also part of the judiciary, also take into account international human rights standards.

- *Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.*

As mentioned above, international treaties that contain human rights catalogues and for which the art.5, para 4 of the Constitution conditions are met are directly applicable and with priority before national laws in case of contradiction.

Also, one of the grounds for challenging a law before the Constitutional Court is inconsistence with the universally recognized standards of international law and with the international treaties where to Bulgaria is a party. The first hypothesis includes human rights that don't necessary derive from international treaties per se, but from jus cogens, such as the prohibition of torture and from act that have obtained the status of a universal standard, such as the Universal Declaration of Human Rights.

## I.II Supranational catalogues of human rights (the Charter)

- *Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by "radiating" through the national catalogues (a substantive point of reference in other states)?*

Following the entry into force of the Lisbon Treaty in 2009 the Charter of Fundamental rights of the EU has the same legal value as the European Union treaties. The Charter is directly applicable and is a point of reference to review the constitutionality of legal rules and/or decisions of public authorities. Within the EU legal framework the Charter of Fundamental Rights of the EU has a higher normative status that all EU legislation adopted under the Treaties themselves. Member States are as directly bound by the EU Charter as the EU institutions. What this means in practice is that a provision of EU legislation or national law in the scope of EU law is invalid if it is breaches the EU Charter.

- *Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogues in your country by general courts, or as a source for judicial law-making?*

Where the interpretation of a provision of Community law or the interpretation and validity of an act of the institutions of the European Union is relevant to the correct adjudication of the case, the Bulgarian court requests the Court of Justice of the European Union to give a ruling on the case. The judgment given by the Court of Justice of the European Union is binding upon all general courts and institutions in the Republic of Bulgaria. It should be mentioned that the Bulgarian Constitutional Court is not part of the judicial system (Decision № 18 of 1993 on constitutional case № 19/1993).

- *Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is conditioned by making a request for preliminary ruling with the Court of Justice of the EU?*

As mentioned above, if a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law.

**I.III National human rights catalogues**

- *Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the Constitution, a part of the constitutional order)? What is its structure?*

The catalogue of human rights is integral part of the Constitution of the Republic of Bulgaria. Systematically, human rights provisions belong to Chapter Two of the Bulgarian Constitution, entitled “Fundamental Rights and Duties of Citizens”.

The above mentioned Chapter contains a catalogue of first-generation human rights such as right to life, right to liberty and personal inviolability, freedom and confidentiality of correspondence, freedom of conscience and thought, etc. These rights serve to protect the individual against violations from the state.

The constitutional regulation of human rights in the Republic of Bulgaria includes as well second-generation human rights such as right to strike, right to social security and social assistance, right to health insurance, etc. Unlike the first generation rights, known as „defensive” or „negative”, the purpose of these „shared” or „positive” rights is a call for positive actions in the social sector by the Government and for sharing the Government’s achievements. They can be realized only if the Government takes the needed and expected measures and creates conditions and guarantees.

Third-generation rights such as right to benefit from the national and universal human cultural values and right to a healthy and favorable environment are also encompassed by Chapter Two of the Bulgarian Constitution.

- *What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country (previous or foreign), or is it original?*

A remarkable fact about the national constitutional history is that with the restoration of the Bulgarian statehood at the end of the 19th century it started to develop in a constitutional framework.

The roots of the human rights catalogue in the current Constitution of 1991 can be traced back to the first Bulgarian Constitution, which became known as the “Tarnovo Constitution”. This first basic law reflects the best examples of constitutional theory and practice of its time. It provides for a wide participation of the people in the government, regulates the separation of powers, and establishes such civil and political rights that sound modern even today.

The regulation of human rights in the current Constitution of 1991 continues the tradition established by the “Tarnovo Constitution” and at the same time enriches it with contemporary traits, influenced by the modern international standards in this area.

- *What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?*

The procedure for the amendment of the Bulgarian Constitution is regulated in Chapter Nine, entitled "Amendments to the Constitution. Adoption of a New Constitution". Under article 154 of Chapter Nine of the Bulgarian Constitution, the process of amending the Constitution may be initiated by one quarter of the members of the National Assembly or the President of Bulgaria. As stipulated by article 155 of the Constitution:

"(1) A constitutional amendment shall require a majority of three quarters of the votes of all Members of the National Assembly in three ballots on three different days.

(2) A bill which has received less than three quarters but more than two-thirds of the votes of all Members shall be eligible for reintroduction after not fewer than two months and not more than five months. To be passed at this new reading, the bill shall require a majority of two-thirds of the votes of all Members."

According to article 153 of the Constitution: "The National Assembly shall be free to amend all provisions of the Constitution except those within the prerogatives of the Grand National Assembly". The prerogatives of the Grand National Assembly are listed in an exhaustive manner in article 158 of the Constitution and they include also the power to decide on amendment to two provisions that belong to Chapter Two "Fundamental Rights and Duties of Citizens"- article 57, paras 1 and 3, which state "Citizens' fundamental rights shall be irrevocable", respectively "Following a proclamation of war, martial law or a state of emergency the exercise of individual civil rights may be temporarily curtailed by law, except for the rights established by Art. 28, Art. 29, Art. 31 paras 1, 2 and 3, Art. 32 para 1, and Art. 37". In such cases, elections for the Grand National Assembly (composed of 400 elected members) need to be convened through a resolution of the National Assembly supported by two-thirds of the votes of all MPs, and the mandate of the National Assembly expires at the date when the elections are held.

Since its adoption in 1991, the current Bulgarian Constitution has undergone five amendments.

The second amendment, that took place in 2005, was directly linked to Bulgaria's pending EU membership. As a result of this reform, by virtue of article 25, para 4 which systematically belongs to Chapter Two of the Constitution, no Bulgarian citizen may be surrendered to another State or to an international tribunal for the purposes of criminal prosecution, unless the opposite is provided for by international treaty that has been ratified, published and entered into force for the Republic of Bulgaria.

Another aspect of the constitutional reform from 2005 was the inclusion in Chapter Two of provision on European Parliament elections and the participation of EU citizens in local elections in Bulgaria.

In its jurisprudence the Bulgarian Constitutional Court upholds that the law evolution is an objective process that permits the interpretation of legal texts to be "open" to other concepts and also to take into account major changes that have meanwhile occurred in public life. This conception paves the path for the Court to conceive new ideas and new legal notions and to interpret and apply fundamental rights in the light of the changing socio-economic and public environment.

### I.IV. The mutual relationship between different catalogues of human rights

- *Can you give examples from the case law of your court related to the use of any of the international catalogues?*

In c.c. No 15/97 on the compliance of the Framework Convention on the Protection of National Minorities with the Constitution the Bulgarian Constitutional Court rules that the rights and freedoms listed in the Convention are duly provided for and correspondingly

protected in the Constitution. They are recognized to every individual regardless of his or her national identity. The content of the rights and freedoms that are treated both in the Convention and the Constitution is determined by the modern standards of fundamental human rights. The Constitutional Court recalled that respect for territorial integrity is a fundamental principle in international law and is also a fundamental principle enshrined in Art. 2 para 2 of the Constitution. The exercise of rights and freedoms under the Convention is possible and admissible only when this principle is strictly abided by both under the Convention and the Constitution. The Constitutional Court concluded that the Convention provisions do not affect the principle of national unity that the Constitution proclaims. National unity does not exclude religious, language or ethnic differences among the citizens of the Republic of Bulgaria.

In c.c. No 20/98 the petitioners contest the constitutionality and compliance with universally recognized international law standards and with international instruments to which the Republic of Bulgaria is a party, of the provision in Art. 17 para 5 of the Law on the Settlement of Collective Labor Disputes. The provision provides that the Court decision on challenging the legitimacy of a strike that has started or ended is final and shall be immediately reported to the parties. The Constitutional Court emphasized that Art. 50 of the Constitution explicitly stipulates that workers and employees shall have the right to strike in defence of their collective economic and social interests. The texts of the Universal Declaration of Human Rights (Arts. 7, 8 and 10) do not contain a universally acknowledged international law standard requiring that all categories of cases be heard in a definite procedure and by a definite number of court instances. There is no disagreement with Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (CPHRFF), an international instrument to which Bulgaria is a party. The Contracting States are free to handle their civil and penal court proceedings. The Convention does not pose a requirement for a dispute to be heard by a certain number of court instances.

In c.c. No 19/2010 proceedings have been instituted on a petition received from a panel of three judges of the Supreme Administrative Court. The petition sets out a request for the first sentence of Article 7 of Decree No 904 of 28 December 1963 on countering malfeasance offences (UBDH) to be declared unconstitutional. According to the provision concerned "the decision of the district judge shall not be subject to appeal and shall enter into force without delay". In the decision Constitutional Court recalls that according to Article 31(4) of the Bulgarian Constitution the rights of a person against whom charges have been brought in a court of law may not be restricted beyond what is necessary for the purposes of a fair trial. The right to a fair trial "where a criminal charge had been brought against a defendant" is enshrined in Article 6(1) of the CPHRFF. According to Article 5(4) of the Constitution the CPHRFF is a part of national law and is applied as a matter of precedence where a provision laid down in national law contravenes the international treaty. Hence the national courts are to apply the CPHRFF directly without there being a need for intervention on the part of the Constitutional Court. The provisions on fundamental rights laid down in the national Constitution should be interpreted in light of the underlying principles of the CPHRFF.

The arguments set forth in the petition are based on Article 2(1) of Protocol No 7 to the CPHRFF, according to which "everyone convicted of a criminal offence by a tribunal is entitled to have his conviction or sentence reviewed by a higher tribunal". Bulgaria signed the cited Protocol on 3 November 1993 and following its ratification and enactment by a dedicated law (SG No 87/2000) it entered into force on 1 February 2001 although it has not been promulgated in the State Gazette. The Constitutional Court may not build its case on Protocol 7 to the CPHRFF because "the international treaties ratified by Bulgaria, which have entered into force but have not been promulgated in the State Gazette, are not a part of national law unless ratified before the entry into force of the current Constitution insofar as their promulgation was not

required by law". According to Article 5(4) of the Constitution prior to their promulgation such international treaties do not supersede the provision laid down in national law.

In its jurisprudence the European Court of Human Rights (ECHR) has determined alternative criteria that allow criminal offences within the meaning of the Convention to be distinguished from infractions as defined and classified in national law depending on the type of proceedings and the nature and severity of the penalty imposed.

The Constitution Court finds that malfeasance (anti-social behaviour), which may be described as conduct that disturbs public order, carries a "criminal charge" in the meaning of the Convention. As such, and in view of the severity of the penalty it carries (detention in custody on the premises of a service under the jurisdiction of the Ministry of Internal Affairs), it is equivalent to "imprisonment". An offence committed under Article 1(2) UBDH may not be regarded as a minor infraction because it carries the penalty "detention in custody on the premises of a service under the jurisdiction of the Ministry of Internal Affairs".

Restricting the right of a defendant to appeal a court decision whereby they are to be detained in custody before a higher tribunal is beyond what is necessary for the purposes of a fair trial despite the decision being adopted in the framework of administrative proceedings in which the criminal liability of the defendant has been engaged. This constitutes a violation the right to a fair trial of a detainee under Article 31(4) of the Constitution and Article 6(1) CPHRFF.

In c.c. 15/2010 the President of the Republic challenged the constitutionality of and the compliance with international treaties to which Bulgaria is a party and the conformity with EU law of § 3f of the Labor Code – LC (§ 20, item 2 of the Act Amending the Labor Code – AALC) and § 8a of the Civil Service Act – CSA (§ 21, item 5 of the AALC). This challenge was joined to another challenge that was brought by 51 Members of the 41st National Assembly and that contested the constitutionality of and the compliance with international treaties to which Bulgaria is a party of the texts that the President challenged and in addition, of Art. 176, para 3 of the Labor Code (§ 8 of the AALC); Art. 224, para 1 of the LC (§ 11 of the AALC); Art. 59, para 5 of the Civil Service Act (§ 21, item 3 of the AALC); Art. 61, para 2 of the CSA (§ 21, item 4 of the AALC).

With regards to compliance with international treaties Constitutional Court assumed that international law instruments determine the general frame of the right to a leave. Art. 24 of the Universal Declaration of Human Rights reads thus:,Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay." The challenged § 3f of the LC and § 8a of the CSA deprive workers and employees (on an employment contract) and civil servants (in official legal relations under the CSA) of the possibility to exercise their right to a paid annual leave and by doing so are incompatible with recognized international law standards.

Art. 7 (d) of the International Covenant on Economic, Social and Cultural Rights reads thus: „The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:... (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay" whereas Art. 2 (2) of the same Covenant reads that „The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind." The said provisions provide for the right to a leave and make it binding to make sure that this right is exercised. It is in the second part – the exercise of the right to a paid annual leave – that § 3f of the LC and § 8a of the CSA are dissonant with the quoted Covenant articles.

§ 3f of the LC and § 8a of the CSA are discordant with Art. 2 of the ILO C52 Holidays with Pay Convention, 1936. Art. 224, para 1 of the LC and Art. 61, para 2 of the CSA are discordant with Art. 6 of the said Convention in the part regarding payment of compensation in

cash for unused paid annual leave upon the termination of the contract of employment owing to the impossibility to exercise the right to compensation whenever the right to a leave has not elapsed.

Art. 2 (3) of the European Social Charter (revised) reads that „With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:… (3) to provide for a minimum of four weeks' annual holiday with pay" whereas Article F (1) and Art. G (1) provide for the derogations and restrictions in time of war or public emergency. § 3 f of the LC and § 8a of the CSA deprive workers and employees of the chance to effectively exercise the right to a leave providing there exist no circumstances for derogations or restrictions. Hence the incompatibility of these two texts with the said articles of the European Social Charter.

§ 3f of the LC and § 8a of the CSA disagree with Art. 31 (2) in relation to Art. 52 (1) of the Charter of Fundamental Rights of the European Union reading that „every worker has the right to an annual paid leave". The restriction of the rights that the Charter recognizes must respect the core of these rights. The argument is that workers and employees are deprived of the possibility to exercise an acquired right – the right to a leave. The said texts are dissonant with Art. 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time that makes it binding on the Member States to take the measures necessary to ensure that every worker is entitled to a minimum period of paid annual leave that may not be replaced by an allowance in lieu, except where the employment relationship is terminated. The Constitutional Court in Decision 12 of 2010 on case 15/2010:

1. Declares unconstitutional § 3f of the LC and § 8a of the CSA and non-compliance with Art. 24 and art.2, para 1 of the Universal Declaration of Human Rights, Art. 7 (d) Art. 2 (2) of the International Covenant on Economic, Social and Cultural Rights, Art. 2 of the International Labour Organisation Convention No 52 Holidays with Pay Convention, Art. 2 (3) of the European Social Charter (revised), Art. 31 (2) in relation to Art. 52 (1) of the Charter of Fundamental Rights of the European Union and Art. 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 in relation to Art. 153 and Art. 151 of the Treaty of the Functioning of the European Union;

2. Declares unconstitutional „for the current calendar year in proportion to the time recognized for length of service and for the unused paid annual leave postponed pursuant to Art. 176, the right to which has not lapsed." of Art. 224, para 1 of the LC (§ 11 of the AALC) and „for the current calendar year in proportion to the time recognized for length of service and for the unused paid annual leave postponed pursuant to Art. 59, the right to which has not lapsed." of Art. 61, para 2 of the CSA (§ 21, item 4 of the AALC) and non-compliance with Art.6 of the International Labour Organisation Convention No 52 Holidays with Pay Convention.

In c.c. No 6/2011 the petitioners contest Article 411e(3) of the Penal Procedure Code according to which the parties to a trial must attend hearings before the specialist criminal court regardless of whether they have been summoned to appear before another court or body involved in the pretrial investigation. It is argued that this creates inequality between the specialist criminal court and other courts and government bodies and that regardless of other commitments defendants must, as a matter of priority, appear before the specialist criminal court to avoid incurring a penalty. The Court declares unconstitutional the provision concerned and also rules that it contravenes Article 6 CPHRFF because it will cause an unreasonable delay in the cases tried by other general and specialist courts and hinder the work of the bodies conducting pretrial investigations, which will not be able to carry out their tasks in line with the requirement laid down in the cited provision of the international treaty.

- *Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in the light of the protection afforded?*

Article 5, para 4 of the Constitution stipulates ”Any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for the Republic of Bulgaria, shall be part of the domestic law of the land. Any such treaty shall take priority over any conflicting standards of domestic legislation.”

In its case law Constitutional Court assumes that despite the different wording the protection of human rights under the Constitution and international treaties is essentially similar. (Decision 10 of 1995 on constitutional case no 8/95 about Article 10 CPHRFF and Art. 41, para 2 of the Constitution in relation to the right of information; Decision 2 of 1998 on constitutional case no 15/97 - the freedom of association that is provided for in Art. 7 of the Convention on the Protection of National Minorities and Art. 44 para 1 of the Constitution; Decision No. 13 2012 on Constitutional Case No. 6/2012 about the protection of property under Art. 1 of Additional Protocol No. 1 to the CPHRFF and Art. 17 of the Constitution.).

In Decision No.3 of 2011 on c.c. No. 19/2010 mentioned above the Constitutional Court rules that according to Article 5(4) of the Constitution the CPHRFF is a part of national law and is applied as a matter of precedence where a provision laid down in national law contravenes the international treaty. Hence the national courts are to apply the CPHRFF directly without there being a need for intervention on the part of the Constitutional Court. The provisions on fundamental rights laid down in the national Constitution should be interpreted in light of the underlying principles of the CPHRFF.

In Decision No. 1 of 2012 on Constitutional Case No. 10/2011 the Court recalls: ”The Constitutional Court has already had the chance to underscore that the interpretation of the Constitution texts that concern fundamental rights should conform to the CPHRFF standards. In the Constitutional Court’s understanding such a conforming interpretation is in line with the ECHR universal compulsory jurisdiction to which Bulgaria subscribes and which concerns the CPHRFF interpretation and enforcement.”

- *Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogue?(NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)*

Article 149, para 1, item 4 of the Constitution empowered Constitutional Court to pronounce on the consistency of any international treaties concluded by the Republic of Bulgaria with the Constitution prior to the ratification of any such treaties, as well as on the consistency of any laws with the universally recognized standards of international law and with the international treaties where to Bulgaria is a party. The Constitutional Court of the Republic of Bulgaria does not act ex officio. The Constitution defines the bodies entitled to approach the Court: not fewer than one fifth of all Members of Parliament; the President; the Council of Ministers; the Supreme Court of Cassation; the Supreme Administrative Court; the Chief Prosecutor; the Ombudsperson; the Supreme Bar Council. The Ombudsperson and the Supreme Bar Council may approach the Constitutional Court only with a referral to establish unconstitutionality of any law whereby any rights and freedoms of citizens are violated. A panel of judges of the Supreme Court of Cassation or the Supreme Administrative Court shall suspend proceedings in the case and shall refer the matter to the Constitutional Court should it establish an inconsistency between a law and the Constitution. Article 22, para 1 of the Constitutional

Court Act provided that the Court shall rule only on the referral as presented. It shall not be limited to the indicated grounds for non-conformity with the Constitution.

## II. SPECIAL PART - SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

### II.I Right to life

- *What is the original wording of the provision protecting this right in your national catalogue?*

According to Article 28 of the Constitution "Everyone shall have the right to life. Any trespass to human life shall be punished as a most serious criminal offence."

- *Is it possible to restrict the right? If so, how and under what conditions?*

The right to life cannot be restricted. The right to life is from the category of inalienable rights. Restrictions are inadmissible for any reason.

- *Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.*

The Constitutional Court put the emphasis on the fundamental importance of the right to life in Decision № 10 of 1995 on constitutional case № 8/1995. Undoubtedly, the right to life, understood as the right to the protection of life and health, is a constitutional right of the highest order. It is no coincidence that it is placed first in Chapter Two of the Constitution. There is no doubt that it has the primacy and priority over other rights which, in order to protect the right to life, is permissible to be affected.

In Decision № 19 of 1997 on constitutional case № 13/1997 the Constitutional Court highlighted that the right to life is a fundamental constitutional right. Along with the dignity and other rights of the person, according to Art. 4, para. 2 of the Constitution, is guaranteed by the state.

- *Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?*

The Constitutional Court interprets and applies the right to life in accordance with international standards.

### II.II Freedom of expression

● *What is the original wording of the provision protecting this right in your national catalogue?*

According to article 39, para 1 of the Constitution "Everyone shall have the right to express an opinion and to disseminate it through speech – in written or oral form, through sound, image or by other means."

● *Is it possible to restrict the right? If so, how and under what conditions?*

This right is not absolute and the Constitution contains reasons for its restriction in para 2 of article 39 which states that "This right shall not be used to the detriment of the rights and reputation of others and to call for forced changed of the constitutionally established order, to perpetration of criminal offences, to instigation of animosity or violence against personality."

The possibility to interfere in the right to freely express opinion when it is detrimental to the rights and reputation of another person is admissible by the Constitution as in this way the honour, dignity and reputation of a person as constitutionally protected values are defended. This curtailment is not to be understood as prevention of public criticism, particularly towards politicians, government officials and government institutions.

The restriction on statements that appeal to fan up animosity derives from the Constitution-honored values like tolerance, mutual respect and the ban to preach hatred on a racial, national, ethnic or religious basis. In any case, the right to freely express opinion may be restricted by an enacted statute only where that statute seeks to adequately and proportionately protect the values enshrined in the Constitution.

● *Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied?*

Pursuant to art. 149, para 1, item 1 of the Constitution, the Constitutional Court is the body assigned with the exclusive competence to offer obligatory interpretation of the Constitution. The mandatory interpretation of the provisions of the Constitution is very important in terms of the correct application of the fundamental rights and freedoms of citizens.

The role of the Court in the first years of its operation was particularly active in defending the freedom of opinion and the related fundamental rights enshrined in the Constitution. In one of its most famous interpretative judgments (Decision № 7 of 1996 on constitutional case № 1/1996), the Constitutional Court gave binding interpretation on the provisions of articles 39, 40 and 41 of the Constitution that proclaim as the individual's fundamental rights the right to freely express and disseminate opinion and the right to seek, obtain and disseminate information.

The Court ruled that these provisions protect the individual's right to free expression as an equal member of the social community. These functions of the rights under articles 39, 40 and 41 of the Constitution define them as essential for individual and social development. They underlie the democratic process and enable it to function.

Together the three provisions protect various aspects of the right to freely express and disseminate opinion and the right to seek, obtain and disseminate information. The three provisions are in systemic and functional relation.

The Constitutional Court put the emphasis on the fundamental importance of the right to express and disseminate an opinion for the established constitutional order. The Court highlighted that for the individual, this right appears to be an inherent element of his nature and of the ability to fulfil himself in the social reality. The freedom of opinion lies at the heart of the principle of political pluralism and of the inadmissibility to monopolize the political, ideological and spiritual sphere as well as of other rights, e.g. the right to information.

The Court further noted that the right to express and disseminate an opinion serves as a means for self-expression of the individual and for his development and at the same time as a tool for the protection of his dignity. The freedom of opinion is one of the fundamental pillars of every democratic society and a precondition for its progress.

● *Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?*

In the above mentioned interpretative decision the Constitutional Court acknowledged that the wording of article 39, para 1 of the Constitution protecting the right to freely express and disseminate opinion is similar to that of article 10, para 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms – "freedom of expression" and therefore the constitutional provision should be interpreted in the context of the international standards in this area.

In its subsequent case law, the Court reaffirmed the position that the provisions on fundamental rights laid down in the national Constitution should be interpreted in light of the underlying principles of the Convention for the Protection of Human Rights and Fundamental Freedoms. In the Constitutional Court's understanding such a conforming interpretation is in line with the European Court of Human Rights universal compulsory jurisdiction to which Bulgaria subscribes and which concerns the interpretation and enforcement of the Convention for the Protection of Human Rights and Fundamental Freedoms.

**II. III Right to privacy/ right to respect for private life/ right to private life**

- *What is the original wording of the provision protecting this right in your national catalogue?*

"Article 32. (1) The private life of citizens shall be inviolable. Everyone shall have the right to protection against any unlawful interference with their private or family life and against any encroachment on their honour, dignity, and reputation.

(2) No one may be followed, photographed, filmed, recorded, or subjected to any other similar actions without their knowledge or despite their express disapproval, save in the cases provided for by the law."

- *Is it possible to restrict the right? If so, how and under what conditions?*

Constitutional rights are inalienable as per article 57, para 1 of the Constitution. In Article 57, para 3 are listed the absolute rights which cannot be restricted even by law, temporary and in extraordinary circumstances such as war. These are rights under Articles 28, 29, 31 (1), (2) and (3), Article 32 (1), and Article 37.

The right of privacy is not absolute in all of its aspects. One could be subjected to the activities, listed in Article 57, para 2 under conditions provided for in a legislative act of the Parliament. It could be restricted for the sake of another constitutional value that prevail whilst abiding the principle of proportionality.

The right of protection of the honour, dignity and good reputation as per Article 57, para 3 cannot be restricted under no circumstances.

- *Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogue of human rights applied.*

The Constitutional Court has had the chance to discuss the right under art. 32, para 1 on several cases, related to the public announcement of the names of the persons, who worked for or collaborated to the "State Security" Agency (SSA) during the former political regime in the light of the protection of the individual honour, dignity and reputation.

In Decision No.10 from 22.09.1997 on c.c. No. 14/1997 the Court found that defining someone as "collaborator" based on evidence, none of which came out of the person was violating the human right to honour, dignity, and good reputation. In Decision No. 14 from 30.05.2001 on c.c. No. 7/2001 the Constitutional Court dealt with an amendment of the act

regulating the procedure for disclosure of the names of the persons who worked for SSA and found that there was a balance between the right to information and the right to protection of the individual honour, dignity and reputation.

In Decision No.13 from 13.10.2012 on c.c. No. 6/2012 when discussing the Act on forfeiture of assets acquired through criminal activity and administrative violations the Court found that during the checkups some of the information collected is protected under Art. 32, para of the Constitution, but there was no violation of this fundamental right, since a legitimate goal was pursued, the measure met the proportionality requirements and there were guarantees for the protection of the information regarding the personal life of the persons subjected to such checkups.

In Decision No. 2 from 12.03.2015 on c.c. No. 8/2014 the Constitutional Court found that the challenged provisions of Art. 250a to Art. 250f, Art. 251 and Art. 251a of the Electronic Communications Act (ECA) were in violation of Art. 32, para 1 and Art. 34, para 1 of the Constitution. The unconstitutional norms were adopted as transposition of Directive 2006/24/EC of the European Parliament and the Council, which the Court of Justice of the European Union in its Decision from 08/04/2014 on Joined Cases C-293/12 and C-594/12 found to be invalid. Even though the ECA was challenged only as unconstitutional, the Court took into account the international and supranational human rights standards, including the case law of the European Court of Human Rights on right to privacy.

- *Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?*

No, not in the case law of the Constitutional Court.

**II.IV. Freedom of religion**

- *What is the original wording of the provision protecting this right in your national catalogue?*

According to article 13, para 1 of the Constitution “Religious denominations shall be free.” Pursuant Article 37, para 1 “Freedom of conscience, freedom of thought, and choice of religion and of religious or atheistic views shall be inviolable. The State shall assist the maintenance of tolerance and respect among believers adhering to different denominations, as well as between believers and non-believers.”

- *Is it possible to restrict the right? If so, how and under what conditions?*

The Constitution contains reasons for its restriction in article 13, para 4 – “Religious communities and institutions, or religious convictions, may not be used for political purposes.” and article 37, para 2 “Freedom of conscience and religion may not be directed against national security, public order, public health and morals, or against the rights and freedoms of other citizens.”

- *Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied?*

In one of its interpretative decisions Decision 5 of 1992 on c.c. No. 11/92 the Court gives binding interpretation of article 13, para 1 and 2 and Article 37 of the Constitution. The freedom of religion is absolutely personal, inviolable and fundamental right of every Bulgarian

citizen. It is a value of supreme order. Without its guaranteed exercise, the existence of civil society is inconceivable. The freedom of religion encompasses the following important powers: free choice of religion and free exercise of religion - through speech, press, association. The freedom of religion can not be restricted except in the cases of Art. 13 para 4 and Art. 37, para 2 of the Constitution, namely when religious communities and institutions are used for political purposes, or where freedom of conscience and religion is directed against national security, public order, public health and morals or against the rights and freedoms of other citizens. These restrictive grounds are exhaustively listed and can not be expanded or supplemented by law or by interpretation. By law only the specific mechanisms for their implementation can be defined. Religious communities and institutions are separated from the State. State intervention and state administration of the internal organizational life of religious communities and institutions, as well as their public manifestation, are not admissible except in the cases already mentioned in Art. 13 para 4 and Art. 37, para 2 of the Constitution.

- *Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?*

The case law of Constitutional Court is in conformity to the case law of international courts with respect to freedom of religion.

### II.V Prohibition of discrimination

- *What is the original wording of the provision protecting this right in your national catalogue?*

According to article 6, para 2 of the Constitution "All citizens are equal before the law. No restrictions of rights or privileges shall be allowed on the grounds of race, nationality, ethnic affiliation, sex, origin, religion, education, convictions, political affiliation, personal and social status, or property status."

- *Is it possible to restrict the right? If so, how and under what conditions?*

The Constitution refers to a number of cases when privileges are granted or rights are restricted. However, the introduction of such criteria is not a matter of discretion and should have justification. As the Constitutional Court notes, this introduction is imposed by a public necessity or for the sake of the principle of equality before the law.
Inasmuch as the equality before the law is a Constitution-granted right that citizens enjoy, the Constitutional Court has repeatedly pointed out that a deviation, when such is provided for, will have to be serious in a sufficient measure and the restriction shall not be in excess to what is required. Furthermore, the restriction of fundamental rights, whenever it is admissible, shall not be of indefinite duration.

According to the Constitutional Court it is solely considerations of constitutional nature that can justify a restriction of the Constitution-enshrined rights of citizens. When the Constitution proclaims the equality of citizens before the law as a principle, then there will be objectives that will fail to give a cogent justification to the restriction of rights and objectives that will do it will have to be of the nature that the Constitution accepts as grounds for the restriction of rights.

- *Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied?*

The Constitutional Court has a history of cases in relation to Art. 6, para 2 of the Constitution.

In one of its first interpretative decisions (Decision № 14 of 1992 on constitutional case № 14/1992), the Court systemized and justified the grounds on which any discrimination or privilege is inadmissible - race, nationality, ethnicity, gender, background, religion, education, beliefs, political affiliation, personal and social status or property status. At the same time, it justified the constitutionality of certain social benefits stemming from the principle of the social state and which lie beyond the scope of the stated signs. According to the Constitutional Court, in certain cases, the Constitution allows different treatment when it is socially necessary and socially justifiable. These are different forms of protection for certain groups of vulnerable persons - children and elderly people left without the care of their relatives, people with physical and mental disabilities, etc.

In its new case law, the Court noted that pursuit of equality before the law is a key engine in a state where the Constitution reigns supreme. Article 6, para 2 of the Constitution proclaims the equality of all citizens before the law as a constitutional principle that is inherent in any democratic society. This provision specifies on what grounds there shall be no restriction of rights. Restriction of rights on the grounds that are listed violates the principle of equality before the law. Thus the Constitution explicitly precludes inequality in the law system on the basis of the criteria that are enumerated in this Constitution text.

Among the most important characteristics of the principle of equality before the law, highlighted in the jurisprudence of the Constitutional Court, is the obligation that it imposes to the Legislature to treat citizens equally within the framework of legislation. The Legislature in a state committed to the rule of law is bound to apply the same solution to similar cases and a solution that varies from case to case. This is the only way in which equality before the law and justice in society can be guaranteed. Cases are seen as similar if the differences between them, if at all, are not essential. Essential differences, if any, make it binding on the Legislature to intervene and differentiate the legal texts that ensure equality in protection and support. To provide one and the same treatment to a heterogeneous group of cases would be tantamount to similar treatment of dissimilar cases in defiance of the principle of equality before the law and would lead to injustices.

In its jurisprudence, the Court also underlined that the principle of equality stands for equality before the law. That the law provides for differentiation with regard to one and the same right or obligation is not tantamount to a violation of the Constitution principle. Differentiation is based on a certain criterion which is met by all entities in the respective group. That differentiation accounts for the strict and fair enforcement of equality to a greater extent and codifies it. The recognition of objective and subjective differences that call for singular legal arrangements if equality before the law is to be achieved needs differentiation. The issue of the choice of criterion in the differentiation of the groups of players is an issue of social, economic and political appropriateness and the criterion must be codified or deduced from the relevant legal arrangements.

- *Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?*

In the light of the concept of conforming interpretation, the Constitutional Court has interpreted and applied the prohibition of discrimination in conformity to the international standards.

**II.VI Right to liberty**

- *What is the original wording of the provision protecting this right in your national catalogue?*

Preamble:
…"Declaring our allegiance to the universal human values of liberty, peace, humanism, equality, justice and tolerance…"
"Article 30. (1) Everyone shall have the right to personal liberty and inviolability.
(2) No one may be detained, inspected, searched or subjected to any other interference with the personal inviolability thereof except under terms and according to a procedure established by a law.
(3) In cases of urgency expressly specified by the law, the competent state bodies may detain a citizen and shall immediately notify the judicial authorities of any such detention. The [competent] judicial authority shall pronounce on the legal conformity of any such detention within 24 hours thereafter.
(4) Everyone shall have the right to legal counsel as from the moment they are detained or constituted as an accused party.
(5) Everyone shall have the right to meet their defence counsel in private. The confidentiality of such communications shall be inviolable."

- *Is it possible to restrict the right? If so, how and under what conditions?*

The right to liberty is not listed in Article 57, para 3 among the fundamental rights which could never be restricted. The conditions under which the right to liberty can be restricted are specified in Article 30, para 2 and para 3, along with specially designated means for protection against arbituary restriction- control by the judiciary (Art. 30, para 3), guaranteed access to legal counsel (Art. 30, para 4) and confidentiality of the communication with the legal counsel. The general proportionality principle applies too.

- *Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogue of human rights applied.*

In Decision No. 11 from 2016 on c.c. No. 7/2016 the Court discussed art. 37 from the Act on the fight against the criminal deeds of minors and under aged persons, which allowed temporary detainment of up to 15 days with a permission of a prosecutor for detainment of more than 24 hours. The act did not provide for judicial review. In the Bulgarian system prosecutors are members of the judiciary, along with judges. However the Court found that the act of approval by a prosecutor was an administrative act and as such it could be challenged under Article 120 of the Constitution even if that wasn't stated explicitly in the challenged act.
In Decision No. 11 from 2016 on c.c. No. 7/2016 the Court considered the interpretation of the right to liberty in more detail. It found that:
"Every human being by its nature needs personal space, in which it could make its own decisions and take actions upon those decisions, taking into account of course the necessary for the public peace balance with the personal space of the other individuals."
The Court discussed the primary importance of the right to liberty as a value clearly stated in the Preamble of the Constitution and expressly protected by virtue of Art. 30 of the Constitution basic right:
"The general conditions for restricting every fundamental right are valid and namely- for it to be provided in a law, for the restriction to be aimed at guaranteeing significant constitutionally guaranteed values (i.e. to be justified by a legitimate goal, to be proportionate

to the danger for the object of protection and last but not least- for there to be guaranteed access to effective judicial review.

In Decision No. 3 from 2011 on c.c. 19/2010 the Court found art. 7 of Decree No. 904 on the fight with the minor hooliganism unconstitutional, because it allowed detention at the regional police stations without access to a court of second instance. The Constitutional court took into account the case law of the European Court of Human Rights and found that the temporary detainment amounted to punishment and as such should be governed by the general criminal procedural principles of providing access to at least two court instances.

In Decision No. 10 from 2011 on c.c. 6/2011 the Court found that the provision of the Criminal Procedural Code which allowed compulsory bringing to the criminal court of a witness or experts who without any excusable reasons did not come to hearing when duly subpoenaed for it was not in violation of Article 30 of the Constitution.

In Decision No. 2 from 2008 on c.c. 1/2008 the Court found a provision of the Act on the Military Forces of Republic of Bulgaria unconstitutional, because it was in violation habeas corpus for the sergeants and officers of the Bulgarian army. The Court found that the right to liberty had absolutely the same volume for the members of the military as the one for the ordinary citizens.

- *Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?*

No, not in the case law of the Constitutional Court.