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National Human Rights Systems: Bulgaria

ABSTRACT: *The new democratic Constitution of the Republic of Bulgaria, adopted in 1991, established a framework for integrating fundamental rights into national law and aligning them with international standards. The constitutional provisions regarding human rights and liberties do not follow a strict hierarchical order; instead, they are generally regarded as holding equal weight, regardless of their placement or the irrevocability clause. However, the limited indirect access of Bulgarian citizens to the Constitutional Court has primarily positioned it as a guardian of the constitutional framework with a limited role in protecting human rights.*

Since the 1990s, Bulgaria's judicial system has incorporated not only judges but also prosecutors and investigating magistrates, reflecting a shared responsibility for protecting rights. Over the years, it has become evident that the courts play a crucial role in safeguarding fundamental rights. In 2006, a constitutional amendment established the position of Ombudsperson to protect citizens' rights and freedoms and to serve as the National Prevention Mechanism. In the early 21st century, the parliament also created several National Human Rights Institutions (NHRIs) through legislation, including the Commission for Protection against Discrimination, the Commission for Protection of Personal Data and the State Agency for Child Protection. In subsequent years, the government formed various advisory and monitoring bodies. However, Bulgaria's NHRIs lack a unified framework and do not fully adhere to the six pillars outlined in the Paris Principles of 1993 – independence, pluralism, cooperation, accessibility, funding, and broad mandate.

The tension between national and supranational interpretations of human rights underscores the need for further reforms and a commitment to consistently upholding these rights. The success of Bulgaria's human rights protection will depend on ongoing engagement with both national and international frameworks to promote justice and equality.

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1. Introduction: Key Concepts of Human Rights in Bulgarian Law

Since the 1950s, Bulgarian legal doctrine has predominantly used the term 'fundamental rights' within a domestic context,[1] while 'human rights' has been employed in ideological[2] and international[3] contexts from the late 1970s onwards. This distinction remains relevant today,[4] largely due to the consistent inclusion of the title 'Fundamental Rights and Obligations of the Citizen' in the respective chapters of the socialist constitutions of the People's Republic of Bulgaria (1947 and 1971) and the democratic Constitution of the Republic of Bulgaria of 1991. The term 'constitutional rights' is often used in case law in reference to specific provisions of the current Bulgarian Constitution, yet it is not clearly linked to or distinguished from the concept of human rights.

In the 1990s, Neno Nenovski, a professor of legal theory and a constitutional judge from 1991 to 1994, began to explore the theoretical aspects of the concept of human rights[5] within the new democratic constitutional framework. He emphasised the 'rights of the individual'[6] and advocated for their protection by the Constitutional Court (Конституционен съд).[7] Subsequently, some constitutional theorists continued to examine the interconnection between the international and constitutional dimensions of human rights,[8] leading to the emergence of the term 'fundamental human rights'[9] in the early 21st century.

Following Bulgaria's accession to the European Union in 2007, the concept of 'fundamental rights' began to gain prominence at the intersection of international and national contexts, particularly in relation to the application of the Charter of Fundamental Rights of the European Union. As a result, the terms 'human

1 Чобанов [Chobanov], 1948; Янев, Цонев[Yanev and Tsonev], 1952; Вълканов [Vylkanov], 1990.
2 Кожаров [Kozharov], 1977; Захаров [Zaharov] et al., 1979; Цеков [Tsekov], 1982; Михайлова [Mihaylova], 1987.
3 Векилов [Vekilov] et al., 1982.
4 Contemporary studies in international public law in Bulgaria primarily employ the term 'human rights' – see Белова-Ганева [Belova-Ganeva], 2013; Йочева [Yocheva], 2020. Research in constitutional law and national protection tends to favor the notion of 'fundamental rights' – see Златарева [Zlatareva], 2007; Янкулова [Yankulova], 2020.
5 Неновски [Nenovski], 1994.
6 Неновски [Nenovski], 1995.
7 Неновски [Nenovski], 2000.
8 Друмева, Каменова, [Drumeva, Kamenova], 2000.
9 Танчев, [Tanchev], 2002.

rights' and 'fundamental rights' have increasingly been used synonymously and interchangeably in both doctrine[10] and jurisprudence.

At the same time, legal scholars in Bulgaria began to explore the relationship between the two concepts, asserting that they were drawing on Robert Alexy's discursive theory[11] and the notion that the material substance of fundamental rights encompasses criteria beyond the mere constitutional mention and protection of those rights.[12] It is not entirely clear how, from this starting point, Boyka Cherneva developed her central thesis, which asserts that 'the ontological essence of human rights lies in their existence as fundamental subjective rights.'[13] She further posits that 'through legal institutionalisation, natural rights are transformed into fundamental rights.'[14] Cherneva distinguishes between the two terms, noting that 'human rights' are 'used in an absolute sense' and apply to all individuals regardless of specific context, while 'fundamental rights' are described as 'open and supple,' encompassing not only the concept of human nature but also the principles of equality under the law and the rule of law.[15] However, such an approach overlooks decades of jurisprudence and case law from the European Court of Human Rights, which connect human rights to specific contexts and tie effective remedies for their protection to the principle of the rule of law.

This tendency within Bulgarian doctrine to reduce human rights to a purely theoretical concept, coupled with the endorsement of the term 'fundamental subjective rights' as a distinct legal category, represents a shift that undermines the importance of the supranational dimension of human rights. This conceptual framework has contributed to the perception that supranational and international protection of human rights is separate from national protection mechanisms, which rely on the procedural institutionalisation of certain subjective rights within Bulgarian legislation. Consequently, some judges have come to believe that rights under the European Convention on Human Rights – such as the right to personal and family life under Article 8 – do not automatically confer rights upon individuals or impose corresponding obligations on the state without relevant national legislation.[16]

10 Чернева [Cherneva] et al., 2023.
11 Alexy, 1996, 2006.
12 Чернева [Cherneva] 2016, p. 82.
13 Ibid., p. 86.
14 Ibid. This is a reformulation of Alexy's original thesis: 'Human rights are institutionalised by means of their transformation into positive law. If this takes place at a level in the hierarchy of the legal system that can be called 'constitutional,' human rights become fundamental rights' (Alexy, 2006, p. 22.). Cherneva has oversimplified the relationship between human rights and positive law and has failed to capture the nuanced distinction that Robert Alexy made regarding the constitutional elevation of human rights to fundamental rights.
15 Чернева [Cherneva], 2016, p. 86.
16 See: Interpretative Decision No. 2/2023 by the General Assembly of the Civil College of the Supreme Cassation Court.

2. The Bulgarian Constitution's Approach to Human Rights

■ *2.1. Constitutional Framework for Human Rights in a Dedicated Chapter*

The 1991 Constitution, enacted in the aftermath of the collapse of the communist regime, outlines the 'Fundamental Rights and Obligations of Citizens' in Chapter Two, positioned immediately after the basic provisions, which also contain certain human rights. Similar catalogues were enshrined in the earlier constitutions of 1947 and 1971; however, those provisions were ultimately hollow and devoid of genuine content under totalitarian rule.[17] The democratic Constitution of 1991 sought to transform this approach by granting its provisions immediate effect[18], allowing individuals to directly invoke them to safeguard their fundamental rights in any administrative or judicial proceedings.

■ *2.2. Incorporating International Human Rights Standards into the Domestic Legal Hierarchy: Positioned Below the Constitution and Above Parliamentary Legislation*

Another paradigm shift was introduced in Article 5, paragraph 4, by incorporating all ratified, promulgated, and enforced international instruments as part of domestic law, giving them precedence over parliamentary legislation. The 1991 Constitution also emphasises the significance of international human rights treaties by granting the Constitutional Court the authority to assess whether national laws conform to 'universally accepted international norms and treaties to which Bulgaria is a Party'.[19]

Integrating self-executing international standards into Bulgaria's domestic legal framework marked a radical change in the country's approach to human rights. In the 1980s, Bulgarian legal doctrine maintained that international norms did not confer direct rights on individuals, asserting that 'the specific content and implementation of individual rights and freedoms' fell 'within the exclusive domestic competence of states.'[20] Consequently, international and domestic law were viewed as two independent legal orders without primacy for either system,[21] leading to ambiguities in the application of international law, particularly regarding human rights. Under the 1971 Constitution, the People's Republic of Bulgaria applied the concept of 'abiding' by international treaties,[22] ensuring the application

17 Dolapchiev, 1953.
18 Art. 5 para. 2 of the Constitution.
19 Ibid., Art. 148 para. 1 point 4.
20 Векилов [Vekilov] et al., 1982, p. 266.
21 Радойнов [Radoynov], 1971, p. 72.
22 Decree No. 1496 on the participation of the People's Republic of Bulgaria in international treaties (Prom. SG 62 of 12.08.1975) was repealed in November 2001 by International Treaties of the Republic of Bulgaria Act (Prom. SG 97 of 13.11.2001).

of international norms through explicit statutory referral.[23] In contrast, the 1991 Constitution integrated the standards of international treaties into the domestic normative hierarchy, prioritising them over parliamentary laws and thereby laying the groundwork for national mechanisms for human rights protection on an entirely different foundation.

■ *2.3. Vertical and Horizontal Protection of Human Rights*

Bulgarian constitutional theory firmly establishes that human rights are essential and intricately woven throughout the entire text of the 1991 Constitution of the Republic of Bulgaria, reflecting a comprehensive commitment to individual liberties and dignity.[24] The Constitution encompasses both vertical protection, which safeguards individuals from state infringement, and horizontal protection, which ensures respect for rights in private relationships.[25] This dual approach aims to nurture a human rights culture within society, encouraging not only legal safeguards but also a collective responsibility among citizens to uphold the rights of others.

The Constitution primarily provides vertical protection by placing explicit obligations on the state to respect, safeguard, and guarantee life, dignity, and individual rights.[26] Parliament is tasked with electing an ombudsperson who advocates for the rights and freedoms of citizens.[27] The judiciary is responsible for safeguarding the rights and legitimate interests of all citizens.[28] The Constitutional Court has the authority to declare unconstitutional any laws that violate fundamental rights and freedoms, upon referrals not only from traditional entities[29] but also from the ombudsperson and the Supreme Bar Council.[30]

The Bulgarian Constitution extends the protection of fundamental rights to relationships between private individuals, thereby incorporating horizontal effects and promoting a culture of respect for human rights beyond the state's obligations. For example, Article 58, paragraph 1 mandates that citizens must respect the rights and legitimate interests of others. Fundamental rights are considered irrevocable[31] and must not be abused or exercised to the detriment

23 Тодоров [Todorov], 2000, p. 316.
24 Танчев [Tanchev], 2002, p. 36.
25 Цонева [Tsoneva], 2019, p. 159.
26 Art. 4 para. 2 of the Constitution.
27 Ibid., Art. 91a para. 1.
28 Ibid., Art. 117 para. 1.
29 Art. 150 para. 1 of the Constitution outlines the entities authorised to initiate proceedings before the Constitutional Court. Specifically, it states that the Constitutional Court may act upon a request from at least one-fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, or the Chief Prosecutor.
30 Art. 150 paras. 4–5 of the Constitution.
31 Ibid., Art. 57 para. 1.

of the rights or legitimate interests of others[32]. Moreover, certain constitutional provisions explicitly incorporate the horizontal dimension of human rights protection. For instance, the exercise of the right to express opinions (Article 39) and the right to seek, receive, and disseminate information (Article 41) is restricted in the Bulgarian Constitution, as these rights cannot be used to harm the rights or reputation of others.

■ *2.4. Groups that Enjoy 'Special Protection' under the Bulgarian Constitution*

The 1991 Constitution provides specific human rights protections for certain vulnerable groups, including children, mothers, persons with disabilities, and older adults.

In its foundational provisions, the Constitution places the family, motherhood, and children under the protection of the state and society (Article 14). It recognises that raising and nurturing children is both a right and a responsibility of parents, with the state offering assistance[33]. Abandoned children are entitled to protection from the state and society[34], and the Constitution ensures that children born out of wedlock enjoy the same rights as those born within marriage. Mothers receive special protections, including guaranteed prenatal and postnatal leave, free obstetric care, improved working conditions, and various forms of social assistance.[35]

Article 51, paragraph 3 extends special protection to older adults without relatives who cannot support themselves, as well as to persons with physical and mental disabilities. The state is also mandated to create conditions that enable individuals with disabilities to exercise their right to work[36].

Furthermore, the Constitution ensures enhanced protection for Bulgarian citizens by birth,[37] stating that they cannot be deprived of their Bulgarian citizenship under any circumstances[38]. All Bulgarian citizens abroad are entitled to the protection of the Republic of Bulgaria[39], and the Constitution affirms that all citizens, regardless of their location, possess the same rights and obligations[40].

32 Ibid., Art. 57 para. 2.
33 Ibid., Art. 47 para. 1.
34 Ibid., Art. 47 para. 4.
35 Ibid., Art. 47 para. 2.
36 Ibid., Art. 48 para. 2.
37 According to Art. 25 para. 1 of the Constitution, Bulgarian citizenship by birth is granted to anyone with at least one parent holding Bulgarian citizenship, or to anyone born on the territory of the Republic of Bulgaria, provided they are not entitled to any other citizenship by virtue of their origin. Alternatively, Bulgarian citizenship may also be acquired through naturalisation, as established by law.
38 Art. 25 para. 3 of the Constitution.
39 Ibid., Art. 25 para. 5
40 Ibid., Art. 26 para. 1.

■ *2.5. Guiding Principles of the Status of the Individual*

The guiding principles of the status of the individual in the Bulgarian Constitution are primarily anchored in the protection of 'the rights, dignity, and security of the individual', which the Preamble identifies as its 'highest principle.'

The Constitutional Court has consistently emphasised the importance of these values when assessing the constitutionality of laws or interpreting constitutional provisions.[41] The principle of human dignity and individual rights guides the Court in evaluating the compliance of amendments and additions to the Constitution with its foundational principles and the balance of constitutional values:

> It is no coincidence that the preamble of the Constitution declares our allegiance to the common human values of freedom, peace, humanism, equality, justice, and tolerance, while elevating the principle of the rights of the individual – his dignity and security – to the rank of supreme principle. The primary criterion for assessing any and all amendments to the Constitution is whether they, individually and collectively, facilitate or impede respect for individual rights. The constitutionality of any change is not determined by how 'cosmetic' or 'radical' it may be, as that would be a judgement of form rather than substance. For a substantive assessment of any and all amendments to the Constitution, the overriding consideration is their direction – whether they strengthen or undermine the rule of law, the separation of powers and their balances and interaction in a republic with parliamentary government, and the independence of the courts and other bodies in the judiciary; respectively, whether they promote or hinder access to an independent and impartial tribunal and an independent, impartial, and effective investigation.[42]

The Bulgarian Constitution also connects the principle of the rule of law[43] with the state's commitment to 'guarantee the life, dignity, and rights of the individual' and to foster conditions that promote the free development of individuals and civil society.[44]

Another key principle regarding the status of the individual under the 1991 Constitution is expressed in Article 6, which asserts that 'all individuals are

41 For instance, Decision No. 6, issued on 18 November 2005 by the Constitutional Court of the Republic of Bulgaria in Case No. 7/2004; Decision No. 10, issued on 29 May 2018 by the Constitutional Court of the Republic of Bulgaria in Case No. 4/2017, among others. All decisions and cases of the Constitutional Court are available in Bulgarian at the following database: https://www.constcourt.bg/bg/search (Accessed: 18 May 2025).

42 Decision No. 13, issued on 27 July 2024 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2024.

43 Art. 4 para. 1 of the Constitution.

44 Art. 4 para. 2. This connection is discussed in the jurisprudence of the Constitutional Court. See Decision No. 3, issued on 17 May 1994 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/1994; Decision No. 7, issued on 4 June 1996 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/1996; Decision No. 20, issued on 14 July 1998 by the Constitutional Court of the Republic of Bulgaria in Case No. 16/1998, among other.

born free and equal in dignity and rights' (paragraph 1) and that 'all citizens shall be equal before the law' (paragraph 2). The tenet of equality before the law also applies to all foreigners residing in Bulgaria, as the Constitution grants them all rights and obligations derived from it, except for those specifically requiring Bulgarian citizenship[45].

The axiological foundations of these guiding principles – human dignity, individual rights and freedoms, the rule of law, and equality before the law – are deeply rooted in and influenced by Bulgaria's experiences with totalitarianism from 1944 to 1989. The constitution-makers of 1990-1991 sought to embed the values of democracy, the rule of law, and human rights into the very foundations of the 1991 Constitution.

At the beginning of Chapter Two, the framers differentiate between the rights and duties of Bulgarian citizens and those of foreigners residing in Bulgaria. The first paragraph of Article 26 establishes that all citizens of Bulgaria, regardless of their location, possess all rights and duties conferred by the Constitution. The second paragraph extends these constitutional rights and duties to foreigners residing in the Republic of Bulgaria, 'except those rights and duties for which Bulgarian citizenship is required by this Constitution or by another law.' The reference to 'another law' suggests that specific legal statutes may further clarify the rights and obligations of foreigners. This allows for a more nuanced approach to foreign residency, where additional rights may be granted or specific duties imposed based on legal status.

Thus, Article 26 strikes a balance between inclusivity for foreigners and the exclusivity of certain rights for citizens. It acknowledges the contributions of foreign residents while maintaining the primacy of citizenship in the exercise of specific, mainly political, rights. In summary, Article 26 of the Bulgarian Constitution serves as a foundational provision that delineates the rights and duties of both citizens and foreigners, reflecting principles of universality, inclusivity, and the significance of citizenship within Bulgaria's legal framework.

■ *2.6. The Catalogue of Fundamental Rights in the Bulgarian Constitution*

2.6.1. Individual Rights and Liberties in the Basic Provisions of the Constitution

The constitution-makers strategically placed certain individual rights and liberties in the first chapter, titled 'Basic Provisions,' rather than in the dedicated second chapter of the Constitution. This choice highlights their importance within the political, social, and economic systems of Bulgaria's emerging democratic constitutional framework, which began to take shape in the last decade of the twentieth century.

45 For instance, active electoral rights (Art. 42 para. 1); Art. 26 para. 2.

Following the establishment of republican government and parliamentarism, the 1991 Constitution enshrines the political right to universal, equal, and direct suffrage through secret ballot (Article 10). This provision is crucial for facilitating free and fair elections and for ensuring political pluralism[46] – cornerstones of democracy.

Article 12 of the Constitution establishes the civil right to free association, vital for fostering a robust civil society. It empowers citizens to unite in addressing common concerns, promoting a sense of community and collective action. Organisations formed under this right can serve as a counterbalance to government power, holding authorities accountable and ensuring adherence to the law and democratic principles.

The foundational provisions also affirm respect for private property rights, closely linked to individual freedom and autonomy, particularly in the context of establishing a market economy after the fall of the communist regime. Article 17, paragraph 1 explicitly declares private property inviolable, incentivising individuals to make resource choices, invest, innovate, and engage in economic activities essential for wealth creation and economic growth.

The inclusion of universal suffrage, free association, and private property in the first chapter of the 1991 Constitution reflects a core commitment to democratic governance and a free economy. These interconnected rights are crucial for the stability and success of Bulgaria's transition from a totalitarian regime to a democratic society.

2.6.2. No Hierarchical Order, but Classification of Fundamental Rights Based on the Constitutional Clause for Revocability

The constitutional provisions concerning human rights and freedoms in Bulgaria do not follow a strict hierarchical order; instead, they are generally regarded as holding equal weight. The Constitutional Court underscores the importance of equal respect for fundamental rights as a key factor in their balancing.[47]

In cases assessing the compliance of parliamentary laws with the Constitution, the Court has examined certain legislative approaches that could be interpreted as steps towards establishing a hierarchical order of fundamental rights.[48] In this context, the Court has emphasised that such a hierarchy contradicts international treaties and the national constitutions of modern democratic legal

46 Art. 11 of the Constitution explicitly establishes the principle of political pluralism in paragraph 1 and defines the role of political parties in the formation and expression of citizens' political will in para. 3.

47 Decision No. 8, issued on 15 November 2019 by the Constitutional Court of the Republic of Bulgaria in Case No. 4/2019.

48 Ibid. 'Essentially, such an approach by the legislator is a step towards creating a hierarchical order of fundamental rights, in which freedom of expression may end up being considered less important than dignity, reputation, or the protection of public order and morals.'

states, which affirm the equivalence of rights and do not permit the permanence of restrictive measures, as this would effectively amount to their rejection.

Nonetheless, certain rights may be viewed as particularly significant due to their foundational nature and irrevocability. The 1991 Constitution outlines the nature and limitations of citizens' fundamental rights, encapsulating three key principles: irrevocability, prohibition against abuse, and conditions for limitation.

To begin with, Article 57 paragraph 1 clearly states that fundamental rights are irrevocable, stressing that these rights are inherent to individuals and cannot be revoked or invalidated by the state or any other entity.

Second, paragraph 2 of Article 57 prohibits the abuse of rights, asserting that they must not be exercised in ways that harm the rights or legitimate interests of others. This provision establishes a crucial balance in the exercise of fundamental rights, helping to prevent conflicts and maintain social order. Therefore, lawmakers must recognise that this balancing approach is integral to the Constitution and must comply with the limitations on fundamental rights outlined in Article 57 paragraph 2.[49]

Lastly, paragraph 3 of Article 57 allows for the temporary curtailment of individual civil rights during times of war, martial law, or a state of emergency. However, it specifically protects certain rights from such limitations, including the right to life (Article 28); the prohibition of torture and cruel, inhuman, or degrading treatment (Article 29); the right to be brought before a court within the legally established timeframe for anyone charged with a crime[50]; the right not to be compelled to confess guilt or to be convicted solely based on a confession[51]; the presumption of innocence until proven guilty[52]; the right to individual protection against unlawful interference in private or family affairs and encroachments on honor, dignity, and reputation[53]; and freedom of thought, conscience, and religion (Article 37). The Constitutional Court categorises these fundamental rights as 'absolute rights,' indicating that they may never be restricted.[54] This classification constitutes the first group of rights in its jurisprudential framework.

The second group comprises rights that may be temporarily restricted by law during times of war, martial law, or a state of emergency. According to the Constitutional Court, these include, among others, the right to legal counsel and confidential communication[55]; the right of Bulgarian citizens to return to the

49 Ibid.
50 Art. 31 para. 1.
51 Art. 31 para. 2.
52 Art. 31 para. 3.
53 Art. 32 para. 1.
54 Decision No. 10, issued on 29 May 2018 by the Constitutional Court of the Republic of Bulgaria in Case No. 4/2017.
55 Art. 30 paras. 4–5.

country[56]; the right of citizens whose mother tongue is not Bulgarian to study and use their language alongside the compulsory study of Bulgarian[57]; the right to express opinions[58]; the right to a free press and media not subjected to censorship (Article 40, paragraph 1); and the right to seek, obtain, and disseminate information from public bodies (Article 41). The Court emphasises that this list is exemplary and not exhaustive.

The third group consists of fundamental rights that may be restricted not only during times of war, martial law, and states of emergency but also for other specified reasons, following particular conditions and procedures established in either the Constitution or parliamentary law. These restrictions align with the balancing principle, which allows for the limitation of human rights when they infringe upon the rights or legitimate interests of others[59]. Consequently, this group is further categorized by the Constitutional Court into two subgroups, based on whether the specific grounds for restriction are explicitly outlined in the Constitution[60] or in parliamentary law.[61]

2.6.3. The Right of Access to Justice in the Bulgarian Constitutional Framework

The 1991 Constitution of the Republic of Bulgaria does not explicitly include a provision for the right of access to justice. However, the fundamental importance of this right has been repeatedly emphasised in the jurisprudence of the Constitutional Court, which recognises it as a key criterion upholding the principle of the rule of law:

Judicial review for legality, as an essential element of the rule of law and the principle of separation of powers, necessarily implies that access to justice must always be open [...] Consequently, access to court, both as a possibility and a

56 Art. 35 para. 2.
57 Art. 36 para. 2.
58 Art. 39 para. 1.
59 Art. 57 para. 2.
60 For example, Art. 34 para. 2 of the Constitution permits exceptions to the freedom and confidentiality of correspondence only with judicial authorisation, and solely for the purpose of preventing or investigating serious crimes. Art. 40 para. 2 provides that injunctions or confiscations of press materials may be imposed only by judicial act in cases of public decency or incitement to violence. Moreover, any such injunction must be followed by confiscation within 24 hours in order to remain in effect.
61 For example, Art. 25 para. 6 of the Constitution stipulates that the conditions and procedures for acquiring or losing Bulgarian citizenship shall be established by law. The Constitution also refers to parliamentary laws concerning the expulsion or extradition of foreigners against their will (Art. 27 para. 1) and the conditions and procedures for granting asylum (Art. 27 para. 2). Additionally, Art. 30 para. 2 states that no one may be detained or subjected to inspection, search, or any other infringement of personal inviolability except under conditions and in a manner established by law.

necessity, is vital for the normal functioning of the rule of law and the separation of powers.[62]

The Court explains that the fairness of judicial procedures encompasses multiple dimensions, one of which is access to court. This access is influenced by various factors, including the geographical proximity of the court to the individual seeking judicial protection and efforts to minimise obstacles to court proceedings.[63] If justice is to protect and guarantee human rights, it must create conditions that ensure the highest possible level of realisation for these rights.[64] Furthermore, the right of access to court 'does not have an abstract content' and is not granted 'abstractly and without address.'[65] It is specifically available only to those individuals whose legally recognised interests are affected.[66]

Constitutional jurisprudence also emphasises that the right to defense and access to court should be understood as 'the opportunity for meaningful, real, and effective participation in the process, including the possibility of appealing judicial acts rendered in one or more subsequent instances.'[67]

The Constitutional Court rarely employs the concept of the right to an effective remedy, primarily in discussions related to the case law of the European Court of Human Rights. A notable exception occurred during the recent review of the constitutionality of amendments to the Electoral Code and their alignment with the principle of the rule of law. In this context, the Court connected the application of this principle to the provision of effective legal remedies:

The legislator has established a legal framework that meets contemporary constitutional standards for conducting fair, transparent, and lawful elections, along with legal guarantees for their implementation in accordance with the principles of universal, equal, and direct suffrage with secret voting. This framework

62 Decision No.1, issued on 1 March 2012, by the Constitutional Court of the Republic of Bulgaria in Case No. 10/2011.

63 Decision No.5, issued on 19 April 2019, by the Constitutional Court of the Republic of Bulgaria in Case No. 12/2018.

64 Decision No.11, issued on 4 October 2016 by the Constitutional Court of the Republic of Bulgaria in Case No. 7/2016: 'This understanding aligns with the fundamental views of the Constitutional Court, which, in developing its practice, has also concluded that the constitutional right to defense can be fully realised only if the path to the court is not closed, as only a competitive, public judicial process with equality between the parties, in the sense of Article 121 of the Constitution can ensure the revelation of the truth and the accurate application of the law.'

65 Decision No.6, issued on 14 June 2016, by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2016.

66 Decision No.13, issued on 13 October 2012, by the Constitutional Court of the Republic of Bulgaria in Case No. 6/2012.

67 See: Dissenting Opinion of Constitutional Judge Tanya Raykovska regarding Decision No.6, issued on 14 June 2016, by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2016.

aims to mitigate the risks of electoral manipulation and ensures effective legal remedies before an independent and impartial body.[68]

■ *2.7. Proportionality Test in the Bulgarian Constitutional Jurisprudence*

In its review of the constitutionality of restrictions on fundamental rights, the Constitutional Court adopts different approaches depending on whether the restrictions concern civil and political rights or social and economic rights.

In its jurisprudence, the Court explains that civil rights are characterised as 'defensive' and 'negative,' serving to protect individuals from the intrusion of public authority. In contrast, social rights are deemed 'positive' and rooted in 'solidarity,' requiring the state to take proactive measures to establish the conditions necessary for their realisation.[69] For social rights, the legislator has the discretion to amend regulations – including the repeal of existing legal texts – after evaluating the needs of those in need and the capabilities of society.[70] Social rights are based on concepts such as 'suitable working conditions,' 'protection of human health,' and 'accessible medical care,' which do not provide information on the extent to which they have been violated or realised, and consequently, how they should be protected.[71]

The Constitutional Court further emphasises that a defining characteristic of social rights enshrined in the Constitution is that 'they are not universal and do not apply to all citizens.'[72] Instead, these rights are tailored to certain groups, such as mothers, children without caregivers, older adults, and those in need of healthcare. Moreover, a notable aspect of constitutional social rights is their lack of direct judicial protection, which distinguishes them from the 'classic type' of rights.[73] This distinction supports the notion that the principle of proportionality is applied differently to 'classical' and 'social' rights, focusing on the reasonableness of restrictions and granting the legislator broader discretion.[74]

Although the division of fundamental rights implies a varying scope of assessment for the legislator by the Constitutional Court, there has yet to be a specific analysis on this matter, nor has a clear test for the applicability of limitations been established for the different generations of rights. Recently, this issue

68 Decision No.9, issued on 2 July 2021, by the Constitutional Court of the Republic of Bulgaria in Case No. 9/2021.

69 Decision No. 2, issued on 4 April 2006, by the Constitutional Court of the Republic of Bulgaria in Case No. 9/2005.

70 Decision No. 13, issued on 15 July 2003, by the Constitutional Court of the Republic of Bulgaria in Case No. 11/2003.

71 See: the Dissenting Opinion of the Constitutional Judge Blagovest Punev regarding Decision No. 5, issued on 10 July 2008, by the Constitutional Court of the Republic of Bulgaria in Case No. 2/2008.

72 Decision No. 2 issued on 22 February 2007, by the Constitutional Court of the Republic of Bulgaria in Case No. 12/2006.

73 Ibid.

74 Димитрова [Dimitrova], 2024, p. 184.

has been addressed for the first time in Bulgarian legal doctrine by Maria Dimitrova, who examines and compares the theoretical models developed by Robert Alexy and Aaron Barak.[75] She concludes that the proportionality test in any case encompasses a judicial analysis based on four rules: the legitimacy of the aim, the appropriateness and necessity of the measures for achieving that aim, and a balancing test that weighs the benefits of achieving the legitimate aim against the harms inflicted on the rights being restricted.[76] Dimitrova asserts that all these rules apply only to the first generation of civil rights.[77] In contrast, for subsequent generations of social, economic, and cultural rights, a broader discretion should be granted to the legislator, and the state's intervention should be assessed with a more expansive understanding of its reasonableness. Consequently, regarding these rights, courts tend to apply the principle of reasonableness when evaluating legislative limitations, resulting in a more reserved approach.

■ *2.8. Constitutional Duties of Citizens*

The provisions located at the end of Chapter Two of the 1991 Constitution establish a comprehensive framework outlining the duties of citizens that balances individual rights with responsibilities, promoting a sense of community and national identity. These provisions reflect a commitment to civic responsibility, legal equality, and the collective welfare of society.

Article 58 sets forth the general duties of citizens to adhere to the Constitution and the laws of Bulgaria while respecting the rights and legitimate interests of others. This provision promotes a culture of mutual respect and social responsibility, reinforcing the idea that citizenship comes with certain obligations. Moreover, these constitutional duties take precedence over personal beliefs, ensuring that all citizens are held to the same legal standards regardless of their personal convictions.

In terms of national security, the Constitution recognises the importance of citizen participation in safeguarding the state. By designating national defense as 'a duty and a matter of honor for every Bulgarian national,' it emphasises the collective responsibility of citizens to protect their country. The provisions regarding high treason and betrayal highlight the gravity of this duty, reflecting a broader understanding of citizenship that encompasses not just rights but also active involvement in national defense.

The framework of fiscal responsibility is articulated in Article 60, which mandates that citizens pay taxes and duties established by law, proportionate to their income and property. This provision underscores the principle of fairness in taxation, ensuring that all citizens contribute to the funding of public services and

75 Alexy, 2002; Barak, 2012.
76 Димитрова [Dimitrova], 2024, pp. 75–76.
77 Dimitrova, 2024, p. 185.

the overall functioning of the state. Moreover, the requirement for any tax concessions or surtaxes to have a legal basis ensures transparency and accountability in fiscal matters, reinforcing the rule of law.

Finally, Article 61 addresses the duty of citizens to assist the state and society during natural disasters or emergencies. This provision reflects a sense of collective responsibility and solidarity within the community, emphasising the role citizens play in supporting each other and the state during crises. It highlights the expectation that citizens will contribute to the common good, particularly in times of need.

■ *2.9. The Constitutional Framework of Fundamental Rights in the Face of Modern Challenges*

In Bulgaria, it is widely recognised that the provisions in the second chapter of the Constitution, titled 'Fundamental Rights and Duties of Citizens,' closely align with the European Convention on Human Rights.[78]

However, it was not the provisions of the 1991 Constitution that significantly advanced human rights protection and propelled the Bulgarian legal system forward; rather, it was the influence of the European Court of Human Rights, known for its broad scope and progressive jurisprudence.[79] Tension has begun to emerge between the case law of the Strasbourg Court and that of Bulgarian judges, many of whom have resisted the supranational court's interpretations regarding the fundamental rights of individuals with mental disabilities,[80] those with homosexual orientations,[81] transgender individuals,[82] and the right of association for the Macedonian minority,[83] among others.

In recent years, this tension has become increasingly evident in the jurisprudence of the Constitutional Court, which ruled in 2018 that the Istanbul Convention was unconstitutional, citing the terms 'gender' and 'gender identity' as ambiguous and unacceptable.[84] In its decision, the Court departed from its prior practice of cautiously interpreting fundamental rights by strictly adhering to the

78 Марчева [Marcheva], 2024, p. 108.
79 Keller and Stone, 2008, p. 3; Christoffersen and Madsen, 2011.
80 See: *Stanev v. Bulgaria*, No. 36760/06, ECtHR [GC], Judgment of 17 January 2012 among others.
81 See: *Koilova and Babulkova v. Bulgaria*, no. 40209/20, ECtHR, Judgment of 5 September 2023 among others.
82 See: *P.H. v. Bulgaria*, no. 46509/20, ECtHR, Judgment of 27 September 2022 among others.
83 See: *United Macedonian Organisation Ilinden and others v. Bulgaria*, no. 59491/00, ECtHR, Judgment of 19 January 2006 among others.
84 Decision No. 13, issued on 27 July 2018 by the Constitutional Court of the Republic of Bulgaria in Case No. 3/2018.

text of the Constitution,[85] instead adopting an ideologically driven activist stance in defense of 'traditional values.'[86] Three years later, this anti-gender doctrine was reiterated in an interpretative decision, which asserted that the term 'sex' in the anti-discrimination clause of the Constitution[87] was 'to be understood solely in its biological meaning.'[88] Notably, the terms 'traditional values' and 'traditional society' did not appear in the Constitutional Court's jurisprudence prior to the landmark 2018 decision declaring the Istanbul Convention unconstitutional.[89]

This ideological shift in Bulgarian constitutional jurisprudence has been met with well-founded scholarly criticism from Velina Todorova, who concludes that the Constitutional Court has undermined its legitimacy as a court for human rights.[90] A notable example of this is Interpretative Decision No. 2/2023 by the General Assembly of the Civil College of the Supreme Court of Cassation,[91] which marked a significant reversal of over 30 years of Bulgarian case law that previously allowed transgender and intersex individuals to legally change their sex on ID documents upon providing sufficient medical evidence. In this decision, a majority of 28 civil judges prevailed over 21 dissenting judges. The Supreme Court of Cassation referenced the constitutional jurisprudence and asserted that an individual's sex was determined at birth and could only be lost upon death, thus denying the existence of intersex and transgender persons. Furthermore, the Supreme Court concluded that the incorporation of the European Convention on

85 A notable example for such practice is Decision No. 7, issued on 4 June 1996 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/1996, which interprets Articles 39, 40, and 41 of the Constitution. The Court clarifies 'the right to freely express opinions and to disseminate them; the right to seek, receive, and disseminate information; and the definition and meaning of the limitations on these rights as provided in the constitutional texts.'

86 Smilova, 2020.

87 Art. 6 para. 2.

88 Decision No. 15, issued on 26 October 2021 by the Constitutional Court of the Republic of Bulgaria in Case No. 6/2021.
In Bulgarian, the term is 'пол.' It appears only once in the 1991 Constitution, specifically in Art. 6 para. 2, which contains the anti-discrimination clause. This clause states: 'All citizens shall be equal before the law. There shall be no privileges or restrictions of rights based on race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status, or property status.'

89 It is important to note that the term 'traditional' is used only once in the 1991 Constitution of the Republic of Bulgaria, specifically in Art. 13 para. 3, which states that 'the traditional religion in the Republic of Bulgaria is Eastern Orthodox Christianity.' This constitutional provision was cited for the first time by the Court in Decision No. 15, issued on 26 October 2021 in Case No. 6/2021, which fully articulated the Court's anti-gender doctrine.

90 Тодорова [Todorova], 2023, p. 169..

91 Interpretative Decision No. 2, issued on 20 February 2023 by the Supreme Court of Cassation on Interpretative Case No. 2/2020, General Assembly of the Civil College of the Supreme Court of Cassation. The interpretative decisions issued by the General Assembly of the Civil College of the Supreme Court of Cassation are available in Bulgarian at the following database [Online]. Available at: https://www.vks.bg/talkuvatelni-dela-osgk.html (Accessed: 18 May 2025).

Human Rights, particularly Article 8, into the national legal order did not mean that all its provisions were directly applicable or 'self-executing.' In essence, this indicates that the ECHR does not automatically confer rights upon citizens or impose obligations on the Republic of Bulgaria without corresponding national legislation.

All these trends indicate that the regulation of fundamental rights and freedoms in the 1991 Constitution does not offer a stable foundation for addressing the challenges of modern times and the impacts of globalisation. This includes developments in the concepts of individual freedom, gender identity and recognition, as well as the tension between protecting and respecting the autonomy of vulnerable individuals.

3. State Bodies for the Protection of Fundamental Rights in Bulgaria

■ *3.1. Judiciary*

The 1991 Constitution assigns the judiciary[92] the responsibility of protecting the rights and legitimate interests of all citizens[93]. However, Bulgaria's judicial system is structured to include not only judges but also prosecutors and investigating magistrates. This integration reflects the legacy of previous totalitarian constitutions, which conferred upon the prosecution office the same constitutional status as the courts, resulting in a unified constitutional framework.[94]

During the constitution-making debates in 1990–1991, the justification for this unconventional design within democracies was that all judges, prosecutors, and investigating magistrates shared the responsibility of protecting rights. However, some voices expressed concerns about this rationale, pointing out that if this logic were applied consistently, the police would also share a similar responsibility, yet they were part of the executive branch rather than the judiciary.[95]

Over the following decades, it became evident that the courts played a crucial role in safeguarding fundamental rights within the justice system by adjudicating disputes and ensuring the fair application of the laws. In the 2023 constitutional reform, an amendment to Article 117, paragraph 2, underscored that the court was the central entity in the judiciary. By providing a mechanism for legal recourse and accountability, the judiciary serves as a vital check against abuses of power, thus reinforcing the rule of law.

92 In the 1991 Constitution, the term 'judiciary' (съдебна власт) encompasses not only the court system but also the systems of prosecutor's offices and investigating magistrates, all of which fall under the judiciary's authority.

93 Art. 117 para. 1.

94 Refer to the titles of the respective chapters in the 1947 Constitution, which includes Chapter Six, 'People's Judges and Prosecutorial Supervision,' and the 1971 Constitution, which features Chapter Eight, 'Court and Prosecutor's Office.'

95 Марчева [Marcheva], 2024, p. 58.

■ *3.2. Ombudsperson*

In 2006, an amendment to the Bulgarian Constitution created the position of Ombudsperson (Омбудсман), elected by the National Assembly to protect citizens' rights and freedoms (Article 91a).

Subsequent parliamentary legislation further formalises the role, granting the Ombudsperson authority primarily through recommendation powers.[96] This includes investigating complaints, mediating between citizens and authorities, and advising on policies and legislative reforms. Although the Ombudsperson does not have the final say or the ability to enforce resolutions, access to institutions and effective communication channels allows for influence over the human rights landscape.

In 2012, the Ombudsperson was appointed as the National Prevention Mechanism, tasked with monitoring places of detention and ensuring compliance with international standards for the treatment of individuals in such facilities, thereby preventing torture and inhumane treatment.

■ *3.3. Constitutional Court*

The Constitutional Court is established as the guardian of the Constitution, and in this capacity, it is supposed to ensure the protection of fundamental rights and freedoms outlined in its second chapter. It is composed of 12 judges, each serving a term of nine years.

The constitutional judges elect a President of the Constitutional Court by secret ballot for a term of three years.[97] The President is responsible for administering constitutional cases by assigning a case number, designating one or more rapporteur judges, and setting a date for review.[98] The constitutional judges are supported by legal experts and administrative secretaries.[99] However, there are no existing rules governing draft decisions prepared by the legal staff, and such drafts, if they exist, do not bind the rapporteur judge or the panel.

In most cases, the Constitutional Court renders its rulings and decisions by a majority of more than half of all judges.[100] The President of the Constitutional Court in Bulgaria serves as *primus inter pares* and does not have the authority to cast a deciding vote in the event of a tie. A request that fails to secure the necessary majority for approval during its substantive constitutional review is subject

96 Стоилов [Stoilov], 2001, p. 185.
97 Art. 147 para. 4 of the Constitution.
98 Art. 18 para. 1 of the Constitutional Court Act.
99 Art. 7a of the Rules for the Organization of the Activities of the Constitutional Court. This rule was introduced in 2016.
100 Art. 151 para. 1 of the Constitution. An exception to the two-thirds majority requirement is stipulated by the Constitution in certain cases – for instance, the removal of immunity or the establishment of factual impossibility of a constitutional judge (Art. 148 para. 2 of the Constitution).

to rejection.[101] Consequently, a challenged legislative provision is not deemed unconstitutional, as the request to establish its alleged unconstitutionality did not achieve the necessary majority.

The core competencies of the Court are defined in Article 149 paragraph 1, which grants it the authority to issue binding interpretations of the Constitution, rule on the constitutionality of laws, and resolve jurisdictional conflicts among the National Assembly (Народно събрание), the President (Президент), and the Council of Ministers (Министерски съвет), as well as between local and central authorities. Additionally, the Court assesses whether international treaties signed by Bulgaria comply with the Constitution prior to their ratification[102] and whether domestic laws align with ratified international treaties. It also adjudicates the constitutionality of political parties and associations, the legality of presidential and parliamentary elections, and rules on accusations brought by the National Assembly against the President or Vice President.

Other constitutional provisions empower the Court to adjudicate disputes related to the termination of office for Members of Parliament in cases of ineligibility or incompatibility[103]; for the President or Vice President in instances of resignation or permanent inability to exercise their powers due to serious illness[104]; and for any constitutional judge in circumstances of resignation, removal of immunity, or determination of incompatibility or factual inability to perform duties for more than one year.[105]

Article 149 paragraph 2 of the Constitution explicitly states that the powers of the Constitutional Court cannot be granted or revoked by law. Consequently, its authority is firmly anchored in the Constitution itself, and no form of 'law in action' can legally arise within this framework. Both parliamentary legislation[106] and Rules[107] merely outline the procedures and actions for exercising the powers of the Constitutional Court. The procedure before the constitutional jurisdiction consists of two phases: the first phase addresses the admissibility of the request, while the second phase involves a decision on the merits.

The current constitutional framework for fundamental rights and freedoms in Bulgaria has a significant flaw: it lacks provisions for individual constitutional

101 Ruling No. 5, issued on 9 October 2007 by the Constitutional Court of the Republic of Bulgaria in Case No. 6/2007.

102 Only two such treaties underwent preliminary constitutional review: the Framework Convention for the Protection of National Minorities in 1997, which was deemed constitutional, and the Istanbul Convention in 2018, which was ruled unconstitutional.

103 Art. 72 para. 1 point 3 of the Constitution.

104 Ibid., Art. 97 para. 2.

105 Art. 148 para. 1 points 2, 4, and 5, in conjunction with paragraph 2 of the Constitution.

106 Constitutional Court Act (Prom. SG. 67/1991).

107 According to Paragraph 1 of the Supplementary and Concluding Provision of the Constitutional Court Act, the Constitutional Court is responsible for adopting its own Rules. The Rules for the Organization of the Activities of the Constitutional Court were published in SG 106/1991 and have been amended over the years.

complaints and direct access to constitutional justice and remedies within the national human rights protection system.

Under the 1991 Constitution, access to the Constitutional Court was initially limited to a specific set of institutions – including one-fifth of the Members of Parliament, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, and the Chief Prosecutor[108].

In 2006, the Ombudsperson was granted the right to challenge laws before the Constitutional Court[109], and in 2015, this right was extended to the Supreme Bar Council[110]. However, their ability to take action is restricted to situations in which the laws are claimed to infringe upon the constitutional rights and freedoms of citizens. Remarkably, they cannot contest parliamentary legislation based on inconsistencies with international human rights instruments ratified by Bulgaria. Furthermore, neither the Ombudsperson nor the Supreme Bar Council has active standing to request the Court to provide binding interpretations of the Constitution or to exercise any competencies beyond rulings on the unconstitutionality of laws.

The 2023 constitutional reform expanded access by permitting judges from all court levels[111] to refer cases to the Constitutional Court regarding unconstitutional legislation. Before 2023, Bulgarian judges primarily depended on the European Convention on Human Rights and its superior legal status over conflicting national laws to safeguard individual rights and liberties. However, this approach proved inadequate for overturning problematic domestic legislation. The absence of individual constitutional complaints has greatly constrained citizens and legal entities in their capacity to directly contest the constitutionality of laws and actions that impact them, thereby limiting their access to constitutional remedies.

While the broadening of indirect access to the Constitutional Court holds promise for strengthening human rights protections, it remains uncertain how national judges will implement this new avenue. The current constitutional provision, referred to as the 'indirect individual complaint' during the 2023 reform debates, is framed more as an expansion of judges' powers rather than as a means of empowering citizens.[112] The decision whether to refer a case to the Constitutional Court is left entirely to the judge's discretion, without any constraints or

108 Art. 150 para. 1.

109 Ibid., para. 4.

110 Ibid., para. 5.

111 Until 2023, Art. 150 para. 2 of the Constitution restricted the referral of unconstitutional legislation to the Constitutional Court solely to panels of judges in the Supreme Court of Cassation and the Supreme Administrative Court.

112 Art. 150 para. 2 of the Constitution: 'Any court, upon the request of a party involved in the case or on its own initiative, may refer a request to the Constitutional Court to determine whether a law applicable to the specific case is inconsistent with the Constitution. The proceedings will continue, and the court that issues the final decision will render its judicial act after the proceedings before the Constitutional Court have concluded.'

requirements, when considering a referral request made by the parties involved in the litigation. Thus, the individual protection of fundamental rights and freedoms in Bulgaria, even after the introduction of the indirect individual complaint at the end of 2023, largely depends on how effectively the courts administer justice.

De lege ferenda, it would be beneficial to amend the Constitution or relevant legislation to mandate that judges refer individual complaints to the Constitutional Court, provided these complaints meet specific criteria.[113] By instituting such requirements, the legal system could enhance the efficiency and effectiveness of the Constitutional Court, ensuring that it addresses cases of substantial constitutional significance while alleviating the burden of frivolous or inadequately substantiated claims. This approach would not only uphold the integrity of the judicial process but also reinforce the Court's role in safeguarding constitutional rights.

An analysis of the transcripts from the constitution-making debates at the Seventh Grand National Assembly (Седмо Велико народно събрание) in 1991 reveals that the Constitutional Court was primarily viewed as a guardian of the constitutional design,[114] with limited recognition of its role in the protection human rights. It is established in both theory[115] and the jurisprudence of the Constitutional Court[116] that *ex post* normative control is its primary authority, reflecting the direct effect of constitutional norms.[117]

The Constitution delineates two types of norm control: abstract and concrete.[118] In the case of abstract control, the Constitutional Court determines a law's conformity with the Constitution or a ratified international treaty, independent of any specific case. This type of control is conducted without a specific legal dispute as a basis, and its rulings have a binding effect on all future disputes. It can be initiated by any of the entities outlined in Article 150, paragraph 1, listed above, including the Supreme Court of Cassation and the Supreme Administrative Court, which may act either through their plenary assemblies or the general assemblies

113 Typically, such complaints must pertain to a law that is applicable to the case at hand, with the individual arguing that the law violates specific provisions of the Constitution. The constitutional question must be relevant to the outcome of the case being adjudicated. Additionally, the individual generally must have exhausted all available legal remedies within the ordinary judicial process before raising the constitutional question. The complaint should also be submitted in a timely manner, usually at the stage in the judicial process when the law becomes pertinent to the case.

114 Белов, Димитрова [Belov, Dimitrova], 2021.

115 Танчев [Tanchev], 2012.

116 Decision No. 4, issued on 14 May 2020 by the Constitutional Court of the Republic of Bulgaria in Case No. 9/2019; Ruling No. 7, issued on 24 July 2023 by the Constitutional Court of the Republic of Bulgaria in Case No. 9/2023.

117 Art. 5 para. 2 of the Constitution.

118 Decision No. 4, issued on 14 May 2020 by the Constitutional Court of the Republic of Bulgaria in Case No. 9/2019.

of their respective chambers.[119] Conversely, concrete control entails the Constitutional Court assessing a law's conformity[120] with the Constitution within the context of an ongoing legal dispute before the referring court. Before the 2023 constitutional reform, only judges from the Supreme Court of Cassation and the Supreme Administrative Court could initiate concrete constitutional control. Following the constitutional amendments, any judge or panel of judges can now raise the issue of a law's unconstitutionality regarding the specific case at hand.

In general, the Constitutional Court's decisions are published in the *State Gazette* within 15 days of their adoption and take effect three days after publication. Regardless of the grounds for referring a matter to the Constitutional Court, its decisions always carry an *erga omnes* effect. According to Article 151 paragraph 2 sentence 3 of the Constitution, a law declared unconstitutional does not apply from the day the Constitutional Court's decision takes effect. The Court has clarified that the phrase 'does not apply' imposes a prohibition on the future application of the law, and this prohibition is 'unconditional, imperative, and permanent.'[121] As a result, the law declared unconstitutional 'ceases to operate and regulate social relations,' losing its legal effect and no longer existing as a normative act.[122] Thus, declaring a legislative norm unconstitutional is equivalent to its non-applicability in the future rather than its annulment[123] or repeal. It is the responsibility of Parliament to repeal or amend the unconstitutional norm.

In Interpretative Decision No. 4 of 14 May 2020, the Constitutional Court shed light on the legal consequences of declaring various acts unconstitutional.[124]

119 See the interpretative Decision No. 3 issued on 5 April 2005 by the Constitutional Court of the Republic of Bulgaria in Case No. 2/2005: 'The authority to refer cases to the Constitutional Court under Art. 150 para. 1 of the Constitution is vested in the plenary sessions of the Supreme Court of Cassation and the Supreme Administrative Court, comprising all judges, as well as the general assemblies of their respective chambers.'

120 The 1991 Constitution does not establish constitutional control over judicial decisions, meaning there is no provision for a constitutional complaint regarding any act or decision made by a judicial authority in the administration of justice.

121 Decision No. 22, issued on 31 October 1995 by the Constitutional Court of the Republic of Bulgaria in Case No. 25/1995.

122 Ibid.

123 It is important to note that the term 'annulment' is not used in Bulgarian law. Instead, the law refers to declaring an act void or invalid, or to its repeal due to illegality.

124 Decision No. 3, issued on 28 April 2020 by the Constitutional Court of the Republic of Bulgaria in Case No. 5/2018.

First, non-normative acts – such as "laws in the formal sense,[125] resolutions of the National Assembly,[126] and decrees of the President' – are considered invalid from the moment of their adoption or issuance.

Second, the Court clarified that an unconstitutional law does not apply to ongoing legal relationships that have not been concluded by the time the Constitutional Court's decision takes effect, as well as to relationships that are subject to pending judicial proceedings.

Third, the Court revised its previous jurisprudence[127] regarding the consequences of declaring unconstitutional a law that amends or repeals an existing law, stating that it does not have a retroactive effect. Consequently, the old law will not be reinstated in its prior form as a result of declaring the new law unconstitutional. However, this does not encompass the parliamentary laws through which the National Assembly amends or supplements the Constitution. Some of these laws may be declared unconstitutional if Parliament exceeds its constitutional powers of amendment or supplements the Constitution in a manner that contradicts its principles and balance of values. In such cases, the unconstitutional law amending or supplementing the Constitution is rendered invalid from the date it takes effect, and the amended provisions will be restored to their original text.[128]

With respect to constitutional omissions, jurisprudence firmly maintains that such omissions may exist, but it is not within the competence of the Constitutional Court to address them while fulfilling its role of issuing binding interpretations of the Constitution.[129] Otherwise, the Court's interpretative authority would effectively become a constitution-making power.[130] In the event of any constitutional or legislative gaps, the principle of the rule of law remains

125 The classification of a law as a 'law in the formal sense' is articulated in the reasoning of Decision No. 17, issued on 3 October 1995 by the Constitutional Court of the Republic of Bulgaria in Case No. 13/1995. The Court defined the legal characteristics of the 1995 budget law, as approved by the National Assembly, along with any annual budget law, recognising it as a 'formal law' because it does not contain legal norms that regulate social relations. Additionally, it noted that budget laws are managerial (administrative) acts that, while retaining their legal characteristics, are issued in the form typical of acts of the National Assembly (laws) and according to the procedures established by the legislative body.

126 The National Assembly adopts binding resolutions in various instances, including the election of members to other public bodies and the acceptance of reports, among others.

127 Decision No. 22, issued on 31 October 1995 by the Constitutional Court of the Republic of Bulgaria in Case No. 25/1995: 'When the Constitutional Court declares a law unconstitutional that repeals or amends an existing law, the latter restores its validity in the version prior to the repeal or amendment from the date the court's decision takes effect.'

128 See: Decision No. 13, issued on 26 July 2024 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2024.

129 Ruling No. 8, issued on 22 November 2016 by the Constitutional Court of the Republic of Bulgaria in Case No. 17/2016.

130 See also: the Dissenting Opinion of Constitutional Judge Filip Dimitrov regarding Ruling No. 8, issued on 22 November 2016 by the Constitutional Court of the Republic of Bulgaria in Case No. 17/2016.

paramount.[131] It is essential to interpret existing laws in a way that upholds justice, protects fundamental rights, and maintains the integrity of the legal system. The rule of law serves as a guiding framework for addressing these omissions, ensuring that any actions taken to fill these gaps align with constitutional principles and democratic values.

4. The Dynamics of the Relationship Between the Constitutional Court and Ordinary Courts as National Human Rights Mechanisms

The impact of constitutional control over legislation is vital for reinforcing the primacy of the Constitution and ensuring the protection of human rights in Bulgaria. The Constitutional Court has determined that failure to comply with its rulings constitutes a violation of the Constitution.[132] It holds exclusive jurisdiction over the constitutional review of parliamentary laws in Bulgaria. While all other courts are authorised to directly apply constitutional norms instead of those found in parliamentary laws or secondary legislation enacted by the government, they cannot adjudicate the unconstitutionality of laws.[133]

In any case, ordinary courts uphold the normative hierarchy to strengthen the rule of law and safeguard fundamental rights and freedoms. Only the Supreme Administrative Court has the authority to repeal secondary legislation enacted by the central government bodies, thereby adjudicating its conformity with higher normative acts, including the Constitution.[134] For issues concerning the constitutionality of regulations issued by local governments and their repeal when they conflict with higher laws, the corresponding administrative courts within the relevant municipality are responsible.[135]

Over the past 30 years since its establishment in 1991, the primary focus of the Bulgarian Constitutional Court has been on the posterior constitutional

131 Decision No. 3, issued on 28 April 2020 by the Constitutional Court of the Republic of Bulgaria in Case No. 5/2019.

132 Decision No. 1, issued on 12 March 2013 by the Constitutional Court of the Republic of Bulgaria in Case No. 5/2012.

133 Art. 15 para. 3 of the Normative Acts Act states: If a decree, regulation, ordinance, or instruction conflicts with a normative act of higher authority, the judicial bodies shall apply the act of higher authority.

134 According to Art. 132 para. 2 point 1 of the Administrative Procedure Code, the Supreme Administrative Court is authorised to adjudicate all challenges to secondary legislation, except for those adopted by municipal councils.

135 Art. 8 of the Normative Acts Act grants each municipal council the authority to issue ordinances regulating issues of local significance, in accordance with higher normative acts, where such matters have not already been addressed. All such municipal ordinances can be challenged for their conformity with the Constitution and parliamentary laws before the relevant administrative courts in the region that includes the respective municipality (Art. 45 para. 3 of the Local Government and Local Administration Act).

review of parliamentary laws. A brief overview of the number of all the cases before the Constitutional Court indicates that, in general, the caseload is relatively modest.

In the 1990s, shortly after the Court's establishment, its caseload peaked at 37 initiated constitutional cases in both 1992 and 1998. In its first year, 1991, the majority of requests were submitted not by authorised entities but by political parties, leading the Constitutional Court to decline to rule on these requests, rejecting 24 out of a total of 30 submissions. Gradually, the number of declined requests significantly decreased,[136] reaching zero in both 1995 and 1998. In 1995, the Constitutional Court achieved a significant milestone by delivering a total of 29 decisions, marking it as a record year in its history.[137]

In the first decade of the 21st century, the volume of the Constitutional Court's caseload decreased by approximately 30% on average.[138] Notably, 2008 saw a record low for the Court, with only five requests submitted – a 50% decrease from the 10 requests received in 2007. In both 2004 and 2005, the annual number of cases was 11, while in 2003 and 2006, it was 12 cases per year. In other years, the volume varied between 17 and 23 cases annually.[139]

In the second decade of the 21st century, the caseload was lowest in 2012, with only seven cases, while it peaked in 2010 and 2013, reaching 22 cases in both years.[140] In 2021, 2022, and 2023, the Constitutional Court received the same number of requests – 21 in each year. Following the 2023 constitutional reform that empowered courts of all instances to refer unconstitutional parliamentary laws to the Constitutional Court, the caseload in 2024 saw a significant increase, effectively doubling.[141]

Between 1991 and 2023, out of 551 constitutional cases, 123 requests were rejected without examination, accounting for approximately 22% of all submissions to the Constitutional Court. There have been no in-depth statistics to compare the annual frequency of abstract and concrete review procedures in

136 In 1992, among 37 requests, 9 were declined for various reasons, 3 cases were terminated due to lack of subject matter (for instance, the allegedly unconstitutional law had been repealed by Parliament), and 19 decisions were issued. In the subsequent years, the number of requests to the Constitutional Court initially decreased, with 22 requests in 1993 and 18 in 1994. However, it then increased by 50%, reaching 32 requests in both 1995 and 1996, and peaking at 37 cases in 1998. The caseload dropped to 20 cases in 1997 and further declined to 14 cases in 1999.

137 In 1995, out of 32 cases, 3 were consolidated with others, resulting in 29 decisions being issued.

138 The average annual number of cases from 1991 to 1999 was 19.44, while the average annual number of cases from 2000 to 2009 was 13.80.

139 In 2000, there were 18 cases; in 2001, 17 cases; in 2002, 23 cases; in 2009, 19 cases; and in 2010, 22 cases.

140 In 2011, 16 requests were submitted; in 2014 and 2015, there were 13 cases each year; in 2016 and 2018, 17 cases per year; in 2017, 14 cases; and in 2019 and 2020, 15 cases annually.

141 The register indicates 42 requests to the Constitutional Court in 2024.

Bulgaria. Nevertheless, there is no doubt that the Constitutional Court primarily exercises its powers within the framework of abstract constitutional control.

It cannot be said that the Constitutional Court predominantly approves or denies requests for declaring laws unconstitutional, as there is often a balance between the two outcomes in most years. The years 2002, 2003, 2006, and 2017 stand out as exceptional, as most decisions during these years denied requests for declaring legislative provisions unconstitutional. Conversely, in 2006 and 2008, the majority of submissions for unconstitutionality to the Constitutional Court were upheld.

What fundamentally sets the Bulgarian Constitutional Court apart from similar jurisdictions in Europe is the frequent referral for the interpretation of the Constitution. In the early years, requests for constitutional interpretation were comparable to those for establishing unconstitutionality, with 1993 and 1994 seeing a notably higher number of requests. Specifically, there were seven submissions for constitutional interpretations in both 1992 and 1993, while 1995 marked a peak with eight requests. In most subsequent years, such requests fluctuated between two and three, with some years recording none at all.[142]

The Constitutional Court has clarified that its binding interpretations of the Constitution are 'abstract' and not tied to any specific constitutional legal dispute.[143] Additionally, two key functions of its interpretative authority were emphasised: the primary function of the Court in fostering a clear and coherent system of effective norms, and the related preventive function, which helps avert the use of the Court's sanctioning powers, particularly in declaring a specific law unconstitutional.[144] Regarding the potential for the same constitutional provision to be interpreted multiple times, the Constitutional Court has stated that it is permissible to request a new interpretation of the same provisions, provided the requests address different interpretative questions.[145]

The analysis of constitutional jurisprudence in Bulgaria reveals a lack of independent or autonomous requests for the Court to exercise its powers to assess the conformity of national laws with universally accepted international norms and treaties ratified by Bulgaria. Such requests are typically made to support and reinforce challenges to the constitutionality of parliamentary legislation. In most of the Court's decisions, the assessment of constitutionality aligns with the evaluation of conformity with international instruments, likely due to the approach

142 For example, in 2006, 2008, 2009, 2011, 2015, and 2018, no requests for constitutional interpretation were submitted to the Court.

143 Decision No. 8, issued on 1 September 2005 by the Constitutional Court of the Republic of Bulgaria in Case No. 7/2005.

144 Ibid.

145 Ibid. Interpretative questions serve two key roles: they help outline the framework of interpretation, including focal points and priorities for specific cases, and they act as a guideline to determine whether a provision has already been interpreted from that perspective, which may render further discussion of the issue inadmissible.

of interpreting the Constitution in harmony with international human rights treaties.[146]

It was not until 2001, a decade after the establishment of the Constitutional Court, that a panel of judges at the Supreme Administrative Court initiated concrete constitutional control for the first time. They challenged a provision in the State Property Act that restricted the right to private property and free economic initiative and violated the principle of the rule of law.[147]

From 1991 to 2023, a total of 28 constitutional cases concerning the constitutionality of laws were referred to the Constitutional Court by panels of supreme judges. Of these, only five challenges initiated by panels of judges at the Supreme Administrative Court were upheld, while the remaining 23 were denied. The infrequent initiation of concrete constitutional control can be attributed to two main factors. The first relates to the powers of the supreme courts, which can request abstract constitutional control through decisions made in plenary sessions or by the general assemblies of their respective colleges.[148] The second factor pertains to the authority of courts at all levels not to apply parliamentary legislation that contradicts norms in ratified international treaties or EU law. Bulgarian judges primarily rely on the direct applicability of international human rights instruments and the primacy of EU law, rather than on concrete constitutional control, to protect individual rights and uphold the rule of law.

The history of infrequent concrete constitutional control in Bulgaria, marked by the rejection of most requests from the supreme courts, reflects a lack of confidence in the constitutional jurisdiction as a human rights court. In 2024, the majority of requests to the Constitutional Court from first-instance judges were deemed inadmissible, further straining the relationship between the judicial system and the constitutional control body. However, there is no evidence of resistance from the courts in enforcing Constitutional Court decisions in Bulgaria. Instead, ordinary judges appear to be seeking additional remedies for the protection of human rights beyond those provided constitutionally.

146 This approach of aligning the interpretation of the Constitution with international treaties is explicitly established in many decisions of the Constitutional Court. See, for instance, among others: Decision No. 1, issued on 1 March 2012 by the Constitutional Court of the Republic of Bulgaria in Case No. 10/2011; Decision No. 6, issued on 14 June 2016 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2016; Decision No. 14, issued on 17 November 2022 by the Constitutional Court of the Republic of Bulgaria in Case No. 14/2022.
The alignment of the Constitution's interpretation with international treaties is also explicitly analysed in the constitutional doctrine. See: Цеков [Tsekov], 2021.

147 Decision No. 7, issued on 10 April 2001 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2001.

148 In 1994, the plenary session of the Supreme Court first challenged the constitutionality of an amendment to the Civil Procedure Code; however, the request to declare it unconstitutional was denied. See: Decision No. 2, issued on 7 April 1994 by the Constitutional Court of the Republic of Bulgaria in Case No. 2/1994.

5. Overview of National Human Rights Institutions in Bulgaria

Among the constitutionally mandated state bodies responsible for protecting fundamental rights, the Ombudsperson plays a crucial role in promoting and monitoring the effective implementation of international human rights standards in Bulgaria.

At the outset of the 21st century, the parliament established several National Human Rights Institutions (NHRIs) through legislation, including the Commission for Protection against Discrimination (Комисия за защита от дискриминация),[149] the Commission for Protection of Personal Data (Комисия за защита на личните данни),[150] and the State Agency for Child Protection (Държавна агенция за закрила на детето).[151] In 2013, the Council of Ministers adopted a decision to create the National Coordination Mechanism for Human Rights,[152] which was re-established by decree in March 2024,[153] further enhancing its competencies and responsibilities as a monitoring and coordination entity. In 2016, the National Assembly enacted legislation to promote gender equality through the formation of a National Council on Equality between Women and Men.[154]

However, these NHRIs in Bulgaria do not adhere to a unified concept or framework, let alone the six pillars – independence, pluralism, cooperation, accessibility, funding, and broad mandate – outlined in the Paris Principles of 1993,[155] which aim to ensure the effective protection of human rights through national mechanisms. They significantly differ in their mandates and scopes of competence, ranging from adjudicating complaints and conducting administrative supervision to performing predominantly monitoring and advisory functions.

Both the Commission for Protection against Discrimination (CPD), which adjudicates discrimination complaints, and the Commission for Protection of Personal Data (CPPD), primarily responsible for overseeing the administrative activities of personal data administrators, were established as independent monitoring bodies[156] with parliamentary involvement in their creation. By explicitly

149 Established in the Protection Against Discrimination Act (Prom. SG. 86/2003).

150 Established in the Personal Data Protection Act (Prom. SG.1/2002).

151 Established in the Child Protection Act (Prom. SG. 48/2000).

152 Resolution No. 796, dated December 19, 2013, adopted by the Council of Ministers, for the establishment of a National Coordination Mechanism for Human Rights.

153 Decree No. 59 of the Council of Ministers, dated March 21, 2024, on the establishment of a National Coordination Mechanism for Human Rights (Prom. SG. 26/2024).

154 Established in the Equality of Women and Men Act (Prom. SG. 33/2016).

155 United Nations General Assembly. (1993). Resolution 48/134: National institutions for the promotion and protection of human rights [Online]. Available at: https://undocs.org/en/A/RES/48/134 (Accessed: 15 December 2024).

156 See: Art. 40 para. 1 of the Protection against Discrimination Act, and Art. 6 para. 1 of the Personal Data Protection Act.

stating that these institutions are independent, the law implies that their operations – including investigations, inquiries, findings, and decisions – are conducted without any external direction. Together with the Ombudsman, these Commissions align most closely with the criteria for effective NHRIs. This alignment is likely due to their establishment following external recommendations from the United Nations, the Council of Europe, and the European Union.[157]

The National Assembly elects five of the nine members of the CPD (with the remaining four appointed by the President) and all five members of the CPPD. However, there are no legislative guarantees to ensure a clear, transparent, and participatory selection and appointment process for the members of these commissions, nor is there a broad search for applicants from diverse social groups. The principle of pluralism is somewhat applied in the case of the CPD, as the law mandates that its members be elected or appointed following the 'principles of balanced participation of women and men, as well as the inclusion of individuals belonging to ethnic minorities.'[158]

Access to both Commissions is generally well organised. Complaints can be submitted in written form at no cost. Their central offices are located in Sofia, the capital, and the Commission for Protection of Data also has regional offices to enhance geographical coverage. However, there are no mobile services or clinics available to assist individuals in remote areas. Complaints can be submitted in person on paper at either office, or they can be sent via email or through the Secure Electronic Delivery System maintained by the Ministry of Electronic Governance in Bulgaria.

The laws designate both Commissions as primary budget distributors, meaning they are directly responsible for planning, executing, and controlling the allocated budgetary funds. They possess significant autonomy in managing these resources and retain control over their budgets once funding is provided. Regarding the issue of 'adequate funding' and the necessary resources to fulfil their mandated activities – ensuring sufficient staffing, infrastructure, and institutional capacity – the chairpersons annually request budget increases to meet their basic needs.

157 The reasons for the draft of the Protection Against Discrimination Act explicitly stated the following: 'The establishment of anti-discrimination legislation, including a specialised body for its implementation, is outlined in the recommendations of the Commission against Racism and Intolerance of the Council of Europe and the United Nations High Commissioner for Human Rights to the UN member states. A similar requirement is included in Council Directives 2000/43 and 2000/78 of the European Union. The adoption of anti-discrimination legislation is a crucial condition for closing Chapter Thirteen, "Social Policy and Employment," in Bulgaria's negotiations for EU membership.'
The reasons for the draft of the Personal Data Protection Act highlight that this law 'concludes the phase concerning access to public information and protected information, which are integral to the administrative reform in Bulgaria,' and that it was developed in alignment with both Bulgarian and European legislation on human rights protection.

158 Art. 41 para. 3 of the Protection against Discrimination Act.

In contrast to the independent Commissions, the State Agency for Child Protection operates as a standard administrative institution within the hierarchy of central executive power, with its activities, structure, organisation, and personnel governed by rules established by the Council of Ministers.[159] The chairperson, elected by the Council of Ministers, is the specialised body responsible for guidance, coordination, and oversight in child protection.[160] The State Agency for Child Protection is a secondary budget distributor that does not independently plan its budget; it receives funds from the Ministry of Labor and Social Policy and spends them according to the guidelines and conditions set by the ministry. Access to the State Agency for Child Protection is similar to that of the independent Commissions. Furthermore, the Agency has regional offices and can also be reached through a national toll-free hotline for children, available 24 hours a day, seven days a week.

An advisory and coordination National Council for Child Protection is established within the State Agency,[161] consisting of representatives from various public bodies at both national and local levels, as well as non-governmental organisations (NGOs) focused on child protection. This National Council provides preliminary opinions on draft normative acts related to children's rights.

Similarly, the National Council on Equality between Women and Men serves as a platform for consultation, cooperation, and coordination among central and local executive bodies and civil society organisations on gender equality issues. The Minister of Labour and Social Policy organise its work and serves as its chairperson under rules enacted by the Council of Ministers.[162]

In 2013, the Council of Ministers established the National Coordination Mechanism for Human Rights,[163] which included representatives from key public bodies. Its primary task was to allocate responsibilities related to ongoing dialogue and periodic national reports to international human rights monitoring and control mechanisms among state bodies and institutions. At first, it was envisioned as an advisory body regarding the future signing or accession of the Republic of Bulgaria to international human rights treaties, as well as for recommending legislative or other measures to enhance the state of human rights in the country. Its competencies were further extended to include monitoring the implementation of recommendations from reports issued by international UN mechanisms, assisting relevant ministries in developing policies and practices to

159 Rules of the Structure of the State Agency for Child Protection, Appendix No. 1 to Article 1 of Council of Ministers Decree No. 38 of February 15, 2001, published in SG 17/2001.

160 Art. 17 para. 1 of the Child Protection Act.

161 Art. 18 of the Child Protection Act.

162 Rules for the Structure, Organization, and Activities of the National Council for Equality between Women and Men under the Council of Ministers, adopted by Council of Ministers Decree No. 302 on November 15, 2016 (Published in SG. 93/2016).

163 Resolution No. 796, dated December 19, 2013, adopted by the Council of Ministers, for the establishment of a National Coordination Mechanism for Human Rights.

fulfill commitments under international human rights treaties to which Bulgaria is a party, continuously developing specialised expertise on human rights issues, maintaining an open dialogue with the academic community and civil society, and improving transparency and accountability in the field.

The government established these advisory and monitoring bodies to foster cooperation among the various branches of national power – legislative, executive, and judiciary – as well as public institutions at both central and local levels and NGOs. However, they lack transparent funding mechanisms and clearly defined legal procedures that guarantee access to their operations. Consequently, they function more as façade structures intended to assure international bodies and EU partners that Bulgaria is committed to human rights, rather than serving as effective platforms for genuine human rights advocacy and improvement.

6. Conclusion

Bulgaria's journey towards establishing a robust human rights framework is marked by significant legal advancements and ongoing challenges. The 1991 Constitution laid the groundwork for integrating fundamental rights into national law and aligning them with international standards. However, Bulgarian citizens' lack of direct access to the Constitutional Court and the tension between national and supranational interpretations of human rights indicate a need for further reform and commitment to upholding these rights uniformly. While critical, the role of NHRIs requires strengthening to ensure their effectiveness and independence. As Bulgaria navigates modern challenges, particularly regarding marginalised groups, it must foster a culture of respect for human rights that transcends legal provisions and permeates societal norms. Ultimately, the success of Bulgaria's human rights protection will depend on continuous engagement with national and international frameworks to promote justice and equality

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