

Bulgarian constitutional court issues landmark decision on interpretation of rulings

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On 28 April 2020, the Bulgarian Constitutional Court issued a landmark decision on the interpretation of its rulings and their effect on the Bulgarian legal framework.

In its Decision, the court reversed how case law has been applied for the past 25 years, and effectively strengthened the importance of its rulings on the overall legal system of the country.

The Decision has three main conclusions:

Effect of declaring a non-normative legal act as unconstitutional

The Court stated that non-normative legal acts (i.e. acts with a one-off effect) which are declared as unconstitutional (e.g. "decisions of the Parliament" and "resolutions of the President") are invalid from the moment of their adoption. Herewith the Court reiterated that its rulings cannot be ignored and are not intended to be without legal effect and to be of a declaratory nature only.

The Court recognised the main competing theories in relation to the effect of its decisions: whether they should apply *ex nunc* (for the future) or *ex tunc* (with an effect from the past). The high-court judges discussed these two approaches at length and reasoned that the application of its decisions for the future is appropriate when declaring a law unconstitutional and the same law is intended to produce repeatedly and continuously over time the legal consequences provided for therein.

On the contrary, the Court argued that the *ex tunc* theory is the appropriate one in relation to one-off legal acts where at the time of the Court's decision an act's legal effect has taken place, and the Court cannot affect its application if its decision is to be taken for the future.

Decisions of the Court on amendments or repeals of existing statutes do not have restorative effect

The second conclusion of the Court states that its decisions, which declare amendment acts as unconstitutional, do not have a restorative effect (i.e. the acts that were being amended by the unconstitutional norm do not automatically have legal effect). Explaining its Decision, the Court suggested that the Bulgarian parliament is the competent body to address a legal vacuum if it determines to do so.

These statements by the Court are entirely opposite to its case law practice over the past 25 years. The Court recognised this fact, but argued that the law has been developing throughout the years, and that it has formed new understandings of its application through its practice.

Moreover, the judges stated that the Court is not *per se* bound by its past decisions, and the interpretation of the law should be an ongoing process, open to new and different views. The Court further contended that the change in its guidance is supported by the social need and responsibility of the Court to form new decisions pursuant to changes in legal theory and circumstances.

Laws declared as unconstitutional are not to be applied in ongoing court cases and legal relations

The third main point made by the Court is that in ongoing court procedures and legal relations, the laws declared by the Court as unconstitutional are not to be applied. Moreover, the Court has made it mandatory, by including this tenet in the disposition of the Decision, for parliament to take actions and regulate the legal consequences of the application of unconstitutional laws.

The Court argued that general *ex nunc* application of its decisions in respect to ongoing proceedings might force courts to opine on disputes, basing their conclusions on laws that have been determined as unconstitutional, and this would contravene the general spirit of the constitution. Pursuant to its rulebook, parliament would have two

months to address this issue from the date the Court declares a law unconstitutional.

Conclusions

The overall effect of the Decision will be evaluated when courts are faced with case law that forces them to apply these conclusions. In the meantime, claimants and defendants alike will be forced to assess the consequences of this Decision on their disputes, if such disputes are directly affected by legal acts declared unconstitutional by the Court.

For further information on the legal impact of the Decision, call and email your usual CMS contact or local CMS experts: Dimitar Zwiatkow and Ivan Gergov.

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