



### **3<sup>rd</sup> Congress of the World Conference on Constitutional Justice 'Constitutional Justice and Social Integration'**

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**Reply by the**

## **CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS**

### **A. Court description**

#### **Introduction**

The Constitutional Court of the Republic of Belarus (hereinafter – the Constitutional Court) was established in April 1994 according to the Constitution of the Republic of Belarus. It is a judicial body to review the constitutionality of normative legal acts in the State, to ensure the supremacy of the Constitution and its direct effect.

Extension of its powers and entitlement to exercise obligatory preliminary review of the constitutionality of laws adopted by the Parliament before their signing by the President alongside with the exercise of subsequent review of the constitutionality of normative legal acts have contributed to enhancement of the role of the Constitutional Court in formation of the State based on the rule of law, ensuring human rights and freedoms.

In 2014 functions and competence of the Constitutional Court, legal regulation of the constitutional proceedings were specified at the legislative level with regard to accumulated experience of 20 years of its activities.

#### **I. Basic documents**

The Constitution of the Republic of Belarus, 1994 with further changes and additions (hereinafter – the Constitution), the Code of the Republic of Belarus on Judicial System and Status of Judges, the Law of the Republic of Belarus “On Constitutional Proceedings”, Rules of the Constitutional Court of the Republic of Belarus are the legal basis for the organisation and activities of the Constitutional Court.

### **II. Composition, procedure and organisation**

#### **1. Composition**

The Constitutional Court is formed of 12 judges. Six judges are appointed by the President of the Republic of Belarus and six are elected by the Council of the Republic of the National Assembly – a house of the Parliament.

Judges of the Constitutional Court may be appointed (elected) from amongst citizens of the Republic of Belarus, having higher legal education and high moral standards, being highly qualified specialist in the field of law, having as a rule a scientific degree.

The Constitutional Court judges are appointed (elected) for a term of eleven years and may be re-appointed (re-elected). The retirement age of the members of the Constitutional Court is 70 years.

The Chairperson of the Constitutional Court is appointed by the President of the Republic of Belarus with the consent of the Council of the Republic of the National Assembly from amongst the judges of the Constitutional Court for a 5-year term.

The Deputy Chairperson of the Constitutional Court is elected by the Constitutional Court from amongst the judges of the Constitutional Court upon the recommendation of the Chairperson of the Constitutional Court for a 5-year term.

## **2. Procedure**

The Constitutional Court is competent to decide when no less than eight judges of the Constitutional Court have been appointed (elected).

Procedure of consideration of cases by the Constitutional Court, making decisions on them as well as committing procedural actions by the judges of the Constitutional Court and participants of the constitutional proceedings is regulated by the Law "On Constitutional Proceedings".

Cases are considered by the Constitutional Court collectively in open court session if there is a quorum. The case is considered in closed court session in order to protect the information containing state secrets or other secrets protected by the law contained in the case materials.

Cases are considered by the Constitutional Court on the basis of the adversarial character and equality of the parties. The parties shall enjoy equal rights as to presentation and examination of evidence, making requests, statement of opinions on any issue related to the case.

The constitutional proceedings are conducted orally. When considering cases the Constitutional Court hears the parties, their representatives, experts, specialists and witnesses, and reads out the documents relevant to the case.

In the cases provided by the Law "On Constitutional Proceedings" the Constitutional Court considers cases using the written form of the proceedings. The case is considered on the basis of written documents and other materials submitted to the Constitutional Court and requested by it during preparation of the case for consideration in a court session, as a rule, without invitation of the parties, their representatives, witnesses, experts, specialists and other persons to participate in a court session. When considering the case using the written form of constitutional proceedings it is allowed to use elements of the oral form of constitutional proceedings.

The constitutional proceedings represent a special procedure by means of which the Constitutional Court exercises judicial power.

## **3. Organisation**

Issues of preparation and holding the Constitutional Court's sessions, ensuring conditions for the Constitutional Court and its judges to exercise their powers are regulated by the Rules of the Constitutional Court.

Organisational, material and technical provision of the Constitutional Court's activities is in charge of the Secretariat of the Constitutional Court.

The Secretariat ensures the functioning of the Court in administration of justice, case-law generalisation, analysis of court statistics, systematisation of legislation, performance of other functions. It also provides the organisational support of Court's activities.

There is the Academic Consultative Council under the Constitutional Court. The relevant regulations are approved by the Constitutional Court. The members of the Academic Consultative Council are approved by the Constitutional Court on the recommendation of the Chairperson of the Constitutional Court.

## **III. Powers**

The Constitutional Court is empowered:

to review the constitutionality of normative legal acts, obligations under treaties and other international commitments of the Republic of Belarus, acts of interstate formations to which the Republic of Belarus is a party in the exercise of subsequent review;

to review the constitutionality of laws adopted by the National Assembly (except laws prepared in connection with conclusion, execution, suspension and termination of international

treaties of the Republic of Belarus) before their signing by the President of the Republic of Belarus in the exercise of obligatory preliminary review;

to review the constitutionality of international treaties of the Republic of Belarus which have not yet entered into force;

to deal with existence of facts of systematic or gross violations of the Constitution by the Houses of the National Assembly of the Republic of Belarus, existence of facts of systematic or gross violation of requirements of the legislation by the local council of deputies;

to give the official interpretation of decrees and edicts of the President of the Republic of Belarus concerning constitutional rights, freedoms and duties of individuals;

to state its position on conformity of the documents adopted (issued) by foreign states, international organisations and (or) their bodies and affecting the interests of the Republic of Belarus to generally recognised principles and rules of international law;

to review the constitutionality of guidelines for rule-making and law-enforcement practice of state bodies including judicial and law-enforcement bodies;

to make decisions on elimination of legal gaps, collisions and legal uncertainty in normative legal acts;

to adopt annual messages to the President of the Republic of Belarus and the Houses of the National Assembly of the Republic of Belarus on constitutional legality in the Republic of Belarus.

#### **IV. The character and consequences of decisions**

Judgments and decisions of the Constitutional Court are final, with no right of appeal or protest; they have direct effect and do not require confirmation by other state bodies, other organisations, officials; they enter into force within the date of their adoption unless otherwise specified.

Normative legal acts recognised as unconstitutional according to the opinion of the Constitutional Court have no legal force. Recognition of normative legal acts as unconstitutional is the basis for termination of their validity, making appropriate alterations and (or) addenda or adoption of new normative legal acts with the same subject of legal regulation. The Constitution is applied directly till the termination of their validity, making appropriate alterations and (or) addenda or adoption of new normative legal acts.

Normative legal acts recognised not to be conforming to international legal instruments ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus according to the opinion of the Constitutional Court shall be deemed to cease to have effect in whole or in part since the date of their recognition as invalid (their abolition), making appropriate alterations and (or) addenda or adoption of new normative legal acts with the same subject of legal regulation, unless otherwise stipulated by the Constitutional Court.

Recognition of a normative legal act not to be conforming to the Constitution, international legal instruments ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus according to the opinion of the Constitutional Court is the basis for termination of the validity of provisions of other normative legal acts based on such a normative legal act or reproducing it.

Normative legal acts recognised not to be conforming to the Constitution, international legal instruments ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus according to the opinion of the Constitutional Court can not be applied by courts, other state bodies, other organisations and officials. Court's decisions based on these acts shall be revised in accordance with the established procedure and legal acts adopted (issued) by other state bodies, other organisations and officials shall cease to have effect unless otherwise stipulated by the Constitutional Court.

The Constitutional Court's decision on non-compliance of the law adopted by the Parliament with the Constitution, international legal instruments ratified by the Republic of Belarus adopted in the exercise of obligatory preliminary review can be the ground for the return of the law by the President of the Republic of Belarus with his objections or the signing of

the law by the President of the Republic of Belarus with his objections regarding its certain provisions.

A normative legal act on expression of consent for the obligatory character of an international treaty which has not entered into force for the Republic of Belarus concerning such a treaty recognised not to be conforming to the Constitution of the Republic of Belarus according to the decision of the Constitutional Court and with no expressed consent for it to be bound for the Republic of Belarus is not adopted (issued).

The official interpretation of decrees and edicts of the President of the Republic of Belarus concerning constitutional rights, freedoms and duties of individuals given by the Constitutional Court is binding on state bodies, other organisations, officials and other individuals.

The decision of the Constitutional Court on its position on conformity of a document adopted (issued) by a foreign state, international organisation and (or) their bodies and affecting the interests of the Republic of Belarus to generally recognised principles and rules of international law can be a ground for taking appropriate measures by state bodies, other organisations and officials within their competence.

The Constitutional Court's decision on elimination of legal gaps, collisions and legal uncertainty in normative legal acts is mandatory for consideration by state bodies and officials within their competence.

## **Conclusion**

The status of the Constitutional Court as a judicial body to review the constitutionality of normative legal acts in the State is enshrined in the Constitution.

The Constitutional Court is called up to protect the constitutional system of the Republic of Belarus, human rights and freedoms guaranteed by the Constitution, to ensure the supremacy of the Constitution and its direct effect in the territory of the Republic of Belarus, to ensure conformity of normative legal acts of state bodies to the Constitution, establishment of lawfulness in rule-making and law enforcement.

In accordance with the Constitution and laws the Constitutional Court is empowered to exercise obligatory preliminary review as well as subsequent review of the constitutionality of normative legal acts and has a number of other powers.

Organisation and activities of the Constitutional Court are regulated by laws.

## **B. Social integration**

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

#### **1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law and social security law?**

The Constitutional Court has repeatedly reviewed the constitutionality and existence of legal gaps in normative legal acts regulating the right to work, the right to social security and other social rights.

1.1.1. In the Decision on October 4, 2011 “On Some Issues of Legal Regulation of Parental Leave” the Constitutional Court states that refusal to grant parental leave for the child under three years to working fathers, other relatives in case the mother is an individual entrepreneur is not based on constitutional principles and rules which characterize the Republic of Belarus as a social state based on the rule of law and is caused by a legal gap in regulation of relations in this field. In practice this leads to violation of the rights and legal interests of individuals. At the present time this gap was eliminated by the legislator.

1.1.2. In the Decision on November 28, 2012 “On the Right of Employees to Reimbursement of Travel Expenses for Business Trips” the Constitutional Court noted that legal regulation of the procedure and amount of the reimbursement of expenses established by the Ministry of Finance and the Ministry of Labour and Social Protection in some cases eliminates the possibility of implementation of the right of employees to compensation of travel expenses. On the basis of the constitutional principle of the rule of law and taking into account the constitutional duty of the state to guarantee the rights and freedoms of individuals enshrined in laws as well as provisions of Article 23.1 of the Constitution which permit restriction of personal rights and freedoms only in the instances specified by law, the Constitutional Court recognised that these ministries had exceeded their powers and underlined that the employee's right to reimbursement of travel expenses for business trips enshrined in the Labour Code can not be restricted by subordinate acts. At the present time necessary alterations were made to appropriate ministerial acts.

#### **1.2. How were issues of social integration or conflict transformed into legal issues?**

As a judicial body to review the constitutionality of normative legal acts in the State the Constitutional Court considers legal issues concerning the review of constitutionality of normative legal acts regulating social integration or conflict.

When reviewing the constitutionality of an act the Constitutional Court means the strict sense of legal rules as well as the meaning attributed to them by the practice of their application.

Thus, on the basis of the proposal of the Parliament the Constitutional Court considered the constitutionality of conditions of award of pension for cabin crew for long service which differ from those for other categories aviation workers, including flight and test-flight personnel.

In the Judgment on March 29, 2006 “On the Conformity of the Ordinance of the Council of Ministers of the Republic of Belarus on December 18, 1992 No. 758 “On Conditions of Award of Pension for Certain Categories of Test-Flight Personnel” Concerning Pension Provision for Cabin Crew of the Civil Aviation to the Constitution, Other Laws of the Republic of Belarus, International Treaties of the Republic of Belarus” it was noted that the nature of work and responsibility of the flight crew differ from the nature of work and responsibility of cabin crew and the absence of obstacles to include flight attendants as well as flight operators to the category of aviation workers, flight personnel who enjoy preferential terms of pension calculation was pointed out, but the solution of this issue comes within the competence of the legislator.

**1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?**

The Constitutional Court considers cases on legal issues relating to social integration, including review of constitutionality, elimination of legal gaps, collisions and legal uncertainty in the legislation on labour, taxation, pension provision and education.

Thus, in the Decision on March 5, 2009 “On Legal Regulation of Severance Pay” the Constitutional Court noted that ambiguous interpretation and application of legal rules regulating the payment of severance pay and minimum compensation for deterioration of the legal status of an employee when terminating the contract for defiance or improper performance of its terms by the employer has led to *de facto* exclusion of the possibility to get severance pay provided by the legislation. In this Decision the legal position was stated that cases of non-payment of severance pay should be determined only at the legislation level. In this regard the Constitutional Court recognised the necessity to make alterations and addenda to the Labour Code. At the present time these changes have been made.

In the Decision on March 23, 2010 “On Equal Guarantees of the Citizens' Right to Protection against Unemployment” the Constitutional Court considered the issue of legal regulation of relations in the field of awarding and payment of allowance to unemployed during their training or retraining as well as granting of unemployment benefit. The Court found that individuals dismissed from work for grounds that are not related to commission of wrongful actions and recognised as unemployed do not enjoy equal protection against unemployment. The amount of allowance paid to them during their training, retraining and professional development may differ depending on different causes of their dismissal, and they may be denied the awarding of unemployment benefit. In order to implement the constitutional principle of equality before the law the Constitutional Court considered it necessary to make appropriate alterations to the Law “On Employment of the Population of the Republic of Belarus”.

**2. International standards for social integration**

**2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?**

The Republic of Belarus is a party to basic international treaties on human rights including social rights. As a member of the United Nations since 1945, Belarus has signed and ratified the most important international legal instruments on human rights including the International Covenant on Economic, Social and Cultural Rights (1966) and others acts that directly result from the Universal Declaration of Human Rights.

The Constitution was developed on the basis of experience of constitutional development, the advanced achievements of the European states, international approaches to the protection of human rights. The Constitution enshrines the principles and rules regulating the use and implementation of rules of the international law and the balance of international and national law.

According to the Constitution the individual, his rights, freedoms and guarantees to secure them are the supreme value and goal of the society and the State (Article 2.1); the State shall guarantee the rights and freedoms of citizens of Belarus that are enshrined in the Constitution and laws, and specified by the State's international obligations (Article 21.3).

The Constitution enshrines the social rights that conform to international standards elaborated at the level of the UN as well as in the framework of regional international organisations – the Council of Europe, the Commonwealth of Independent States.

**2.2. Does your Court apply specific provisions on social integration that have an international source or background?**

According to Article 8 of the Constitution the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith. Thus, the Belarusian State proceeds from the priority of the

observance of generally recognised principles of international law, forms the system of national legislation based on these principles. It is fully applied to issues of social integration.

The international treaties of the Republic of Belarus are part of the national legal system. In accordance with provisions of the Law “On Normative Legal Acts of the Republic of Belarus”, the Law “On International Treaties of the Republic of Belarus” rules contained in the international treaties of the Republic of Belarus are part of the current legislation in the territory of the State, are subject to direct application except cases when it results from an international treaty that application of such rules requires the adoption (publication) of a domestic normative legal act.

On the basis of provisions of Articles 8 and 116 of the Constitution, the laws “On Normative Legal Acts of the Republic of Belarus” and “On International Treaties of the Republic of Belarus” the Constitutional Court considers in its activities generally recognised principles of international law and provisions of the international treaties of the Republic of Belarus.

### **2.3. Does your Court directly apply international instruments in the field of social integration?**

The Constitutional Court uses provisions of international legal instruments both universal and regional nature in order to justify its legal positions when considering cases.

In 1994-2013 the Constitutional Court made more than 170 decisions in which its legal positions were grounded by referring to the principles and rules enshrined in international legal instruments including multilateral and bilateral international treaties.

In its decisions regarding a particular aspect of social integration the Constitutional Court has generally used the principles and rules enshrined in the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), a number of conventions adopted within the framework of the ILO, etc.

### **2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?**

The following approaches were developed regarding the practice of use of the provisions of international treaties by the Constitutional Court when making decisions and giving judgments.

2.4.1. The international treaties as a source of law regulating certain social relations are mentioned without reference to specific provisions of international treaties.

For example, in the Decision on October 31, 2008 on the Law “On Making Addenda and Alterations to Certain Codes of the Republic of Belarus on Collection of Alimony for Maintenance of Children” the Convention on the Rights of the Child (1989) ratified by the Republic of Belarus was mentioned as a source of legal regulation of collection of alimony for maintenance of children.

2.4.2. Specific provisions of international treaties are used when considering the conformity of the reviewed normative legal act to the international legal instruments ratified by the Republic of Belarus.

Thus, in the Decision on October 30, 2008 on the Law “On Making Addenda and Alterations to Certain Laws on Combating Illegal Migration, Spread of Slave Labour, Child Pornography and Prostitution” it was emphasised that prohibitions and restrictions provided by this Law in order to counteract illegal migration, spread of slave labour, child pornography and prostitution were conforming to the international commitments of the Republic of Belarus on the basis of the Slavery Convention (1926), the Convention on the Rights of the Child (1989) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000).

When reviewing the constitutionality of the Law “On External Labour Migration” (Decision on December 21, 2010 ) the Constitutional Court noted that the basic principles of external labour migration which were enshrined in Article 4 of the Law and were assigned to determine the substantial orientation of provisions of the Law were based not only on provisions of the Constitution but also were conforming to the generally recognised principles and rules on

the necessity to promote and develop the respect of human rights and fundamental freedoms contained in the UN Charter, international legal instruments in the field of human rights.

In the Decision on July 5, 2013 on the Law “On Making Alterations and Addenda to the Law of the Republic of Belarus “On Labor Safety” the Constitutional Court stated that the definition of specific measures aimed at the female labour protection and including prohibition of the recruitment of women to perform heavy work and work in harmful and (or) dangerous working conditions as well as underground works (with some exceptions) (Article 15.1 of the Law), prohibition of the recruitment of women to perform work connected with manual lifting and moving heavy loads that exceed limits set for them, unless otherwise stipulated by legislative acts (Article 15.2 of the Law) wasn't discrimination and this fact is also confirmed by the approaches enshrined in a number of international legal instruments relating to the mentioned field of relations, in particular the Declaration on the Elimination of Discrimination against Women (1967), the UN Convention on the Elimination of all Forms of Discrimination against Women (1979), the ILO Discrimination (Employment and Occupation) Convention No. 111 (1958).

2.4.3. When reviewing the constitutionality of normative legal acts legal positions of the Constitutional Court are formulated under the influence of legal positions of the European Court of Human Rights (hereinafter – the ECtHR).

In particular, in the Decision on June 29, 2012 “On the Conformity of the Housing Code of the Republic of Belarus to the Constitution of the Republic of Belarus” the Constitutional Court referred to the Judgment of the ECtHR on February 21, 1986 on the case of “James and Others v. the United Kingdom” by citing the position of the ECtHR that in today's society provision of housing is a major social need, solution of the housing problem can not be entirely left to the market because its unlimited action, especially in time of economic transformation, can create the danger of undesirable social consequences and therefore reflects not only private but also public interest.

2.4.4. Belarus is one of the active participants in the integration processes in the post-Soviet space being part of such formations as the Union State of Belarus and Russia, the Commonwealth of Independent States, the Eurasian Economic Community (EAEC), the Customs Union. That presumes that the Republic of Belarus as a party to these international formations has a number of multilateral and bilateral international commitments in the field of social rights which are taken into account by the Constitutional Court when making decisions.

In the Decision on February 18, 2009 “On Equal Terms of Exemption from Reimbursement of State Funds for an Young Specialist's Training” the Constitutional Court pointed to unequal conditions of exemption of young specialists who have received secondary special education at the expense of the State and accepted in the educational institution for training in full-time education of a higher level from the obligation to reimburse the appropriate funds for their training in case of their absence from work after their placement. It depends on whether it is an educational institution of the Republic of Belarus or of any other state (including the Russian Federation). On the basis of the Agreement between the Republic of Belarus and the Russian Federation on the equal rights of citizens (1998) the Constitutional Court recognised the necessity to make appropriate alterations to the legislation.

In the Decision on July 17, 2009 “On Ensuring Equal Rights of Individuals in the Field of Work” aimed at prevention of the misuse of discriminatory conditions in the field of employment the Constitutional Court has pursued the goal of ensuring the community of legal regulation of similar relations, equality of individuals' rights to employment in the territory of the Union State of Belarus and Russia.

## **2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?**

When reviewing the constitutionality of normative legal acts the Constitutional Court is based on provisions of the Constitution. Provisions of the Constitution are conforming to the universal international human rights standards including in the field of social integration.



According to Article 8 of the Constitution the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith.

In the Message on Constitutional Legality in the Republic of Belarus in 2011 it was emphasised that when reviewing the constitutionality of legal provisions in the exercise of obligatory preliminary review the Constitutional Court proceeds from the principles and provisions of the Constitution, revealed constitutional legal meaning of reviewed provisions including generally recognised principles and rules of international law.

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

#### **3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, *Staatszielbestimmungen*, ...?**

The Constitutional Court considering cases on issues within its competence makes judgments and decisions on the basis of principles and rules as well as values and goals enshrined in the Constitution. The Constitutional Court has repeatedly noted that constitutional values have an organising effect on the appropriate fields of social relations, act as guidelines, standards, purposes for state bodies and officials, individuals and society as a whole. At the present time constitutional values are the leading instrument of constitutional law in the Constitutional Court’s activities.

Exercising its constitutional functions and powers the Constitutional Court considers cases and materials through constitutional values and this fact ensures the supremacy and direct effect of the Constitution, approval of constitutional legality in the rule-making and law enforcement.

In decisions concerning issues of social integration the Constitutional Court proceeds primarily from the fact that according to the Constitution the individual, his rights, freedoms and guarantees of their implementation are the supreme value and goal of society and the State, as well as from certain values enshrined in the Constitution, such as democratic, social state based on the rule of law, democracy, rule of law, justice, equality, constitutional economics.

In a number of decisions taken primarily in the exercise of obligatory preliminary review of the constitutionality of laws the Constitutional Court stated legal positions aimed at revealing the constitutional legal meaning of legal provisions in terms of implementation of the constitutional principle of social state, guarantees of equal protection and equal conditions for the development of all forms of ownership, entrepreneurial freedom, constitutional provisions on social rights.

In the Decision of the Constitutional Court on June 29, 2012 which reviewed the constitutionality of provisions of the Housing Code regarding inadmissibility of eviction from the hostel without the provision of alternative accommodation of pupils and students belonging to socially vulnerable children (orphans, children left without parental) the Constitutional Court stated that the establishment of such features concerning certain categories of children can not be considered as a violation of the principle of equality before the law (Article 22 of the Constitution) because it is based on the social character of the state which predetermines the duty of the state to safeguard the welfare of its citizens and their social security.

#### **3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?**

The Constitutional Court is empowered to make decisions on elimination of gaps in normative legal acts, elimination of collisions and legal uncertainty. Actively realising this power, the Constitutional Court for the period of its activity has taken more than 200 decisions on elimination of gaps in the legislation aimed at the implementation of majority of provisions of the Constitution relating to the social rights of individuals. In the majority of cases these decisions are made on the basis of applications of individuals who considered that their constitutional rights were violated due to improper legislative regulation.

Thus, the Decision on November 14, 2012 “On Compensation of the Funds spent by the State to train Graduates of Institutions of Higher and Other Education in Case of their Voluntary Entry into Military Service” was taken in connection with the application of an individual on the legality of requirements of the institution of higher education for reimbursement of funds spent by the state on his training in this institution in case he enters military service under the contract. In order to ensure the constitutional principles of the rule of law, equality and social justice in the realisation by the citizens of the Republic of Belarus of the constitutional and sacred duty to defend the Republic of Belarus the Constitutional Court considered it necessary to eliminate a constitutional legal gap in the legal regulation and to enshrine the right of graduates of institutions of higher and other education to exemption from reimbursement of funds spent by the state for their training in case of their voluntary entry into military service under contract.

**3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?**

The legislation of the Republic of Belarus does not provide for direct access of individuals and organisations to the Constitutional Court to settle constitutional legal disputes.

In accordance with the Code on Judicial System and Status of Judges individuals shall address bodies and officials entitled to make proposals to the Constitutional Court to review the constitutionality of an act with the initiative to review the constitutionality of a normative legal act. This right of individuals represents indirect access to constitutional justice, i.e. the right to address the body of constitutional review in an indirect way.

**3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?**

The Constitutional Court makes decisions in the exercise of preliminary and subsequent review of constitutionality as well as on elimination of legal gaps, collisions and legal uncertainty.

For example, when considering the problem of including of requirements concerning worker’s age, gender and his place of residence in job offers (vacancies) by employers the Constitutional Court made the Decision on July 17, 2009 “On Ensuring Equal Rights of Individuals in the Field of Work”. In this Decision it was noted that this practice creates preconditions for violation of the constitutional right to choose profession, type of occupation and work in accordance with his vocation, capabilities, education and professional training, and with regard to social needs (Article 41.1), women equal rights with men in their opportunities to receive promotion in labour (Article 32.5), to move freely and choose their place of residence within the Republic of Belarus (Article 30). The Constitutional Court found this practice illegal and drew attention of the legislator to the fact that the absence of reference to age, place of residence in the list of discriminatory conditions established by the labour legislation as well as the exhaustive nature of this list significantly restricts guarantees of realisation of the constitutional right of individuals to work.

In the execution of the Decision of the Constitutional Court the Labour Code was amended. Age, place of residence and other circumstances which are not related to the worker’s qualities and are not determined by the specific character of work are rated among discriminatory circumstances in the field of labour relations.

Developing this position, in the Decision on December 22, 2009 on the Law “On Making Alterations and Addenda to the Law of the Republic of Belarus “On Employment of the Population of the Republic of Belarus” the Constitutional Court noted that the prohibition for employers to indicate discriminatory conditions in the proposals on available job offers (vacancies) should apply not only to notifications addressed by the employer to the state employment service by establishing additional requirements for the content of such notifications, but also to proposals of employers on available job offers (vacancies) made by them including mass media and billboards.

### **3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?**

In the field of preliminary review of constitutionality the Constitutional Court is empowered:

to review the constitutionality of laws adopted by the Parliament of the Republic of Belarus before their signing by the President of the Republic of Belarus in the exercise of obligatory preliminary review;

to review the constitutionality of international treaties of the Republic of Belarus which have not yet entered into force.

The power to give the official interpretation of decrees and edicts of the President of the Republic of Belarus concerning constitutional rights, freedoms and duties of individuals is aimed at prevention and avoidance of social conflicts.

Features of the consideration of the mentioned categories of cases by the Constitutional Court are regulated by the Law "On Constitutional Proceedings".

When reviewing laws in the exercise of the obligatory preliminary review the constitutionality of its provisions is determined on the basis of constitutional values, completeness of the mechanism for implementation of the constitutional rights of individuals, effectiveness of guarantee of human rights and freedoms, proportionality of their restrictions with regard to the necessity to ensure the balance of constitutional values.

Legal positions of the Constitutional Court formulated during the preliminary review of the constitutionality of laws are aimed at revealing the constitutional and legal meaning of legal provisions. They contain conclusions on the implementation and development of provisions and principles of the Constitution in the reviewed laws. The Constitutional Court, if necessary, points out the gaps of legal regulation, collisions of legal provisions, orientate on the correct understanding of legal provisions in the rule-making and law enforcement process. At the same time the Constitutional Court draws attention to the necessity for the development of constitutional values in the regulation of specific legal relationship, inadmissibility of disproportionate restriction of individuals' rights at the legislative level.

The practice of the preliminary review in the State has shown its advantages: prevention of entry into force of unconstitutional legal provisions, formation of individuals' confidence in the constitutionality of legislative regulation.

The following decisions are indicative of the preventive nature of the Constitutional Court's activities when reviewing the constitutionality of laws in the exercise of the obligatory preliminary review.

In the Decision on December 26, 2011 on the constitutionality of the Law "On Making Alterations and Addenda to the Tax Code of the Republic of Belarus" the Constitutional Court stated the legal position concerning the procedure for address of the tax bodies and their officials to the notary for the commission of executive endorsement for the recovery of collection of a tax, charge (fee), fines at the expense of the assets of the payer (other responsible person) after having revealed legal uncertainty in provisions of the Tax Code. On the basis of the fact that the commission of executive endorsement for the recovery of collection of a tax, charge (fee), fines at the expense of the assets of the payer (other responsible person) affects to a certain extent the right of ownership the Constitutional Court stated that the procedure for address of the tax bodies and their officials to the notary for the commission of such endorsement should be established at the level of an legislative act. This legal position has been implemented through making appropriate alterations to the Tax Code.

In the Decision on July 5, 2013 on the Law "On Making Alterations and Addenda to Certain Codes of the Republic of Belarus on the Issues of Strengthening of Sanctions for Driving a Vehicle in Drunken State" the Constitutional Court drew attention of the law enforcer to the necessity of protection of the right of the vehicle owner of ownership and taking appropriate measures in case of taking administrative proceedings against the driver for committed offenses. The court, bodies dealing with this administrative case and their officials should duly notify the owner of the vehicle which was a weapon or means of committing the offense about the possible special confiscation of the vehicle regardless the right of ownership

in case of repeated (within one year after the imposition of administrative penalties) wrongful act committed by the mentioned person.

### **3.6. Has your Court ever encountered difficulties in applying these tools?**

Authorised bodies are entitled to make proposals to the Constitutional Court to review the constitutionality of normative legal acts in case there are questions on the constitutionality during their application. These authorised bodies have not made proposals for several years. So long as when reviewing the constitutionality of normative legal acts in the exercise of subsequent review the Constitutional Court considers not only the content of provisions but also the meaning given to them by the practice of their application, it leads to the fact that in a number of cases normative acts the constitutionality of which is disputed in the course of their application remain outside the field of constitutional review.

### **3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?**

Individuals and organisations are not entities entitled to direct access to the Constitutional Court for reviewing the constitutionality of a normative act.

At the same time the Republic of Belarus provides an indirect access to constitutional justice for individuals and organisations.

The Code of Judicial System and Status of Judges, the Law "On Constitutional Proceedings" enshrine the right of individuals and organisations to address authorised bodies (bodies entitled to make an appropriate proposal to the Constitutional Court on issues within its jurisdiction) with the proper initiative.

The President of the Republic of Belarus, the House of Representatives of the National Assembly, the Council of the Republic of the National Assembly (its Presidium), the Supreme Court, the Council of Ministers of the Republic of Belarus are authorised bodies empowered by Article 116 of the Constitution, the Code on Judicial System and Status of Judges, the Law "On Constitutional Proceedings" and other legislative acts to make appropriate proposals to the Constitutional Court that shall be considered within the jurisdiction of the Constitutional Court.

The Law "On Constitutional Proceedings" which regulates the procedure of realisation of this right provides the requirement of obligatory indication of the issue for a Constitutional Court session, justified conclusions and proposals in the initiative application as a guarantee of its realisation. At the same time the Law enshrines the obligation for authorised bodies to consider the initiative application and take the decision on making an appropriate proposal to the Constitutional Court or on refusal to make such a proposal.

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

### **4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?**

The Constitutional Court's decisions taken in the exercise of obligatory preliminary review of the constitutionality of laws, in the exercise of subsequent constitutional review and aimed at elimination of legal gaps, collisions and legal uncertainty in normative legal acts consistently develop the constitutional content of the principle of the social state, aimed at ensuring social rights of individuals and contribute to settlement or avoidance of social conflicts.

### **4.2. Does your Court *de facto* act as 'social mediator', or/and has such a role been attributed to it?**

Ensuring the supremacy of the Constitution and its direct effect on the territory of the Republic of Belarus, conformity of normative legal acts of state bodies to the Constitution, approval of constitutional legality in the rule-making and law enforcement are the tasks of the Constitutional Court.

Issues on the constitutionality of normative legal acts can be indirectly connected with settlement of conflicts between different social groups, but there is no such practice in the Constitutional Court's activities.

The majority of cases settled by the Constitutional Court concern issues of guarantees of social rights of individuals by the state, completeness of implementation of these rights, including respect of the principles of justice, equality, non-discrimination, ensuring of clear mechanisms of implementation and protection of social rights by the legislator, proportionality of possible restrictions on the basis of the balance of constitutional values.

**4.3. Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?**

There have been no cases when social actors, political parties could not find any agreement and have brought an action before the Constitutional Court.

**Court being executed?**

State bodies of the Republic of Belarus execute decisions of the Constitutional Court. Of nearly 300 enforceable decisions of the Constitutional Court which have been adopted for the whole period of its activities more than 80 percent of the decisions have been executed, the rest is being executed.

The Constitutional Court's decisions on elimination legal gaps, collisions and legal uncertainty in normative legal acts are executed by making alterations and addenda to existing legislation.

**8. Are there problems in the execution of specific types of decisions?**

There are no problems in the execution of specific types of decisions of the Constitutional Court.

The procedure of execution of specific types of decisions is regulated by the Law "On Constitutional Proceedings".

**9. Does your Court consider that it is prevented by judicial restraint from defending itself in the media or from seeking assistance?**

Interacting with the media the Constitutional Court provides information openness and publicity of its activities, contributes to the realisation by individuals of the constitutional right to receive complete, accurate and timely information about activities of state bodies. At the same time the judges are restrained and correct when commenting decisions.

In its activities the Constitutional Court has not had the necessity to seek protection or other assistance in the media.