

SEPARATION OF POWERS AND INDEPENDENCE OF CONSTITUTIONAL COURT OF REPUBLIC OF BELARUS

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I. Institutional independence of the Constitutional Court

1.1. Constitutional status of the Constitutional Court

The separation of powers is one of the fundamental principles enshrined in the Constitution of the Republic of Belarus. According to Article 6 thereof state power in the Republic of Belarus shall be exercised on the basis of its separation into legislative, executive and judicial.

State bodies, which represent every branch of state power, carry out their functions being subject to their proper competence within the defined scope of powers, where they are independent, co-operate, check and balance one another.

For the moment the balance of powers of all these branches has been reached in our country. It ensures political, social and economic stability in the state as well as safeguards the independence of the judiciary. The constitutional principle of the separation of powers is the basis on which the independent status of the Constitutional Court of the Republic of Belarus is formed.

It has been enshrined at the constitutional level that in the Republic of Belarus the judicial power belongs to courts. This constitutional provision has been developed in the Code of the Republic of Belarus on Judicial System and Status of Judges: the judiciary is independent, it co-operates with the legislative and the executive.

It is established in the Constitution (Article 116) that the review of constitutionality of normative acts in the state is carried out by the Constitutional Court. This article also stipulates the procedure for electing (appointing) the Constitutional Court judges, their number and main competences of the Court. So the Constitutional Court status, its place and functions in the system of state authorities are defined in the Constitution.

The tasks of the Constitutional Court are to safeguard the supremacy of the Constitution and a direct effect thereof in the territory of the Republic of Belarus, ensure the compliance of the normative legal acts issued by state bodies with the Constitution, strengthen legality in rule-making and law-enforcement as well as resolve other issues specified in the Constitution, the Code on Judicial System and Status of Judges and other legislative acts (article 6 of the Code).

The review of constitutionality of normative legal acts manifests itself as a control of the state power from the positions of law provided with autonomous and independent exercise of the Constitutional Court competence.

According to the Constitution the Constitutional Court is formed on a parity basis. Six judges of the Constitutional Court are appointed by the President of the Republic of Belarus, six are elected by the Council of the Republic of the National Assembly of the Republic of Belarus (upper house of the Parliament). The candidacies to be elected (appointed) for posts of judges are suggested by the Chairperson of the Constitutional Court. The President of the Republic appoints the Chairperson of the Constitutional Court with the consent of the Council of the Republic from among judges of the Constitutional Court for a 5-year-term.

The institutional independence of the Constitutional Court as one of the highest state authorities arises from the most important elements of the Constitutional Court status such as parity procedure for forming the Constitutional Court, high requirements for judges' qualification, their term of office. Such independence of the Court works out as its complete autonomy (self-regulation): neither the President, nor the parliament and the Government are entitled to interfere with the Constitutional Court functions.

1.2. Regulatory and administrative autonomy

The Constitutional Court autonomously organises its internal work. It is regulated in the Rules of Procedure of the Constitutional Court. These Rules define the Court operating procedures as well as functions of the Secretariat of the Constitutional Court.

With a view to provide research the Science Advisory Council was attached to the Constitutional Court. The Rules of the Science Advisory Council and its membership were approved by the Constitutional Court decision.

The Rules of Procedure and other acts, adopted by the Court, prove its regulatory autonomy in the organisation of its work.

As to administrative autonomy of the Constitutional Court, it is manifested in autonomous regulation of organisational and personnel issues of the functioning of the Constitutional Court Secretariat (Apparatus). The Secretariat ensures the Constitutional Court activities in administering constitutional justice.

1.3. Independent budget

Independence of the Constitutional Court budget is the most important constituent of its institutional independence. Much of it is owed to the procedure for financing its work. The financing of either the Constitutional Court or other courts is regulated at a law level.

According to article 190 of the Code on Judicial System and Status of Judges the courts of the Republic of Belarus are financed out of the republican budget; the financing shall ensure the efficient and independent administration of justice in accordance with legislative acts. The courts maintenance expenditures are specified in separate lines of the republican budget for the next financial year. The same approach is stipulated in the Budget Code.

Property which is required to support the Constitutional Court work is in republican ownership, the Constitutional Court exercises its operative management.

Material and technical support of the Constitutional Court includes transport service and communication facilities, which are carried out by relevant state bodies under the procedure established by the President of the Republic of Belarus.

In accordance with budget legislation the Constitutional Court is simultaneously an administrator and holder of budgetary funds. As an administrator it autonomously works up the project on budget estimate for the next financial year and refers it to the Ministry of Finance. The Court also approves the budget estimate. The Parliament taking into account the approved budget estimate, authorises the concrete volume of the Constitutional Court maintenance expenditures for the next financial year in a separate line of the law on the republican budget adopted on an annual basis. The Court ensures the administration of budgetary appointments and implementation of the Court budget.

Therefore the state responsibility to provide adequate finance for proper functioning of the Constitutional Court as well as the right of the latter to autonomous working out and approval of the budgetary estimate as a basis of its financing are established in legislative acts and realised in practice being one of the guarantees of independent administration of constitutional justice in the Republic of Belarus.

1.4. Disciplinary independence

Independence of the Constitutional Court of the Republic of Belarus manifests itself along with regulatory, administrative and financial autonomy in issues of judges' disciplinary liability.

Under the provisions of article 124 of the Code on Judicial System and Status of Judges the termination of powers of the Chairperson and the judges of the Constitutional Court is carried out by the President of the Republic of Belarus based on the Constitutional Court submission on the termination of powers of a judge on relevant grounds with notification of the Council of the Republic of the National Assembly. Such submission shall be adopted by a majority vote of the full composition of the Constitutional Court judges. If the termination of powers is submitted due to a gross violation of duties or commission of acts incompatible with civil service (disciplinary case), it shall be adopted by a majority vote of no less than two thirds of the full composition of judges.

The simple or special majority required by the Code on Judicial System and Status of Judges for those submissions speaks for the defining role of the Constitutional Court in resolving issues of disciplinary liability of judges. There has not been any need to apply those provisions in practice.

1.5. Execution of decisions

According to article 24 of the Code on Judicial System and Status of Judges, article 38 of the Law on the Constitutional Court of the Republic of Belarus the Constitutional Court decisions enter into force from the day of their adoption if not specified otherwise. They are final and shall not be subject to appeal or protest. The court rulings are compulsory for all the state bodies, other organisations, as well as officials and citizens and shall be executed in the whole territory of the Republic of Belarus.

The Constitutional Court decision shall be considered by the bodies and persons to whom they have been referred. All these bodies and persons shall reply within the terms specified by the Court. The refusal or avoidance of consideration, failure to meet the specified terms, failure to execute or improper execution of the Constitutional Court decisions involve liability under the legislation of the Republic of Belarus.

State bodies of the Republic of Belarus respect the Constitutional Court decisions through consistent implementation of legal positions contained therein. Out of 292 decisions to be executed, which have been taken over the period of its operation, 215 have been executed in full. All the others have been executed either in part or are being in execution.

Practical respect for the Constitutional Court decisions speaks for the Constitutional Court functions, which are aimed to strengthen constitutional legality and protect constitutional rights and freedoms of the individual, are being performed.

So proceeding from inadmissibility of restrictions of the constitutional right to work in its decision of July 17, 2009 the Constitutional Court pointed to the situations where the employers have included the terms and conditions on age and place of residence of an employee as well as other terms which do not regard business qualities in their job (vacancies) offers. The Court underlined that it makes backgrounds for violation of individual constitutional rights enshrined in Articles 30, 32 and 41 of the Constitution. It deemed that the omission of age and residence in the discriminatory conditions list, established by labour legislation, as well as its entirety considerably restrict guarantees of the constitutional right to work. So the Council of Ministers was proposed to prepare a draft law on making relevant addenda to the Labour Code and the Law on Employment of the Population of the Republic of Belarus. Those addenda were introduced into the said Law in December, 2009.

The legislative provision on a final character of the Constitutional Court decisions is respected in practice and turns to be one of the guarantees of institutional independence of the Court.

1.6. Co-operation with the mass media

The Constitutional Court decisions play a significant role in safeguarding the individual rights and freedoms. Therefore the explanation in mass media of the Court legal positions is of high practical importance as fostering the society in the spirit of respect for constitutional values.

The Constitutional Court actively co-operates with the mass media. Various informative events have been organised: press-conferences, interviews and addresses of judges in electronic and print media. On the website of the Constitutional Court (www.kc.gov.by) current information is available in 3 languages – Belarusian, Russian and English. The Court also issues the Official Bulletin of the Constitutional Court of the Republic of Belarus, wherein official materials and the Court decisions as well as scientific articles are published.

The mass media in their messages shall neither foreclose the results of court proceedings in a concrete case nor affect a judge otherwise.

In co-operation with the mass media, the Constitutional Court provides informative openness and publicity of its work, promotes the exercise of the citizens' constitutional right to complete, reliable and timely information on the activities of state bodies.

It should be noted that institutional independence of the Constitutional Court of the Republic of Belarus is predicated upon its forming procedure, working principles, enshrined in the Constitution and developed in legislative acts, as well as by the opportunity to regulate autonomously its internal operation and participate in the settlement of financing.

II. Independence of the Constitutional Court judges

2.1. Legal bases of the independence of the Constitutional Court judge

In Article 110 of the Constitution it is specified that in administering justice judges are independent and obey only the law. Any interference in the judges' administration of justice is inadmissible and involves legal liability.

In the Code on Judicial System and Status of Judges which develops constitutional rules it is established that the independence of the Constitutional Court judges is safeguarded by the procedures for their appointment (election), suspension and termination of their powers, immunity, case proceedings, secrecy of deliberation when delivering the court rulings and prohibited request for its disclosure, liability for contempt of a court or interference in its work as well as by other guarantees, accorded to the judges' status, and provision of organisational and technical operational conditions for the Court.

Any pressure on the judges with a view either to interfere in the entire, complete and fair proceedings in a concrete case or obtain the unlawful court ruling shall be subject to liability provided by legislative acts.

During their term of office the Constitutional Court judges are inviolable. This privilege covers their home, office, transport and communication facilities, correspondence, property and documents in use. When administering justice a judge shall not be brought to any liability for expressing his own judgment in or for taking decision unless the sentence of a court states his guilt in committing the crime against the interests of service. A number of articles of Chapter 34 "Crimes against Justice" of the Criminal Code contain rules imposing liability for interference in administering justice by judges.

The independence of the judiciary shall also be guaranteed by incompatibility of judgeship with other offices and types of activity as well as by the special procedure for bringing judges to legal liability.

The independent status of the Constitutional Court judge is characterised by the term of office, procedure for its suspension and termination, material security of a judge, exclusive requirements for his professional qualification, procedure for bringing him to liability, established in the Constitution and legislative acts.

2.2. Professional training

According to the Constitution the Constitutional Court of the Republic of Belarus is formed of 12 judges from among highly qualified specialists in the field of law, who as a rule have a scientific degree.

Those constitutional provisions have been developed in article 91 of the Code on Judicial System and Status of Judges: **any person being a citizen** of the Republic of Belarus who knows Belarusian and Russian, has got higher legal education, is a highly qualified specialist in the field of law, generally has a scientific degree and adheres to morality may be appointed (elected) the Constitutional Court judge.

For the moment the Constitutional Court operates in full composition. 6 of 12 judges are candidates of legal science, assistant professors, 2 – doctors of legal science, professors. Many judges have previously worked in the ordinary courts system.

The professional training of the current Constitutional Court judges allows administering constitutional justice at an appropriate level, working out legal positions which aim at revealing the constitutional legal meaning of the reviewed normative provisions in order to safeguard constitutionality of rule-making and law-enforcement process.

2.3. Age criterion of a judge office

Taking into consideration constitutional requirements for high professional qualifications of the Constitutional Court judges, to this post are traditionally appointed (elected) persons having authority and considerable practical experience in law.

The age of the judges of the current composition of the Constitutional Court is from 47 to 64 years. The mandatory retirement age is 70 years. If a judge reaches the retirement age set in the Constitution there appears an unconditional ground to his retirement. 4 judges of the Constitutional Court have retired over the period of its activity for reason of their mandatory retirement age.

2.4. Term of office of a judge

The term of office of the Constitutional Court judges is established at the constitutional level and constitutes 11 years. Such a long period turns to be a relevant guarantee for the judge independence. The term of office of the Constitutional Court judges may be renewed. 4 judges in the current composition of the Constitutional Court were re-appointed (elected).

2.5. Material guarantees

The salary of the Constitutional Court judges has been established at the level of the salary of the Government members. It is commensurable with importance is proportionate to the authority of the office and level of responsibility of the Constitutional Court judge. It ensures the independence of a judge assuming its powers.

2.6. Incompatibility of a judge mandate with other functions

The incompatibility of the judge mandate with other functions is necessarily required and turns to be one of the guarantees for the independence of the Constitutional Court judge.

The Constitutional Court judges shall not be members of the Council of the Republic and deputies of the House of Representatives of the National Assembly, deputies of local councils of deputies. The prohibition for judges to conduct any business activities or perform any paid work, apart from teaching and scientific research is enshrined in the Constitution.

At the constitutional level judges are prohibited to be members of political parties or other public associations that pursue political goals (Article 36 of the Constitution). A judge shall decide impartially, being guided by only the Constitution and the law.

2.7. Criteria and limits for removal of a judge

The law level where established criteria and limits for removal of a judge are also a certain guarantee of his independence when administering justice.

The grounds for termination of powers of the Constitutional Court judges are specified in article 124 of the Code on Judicial System and Status of Judges. Pursuing to it they shall be terminated in case of his retirement; his voluntary application for removal; mandatory retirement age; expiry of the term of office; refusal to take an oath; termination of the Republic of Belarus citizenship due to withdrawal from it or its loss; appointment (election) to another post or transfer to another job; activity incompatible with the post of judge; failure to respect restrictions imposed by public service; gross violation of his official duties, commission of acts incompatible with public service; sentence of guilt **coming into effect**; the court ruling recognising special disability or disability of a judge **coming into effect**; incapability of a judge deemed under the established procedure or his inability to perform judge's duties during a long period (no less than 1 year) for health grounds proved by medical certificate; death of a judge, declaration of either his death or missing in the court decision **coming into effect** (without any special decision).

The termination of powers of the Chairperson and judges of the Constitutional Court shall be carried out by the President of the Republic of Belarus inclusive of the cases of personal written application for retirement or voluntary removal as well as in the case of the Constitutional Court submission on termination of a judge powers on other grounds with notification of the Council of the Republic of the National Assembly.

The fact that the Constitutional Court judge may be removed from his office only on the grounds specified in law as well as the entirety of those grounds aim to reinforce the independence of the judiciary.

As to the Constitutional Court practice the powers of its judges have been terminated due to either their mandatory retirement age or expiry of their term of office.

2.8. Immunity of judges

The immunity of the Constitutional Court judges involves their special protection related to performed functions. This protection is represented by a special procedure for suspension of powers of a judge and bringing him to liability.

The powers of a judge are suspended according to article 123 of the Code on Judicial System and Status of Judges by the President of the Republic in cases of instituting criminal proceedings against a judge, bringing him before justice as a suspect or accused – before the sentence, resolution on application of safety sanctions and treatment or resolution on termination of criminal proceedings. The

powers of a judge are renewed by the decision of the President of the Republic of Belarus if the specified grounds for their suspension have fallen off.

In pursuance of the rules of the Criminal Procedure Code the decision on instituting criminal proceedings against the Constitutional Court judge, bringing him before justice as a suspect or accused in criminal proceedings shall be only adopted with preliminary consent of those bodies which have appointed (elected) this judge – the President or the Council of the Republic. The Constitutional Court judge shall not be otherwise subject to detention or deprivation of individual freedom without preliminary consent of the President or the Council of the Republic which have elected him except the commission of state treason or other high crimes as well as the arrest in crime scene.

The judiciary also enjoys personal immunity from prosecution for financial harm caused by malfunction and omissions when administering justice.

The independent status of the Constitutional Court judge determines to a large extent the prestige of constitutional justice and depends on certain factors.

On the one hand, rules of the Constitution and laws prescribing the inadmissibility to interfere with the activity of the Constitutional Court judge or any other pressure, the judge immunity, incompatibility of his post with other ones, special procedure for bringing to liability as well as suspending or terminating his powers, all of them ensure the free and impartial decision-making process. On the other hand, when ensuring these guarantees the judge professionalism, sense of justice and morality are very important.

III. Operating procedures of the Constitutional Court

3.1. Subjects referring to the Constitutional Court

According to Article 116 of the Constitution the review of constitutionality of a normative legal act may be initiated by the following authorised bodies: the President of the Republic of Belarus, the House of Representatives, the Council of the Republic, the Supreme Court, the Supreme Economic Court, the Council of Ministers.

In the Republic of Belarus citizens are not entitled to individual constitutional complaint. The legislation stipulates indirect access to constitutional justice through the mentioned subjects which are authorised to refer to the Constitutional Court in order to initiate the constitutional review of an act.

Under Article 112 of the Constitution ordinary courts are also entitled to refer to the Constitutional Court with prejudicial request if during the proceedings they conclude on the unconstitutionality of a normative act to be applied in a concrete case.

Since 2008 the Constitutional Court has been vested the right to preliminary constitutional review of laws. This review is of obligatory nature which encourages the court in strengthening constitutional legality.

3.2. Constitutional Court relationship with other authorities

The Constitutional Court has relationship with other authorities in view of their constitutional competence. The President of the Republic of Belarus and the Council of the Republic of the National Assembly participate in forming the Constitutional Court composition. The Parliament has issued the Law on Constitutional Court of the Republic of Belarus and the Code on Judicial System and Status of Judges, which regulate the Constitutional Court status and institutional issues of its work. The Constitution specified the state bodies on the proposal of which the Constitutional Court render its judgments on the conformity of normative legal acts to the Constitution.

In its turn the Constitutional Court is entitled to submit to relevant state bodies the proposals resulting from its jurisdiction. The Chairperson of the Constitutional Court and his Deputy are entitled to participate in the sittings of the highest state authorities.

The Constitutional Court plays a particular role in safeguarding constitutional legality. Its decisions are respected by state bodies in their rule-making and law-enforcement practice.

The Constitutional Court exercises either obligatory preliminary review of constitutionality of laws before their signing by the President or subsequent constitutional review of all the normative legal acts in the state.

When examining the conformity of laws to the Constitution in the exercise of preliminary review the Constitutional Court lays down its legal positions aiming both to reveal the constitutional legal meaning of the examined laws and to implement constitutional rules accurately and consistently.

For example, when examining the Law on Making Alterations and Addenda to Some Laws of the Republic of Belarus on the Prevention of Legalisation of Proceeds from Crime and the Financing of Terrorist Activities in the exercise of preliminary review the Constitutional Court deemed this Law to be conforming to the Constitution in its decision of June 4, 2010. It also laid down a number of legal positions on restrictions imposed by this Law.

The Constitutional Court underlined that those restrictions on constitutional rights shall be legally admissible, socially justified, meet the justice requirements and be adequate, proportionate and necessary to protect constitutional values. **In cases where constitutional norms permit of restrictions and the legislator imposes restrictions on the rights and freedoms**, they shall not falsify their actual essence.

As to the duty to disclose the identify of participants to a financial transaction, prescribed by this Law, the Constitutional Court concluded that the legislator who establishes the legal mechanism for preventing legalisation of proceeds from crime and financing of terrorism, has the right to prescribe counteracting measures or find out physical and legal persons committing such actions as well as oblige persons carrying out financial transactions to disclose the identity of the parties to them.

The legal positions formulated by the Constitutional Court in the exercise of preliminary constitutional review are respected by the Parliament in its legislative process.

On the proposals of the President of the Republic of Belarus, the Parliament and the Council of Ministers the Constitutional Court takes decisions in the exercise of subsequent constitutional review.

So, on the proposal of the President the Constitutional Court rendered its judgment of May 13, 1999 “On the conformity of part six of article 209 of the Criminal Procedure Code of the Republic of Belarus to the Constitution of the Republic of Belarus and international legal acts”. **Therein it declared the rule under review to be unconstitutional as related to lack of the right of judicial appeal** against the decision to terminate criminal case. With a view to implement the legal position of the Constitutional Court the Parliament by the Law of October 25, 1999 introduced an addendum to article 209 of the Criminal Procedure Code, where it provided for the opportunity to appeal against the decision to terminate criminal case either in the Prosecutor’s or before the court.

The messages on constitutional legality in the country are annually adopted by the Court and addressed to the President of the Republic of Belarus and houses of the Parliament. They foster the optimisation of legal regulation in the state. So in its Message on Constitutional Legality in the Republic of Belarus in 2009, which was adopted in 2010, the Constitutional Court took a totally favourable view regarding the execution of its decisions. Meanwhile it drew attention to the necessity of the greater extent and timely character of the implementation of its legal positions and proposals by the state bodies and their officials as them being aimed to improve legislation and protect rights and freedoms of the individuals.

3.3. Oral and adversarial nature of proceedings

According to the Law on the Constitutional Court of the Republic of Belarus the constitutional proceedings are oral. When considering a case the Court hears the parties, their representatives, experts, specialists, witnesses and reads out the documents relating to the case.

It is established in the Law that constitutional proceedings shall be based on the adversarial principle. Adversarial nature of proceedings strengthens the independence of the Constitutional Court when administering justice. If the parties and other participants to the case take part in proceedings and are able to reasonably hold their own, the Court hears the case fully and completely and takes an independent and well-founded decision.

For certain categories of cases the Constitutional Court applies a written form of proceedings. In cases which are considered in the exercise of obligatory preliminary review of constitutionality of laws the Court applies a written form of proceedings. **Likewise the Court takes decisions on legislative gaps, conflicts of law and legal uncertainty.** Along with a written form the Constitutional Court admits certain oral elements of proceedings (for example, request for summons and hearing of representatives of the concerned state bodies).

At the moment the draft law on constitutional proceedings is being worked out. The stipulation of rules regulating it at a law level will contribute to more efficient proceedings in cases of different categories at the Constitutional Court.

3.4. Ultra petita and ex officio review of constitutionality of an act

According to article 24 of the Code on Judicial System and Status of Judges when resolving questions the Court is not bound by argument and considerations of the parties.

The Constitutional Court may also decide on acts either based on the act, which has been reviewed or reproducing some of its provisions even if these acts have not been mentioned in the application.

In accordance with article 48 of the Law on the Constitutional Court of the Republic of Belarus the request for review of constitutionality of an act may be withdrawn before the Constitutional Court completes investigation of the case in a court session. If the request has been withdrawn the proceedings in the case are terminated. Thereafter the review of constitutionality shall not be permitted.

In the period of its establishment (1994-1996) pursuant to the constitutional rule the Constitutional Court was entrusted with ex officio review of the conformity of normative acts issued by any state bodies, public associations to the Constitution and laws, international instruments ratified by the Republic of Belarus. The practice showed that this competence may result in attenuated impartiality when taking the Constitutional Court decisions. Moreover the assessment ex officio of constitutionality of a rule of law and its abrogation do not comply in full to the nature of judicial constitutional review. The constitutional reform has excluded the said rule from the Constitution.

3.5. Limits of the Constitutional Court as “a negative legislator”

As “a negative legislator” the Constitutional Court excludes from the legal system these acts which have been declared unconstitutional.

According to Article 7 of the Constitution legal acts or some of their provisions which have been recognised under the procedure specified by law as contradicting the provisions of the Constitution, have no legal force.

According to law the recognition of nonconformity of a normative legal act or some of their provisions to the Constitution or normative legal acts of superior legal force is the ground for

abrogation of this act and other normative legal acts, based on it, under the established procedure. The provisions of such acts shall not to be applied by courts, other bodies and officials.

As a rule the Constitutional Court does not decide on the validity period of the act which has been declared unconstitutional. But in its practice with a view to prevent legal gaps and their unfavourable consequences the Court set the terms for execution of its decision on the unconstitutionality of an act under review due to financial difficulties of its execution. For example, in its judgment of September 27, 2002 concerning the constitutional right to freedom of movement the Constitutional Court with a view to lift restrictions on the freedom of movement proposed to the National Assembly to consider the improvement of the rules of the Law on Procedures of Exit from and Entry into the Republic of Belarus of the Citizens thereof. As a new record keeping system was required the decision specified rather broad terms for its execution.

When declaring an act unconstitutional the Constitutional Court aims to attenuate the consequences of such finding for the legal system. As a rule, if a legal gap occurs due to the invalidity of the act which has been declared unconstitutional, the Constitutional Court points in its decision to the constitutional rules which directly regulate respective relations. In its judgement of June 26, 1998 “On the conformity of part two of article 116 of the Code on Marriage and Family to the Constitution of the Republic of Belarus” the Constitutional Court held that before due alterations and addenda are introduced to the said Code, the rule of part four of Article 32 of the Constitution establishing the judicial procedure for separation of children from their family against the will of their parents or persons acting as parents shall be directly applied.

The scope of constitutional review is defined by the provisions of the Code on Judicial System and Status of Judges. When reviewing constitutionality of a normative legal act the Constitutional Court holds its conformity to the Constitution, international legal acts ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus as regards the content of its rules, form of the act, distribution of powers between state bodies; procedure of its adoption, publication and entry into effect.

When reviewing an act the Constitutional Court considers both its literal meaning and meaning attributed to it by practical application.

3.6. State bodies reaction to the Constitutional Court decisions on legal gaps

The constitutional rules shall be developed in legislation. As a rule the rule-making bodies either timely introduce alterations and addenda to legislation in the execution of the Constitutional Court decisions or respect its legal positions when issuing new acts of legislation.

In the exercise of its right to submit proposals to the relevant state bodies on the necessity to make alterations and (or) addenda to acts of legislation, adopt new normative legal acts the Constitutional Court has taken 184 decisions over the years of its work.

When deciding on the existence of legal gaps and conflicts of law in legislation the Constitutional Court draws attention of rule-making bodies and points them to the necessity of their filling.

For example in its decision of May 27, 2010 with a view to provide the constitutional right of the citizen to access to justice the Constitutional Court deemed as necessary to fill the gap occurred in legal regulation of the court proceedings related to appeals which are filed by the convicted to arrest, confinement, life imprisonment, by the detained and persons under administrative arrest against applied sanctions. The Constitutional Court proposed to the Council of Ministers to work out a draft law on making relative alterations and addenda to the Civil Procedure Code. This decision is being executed now.

3.7. Dissenting opinion of a judge

A personal opinion of the Constitutional Court judge, his judgment related to the current case may be presented in a written dissenting opinion. The right to dissenting opinion is very important inasmuch as constitutional justice is founded on the judge's belief, his individual independent assessment of a case.

The right of the Constitutional Court judge to dissenting opinion is provided by article 24 of the Code on Judicial System and Status of Judges. The dissenting opinion is stated simultaneously with adoption of the decision in a case. As an integral part of the decision it shall be published at will of a judge as an appendix to the decision.

The opportunity to state and publish dissenting opinion is a substantial guarantee for the independence of the Constitutional Court judge. Over the period of its work the Constitutional Court judges have exercised this right 15 times.

3.8. Privacy of the reporting judge name and secrecy of deliberation

The reporting judge is specified in the decisions of the Constitutional Court taken in the exercise of both subsequent and preliminary constitutional reviews. Such practice does not result in any external pressure. For the main function of a reporting judge is to prepare the case files to hearing, but the decision itself is taken collegiately.

The Constitutional Court decides in camera. Only those judges, who have participated in court proceedings of the case, take part in deliberation. In deliberation the judges may freely state their positions on the discussed issue and ask for clarification of other judges' positions. The Court decisions are taken in vote. Thereat a judge may not abstain or miss the vote. Such approach to the secrecy of court deliberation excludes the threat of unlawful pressure and allows for lawful and justified adoption of the Constitutional Court decisions.

Conclusion

The independence of the Constitutional Court of the Republic of Belarus is safeguarded by the direct establishment of its forming procedure, composition and competence in the Constitution. As to the peculiarities of its operation they are specified in the Law on the Constitutional Court of the Republic of Belarus and the Code on Judicial System and Status of Judges.

The guarantees for the independence of constitutional justice which are provided in the Constitution and laws consist in the principles of formation and functioning of the Constitutional Court, procedure for electing (appointing) its judges, their term of office as well as in regulatory, administrative and financial independence of the Court, immunity and special procedure for bringing a judge to liability, their material security of judges.

The said guarantees, being objective bases of the independent constitutional justice, provide the Constitutional Court of the Republic of Belarus with a proper place in the state mechanism with respect to the separation of powers with a view to safeguard the constitutional order as well as the rights and freedoms of the citizens.