



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**Case-law
of the
Constitutional Court of Belarus
2004-2005**

Note by the Secretariat

In 1996, the President of the Republic of Belarus proposed a draft Constitution attributing increased powers to the President to be adopted by referendum. The Constitutional Court decided that the existing Constitution (dating from 1994) could only be amended by a two thirds majority in Parliament and further held that a referendum on the presidential draft could not have a binding effect.

Upon request by the Speaker of Parliament, the Venice Commission gave an opinion, on the presidential draft and a counter-proposal by two political groups in Parliament, in which the Venice Commission came to the conclusion that “both the examined proposals fall short of the democratic minimum standards of the European constitutional heritage” and called on the “authorities of Belarus to abide by the decision of the Constitutional Court” (CDL-INF(1996)008).

A referendum was held on both proposals and resulted in favour of the presidential draft. Following the referendum, the President promulgated his draft in spite of the decision by the Constitutional Court. Most of the members of the Constitutional Court resigned and the Constitutional Court, recomposed according to the new Constitution, annulled the previous decision on the constitutional referendum.

In response to these events, the Bureau of the Parliamentary Assembly of the Council of Europe suspended the special guest status of the Parliament of Belarus thus blocking the procedure of accession of Belarus to the Council of Europe. The Venice Commission discontinued the publication of the decisions of the Belarus Constitutional Court in their *Bulletin on Constitutional Case-Law*.

Even before 1996, the Constitutional Court of Belarus was an associate member of the Conference of European Constitutional Courts. At the XIIth Conference (Brussels, 13-16 May 2002) the Constitutional Court of Belarus requested full membership with the Conference. The Circle of Presidents of the Conference decided in its Resolution IV that “the Constitutional Court of the Republic of Belarus shall not be granted full membership” but that “the European Commission for Democracy through Law, also known as the Venice Commission, is invited to re-establish contact with the Constitutional Court of the Republic of Belarus and to report on that matter on the occasion of the Preparatory Meeting of the XIIIth Conference in Cyprus”.

In view of this request by the Conference, the Commission co-organised with the Constitutional Court a Conference in June 2003 on “Strengthening the Principles of a Democratic State Ruled by Law in the Republic of Belarus by way of Constitutional Control” during which *inter alia* a report on the separation of powers in Belarus was discussed (CDL-JU(2003)023). This Conference was followed by meetings between a delegation of the Venice Commission and authorities of the Republic of Belarus. The delegation learned that based on articles of the Constitution providing in general for access of individuals to courts, the Constitutional Court had started to deal with individual petitions.

In September 2004, the Venice Commission co-organised a further Conference with the Constitutional Court of Belarus on “Constitutional Control and Development of the Social State Ruled by Law” during which two main topics were discussed: social rights and the freedom of expression.

As requested by the Conference of European Constitutional Courts, the Venice Commission reported on its co-operation with the Belarus’ Court at the Preparatory Meeting of the Conference in Nicosia on 16-18 October 2003. The Conference commended progress made by the Constitutional Court of Belarus and agreed that their full membership of the Court would be decided upon at a later stage.

In the light of this decision by the Conference, the Joint Council on Constitutional Justice of the Venice Commission decided at its 3rd meeting on 10 March 2004 to publish the case-law of the Constitutional Court of Belarus since 1997 as a special document to be distributed with the Bulletin on Constitutional Case-Law. The publication was to be preceded by an introductory note setting out the background of the co-operation between the Court and the Venice Commission. This case-law was to be integrated into the CODICES database together with a reference to the same introductory note. Following a first document (CDL-JU(2004)069) containing the years 1997 to 2003, the present document constitutes a further part of the implementation of this decision¹.



¹ For other activities of the Venice Commission related to Belarus see documents CDL-AD(2003)014, CDL-AD(2004)029 and CDL-AD(2006)028.

Belarus

Constitutional Court

Statistical data

1 January 2004 – 30 April 2004

Total number of decisions: 11

1 May 2004 – 31 August 2004

Total number of decisions: 12

1 September 2004 – 31 December 2004

Total number of decisions: 20

Judgment: 1

1 January 2005 – 30 April 2005

Total number of decisions: 10

1 May 2005 – 31 August 2005

Total number of decisions: 14

1 September 2005 – 31 December 2005

Total number of decisions: 35

Important decisions

Identification: BLR-2004-B-001

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 30.01.2004 / **e)** J-168/04 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 1/2004 / **h)** CODICES (English, Russian).

Keywords of the systematic thesaurus:

3.9 **General Principles** – Rule of law.

4.10.4 **Institutions** – Public finances – Currency.

5.3.38.2 **Fundamental Rights** – Civil and political rights – Non-retrospective effect of law – Civil law.

5.4.8 **Fundamental Rights** – Economic, social and cultural rights – Freedom of contract.

Keywords of the alphabetical index:

Loan, foreign currency.

Headnotes:

All natural persons, if citizens of Belarus, have the right to conclude loan contracts, including loan contracts in foreign currency.

Summary:

The House of Representatives of the National Assembly challenged the Constitutional Court on the issue of the constitutionality of Article 760.3 of the Civil Code (CC) of Belarus. The provision of the article of the CC in question envisaged that foreign currency and negotiable instruments may be the subject-matter of a loan contract in the territory of Belarus made in conformity with Articles 141, 142 and 298 of the Code in question.

In accordance with Article 141 CC, the Belarusian rouble is the legal tender of the country, it is obligatory, and transactions have to be made according to its nominal cost in the territory of the country, in relation to the cases, procedure and conditions of the use of foreign currency in Belarus. This will be specified by the legislation. According to Article 142 CC, the types of negotiable instruments, as well as the procedure of carrying out transactions using them, shall be specified by the legislation. The right of ownership of currency valuables shall be subject to protection in the Republic of Belarus on common grounds. Article 298 CC envisages the possibility of payment of a pecuniary obligation in Belarusian roubles in the sum equivalent to the definitive sum in foreign currency or in standard (conventional) monetary units; the use of foreign currency and payment documents in foreign currency while making payments in the territory of the Republic of Belarus under the obligations shall be permissible in the cases and procedure and under the conditions specified by the legislation.

Having analysed the norms of the Civil Code and the Banking Code, Law “On the National Bank of the Republic of Belarus”, as well as acts of the National Bank and other enforceable legislation pertaining to currency regulation, the Constitutional Court concluded that before the coming into force of the Law of 22 July 2003 “On currency regulation and currency control”, the specified provisions were imperfect, contradictory and uncertain, which gave grounds for their mixed understanding and application in practice. This has resulted in problems in numerous foreign currency loan contracts between

residents. They have been resorting to the courts for the redress of their violated rights and have further been seeking clarification as to the legality of those contracts. At the moment the case has been brought before the Constitutional Court as a result of petitions by a number of state bodies, as well by certain scientific organisations and institutions of higher education.

The Constitutional Court has also emphasized the contradictory nature and inconsistency of judicial practice as regards disputes between residents, following on from the foreign currency loan contracts, when the courts of law enforced the recovery of money in Belarusian roubles for the benefit of an appellant and during the proceedings the parties did not refuse the conclusion of the foreign currency loan contract. These transactions were found to be invalid and the foreign currency, as the subject-matter of the transaction, was returned to state revenues. In this connection, attention was drawn to the Supreme Court of the Republic of Belarus, as the body directing judicial practice and which changed the practice in 2001 by the preservation of the same norms of the legislation, to the extent that it was made against the interests of participants in foreign currency loan contracts, who counted on the protection of their interests on behalf of the state and, owing to the uncertainty of the content of legal norms, had grounds to apply on behalf of the state bodies to seek a fair solution to their disputes.

As a result, the Constitutional Court was of the opinion that in order to secure legally correct decisions, all options had to be considered including, for example, improvement of the legislation to procure a defined understanding of legal terms to meet the requirements of part two of Article 112 of the Constitution and for a timely clarification by the Constitutional Court of the constitutionality of those terms or expressions of legal rules included in the applications under consideration.

Taking into consideration the peculiarities of the situation, the Constitutional Court found that the law in relation to foreign currency loan contracts concluded by natural persons – residents in accordance with Article 760.3 of the Civil Code, before the coming into force of the Law of 22 July 2003 “On currency regulation and currency control” the provisions of Article 11 of the Law “On currency regulation and currency control” should be applied to those disputes which are either being or have been examined in the courts of law, but which have not been concluded. This conclusion was based on part six of Article 104 of the Constitution and part one of Article 67 of the Law “On enforceable enactments of the Republic of Belarus” under which an enforceable

enactment has no retrospective effect, i.e. it shall not cover matters arising before its coming into force, except in those cases where it not only mitigates or repeals the responsibility of citizens, but also improves in some other way the position of the persons in question.

The Constitutional Court has proposed that the National Bank should change its interpretation of the Law “On currency regulation and currency relation” in order to ensure a good understanding and application of the given acts. Furthermore, it should work in tandem with other state bodies to explain to citizens their rights and obligations in the specified field.

The Constitutional Court held that Article 760.3 of the Civil Code, where the legislator stipulated that foreign currency and negotiable instruments might be the subject-matter of loan contracts in the territory of the Republic of Belarus so long as the rules of Articles 141, 142 and 298 of the specified Code were observed, which is compatible with the Constitution of the Republic of Belarus.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2004-B-002

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 20.02.2004 / **e)** J-170/04 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 1/2004 / **h)** CODICES (English, Russian).

Keywords of the systematic thesaurus:

- 3.10 **General Principles** – Certainty of the law.
- 3.11 **General Principles** – Vested and/or acquired rights.
- 3.16 **General Principles** – Proportionality.
- 3.17 **General Principles** – Weighing of interests.
- 5.4.4 **Fundamental Rights** – Economic, social and cultural rights – Freedom to choose one's profession.
- 5.4.6 **Fundamental Rights** – Economic, social and cultural rights – Commercial and industrial freedom.

Keywords of the alphabetical index:

License, medical, pharmaceutical activities / Ownership, state, private / Physician, qualification, requirement.

Headnotes:

Medical private practice requires the relevant qualifications and permission (licensing) for carrying out medical activities.

When restricting acquired rights, it is necessary to give special consideration to the principles of fairness, proportionality, and maximum respect for private and public interests.

Summary:

The House of Representatives of the National Assembly of Belarus petitioned the Constitutional Court regarding the conformity with the Constitution of Belarus of various legislation, in particular Article 15 of the Law of Belarus "On public health protection" and the provisions for the licensing of medical activities; licensing of pharmaceutical activities approved by Resolution of the Council of Ministers of the Republic of Belarus of 20 October 2003, no. 1378", the procedure and conditions for issuing special permissions (licenses) for carrying out medical and pharmaceutical activities – in particular, those which set higher requirements for the professional level of the heads of organisations of public health protection (heads of organisational departments) carrying out directly medical or pharmaceutical activities, individual entrepreneurs, as well as employees engaged (point 9 of the Provision on licensing of medical activities, points 9 and 10 of the Provision on licensing of pharmaceutical activities).

Having examined the materials of the case, the Constitutional Court held that the rules of Article 15 of the Law "On public health protection" have no bearing upon the issues of the licensing of medical and pharmaceutical activities, as they specify the conditions and requirements for securing the right of persons to carry on these activities as physicians or as pharmaceutical chemists, but not as heads of legal entities (heads of organisational departments) and individual entrepreneurs who organise the different types of requirements which are subject to licensing, and who bear the full responsibility to the medical or pharmaceutical service.

The Court emphasised that the physicians and pharmaceutical chemists under Article 41 of the Constitution exercise their right to work, i.e. the right to choose one's line of business following one's own

vocation, abilities, education, professional training, as well as taking into consideration social needs, by way of making labour and civil legal contracts with those relevant economic entities (both state and private), which organise the carrying out medical and pharmaceutical activities in accordance with the requirements and the standards of the state.

Furthermore, the Constitutional Court concluded that before the coming into force of the new requirements governing applicants for licenses and license-holders to commence carrying out medical and pharmaceutical activities, it was the provision of the procedure for issuing for the economic entities (legal persons and entrepreneurs which are not in this context a legal entity), special permissions (licenses) (for carrying out the types of activities under the authority of the Ministry of Public Health approved by Order of the Ministry of Public Health of the Republic of Belarus of 15 January 1998, no. 15), that was effective. According to that provision, the issuing of licenses for medical practice, wholesale and retail dispensing of medicines and herbs (sub-items 2.3.2 and 2.5 of point 2) has been exercised within the lower extent of the requirements and conditions made by the applicants for licenses (license-holders).

In accordance with previous effective legislation, the obtaining of licenses for conducting medical or pharmaceutical activities had not been conditional upon the presence or absence of the head of organisation (head of organisational department), individual entrepreneur or employees of the top and higher qualified category.

The Constitutional Court found that when restricting acquired rights, it is necessary to have special consideration for the principles of fairness, proportionality and maximum respect to private and public interests. Such an approach promotes the foundation of trust by the citizens of the state. It has been proclaimed by the Republic of Belarus that the most important principle of legal regulation should be its predictability and its reasonable stability based on the balance between the interests of the State and its citizens as well as the economic entities.

Therefore, it was held to be lawful by the Constitutional Court to make additional requirements for new persons wishing to obtain licenses for conducting medical or pharmaceutical activities, either by way of creation of a legal entity or by way of work as an individual entrepreneur.

In respect of persons or organisations who obtained licenses under the previous legislation, which will now be suspended, the Constitutional Court was of the view that their applications for new licences should be

sympathetically considered based on the applicants length of service and other circumstances that ought to be taken into consideration within the time period after the adoption of the present judgment, and that this should be a sufficient solution.

Designated persons, as authorised by state bodies, shall be entitled to mitigate the requirements, as stipulated by the above provision for awarding qualifying categories for medical and pharmaceutical workers, as approved by the Resolution of the Ministry of Public Health of the Republic of Belarus of 1 July 2002 no. 45 in part, for awarding qualifying categories out of the established sequence, taking into account the length of the service, level of professional training and other circumstances, including the creation by them of economic entities which had conduct of medical or pharmaceutical activities on the basis of the licences issued previously by the state bodies.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2004-B-003

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 11.03.2004 / **e)** J-171/04 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 1/2004 / **h)** CODICES (English, Russian).

Keywords of the systematic thesaurus:

2.3.6 **Sources of Constitutional Law** – Techniques of review – Historical interpretation.

3.9 **General Principles** – Rule of law.

5.3.2 **Fundamental Rights** – Civil and political rights – Right to life.

Keywords of the alphabetical index:

Death penalty, possibility / Death penalty, moratorium.

Headnotes:

National legislation, international standards, and the conditions of evolution of the State shall make it possible to reach decisions regarding the declaration

of cessation of the death penalty or to take a decision on the abolition in full of the punishment in question.

Summary:

The House of Representatives of the National Assembly of Belarus asked the Constitutional Court to give its judgment on the conformity between the Constitution of Belarus, the international treaties ratified by Belarus and the provisions of the Criminal Code of Belarus providing for a death penalty, in view of the fact that the specified provisions of the Criminal Code are at variance with Articles 2, 21 and 25 of the Constitution of Belarus and contrary to the international principles and standards establishing the unconditional right to life and inviting all states to abolish the death penalty, and to secure the most important human right in question.

The Constitutional Court, having studied the dynamics of the development of the criminal legislation of Belarus pertaining to the application of the death penalty, the practice of applying such punishment, the experience of other states and countries of the European region, held that Belarus has come closer to the abolition of the death penalty or to a declaration of suspension of its application in accordance with the international approaches and standards. The joining of the Republic of Belarus to the Council of Europe and signing, firstly, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Protocol no. 6 concerning abolition of the death penalty (1983) and Protocol no. 13 concerning the abolition of the death penalty in all circumstances (2002), will contribute to an unconditional adoption of the decision on the abolition of the penalty in question.

The Constitutional Court also had regard to the fact that at present there is no factual fulfilment of the Recommendations of the House of Representatives of the National Assembly adopted of 13 June 2002 arising from the results of the Parliamentary hearings on the subject of “Political and legal problems of the abolition of the death penalty in the Republic of Belarus”, which were delivered to the Council of Ministers, the Ministry of Internal Affairs, the Ministry of Education, the Ministry of Justice, the Supreme Court and the Ministry of Information for the purposes of the creation of conditions under which a declaration could be made to declare a suspension of the death penalty. The Constitutional Court also emphasised that the tendency to reduce the context of extra grave crimes connected with intentional infringement on human life, which had been outlined only in 2003, should be secured by the efforts of the law enforcement bodies.

Having considered Article 24.3 of the Constitution of Belarus setting out the possibility to apply the death penalty only until its abolition, as the legal ground for the decision to declare a suspension of the death penalty or for its abolition, as well as; taking into account the above mentioned circumstances, that the Second Optional Protocol to the International Covenant on Civil and Political Rights has not been ratified by Belarus, that the issue of its full membership of the Council of Europe has not yet been resolved, and that the European Convention for the Protection of Human Rights and Fundamental Freedoms and the relevant Protocols thereto have not been signed, and that would stipulate by force of Articles 8 and 116 of the Constitution of Belarus the supremacy of the specified international acts within the national legal system, the Constitutional Court referred the issue to the competence of the Head of the State and Parliament.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2004-B-004

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 15.04.2004 / **e)** D-172/04 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 2/2004 / **h)** CODICES (English, Russian).

Keywords of the systematic thesaurus:

3.13 **General Principles** – Legality.

Keywords of the alphabetical index:

Appeal, individual, written, oral, right / Appeal, to the State bodies and officials, examination, obligation, procedure.

Headnotes:

Citizens have the right to appeal in written and oral form to State bodies, officials, and other organisations. In turn, State bodies, officials and the heads of organisations are obliged to hear citizens' cases individually, and have no right to refuse their direct applications, made in accordance with the prescribed

procedure and with regard to issues that fall within the competence of such state bodies, officials, and other organisations.

Summary:

This decision had been adopted as a result of individual appeals concerning the restriction of the right of citizens to appeal orally and in written forms directly to the Chairperson of the Minsk city executive committee on the issues within his competence.

On 15 April 2004, the Constitutional Court of Belarus examined the issue of conformity between the Constitution and the rules of pertaining to the receiving of appeals made by citizens to the Minsk city executive committee.

A decision of the Minsk city executive committee of 1 October 2002 has approved the relevant Provision on the procedure of appeals by citizens, which contains the criteria restricting the right of citizens to appeal directly to the Chairperson of the Minsk city executive committee. In particular, a citizen, in order to put his/her name on the list of appointments for an audience with the Chairperson of Minsk city executive committee, should put the question in writing the question and indicate the legal grounds of the appeal.

The Constitutional Court analysed the relevant Article 40 of the Constitution, and the legislation regulating the procedure of the constitutional right of citizens to make an appeal.

In the opinion of the Constitutional Court, although preliminary registration promotes more effective exchange with citizens, it should not exclude the right of citizens to an oral application at the first hearing. With regard to the arguments and the lawfulness of the requirements contained in the appeal, this is not the obligation of a citizen but of the officials who examine the appeal and produce the reply. The Law of Belarus "On appeals of citizens" shall fix the relevant terms (15 days, 1 month, 2 months) for the determination of lawfulness (legality) of appeals lodged by citizens. This signifies that the lawfulness of an appeal shall be determined not at the stage of preliminary registration (list making) for the reception of the appeal, but in the process of its examination.

Thus the Constitutional Court directed the Minsk city executive committee and other local executive and administrative bodies to the obligation to properly secure the constitutional right of citizens to lodge their appeals to the state bodies, including oral appeals by personal reception.

Languages:

Belarusian, Russian, English (translation by the Court).

*Identification:* BLR-2004-B-005

a) Belarus / b) Constitutional Court / c) / d) 01.07.2004 / e) D-173/04 / f) / g) / *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 3/2004 / h) CODICES (English, Russian).

Keywords of the systematic thesaurus:

4.8.7.1 **Institutions** – Federalism, regionalism and local self-government – Budgetary and financial aspects – Finance.

4.8.7.2 **Institutions** – Federalism, regionalism and local self-government – Budgetary and financial aspects – Arrangements for distributing the financial resources of the State.

5.3.16 **Fundamental Rights** – Civil and political rights – Principle of the application of the more lenient law.

5.3.38 **Fundamental Rights** – Civil and political rights – Non-retrospective effect of law.

Keywords of the alphabetical index:

Budget, savings / Building, expenses / Regulation, government, local council, implementation / Municipality, decision, retroactivity.

Headnotes:

Proposals made by a local executive committee to reduce building costs are likely to have positive social consequences for the region, as it would make it possible to increase funds available for building and repair work.

An enactment shall not have retrospective effect, i.e. the enactment shall not cover agreements made before it comes into force, except when it mitigates or revokes the responsibility of citizens, or in some way improves the status of persons who are affected by it, or when the enactment or the proceedings leading to its coming into force directly specifies that it will apply to agreements made prior to its coming into force.

Summary:

As a result of an individual application, the Constitutional Court examined the decision of the Vilejka region executive committee to reduce budgets for previously planned construction.

In considering the application in question the Court held that the norms of costs and planned accumulations for building and construction firms which carry out building, construction and special building works by contract are regulated by specified enforceable enactments of the Government of the Republic of Belarus. The Resolutions of the Cabinet of Ministers of 11 February 1993, no. 67 and of 6 July 2001, no. 997 had specified the maximum norms costs and planned accumulations. The Resolution of the Cabinet of Ministers of 27 October 1995, no. 599 “On setting of reducing budgets as to the norms of burden costs and planned accumulations for building and construction organisations” was set reducing budgets of the norms of burden costs and planned accumulations at 0,996 and 0,96 respectively.

The Vilejka region executive committee, by carrying out the recommendations of the Minsk Oblast executive committee, adopted Decision no. 84 of 27 February 2003 and determined that communal property organisations concluding new building contracts shall apply a reduced budget as to the maximum norms of burden costs and planned accumulations than those fixed by Resolution of the government.

The Court ruled that the term “maximum norms” should be considered as the maximum tariff, which could not be increased upon conclusion of the contracts, but which could be reduced.

The Court found that sub-item 1.3 of point 1 of the decision of the Vilejka region executive committee was consistent with the Constitution and also with the legislation of the Republic of Belarus.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2004-B-006

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 23.07.2004 / **e)** D-174/04 / **f)** / **g)** / *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 3/2004 / **h)**.

Keywords of the systematic thesaurus:

4.8.7.1 **Institutions** – Federalism, regionalism and local self-government – Budgetary and financial aspects – Finance.

5.2 **Fundamental Rights** – Equality.

5.3.16 **Fundamental Rights** – Civil and political rights – Principle of the application of the more lenient law.

5.3.38 **Fundamental Rights** – Civil and political rights – Non-retrospective effect of law.

5.4.8 **Fundamental Rights** – Economic, social and cultural rights – Freedom of contract.

Keywords of the alphabetical index:

Budget, savings / Building, expenses / Property, communal, disposition / Municipality, decision, retroactivity / Contract, observance.

Headnotes:

According to the Constitution and the Law, the retrospective effect of an enactment implies inadmissibility not only when resolving an issue of the imposition of legal liability, but also when it results in a change in the legislation which has a prejudicial effect upon the status of citizens or legal entities.

Summary:

The Court considered an application filed by a legal entity regarding the decision on retrospective effects made by Minsk city executive committee in respect of the norms applying to the reduction of the budget of the planned accumulation and burden costs.

According to the decision of the Minsk city executive committee of 4 March 2004, an enactment came into force on 1 January 2004, i.e. the coming into force of this particular enactment was given retrospective effect. The enactment was included in the national register of legal acts of the Republic of Belarus of 1 April 2004.

The Court specified that under Article 104.6 of the Constitution no enactment shall have a retrospective effect unless it extenuates or revokes the

responsibility of citizens. Article 67 of the Law “On enforceable legal acts of the Republic of Belarus” envisages that the coming into force of an enactment shall have no retrospective effect, i.e. it shall not cover contracts entered into before it comes into force, unless it extenuates or revokes the responsibility of citizens or in some other way improves the position of persons affected by it, or if the enactment directly stipulates that it covers the contract in question before it comes into force.

The Court stressed that in instances where the enactment itself or the proceedings by which it came into force specified directly that it should cover contracts arising before its coming into force, retroactivity may be granted with respect only to those norms of the enactment in question which do not prejudice the position of citizens or legal entities. The Court noted that the challenged norms may be at variance with the principles of supremacy of the law and equality of the rights of participants of civil relations specified in Article 2 of the Civil Code of the Republic of Belarus.

The Court emphasised the necessity to observe the constitutional principle of the freedom of contract. The Minsk city executive committee is the arbitrator for the negotiations between organisations and customers with contractors regarding changes to the conditions of a contract or, if agreement cannot be reached, regarding its termination. Exclusion, taking into account the provisions of the Civil Code, is allowable only in instances when the customer and contractor under the contract are the unitary communal enterprises.

Languages:

Belarusian, Russian, English (translation by the Court).

**Identification:** BLR-2004-B-007

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 23.08.2004 / **e)** D-175/04 / **f)** / **g)** / *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 3/2004 / **h)**.

Keywords of the systematic thesaurus:

3.13 **General Principles** – Legality.

5.3.37 **Fundamental Rights** – Civil and political rights – Right of petition.

Keywords of the alphabetical index:

Appeal, administrative, right / Appeal, in written and oral form / State organ, duty to receive citizens.

Headnotes:

According to national legislation, citizens have the right to lodge appeals in written or oral form to state bodies, officials, and other organisations. The state bodies, officials and heads of organisations are obliged to receive citizens' appeals and may not refuse applications under the prescribed procedure with regard to issues falling within their competence with the purpose of protection of the rights and lawful interests of citizens.

Summary:

A direction had been adopted on the grounds of an individual application (Article 122 of the Constitution) challenging the legality of the Instruction on procedure of personal reception of citizens in Gomel oblast executive committee approved by the Decision of Gomel oblast executive committee of 17 April 2003, no. 267 in part, excluding the possibility of an oral application by citizens being personally received by the Chairperson of Gomel oblast executive committee, as well as establishing the necessity for citizens to justify the legality of their requirements.

The Constitutional Court emphasised the legal position with regard to the procedure of the constitutional right of citizens to appeal to state bodies and other organisations as expressed in its decision of 15 April 2004 "On the constitutionality of the provision on procedure of reception of citizens in Minsk city executive committee approved by Decision no. 1430 of Minsk city executive committee of 1 October 2002".

The subjects under examination by the Court were both the specified decision of Minsk city executive committee and the analogous decisions of certain oblast executive committees, including Gomel oblast executive committee. The Court in its decision considered the position of both the Minsk city executive committee and other local executive and administrative bodies, for the necessity of securing the constitutional rights of citizens to lodge applications to state bodies, including the right to personal reception of oral applications, and that presupposed

bringing both the enactments they adopted and the practical application of the law into line with the requirements of the Law "On applications of citizens".

The Court held that the constitutional and legal meaning of Article 5 of the Law, referred to in the Court's decision of 15 April 2004, shall be obligatory and shall exclude any other interpretation of by-laws, including decisions by local executive and administrative bodies.

The Court found that the position had now been resolved with the introduction of relevant alterations and therefore there was no need to deliver new decision as envisaged by Article 35 of the Law of the Republic of Belarus "On the Constitutional Court of the Republic of Belarus".

Cross-references:

- Decision of 15.04.2004, no. D-172/2004.

Languages:

Belarusian, Russian, English (translation by the Court).

*Identification: BLR-2004-B-008*

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 25.10.2004 / **e)** J-178/04 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 4/2004 / **h)**.

Keywords of the systematic thesaurus:

2.2.1.2 **Sources of Constitutional Law** – Hierarchy – Hierarchy as between national and non-national sources – Treaties and legislative acts.

3.12 **General Principles** – Clarity and precision of legal provisions.

4.10.7.1 **Institutions** – Public finances – Taxation – Principles.

Keywords of the alphabetical index:

Tax, due rate / Legal person, foreign, tax payer, different treatment / Residence, lack, taxation / Taxation, double, avoidance, international treaty.

Headnotes:

The incomes of foreign legal entities that are not registered in the territory of Belarus, but which do carry out their activities on its territory, are subject to taxation at the appropriate rates, in accordance with the national legislation. Once an international treaty on the avoidance of double taxation has been ratified by Belarus, then the provisions of such an international treaty shall prevail.

Summary:

The Constitutional Court examined the case further to an application by the House of Representatives of the National Assembly of Belarus.

The case concerned foreign legal entities with no permanent presence in Belarus and which are thus subject to income tax from transactions with securities at the rate of 40 per cent, on the grounds of the specified Resolutions of the State Tax Committee (at present - the Ministry on Taxes and Dues).

The Constitutional Court has held to be legal the levying of tax at a rate of 40 per cent, based on the national tax legislation, on income from transactions with securities upon those foreign legal entities which do not act through a permanent representative office in Belarus.

At the time the case was considered, about 50 international agreements on the avoidance of double taxation were in effect in Belarus. They generally contain a rate that does not exceed 10 per cent. The Constitutional Court emphasised that the provisions of such agreements to which Belarus is a party are to apply to those persons who are residents of one or both Contracting States. The procedure of confirmation of the status of a resident is stipulated by the national tax legislation. Therefore, the Court considered arguments put forward by the House of Representatives stating that the legislation in question was not in line with the ratified international agreements on the avoidance of double taxation, as the legislation specifying the complex procedure of release from double taxation was unfounded and of no legal nature.

At the same time, the Constitutional Court noted a contradiction inherent in the legal regulation of tax affairs, which could result in confusion in interpreting and enforcing the enactments in practice.

The Court thus invited the government and other relevant state bodies to take appropriate steps to secure unified legal regulation, a timely removal of

the confusing and contradictory rules, and also to ensure a fair resolution of conflict situations in the field of taxation, bearing in mind that, to a certain extent, the grounds for dispute are caused by imperfect legislation, inherent contradiction, and failure to take proper steps to rectify matters.

Supplementary information:

- Judge V.Z. Shuklin delivered a dissenting opinion.

Languages:

Belarusian, Russian, English (translation by the Court).

*Identification:* BLR-2004-B-009

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 08.12.2004 / **e)** D-180/04 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 4/2004 / **h)**.

Keywords of the systematic thesaurus:

4.8.4.1 **Institutions** – Federalism, regionalism and local self-government – Basic principles – Autonomy.

4.8.7.2 **Institutions** – Federalism, regionalism and local self-government – Budgetary and financial aspects – Arrangements for distributing the financial resources of the State.

Keywords of the alphabetical index:

Tax, local, right to determine / Natural person, infrastructure, use.

Headnotes:

The right to set local taxes for maintenance and development of infrastructure belongs to the higher level of local executive and administrative bodies; in particular, Minsk city and Minsk Councils of deputies.

Summary:

The Constitutional Court examined an application by some citizens concerning the conformity with the Constitution of enforceable legislation made by two local (Postavy and Pukhovichy) regional Councils of Deputies, which have levied local taxes for a specific purpose from natural persons, organisations and individual entrepreneurs.

The Decision no. 40 of the Council of Deputies of the Postavy Region of 29 December 2003 "On the budget of the region for 2004" established a number of local taxes within the territory of the region to be levied upon natural persons, for the purpose of the maintenance and development of infrastructure. The tax payers are natural persons who reside in the territory of Postavy, and who own flats and other residential property, as well as tenants in local authority housing. The basis of the obligation of natural persons to pay the taxes for maintenance and development of infrastructure was not the fact that those persons used infrastructure in the Postavy region, but, the fact of possession, use of property or its ownership by the tax payer. The given conclusion does not in any way relate to the use of infrastructure located in the territory of the Postavy region.

The Decision no. 43 of the Council of Deputies of the region of Pukhovichy of 18 February 2004 approved the Provision to levy a designated tax due from natural persons for the maintenance and development of infrastructure of the city. The tax payers are citizens who reside in the territory of Pukhovichy region and who are 18 years of age as of 1 January 2004, as well as citizens who are current residents and who have plots of land in the territory of the city of Marijana Gorka and of rural settlements. Under the Law "On the budget of the Republic of Belarus for 2004", the local councils of deputies at a territorial level, (the Pukhovichy regional Council of deputies is also included in this context), shall have the right to levy taxes upon natural persons, the payers of which may also be natural persons, and the objects include parking in specially equipped places; trading in the territory of the relevant administrative and territorial units; ownership of dogs and (or) their use in business activities, use of local symbols; holding of auctions; hunting and fishing; building within the territory of the relevant administrative and territorial units; other types of use of infrastructure by the relevant administrative and territorial units specified by the Council of Deputies of Minsk and councils of deputies at a territorial level.

The Constitutional Court has found to be at variance with the Constitution and the Law of the Republic of Belarus "On the budget of the Republic of Belarus

for 2004" provisions of enforceable legislation of Postavy Regional Council of Deputies in relation to the levying of local taxes upon natural persons for the use of objects of infrastructure and fixing the rate of the taxes, and the Decision of Postavy Regional Council of Deputies which approved the provision for local taxes due from natural persons for the maintenance and development of the infrastructure of the region.

Languages:

Belarusian, Russian, English (translation by the Court).

*Identification:* BLR-2005-B-001

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 05.01.2005 / **e)** D-182/05 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 1/2005 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

3.17 **General Principles** – Weighing of interests.
5.3.39.3 **Fundamental Rights** – Civil and political rights – Right to property – Other limitations.
5.4.13 **Fundamental Rights** – Economic, social and cultural rights – Right to housing.

Keywords of the alphabetical index:

Cooperative, housing member, withdrawal / Property, shares, return / Building, cooperative, member withdrawal.

Headnotes:

Legislation is needed to regulate the issues of building by members of Housing and Building Cooperatives and their withdrawal from such schemes, and it must also ensure full protection of members' rights to have their shares returned. The protection of citizens affected by housing law shall be afforded by improving the law and the practical application of the law governing this sector, and by setting the best standards for the terms and conditions of the relevant contracts.

Summary:

In its decision of 5 January 2005, the Constitutional Court analysed the problem of the return of shares for citizens withdrawing from organisations carrying out building works. The legislation governing this sector is incomplete, and this has resulted in breaches of the rights and the lawful interests of certain specified citizens who have not had their shares returned in time. In the opinion of the Constitutional Court, there is the need for regulation of the relationships between citizens who have completed building works, Housing and Building Cooperatives and other related organisations. The "Effective Model Rules of a Housing and Building Cooperative" are clearly out of date and the norms in these rules are not in line with the norms of the Civil and Housing Codes or indeed with other acts of legislation. It has not proved efficient to resolve many of the issues by having reference to the documentation passing between those citizens carrying out building work because these documents do not properly protect the rights and lawful interests of citizens. The Constitutional Court has asked the Council of Ministers of the Republic of Belarus to resolve the issues concerning correct payment for those persons who have carried out building works and have withdrawn from the building organisation by ensuring that there is the best possible form of protection of the interests of both the building organisations and of the citizens who have withdrawn from them.

Languages:

Belarusian, Russian, English (translation by the Court).

*Identification:* BLR-2005-B-002

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 02.03.2005 / **e)** D-184/05 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 1/2005 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

5.1.1.3 **Fundamental Rights** – General questions – Entitlement to rights – Foreigners.

5.2.1.1 **Fundamental Rights** – Equality – Scope of application – Public burdens.

5.2.2.4 **Fundamental Rights** – Equality – Criteria of distinction – Citizenship or nationality.

Keywords of the alphabetical index:

Foreigner, temporary stay, registration, capital, taxation / Foreigner, tax, local, payment.

Headnotes:

It is unconstitutional and at variance with the national legislation currently in force as well as with international law for local authorities to impose any taxes and dues upon foreign citizens and stateless persons who arrive to stay on a temporary basis in the Republic of Belarus (city of Minsk).

Summary:

The Constitutional Court was asked to verify point 2 of the Decision of the Minsk city executive committee of 11 April 1996 "On registration of foreign citizens and stateless persons who arrive in Minsk on a temporary basis and compensation for relevant municipal economy expenses" as a result of an application of a citizen on the grounds of part four of Article 122 of the Constitution.

The said decision contains approved provision for the registration of foreign citizens and stateless persons who arrive in the city of Minsk. The provision regulates the procedure for accounting for the specified persons in the city of Minsk, for example the registration of their passports. Point 2 also stipulates an obligation for foreign citizens, who have reached the age of eighteen, to hand over sums of money at the rate of 20 per cent of the minimum wage for each day they reside in the city of Minsk with a view to compensation for the social services budget and for the development of infrastructure of the city. According to point 6 of the provision, the control over making payments for residence and registration in the city of Minsk is vested in those bodies authorised to carry out registration.

An analysis was carried out of the relevant provisions of the Constitution, the legislation "On the legal status of foreign citizens and stateless persons in the Republic of Belarus", "On national dues", "On local government and self-government in the Republic of Belarus", "On the status of the capital of the Republic of Belarus – the city of Minsk" and other legislation currently in force in Belarus.

The Constitutional Court has ruled that foreign citizens and stateless persons within the territory of Belarus shall enjoy rights and liberties and carry out

duties on equal terms with the citizens of Belarus; they are to be entitled without discrimination to equal protection of their rights and legitimate interests. The legislation of Belarus does not entitle any local authorities to set any taxes and dues for foreign citizens and stateless persons arriving on a temporary basis within Belarus. The collection of the funds mentioned above from foreign citizens is also in breach of the norms of international treaties to which the Republic of Belarus is a party and which form part of the law currently in force in Belarus.

The Constitutional Court examined point 2 of the Decision of Minsk city executive committee of 11 April 1996 no. 240 "On registration of foreign citizens and stateless persons who arrive in Minsk temporarily and compensation of relevant municipal economy expenses" and also point 1 of the Decision of Minsk city Council of deputies of 8 June 1999 no. 27 which approved the said Decision of Minsk City Executive Committee in relation to the collection from foreign citizens and stateless persons of money for each day they reside in the city of Minsk. It found both to be at variance with the Constitution of the Republic of Belarus, with the legislation currently in force within the Republic of Belarus, and with international law.

Supplementary information:

Subsequently, and as a result of the adoption of relevant decisions by the Minsk City Council of Deputies, the collection of payments from foreign citizens for their residence in the city of Minsk has been terminated as of 3 March 2005.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2005-B-003

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 12.05.2005 / **e)** D-185/05 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 2/2005 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

3.10 **General Principles** – Certainty of the law.

5.3.42 **Fundamental Rights** – Civil and political rights – Rights in respect of taxation.

Keywords of the alphabetical index:

Law, interpretation / Law, application / Tax, exemption, condition / Law, ambiguous.

Headnotes:

High quality legislation presupposes the absence of any ambiguity. Only then can legal norms be properly understood and applied.

Improvement of the legislation and its practical application may be achieved by means of interpretation.

The purpose of compensation for moral injury is compensation for moral and physical suffering, rather than the making of profit.

Summary:

Having received applications from various citizens, the Constitutional Court examined the constitutionality of legislation regulating the taxation of sums paid in compensation for moral injury.

To protect their rights, liberty, honour and dignity, citizens are entitled, under Article 60 of the Constitution, to recover both property damage and financial compensation for moral injury through the courts.

The civil legislation of Belarus contains legal norms regulating recompense for moral injury and also the sums specified by the Court to be payable in compensation. Injury caused to a person or to the property of a citizen shall be subject to compensation in full by the person who caused the injury. The amount of compensation for moral injury caused to a citizen and the grounds under which it will be paid shall be specified by the norms of the Civil Code (Chapter 58 and Articles 152, 968 of the Civil Code). Compensation for moral injury will be in monetary form, and the rate of compensation shall be fixed by the court depending on the type of damage inflicted upon the victim and also upon the degree of culpability on the part of the person who inflicted the injury of the injury in those cases where culpability is a ground for compensation. When the rate of compensation for the injury is fixed, regard must be given to requirements of reasonableness and fairness.

The law "On income tax from natural persons" specifying exemption of monetary compensation for moral injury from taxation has the wording "within the limits of rates specified by the legislation of the Republic of Belarus". This wording is open to several interpretations.

Study of law enforcement practice has shown that sums of financial compensation for moral injury, with the exception of those specifically listed in the legislation currently in force, are considered by the tax authorities being subject to taxation as "other income". The Constitutional Court took the view that the existing state of affairs (whereby some payments of financial compensation for moral injury are taxable and others are not) is not properly derived from the provisions of the Law "On income tax from natural persons". The distinction between taxable and non-taxable compensation depends on the circumstances in which the need for compensation took place, and this is something which does not follow directly from the norms of the law in question.

The Court suggested that the House of Representatives of the National Assembly should take steps to improve the norms of the Law "On income tax from natural persons", which regulates taxation of compensation for moral injury, and its practical application. This should either be done through interpretation or by changing the law so that any ambiguities are removed and the norms in question can be applied in such a way as to afford fuller protection of citizens' rights.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2005-B-004

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 24.06.2005 / **e)** D-186/05 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 2/2005 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

5.2 **Fundamental Rights** – Equality.

5.3.13.1.3 **Fundamental Rights** – Civil and political rights – Procedural safeguards, rights of the defence and fair trial – Scope – Criminal proceedings.

Keywords of the alphabetical index:

Convicted person, right to amnesty / Punishment, terms, reduction / Sentence, application, procedures / Amnesty, date of effect.

Headnotes:

The right to amnesty shall take effect from the date of the original verdict, whether this was before or after the relevant time period for the amnesty.

Summary:

As a result of applications from various convicted persons, the Constitutional Court examined the issue of the amnesty and questions which had arisen as to the rights of certain convicted persons to take advantage of it.

In its decision, the Constitutional Court once again emphasised that persons who committed crimes before the coming into force of the law on amnesty and those who were convicted of crimes before or during the passing of this law have already acquired the right to amnesty. Their sentences can be reduced to up to one year, even if the sentences were subject to appeal or new sentences were handed down after the expiry of the period of time for the amnesty.

The Constitutional Court suggested that the Supreme Court and the Prosecutor's Office of Belarus should apply the law in a uniform way in the instances specified.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2005-B-005

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 14.07.2005 / **e)** D-187/05 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 2/2005 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

3.5 **General Principles** – Social State.

5.2.1.3 **Fundamental Rights** – Equality – Scope of application – Social security.

5.4.14 **Fundamental Rights** – Economic, social and cultural rights – Right to social security.

Keywords of the alphabetical index:

Incapacity, occupational, temporary / Insurance, social, allowance, duration / Insurance, social, compulsory membership.

Headnotes:

The main principles of state social insurance stipulated in Article 2 of the Law “On bases of state social insurance” shall be: participation of employers, workers and self-employed persons who pay compulsory insurance premiums into state insurance funds; distribution of means from able-bodied citizens to disabled citizens and from working people to the unemployed; guarantee of pensions, benefits and other allowances in accordance with the legislation; equal rights of citizens of Belarus to state social insurance, regardless of social status, race and nationality, sex, language, occupation or place of abode; differentiation of conditions and scales of pensions, benefits and other allowances within the state social insurance.

Individual entrepreneurs, employers and workers and other persons who pay compulsory insurance premiums to the state insurance funds shall contribute towards the state social insurance funds under the conditions and in the way set out in the legislation. Therefore, individual entrepreneurs shall be also subject to equal regulation of the procedure of calculation and payment of temporary disability allowances since they pay compulsory state social insurance irrespective of their occupation.

Summary:

The Constitutional Court of Belarus examined applications from citizens concerning payment of temporary disability allowances.

The relevant Provision of the Government specifies the procedure for claiming temporary disability allowances (except for temporary disability allowance in cases of occupational diseases and accidents). Under Part 31 of the Provision, temporary disability allowances are calculated in accordance with average daily payment, worked out on an hourly basis, for two calendar months prior to the month when the temporary disability becomes evident or maternity leave commences.

The applications showed that Point 39 of the Provision contains illegal restrictions upon the amounts of temporary disability allowances payable to individual entrepreneurs, members of farm enterprises and workers within the creative professions. There are also unsound differences in the procedure for calculation.

On the grounds stated above, the Constitutional Court found Part 39 of the Provision to be incompatible with the principle of equal rights of the citizens of Belarus to receive state social insurance regardless of social status and occupation. Part 30 was also found to be at odds with Articles 22 and 23 of the Constitution, guaranteeing equality before the law and ensuring equal protection of citizens’ rights and legitimate interests. Furthermore, restrictions upon personal rights and liberties are to be permitted only in the instances specified in law, in the interest of national security, public order and for the protection of the morals and health of the population as well as the rights and liberties of other citizens.

The Constitutional Court proposed that the Council of Ministers of Belarus should ensure that Articles 22, 23 and 47 of the Constitution are respected and adopt a uniform approach to the procedures of calculating and paying temporary disability allowances to all citizens who are subject to compulsory state social insurance, irrespective of their occupation.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2005-B-006

a) Belarus / b) Constitutional Court / c) / d) 07.09.2005 / e) D-188/05 / f) / g) / *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 3/2005 / h).

Keywords of the systematic thesaurus:

3.5 **General Principles** – Social State.
 3.10 **General Principles** – Certainty of the law.
 3.20 **General Principles** – Reasonableness.
 5.3.39.4 **Fundamental Rights** – Civil and political rights – Right to property – Privatisation.
 5.4.13 **Fundamental Rights** – Economic, social and cultural rights – Right to housing.

Keywords of the alphabetical index:

Housing, unfit for habitation, tenement houses, new dwelling, provision, ownership.

Headnotes:

Under Article 44 of the Constitution, property acquired by lawful means shall be safeguarded by the state.

Incompleteness and gaps in housing legislation (a notable example being the absence in the Housing Code of a list of grounds for finding living accommodation to be unfit for habitation in terms of to sanitary and technical requirements and the legal consequences of such a finding) not only hampers the practical application of legal norms but also affords inadequate protection of housing rights and of the legitimate interests of the proprietor and the state.

Legal regulations, and decisions based thereon, must be based upon the principles of reasonableness and maximum consideration is to be given to private and public interests.

Summary:

Upon the application of the Deputy Chairman of Gomel City Executive Committee, the Constitutional Court examined the question of improvement of housing legislation relating to the conveyance of living accommodation into the ownership of citizens whose tenement house has been found to be unfit for habitation. The Constitutional Court suggested that the House of Representatives of the National Assembly of the Republic of Belarus should set out in the Housing Code the proper legal procedure and grounds for conveying living accommodation into the ownership of somebody whose tenement house has

been found to be unfit for habitation and at variance with sanitary and technical requirements, due to emergency conditions or to wear and tear.

The Constitutional Court pointed out that the procedure and grounds for finding the living accommodations to be unfit for habitation in terms of sanitary and technical requirements, as well as the legal consequences of such a finding, were not covered in the Housing Code but were instead subject to regulation by bye-laws. This has led to discrepancies and difficulties in the practical application of the law.

Thus, the content of Article 105 of the Housing Code should state that other living accommodation should be conveyed, jointly with members of his or her family, to the owner of living accommodation in a tenement house, only under the following conditions:

- if the house or living accommodation is in a condition of emergency or about to collapse;
- if the house or living accommodation is about to be designated as unfit for habitation;
- if the house or living accommodation is subject to a demolition order because the plot of land is needed by the State.

The article in question should also contain a list of grounds for living accommodation to be found unfit for habitation (for example, if it is in an emergency condition or on the brink of collapse) and also the legal consequences of such a finding.

Absence of rules as indicated above will hamper the resolution of the problem of conveying living accommodation into the ownership of citizens whose living accommodation has been found unfit for habitation.

The Constitutional Court proposed that the legislator should draft rules under which owners could be allocated larger living accommodation if they pay for the difference in space between the new accommodation and that which they occupied previously and which has been found unfit for habitation.

Languages:

Belarusian, Russian, English (translation by the Court).



Identification: BLR-2005-B-007

a) Belarus / b) Constitutional Court / c) / d) 04.10.2005 / e) J-189/05 / f) / g) / *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 4/2005 / h).

Keywords of the systematic thesaurus:

1.6.7 **Constitutional Justice** – Effects – Influence on State organs.

3.20 **General Principles** – Reasonableness.

5.3.6 **Fundamental Rights** – Civil and political rights – Freedom of movement.

5.3.10 **Fundamental Rights** – Civil and political rights – Rights of domicile and establishment.

Keywords of the alphabetical index:

Citizen, travelling abroad, right, limitations / Passport, endorsement, obligatory / Passport, authorisation to leave the country.

Headnotes:

Extension of the time period for the execution of a previously adopted judgment of the Constitutional Court relating to the procedure of endorsing the passport of a Belarus national who is travelling abroad on a temporary basis.

Summary:

On 4 October 2005, in open court session as a result of a constitutional motion of the Council of Ministers of the Republic of Belarus, the Constitutional Court examined the issue of the extension of the time period for execution of the judgment of the Constitutional Court dated 27 September 2002 pertaining to the making of an endorsement in the passport of a citizen wishing to travel abroad, granting him permission to do so. In its judgment of 27 September 2002, the Constitutional Court found to be unconstitutional the legislation in force which specifies the obligation of making such an endorsement in the passports of all citizens of the Republic of Belarus who wish to go abroad, since the vast majority of them will have no restrictions on their right to leave the country.

Taking into account the necessity of protection of the state and individual interests, and also having regard to the motion passed by the Council of Ministers, it was decided that the time period for the execution of the judgment of the Constitutional Court dated 27 September 2002 should be extended, until the creation of the relevant system of registration of those

persons with lawful restrictions upon their ability to travel in and out of Belarus. Under Articles 2, 30, 59 and various other articles of the Constitution, the bodies subordinated to the Council of Ministers will be responsible to the citizens of Belarus for the full provision, as quickly as possible, of the constitutional right to freedom of movement.

Cross-references:

- Judgment no. 146/2002 [BLR-2002-B-004].

Languages:

Belarusian, Russian, English (translation by the Court).


