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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

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The Constitutional Court of the Republic of Belarus*

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I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

1. In Belarus the constitutional principle of separation of powers implies both the unity of powers of the state and their functional separation. According to Article 6 of the Constitution of the Republic of Belarus state power shall be exercised on the principle of its separation into legislative, executive and judicial powers; state bodies shall be independent within their powers: they shall interact among themselves, check and balance one another.

The implementation of this principle in relation to the judiciary is ensured by certain constitutional and legal guarantees. The Code on Judicial System and Status of Judges establishes that the judicial power shall be independent; it shall interact with the legislative and executive powers.

Separation of powers is implemented through the procedure of forming the Constitutional Court, which is enshrined at the constitutional level. Under the Constitution the Constitutional Court shall be formed on a parity basis of 12 judges from among highly qualified specialists in the field of law, who as a rule have a scientific degree: six judges of the Constitutional Court shall be appointed by the President of the Republic of Belarus and six – elected by one of the Houses of Parliament – the Council of the Republic of the National Assembly. The term of office of judges shall be 11 years. With the consent of the Council of the Republic the President shall appoint the Chairperson of the Constitutional Court from among the judges of the Constitutional Court.

The constitutional provisions, governing the procedure of forming the Constitutional Court, have been developed in the Code on Judicial System and Status of Judges. Candidates to elected judges of the Constitutional Court shall be nominated by the Chairperson of the Constitutional Court. A nominee who has polled a majority vote of the full composition of the Council of the Republic shall be deemed to be elected a judge of the Constitutional Court.

The legislation of the Republic of Belarus does not provide for the revoke of the Constitutional Court judges. However, the Code on Judicial System and Status of Judges exhaustingly specifies the cases where the powers of the Constitutional Court judge may be terminated. Among them there is resignation; mandatory retirement age established for the Constitutional Court judge; expiry of his term of office; termination of citizenship of the Republic of Belarus due to either its withdrawal or loss; activities incompatible with the judge's office; failure to respect restrictions imposed by public service. In 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.

Under the Constitution the President is empowered to dismiss the Chairperson and judges of the Constitutional Court on the grounds provided by law with notification of the Council of the Republic. In accordance with article 124 of the Code on Judicial System and Status of Judges the said powers shall also be terminated by the President if a judge voluntarily applies for resignation or dismissal, or the Constitutional Court submits for the termination of the powers on the grounds provided in the named Code (notably, appointment to another office or transfer to another job) with notification of the Council of the Republic. Thereat the Constitutional Court submission shall be adopted by a majority vote of the full composition of the judges thereof. If the Constitutional Court submits for the termination of the judge powers due to gross violations of his duties, commission of an act incompatible with public service, such submission shall be adopted by no less than a two thirds majority vote of the full composition of judges.

The legislation also provides for the powers of the Constitutional Court judge to be suspended by the President of the Republic. The suspension shall occur in cases of instituting criminal proceedings against a judge, bringing him before justice as a suspect or accused – before entry into legal force of a sentence, ruling on either application of safety sanctions and treatment or termination of criminal proceedings. In practice, there has been no need to enforce these normative provisions.

Thus, the role of the Parliament in the formation of the Constitutional Court has been determined at the constitutional level and is performed when the Council of the Republic (one of the Houses of Parliament) elects six of the 12 judges of the Constitutional Court and gives its consent to the appointment of the Chairperson of the Constitutional Court. As to the Government, it does not have any influence on the formation of the Constitutional Court.

Being the most important elements of the Constitutional Court status, a well-balanced parity procedure of forming the Constitutional Court, high requirements for its judges' qualification, their term of office establish the institutional independence of the Constitutional Court as one of the highest state authorities.

At the constitutional level, the role of the Parliament consists not only in forming the Constitutional Court, but in providing a legislative basis for its activity. In accordance with the Constitution, the Parliament shall adopt laws, including those on the competence, organisation and operating procedure of the Constitutional Court.

The current Belarusian legislation on judicial constitutional review is based on the Constitution and includes the Code on Judicial System and Status of Judges, the Law on Constitutional Court of the Republic of Belarus and other legislative acts. The issues of internal activity of the Constitutional Court are governed by its Rules of Procedure.

A draft law on the organisation and functioning of the Constitutional Court, like any draft law in the Republic of Belarus shall be elaborated and submitted to the Parliament under the procedure established by legislative acts. One of the mandatory phases of law-creating process is the approval of the draft law by the concerned state authorities. The Constitutional Court is not empowered to review or referee the drafts, the constitutionality of which may be subject to its review after they become acts.

However, when are issued any legislative acts on the activities of the Constitutional Court, providing for some changes and additions to be introduced, the Court shall state its remarks and suggestions. As a rule they are taken into consideration by the Parliament.

Now it is being prepared a draft law on constitutional proceedings. The Constitutional Court is taking an active and direct part in drafting the provisions of this act.

2. Budgeting of the Constitutional Court

Issues of financing of the Constitutional Court are determined at the legislative level.

According to article 190 of the Code on Judicial System and Status of Judges the courts of the Republic of Belarus shall be financed out of the republican budget; their 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.

In accordance with budget legislation the Constitutional Court is simultaneously an administrator and recipient of budgetary funds. As an administrator it shall autonomously work up the draft budget estimate for the next financial year and refer it to the Ministry of Finance. The Court shall also approve the draft budget estimate. Taking into account the approved budget estimate the Parliament shall state a concrete amount of the Constitutional Court maintenance expenditures for the next financial year in a separate line of the law on the republican budget adopted annually. The Court shall ensure both the administration of budgetary funds and implementation of its budget.

Therefore the State's responsibility to provide adequate financial resources for proper functioning of the Constitutional Court as well as the right of the latter to autonomously develop and approve the budget 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 justice in the Republic of Belarus.

3. Review of Constitutionality of Normative Legal Acts

According to Article 116 of the Constitution the main function of the Constitutional Court shall be to review the constitutionality of normative acts in the State.

The Constitutional Court shall, on the proposals of the President, the House of Representatives, the Council of the Republic, the Supreme Court, the Supreme Economic Court, the Council of Ministers deliver judgments on:

- conformity of laws, decrees and edicts of the President, obligations under treaties and other international commitments of the Republic of Belarus to the Constitution and international legal acts ratified by the Republic of Belarus;
- conformity of acts of interstate formations to which the Republic of Belarus is a party, of edicts of the President of the Republic of Belarus issued to the execution of the law, to the Constitution, international legal acts ratified by the Republic of Belarus, laws and decrees of the President of the Republic of Belarus;
- conformity of resolutions of the Council of Ministers and acts of the Supreme Court, the Supreme Economic Court, the Prosecutor General to the Constitution, international legal acts ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus;
- conformity of acts of any other state body to the Constitution, international legal acts ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus.

Thus, in the exercise of constitutional review *a posteriori* the Constitutional Court delivers judgments on the constitutionality of all normative legal acts provided that one of the abovementioned subjects submits the relevant proposal.

By virtue of the provisions of Article 116 of the Constitution the rules of procedure of both Houses of Parliament and the Council of Ministers as normative legal acts may be subject to constitutional review by the Constitutional Court. However, the legislation does not insist on obligatory character of the review which may be exercised by the Constitutional Court on the initiative of these authorised bodies.

For example on October 11, 1995 the Constitutional Court delivered a judgment on the conformity of article 7 of the Law on the Supreme Council of the Republic of Belarus, article 10, part four of article 63 of the Provisional Rules of Procedure of the Supreme Council of the Republic of Belarus to the Constitution. The relevant provisions of the Law regulating the activity of this representative authority as well as its Provisional Rules of Procedure to the extent concerning the legitimacy of the Supreme Council, depending on the number of deputies were found to be conforming to the Constitution.

For more than 15-year period of its work in the exercise of constitutional review *a posteriori* the Constitutional Court has delivered 73 judgments on the constitutionality of normative legal acts. Among those reviewed acts there have been 25 laws, 20 edicts of the President of the Republic of Belarus, more than 10 resolutions of the Government, acts of the republican bodies of state administration, decisions of local administrations and self-administrations. Thereat 47 normative legal acts (their particular provisions) have been found nonconforming to the Constitution and acts of higher legal force.

Starting in July 2008 along with posterior constitutional review the Court has been obligatory reviewing *a priori* all the laws adopted by the Parliament before their signing by the President. During 2008-2010, in the exercise of obligatory prior review more than 250 laws have been examined. Among them there have been 3 codes, about 50 general and special laws, more than 100 laws on making changes and additions to legislative acts or on invalidating them, more than 100 laws on ratification of treaties.

When taking decisions in the exercise of obligatory constitutional review of laws *a priori*, the Constitutional Court states its legal positions which are aimed at revealing the constitutional and legal meaning of the law rules. The legal positions present the conclusions on the implementation and development of the rules and principles of the Constitution in the laws under review. If required, the Court points to the gaps left in legal regulation or conflicts of law rules, preventing their ambiguous comprehension and enforcement. In addition, the Constitutional Court has the right, enshrined at a law level, to address relevant state bodies with proposals to fill the gaps in acts of legislation, settle the conflicts and eliminate legal uncertainty.

When deciding on the presence of gaps in legislation the Court proposes to rule-making bodies to fill the identified gaps. So, in March 2009, the Constitutional Court took three decisions on the rules of procedure of the Parliament and the Government. In these decisions the Court pointed to the lack of a proper legal procedure for the indirect access of citizens to constitutional justice in the event when they address the bodies authorised to submit relevant proposals to the Constitutional Court (the President, both Houses of Parliament, the Council of Ministers, the Supreme Court, the Supreme Economic Court) with the initiative to review normative legal acts. The Constitutional Court proposed to the House of Representatives, the Council of the Republic and the Government to fill the identified gaps and make appropriate changes and additions to their rules of procedure.

With a view to implement the decision of the Constitutional Court the Government has added Chapter 8¹ "Procedure for Consideration by the Council of Ministers of Issues on Submitting Proposals to the Constitutional Court" to its Rules of Procedure.

All public authorities including the Parliament and the Government are obliged to respect the Constitutional Court decisions. The binding effect of the Court decisions is based on the provisions of Article 137 of the Constitution stipulating that the latter

shall have the highest legal force. Laws, decrees, edicts and other acts of state bodies shall be issued on the basis of and in accordance with the Constitution. If there is inconsistency between a law, decree or edict and the Constitution, the Constitution shall be enforced.

However, the legislation of the Republic of Belarus has not provided either for terms to make changes and additions to those normative legal acts which had been found by the Constitutional Court as nonconforming in whole or in certain part to the Constitution, or for a special procedure to make relevant changes and additions to them.

Article 7 of the Constitution stipulates that legal acts or particular provisions thereof which have been recognised under the procedure established by law as contradicting the provisions of the Constitution shall have no legal force. The declaration of nonconformity of a normative legal act or its particular provisions to the Constitution or normative legal acts of higher legal force, is the basis for repeal under the established procedure of either this act or other normative legal acts based on it. The provisions of such normative legal acts shall not be enforced by courts, other bodies and officials.

In some of its decisions the Constitutional Court sets a term for their execution. For example, in 1998 an interdepartmental act of the Ministry of Social Security and the Ministry of Labour was subject to the Constitutional Court review. The Court had to adjudicate upon the types of payments that were not charged with state social insurance contributions. In its judgment of September 24, 1998 the Court set a date (January 1, 1999) from which the rules deemed unconstitutional should not be applied. So, the Parliament had to bring the legislation on state social insurance in accordance with the Constitutional Court judgment by December 31, 1998.

The Constitutional Court decisions are generally executed without delay what reflects the efficiency of constitutional justice.

The Parliament has no powers stipulated at the constitutional level to revoke the decisions of a constitutional review body. The Constitutional Court decisions are final and binding.

By its decisions the Constitutional Court contributes to strengthen constitutional legality, safeguard constitutional rules, protect the constitutional order and ensure rights and freedoms of the individual and the citizen.

4. Relationship of the Constitutional Court with Other Public Authorities

The Constitutional Court has relationship with other authorities in view of their constitutional competence. The President and the Council of the Republic of the

National Assembly participate in forming the Constitutional Court composition. The Parliament has adopted 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 procedural issues of its activity.

In its turn, when exercising its powers the Constitutional Court co-operates with other public authorities.

The Constitutional Court exercises either constitutional review *a posteriori* of normative acts on the proposals of the authorised bodies or obligatory constitutional review *a priori* of all the laws before their signing by the President.

In the instances specified by the Constitution the Constitutional Court, on the proposal of the President, shall give its conclusion on the existence of facts of systematic or flagrant violations of the Constitution by the Houses of the National Assembly. If referred by the Presidium of the Council of the Republic the Constitutional Court shall also take decisions on the existence of facts of systematic or flagrant violations of legislative requirements by local councils of deputies.

On the proposal of the President the Constitutional Court shall give the official interpretation of decrees and edicts of the President on constitutional rights, freedoms and responsibilities of citizens.

One of the forms of the Constitutional Court relationship with the President and the legislature is the Court's annual message on constitutional legality in the State, which is adopted on the basis of verified materials. Such messages foster the optimisation of legal regulation. So in its Message on Constitutional Legality in the Republic of Belarus in 2009, the Constitutional Court took a totally favourable view regarding the execution of its decisions. Meanwhile it drew attention to the fact that the implementation of its legal positions and proposals by state bodies and their officials requires greater extent and more timely character as they aim at filling gaps and settling conflicts of law and protecting rights and freedoms of citizens.

With a view to either fill gaps and settle conflicts of law as well as provide for optimum legal regulation or establish unified law-enforcement the Constitutional Court is entitled to submit proposals to the President, the Houses of Parliament, the Government and other state authorities according to their competence on the required changes and (or) additions to acts of legislation or on the adoption of new normative legal acts.

So, in 2008-2009 the Constitutional Court took more than 20 decisions in which it proposed to relevant state bodies to necessarily fill the gaps in acts of legislation, settle conflicts and eliminate uncertainty of law as well as make relevant changes and additions to the acts.

On December 29, 2008 the Court took a decision on longer terms of administrative penalties imposed for particular administrative offences where it was found that ambiguous wording of a rule of the Code on Administrative Offences may provoke its broad interpretation and cover an unreasonably large list of acts administratively punishable at the discretion of a person entitled to law-enforcement. Therewith the Court assumed that securing of uniform comprehension and application of laws guarantees everyone's protection of rights and freedoms on the basis of the supremacy of law, legal equality and justice principles. In its turn, unsecured unity of comprehension and practical application of laws involves the uncertainty of a law and its probable unlawful and arbitrary enforcement. Thereby is violated the fundamental constitutional principle of equality required for the implementation of rights and freedoms of citizens.

In the said decision the Constitutional Court proposed to the House of Representatives to make necessary changes and additions to the Code on Administrative Offences. The decision was implemented through adopting the Law of December 28, 2009 on Making Changes and Additions to Certain Codes of the Republic of Belarus on the Issues of Criminal and Administrative Liability.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

1. Traditionally, legal disputes of constitutional nature between public authorities include jurisdictional disputes which are more customary to federal states or unitary states with a complex state structure. With a view to perform the assigned tasks the powers of the state have relationship within their established competence. Thus, sometimes there arise questions on power balance, scope of autonomous activity of constitutional bodies, constitutionality and legality of their functioning.

In the legal system of the Republic of Belarus distribution of organic powers is based on the principle of their separation. The competence of the President, the Parliament, the Government, the judiciary including the Constitutional Court, local administration and self-administration as well as the prosecutors and the Committee of State Control has been enshrined in the Constitution.

The Constitutional Court has no any special powers to resolve organic disputes over jurisdiction. The issues of distribution of powers between public authorities are examined within the scope of constitutional review of normative legal acts exercised by the Court.

In accordance with the provisions of the Code on Judicial System and Status of Judges and the Law on Constitutional Court of the Republic of Belarus the Constitutional Court, reviewing constitutionality of a disputed normative legal act *a posteriori*, holds its conformity to the Constitution, international instruments ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus. Under review are not only the content of the rules, form of the act, procedure for its adoption, signing, publication and entry into effect but distribution of jurisdiction between state bodies as well.

When reviewing the constitutionality of an act the Constitutional Court may identify contradictions in the content of its rules which determine the competence of a state authority, inconsistency between the acts of different legal force, regulating jurisdictional issues, lack of authority of the state body to legal regulation of a certain sphere.

On March 16, 2000 the Constitutional Court rendered a judgment on the proposal of the Supreme Economic Court, in which certain rules of Instructional Guidelines on calculating value added tax, approved by the Order of the State Tax Committee of April 26, 1999 No. 87, was declared unconstitutional. It was stated in that judgment that the object and base of the tax are its key elements, so they shall be imposed by state bodies empowered to levy taxes. Under the Constitution it is the National Assembly (the Parliament). Thus, the Court reviewed both the content of the said

rules and the competence of a law-making body. The lack of the State Tax Committee's authority to issue relevant regulation served one of the grounds for declaring the disputed act unconstitutional.

In its judgment of September 24, 1998 the Constitutional Court recognised point 25 of the List of Payments that are not charged with state social insurance contributions (approved by the Ministry of Social Security and the Ministry of Labour on June 19, 1996) as nonconforming to the Constitution, the laws of the Republic of Belarus due to the fact that the regulation of contained issues shall not fall within the competence of the ministries and other republican authorities. The Court pointed out that such key elements of compulsory insurance contributions as payers, amounts of payments, benefits, shall be defined not in departmental regulations, but at the legislative level.

When exercising obligatory constitutional review of laws *a priori* the Constitutional Court reviews both the compliance of a law to the constitutional rules and principles and constitutionality of organic powers of public authorities to the extent of their distribution among the Parliament and other authorities as well.

In its decision of June 23, 2010 after reviewing the constitutionality of the Law on the Committee of State Control of the Republic of Belarus and Its Territorial Bodies, the Constitutional Court declared the Law constitutional and noted that the exercise of certain powers of that Committee and regional committees of state control, the rights of the officers of the Committee and its territorial bodies, authorised to conduct inspections, are linked to some extent with probable restrictions of rights and legitimate interests of citizens and organisations. In the Court's opinion the imposed restrictions of rights of citizens and organisations do not involve the breach of their essence, therefore they are permissible, socially justified and aimed at ensuring the interests of national security, public order, rights and freedoms of others (Article 23 of the Constitution). These restrictions are deemed proportionate to the constitutional values and goals. As to the Parliament's powers to adopt this Law it was specified that the subjects of legislative process were legislating within their competence laid down by Articles 97-99 of the Constitution.

Constitutional review of normative legal acts, including declaration of unconstitutionality on the grounds of their issuance beyond the competence of the issuing authority, shall follow general rules of constitutional proceedings when reviewing either *a posteriori* or *a priori*.

For the exercise of posterior constitutional review the Law on the Constitutional Court of the Republic of Belarus provides for an oral form of constitutional proceedings. Participants in the hearing shall be the parties, representatives of the parties, witnesses, experts, specialists, interpreters.

Parties to the Constitutional Court hearings shall be those officials who signed or issued the reviewed act or their representatives; the applicants who submitted the relevant proposal to the Constitutional Court or their representatives.

The parties (their representatives) shall appear when summoned by the Constitutional Court and provide explanations and answer the questions. A party (its representative) shall be entitled to state their own position in respect of the case, question the adverse party (its representative), witnesses and experts and also to lodge petitions, submit relevant documents, written comments and other material, and have access to the documents, written comments and other material provided to the Constitutional Court by the adverse party (its representative).

The Constitutional Court hearings may be attended by the President, the chairpersons of the Houses of Parliament, the Prime Minister, the Chairperson of the Supreme Court, the Chairperson of the Supreme Economic Court, the Prosecutor General and the Minister of Justice, who shall be entitled to state their position on all the issues considered.

For the exercise of obligatory prior constitutional review the written form of constitutional proceedings has been prescribed at the legislative level. Such form does not provide for invitation and hearing of the representatives of the parties, experts, specialists and witnesses.

Thus, despite the lack of special power to resolve organic disputes, the Constitutional Court, when reviewing normative legal acts, may adjudicate upon whether the regulation of various public relations falls within the competence of the issuing public authority.

When reviewing the constitutionality of a normative legal act and adjudicating upon distribution of powers the Constitutional Court as a judicial review body ensures the implementation of the rule of law, under which all the authorities of the state as well as its officials shall act within the confines established in the Constitution and acts of legislation issued in the pursuance thereof.

2. Implementation of the Constitutional Court Decisions

In general, the Constitutional Court decisions shall be executed by public authorities without delay. This fully applies to those authorities whose powers to issue the disputed normative legal act were reviewed in the Constitutional Court decision.

As a rule, the act which has been declared unconstitutional shall be repealed under the established procedure by an authorised rule-making body. If required a new act may be issued with a view to implement the Constitutional Court decision.

For example in its judgment of September 24, 1998 the Constitutional Court declared the unconstitutionality of an interdepartmental act of the Ministry of Social Security and the Ministry of Labour on the contributions to state social insurance. In order to implement that judgment were enacted the Law of January 6, 1999; the Resolution of the Council of Ministers of January 25, 1999 No. 115. By the Order of the Ministry of Statistics and Analysis of December 11, 1998 No. 293 was approved the Instruction on the salary fund and other payments, were repealed the relevant sections of the Instruction on statistics of the employees' quantity and salary.

In the Constitutional Court decision of August 18, 1999 on the decision of the Executive Committee of the city of Grodno of March 4, 1999 No. 185 introducing local taxes it was stated that the imposition of certain local taxes and dues, including trust fees for the maintenance of children preschools, falls within the competence of the local Councils of Deputies of basic territorial level. The Court found that the imposition of local taxes and fees is beyond the competence of the local executive and administrative bodies. Thus, the Executive Committee of the city of Grodno adopting the decision of March 4, 1999 No. 185 has exceeded its powers. The Court ordered the Council of Deputies and the Executive Committee of the city of Grodno to regulate in accordance with their competence the imposition of trust fees for the maintenance of children preschools. Pursuant to the decision of the Constitutional Court the Grodno Council of Deputies by its decision of October 21, 1999 No. 17 approved a new Regulation on the creation and use of trust fees for the maintenance of children preschools in Grodno.

On December 8, 2004 the Constitutional Court reviewed the lawfulness of the inclusion of entities selling forest products beyond the Republic of Belarus in the List of payers of local trade fees that had been prescribed by the Verkhnedvinsk District Council of Deputies. One of the provisions of the reviewed Instruction on calculation and payment of local trade fees, approved by the decision of the Verkhnedvinsk District Council of Deputies, was deemed to be nonconforming to the Constitution and the Law on the Budget of the Republic of Belarus for 2004. Afterwards the Verkhnedvinsk District Council of Deputies informed the concerned bodies and officials that the provision of the Instruction, which had been declared unconstitutional, ceased to be in force from the date of the Constitutional Court decision and should not be applied in future.

Thus, the public authorities of the Republic of Belarus take timely measures to remedy defects in legislation identified by the Constitutional Court in view of distribution of powers between state bodies.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The decisions of the Constitutional Court which reveals defects of legal regulation in constitutional proceedings and suggests possible ways to correct them, shall be binding *erga omnes*.

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 shall be final and subject to no appeal or protest.

It has been stipulated in article 14 of the Code on Judicial System and Status of Judges and article 10 of the Law on the Constitutional Court of the Republic of Belarus that the Constitutional Court decisions shall be binding upon all the state bodies, other organisations, officials and citizens and enforceable in the whole territory of the Republic of Belarus.

The Constitutional Court decisions shall be considered by the bodies and officials to whom they are addressed to. Those bodies and officials shall reply to the Constitutional Court within the term specified by it, unless otherwise stipulated in the Law. Any refusal or evasion to consider the Constitutional Court decision, breach of the terms or failure to enforce or inappropriate enforcement of the decision shall involve liability in accordance with the legislation of the Republic of Belarus.

According to the Constitution legal acts or particular provisions thereof which have been recognised under the procedure established by law as contradicting the provisions of the Constitution shall have no legal force.

If an act has been declared unconstitutional, it shall be repealed under the established procedure by a rule-making body which had issued it. And if there has been a legal gap identified, a new act shall be issued to implement the Constitutional Court decision. If the Court declared unconstitutional certain provisions of the act, they shall not be enforced by the state bodies (officials), courts until they will be introduced with relevant changes and (or) additions.

In some cases, if the declaration of unconstitutionality of an act provokes a gap in legal regulation at a law level, a rule of the Constitution shall be directly enforced as the Constitutional Court indicates in its decision.

For example on June 19, 1998 in the Constitutional Court decision on the conformity of article 246 of the Code of the Republic of Belarus on Administrative Offences to the Constitution the specified article of the Code was declared unconstitutional and nonconforming to the International Covenant on Civil and Political Rights to the extent that it has not provided for judicial appeal against administrative detention,

personal inspection, inspection of personal effects and seizure of these effects and documents. Therefore the Parliament had to introduce relevant changes and additions to the named Code and other laws. Simultaneously the Court stated that until their introduction Article 60 of the Constitution should be enforced. With a view to implement the Constitutional Court decision the Parliament amended article 246 of the Code on Administrative Offences by issuing the Law of May 28, 1999.

In the legal system of the Republic of Belarus the legislature has no powers to invalidate the Constitutional Court decision.

Under the provisions of the Code on Judicial System and Status of Judges, the Law on the Constitutional Court of the Republic of Belarus judgments and decisions of the Constitutional Court shall enter into force from the date of their adoption, if otherwise specified therein. In some cases the Constitutional Court may specify the term (or set of events) during which its decision shall be implemented by a rule-making body (an official).

On September 27, 2002 the Constitutional Court delivered a judgment on the exit from and entry into the Republic of Belarus of its citizens. The Court reviewed a five-year term provided for the temporary exit of the citizens of the Republic of Belarus with a mandatory note in the national passport. It was stated that certain provisions of the law under review were not fully consistent with the Constitution. The Court pointed out that the vast majority of citizens, who are temporarily going abroad, are free to leave the country. Thus, such a note in the passport mandatory for all the citizens denies their rights and is not proportionate to constitutionally protected values.

The Constitutional Court proposed to the bodies of the state, which were authorised to address these issues, to amend the exit and entry system in short terms but no later than by December 31, 2005. The amended system should allow to use the national passport for leaving abroad without mandatory note in it. A rather long term specified for the system of the citizens' exit and entry to be amended was due to the fact that it required being renewed and provided with appropriate funding.

As a general rule, if found nonconforming either to the Constitution or normative legal acts of higher legal force, normative legal acts or particular provisions thereof shall not be applied by the courts.

According to the Constitution (Article 112) ordinary courts are entitled to address the Constitutional Court through the supreme judicial bodies with a prejudicial request if, during the hearing of a specific case, a court concludes that a normative act does not conform to the Constitution. But in practice this mechanism is not in demand and there is no an established procedure regulating the consequences of the relevant Constitutional Court decision in a case at hand.

Thus, the Constitutional Court decisions shall be binding upon both parties to the case and all the other public authorities, organisations, officials and citizens.

2. Enforcement of the Constitutional Court Decisions by Public Authorities

According to article 40¹ of the Law on the Constitutional Court of the Republic of Belarus the Constitutional Court decisions shall be enforced immediately after their publication if otherwise specified therein. The rule allowing the Court to set the terms for implementation of its decision prevents from the negative consequences due to non-enforcement of the act deemed unconstitutional, that may cause a gap in the legal regulation of individual rights and public interests.

The legislature as well as other rule-making bodies shall execute the Constitutional Court decisions, consistently implementing the Court's legal positions.

215 out of 292 decisions of the Constitutional Court have been executed in full, the rest have been executed in part or are being executed.

The practice of the execution of the Constitutional Court decisions shows that the Court efficiently performs its functions aimed at strengthening of constitutional legality and protection of constitutional rights and freedoms of an individual.

The Constitution does not specify the terms during which the legislature shall correct unconstitutional defects (gaps in legislation, conflict of laws, their contradictions and inconsistencies). In practice they may be set by the Constitutional Court in its decisions on concrete cases if required. The Constitutional Court decisions are generally executed within the terms set by the Court. In exceptional cases the Court may postpone the execution of the decision on the proposal of that state body charged with it.

For example, state bodies authorised to implement the Constitutional Court judgment of September 27, 2002 on exit from and entry into the republic failed to amend it within the period specified by the Court. So, the Government addressed the Constitutional Court with a proposal to change the terms prescribed in that judgment given that because of insufficient funding an automated border control system would not be completely installed in due time. The said border control system would allow the citizens to go abroad (come back) with their national passport without the mentioned mandatory note in it.

The Constitutional Court accepted the position of the Council of Ministers, shared up by the House of Representatives who had initiated those proceedings in 2002, and the term provided for implementation of that judgment was postponed until the amendment of the relevant system aimed to control persons who are lawfully restricted in their rights to leave or enter the Republic of Belarus.

By virtue of its powers enshrined at the constitutional level, the Constitutional Court acts as a "negative legislator" excluding the acts which have been declared unconstitutional from the national legal system. Implementing the Constitutional Court decisions either the Parliament or other authorities of the state repeal the unconstitutional act and at most adopt a new one (or introduce appropriate changes to the current act if only a part of the act has been declared unconstitutional). The issuance of a new act (some new provisions) by the authorities implementing the Constitutional Court decision shall be subject to legal arguments and legal positions set forth in the reasoning of the Court decision.

If a normative legal act concerns the issues that have already been considered by the Constitutional Court it may not contain any provisions deemed unconstitutional under the established procedure. This shall be fully applied to the legislative activity of the Parliament as well as other rule-making bodies.

Thus, the timely and proper enforcement of the Constitutional Court decisions is one of the most important guarantees for strengthening constitutional legality, ensuring the legal stability and rule of law in the country.

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The Constitutional Court of the Republic of Belarus carries out its activities in co-operation with all public authorities with respect to constitutional powers of the Court itself and competence of other authorities.

For the moment the balance of powers of all the authorities of the state has been reached in our country. It ensures political, social and economic and legal stability in the state as well as safeguards the independence of the judiciary.

The Constitutional Court is a judicial body which reviews the constitutionality of normative legal acts in the state and exercises judicial power through constitutional proceedings. The Court is entrusted with safeguarding of the supremacy of the Constitution and a direct effect thereof, compliance of the normative legal acts issued by state bodies with the Constitution, strengthening of legality in rule-making and law-enforcement.

The Constitutional Court decisions contribute to strengthen constitutional legality in the Republic of Belarus, respect its constitutional rules, protect the constitutional order as well as ensure the rights, freedoms and legitimate interests of its citizens.