

CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

National Report for the XVIIIth Congress of the Conference of European Constitutional Courts

Human Rights and Fundamental Freedoms: the Relationship of International, Transnational and National Catalogues in the 21st Century

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I International catalogues of human rights (ECHR, UDHR and ICCPR)

In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?

The Republic of Belarus, as one of the founders of the United Nations, conscientiously fulfills its international obligations in the field of protecting human rights contained in international legal instruments (UDHR, ICCPR, etc.).

The constitutional foundations of the legal force of international treaties, including in the field of the protection of human rights, are enshrined in a number of Articles of the Constitution of the Republic of Belarus of 15 March 1994, with changes and additions adopted at the republican referenda of 1996 and 2004 (hereinafter – the Constitution). Thus, Article 8 of the Constitution establishes that the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith; the Republic of Belarus in conformity with the rules of international law may on a voluntary basis enter interstate formations and withdraw from them; conclusion of treaties that are contrary to the Constitution shall not be permitted. According to Article 137, the Constitution shall have the supreme legal force.

Foreign nationals and stateless persons in the territory of Belarus shall enjoy the rights and freedoms and execute duties on equal terms with citizens of the Republic of Belarus, unless otherwise specified by the Constitution, laws and treaties (Article 11 of the Constitution).

In accordance with Article 18.1 of the Constitution, in its foreign policy the Republic of Belarus shall proceed from the principles of equality of states, non-use of force or threat of force, inviolability of frontiers, peaceful settlement

of disputes, non-interference in internal affairs and other generally recognised principles and norms of the international law.

Article 21.3 of the Constitution stipulates that the State shall guarantee the rights and freedoms of citizens of Belarus that are enshrined in the Constitution and laws, and specified by the State's international obligations.

The legal force of international treaties of the Republic of Belarus is evidenced by Article 116.4 of the Constitution providing that the Constitutional Court shall deliver judgements on the compliance of the legislative and other normative legal acts listed in this Article with the Constitution, as well as international legal acts ratified by the Republic of Belarus.

From the analysis of the constitutional provisions follows the supremacy of the Constitution of the Republic of Belarus over international treaties, which ensures the sovereignty of the state and constitutional identity. At the same time, international treaties ratified by the Republic of Belarus have a special position in the national legal system.

As a rule, the laws of the Republic of Belarus contain the following provision confirming the priority of international treaties over laws: if an international treaty of the Republic of Belarus establishes other rules than those contained in this law, then the rules of the international treaty shall apply (for example, this concerns the Civil Code, the Housing Code, the Labour Code, the Education Code, the Law of the Republic of Belarus “On Combating Trafficking in Human Beings”, etc.).

What mechanism is used to invoke the international treaties in national court decision-making?

The national mechanism for the implementation (realisation) of the rules of international treaties in law enforcement practice is determined, in addition to the specified provisions of the Constitution, by the provisions of the Law “On International Treaties of the Republic of Belarus”, as well as by the rules of other laws and other legislative acts of the Republic of Belarus. As provided in Article 3 of the Law “On International Treaties of the Republic of Belarus”, the conclusion, entry into force, official publication, registration, keeping custody, recording, performance, suspension and termination of the operation of the treaties of the Republic of Belarus shall be carried out in accordance with the Constitution of the Republic of Belarus, the generally recognised principles of international law, the Vienna Convention on the Law of Treaties of 23 May 1969, other treaties of the Republic of Belarus, the present Law and other legislative acts of the Republic of Belarus.

Article 17 of the Law “On International Treaties of the Republic of Belarus” establishes a number of ways of expressing the consent of the

Republic of Belarus to be bound by international treaties: by signing an international treaty, by exchanging notes, letters or other documents constituting an international treaty, by ratifying an international treaty, by approving (accepting) an international treaty, by joining an international treaty, by way of succession in relation to an international treaty (Article 17.1), as well as by any other way stipulated by an international treaty (Article 17.2).

The most important way, which has a constitutional basis (Articles 97.1.2, 116.4), is the ratification of international treaties carried out by the National Assembly of the Republic of Belarus in the form of a law (Article 20 of the Law “On International Treaties of the Republic of Belarus”).

The state bodies of the Republic of Belarus, departments of state bodies, whose competence includes issues contained in the treaties of the Republic of Belarus, shall ensure the fulfillment of obligations assumed by the Republic of Belarus within these international treaties, observe the exercise of the rights of the Republic of Belarus arising from these international treaties and fulfillment by other participants of these international treaties of their obligations (Article 37.2 of the Law “On International Treaties” of the Republic of Belarus”).

According to Article 36 of the said Law, the treaties of the Republic of Belarus shall be faithfully implemented by the Republic of Belarus in accordance with the international law; the rules of law, contained in the ratified treaties of the Republic of Belarus, shall be directly applicable unless otherwise implied by a treaty stating that enforcement of those rules requires a normative legal act to be adopted (issued); those rules shall have the force of a normative legal act that expresses the consent of the Republic of Belarus to be bound by a relevant treaty.

The Constitutional Court in the decision of 7 May 2018 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to the Law of the Republic of Belarus “On the Treaties of the Republic of Belarus” to the Constitution of the Republic of Belarus” formulated a legal position that in order to comply with the constitutional principles of the rule of law and legal certainty the legislator, while improving legal regulation, should take into account that the legal rules contained in the ratified treaties are an integral part of the system of law that is in effect in the territory of the Republic of Belarus.

Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

The Constitution of the Republic of Belarus does not contain provisions on the direct effect of international rules on human rights. At the same time, in accordance with Article 36.2 of the Law “On International Treaties of the

Republic of Belarus”, the rules of law, contained in the ratified treaties of the Republic of Belarus, shall be directly applicable.

It should be noted that human rights and freedoms enshrined in the Constitution of Belarus, in terms of their content and list (catalogue), coincide with human rights contained in international legal instruments (UDHR, ICCPR, International Covenant on Economic, Social and Cultural Rights (ICESCR)). Therefore, the systematic application by the Constitutional Court of the provisions of the Constitution, while considering the constitutionality of laws and other legislative acts, implies due regard to the rules of international human rights instruments.

For example, in the decision of 11 July 2018 “On the Right to Appeal against Disciplinary Action and Relevant Appeal Procedure Provided for the Convicts Placed under Restraint, Subject to Correctional Labour and Other Punishments” the Constitutional Court pointed out the provisions of international legal instruments that are consistent with the principles and rules of the Constitution regarding access to justice (Articles 8 and 10 of the UDHR, Articles 2 and 14 of the ICCPR, paragraph 2 of the General comment no. 32 (2007) of the UN Human Rights Committee on Article 14 of the ICCPR, paragraph 3.6 of the United Nations Standard Minimum Rules for Non-custodial Measures, adopted by the UN General Assembly Resolution 45/110 of 14 December 1990).

In that way, the supremacy of the Constitution implies also the application of international legal rules on human rights in conjunction with the relevant constitutional provisions on the rights and freedoms.

I.II Supranational catalogues of human rights (the Charter)

The Republic of Belarus is not a member of the European Union.

I.III National human rights catalogues

Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?

According to the Constitution of the Republic of Belarus, the individual, his rights, freedoms and guarantees to secure them are the supreme value and goal of the society and the State; the State shall assume responsibility before the citizen to create the conditions for free and dignified development of his personality (Article 2). Article 21.3 of the Constitution stipulates that the State shall guarantee the rights and freedoms of citizens of Belarus that are enshrined

in the Constitution and laws, and specified by the State's international obligations.

The Constitution, which has the highest legal force (Article 137.1), is the basis for the construction and development of the legal system of the Republic of Belarus, it establishes the most important principles of the structure of the society and the state, human rights and freedoms and the mechanism for their implementation. Recognition in the Constitution of the individual, his rights and freedoms as the supreme value and goal of the society and the state and their guarantee by the State give them priority over other values.

The Constitution consists of nine sections, one of which – Section II “Individual, Society and the State” – directly enshrines the rights, freedoms and duties of a person and citizen (Articles 21–63). Moreover, not only this section, but also other sections of the Constitution contain provisions on the rights, freedoms and duties of the individual.

What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?

The legal regulation provided for in the Constitution is historically connected with the regulatory requirements of previous constitutions of the Republic of Belarus, including the Constitution of the Byelorussian Soviet Socialist Republic of 1978 (hereinafter – the 1978 Constitution).

In accordance with Article 4.1 of the 1978 Constitution, the Soviet state and all its bodies were entrusted with ensuring protection of the rights and freedoms of citizens provided for by the Constitution.

As established in Article 37.1, citizens of the Byelorussian SSR shall have the full range of socio-economic, political and personal rights and freedoms, which are proclaimed and guaranteed by the Constitution of the USSR, the Constitution of the Byelorussian SSR and Soviet laws.

The 1978 Constitution proclaimed the equality of citizens of the Byelorussian SSR before the law, the equal rights of citizens of the Byelorussian SSR in all areas of economic, political, social and cultural life (Article 32), the guarantees of political freedoms, such as freedom of speech, press, assembly, meetings, street marches and demonstrations (Article 48), freedom of religion (Article 50), as well as personal integrity (Article 52).

In that way, the 1978 Constitution has already enshrined the fundamental rights of an individual contained in the fundamental international legal instruments in the field of human rights.

The Declaration on State Sovereignty of the Republic of Belarus of 27 July 1990 laid the foundation for the formation of qualitatively new principles of state and public life.

According to Article 3 of this Declaration, the state sovereignty of the Republic of Belarus shall be affirmed in the name of the highest goal – free development and well-being, dignified living of every citizen of the republic on the basis of ensuring the rights of individuals in accordance with the Constitution of the Republic of Belarus and its international obligations. Article 4 stipulated that the republic shall protect the honour, health, rights and legitimate interests of its citizens, shall ensure their social protection; they shall be under its protection beyond the Republic of Belarus.

The current Constitution of the Republic of Belarus enshrined the provisions of the above-mentioned Declaration on ensuring the rights of individuals and the national state-legal traditions continued in other historical conditions. By proclaiming that the individual, his rights, freedoms and guarantees to secure them are the supreme value and goal of the society and the State (Article 2.1), the Constitution enshrined a fundamentally new concept of the relationship between the State and the citizen.

The Constitution (Article 8.1) provides that the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith. Keeping this provision in mind, global standards in the field of human rights and achievements of European and world constitutionalism were normatively set forth in the Constitution.

What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?

The procedure for amending the Constitution is provided for by the Section VIII of the Constitution. This procedure is different from the usual general procedure for adopting laws.

Thus, according to Article 138 the issue of changing and adding the Constitution shall be considered by the Houses of the Parliament (the House of Representatives and the Council of the Republic) on the initiative of the President or of no less than 150 thousand citizens of the Republic of Belarus eligible to vote.

A law on changing and adding the Constitution may be adopted after it has been discussed and approved twice by the Parliament with at least a three-month interval (Article 139.1 of the Constitution).

Article 140.1 of the Constitution stipulates that laws on changes and additions to the Constitution, on the entry into force of the said laws shall be deemed to be adopted if no less than two thirds of the full composition of each House of the Parliament voted for them.

Article 140.2 provides that the Constitution may be changed or added through a referendum; a decision on changing or adding the Constitution by means of a referendum shall be deemed to be adopted if the majority of citizens on the electoral roll voted for it.

According to Article 140.3 sections I “Fundamentals of the Constitutional System”, II “Individual, Society and the State”, IV “President, Parliament, Government, Court” and VIII “Effect of the Constitution of the Republic of Belarus and Procedure of its Changing” of the Constitution may be changed only by means of a referendum.

In the history of independent sovereign Belarus, after the adoption of the Constitution on 15 March 1994, two republican referendums were held on the issue of making changes and additions to the Constitution. At the same time, the key idea of the constitutional course remains unchanged – formation of a democratic social State based on the rule of law in which the individual is the supreme value of the society and the State and ensuring the rights and freedoms of citizens of the Republic of Belarus is the supreme goal of the State.

The Constitution, with changes and additions adopted at the referendum of 24 November 1996, based on the fixed system of state priorities, more fully regulates the legal status of an individual, his rights and freedoms.

To this end, Article 2.1 of the Constitution was supplemented by the provision that not only the individual, but also his rights, freedoms and guarantees to secure them are the supreme value and goal of the society and the State. Based on the social essence of the State, Article 21.2 of the Constitution stipulates that everyone has the right to a decent standard of living, including appropriate food, clothing, housing and a continuous improvement of conditions necessary to attain this.

The legal mechanisms for protecting rights and freedoms have been strengthened. Along with the constitutionally guaranteed protection of the rights and freedoms of everyone by a competent, independent and impartial court, Article 61 provides for the right of everyone, in accordance with the international legal acts ratified by the Republic of Belarus, to appeal to international organisations to defend his rights and freedoms, provided all available domestic legal remedies have been exhausted.

The rights of certain segments and groups of the population have been specified taking into account their social role in the society. Further to the constitutional principle of equality, it is envisaged to ensure that women shall be guaranteed equal rights with men in their opportunities to receive education

and vocational training, promotion in labour, social and political, cultural and other spheres of activity as well as in creating conditions safeguarding their occupational safety and health (Article 32.5); young people shall be guaranteed the right to their spiritual, moral and physical development; the State shall create all necessary conditions for free and effective participation of young people in political, social, economic and cultural development (Articles 32.6 and 32.7); the State shall display particular care for veterans of war and labour (Article 47).

According to the results of the republican referendum of 24 November 1996, taking into account the democratic nature of the State stipulated by the Constitution, the right of citizens of the Republic of Belarus to take part in discussion of issues of state and public life at republican and local meetings, under the procedure established by the legislation (Article 37.3 of the Constitution) was enshrined at the constitutional level.

I.IV The mutual relationship between different catalogues of human rights

Can you give examples from the case law of your court related to the use of any of the international catalogues?

According to Article 8 of the Constitution, the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith. Thus, the system of national legislation has been formed on the basis of priority compliance with generally recognised principles of international law.

On the basis of Articles 8 and 116 of the Constitution, the Constitutional Court, when considering cases, takes into account the generally recognised principles of international law and the rules of international treaties in order to ground its legal positions, where necessary.

In 1994-2018, the Constitutional Court made more than 130 decisions in which it argued its legal positions by referring to the principles and rules enshrined in the UDHR (1948), the ICCPR (1966).

Thus, in the decision of 27 December 2018 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to the Law of the Republic of Belarus “On the Population Register” to the Constitution of the Republic of Belarus”, the Constitutional Court grounded its legal position on the need to guarantee everyone’s constitutional right to protection from illegal interference with his personal life by referring to the international obligations of the Republic of Belarus in the field of respect for

one of the human and citizen's rights – the right to privacy, provided by Article 12 of the UDHR and Article 17 of the ICCPR.

In the decision of 11 July 2016 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to Certain Laws of the Republic of Belarus on Forced Migration” to the Constitution of the Republic of Belarus” the Constitutional Court concluded that the Republic of Belarus has the right to grant refugee status to foreigners, additional protection, asylum and temporary protection in the event of their departure from their state of origin to the territory of the Republic of Belarus on the basis of reasonable fears of being prosecuted for political, social, religious or ethnic grounds. The Court justified this position with the provisions of both the Constitution and international legal instruments. In particular, the provisions of the UDHR stipulate that everyone has the right to leave any country, including his own, and to return to his country (Article 13.2); everyone has the right to seek and to enjoy in other countries asylum from persecution (Article 14.1). In accordance with the Preamble of the Declaration on Territorial Asylum adopted by United Nations General Assembly Resolution 2312 (XXII) of 14 December 1967, the grant of asylum by a State is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State.

The formation of the legal positions of the Constitutional Court, when reviewing the constitutionality of normative legal acts and considering cases on elimination of gaps, collisions and legal uncertainty in normative legal acts, has been influenced by the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (31 decisions of the Constitutional Court contain references to the ECHR), as well as by the legal positions of the European Court of Human Rights (23 decisions of the Constitutional Court contain references to the legal positions of the ECtHR).

In the decision of 28 December 2015 “On the Conformity of the Law of the Republic of Belarus “On Industrial Safety” to the Constitution of the Republic of Belarus” the Constitutional Court noted that the provisions of the Law providing for licensing of activities and a permitting system in the field of industrial safety (Articles 18 and 19), rules for ensuring industrial safety (Article 20), identification and registration of hazardous production facilities (Articles 21 and 22), examination and declaration of industrial safety (Articles 27 and 28) and other provisions are aimed at improving legal mechanisms for protection of the constitutional rights of individuals and compliance with the relevant international obligations of the Republic of Belarus in this field.

These international obligations of the Republic of Belarus, as indicated by the Constitutional Court in the above decision, follow, in particular, from Article 6 of the ICCPR, Article 2 of the Convention of the Commonwealth of Independent States on the Rights and Fundamental Freedoms of the Person of

26 May 1995, securing the right to life as an inalienable right of everyone protected by law and thereby imposing on the state the obligation to regulate this field on the legislative level in order to provide effective protection against violation of the right to life, including in relation to the field of industrial safety activities.

The Constitutional Court, while reviewing the above-mentioned rules of the Law, also took into account the ECtHR judgement of 30 November 2004 on the case “Öneryildiz v. Turkey” stating that the need to take all appropriate measures to protect life entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework is properly implemented and any breaches of that right are repressed and punished. This obligation undoubtedly applies to hazardous activities, where, among other things, it is necessary to pay special attention to technical regulations governing certain aspects of this activity and taking into account in particular the level of potential danger to human life. These regulations should govern licensing, organisation, procedure, the safety of this type of activity and its supervision, as well as oblige the relevant authorities to take practical measures to ensure the effective protection of individuals whose lives may be jeopardised as a result of this activity.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

What is the original wording of the provision protecting this right in your national catalogue?

According to Article 24 of the Constitution of the Republic of Belarus everyone has the right to life (Article 24.1); the State shall protect life of the individual against any unlawful infringements (Article 24.2); until its abolition, the death penalty may be applied in accordance with law as an exceptional measure of punishment for especially grave crimes and only in accordance with a court sentence (Article 24.3).

Is it possible to restrict the right? If so, how and under what conditions?

In the Republic of Belarus, restriction of personal rights and freedoms shall be permitted only in the instances specified by law, in the interests of national security, public order, protection of the morals and health of the

population as well as rights and freedoms of other persons (Article 23.1 of the Constitution).

At the same time, according to Article 63.2 of the Constitution, in carrying out special measures during a state of emergency, the rights specified in Article 24, part three of Article 25 and Articles 26 and 31 of the Constitution may not be restricted.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

One of the main tasks of the Constitutional Court of the Republic of Belarus is to protect the constitutional rights and freedoms of a man and a citizen, including the right to life, through the prism of which the Constitutional Court, in the exercise of obligatory preliminary review, considers the constitutionality of the relevant provisions of laws adopted by the Parliament of the Republic of Belarus before they are signed by the President of the Republic of Belarus.

Thus, when considering the constitutionality of the Law of the Republic of Belarus “On Making Alterations and Addenda to Certain Codes of the Republic of Belarus” which supplements Article 145 of the Criminal Code of the Republic of Belarus “Incitement to Suicide” with new qualifying elements, the Constitutional Court in the decision of 28 December 2018, based on the provisions of the Constitution, including Articles 24.1 and 24.2, and taking into account the 2014 World Health Organisation's report “Suicide Prevention: A Global Imperative” concluded that changes to the Criminal Code due to the emergence of new forms of criminal acts affecting the human mind and motivation for its behaviour, including through the Internet, are aimed to create additional legal mechanisms to guarantee the constitutional rights and legitimate interests of individuals, including the safety of their life and health.

The provisions of Article 24 of the Constitution were considered by the Constitutional Court when the Court, on the proposal of the House of Representatives of the National Assembly of the Republic of Belarus, gave its judgement of 11 March 2004 “On the Conformity between the Constitution of the Republic of Belarus, the International Treaties to which the Republic of Belarus is a Party and the Provisions of the Criminal Code of the Republic of Belarus stipulating Application of the Death Penalty as a Punishment” in the exercise of *a posteriori* constitutional review.

Assessing Article 24 of the Constitution in a systematic relationship with the relevant rules of Articles 1, 2, 7, 21–23 of the Constitution, as well as taking into account the provisions of Article 3 of the UDHR and Article 6 of the

ICCPR, the Constitutional Court expressed the following legal position: “Human life is recognised in the civilised human community as the highest value, the right to life is a natural and inalienable right received by a person from the moment of his birth. When a person is deprived of his life, all his other natural rights lose their meaning, since the rights-holder disappears. Therefore, the universally recognised provision, enshrined in a number of international documents and rules of national legislation, that everyone has the right to life is comprehensive and it is interconnected with the issue of the legality of depriving a person of his life, including through the application of the death penalty as a criminal punishment”.

The Constitutional Court considers that Article 24.3 of the Constitution, which anticipates the abolition of the death penalty and establishes a kind of transitional provision according to which the death penalty may be temporarily applied as an exceptional measure only for especially grave crimes, implies the refusal of the State to use this punishment, and that Article 24.3 of the Constitution, which establishes the possibility of applying the death penalty as an exceptional measure of punishment only until its abolition, makes it possible to declare a moratorium on the application of the death penalty or the complete abolition of this punishment.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

It was noted in the abovementioned judgement of the Constitutional Court of 11 March 2004 that when assessing the issue of the death penalty, the legal system of the State, its traditions and history, the context under which the legal rules were formulated, their change, as well as the situation regarding criminal activities at the present stage, should be taken into account. In addition, the Republic of Belarus is not a member of the Council of Europe and has not ratified the Second Optional Protocol to the ICCPR.

II.II Freedom of expression

What is the original wording of the provision protecting this right in your national catalogue?

As prescribed by Article 4 of the Section I of the Constitution “Fundamentals of the Constitutional System”, democracy in the Republic of Belarus shall be exercised on the basis of diversity of political institutions, ideologies and opinions (Article 4.1); the ideology of political parties, religious

or other public associations, social groups may not be made mandatory for citizens (Article 4.2).

According to Article 33 of the Constitution, everyone is guaranteed freedom of thoughts and beliefs and their free expression (Article 33.1); no one may be forced to express his beliefs or to deny them (Article 33.2); no monopolisation of mass media by the State, public associations or individual citizens and no censorship shall be permitted (Article 33.3).

It follows from the meaning of Article 33.3 of the Constitution that it also enshrines the freedom of the media, which are intended to ensure the free expression and dissemination of various opinions and views in the society.

The provision on the freedom of expression is connected with Article 34.1 of the Constitution, according to which citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information on the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment. In addition, Article 34.2 of the Constitution provides that state bodies, public associations and officials shall provide citizens of the Republic of Belarus with an opportunity to familiarise themselves with materials that affect their rights and legitimate interests.

The provisions of Article 33 of the Constitution on the freedom of opinion and expression are also connected with Article 35 of the Constitution stipulating that the freedom to hold assemblies, meetings, street marches, demonstrations and pickets that do not disturb law and order or violate the rights of other citizens of the Republic of Belarus, shall be guaranteed by the State.

Is it possible to restrict the right? If so, how and under what conditions?

In the Constitution, the right to freedom of opinion and expression is limited by general constitutional prohibitions: the foundation and activities of political parties and other public associations, that aim to change the constitutional system by force or conduct propaganda of war, social, ethnic, religious and racial hatred, shall be prohibited (Article 5.3); restriction of personal rights and freedoms shall be permitted only in the instances specified by law, in the interests of national security, public order, protection of the morals and health of the population as well as rights and freedoms of other persons (Article 23.1).

In accordance with Article 34.3 of the Constitution, the use of information may be restricted by the legislation with the purpose to safeguard honour, dignity, personal and family life of the citizens and the full exercise of their rights.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The case-law of the Constitutional Court contains a number of decisions made in the exercise of obligatory *a priori* review of the constitutionality of laws on making alterations and addenda to the Law of the Republic of Belarus “On Mass Media” (decisions of 4 December 2013, 19 December 2014, 3 May 2016 and 10 July 2018) and the Law of the Republic of Belarus “On Mass Events in the Republic of Belarus” (decisions of 28 October 2011 and 6 July 2018).

Thus, in the decision of 10 July 2018, when assessing the constitutionality of Article 30¹ of the Law “On the Mass Media” (hereinafter – the Law on Mass Media), which stipulates, in particular, that the owner of an Internet resource, the owner of a network publication shall be obliged to prevent posting on the Internet resource, in the network publication of information messages and (or) materials (including leaving comments) by other users without their preliminary identification, it was noted that since Internet resources have a significant place in the total volume of the disseminated information and in order to ensure the rights of users, the Constitutional Court considers that the extension of the requirements enshrined in the Law on Mass Media to such resources and their owners is aimed at ensuring the constitutional right to information, which is consistent with Article 13.5 of the Constitution and does not diminish the right to freedom of opinion, belief and expression established by Article 33.1 of the Constitution.

In the same decision the Court formulated a legal position in connection with the review of the constitutionality of the provision supplementing Article 38.1 of the Law on Mass Media. According to this provision information whose distribution is prohibited includes information that promotes and encourages suicide; information on how to make explosive devices and explosives as well as objects, the damaging effect of which is based on the use of combustible substances; information on a minor who suffered as a result of illegal actions (inaction) permitting directly or indirectly to establish the identity of this minor without the consent of his legal representative. The essence of the legal position lies in the fact that the established legal regulation is aimed at protecting citizens' rights from these negative manifestations in the media and the Internet, preventing threats to national security, creating a legal mechanism to provide special protection to minors, increasing their level of security, strengthening guarantees for protection of their privacy and health, taking into account the socio-psychological characteristics of children, their vulnerable situation, the

possible negative impact of harmful information on moral, spiritual and physical health, and proportionally protected values. The provisions of the Law do not prevent the dissemination and receipt of appropriate information, since users do not lose the right to information, they can receive and use public information in full, including information on the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment (Article 34.1 of the Constitution), except for information access to which is limited in the interests of national security (Article 23.1 of the Constitution), in order to protect the life and health of citizens (Articles 24.2 and 45.1 of the Constitution), the childhood (Article 32.1 of the Constitution).

In the decision of 6 July 2018, when considering the constitutionality of the addendum to Article 9.2 of the Law “On Mass Events in the Republic of Belarus”, which provides for the possibility of holding mass events upon notification in places determined for this purpose by local executive and administrative bodies, it is noted that the establishment by the Law of the procedure for holding mass events upon notification meets international standards enshrined in the Guidelines on the Freedom of Peaceful Assembly (CDL-AD(2010)020), prepared by the OSCE/ODIHR Panel on Freedom of Assembly and by the Venice Commission, adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010), according to which it is the primary responsibility of the State to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation (para. 2.2).

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The case-law of the Constitutional Court of the Republic of Belarus is in line with the approaches of international courts in assessing the due procedure for exercising the right to freedom of opinion and expression (ECtHR judgements of 10 July 2012 in the case “Berladir and others v. Russia”, of 26 July 2007 in the case “Makhmudov v. Russia”, of 2 July 2002 in the case “Wilson and the National Union of Journalists and others v. United Kingdom” and others).

II.III Right to privacy/right to respect for private life/right to private life

What is the original wording of the provision protecting this right in your national catalogue?

According to Article 28 of the Constitution, everyone shall have the right to protection against unlawful interference with his private life, including encroachments on the privacy of his correspondence and telephone and other communications, and on his honour and dignity.

The above provisions of Article 28 of the Constitution also develop the provisions of Article 25.1 of the Constitution on the State's duty to safeguard personal liberty, inviolability and dignity.

A specific type of the inviolability of personal life, the inviolability of a person is the inviolability of the home and other possessions of a citizen. In accordance with Article 29 of the Constitution, inviolability of home and other legitimate possessions of citizens shall be guaranteed. No one shall have the right without a lawful ground to enter home or other legitimate possession of a citizen against his will.

Some issues of protecting the honour, dignity, personal and family life of citizens are also reflected in Article 34 of the Constitution, by virtue of which the use of information may be restricted by the legislation with the purpose to safeguard honour, dignity, personal and family life of the citizens and the full exercise of their rights (Article 34.3).

Is it possible to restrict the right? If so, how and under what conditions?

Since the concept of "personal life", synonymous with the concept of "private life", covers the spiritual, practical and physical field controlled by the individual himself, including personal convictions, his connections with family members, other relatives, state of health, intimate life, etc., then certain aspects of personal life due to their internal content are inviolable and cannot be limited.

Thus, the right to express an attitude towards religion cannot be limited (Articles 31 and 63.2 of the Constitution). Everyone is guaranteed freedom of thoughts and beliefs and their free expression; no one may be forced to express his beliefs or to deny them (Articles 33.1 and 33.2 of the Constitution), to determine or indicate his ethnic identity (Article 50.1 of the Constitution).

At the same time, within the meaning of constitutional requirements, certain other aspects of personal life may be limited under certain conditions. Thus, Article 28 of the Constitution deals with such components of personal life as correspondence, telephone and other communications.

In this context, Article 23.1 of the Constitution should be considered as fundamental (restriction of personal rights and freedoms shall be permitted only in the instances specified by law, in the interests of national security, public

order, protection of the morals and health of the population as well as rights and freedoms of other persons).

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court of the Republic of Belarus considered in constitutional proceedings the issue on legal regulation in civil law of the use and protection of one's image.

In the decision of 30 October 2018 the Constitutional Court, making reference to Articles 2.1, 21.1, 21.3, 25.1 and 28 of the Constitution, stated that constitutional provisions guarantee the right to protection of personal non-property rights, such as freedom, inviolability and dignity of a person, personal life, honour and dignity. The Constitutional Court recognised that a person's appearance, belonging to him or her since birth, as well as the right to his or her image, based on that appearance, are intangible benefits falling within the protective scope of the Constitution. It was noted that the protection of one's image should be ensured by an appropriate legal mechanism that would take into account the essence of this intangible benefit and determine the features of one or another way of its protection, and therefore the Constitutional Court recognised the need to make appropriate changes to the Civil Code of the Republic of Belarus.

When making this decision, the Constitutional Court in support of its findings applied the above provisions of the Constitution of the Republic of Belarus, Article 12 of the UDHR, Articles 2.2 and 17.1 of the ICCPR, as well as Article 8 of the ECHR and its interpretation in the ECtHR judgements in relation to one's image (para. 2 of the decision).

In the decision of 8 June 2017 "On the Conformity of the Law of the Republic of Belarus "On Making Alterations and Addenda to the Law of the Republic of Belarus "On Social Services" to the Constitution of the Republic of Belarus" the Constitutional Court of the Republic of Belarus took into account the case-law of the ECtHR, which noted that the protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life, as guaranteed by Article 8 of the ECHR (judgement of 4 December 2008 in the case "S. and Marper v. the United Kingdom"); the protection of personal data is a principle in the legal systems and it is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life (judgements of 25 February 1997 in the case "Z. v. Finland" and of 17 July 2008 in the case "I. v. Finland").

The Constitutional Court in the said decision noted that the requirement of the Law “On Social Services” to ensure the confidentiality of information that has become known in the provision of social services, the possibility of providing it only in cases provided for by the legislator, is proportionate to the protected rights and interests of persons to whom such services are provided, since this requirement is aimed at eliminating unauthorised interference in the personal life of an individual through the disclosure of information about it, a threat to other constitutional rights and freedoms associated with self-determination of an individual.

In the decision of 5 June 2014 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to the Law of the Republic of Belarus “On Healthcare” to the Constitution of the Republic of Belarus” the Constitutional Court recognised that provision of information constituting medical confidentiality in the cases provided for by the Law of the Republic of Belarus “On Healthcare” meet constitutional requirements, as defined by law and aimed at protecting the interests of national security, public order, the rights of others.

At the same time, the Constitutional Court also drew attention to the approaches developed by the ECtHR on similar issues, in particular, those contained in the judgement of 6 June 2013 in the case “Avilkina and Others v. Russia”.

According to the Constitutional Court, the restrictions established by the reviewed Law on the protection of medical confidentiality comply with the principle of proportionality: they are not excessive and contribute to achieve a balance between private and public interests.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The case-law of the Constitutional Court of the Republic of Belarus described in this paragraph is similar to the approaches of the ECtHR regarding the protection of the right to privacy, including the right to protection of one's image as one of the aspects of private life (judgements of 4 December 2008 in the case “S. and Marper v. the United Kingdom”, of 25 February 1997 in the case “Z. v. Finland”, of 17 July 2008 in the case “I. v. Finland”, of 26 March 1987 in the case “Leander v. Sweden”, of 16 February 2000 in the case “Amann v. Switzerland”, of 6 June 2013 in the case “Avilkina and Others v. Russia”, of 24 June 2004 in the case “Von Hannover v. Germany”, etc.).

II.IV Freedom of religion

What is the original wording of the provision protecting this right in your national catalogue?

Article 31 of the Constitution stipulates that everyone shall have the right to determine independently his attitude towards religion, to manifest any religion alone or in community with others, or to manifest none at all, to express and spread beliefs connected with his attitude towards religion, and to participate in the performance of acts of worship and religious rituals and rites, which are not prohibited by law.

The freedom of religion enshrined in Article 31 of the Constitution is closely interconnected with the principles of a secular state established in Article 16 of the Constitution, according to which religions and faiths shall be equal before the law; relations between the State and religious organisations shall be regulated by law with regard to their influence on formation of spiritual, cultural and state traditions of the Belarusian people; the activities of religious organisations, their bodies and representatives that are directed against the sovereignty of the Republic of Belarus, its constitutional system and civic concord, or involve violation of civil rights and freedoms of its citizens as well as impede execution of state, public and family duties by its citizens or are detrimental to their health and morality shall be prohibited.

In turn, the provisions on freedom of conscience, equality of religions and faiths before the law are coupled with Article 4 of the Constitution on the exercise of democracy in the Republic of Belarus on the basis of diversity of political institutions, ideologies and opinions. Moreover, the ideology of political parties, religious or other public associations, social groups may not be made mandatory for citizens.

Is it possible to restrict the right? If so, how and under what conditions?

According to Article 23.1 of the Constitution, restriction of personal rights and freedoms shall be permitted only in the instances specified by law, in the interests of national security, public order, protection of the morals and health of the population as well as rights and freedoms of other persons.

By virtue of Article 63.1 of the Constitution, the exercise of the personal rights and freedoms specified by the present Constitution may be suspended only under a state of emergency or martial law under the procedure and within the limits specified by the Constitution and law. In carrying out special measures during a state of emergency, the rights specified in Articles 24, 25.3, 26 and 31 of the Constitution may not be restricted.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court of the Republic of Belarus made several decisions on issues related to freedom of religion (of 26 June 2001, 15 April 2004, 6 December 2005) regarding a personal (identification) number in a passport of a citizen of the Republic of Belarus, in connection with which some citizens refused to obtain a passport on religious grounds.

In the decisions of 11 January 2007, “On Granting an Old-Age Pension to Working Citizens who, on Religious Grounds, do not have a Passport,” and of 9 July 2014 “On Legal Uncertainty in the Legal Regulation of Personal Identification when Granting a Pension by Labour, Employment and Social Protection Bodies”, the Constitutional Court drew attention to the fact that in the law enforcement there are cases when individuals who, on religious grounds, refused to receive a passport of a citizen of the Republic of Belarus due to the personal (identification) number, cannot exercise their constitutional right to a pension. The Constitutional Court asked the Council of Ministers of the Republic of Belarus to provide in the legal regulation of the procedure for provision and preparation of documents for a pension the possibility of identification in exceptional cases, not only with a passport, but also with other documents.

When making these decisions, the Constitutional Court was guided by the provisions of the Constitution, other laws and subordinate legislation of the Republic of Belarus.

In the decision of 26 May 2000 “On Certain Issues of Implementing Article 57 of the Constitution of the Republic of Belarus” the Constitutional Court laid down the legal position that individuals should have the right to replace military service with an alternative one due to religious beliefs.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

An analysis of the case-law of international courts and the Constitutional Court of the Republic of Belarus on the protection of the right to religion (in comparable parameters) shows the absence of substantive discrepancies (see, for example, ECtHR judgements of 7 July 2011 in the case “Bayatyan v. Armenia”, of 25 May 1993 in the case “Kokkinakis v. Greece”, of 22 June 2007 in the case “Barankevich v. Russia”).

II.V Prohibition of discrimination

What is the original wording of the provision protecting this right in your national catalogue?

According to the Constitution, all shall be equal before the law and have the right to equal protection of their rights and legitimate interests without any discrimination (Article 22).

As for subjects of the right, Article 22 covers not only citizens of Republic of Belarus, but also foreign nationals and stateless persons who in the territory of Belarus shall enjoy the rights and freedoms and execute duties on equal terms with citizens of the Republic of Belarus, unless otherwise specified by the Constitution, laws and treaties (Article 11).

Article 22 of the Constitution guarantees protection against all forms of discrimination in the exercise of the rights and freedoms provided for by the Constitution.

The Constitution enshrined the following rights and freedoms granted by the State: equal rights to all to conduct economic and other activities, except for those prohibited by law, and guarantee equal protection and equal conditions for development of all forms of ownership (Article 13.2); the State shall regulate relations among social, ethnic and other communities on the basis of the principles of equality before the law and respect of their rights and interests (Article 14.1); religions and faiths shall be equal before the law (Article 16.1); women shall be guaranteed equal rights with men in their opportunities to receive education and vocational training, promotion in labour, social and political, cultural and other spheres of activity as well as in creating conditions safeguarding their occupational safety and health (Article 32.5); citizens of the Republic of Belarus, in accordance with their abilities and professional training, shall have the right to equal access to any office in state bodies (Article 39), etc.

Is it possible to restrict the right? If so, how and under what conditions?

According to Article 23.1 of the Constitution, restriction of personal rights and freedoms shall be permitted only in the instances specified by law, in the interests of national security, public order, protection of the morals and health of the population as well as rights and freedoms of other persons.

By virtue of Article 63.1 of the Constitution, the exercise of the personal rights and freedoms specified by the present Constitution may be suspended only under a state of emergency or martial law under the procedure and within the limits specified by the Constitution and law. In carrying out special measures during a state of emergency, the rights specified in Articles 24, 25.3, 26 and 31 of the Constitution may not be restricted.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The constitutional provision on the equality of all before the law was taken into account by the Constitutional Court when making, among many others, the following decisions.

When considering the issue of the different amount of the childcare allowance for children under three years old depending on the type of mother's occupation before the start of the childcare period, the Constitutional Court in the decision of 21 October 2005 "On the Amount of State Allowances to Families with Children" noted that Article 13 of the Law of the Republic of Belarus "On State Allowances for Families with Children" regarding the establishment of different amount of the childcare allowance for children under three years old depending on the type of mother's occupation before the start of the childcare period contradicts the principle of equality of citizens of the Republic of Belarus in the right to state social insurance regardless of social status and occupation and is not consistent with Article 22 of the Constitution, which stipulates that all shall be equal before the law and have the right to equal protection of their rights and legitimate interests without any discrimination.

In the decision of 14 July 2005 "On Improving the Legislation on the Payment of Temporary Disability Benefits" the Constitutional Court noted that the establishment by the legislation of the procedure for calculating temporary disability benefits for individual entrepreneurs, which differs from the general procedure for calculating and paying temporary disability benefits established for other working citizens, is contrary to the principle of equality of citizens of the Republic of Belarus in the right to state social insurance regardless of social status and occupation and is not consistent with Articles 22 and 23 of the Constitution.

In the decision of 5 July 2013 "On the Conformity of the Law of the Republic of Belarus "On Making Alterations and Addenda to the Law of the Republic of Belarus "On Labour Protection" to the Constitution of the Republic of Belarus" the Constitutional Court concluded that the principle of legal equality cannot and should not be implemented without taking into account the universally recognised social role of women in procreation, which obliges the State to establish additional guarantees aimed at protecting the health of women, including in the field of labour protection, in order to protect the reproductive health of women from the effects of harmful and (or) dangerous production factors.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

In its practice the Constitutional Court correlates the constitutional provisions with the universally recognised principles and rules of international law. International legal reasoning is used to additionally substantiate the legal positions of the Constitutional Court.

The approaches regarding prohibition of discrimination set forth in the ECtHR judgements (judgements of 13 June 1979 in the case “Marckx v. Belgium”, of 6 April 2000 in the case “Thlimmenos v. Greece”, of 28 May 1985 in the case “Abdulaziz, Cabales and Balkandali v. the United Kingdom”, etc.) have been taken into account in the decisions of the Constitutional Court

II.VI Right to liberty

What is the original wording of the provision protecting this right in your national catalogue?

According to Article 25 of the Constitution, the State shall safeguard personal liberty, inviolability and dignity. The restriction or denial of personal liberty is possible in the instances and under the procedure specified by law. A person who has been taken into custody shall have the right to a judicial review of the legality of his detention or arrest. No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, or be subjected to medical or other experiments without his consent.

The constitutional provisions also provide that no one shall be compelled to be a witness against oneself, members of his family or close relatives; evidence obtained in violation of the law shall have no legal force (Article 27).

In order to protect their rights, freedoms, honour and dignity in accordance with law, citizens shall be entitled to claim, through courts, both property damage and financial compensation for moral injury (Article 60.2 of the Constitution).

Is it possible to restrict the right? If so, how and under what conditions?

The right to liberty may be restricted upon arrest, imprisonment, detention, custody. By virtue of Article 25.1 of the Constitution, the restriction or denial of personal liberty is possible in the instances and under the procedure specified by law.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

In the decision of 26 December 2014 “On the Conformity of the Law of the Republic of Belarus “On Making Addenda and Alterations to the Criminal Code, Criminal Procedure Code, Criminal Executive Code of the Republic of Belarus, Code of the Republic of Belarus on Administrative Offences and Procedural Executive Code of the Republic of Belarus on Administrative Offences” to the Constitution of the Republic of Belarus” the Constitutional Court stated that the detention of a suspect or accused person significantly limits the constitutional rights to personal liberty, inviolability and dignity that determines the exclusivity of this restrictive measure. In this regard, the body conducting the criminal process, along with the establishment of the grounds and motives, by virtue of which the suspect or accused had to be placed in custody, should consider the possibility of applying other preventive measures to such a person.

In the decisions of the Constitutional Court it was noted that the right to judicial appeal is the guarantee of personal liberty and inviolability, as it guarantees examination of the legal grounds for making a decision on detention, and protection against arbitrary restrictions of these rights. Thus, in the decision of 8 July 2016 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to the Law of the Republic of Belarus “On the Procedure and Conditions of Detention of Persons in Custody” to the Constitution of the Republic of Belarus” the Constitutional Court noted that the provision of the Law “On the Procedure and Conditions of Detention of Persons in Custody” on the establishment in places of detention of a special regime, which provides for the isolation, security and supervision of such persons, the obligation for them to comply with certain requirements for the failure of which they can be sanctioned, implies the restriction of the constitutional right to liberty, including freedom of movement and personal inviolability.

In this regard, the Constitutional Court noted that a person in custody has the right to judicial review of the lawfulness of his detention or arrest and drew the attention of the law enforcement bodies to the strict observance of the provisions of the Criminal Procedure Code regulating the procedure and conditions of detention in order to prevent violations of the constitutional rights and freedoms of individuals.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The case-law of the Constitutional Court regarding protection of the right to personal liberty is comparable to the case-law of the ECtHR (judgements of the ECtHR of 28 October 2003 in the case “Rakevich v. Russia”, of 30 November 2004 in the case “Klyakhin v. Russia”, of 28 March 2000 in the case “Baranowski v. Poland”, etc.).