

CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

4th Congress of the World Conference on Constitutional Justice

THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD

QUESTIONNAIRE

A. The rule of law and constitutional justice in the modern world

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The Constitution keeps a key place among sources of the legal system of the Republic of Belarus.

Article 7.1 of the Constitution of the Republic of Belarus directly enshrines that the Republic of Belarus shall be bound by the principle of supremacy of law. This principle has been made more concrete in Article 7.2 providing that the State and all the bodies and officials thereof shall operate within the confines of the Constitution and acts of legislation adopted in accordance therewith. Article 7.3 of the Constitution stipulates that legal acts or specific provisions thereof which have been recognised under the procedure specified by law as contradicting the provisions of the Constitution shall have no legal force.

These provisions have been developed in other Articles of the Constitution. Thus, according to Article 112.1 the courts shall administer justice on the basis of the Constitution and other normative acts adopted in accordance therewith. Article 137.1 enshrines that the Constitution 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 of the Republic of Belarus.

The constitutional principles and rules condition the duty of the state, its bodies and officials and other subjects of public relations to act in accordance with the principle of the rule of law.

A number of provisions of the Constitutional Court acts are directly aimed at ensuring the principle of the rule of law in the Republic of Belarus.

The judgements and decisions taken by the Constitutional Court in the exercise of the constitutional review have regulatory effect. The Constitutional Court reveals the content of the constitutional principle of the rule of law and

justifies the need to comply therewith in the rule-making and application of law for the purpose of implementation and protection of constitutional values such as democracy, human rights and freedoms, justice and equality.

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

The principle of the rule of law, enshrined at the constitutional level, is recognised in the Republic of Belarus as one of the most important factors of constitutionalism. This principle is understood as a set of components that determine the construction and functioning of the legal system of the Republic of Belarus on the basis of the supremacy of the Constitution, strengthening of the constitutional legality and constitutional democracy, respect for human rights and freedoms while ensuring the balance of interests of the individual, society and state taking into account the constitutional values. This understanding, formulated also on the basis of the legal positions of the Constitutional Court, serves as the basis for the concept of the rule of law in the Republic of Belarus. This concept is formal and effective for state bodies, officials, civil society, individuals and all other subjects of constitutional and legal relations.

It should be noted that there are no other concepts of the rule of law in the Republic of Belarus.

The Constitutional Court, which is directly entrusted with tasks of protecting the constitutional order of the Republic of Belarus, the constitutionally guaranteed human rights and freedoms, ensuring the supremacy of the Constitution and its direct effect on the territory of the Republic of Belarus, conformity of normative legal acts of state bodies to the Constitution, strengthening of legality in rule-making and application of law, develops the concept of the rule of law by formulating its formal and substantial aspects. Taking into account the legal status of the Constitutional Court, its activities on the disclosure of meaning and specific content of the concept of the rule of law are aimed at ensuring a uniform understanding and implementation of the constitutional provisions in the legislation and application of law.

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

In accordance with Article 116 of the Constitution review of the constitutionality of normative acts in the State shall be exercised by the Constitutional Court of the Republic of Belarus. When exercising its powers on the constitutional review and checking the constitutionality of normative legal

acts the Constitutional Court grounds its legal positions proceeding from the principle of the rule of law.

The Constitutional Court considers cases involving legal relationship in various fields of law.

It should be noted that since 2008 in the exercise of the preliminary obligatory review the Constitutional Court has been vested with the power to check the constitutionality of all the laws passed by Parliament before their signing by the President, that is before the entry of these laws into force. In that way, starting from the mentioned period, all the laws passed by Parliament and applying to different fields of law have been subject to assessment on the their conformity to the Constitution, including their compliance with the principle of rule of law, by the Constitutional Court.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

In the Republic of Belarus the content of the principle of the rule of law is revealed primarily in the constitutional case-law. When exercising the constitutional review the Constitutional Court grounds the multidimensional content of the principle of the rule of law and shows the way of its implementation in the law-making and application of law.

When analysing the constitutional case-law the Constitutional Court in the Message on Constitutional Legality in the Republic of Belarus in 2011 noted that the rule of law as the most important feature of a State based of the rule of law includes necessary components that are not only of formal but also of material value. These components are: legality, legal certainty, prohibition of arbitrariness, access to justice before independent and impartial courts, respect of human rights and equality of all before the law.

This interpretation of the rule of law by the Constitutional Court is consistent with international approaches to the understanding of the content of the principle of the rule of law.

Many decisions of the Constitutional Court contain references to the content of the principle of the rule of law.

4.1 Thus, assessing the constitutionality of alterations made to the Law “On Counteraction to Extremism” in the Decision of 12 April 2016 “On the Conformity of the Law of the Republic of Belarus “On Making Addenda and Alterations to Certain Laws of the Republic of Belarus” to the Constitution of the Republic of Belarus” the Constitutional Court noted that the judicial procedure for recognition of materials and organisations as extremist established by the Law excludes similar powers of other state bodies and officials and represents an additional guarantee for the protection of human

rights and freedoms provided for in Article 60 of the Constitution. This procedure complies also with the relevant international legal standards in the field of justice (Articles 8 and 10 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the European Convention on Human Rights) under which democratic practices and the rule of law are ensured. The Constitutional Court drew attention of the courts of general jurisdiction to the need to ensure the rule of law and constitutional provisions guaranteeing fundamental rights and freedoms of individuals when state bodies and officials make decisions and deal with specific criminal cases on extremist crimes.

4.2 The Constitutional Court has repeatedly pointed out the need for respect of the principle of legal certainty in the rule-making, as the uncertainty of legal rules creates conditions for their violation in the application of law, and as a result opens up the possibility for arbitrariness, violations of the rights, freedoms and legitimate interests of individuals and organisations that is not consistent with the principle of the rule of law.

In the Decision 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» in order to ensure the proper exercise of the constitutional right to social security as well as the principle of social justice the Constitutional Court recognised it necessary to eliminate legal uncertainty in the legal regulation of personal identification when granting a pension by labour, employment and social protection bodies.

According to the Constitutional Court, when the principle of legal certainty is observed in rule-making it enables uniform and predictable application of law that increases citizens' confidence in the State (Decision of the Constitutional Court of 16 December 2015 “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 Citizenship of the Republic of Belarus” to the Constitution of the Republic of Belarus”).

4.3 In the Decision of 16 October 2012 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to the Tax Code of the Republic of Belarus” to the Constitution of the Republic of Belarus” the Constitutional Court assessed the provision added to the Tax Code on the right of the payer not to carry out unlawful decisions of tax authorities and demands of their officials taking into account the provisions of the said Code on the taxpayer's right to appeal against decisions of tax authorities, including against demands (orders) to eliminate violations, actions (inaction) of their officials, if the taxpayer believes that such decisions or actions (inaction) of officials have been adopted or made with violation of the rules established by the tax or another legislation or violate his rights.

The Constitutional Court pointed out that these legislative provisions were aimed at protecting the rights of taxpayers, avoidance of arbitrariness on the part of state bodies (officials) as the most important components of the principle of the rule of law; if the tax authorities and their officials in the exercise of their powers have violated the rights and legitimate interests of individuals, these latter shall be entitled to exercise the constitutional right for resort to state bodies and to judicial protection by filing a corresponding complaint.

4.4 Analysing the provisions of Articles 34 and 38 of the Criminal Procedure Code of the Republic of Belarus on suspension of suspected persons from office by the relevant officials the Constitutional Court in its Decision of 29 April 2010 “On the Conformity of the Law of the Republic of Belarus “On Making Addenda and Alterations to the Criminal Procedure Code of the Republic of Belarus” to the Constitution of the Republic of Belarus” noted that the fact that the suspect does not have the right to appeal against such measure impedes the access to justice for this person and infringes his right to free choice of remedies.

Based on the provisions of Article 60 of the Constitution specifying that everyone shall be guaranteed protection of his rights and freedoms by a competent, independent and impartial court within the time limits specified by law and on the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights on the right of everyone to effective restoration of rights by the competent national courts, the Constitutional court pointed out that when applying such a criminal and procedural measure as suspension of a suspect from office the latter should be able to seize the court for protection of his rights.

4.5 In the Decision of 27 May 2015 “On Making Alterations and Addenda to Certain Laws of the Republic of Belarus” based on the constitutional principle of equality of all before the law (Article 22) the Constitutional Court assessed the provisions of Article 17 of the Law of the Republic of Belarus “On Auditing” which establishes the common auditing procedure for all commercial organisations providing for equal legal conditions for the activities of such organisations (including those created with the participation of foreign capital), that is aimed at ensuring equality for all persons (including foreigners) investing their funds in the economy of the Republic of Belarus.

The Constitutional Court noted that this legal regulation is aimed at compliance with the constitutional principles of the rule of law and equality of all before the law as well as at respect for the principle of equality of investors enshrined in Article 5.1.3 of the Law “On Investments”. Such legal regulation is consistent with the rules of the Constitution according to which the State shall grant 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; the State shall regulate economic activities in the interests of the individual and society (Articles 13.2 and 13.5).

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

Article 7 of the Constitution of the Republic of Belarus of 1994 (with changes and additions adopted at the republican referendum of 24 November 1996) stipulates that the Republic of Belarus shall be bound by the principle of supremacy of law. The content of this principle is revealed in other provisions of Article 7 of the Constitution as the main source of law in the Republic of Belarus.

The provisions of Article 116 of the Constitution stipulating that review of the constitutionality of normative acts in the State shall be exercised by the Constitutional Court of the Republic of Belarus and establishing that the normative acts or their particular provisions which have been found unconstitutional shall cease to be in force under the procedure determined by law are aimed at ensuring the exercise of the principle of the rule of law.

It should be noted that the constitutional and legal framework for the exercise of the principle of the rule of law in the activities of general courts is set forth by Article 112.1 of the Constitution which provides that the courts shall administer justice on the basis of the Constitution and other normative acts adopted in accordance therewith.

In the case-law in the Republic of Belarus the concept of the rule of law has been developed on the basis of the constitutional rules and international approaches to the understanding of the principle of the rule of law. At the same time this concept has been enriched by the new provisions including by means of acts of constitutional justice.

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

Article 8 of the Constitution stipulates 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. On this basis the Republic of Belarus adheres to approaches to the interpretation of the principle of rule of law arising from the generally recognised principles of international law.

To this end at the national level the provisions on the role of the rule of law are taken into account. These provisions may be found in the resolutions of

the UN General Assembly “Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels” of 24 September 2012 and “The rule of law at the national and international levels” of 14 December 2015, the reports of the UN Secretary-General “The rule of law and transitional justice in conflict and post-conflict societies” (2004), “Strengthening and coordinating United Nations rule of law activities” (2015), the Report on the rule of law adopted by the European Commission for democracy through Law (Venice Commission) (2011) and other international instruments.

According to the Resolution 69/123 of the UN General Assembly “The rule of law at the national and international levels” of 10 December 2014 the rule of law can not be achieved without respect for the fundamental principles of international law.

In the Report of the Secretary-General at the 66th session of the UN General Assembly “Delivering justice: programme of action to strengthen the rule of law at the national and international levels” (2012) it was noted that the United Nations defines the rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards; it requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decisionmaking, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

The Constitutional Court orients rule-making and law-enforcement bodies towards their activities to be in line with the provisions of international instruments on human rights, including the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention on the Rights of the Child of 1989, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988, a number of conventions adopted by the ILO, etc.

In that way the international law has a direct impact on the interpretation of the principle of the rule of law in the Republic of Belarus. International approaches to the interpretation of this principle are taken into account in the development of national legislation and law-enforcement practice.

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

The economic crisis to some extent may be considered as a threat to the rule of law at the national level. The crisis in the economic sphere causes job cuts, reduction of real incomes, reduction of social benefits and privileges. These phenomena weaken the guarantees of consistent ensuring of the rule of law in the society, result in a certain exacerbation of social contradictions.

One of the factors that weaken mechanisms of ensuring the rule of law is insufficient level of legal culture. In the legal doctrine of the Republic of Belarus legal culture is seen as a set of legal knowledge in the form of rules and other legal provisions, as well as beliefs and guidelines created in the process of life activity and regulating interaction between the individual and social groups, public institutions, which form the objective attitude of the society to the law. Insufficient level legal culture is a factor contributing to inappropriate respect for legal rules that entails violation of the legal order.

In the Message of the Constitutional Court “On Constitutional Legality in the Republic of Belarus in 2015” it was noted that taking into account globalisation, integration, dynamism and interdependence of public and intergovernmental processes, the focus in the field of rule-making shall be orientated to the exercise and security of legal regulation based on the supremacy of the Constitution.

As an integral part of the principle of the rule of law, the principle of legal security requires that legislative acts shall be aimed at achieving and ensuring the constitutionally significant goals and interests, fully and specifically regulate the most important public relations, provide for appropriate mechanisms for the exercise of the rights and freedoms of individuals, strengthening the constitutional order.

The principle of legal security is expressed in the legal protection of the individual with the legal guarantees and legal support for the full exercise of the rights and freedoms provided by the Constitution.

Further development of the constitutional values, principles and rules in the legislative process and application of law contributes to sustainable and consistent strengthening of the legal foundations for the development of Belarus as a democratic state based on the rule of law, overcoming potential threats to the principle of the rule of law and its full implementation in all fields of public life.

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

Such phenomena as migration and terrorism may directly affect the content of certain elements of the doctrine of the rule of law, as they involve the adjustment of the legislation and application of law in view of additional

restrictions concerning the exercise of certain human rights and freedoms. However, such adjustment should be based on the need for consistent respect for the principle of the rule of law.

8.1 The Constitutional Court exercising its power on obligatory preliminary review of the constitutionality of laws passed by Parliament checks the laws dealing with migration and terrorism taking into account the constitutional principle of the rule of law and relevant international legal approaches.

Thus, 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 analysed the provisions of the Law “On granting Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons in the Republic of Belarus” under which appropriate categories of foreigners may not be deported from the Republic of Belarus to the foreign country where their lives or freedom would be threatened on account of race, religion, citizenship, nationality, membership of a particular social group or political opinion, or to a foreign country where they would be threatened by the death penalty or there would be a threat to their lives due to violence in situations of international or non-international armed conflict (Article 5.1); however, this provision shall not be applied to foreigners posing a threat to the national security of the Republic of Belarus or convicted of a crime rated by the Criminal Code of the Republic of Belarus to the category of especially grave crimes (Article 5.3).

The Constitutional Court considered that this legislative regulation is in line with Article 23.1 of the Constitution stipulating that 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 and is consistent with international approaches set out in Article 3 of the Declaration on Territorial Asylum. According to these approaches no person seeking asylum shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution; exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population (Articles 3.1 and 3.2).

8.2 In the Decision of 21 June 2016 “On the Conformity of the Law of the Republic of Belarus “On Making Addenda and Alterations to Certain Laws of the Republic of Belarus on Combating Terrorism” to the Constitution of the Republic of Belarus” the Constitutional Court drew attention to the provision added to Article 13 of the Law “On the Fight against Terrorism”, regulating the legal regime in the area of a counterterrorist operation. This provision provides

that the persons conducting the counterterrorist operation shall be entitled, in particular, to enter freely, if necessary with damage to the locking devices and other items, at any time in the home or other lawful possession of individuals, in facilities and (or) other properties of state bodies and other organisations and to examine them when pursuing persons suspected of an act of terrorism, creation of a terrorist organisation, illegal armed group, their direction or any participation in their activities with the subsequent notification of the prosecutor within 24 hours.

The Constitutional Court noted that such measures entail interference with privacy of individuals and limit to a certain extent the rights to protection against unlawful interference with the private life (Article 28 of the Constitution) and to inviolability of home and other legitimate possessions of individuals (Article 29).

However, according to the Constitutional Court such restriction is objectively conditioned and represents a forced way to achieve the socially justified goal of the fight against terrorism, as in accordance with Article 23 of the Constitution such restriction shall be permitted only 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.

The analysis of the restrictions of the human rights and freedoms established in Article 13 of the Law “On the Fight against Terrorism” shows that they are not excessive, they are consistent with the provisions of international legal instruments, including Article 29.2 of the Universal Declaration of Human Rights according to which in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

At the same time the Constitutional Court drew attention of the law-enforcement bodies to the need of strict compliance of reasonable proportionality of permissible and justified restrictions of the human rights and freedoms with the goals of protection of the constitutional foundations of the security of the society and the state by achieving the balance of protected values.

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related

difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

Issues on the collisions between national and international law have not be submitted to the Constitutional Court of the Republic of Belarus.

The Constitutional Court in a number of its decisions has referred to the provisions of the European Convention on Human Rights (hereinafter – ECHR) as a source of international and legal regulation of relations in the field of human rights.

Due to the fact that the judgements of the European Court of Human Rights (hereinafter – ECtHR) represent not only an act of application of law producing effects for the parties to a particular dispute, but also an act of interpretation of the ECHR, it is possible to talk in broad terms about the impact of the ECtHR case-law on the legislation and law-enforcement practice of the Republic of Belarus, which is a part of the European legal space.

The importance of the ECtHR judgments in the practice of the Constitutional Court lies in the fact that the Constitutional Court refers to the ECtHR judgements in the process of elaboration of legal positions. There are examples where the case-law of the ECtHR was taken into consideration by the Constitutional Court in order to justify its legal position.

In particular, in the Decision of 29 June 2012 “On the Conformity of the Housing Code of the Republic of Belarus to the Constitution of the Republic of Belarus” the Constitutional Court referred to the ECtHR Judgement of 21 February 1986 on the case of “James and the other against the United Kingdom” citing the ECtHR position that modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces because their unlimited action may, especially in a situation of economic transformation, create a risk of undesirable social consequences, and therefore reflects not only private but also public interest.

In the Decision of 23 December 2011 on the Law of the Republic of Belarus “On Advocacy and Legal Practice in the Republic of Belarus” the Constitutional Court drew attention to the ECtHR approaches to this issue by virtue of which membership of a professional association, even when mandatory, shall not be considered as interference in freedom of association and shall not be considered as limitation of the rights guaranteed by Article 11 of the ECHR, and shall be seen as contributing to the protection of professional rights.

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

10.1 The Constitutional Court proceeds from the fact that the constitutional scope of the powers of state bodies shall be determined by the constitutional provisions stipulating 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). At the same time the Constitution provides that the State shall take all measures at its disposal to establish the domestic and international order necessary for the full exercise of the rights and freedoms of the citizens of the Republic of Belarus that are specified by the Constitution; State bodies, officials and other persons who have been entrusted to exercise state functions shall, within their competence, take necessary measures to implement and protect personal rights and freedoms (Articles 59.1 and 59.2).

In accordance with these constitutional provisions in a number of Constitutional Court acts it was noted that the individual, his rights, freedoms and guarantees to secure them as the supreme value and goal of the society and the State, tasks and functions of the state conditioned by this purpose shall determine orientations and the content of activities of legislative, executive and judiciary bodies as well as other state bodies.

10.2 Assessing the constitutionality of provisions of laws and other legal acts on the competence and powers of state bodies, the Constitutional Court is also guided by other rules of the Constitution that establish the fundamentals of state power in the Republic of Belarus. According to the Constitution state power in the Republic of Belarus shall be exercised on the principle of its separation into legislative, executive and judicial powers; state bodies within the confines of their powers, shall be independent: they shall interact among themselves, check and balance one another (Article 6); the State and all the bodies and officials thereof shall operate within the confines of the Constitution and acts of legislation adopted in accordance therewith (Article 7.2). The Constitution also enshrines the functions and powers of the President of the Republic of Belarus, the Parliament and the Government, other state bodies.

Based on these fundamental rules the Constitutional Court in its decisions and judgements reveals the constitutional and legal significance of the functions and powers of state bodies as well as the constitutional scope of legislative consolidation of these powers and their exercise.

In the Decision of 25 May 2015 “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 National Assembly of the Republic of Belarus” to the Constitution of the Republic of Belarus” the Constitutional Court pointed out that one of the Parliament's functions in the system of separation of powers is the adoption of laws providing for proper legal regulation of the most

important public relations and noted the constitutional importance of legislative procedures enshrined by the reviewed Law and their focus on the democratization of law-making.

In the Decision of 18 December 2015 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to Some Laws of the Republic of Belarus on Improvement of Architect Engineering, Urban Planning and Building Activities” to the Constitution of the Republic of Belarus” the Constitutional Court noted that the legislator shall be entitled, taking into account the provisions of the Constitution enshrining the competence of state bodies, to define their powers of authority on the basis of which they are supposed to act in accordance with their competence in the appropriate field, including the level of exercise of these powers.

The Constitutional Court has also repeatedly drawn the attention of the legislator to the need for improvement and consistent legislative consolidation of the mechanism of checks and balances in activities of state bodies and to the fact that in this case such a mechanism should exclude conditions for the interference of state bodies in the field of the constitutional powers of each other and at the same time this mechanism should ensure their interaction in order to fulfill the duties of the state stipulated by the Constitution. 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 regulation of the competence of state bodies by this Law is aimed at a more complete and effective exercise by the state of its constitutional obligation to take all measures at its disposal to create the domestic and international order necessary for the full exercise of the rights and freedoms provided by the Constitution, as well as at coordinated interaction of state bodies in solving their tasks.

The Constitutional Court in the Message “On Constitutional Legality in the Republic of Belarus in 2015” with regard to a number of its legal positions on the constitutionalisation of activities of public authorities stated that the proper interaction of all branches of power is necessary in order to achieve a balance between public and private interests, stability in the society and the state.

10.3 Among the constitutional principles defining the basic principles of interaction between the state, its bodies and the individual the acts of the Constitutional Court have noted the need to implement the principles of mutual responsibility of the state and the individual; equality of all before the law; proportionality of restrictions of the human rights and freedoms; inadmissibility of retroactive effect of laws, except in cases when it mitigates or revokes the responsibility of individuals; humanism; justice.

The Constitutional Court has drawn attention to the special constitutional principles as bases for the functioning of the concrete fields of public relations,

including activities of state bodies in these fields. As a principle having such importance for the economic sphere the Constitutional Court when assessing the constitutionality of normative legal acts has applied the principle of state regulation of economic activity in the interests of the individual and the society, the principle of guaranteeing the equal protection and equal conditions for the development of all forms of ownership and others.

In the practice of constitutional justice special importance for ensuring the constitutionality of the activities of all social actors (including actors that perform public functions) has been attached to the following principles: presumption of innocence; independence of the judiciary in the administration of justice; access to legal assistance; mandatory force of court rulings for all individuals and officials and a number of other principles.

In the acts of the Constitutional Court of the scope of activities of state bodies have been also justified based on other constitutional principles and rules regulating political, social and economic bases of the society and the state, foundations of the legal status of the individual, the mechanism of exercise of state power and other initial normative and guiding principles of the activities of the society and the state.

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

11.1 The binding force of the Constitutional Court decisions for other courts has the constitutional and legal basis, as Article 116 of the Constitution directly enshrines the status of the Constitutional Court as the sole body carrying out the Review of the constitutionality of normative acts in the State and the Constitution has the highest legal force (Articles 7 and 137 of the Constitution).

11.2 The binding force of the Constitutional Court decisions for all state bodies has been directly enshrined by legislative acts of the Republic of Belarus. Article 24 of the Code of the Republic of Belarus on Judicial System and Status of Judges stipulates that judgements and decisions of the Constitutional Court shall be final and not subject to appeal or protest; they shall have the direct effect and shall not require confirmation by other state bodies, other organisations, officials.

11.3 The Law of the Republic of Belarus “On the Constitutional Proceedings” establishes the legal force of the judgement / decision of the Constitutional Court decision and provides for the legal consequences of their adoption. In particular, Article 85 of the said Law provides that normative legal acts recognised according to the judgments of the Constitutional Court as unconstitutional shall have no legal force. These normative legal acts shall not

be applied by courts, other state bodies, organisations, officials. Unless otherwise established by the Constitutional Court, the decisions of the courts based on these acts shall be revised in accordance with the established procedure, and legal acts adopted (issued) by other state bodies, other organisations, officials shall terminate their validity.

The Law “On the Constitutional Proceedings” also provides that if normative legal acts are recognised according to the judgments of the Constitutional Court as not to be conforming to the Constitution, international instruments ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus, unless otherwise stipulated by the Constitutional Court, appropriate state bodies, officials shall within the period set by this Law terminate such a normative legal act or make appropriate alterations and (or) addenda thereto or pass (issue) a new normative legal acts with the same subject of legal regulation.

These legislative provisions condition the need for other courts on the territory of the Republic of Belarus to follow the *case-law* of the Constitutional Court and take it into account when issuing court rulings.

The Constitutional Court exercise the control over the execution of its decisions. The non-execution of the decisions of the Constitutional Court entered into legal force or preventing of their execution shall be liable in accordance with the legislative acts.

There are no conflicts between the Constitutional Court and the Supreme Court of the Republic of Belarus concerning the respect for the case-law of the Constitutional Court as the courts in their activities are guided by the principle of the rule of law.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).

12.1 The main way the Constitutional Court contributes to standards for law-making and for the application of law is by developing legal positions and by setting forth relevant findings in the acts adopted including:

judgements on conformity of laws and other normative legal acts to the Constitution;

decisions on conformity of laws adopted by the Parliament to the Constitution, international legal acts ratified by the Republic of Belarus; this being done when laws are adopted but not signed yet by the President of the Republic of Belarus (obligatory preliminary review of constitutionality);

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

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

12.2 The Constitutional Court has repeatedly highlighted that standards for law-making and application of law need to be enabled by implementation of the constitutional principle of the rule of law.

Based on the results of the obligatory preliminary review of the constitutionality of alterations and addenda to the Law of the Republic of Belarus “On the Citizenship of the Republic of Belarus” the Constitutional Court noted that the constitutional principle of the rule of law becomes crucial to the development of the citizenship institute: it implies that legal regulation in this area be based on the provisions of the Constitution and be in line with the generally recognised principles of international law and international obligations of the Republic of Belarus (Decision of 16 December 2015).

12.3 The Constitutional Court assumes that standards for law-making and for the application of law should also be determined by the principles arising from the rule of law.

For instance, the Constitutional Court has repeatedly referred to the principle of legal certainty and emphasised that in law-making and in the application of law the following components thereof should be respected which are systemacity and consistency of legislation, comprehensible and clear legal requirements, availability of information on the rights, exclusion of retroactive effect of the law (except in cases when it mitigates or relieves liability of individuals), constitutional and uniform character of the application of law, foreseeable development of legislation, its stability and dynamism.

It is underlined in the Decision of the Constitutional Court of 16 February 2012 “On Legal Regulation of Relief from Criminal Punishment or Mitigation of Punishment in Case of Disease” that the principle of legal certainty, being an integral component of the rule of law both in law-making and application of law serves as a necessary guarantee to ensure effective protection of the rights and freedoms of individuals.

12.4 In order to safeguard the rule of law, protection of constitutional rights and freedoms the Constitutional Court also pointed to the need to comply with general legal principles and the fundamental principles of international law.

It is noted in the decision of the Constitutional Court of 25 May 2015 “On the Conformity of the Law of the Republic of Belarus “On Amnesty in Honour of the 70th Anniversary of the Victory in the Great Patriotic War of 1941-1945” to the Constitution of the Republic of Belarus” that being an ethical and legal stance and core element of public relations, humanism reflects the ideals of philanthropy and is expressed in recognition of axiological priority of the

human person, concern for his/her well-being, protection of the rights and freedoms, respect for dignity and honour.

Taking into account the relevant international legal instruments on human rights that require the rights of the child to protection and assistance to be of special concern, the Constitutional Court 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” found that in deciding on loss or annulment of refugee status or complementary protection as well as loss or cease of asylum as regards foreigners having children as their dependents the law-enforcement bodies should be guided by the principle of the best interests of the child.

12.5 In the decision of 2 July 2015 “On the Right of Witnesses in Criminal Proceedings to Legal Assistance” the Constitutional Court stated a legal position in which a standard of legal assistance in the Republic of Belarus was shaped. The Constitutional Court underlined that legal assistance of a lawyer in criminal proceedings should not be restricted by procedural and time limits of his/her participation in investigation and judicial proceedings that complies with international legal standards of justice.

12.6 Enabling of the standard of everyone’s honour and dignity to be respected was in focus in the decision of the Constitutional Court of the Republic of Belarus of 27 November 2015 “On Legal Regulation of Initiation of Private Criminal Prosecutions”. It was recognised therein that a legal gap in constitutional and legal regulation of initiation of private criminal prosecutions should be eliminated by making alterations and addenda to the Criminal Procedure Code of the Republic of Belarus requiring the prosecuting body to initiate private criminal prosecutions in the absence of information about an individual who has committed the crime as well as to initiate private criminal prosecutions in case of the death of a crime victim on the basis of applications submitted by his/her adult close relatives or family members.

Considering the above principles and requirements as binding upon in law-making and in the application of law the Constitutional Court pointed out that adherence to these principles and requirements meets the goals to ensure and efficiently protect human rights, provide non-discrimination and everyone’s equality before the law, legality in governance, certainty of legal requirements.

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

According to Article 59 of the Constitution State bodies, officials and other persons who have been entrusted to exercise state functions shall, within

their competence, take necessary measures to implement and protect personal rights and freedoms.

With a view to enable the principle of the rule of law relevant rights and duties of public actors entrusted to exercise public functions are provided in laws by specifying their legal status.

It is underlined in the Decision of the Constitutional Court of 29 December 2015 “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 Notarial Service” to the Constitution of the Republic of Belarus” that notarial service in the Republic of Belarus is a special kind of legal service designed to protect rights and legitimate interests of individuals and legal entities, public interests, to face other challenges of social importance given that such service is provided on behalf of the State. Public nature of notarial service and public status of the notary result in exclusive requirements raised to in order to attain objective, impartial and independent exercise of important public functions of the notary. Entrusting the Ministry of Justice of the Republic of Belarus with the functions, which involve regulation of notarial service and monitoring of the compliance of the notary, the Belarusian Notary Chamber and its organisational structure with legislation, is based on constitutional provisions stipulating the State guarantee for rights and freedoms of Belarusian citizens as well as State bodies’ duty to take necessary measures within their competence to implement and protect personal rights and freedoms.

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

Articles 59.2 and 59.3 of the Constitution stipulates that State bodies, officials and other persons who have been entrusted to exercise state functions shall, within their competence, take necessary measures to implement and protect personal rights and freedoms; these bodies and persons shall bear responsibility for the actions violating the rights and freedoms of the individual.

14.1 The Constitutional Court case-law shows that with a view to implement constitutional principles and rules the accountability of public officials for their actions is stipulated in laws of the Republic of Belarus and is invoked in the application of law.

Thus, in the Decision of 13 October 2016 “On the Conformity of the Law of the Republic of Belarus “On the Law-Enforcement Officers” to the Constitution of the Republic of Belarus” the Constitutional Court noted that vesting law-enforcement officers with considerable powers affecting the constitutional rights and freedoms of individuals, the rights and legitimate

interests of organisations, requires, in its turn, to ensure efficient control over their actions as well as to establish their accountability. According to the above Law the Ministry of Justice, head departments of Justice, head officers of law-enforcement bodies shall control the actions of law-enforcement officers i. e. proper, full and timely execution of court orders as well as the results of such actions; the law-enforcement officers shall be liable for violation of legislation including abuse of power, exceeding of authority, failure to perform or improper performance of their duties. In this regard the Constitutional Court found that those provisions of the Law are based on the constitutional rules.

14.2 In 2004 the Republic of Belarus ratified the United Nations Convention against Corruption (New York, 31 October 2003) as well as the Council of Europe Criminal Law Convention on Corruption (ETS No.173) (Strasbourg, 27 January 1999) and the Additional Protocol to the Criminal Law Convention on Corruption (ETS No.191) which extended the list of persons subject to the rules established by the Convention No.173 by including national and foreign arbitrators and jurors. The legislation of the Republic of Belarus also reflects the recommendations of experts of the Group of States against Corruption (GRECO).

The Law of the Republic of Belarus “On Fighting Corruption” provides for measures to reduce the motivation of officials to corruption-related behaviour, to raise awareness of inevitable punishment for corruption crimes and to draw large sections of the public in identifying corruption and informing about it the law-enforcement authorities. For instance, the Law prohibits to engage in civil service those persons who have committed grave or especially grave crimes against official interests of service or grave or especially grave crimes combined with jobbery. This prohibition does not depend on the expiry of conviction, that is, it is open ended.

Such legal regulation as well as the system of accountability measures including disciplinary, administrative and criminal liability for acts of corruption allows to provide for effective identification of corruption-related offences and appropriate punishment for them.

In the Decision of 8 July 2015 the Constitutional Court reviewed the constitutionality of the Law “On Fighting Corruption”. Therein the Constitutional Court proceeded from Article 3 of the Constitution, which establishes that the people shall be the sole source of state power and the bearer of sovereignty in the Republic of Belarus; the people shall exercise their power directly, through representative and other bodies in the forms and within the confines determined by the Constitution. The Constitutional Court stated that one of the legal bases of the State policy in fighting corruption should be public control over actions against corruption. Besides of that this duty is imposed on State bodies of public prosecution, internal affairs and national security.

The Constitutional Court noted that the provisions of that Law relating to involvement of individuals and organisations in solution of public problems, on the one hand, contribute to consolidation of the whole society on strengthening the fight against corruption, and on the other hand – to enhance public confidence in the State.

14.3 The Republic of Belarus has case-law related to accountability of public officials for their acts of corruption including those who had a member of Parliament status at the moment when criminal proceedings were instituted against him.

Relevant constitutional and legal regulation and the foreseen list of persons, liable to the provisions of the Law “On Fighting Corruption”, do not prevent liability to be imposed on any person or official if he/she has committed unlawful act qualified as corruption.

Thus, Article 102 of the Constitution stipulates that during their term of office the deputies of the House of Representatives and members of the Council of the Republic may be arrested or otherwise deprived of personal liberty only with the prior consent of the appropriate House with the exception of instances of state treason, or any other grave crime as well as when detained at the scene of the crime. Thereat under the Criminal Code crimes combined with jobbery, which have been committed by an official, shall be qualified as grave or especially grave crimes.

IV. The law and the individual

15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

15.1 In the Republic of Belarus the individuals do not have direct access to the Constitutional Court. In accordance with Article 116.4 of the Constitution the proposals to review constitutionality of normative legal acts may be submitted to the Constitutional Court by authorised subjects (the President of the Republic of Belarus, the Houses of Parliament, the Government and the Supreme Court).

Thereat according to Article 22.4 of the Code on Judicial System and Status of Judges individuals and legal entities shall initiate the submission of proposals to be considered by the Constitutional Court to the President and state bodies authorised thereto.

The procedure for submission and consideration of the initiative applications of individuals and legal entities is enshrined in the Law “On the Constitutional Proceedings”. Thus, the rules of the Law establish the requirements to the content of the initiative application. Conclusions and

proposals shall be grounded, and the initiative application shall specify issues consideration of which is within the competence of the Constitutional Court (Article 27.2). Based on the results of consideration of the initiative application the authorised body shall make a decision on submission of an appropriate proposal to the Constitutional Court or on refusal to submit it. State bodies, other organisations or individuals, including individual entrepreneurs submitting the initiative application shall be informed about this decision (Article 28).

The Constitutional Court considers such legal regulation of relations coming from the initiative applications to be a form of indirect access of individuals and legal entities to constitutional justice that is intended to ensure to these persons the opportunity to become actors of constitutional review.

15.2 According to Article 22 of the Code on Judicial System and Status of Judges the Constitutional Court shall be competent to make decisions on the elimination of legal gaps, collisions and legal uncertainty in normative legal acts. Procedural provisions relating to consideration of this category of cases are laid down in Chapter 24 of the Law “On the Constitutional Proceedings”.

Applications containing information on existence and elimination of constitutional and legal gaps in legislation shall be submitted by individuals and legal entities.

When exercising this competence the Constitutional Court shall take into account constitutional provisions and shall review the completeness and clarity of legal mechanisms to implement constitutional rights and freedoms contained in normative legal acts. In case of identification of such gaps, collisions and uncertainty it shall invite law-making bodies to eliminate them.

Thereat the Constitutional Court shall act within its constitutional status, it shall be based on the constitutional and legal nature of defects in legal regulation, and therefore the Court does not substitute the legislator or the other law-making body, but to some extent the Court serves as a “positive legislator” in order to develop efficient implementation of constitutional rights and freedoms of individuals.

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

A number of decisions taken by the Constitutional Court are aimed at preventing from unjustified legal difficulties to access to ordinary courts. Such access is considered as one of the core elements of everyone’s constitutional right to judicial protection (Article 60 of the Constitution).

Decisions of the Constitutional Court deal with various elements providing access to justice.

16.1 In the Decision of 3 December 2008 “On the Calculation of Procedural Time-limits in Administrative Proceedings” it is noted that the Execution Procedure Code on Administrative Offences does not specify the procedure for calculation of procedural time-limits defining a period of time (the beginning, running and end of time-limits), during which proceedings shall be concluded. According to the Constitutional Court, such a gap concerning calculation of procedural time-limits does not provide for uniform understanding and application of relevant normative rules, entailing restrictions on constitutional rights of individuals to judicial protection and appeal against court rulings (Article 60 and Article 115.3 of the Constitution). In that context the Court recognised the need to make appropriate alterations and addenda to the mentioned Code.

16.2 In its Decision of 25 September 2013 “On the Establishment of the Procedural Order for Exemption from Official Fee for Filing Appeals against Decisions in Cases of Administrative Offences to the Court” the Court stated that the provisions of Article 7.1, Article 21.3, Article 59.2, Article 60.1, Article 112.1 of the Constitution and of international legal instruments to which the Republic of Belarus is a party envisage the obligation of the State to establish at the legislative level an implementing mechanism for the right to appeal to the court against rulings in cases of administrative offences, including the procedural order for exemption of individuals from official fee, given that such mechanism should guarantee everyone’s protection of his/her rights and freedoms by the court.

If an individual is not in a material position allowing to pay that official fee it should not prevent him from exercising his right to judicial protection, including in administrative proceedings since otherwise it would violate the provisions of the Constitution guaranteeing the State protection, including in court of his/her rights and freedoms to everyone. The establishment in legal regulation of administrative proceedings of the procedural order for exemption from official fee for filing appeals against decisions in cases of administrative offences to the court turns to be one of the most important guarantees for the exercise of this right. The lack of legislative rules, stipulating the common approach to legal regulation of public relations coming from the exemption from official fee, promotes neither uniform application of the law nor respect for the constitutional principle of the rule of law, all this may violate the constitutional right to judicial protection.

In this regard the Constitutional Court underlined that with a view to ensure proper implementation of everyone’s constitutional right to judicial protection the legislator should determine the procedural order for exemption from official fee of individuals appealing against decisions on administrative offences to a court on the basis of their material position.

16.3 In the Decision of 27 May 2010 “On the Exercise of the Right to Judicial Appeal against Applied Sanctions by the Convicted to Arrest, Confinement, Life Imprisonment, by the Detainees and Persons under Administrative Arrest” the Constitutional Court concluded that there was a gap in legal regulation of appeal proceeding initiated by the convicted to confinement, arrest, life imprisonment, by the detainees and persons under administrative arrest against applied disciplinary sanctions, that does not ensure the full exercise of the individual constitutional right of access to justice.

With a view to ensure the exercise of everyone’s constitutional right to judicial protection the Constitutional Court recognised the need to define in law the procedure and modalities of proceedings initiated by the convicted to arrest, confinement, life imprisonment, by the detainees and persons under administrative arrest against applied disciplinary sanctions by adding to Chapter 29 of the Civil Procedure Code relevant rules specifying such procedure and modalities of consideration of appeals by that category of individuals in view of their status.

16.4 In the Decision of 29 April 2010 “On the conformity of the Law of the Republic of Belarus “On Making Alterations and Addenda to the Criminal Procedure Code of the Republic of Belarus” to the Constitution of the Republic of Belarus” the Constitutional Court set out its legal position stating that the effect of removal from office of a suspect is beyond the scope of criminal procedure relations as it essentially restricts the following constitutional rights and freedoms of the individual: right to work, to honour, to dignity and to personal professional reputation. The absence of the suspect’s right to judicial appeal against this criminal procedure sanction impedes access to justice and derogates from his/her right to free choice of legal remedy.

Based on everyone’s constitutional right to judicial protection the Constitutional Court underlined that by removing a suspect from office, given that such removal is a sanction of criminal procedure, the suspect should be entitled to appeal to the court for protection of his/her rights.

17. Has your Court developed case-law on other individual rights related to the rule of law?

According to the constitutional principle of the rule of law the Constitutional Court took decisions aimed at ensuring not only access to ordinary courts, but also other individual constitutional rights, including the right to protection against unlawful interference including encroachments on his/her honour and dignity; everyone’s right to legal assistance to exercise and protect his rights and freedoms (Article 62.1 of the Constitution).

17.1 For instance, in its Judgement of 12 June 2014 “On the Conformity of Article 29.1.7 and Article 303.1.1 of the Criminal Procedure Code of the

Republic of Belarus to the Constitution of the Republic of Belarus” it was noted that the Court considers that strict adherence to the rule of law principle, safeguard of the rights and freedoms of individuals to be guaranteed, creation and implementation of such legal mechanisms which would effectively promote the strengthening of constitutional legality are the main factors of the confirmation of constitutional legality in law-making and in the application of law.

In the consideration of this case the Constitutional Court proceeded from correlated rules of Article 25.1, 26, 28 and 60 of the Constitution on safeguarding of personal dignity by the State, on the presumption of innocence, on everyone’s right to protection against unlawful interference including encroachments on his/her honour and dignity; on everyone’s protection of his rights and freedoms by a competent, independent and impartial court. The Court also referred to provisions of international legal instruments which guarantee everyone’s right to reasonable character of criminal charges brought against a person, established by a competent, independent and impartial court. The Constitutional Court concluded that in respect of the deceased should criminal proceedings be refused to be instituted, preliminary investigation or criminal proceedings be terminated by a judge appointing a court hearing or by the court at a hearing, the current legislation, which does not require the consent of close relatives of the suspect or the accused to commit the abovementioned actions in criminal proceedings, thereby does not allow for rehabilitation of the deceased in order to protect his/her dignity and honour. The constitutional right of everyone to be protected against unlawful encroachments on his/her honour and dignity shall cover not only the period of human life. This right also obliges the State to establish legal guarantees to ensure judicial protection of human dignity and honour after his death. One of those guarantees should be the right of close relatives of the deceased to claim his/her rehabilitation in criminal proceedings in compliance with the constitutional principle of justice on the basis of adversary nature of proceedings and equality of parties thereto.

Based on the abovementioned, the provisions of the Criminal Procedure Code of the Republic of Belarus, which established in respect of the deceased that criminal proceedings shall not be instituted; should proceedings be instituted, preliminary investigation and criminal proceedings shall be terminated by a judge when appointing a court hearing as well as at a court hearing except where criminal proceedings are required to rehabilitation of the deceased, were recognised not to comply with Article 25.1, Articles 26, 28 and 60 of the Constitution to the extent that in the system of current legislation they allow for a body dealing with a criminal case to refuse instituting criminal proceedings in the event of the death of the suspect or the accused, and should proceedings be instituted – to terminate them without the consent of close relatives of the deceased.

17.2 In the Decision of the Constitutional Court of 2 July 2015 “On the Right of Witnesses in Criminal Proceedings to Legal Assistance” it was pointed out that the Criminal Procedure Code does not contain provisions directly stipulating the right of individuals who witness to competent legal assistance, although the witness' testimony is an important source of evidence and despite the fact that failure to perform obligations provided for by the Code may result in criminal liability.

The absence in the criminal procedure law of a rule stipulating obligation of the body conducting criminal proceedings to allow for a lawyer to participate in criminal proceedings as a representative of a witness, in practice, does not permit to exercise properly the constitutionally guaranteed right to legal assistance, including during the investigation and other procedural actions with participation of the witness.

The Constitutional Court concluded that the Criminal Procedure Code contains a gap in legal regulation of the exercise of the witness' right to legal assistance in criminal proceedings in order to enjoy and protect the rights and freedoms, including the right to apply at any time for assistance of lawyers. This right, according to the Constitutional Court, shall not depend on the discretionary powers of the preliminary investigation bodies, shall be ensured at all stages of the criminal process and may not be restricted under any circumstances.

In order to ensure the constitutional principle of the rule of law envisaging the need of timely elimination of gaps in normative legal acts, collisions and legal uncertainty, requiring to shape a legal system in which normative legal acts shall be correlated, coherent with each other, and providing for clarity, accuracy, consistency and logical coherence of legal rules, the Constitutional Court considers it appropriate to eliminate the mentioned gap of legal regulation by making relevant alterations and addenda to the Criminal Procedure Code.

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

Either in cases related to ensuring the constitutional rights of individuals and guarantees of their exercise, or in decisions on other issues within the competence of the Court it pointed out that the rule of law should be respected.

So, in the Message of the Constitutional Court “On Constitutional Legality in the Republic of Belarus in 2011” it is noted that the principle of the rule of law in rule-making and application of law serves as the main factor in providing the supremacy of Constitution, in confirmation of constitutional legality and development of constitutional democracy.

In the Message “On Constitutional Legality in the Republic of Belarus in 2015” the Constitutional Court drew attention to the fact that taking into account globalisation, integration, dynamism and interdependence of public and intergovernmental processes, the focus in the field of rule-making shall be orientated to the exercise and security of legal regulation based on the supremacy of the Constitution.

As an integral part of the principle of the rule of law, the principle of legal security requires that legislative acts shall be aimed at achieving and ensuring the constitutionally significant goals and interests, they shall fully and specifically regulate the most important public relations, provide for appropriate mechanisms for the exercise of the rights and freedoms of individuals, strengthen the constitutional order.