



Strasbourg, 1 December 2008

CDL-JU(2008)038
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

CASE-LAW
OF THE CONSTITUTIONAL COURT OF BELARUS
2006 – 2007

Belarus

Constitutional Court

Statistical data

1 January 2006 – 30 April 2006
Total number of decisions: 17

1 May 2006 – 31 August 2006
Total number of decisions: 6

1 September 2006 – 31 December 2006
Total number of decisions: 13

1 January 2007 – 30 April 2007
Total number of decisions: 11

1 May 2007 – 31 August 2007
Total number of decisions: 10

1 September 2007 – 31 December 2007
Total number of decisions: 6

Important decisions

Identification: BLR-2006-B-001

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 29.03.2006 / **e)** J-194/06 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 1/2006 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

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

5.4.16 **Fundamental Rights** – Economic, social and cultural rights – Right to a pension.

Keywords of the alphabetical index:

Pension, determination, equality.

Headnotes:

The pension security of air stewards and stewardesses is set out in the national legislation. Account is taken of the nature of their work, length of service and their working conditions. The procedure for awarding

their pensions, which is also set out in the legislation, conforms to the Constitution.

Summary:

I. The House of Representatives of the Belarus Parliament sought a ruling from the Constitutional Court. A question had arisen, from the Resolution of the Council of Ministers of the Republic of Belarus of 18 December 1992 no. 758 "On conditions of awarding pensions to certain categories of aviation workers and air test crew", together with various alterations and addenda.

The House of Representatives pointed out that different long-service pension arrangements exist for air stewards and stewardesses on the one hand, and other aviation workers on the other (including flight personnel and air test crew). The Air Code refers to air stewards and stewardesses as members of the aircraft crew. Resolution no. 758 stipulates the same procedure and terms for awarding pensions for flight operators as for members of flight crew. However, other procedures and conditions are in force, for awarding the pensions of air stewards and stewardesses. The House of Representatives argued that Resolution 758 creates unequal conditions for the pension security of members of aircraft crew. This state of affairs is out of line with Article 22 of the Constitution, in which the principle of universal equality before the law is enshrined.

II. The Court observed that Article 47 of the Law "On pension security" stipulates four categories of workers in the aviation and air-testing field who are entitled to long service pensions:

1. flight workers and air testing crew;
2. qualified air traffic control workers;
3. engineering staff;
4. air stewards and stewardesses.

Each category has separate terms and procedures for awarding long service pensions and calculating their scale. The Law on Pension Security also charges the Council of Ministers with formulating additional regulations for flight workers and air testing crews, as well as engineering staff (Article 47.a and 47.b). These regulations are contained in Resolution no. 758.

Those air stewards and stewardesses who counted as aircraft crew had their rights to long service pensions and the terms and conditions under which they would be paid spelt out in Article 47.g of the Law on Pension Security. As these are regulations of direct effect, no further legislation is necessary to award or to calculate long service pensions. The

legislator deliberately placed air stewards and stewardesses in a separate category to other aviation workers, and there is direct provision for their pension security within the legislation.

If the Council of Ministers is not empowered to determine conditions for the pension security of air stewards and stewardesses, it follows that Resolution no. 758, which regulates conditions for the pension security of aircrew, does not cover air stewards and stewardesses. The scale of their pensions is governed by length of service and the amount they earn.

The Court found Resolution no. 758 to be in line with the Constitution, with Belarus legislation and with international treaties to which Belarus is a party. It did, however, state that, if necessary, the competent state authorities should have the power to amend pension legislation to cover the pension security of air stewards and stewardesses. It also warned legislators about the presence within the law of contradictions and ambiguities which may be deemed null and void, especially if they affect citizens' rights, freedoms and obligations. This would not be of benefit to the establishment of constitutional order.

Languages:

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



Identification: BLR-2006-B-002

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 23.06.2006 / **e)** P-190/06 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 2/2006 / **h)** CODICES (Russian).

Keywords of the systematic thesaurus:

4.7.8.1 **Institutions** – Judicial bodies – Ordinary courts – Civil courts.

5.3.13 **Fundamental Rights** – Civil and political rights – Procedural safeguards, rights of the defence and fair trial.

Keywords of the alphabetical index:

Vehicle, insurance.

Headnotes:

Where there is legislation to enforce compulsory insurance of civil responsibility for vehicle owners, the grounds for compensation for damage shall be the fact that it was caused. Whether the person who caused the damage was guilty or innocent will be irrelevant.

Summary:

The Constitutional Court noted in its decision that there is no single approach by common law courts to the issue of reimbursement by insurers of damages caused by vehicle accidents. It examined the provisions of the Civil Code, various edicts, decrees by the President of the Republic of Belarus and other relevant insurance legislation.

In the opinion of the Constitutional Court, it is necessary to look at the legislation currently in force as a whole, rather than simply the provisions of part 2 of Article 948.2 of the Civil Code that stipulates responsibility through guilt on the part of the person who caused damage.

Languages:

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



Identification: BLR-2006-B-003

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 21.09.2006 / **e)** J-195/06 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 3/2006 / **h)** CODICES (Russian).

Keywords of the systematic thesaurus:

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

5.3.39.4 **Fundamental Rights** – Civil and political rights – Right to property – Privatisation.

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

5.4.13 **Fundamental Rights** – Economic, social and cultural rights – Right to housing.

Keywords of the alphabetical index:

Housing, privatisation / Tax, income, calculation.

Headnotes:

A citizen who sells “Zhiljo cheques” will receive a certain income, minus the expenses he has incurred. The sum of expenses affects the tax rate: the higher the expenses, the smaller the taxation base and, consequently, the income tax.

The expenses incurred by a citizen who obtained “Zhiljo cheques” could be their notional duty, as well as the cost of the cheques themselves. Inflation had resulted in changes to the nominal value of the cheques (the value that is indicated on the cheque) and an update was needed. The House of Representatives of the National Assembly considered that the new value should be based upon the rise of construction costs of dwellings, rather than on the index of consumer costs.

It is important to bear in mind that “Zhiljo cheques” were issued free of charge to citizens, in recognition of their labour contribution to the creation of the housing stock which was state stock before privatisation. Therefore, although the cheques are securities, in view of their special nature, they may be subject to different legal treatment. Under the current law, the index of the rise of construction costs of dwellings, as stipulated in the legislation on privatization, can only be used in the context of cheques when properties are being privatized, built or renovated.

Summary:

I. The House of Representatives of the National Assembly had submitted a petition about Resolution no. 2/1/1/1/2 “On making alterations and addenda to the Provision on composition, rates, and procedure of exemption from the sums of author’s fees and other incomes of natural persons”. The Ministry of Taxes and Dues, the Ministry of Economy, the Ministry of Finance, the Ministry of Statistics and Analysis and the Ministry of Culture adopted this resolution, also referred to as “the resolution of 5 January 2002”. The part of the resolution under consideration here was that which related to expenses in the context of “Zhiljo cheques” and the use of index of consumer costs for taxation calculations.

The House of Representatives of the National Assembly considered that the Ministry of Taxes and Dues had acted unlawfully in imposing income tax on citizens who had sold “Zhiljo cheques”. In so doing, it

had used the index of consumer costs stipulated by Resolution of 5 January 2002 instead of the index of the rise of construction costs of dwellings, as set out in the Resolution of the Council of Ministers no. 1399, dated 21 September 2001. This Resolution was described as “On the approval of provisions pertaining to the privatisation of living accommodation in houses within the state housing stock, their maintenance and repair and provisions on indexation of dwelling quotas.”

II. The Constitutional Court ruled that the resolution was in line with the Constitution and other relevant legislation.

The Court examined the Constitution and various legislation, including Laws “On the privatisation of housing stock in Belarus”, “On the privatisation of state property in Belarus” and “On income tax from natural persons”. Having also studied the evidence before it, the Court arrived at the following conclusion.

The index of the rise in construction costs did not apply to the taxation of profits arising from the sale of “Zhiljo cheques”, as the relevant ministries had used their delegated powers to adopt the Resolution of 5 January 2002. There was no prohibition on stipulating in taxation matters the index of consumer costs by acts of higher legal force. The index of the rise of consumer costs of dwellings only applied where “Zhiljo cheques” were used in accordance with the purpose envisaged by the legislation (Articles 11.4 and 21.1 of the Law on privatisation).

Under the Law on privatisation, the procedure for the indexation of “Zhiljo cheques”, taking into account the rise in the construction costs of dwelling, came within the remit of the Belarus government. The Council of Ministers, in its Resolution of 21 September 2001 no. 1399, approved provisions for the privatization of residential property currently within the state housing stock, the maintenance and repair of this property, and provisions on the indexation of dwelling quotas. These provisions only allowed for the indexation of “Zhiljo cheques” when they were being used for the privatisation of residential accommodation, or when citizens and their families needed to renovate or rebuild properties. The purpose of indexes stipulated in these Provisions was not the sale of “Zhiljo cheques” and for settling taxation issues.

The Court enumerated the main elements of taxation. These include payers, object of taxation, tax base, tax period, tax rate, method of calculation, procedures and periods of payment. In fact, the legal position was already stated in earlier Constitutional Court

decisions, when the Court had examined fiscal legislation. The stance the Court had taken was approved in the Decree by the President of the Republic of Belarus of 3 November 2005 no. 520 "On improvement of legal regulation of certain relations in the economic sphere".

The Court also referred in its judgment to the issue of the delegation of powers to law-making bodies. The National Assembly and the Council of Ministers, when delegating powers which involve the rights, freedoms and obligations of citizens, should set boundaries to byelaws. As a result, decisions should not be adopted which do not fully meet the aims of legislative regulation.

Languages:

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



Identification: BLR-2006-B-004

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 04.10.2006 / **e)** D-196/06 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 4/2006 / **h)** CODICES (Russian).

Keywords of the systematic thesaurus:

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

3.14 **General Principles** – *Nullum crimen, nulla poena sine lege*.

3.15 **General Principles** – Publication of laws.

5.3.24 **Fundamental Rights** – Civil and political rights – Right to information.

Keywords of the alphabetical index:

Legal act, technical normative, official publication, enforcement / Legal act, failure to observe, liability, administrative, criminal.

Headnotes:

The declaration of Belarus as a state ruled by law presupposes an obligation on the part of state authorities and their officials to operate based on the Constitution and legislation adopted under it, to promulgate legislation by state authorities by some

other means stipulated in the law. For the purposes of observance of the Constitution and the laws, citizens must be able to familiarise themselves with the content of legislation which has been passed.

Summary:

A petition was submitted to the Constitutional Court, on the necessity for timely and reliable information for citizens and legal entities about technical legislation issued by state authorities and officials and the time periods for their enforcement. These include regulations on health and veterinary matters and fire safety rules.

There is no definitive approach towards the adoption and publication of technical legislation or the way in which the information it contained should be relayed to citizens and legal persons. Nevertheless, the legislation is enforceable and sometimes carries with it criminal and administrative responsibility.

The Constitutional Court therefore resolved to ensure that citizens have adequate time to familiarise themselves with the content of technical legislation. The Presidential Administration and the Council of Ministers were asked to put temporary measures in place to ensure that this would happen.

Languages:

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



Identification: BLR-2006-B-005

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 28.12.2006 / **e)** D-197/06 / **f)** / **g)** *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 5/2006 / **h)** CODICES (Russian).

Keywords of the systematic thesaurus:

1.3.5.15 **Constitutional Justice** – Jurisdiction – The subject of review – Failure to act or to pass legislation.

5.4.13 **Fundamental Rights** – Economic, social and cultural rights – Right to housing.

Keywords of the alphabetical index:

Housing, co-operative, regulation, inadequate.

Headnotes:

Gaps in the legislation pertaining to housing and building cooperatives result in inadequate protection of the housing rights and legitimate interests of members of such cooperatives and owners and residents of cooperative property. Neither will the interests of the state be properly protected.

Summary:

On 28 December 2006, the Constitutional Court took a decision on the "Improvement of provisions relating to housing cooperatives". In its decision, it emphasised the imperfections in the housing legislation on the creation and operation of housing cooperatives, and the control over cooperatives by local executive and administrative bodies. Various contradictions mean that the law is not effective, and housing cooperatives are unable fully to exercise their functions. This sometimes results in inadequate protection of the rights of owners and occupiers of housing cooperative property, as well as those of the state.

The model regulations of housing building cooperatives were based upon the Housing Code of 1983. In several respects, they are out of date and out of line with the efficient operation of housing cooperatives and other housing legislation. The Constitutional Court therefore asked the Council of Ministers to adjust the model regulations, in advance of the enactment of the new Housing Code. In so doing, the Council should take account of current housing legislation, the Civil Code, the Law "On joint house and grounds" and other laws. The housing cooperatives should be able to take decisions both at their general meetings and in different ways, for example by deciding upon written applications from its members, as set out of Article 17.5 of the Law "On joint house and grounds".

Languages:

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

*Identification:* BLR-2007-B-001

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 05.04.2007 / **e)** D-199/07 / **f)** / **g)** / *Vesnik Kanstytucij-naga Suda Respubliki Belarus* (Official Digest), no. 1/2007 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

5.1.1.5 **Fundamental Rights** – General questions – Entitlement to rights – Legal persons.

5.3.13.3 **Fundamental Rights** – Civil and political rights – Procedural safeguards, rights of the defence and fair trial – Access to courts.

5.3.20 **Fundamental Rights** – Civil and political rights – Freedom of worship.

Keywords of the alphabetical index:

Appeal, right / Religion, religious association, right to appeal.

Headnotes:

Legal entities, especially religious organisations, are entitled to judicial protection by virtue of the direct effect of Article 60 of the Basic Law of the Republic of Belarus.

Summary:

The proceedings came before the Constitutional Court of the Republic of Belarus as a result of an application by a religious organisation, following its appeal against a written notice it had received from the Authorised Person on religious matters and nationalities, alleging violations of the legislation of the Republic of Belarus. The courts had refused to hear the appeal by the religious organisation, as the legislation in force did not contain any norms which would govern the procedure of appealing in such circumstances.

The Constitutional Court analysed various constitutional principles, international legal documents, national legislation and other normative legal acts. It acknowledged that under the Law on Freedom of Conscience, there is no right to appeal against written notice served on a religious organisation that is alleged to have breached the legislation of the Republic of Belarus. However, Chapter 29 of the Civil Code of Procedure provides for the possibility of appeal against actions by officials which encroach upon the rights of legal entities.

In its judgments of 24 June and 13 May 1999, as well as in its Annual Messages on constitutional law, the Constitutional Court has made several references to the direct effect of Part 1 of Article 60 of the Constitution, due to the requirements set out in Article 137 of the Constitution. It has stressed that the right to judicial protection should be viewed in the context of universally acknowledged principles of international law. The Republic of Belarus recognises the importance of this right and is obliged to ensure that its legislation complies with these principles, under Article 8 of the Constitution.

In its Decision of 5 April 2007, the Constitutional Court has already confirmed its legal position on the direct effect of the norm of Article 60 of the Constitution of the Republic of Belarus that guarantees the right to judicial protection.

Languages:

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



Identification: BLR-2007-B-002

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 28.08.2007 / **e)** D-201/07 / **f)** / **g)** / *Vesnik Kanstytucijnağa Suda Respubliki Belarus* (Official Digest), no. 3/2007 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

3.13 **General Principles** – Legality.
5.3.39.3 **Fundamental Rights** – Civil and political rights – Right to property – Other limitations.

Keywords of the alphabetical index:

Decree, legality, time / Co-operative, member, property right.

Headnotes:

By-laws must be brought into line with the Basic Law and national legislation in a timely fashion.

A citizen who belongs to a voluntary citizens' organisation must be guaranteed the right to property, under national legislation.

Summary:

The Constitutional Court was asked to review an application concerning the legality of provisions on registration procedure for people of the city of Grodno. This group had expressed the wish to join a co-operative on the building and maintenance of garages. The organisation and activities of these co-operatives were approved by Decision no. 528 of Grodno City Executive Committee of 19 June 2002, which dealt with the regulation of the ownership rights of members of the garage co-operative. It also dealt with procedures for the return of share contributions in the event of citizens leaving the cooperative and inheritance of their shares.

The Court analysed the provisions against the background of various constitutional provisions, the Civil Code and other relevant national legislation. It found that points 17, 18, 19 and 22 of the Provision on registration procedures for citizens of the city of Grodno wishing to join garage co-operatives were based on some model regulations on the building and maintenance of open car parks or garages for storage of means of transportation owned by citizens. The Council of Ministers had approved these Regulations by Resolution no. 254 dated 5 August 1977.

The Court noted that the Model Regulations contained some outdated norms and were not in complete conformity with current legislation. It also took note of Article 40, Article 116.1 of the Constitution and Articles 22 and 24 of the Code of the Republic of Belarus on the judicial system and status of judges. The Court therefore requested the relevant bodies to pass byelaws on garage co-operatives that were in line with the Constitution, the norms of the Civil Code, and acts of the President of the Republic.

Languages:

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



Identification: BLR-2007-B-003

a) Belarus / **b)** Constitutional Court / **c)** / **d)** 12.09.2007 / **e)** J-202/07 / **f)** / **g)** / *Vesnik Kanstytucijnaga Suda Respubliki Belarus* (Official Digest), no. 3/2007 / **h)** CODICES (English).

Keywords of the systematic thesaurus:

3.13 General Principles - **Legality.**

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

5.4.16 Fundamental Rights - Economic, social and cultural rights - **Right to a pension.**

Keywords of the alphabetical index:

Repression, victim, rehabilitation.

Headnotes:

The concepts and terms of specific legislation must be in line with the Basic Law, as well as with the laws of higher legal force.

The legislator is entitled to grant pension privileges to certain categories of citizens taking into account their economic and financial situation, and the interests of the citizens concerned.

The right to an increased pension will be based on the relevant documents on rehabilitation.

Summary:

I. The House of Representatives of the National Assembly of the Republic of Belarus asked the Constitutional Court to assess the conformity of Article 68.1.r of the Law on Pension Security with the Constitution.

The House of Representatives observed that Article 68.1.r of the Law on Pension Security specifies an increase in pension for citizens who were with their parents in places of confinement, exile, expulsion, and special deportation. Yet Part 1 of Point 16 of the Provision on the procedure for the restoration of the rights of citizens who suffered as a result of the repressions from 1920-1980 (approved by Resolution of the Supreme Council of the Republic of Belarus of 21 December 1990, with further alterations and addenda) places other children within this category. Examples are children who found themselves bereft of the guardianship of parents, who had suffered repression for ill-founded political reasons, those whose parents were executed by

shooting and those whose parents died whilst in custody but who were rehabilitated posthumously.

II. Following analysis of the relevant constitutional provisions and legislation, and their practical application, the Constitutional Court made the following findings.

Point 2 of the Provision approved by Resolution of the Supreme Council of the Republic of Belarus of 21 December 1990 and Point 2 of Resolution of the Supreme Council of the Republic of Belarus of 6 June 1991 and the study of archive material and case studies reveal a great deal about the adoption of decisions on repression. Much is also revealed about children who were sent into exile, expelled or deported because of the repression suffered by their parents. Children who accompanied their parents to the places of confinement, or into exile, or destinations after expulsion or deportation effectively suffered the same hardships as their parents. These children were kept in conditions of obvious deprivation. Their rights and freedoms were restricted. Subsequently, the competent state bodies recognised them as repressed persons, subject to rehabilitation, and issued the relevant documentation, including them also within the ambit of Article 68.1 of the Law on Pension Security.

When enlarging the circle of persons who suffered from political repression, the legislator made no provision in the Law on Pension Security for the rights of those who, as children, found themselves bereft of the guardianship of parents. Their parents had suffered repression for ill-founded political reasons, or were executed by shooting or had died whilst in custody but were rehabilitated posthumously. See Point 16.1.3 and 16.1.4 of the Provision.

The Constitutional Court stressed that the Supreme Council, by taking decisions on the issue under consideration without financial and economic grounds and in the form of a resolution, rather than legislation, had flagrantly breached the Constitution and the effective legislation.

There was a "collision" here between two special legislative acts – the Provision and the Law on Pension Security". The Constitutional Court held that since the right to a pension was at stake, one should proceed from the norms of the Law on Pension Security as the special legislative act that regulates the relevant relations.

The Constitutional Court accordingly found Article 68.1.r of the Law on Pension Security of the Republic of Belarus of 17 April 1992 awarding an increased rate of pension for those citizens repressed

for ill-founded political reasons during the repression of 1920-1980, and subsequently rehabilitated, to be in line with the Constitution.

It then examined the practice that had evolved since 1 January 1993, whereby Article 68.1.r of the Law on Pension Security only applies to children who accompanied their parents to places of confinement, into exile, expulsion, and special deportation, and were subsequently rehabilitated and issued with the relevant documentation. It was found to be in conformity with the goals and tasks of the legislation that deals with the rehabilitation of victims of political repression, and the restoration of their rights and pension security.

The Court also pointed out that the current pension legislation makes no provision for an increase in pension for other categories of children found to have been the victims of political repression.

Languages:

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

