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**REPORT**

**“THE LAW CLERKS’ ROLE WHEN PREPARING THE DECISIONS OF  
THE CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS”**

**by**

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The Constitutional Court of the Republic of Belarus makes decisions:

- in the exercise of subsequent constitutional control;
- in the exercise of preliminary constitutional control;
- in the procedure of submitting proposals to the norm-creating bodies on the need to make alterations and addenda to the acts of legislation.

When preparing the decisions of the Constitutional Court the judges thereof are assisted in analytics, information, organisation, redaction and other necessary questions by the law clerks of the Secretariat of the Constitutional Court.

### **Legal Bases of Preparation of the Constitutional Court Decisions**

Preparatory activities of the Constitutional Court on draft decisions thereof are regulated by the Code of the Republic of Belarus on judicial system and status of judges, the Law of the Republic of Belarus "On the Constitutional Court of the Republic of Belarus", the Rules of Procedure of the Constitutional Court of the Republic of Belarus and moreover by some decisions of the Constitutional Court on internal issues. All the law clerks of the Secretariat of the Constitutional Court follow the provisions of these normative acts at their work.

### **Assistance in Preparation of Decisions in the Exercise of Subsequent Constitutional Control**

The motions to the Constitutional Court should be preliminarily considered by the Secretariat thereof. In pursuance of article 44 of the Rules of Procedure of the Constitutional Court the Chairman thereof refers the submitted motion to the Expert Law Department of the Secretariat for preliminary consideration and expert's opinion of the law clerks about it. The clerks analyse the enclosed materials, look for supplementary sources of information concerned, select necessary data for consideration of a legal matter. So they work out the Expert Law Department opinion, reference or notes to be submitted to the Chairman of the Constitutional Court who refers the motion to a judge (judges) of the Constitutional Court. Thus the judge (judges) examines whether to institute legal proceedings or to return the motion to an initiator for amendment or to decline the motion due to its stay not within jurisdiction of the Constitutional Court.

After the Constitutional Court makes the decision to institute constitutional proceeding the Chairman thereof assigns a reporting judge (judges) to the case at hand. From that moment begins preparation of court hearing as well as working out of a draft decision of the Constitutional Court.

When working out the draft decision of the Constitutional Court a reporting judge is directly assisted by a deputy judge. Deputy judges are skilled law clerks working under direction of judges. They are entitled to draw up letters in order to discover documents and other materials, make up requests for data or opinions of state bodies and scientific institutions which are necessary for preparation of the Constitutional Court decision. They also analyse and summarise the received documents, work out different information, references, analytical notes etc from them.

The judge assigned to preliminary consideration of a case is also entitled to demand the clerks of the Expert Law Department of the Secretariat of the Constitutional Court to prepare necessary materials concerned. In accordance with part four of article 45 of the Rules of Procedure of the Constitutional Court the instruction of that kind should be arranged through the Secretary General of the Constitutional Court.

As it has been provided in the Rules of Procedure of the Constitutional Court (article 46) the Secretary General shall organise:

- control over observance of dates set in the Law "On the Constitutional Court of the Republic of Belarus" as well as pipe-line for consideration of motions referred to by the Chairman of the Constitutional Court;
- preparatory activities of the structural departments of the Secretariat on necessary materials for the issues at hand inclusive of drawing up references, analytical notes etc.;
- distribution of motion copies and enclosed materials to all the judges.

On the instructions of the Secretary General the Expert Law Department of the Secretariat prepare the materials having recourse to comparative analysis of foreign states legislations on constitutional review, studying and summarising experience of constitutional review exercise abroad with a view to use it in the current Constitutional Court activities.

### **Assistance in Preparation of Decisions in the Exercise of Preliminary Constitutional Control**

In the exercise of obligatory constitutional control of laws adopted by the Parliament before their signing by the President prejudicial preparatory activities start in advance. As a rule they begin with the draft law put on the agenda and given its first reading by the House of Representatives of the National Assembly of the Republic of Belarus. It usually takes no less than 30 days from that moment till the law submission to the Constitutional Court. In the case of urgency of the draft law the time for prejudicial preparatory activities is to be reduced. This notwithstanding the Constitutional Court still has 15-20 days for prejudicial preparatory activities till the official submission of the law thereto.

On the instructions of a judge a deputy judge (law clerk) selects necessary data for the exercise of preliminary constitutional control of the specific law: wording of a draft law which is to get through its first reading, all the amendments and alterations to be made when adopted by the House of Representatives. The deputy judge also draws up analytical and subject information or legislation review relating to amendments and alterations to the draft law. Then he provides the judge with a final wording of a draft law which is sent up for the approval of the Council of the Republic.

In the instructions of a judge a deputy judge takes part in preliminary preparatory activities on draft decisions of the Constitutional Court concerning the specific draft law which has been adopted by the House of Representatives and approved by the Council of the Republic. He also prepares necessary information on the law subjected to examination of constitutionality including different data provision, analytical notes drawing up and materials selection.

In order to get more information the judge may set a task to the deputy judge to make the review of national or foreign law literature as regards the specific legal matter or carry out the comparative analysis of normative legal acts provisions of different countries. That task is performed by common efforts of the clerks of the International Contacts and Comparative Legislative Analysis Section and the deputy judge.

If during prejudicial preparation of obligatory constitutional control of a law the judge has any doubts in constitutionality of the provisions thereof he entrusts the Expert Law Department through the Secretary General of the Constitutional Court with working out of its expert's opinion. The opinion is given to the judges of the Constitutional Court to be used along with other materials when making the Constitutional Court decision on constitutionality of the examined act provisions.

### **Assistance in Preparation of Decisions on Legal Gaps and Conflicts Elimination**

The judges of the Constitutional Court of the Republic of Belarus study permanently the state of norm-creating by both republican bodies of public administration and local executive and administrative bodies. An original "monitoring" of norm-creating by public bodies aims at systematic studies of the constitutional legality state both at the national level and in the regions. On the instructions of a judge a deputy judge studies normative legal acts, select necessary information, analyses normative legal acts with a view to reveal legal gaps and conflicts. If required he also draws up letters, requests, explanatory notes, references etc.

Moreover on the instructions of a judge the deputy judge brings to light the conflicts of relations regulation and other defects thereof by correlation and comparison of normative legal acts provisions, their complex analysis. At the same time on the instructions of a judge a deputy judge may analyse the documents on similar or analogous matters which have already been considered in the constitutional courts of other countries and now available in the library of the Constitutional Court. On the ground of performed analysis the deputy judge may prepare a note on revealed conflicts of legal regulation and other defects thereof including gaps in relations regulation.

When preparation of the draft decision of the Constitutional Court so requires, a judge charges a deputy judge with studies of law enforcement practice on the issue to be considered at the Constitutional Court session.

For the purposes of in-depth studies of the issue the judge may need a supplementary investigation of the legal matter. If that is the case the law clerks of the Expert Law Department of the Secretariat are entrusted with studies of the posed question. The instruction of that kind is arranged through the Secretary General of the Constitutional Court.

On the instructions of the Chairman of the Constitutional Court or his Deputy Chairman the law clerks of the Expert Law Department also study certain legal problems posed by the legal and natural persons in their petitions to the Constitutional Court. As far as there is no the institute of constitutional complaint established at a law level in the Republic of Belarus the legal matters posed in the legal and natural persons petitions within jurisdiction of the Constitutional Court are considered by the law clerks of the Expert Law Department. The consideration thereof results in preparing proposals to eliminate legal gaps and conflicts. At the same time the law clerks generally study law enforcement practice on the issue.

### **Conclusion**

When preparing draft decisions the law clerks employed as deputy judges as well as ones of the Expert Law Department of the Secretariat of the Constitutional Court perform different activities on analysis, information and retrieval. They carry out data retrieval, normative material selection, comparative analysis of legislation including a foreign one as well as analysis of law enforcement practice, drawing up of analytical references and notes, making up proposals to improve the legislation. Furthermore the above-mentioned clerks are entitled to assist directly in preparation of draft decisions.

With regard to the importance and value of the activities on preparation of the draft decisions of the Constitutional Court a high emphasis in staff work is placed on raising the professional qualification of the law clerks. To ensure the appropriate standards for preparation of draft decisions of the Constitutional Court only qualified jurists with considerable professional experience are employed in the Secretariat of the Constitutional Court. To bring up their qualification the law clerks of the Secretariat of the Constitutional Court regularly undergo

professional retraining, participate in different training programs as well as seminars, conferences etc.