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The Constitutional Court of the Republic of Belarus
Канстытуцыйны суд Рэспублікі Беларусь

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for XVIIth Congress of the Conference of European Constitutional Courts

Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles

I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles.

1. Does the constitutional court or equivalent body exercising the power of constitutional review (hereinafter referred as the constitutional court) invoke certain constitutional principles (e.g. separation of powers; checks and balances; the rule of law; equality and non-discrimination etc.) in the process of constitutional adjudication? To what extent does the constitutional court go in this regard? Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

According to Article 116 of the Constitution of the Republic of Belarus review of the constitutionality of normative acts in the State shall be exercised by the Constitutional Court of the Republic of Belarus. When carrying out its powers the Constitutional Court ensures the supremacy of the Constitution and grounds its decisions on the application of the constitutional principles.

The constitutional principles in the Belarusian legal doctrine are understood as the basic ideas, guiding principles taken as a basis for the constitutional and legal regulation that are directly enshrined in the Constitution or result from its provisions. The constitutional principles determine the specifics of the state and social order of the Republic of Belarus and the national legal system.

The constitutional principles are also considered as legal ideals that reflect in concentrated form the laws governing social development and the basic social values. At the same time they are closely connected with other social regulators (policy, morality, religion, etc.) contributing to the organic development of the social system in whole.

The Constitutional Court proceeds from the fact that the constitutional principles are the basis of structural and substantive self-organisation of the law, a kind of supporting structure uniting all legal phenomena in a single consistent complex. This approach permits to consider the totality of the constitutional principles the Constitutional Court refers to in its judgments and decisions as an ordered system.

In this system it is possible to underline the following constitutional principles applied by the Constitutional Court as a source of normative and guiding principles of activity of society and state as well as defining the character and the social nature of the national law:

the principle of priority of the human rights and freedoms and guarantees of their realisation;

the principle of stability of the constitutional order;

the principle of sovereignty of the people;

the principle of separation of powers and interaction of its institutions;

the rule of law;

the principle of supremacy of the Constitution;

the principle of immediate (direct) action of the Constitution;

the principle of priority of the generally recognised principles of international law.

Among the constitutional principles that enshrine the bases of interaction between the state and the individual the Constitutional Court applies:

the principle of mutual responsibility of the state and the citizen;

the principle of equality of all before the law;

the principle of proportionality of restrictions of the human rights and freedoms with the values protected by the Constitution;

the principle of non-retroactivity of the law, except in cases when it mitigates or revokes the responsibility of individuals;

the principle of humanity;

the principle of justice.

Thus, in the Message of the Constitutional Court “On Constitutional Legality in the Republic of Belarus in 2014” it is noted that the necessary criterion for assessing the constitutionality of legal regulation in various fields of public relations by the Constitutional Court shall be the observance of the constitutional principles of equality and justice by the legislator as a condition of constitutional legality in a state based on the rule of law. These principles presuppose that the law embodies justice and its rules are equally addressed to all subjects of legal relationship, they are mandatory for all and they are equally protected by the state. The above-mentioned principles also require proportionality in setting the privileges and limitations, their setting only by the law and their proportionality to the protected constitutional values, state, public and private interests ensuring their balance.

When the Constitutional Court assesses the reasonableness of restrictions of rights and freedoms of the individual by law the priority is given to compliance with the principle of proportionality of such restrictions to the constitutionally protected values. For example, when evaluating the constitutionality of restrictions related to banking operations, in the Decision of

27 May 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” to the Constitution of the Republic of Belarus” the Constitutional Court concluded that the provisions of the reviewed Law on the possibility of refusal to carry out a financial transaction to its participants, as well as the suspension of its realisation in the case of compliance with criteria of identifying and signs of suspicious financial transactions affect the constitutional right of ownership of the participants in the financial transaction, however, these provisions are legitimate as they meet the requirements of proportionality and admissibility. By establishing such restrictions, the legislator creates a legal mechanism to prevent the legalisation of proceeds from crime, terrorist financing and financing of proliferation of weapons of mass destruction, that meets the interests of national security, public order, protection of the rights and freedoms of others.

On the basis of Article 22 of the Constitution stipulating that all shall be equal before the law and have the right to equal protection of their rights and legitimate interests without any discrimination, the Constitutional Court does not set non-discrimination as an independent constitutional principle, but considers non-discrimination as an integral part of the constitutional principle of equality of all before the law and equal protection of rights and legal interests. As noted by the Constitutional Court, the said principle ensures protection against all forms of discrimination and at the same time does not impede the legislator to exercise a special legal regulation and to establish distinctions, exclusions, preferences in the legal status of individuals, if they are objectively justified, grounded and comply with the constitutionally significant goals (Judgment of 28 December 2015 “On the Conformity of the Law of the Republic of Belarus “On Making Addenda to the Law of the Republic of Belarus “On Local Government and Self-Government in the Republic of Belarus” to the Constitution of the Republic of Belarus”).

In the Decision of 25 May 2015 “On the Conformity of the Law of the Republic of Belarus “On Amnesty in Connection with the 70th Anniversary of the Victory in the Great Patriotic War of 1941-1945” to the Constitution of the Republic of Belarus” the Constitutional Court pointed out the principle of humanism arising from a number of the constitutional provisions. At the same time the Constitutional Court does not set the principle of human dignity as an independent constitutional principle but in this decision emphasised that humanism as a moral and legal category and the fundamental basis of public relations reflects the ideals of humanity and manifests itself in the recognition of value priority of the personality, caring about its well-being, protection of the rights and freedoms, respect for dignity and honour.

The Constitutional Court has also applied the constitutional principles,

which may be considered as special because they are fundamental for the functioning of certain spheres of social relations. Among them the basic principles of functioning of the economic sphere are:

the principle of state regulation of economic activity in the interests of the individual and society;

the principle of guarantees of equal protection and equal conditions for the development of all forms of ownership;

the principle of the inviolability of property;

the principle of exercising the right of ownership without prejudice to the rights and legally protected interests of other persons;

the principle of free utilisation of abilities and property for entrepreneurial and other types of economic activities which are not prohibited by law.

Among the special constitutional principles it can also be rated the following principles applied by the Constitutional Court:

the principle of the general elections;

the principle of openness and transparency in the preparation and conducting of elections;

the principle of access to specialised secondary education and higher education for all in accordance with the capabilities of each individual;

the principle of freedom of scientific and technical creativity;

the principle of carrying out the unified tax policy in the territory of the Republic of Belarus.

The following constitutional principles are fundamental in the interaction between the society and the state, social communities:

the principle of social justice;

the principle of social partnership.

The following constitutional principles applied by the Constitutional Court have fundamental importance for the functioning of justice:

the presumption of innocence;

the principle of guarantees of justice;

the principle of independence of the judiciary in the administration of justice;

the principle of justice on the basis of adversarial character and equality of the parties in the process;

the principle of access to legal assistance;

the principle of freedom to appeal against decisions, sentences and other court acts;

the principle of compulsory character of judicial decisions for all individuals and officials.

In the exercise of the review of constitutionality of normative legal acts the Constitutional Court has applied other principles, including those that are

part of the more general constitutional principles. First and foremost, these principles are derived from the constitutional principle of the rule of law, such as:

the principle of legal certainty;
the principle of legality;
the presumption of legality of conduct of an individual;
the principle of the prohibition of arbitrariness;
the principle of respect for the hierarchy of normative acts;
the principle of legal maintenance;
the principle of legal security.

The foregoing does not preclude a different approach to the classification of the constitutional principles, in accordance with the variety of features that can be the basis for such classification.

It should be noted that the constitutional principles are applied in the majority of acts of the Constitutional Court. The application of the constitutional principles is exercised by the Constitutional Court in several ways.

Thus, the constitutional principles are the basis for the interpretation of the constitutional rules regulating specific social relations by the Constitutional Court. On the basis of the constitutional principle of state regulation of economic activity in the interests of the individual and the society, as well as the constitutional principle of mutual responsibility of the state and the individual, the Constitutional Court pointed out that the constitutional right of ownership and the constitutional duty of individuals to participate in the financing of public expenditures (Articles 44 and 56 of the Constitution) are interdependent and interrelated. The right to imposition of tax, which to some extent restricts the right of ownership, arises from the state powers to regulate economic activities in the interests of the individual and the society, as well as from the responsibility of the individual before the state for the strict fulfillment of the responsibilities entrusted to him by the Constitution. The amount of tax shall be fair and reasonable, provide the optimum combination (balance) of the state, public and private interests (Decision of 27 December 2013 “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 Entrepreneurial Activity and Taxation” to the Constitution of the Republic of Belarus”).

The Constitutional Court also assesses to which extent the established legislative regulation complies with the relevant constitutional principles. 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” it was noted

that the constitutional guarantees of the right to work are inseparably linked with individual professional skills and personal qualities to perform a specific labour duties. The principle of equality which is enshrined in Article 22 of the Constitution and guarantees protection against all forms of discrimination, does not prevent the legislator in the exercise of special legal regulation of labour to establish distinctions, exclusions, preferences in the legal status of persons belonging to different categories depending on conditions and type of activity, if they are objectively justified, grounded and comply with the constitutionally significant goals. Such distinctions, exclusions or preferences linked with a certain work, in accordance with Article 1.2 of the Convention concerning Discrimination in Respect of Employment and Occupation or Discrimination (Employment and Occupation) Convention (ILO Convention No.111) (1958) are not considered as discrimination.

The Constitutional Court on the basis of the fact that the constitutional principles in the most concentrated form embody the spirit and meaning of the Constitution, applies them in order to ground its decisions on the merits of the case. Thus, 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 stated that amendments made to the Law “On the National Assembly of the Republic of Belarus” and related to drafting and adoption of laws comply with the purpose of the exercise of the constitutional and legal status of the National Assembly. The Constitutional Court noted that they contribute, in particular, to the exercise of the Parliament's functions in the system of separation of powers – adoption of laws ensuring proper legal regulation of the most important public relations and meeting the needs of society and the state. The relevant provisions of the said Law are also consistent with the constitutional principle of the rule of law and the principle of legal certainty based on it, since they concretise the possible legal consequences of not signing the law by the President of the Republic of Belarus, reinforce the powers of the House of Representatives of the National Assembly of Belarus on the definition of such consequences in relation to the draft law in case its updating is recognised as inappropriate.

The Constitutional Court in its judgments and decisions draws attention of the legislator to the necessary conditions for the realisation of constitutional principles by formulating appropriate legal positions.

In particular, in order to realise the constitutional principle of separation of state power and interaction of its bodies the Constitutional Court points to the need to elaborate a mechanism of checks and balances excluding the possibility of invasion of state bodies in the sphere of the constitutional powers of each other (Message of the Constitutional Court “On Constitutional Legality

in the Republic of Belarus in 2008”), the proper interaction of all branches of power in order to achieve a balance between public and private interests and the stability in the society and the state (Message of the Constitutional Court “On Constitutional Legality in the Republic of Belarus in 2015”).

When checking the constitutionality of the Law of the Republic of Belarus “On Making Alterations and Addenda to the Law of the Republic of Belarus" On Citizenship of the Republic of Belarus” the Constitutional Court in its Decision of 16 December 2015 noted that the sovereign right of the Republic of Belarus to exercise the legal regulation of the relations connected with citizenship implies the possibility for discretion of the legislator when establishing the principles, bases, conditions, procedure of acquisition and termination of citizenship of the Republic of Belarus. At the same time the crucial thing for the development of the institution of citizenship is the constitutional principle of the rule of law stipulating that legal regulation in this field should be based on the provisions of the Constitution and be in line with the generally recognised principles of the international law and the international obligations of the Republic of Belarus.

The Constitution or any other normative legal act do not directly determine the meaning and content of decisions on issues of constitutional law from the perspective of the establishment of specific sources of law within the framework of the Basic Law, which can be applied by the Constitutional Court to ground its decision.

At the same time, when grounding the decision made by references to specific sources of law, the Constitutional Court proceeds from a number of provisions of the Constitution, establishing:

the role of the Constitution in the legal system of the state as a fundamental source of law. These provisions, in particular, stipulate 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; 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 (Articles 7.2 and 7.3); 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; if there is inconsistency between a law, decree or edict and the Constitution, the Constitution shall be applied (Articles 137.1 and 137.2);

the role of the generally recognised principles of international law and the procedure for the application of international instruments as a source of law. Thus, the Constitution provides that the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith; the Republic of Belarus in conformity

with the rules of international law may on a voluntary basis enter interstate formations and withdraw from them; conclusion of treaties that are contrary to the Constitution shall not be permitted (Article 8);

legal force of normative legal acts as a source of law. This hierarchy is based on Article 116.4 of the Constitution stipulating that the Constitutional Court shall deliver judgments on conformity of laws, decrees and edicts of the President, obligations under treaties and other international commitments of the Republic of Belarus to the Constitution and international legal acts ratified by the Republic of Belarus; conformity of acts of interstate formations to which the Republic of Belarus is a party, of edicts of the President of the Republic of Belarus issued to the execution of the law with the Constitution, international legal acts ratified by the Republic of Belarus, laws and decrees; conformity of resolutions of the Council of Ministers of the Republic of Belarus and acts of the Supreme Court of the Republic of Belarus, the Prosecutor General of the Republic of Belarus to the Constitution, international legal acts ratified by the Republic of Belarus, laws, decrees and edicts; conformity of acts of any other state body to the Constitution, international legal acts ratified by the Republic of Belarus, laws, decrees and edicts.

The above mentioned provisions of the Constitution are the criterion for applicability of the sources of law and for the definition of the correlation of their legal force when checking the constitutionality of normative legal acts.

The content of court decisions on issues of the constitutional law is also based on Article 112.1 of the Constitution, according to which the courts shall administer justice on the basis of the Constitution and other normative acts adopted in accordance therewith. In addition, Article 77 of the Law of the Republic of Belarus “On the Constitutional Proceedings”, regulating the content of the acts of the Constitutional Court, determines that the descriptive part of the judgment of the Constitutional Court shall contain: provisions of the Constitution, the Code of the Republic of Belarus on Judicial System and Status of Judges, the present Law, other legislative act establishing the powers of the Constitutional Court to consider the appropriate proposal; type and title of the act, the constitutionality of which is reviewed, date of its adoption (publication, signing or conclusion by any other way) and entry into force (enactment), its registration number and the source of its official publication (if available); summary of legal rules, the constitutionality of which is reviewed.

According to the said Law in the reasoning part of the judgment of the Constitutional Court it shall be indicated: legal positions of the Constitutional Court, arguments in their basis; normative legal acts, international treaties, other international instruments and rules of international law the Constitutional Court was guided by. The operative part of the judgment of the Constitutional Court shall contain the conclusion on conformity or non-conformity of the act,

its particular provisions to the Constitution of the Republic of Belarus, international instruments ratified by the Republic of Belarus, other normative legal acts as well as the date of entry into force of the judgment of the Constitutional Court.

2. What constitutional principles are considered to be organic in your jurisdiction? Are there any explicit provisions in the constitution setting out fundamental principles? Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?

The term "organic constitutional principle" is not used in the normative legal acts of the Republic of Belarus, in the scientific literature as well as in the acts of law-enforcement bodies of the Republic of Belarus, including courts.

In the Belarusian legal doctrine the prevailing point of view is that all the constitutional principles without exception have universal significance, the highest imperative nature, general mandatory character; they define the direction of legal regulation of social relations as well as serve as an initial criterion of legitimacy and legality of actions of state bodies, officials, individuals and other subjects of legal relationships; the stability of the constitutional principles is of particular importance.

At the same time, among organic constitutional principles it is possible to rate the principles contained in section I "Fundamentals of the Constitutional System" of the Constitution of the Republic of Belarus. This section contains a number of constitutional principles named in the information in response to question 1 of section I of the Questionnaire, that are starting normative guiding principles of the life of the society and the state, defining the essence and the social nature of the law of the Republic of Belarus, establishing the basic principles of interaction between the state and the individual.

The Constitutional Court of the Republic of Belarus in its judgments and decisions has also underlined the fundamental constitutional principles by explaining their special importance. In the Message "On Constitutional Legality in the Republic of Belarus in 2014" the Constitutional Court concludes that Evolutional constitutional development is based on the fundamental constitutional principles of priority of the human rights and freedoms and guarantees of their implementation, mutual responsibility of the State and individuals, democracy, separation of state power and interaction of its bodies, the rule of law, equality and justice, as well as on other principles directly enshrined in the Constitution or resulting from its provisions.

The Constitutional Court has mentioned other fundamental constitutional principles, including those set forth in Section I as well as in other sections of the Constitution. For example, the maintenance of public confidence in the law

and the state action (legitimacy of public authority); participation of individuals in managing the affairs of society and the state; proportionality of restrictions of the human rights and freedoms; inviolability and equality of all forms of property and their equal protection; equal conditions and opportunities for the development of all forms of ownership and free utilisation of abilities and property by all economic actors; ideological diversity and political pluralism; environmental protection.

Most of the principles defined by the Constitutional Court as fundamental are set by explicit provisions of the Constitution (see below). To confirm the validity of the position on the special role of the fundamental constitutional principles it should highlight the specificity of their constitutional and legal enshrining. A number of such principles are derived from the provisions of sections I, II, IV, VIII of the Constitution, which can be changed only by a referendum, while other sections of the Constitution may be changed and added by the Parliament in the course of the legislative process.

The fundamental constitutional principles are applied in all acts of the Constitutional Court. In the Decision "On Legal Regulation of Initiation of Private Criminal Prosecutions" of 27 November 2015 the Constitutional Court noted that in accordance with the Constitution the Republic of Belarus shall be bound by the principle of supremacy of law (Article 7.1); the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith (Article 8.1); safeguarding the rights and freedoms of citizens of the Republic of Belarus shall be the supreme goal of the State (Article 21.1); 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 (Article 59.1). On this basis the Constitutional Court recognised the necessity to eliminate a legal gap in constitutional and legal regulation of initiation of private criminal prosecutions by making addenda and alterations to the Criminal Procedure Code of the Republic of Belarus obliging the prosecuting body to initiate private criminal prosecutions in the absence of information about the person who committed the crime mentioned in Article 26.2 of the Criminal Procedure Code, as well as to initiate private criminal prosecutions in case of the death of the victim of the crime on the basis of applications submitted by his/her adult close relatives or family members.

Despite the fact that in the Belarusian legal doctrine there is no delineation of the system of constitutional principles in the explicit and implicit ones, the Constitutional Court has supported the position on the objective existence of both explicit (clearly, openly expressed) and implicit (hidden, implied) constitutional principles.

The Constitution contains a number of both immediate (direct) and indirect (indirect) explicit constitutional principles. Thus, direct explicit principles are enshrined in the constitutional provisions stipulating that:

the Republic of Belarus shall be bound by the principle of supremacy of law (Article 7.1);

the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith (Article 8.1);

the State shall regulate relations among social, ethnic and other communities on the basis of the principles of equality before the law and respect of their rights and interests (Article 14.1);

relations in social and labour sphere between the bodies of state administration, associations of employers and trade unions shall be exercised on the principles of social partnership and interaction of the parties (Article 14.2);

in its foreign policy the Republic of Belarus shall proceed from the principles of equality of states, non-use of force or threat of force, inviolability of frontiers, peaceful settlement of disputes, non-interference in internal affairs and other generally recognised principles and norms of the international law (Article 18);

the judicial system shall be based upon the principles of territorial delineation and specialisation (Article 109.2).

In addition, the Constitutional Court pointed out the following constitutional principles in the Constitution that can be rated among indirect explicit principles:

the principle of priority of the human rights and freedoms and guarantees of their exercise (Article 2.1, Article 21.1, Article 59.1);

the principle of mutual responsibility of the state and the individual (Article 2.2);

the principle of sovereignty of the people (Article 3);

the principle of separation of state power and interaction of its bodies (Article 6);

the principle of supremacy of the Constitution (parts two and three of Articles 7.2, 7.3, 8.3, 137.1 and 137.2);

the principle of guarantee of equal protection and equal conditions for the development of all forms of property (Article 13.2);

the principle of free utilisation of abilities and property for entrepreneurial and other types of economic activities which are not prohibited by law (Article 13.4);

the principle of State regulation of economic activity in the interests of the individual and society (Article 13.5);

the principle of equality of all before the law and equal protection of rights and legitimate interests (Article 22);

the principle of limitation of rights and freedoms only in cases stipulated by law (Article 23.1);

the presumption of innocence (Article 26);

the principle of the inviolability of property (Articles 44.1, 44.2, 44.3, 44.4, 44.5);

the principle of the right of ownership without prejudice to the rights and legally protected interests of other persons (Article 44.6);

the principle of access to secondary specialised and higher education for all in accordance with the capabilities of each individual (Article 49);

the principle of freedom of scientific and technical creativity (Article 51.2 of the Constitution);

the principle of the guarantee of justice (Article 60.1);

the principle of availability of legal assistance (Article 62);

the principle of the general character of the elections (Article 64);

the principles of openness and transparency in the preparation and conduct of elections (Article 65.2);

the principle of non-retroactivity of the law, except in cases when it mitigates or revokes the responsibility of citizens (Article 104.6);

the principle of independence of the judiciary in the administration of justice (Article 110);

the principle of administration of justice on the basis of adversarial character and equality of arms (adversarial principle and equality of arms) (Article 115.1);

the principle of compulsory character of judicial decisions for all individuals and officials (Article 115.2);

the principle of freedom to appeal against decisions, sentences and other court rulings (Article 115.3);

the principle of the uniform tax policy in the Republic of Belarus (Article 132.2).

In the case-law of general courts the principles considered by these courts as constitutional, in some cases are stated as a separate argument of the reasoning part of the judgment. Thus, the reference to the constitutional principle arising from Article 120 of the Constitution which stipulates that local executive and administrative bodies shall, within their competence, resolve issues of local significance, proceeding from national interests is contained in the resolution of the Cassation Board of the Supreme Economic Court of the Republic of Belarus of 21 June 2012 (case No. 58-9/2012/80A/433K). The constitutional principle of equality of arms under Article 115 of the Constitution was applied in the resolution of the Cassation Board of the

Supreme Economic Court of the Republic of Belarus of 1 March 2007 (case No. 5-15Mh/2006/149K).

In the Review of the Supreme Court of the Republic of Belarus of 2 August 2002 "On Application of the Civil Procedural Law Regulating Consideration of Civil Cases in Cassational Proceedings by the Courts" there is indication on the connection between the constitutional principle of adversarial character with the legislative regulation of the grounds for reversal of a judgment by the court of cassation.

General courts also apply the basic branch principles enshrined in acts of sub-constitutional legislation. By the resolution of the Presidium of the Grodno Regional Court of 23 November 2011 the punishment imposed by the court was considered unfair due to its severity by virtue of Article 3 of the Criminal Code of the Republic of Belarus stipulating that criminal liability in the Republic of Belarus shall be based on the principles of the rule of law, equality of individuals before the law, inevitability of responsibility, personal guilty liability, justice and humanity. Most of these principles are defined by the Constitutional Court as constitutional (see the information in the response to question 1, section I of the Questionnaire).

At the same time it should be recognised that the constitutional principles as essential components of the constitutional and legal regulation are most actively used in judgments and decisions of the Constitutional Court. The Constitutional Court is guided by the need to apply constitutional principles when dealing with specific cases with a view to make a reasoned decision, orientation of rule-making and law-enforcement subjects on the execution of the constitutional requirements.

In that way, the Belarusian legal doctrine points to the role of the principles of law as initial, indisputable provisions that express its essence in most characteristic manner and define its content (rules), legally enshrining the foundations of the regulated spheres of social relations. The Constitutional Court assumes that the constitutional principles are directly enshrined in the Constitution or arise from its provisions. A considerable number of constitutional principles are directly established by the Constitutional Court. The Constitutional Court, when interpreting the provisions of the Constitution, takes into account the practice of application of generally recognised principles of international law and reveals a multifaceted meaning and content of the constitutional principles, which is a prerequisite for their implementation in the legislation and law-enforcement, ensuring the dynamism of constitutional and legal regulation.

3. Are there any implicit principles that are considered to be an integral part of the constitution? If yes, what is the rationale behind their existence?

How they have been formed over time? Has academic scholars or other societal groups contributed in developing constitutionally-implied principles?

The analysis of the legal doctrine of the Republic of Belarus shows that not all the constitutional principles are directly enshrined in the constitutional rules. Many of them are present in the Constitution of the Republic of Belarus in the "compressed" form and are revealed from the content of the constitutional provisions as a result of constitutional interpretation and comprehension of the spirit and meaning of constitutional provisions and their system connections.

In the works of legal scholars the term "implicit principle" is not widespread. However, the objective existence of the hidden, implicit, implied constitutional principles is not disputed by any of legal scholars.

The Constitutional Court of the Republic of Belarus on the basis of objectivity of such a legal phenomenon as implicit constitutional principles uses the phrase "the principle arising from the content of the constitutional provisions". Since the complex of essential features that constitute the essence of the notion of an implicit principle, is set out the content of the specific constitutional rules, the implicit principle itself can be considered as an integral part of the constitution.

Implicit constitutional principles are deduced by the Constitutional Court from the constitutional rules both by generalisation and by particularisation.

In case of generalisation the implicit constitutional principles are constructed by identifying new meaning links between several legal rules that are genetically related and interact with each other in the regulation of similar relations.

In case of particularisation the implicit principles are derived from a specific basic principle. In this case they are considered as structural elements of the basic principle being in system connection with each other.

As an example of the implicit constitutional principles formulated on the basis of generalisation, we can cite the following:

the principle of immediate (direct) action of the Constitution arising from the following provisions of the Basic Law: 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 courts shall administer justice on the basis of the Constitution and other normative acts adopted in accordance therewith; if, during the hearing of a specific case, a court concludes that a normative act does not conform to the Constitution, it shall take decision in accordance with the Constitution and raise, under the established procedure, the issue of whether the normative act should be deemed unconstitutional (Article 112);

the principle of social justice which is derived from the provisions of the Constitution stipulating that the Republic of Belarus is a social state (Article 1.1); the State shall assume responsibility before the citizen to create the conditions for free and dignified development of his personality (Article 2.2); everyone has the right to a decent standard of living, including appropriate food, clothing, housing and a continuous improvement of conditions necessary to attain this (Article 21.2); citizens of the Republic of Belarus shall be guaranteed the right to social security in old age, in the event of illness, disability, incapability to work, loss of the bread-winner and in other instances specified by law; the State shall display particular care for veterans of war and labour as well as for those who undermined their health defending national and public interests (Article 47);

the principle of humanism which is derived from the provisions of the Constitution 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); safeguarding the rights and freedoms of citizens of the Republic of Belarus shall be the supreme goal of the State (Article 21.1); the State shall safeguard personal liberty, inviolability and dignity (Article 25.1).

The Constitutional Court assumes that the constitutional principle of a legal category can be complex, multilevel phenomenon and include a number of legal provisions as components, some of which, in their turn, may have features of a legal principle. Besides constitutional legal provisions philosophical and politico-ideological maxims may also be the structural elements of the constitutional principle.

On the basis of particularisation of the explicit constitutional principle of the rule of law, enshrined in Article 7.1 of the Constitution, the following implicit principles were revealed:

the principle of legal certainty;

the principle of legality;

the principle of the presumption of legality of conduct of an individual;

the principle of prohibition of arbitrariness;

the principle of respect for the hierarchy of normative acts;

the principle of legal maintenance;

the principle of legal security.

In that way, the Constitutional Court assumes that the constitutional principle of the rule of law is a complex structure, substantive elements of which include the implicit constitutional principles mentioned above. In support of this approach the Constitutional Court took into account the Report on the rule of law, adopted on 25-26 March 2011 at the 86th plenary session of the European Commission for Democracy through Law (Venice Commission). In

accordance with paragraphs 41-51 of this Report the principles of legality and legal certainty are the necessary elements of the rule of law.

The existence of implicit constitutional principles as the objective reality is predetermined by several factors:

firstly, the laws of dialectics, governing objective and continuous development of the society and the law as a social institution;

secondly, the special nature of the Constitution, which, possessing the properties of a normative legal act, political program, philosophical and ideological manifesto, as well as doctrinal document represent paramount importance for the development of such branches as jurisprudence, political science, philosophy of society, sociology, economics, history.

The implicit constitutional principles originate primarily in the text of the Constitution, in the provisions that establish explicit principles. The process of revealing of the implicit principles by generalisation or particularisation is carried out by scientific legal doctrine and case law (especially by decisions of the Constitutional Court). At the same time genetic relationship of implicit principles not only with the explicit constitutional principles enshrined in the Constitution, but also with other principles is revealed. These principles are contained in:

- legislative acts of the Republic of Belarus;
- international treaties of the Republic of Belarus;
- historical sources of law (constitutions of the Republic of Belarus of 1919, 1927, 1937, 1978, legislative acts and judicial acts of constitutional nature of state formations Belarus was a part thereof at different stages of historical development, that in their essence do not contradict the current Belarusian legislation);
- foreign sources of law (constitutions, legislative acts and judicial acts of constitutional nature of foreign countries, that in their essence do not contradict the current Belarusian legislation);
- national, international and foreign legal, political and philosophical doctrines (works of eminent legal scholars, philosophers, political scientists).

When formulating the implicit constitutional principles legal acts of constitutional nature (laws on making alterations and addenda to the Constitution, laws on the interpretation of the Constitution) are primarily taken into account. However, legal acts of other branches containing the general principles of law also have a certain importance.

An important role in establishing and formulating constitutional principles is played by the generally recognised principles and rules of international law. This is conditioned by the constitutional provision on the recognition by the Republic of Belarus of the supremacy of the generally

recognised principles of international law and ensuring the compliance of laws therewith.

In the Belarusian legal doctrine there is a point of view which is rather popular and according to which the use of foreign sources of law is acceptable because of established historical tradition. Thus, the Statute of the Grand Duchy of Lithuania of 1588, that codified the most important legal institutions of the medieval right of Belarus, contained the following rule: "And if there are some gaps in this Statute, then the court in accordance with its conscience and following the example of other Christian rights should judge and decide in relation to similar cases". The possibility of borrowing foreign sources of law arises also from the genesis of the legal systems of the countries belonging to the continental (Roman-Germanic) legal family.

A specific contribution to the development of the principles enshrined in the Constitution was made by the scientists of the leading educational and scientific centers of the Republic of Belarus: the Belarusian State University, the Academy of Public Administration under the aegis of the President of the Republic of Belarus, Grodno State University, Polotsk State University, the Academy of the Ministry of Internal Affairs of the Republic of Belarus, the National Centre of Legislation and Legal Research of the Republic of Belarus.

4. What role does the constitutional court has played in defining the constitutional principles? How basic principles have been identified by the constitutional court over time? What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in defining and applying those principles? How much importance falls upon travaux preparatoires of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles? Do universally recognised legal principles gain relevance in this process?

The Constitutional Court of the Republic of Belarus plays a leading role in the definition of constitutional principles. The Constitutional Court does not only reveal the content of the constitutional principles, but also evaluates the correlation of specific legal provisions to certain constitutional principles.

Thus, when revealing the content of the constitutional principle of the rule of law, the Constitutional Court in the Message "On Constitutional Legality in the Republic of Belarus in 2001" noted that according to Article 7 of the Basic Law of the Republic of Belarus the principle of the rule of law should be considered as equity enshrined in legal rules, and the rights and freedoms – as a value guideline in law-making and law-enforcement, limiting factor not only for the rights and freedoms of others, but also for the state.

In the Message “On Constitutional Legality in the Republic of Belarus in 2011” the Constitutional Court pointed out that the principle of the rule of law means an absolute priority of the law over the state, its bodies and officials, obliged to act within the Constitution and legislative acts adopted in accordance therewith. The State based on the rule of law can not take place without the rule of law in the political, social and economic life. The principle of the rule of law in the rule-making and law-enforcement serves as the main factor in ensuring the supremacy of the Constitution, the constitutional legality and the development of constitutional democracy.

The absolute observance of the constitutional principle of the rule of law in the rule-making and law-enforcement will enable the legislator to provide a stable, clear and respondent to the modern requirements legislation and the law-enforcement bodies – the effective protection of the rights, freedoms and legitimate interests of individuals, rights and legitimate interests of organisations.

The Constitutional Court considers that the principle of the rule of law by virtue of its universality is fundamental for international relations. In this regard acts of bodies of interstate formations and law-enforcement shall be based on the rule of law, which in integration associations is ensured by forming supranational law aimed at the most harmonious combination and the balance of national interests, the universalisation of legal standards, especially in the field of human rights.

According to the Constitutional Court the principle of the rule of law is a fundamental constitutional and legal basis in accordance therewith the state and the society realise the principles of equality and justice, ensure and achieve the constitutional values and goals (Decision of 25 April 2012 “On the Conformity of the Law of the Republic of Belarus “On Making Alterations and Addendum to the Law of the Republic of Belarus “On Protection of Consumer Rights” to the Constitution of the Republic of Belarus”).

In the Message “On Constitutional Legality in the Republic of Belarus in 2007” the Constitutional Court on the basis of the analysis of the relevant rule-making practice drew attention to the fact that the constitutional principle of guarantee of justice is violated in some cases, for example, in the absence of normative enshrining of the right to appeal against a written warning issued by the Commissioner for religions and nationalities in respect of a religious organisation before the court.

In the Judgment of 12 June 2014, adopted on the issue of absence in the legislation of provisions on the necessity to obtain the consent of the close relatives for the termination of the criminal proceedings in case of death of the accused (suspect), the Constitutional Court noted that the current legislation does not provide for the consent of close relatives of the suspect or the accused

to terminate the criminal proceedings in respect of the deceased and does not allow to ensure the possibility of rehabilitation of the deceased in order to protect his dignity and honour. On the basis of interrelated provisions of Articles 25.1, 26, 28 and 60 of the Constitution on ensuring the dignity of an individual, the presumption of innocence, the right of everyone to protection against attacks on his honour and dignity, guarantees to everyone of protection of his rights and freedoms by a competent, independent and impartial tribunal, as well as on the basis of the provisions of international legal instruments that guarantee the right to establish the validity of the criminal charges brought against him by a competent, independent and impartial tribunal to everyone, the Constitutional Court came to the conclusion that the constitutional right of everyone to protection from attacks on his honour and dignity shall not be limited by the period of human life; this right shall oblige the state to provide for the necessary legal guarantees to ensure judicial protection of human rights after his death including the right of close relatives to require the rehabilitation of the deceased in the frame of the criminal proceedings in compliance with the constitutional principle of the adversarial nature of the judicial proceedings and equality between prosecution and defence.

The principle of free access to justice which is regarded as the value of a democratic state based on the rule of law and having a universal character is an integral part of the principle of guarantee of justice.

According to the Constitutional Court opinion impossibility of a citizen to pay a state fee due to his property status should not impede the exercise of his constitutional right to judicial protection, including in administrative proceedings, since otherwise would mean non-compliance with the constitutional provisions guaranteeing to everyone protection of the human rights and freedoms, including judicial protection, by the State. One of the most important guarantees for the realisation of this right is the establishment in the administrative procedural law of the procedure of exemption from payment of a state fee for filing complaints against rulings on administrative offences cases (Decision of 25 September 2013 “On the Procedure of Exemption from Payment of a State Fee for Filing Complaints against Rulings on Administrative Offences Cases”).

With regard to issues about methods of interpretation the Constitutional Court proceeds from the following.

The interpretation of the Constitution consists in elimination of the uncertainty in the understanding of its provisions, clarification of the meaning of the legal principles contained in the Constitution. The constitutional principles, as well as regulatory constitutional provisions, are subject to execution in the course of the regulation of certain social relations. The direct regulating meaning of the constitutional principles arises from Article 112.2 of

the Constitution which establishes that if, during the hearing of a specific case, a court concludes that a normative act does not conform to the Constitution, it shall take decision in accordance with the Constitution and raise, under the established procedure, the issue of whether the normative act should be deemed unconstitutional.

However, since the legal principles are the most generalised legal maxims that express the most general foundations of organisation and activities of the state and the society, their transfer into the field of specific relationships is rather difficult. In the process of revealing the content of the legal principle there is often competition of meaning, that is why the need to overcome this competition appears. Consequently, the objective need for an adequate interpretation of legal principles is determined by their social nature and role in the regulation of social relations.

Certain provisions relating to the powers of the Constitutional Court to exercise the interpretation of the principles and norms of the Basic Law were enshrined in legislative acts. The issues on the scope of interpretation (adequate, broad, restrictive), methods of interpretation (grammatical, logical, systematic, teleological, historical and political) are detailed in the legal doctrine.

Thus, according to Article 140.3 of the Constitution sections I "Fundamentals of the Constitutional System", II "Individual, Society and the State", IV "President, Parliament, Government, Court", VIII "Effect of the Constitution of the Republic of Belarus and Procedure of its Changing" can be changed only by a referendum. It is obvious that the interpretation of all other provisions of the Constitution may not contradict the rules and principles contained in these sections, so it shall be carried out in conjunction with them. In this connection there is the requirement for system interpretation, revealing system connections of the constitutional norms, principles and law in general.

According to Article 54 of the Law of the Republic of Belarus "On the Constitutional Proceedings", defining the scope of review of the constitutionality of an act, the Constitutional Court, when reviewing constitutionality of an act in a whole or in its certain part, shall establish its conformity to the Constitution of the Republic of Belarus, the international legal acts ratified by the Republic of Belarus, other normative legal acts specified in Article 116.4 of the Constitution of the Republic of Belarus including on: the content of rules; when reviewing the constitutionality of an act the Constitutional Court shall take into consideration both literal meaning of legal rules and the meaning attributed to them by their practical application.

It follows from the foregoing that this law actually establishes the power of the Constitutional Court to analyse, identify the meaning and set correlation between the content of rules (including rules-principles) of the Constitution as

well as of the act under review on the basis of a reasoned presentation of the results of the analysis to make a final conclusion on the constitutionality or unconstitutionality of the legal rule. In that way, by its essence the exercise of this power by the Constitutional Court is constitutional and legal interpretation as a procedural form of the Court's activity.

When formulating the legal positions the Constitutional Court combines a wide arsenal of methods and techniques of interpretation.

First of all, the Constitutional Court proceeds from the assumption that the interpretation, being an intellectual, cognitive process, includes two elements (or phases): clarification and explanation. Clarification provides for revealing the meaning of the legal rule and explanation permits to bring the meaning of the legal rule to the attention of other persons concerned. An adequate clarification and clear explanation of the meaning of legal rules in their totality ensure certainty of a legal requirement and determine uniformity and fairness of law-enforcement.

The interpretation of the constitutional principles and rules does not involve specific, distinct from common, techniques, ways and interpretation methods. Rather, it is a purposeful application of classical methods and techniques of interpretation, when efforts are being made in clarifying and explaining specific concepts, categories, structures and terms of the constitutional law. By applying the above mentioned methods for clarification of the meaning of the legal regulations the Constitutional Court proceeds from the assumption that the grammatical and logical interpretation are the starting point. The need for a systematic interpretation arises when in order to understand the true meaning of the constitutional principles and rules it is necessary to establish their semantic connections with other provisions of the Constitution or the legislation in general. Thus, a systematic interpretation of does not only summarise the results of understanding of consistent meaning of a number of constitutional principles and rules, but also allows to reveal the system connections of the Constitution with the rest of the legislation at different levels.

The interpretation of the Constitution also requires political and historical and teleological interpretation. The use of the documents relating to the development of the Constitution and its adoption, – the alternative projects of the Basic Law, the reports of meetings of bodies taking part in the consideration of the draft constitution, transcripts of reports and speeches of participants of discussions, references, explanatory notes, review specialists – makes it possible to establish the real will of the legislator, diverse goals of constitutional precepts and also helps to identify the constitutional and legal meaning of the other legislative rules.

In order to carry out the reasoned constitutional interpretation the knowledge of purely legal factors conditioning the adoption of the act sometimes is not enough. It is necessary to take into account the non-legal factors, such as socio-political and socio-economic situation in the country at the time of the adoption of a legal rule. Clarification of the meaning of the legal rules based on the analysis of historical reasons, conditions and circumstances of their adoption is important in order to determine the goals and tasks pursued by the legislator when adopting this provision. In addition, consideration of non-legal factors in many ways permits to determine the cause of the so-called "dead" or "sleeping" constitutional rules, when at a certain historical stage, they are no longer used due to changes in social relations for which these rules were oriented.

When establishing and formulating the constitutional principles the Constitutional Court takes into account also the preamble to the Constitution, which is its integral part and has a policy character. Despite the fact that some scientists deny the normative nature of the preamble, the science and practice of constitutional development of the Republic of Belarus recognise the obvious fact that the objectives and principles enshrined in the preamble to the Constitution determine the content of the goals and principles that are enshrined and developed in other sections of the Constitution, define the vector of development of the constitutional system of the Republic of Belarus.

The generally recognised principles and rules of international law are of paramount importance in establishing and formulating the constitutional principles. This is determined by the relevant constitutional provisions: the Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith (Article 8.1); in its foreign policy the Republic of Belarus shall proceed from the principles of equality of states, non-use of force or threat of force, inviolability of frontiers, peaceful settlement of disputes, non-interference in internal affairs and other generally recognised principles and norms of the international law (Article 18.1).

Since the Constitutional Court shall exercise the interpretation of the constitutional principles and rules in the framework of a specific case, such an interpretation can be considered causal. However, the causal interpretation by the Constitutional Court is binding not only for the persons who are parties to the proceedings, but for all the other subjects of law. Such obligatory character of the interpretation by the Constitutional Court is due to two aspects: material and formal.

The material aspect is that since the causal interpretation of the Constitutional Court adequately fulfills the criteria of legality, rationality, scientific nature and fairness, it is used by other courts and law-enforcement

bodies in the settlement of cases related to similar relations. The crucial role is played by the exceptional status of the Constitutional Court as the sole state body exercising constitutional review, as well as specific authority and professionalism of the interpreter.

The formal aspect is that since the Constitutional Court's decision has obligatory character, consequently, interpretive legal provisions set forth in the reasoning part of this decision, are also binding for an indefinite circle of persons and a number of life situations. The determining factor is the semantic continuity of the reasoning and the operative parts of the decision of the Constitutional Court, mediated character of the latter due to legal positions and conclusions contained in the reasoning part.

In addition, it is important to emphasise that the causal interpretation by the Constitutional Court has the characteristics of an official interpretation in the sense that it is carried out by an official state body in the exercise of the interpretative powers, directly arising from the provisions of the law defining the competence and the functioning of the Constitutional Court.

It should also be noted that the legislator explicitly recognises the acts of the Constitutional Court as normative (Article 2.11 of the Law of the Republic of Belarus "On Normative Legal Acts of the Republic of Belarus"). Thus, since the decision of the Constitutional Court from the point of view of the legislator is a normative legal act, interpretative legal provisions contained in the decision automatically become normative.

The foregoing allows some researchers to speak about the dual legal nature of the interpretation of legal rules carried out by the Constitutional Court in the exercise of its powers, that is causal by form and normative by content.

5. What is a legal character of the constitutional principles? Are they considered to be the genesis of the existing constitutional framework? What emphasis is placed upon the fundamental principles by the constitutional court in relation to a particular constitutional right? Are basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe fundamental principles in connection with a specific constitutional right as complementary means of latter's interpretation?

The constitutional principles are a kind of legal principles that have the highest degree of normative generality, imperative normative value, forming together with the constitutional values the core of the constitution.

In the constitutional law, theory of constitutionalism after the study of the constitutional principles the conclusion on their diversity is made. This is due to the complexity and dynamism of constitutional reality including primarily constitutional provisions (goals, principles, tasks, rules, definitions, etc.) in constant development in the process of law-making. The constitutional

principles as having a direct (or indirect) constitutional expression or having the official status of fundamental, basic, guiding ideas as a result of constitutional interpretation together with existing between them various relationships play a significant role in the creation of the image of the constitutional reality, in determination, formation of the essence, spirit of the constitution, ensuring the unity of its rules. The process of interpretation of the constitution contributes to the further clarification of intraconstitutional relations, the formation of a certain consensus on the definition, the establishment of the system of constitutional principles, their hierarchy and relationships, as well as provides for their legitimacy, dynamism for the development of constitutional law.

The term "principle" is used in the rules of the Constitution of the Republic of Belarus for the direct expression of the basic constitutional provisions (Articles 7, 14, 18, etc.). For example, according to Article 7.1 of the Constitution the Republic of Belarus shall be bound by the principle of supremacy of law.

The Constitutional Court of the Republic of Belarus uses the constitutional principles of as a criterion of constitutionality of legal provisions, as well as a basis for developing legal positions in the course of their review.

In the decisions of the Constitutional Court such constitutional principles as the rule of law, mutual responsibility of the state and the individual, sovereignty of the people, separation of state power and interaction of its bodies, are developed by the Constitutional Court by comprehension of their meaning in the system connection with other principles of the Constitution. At the same time most of the constitutional principles (priority of human rights and freedoms and guarantees of their exercise, equality of all before the law, social justice, proportionality of restrictions of the human rights and freedoms) are interpreted by the Constitutional Court in relation to the specific constitutional rights and freedoms.

By way of example we can consider the understanding by the Constitutional Court of the constitutional principle of equality of all before the law.

The constitutional provision on the equality of all before the law and equal protection of rights and legal interests (Article 22 of the Constitution) is one of the fundamental principles of the state based on the rule of law, relations between the state and the individual, basis for the characteristics of the constitutional status of the individual. This principle shall be applied to the whole system of law, that by reason of features of legal regulation implies not only the possibility but also the need to enshrine in certain fields of legislation the special mechanisms of its realisation.

The principle of equality of all before the law describes the legal status of individuals in all spheres of society, including social life. In this area in the

Republic of Belarus as a social state the paramount importance is given to the constitutional requirement of respect of equality of guarantees of exercise of the social rights enshrined in the Constitution and laws. The Constitutional Court draws attention to the fact that, taking into account Articles 22 and 23 of the Constitution, the principle of equality of all before the law does not exclude the constitutionally based differentiation of legal regulation aimed at establishing the legal differences, benefits and preferences for certain categories of individuals (minors, persons with disabilities, etc.), on the condition that legal means used to achieve this goal are reasonable and proportionate to the protected values and goals (Decision of 23 March 2010 "On Equal Guarantees of Exercise of the Rights of Individuals to Protection against Unemployment").

The observance of the principle of equality, its effectiveness largely depend on the implementation of the principle of legal certainty. The Constitutional Court in its Judgment of 25 October 2004 "On the Conformity, of Resolutions of the State Tax Committee of the Republic of Belarus of 8 May 2001 No. 62 "On the Procedure of Payment of Income Tax by Foreign Legal Entities Receiving Income from Securities Transactions from Sources in the Republic of Belarus" and of 25 May 2001 No. 72 "On Approval of the Instruction on Taxation of "another income" of Foreign Legal Entities Not Conducting their Activities in the Republic of Belarus through the Permanent Representation" to the Constitution and Legislative Acts of the Republic of Belarus, International Legal Acts Ratified by the Republic of Belarus" noted that the constitutional principle of equality conditions the requirement of certainty and clarity of legal regulation, because only in case of the common understanding and interpretation of legal rules by all law-enforcement bodies such equality can be ensured. The uncertainty of the content of legal regulation creates, in practice, a conflict situation leading to the subjective discretion in the law-enforcement. This violates the constitutional principles of the rule of law and equality of all before the law and the basic principles of taxation. In a state based on the rule of law normative legal acts on taxation shall contain clear and understandable rules; everyone shall know what taxes, when and how he is obliged to pay.

Thus, the constitutional principle of equality of all before the law, having a universal value, shall be applied to all entities, to the entire system of legal regulation, all branches of law, guarantees protection against all forms of discrimination; its "presence" shall cover all the rights and freedoms both individually and in aggregate.

In addition, certain constitutional principles (separation of state power and interaction of its bodies, non-retroactivity of the law, except in cases when it mitigates or revokes the responsibility of individuals, proportionality of restrictions of the human rights and freedoms) are used by the Constitutional

Court as an independent foundation when reviewing the constitutionality of provisions of normative legal acts. For example, in the Judgment of 18 February 2000 "On the Conformity of Paragraph 2 of the Edict of the President of the Republic of Belarus of 18 January 1999 No. 30 "On the Interpretation of the Edict of the President of the Republic of Belarus of 8 February 1995 No. 52" to the Constitution of the Republic of Belarus" the Constitutional Court, on the basis of Article 104.6 of the Constitution, took into account the principle of non-retroactivity of the law, except in cases when it mitigates or revokes the responsibility of individuals, when checking the constitutionality of the provision of the Edict reviewed.

When checking the constitutionality of the rules of the Banking Code of the Republic of Belarus, in particular the provisions obliging legal entities, when carrying out financial operations, to carry out the identification of participants in order to impede the financing of terrorism, the Constitutional Court applied the principle of proportionality noting that the restrictions, regardless of the reason for their establishment, should ensure a proper balance between the interests of individuals and the state, to be legally admissible, socially justified, meet the requirements of justice and be appropriate, proportionate and necessary for the protection of other constitutionally significant values (Decision of 5 July 2012 "On the Conformity of the Law of the Republic of Belarus "On Making Alterations and Addenda to the Banking Code of the Republic of Belarus" to the Constitution of the Republic of Belarus").

Execution of the constitutional principles is based on the constitutional provisions on the supremacy of the Constitution and the direct action of its rules. One of the tasks of the Constitutional Court, provided for in Article 6 of the Code of the Republic of Belarus on Judicial System and Status of Judges, is to ensure the supremacy of the Constitution and its direct effect on the territory of the Republic of Belarus. On this basis the Constitutional Court in its decisions has repeatedly pointed to the role of the constitutional principles as fundamental foundations having the priority over other legal stipulations, as guidelines for the law-making and law-enforcement.

6. What are the basic principles that are applied most by the constitutional court? Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution does the constitutional court has made in forming and developing of such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.

In its decisions the Constitutional Court applies most the constitutional principles of sovereignty of the people, separation of powers and interaction of their bodies, the rule of law, equality and justice, proportionality of restrictions on rights and freedoms of the individual, integrity and equality of forms of ownership and their legal protection, free utilisation of abilities and property by all economic actors. For example, in the Decision of 26 March 2009 "On the Rules of Procedure of the Council of Republic of the National Assembly of the Republic of Belarus" the Constitutional Court noted 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 (Article 3.1 of the Constitution). In the indirect way the people, individuals exercise their power, in particular, through a representative body – the Parliament (the National Assembly), consisting of two Houses – the House of Representatives and the Council of the Republic, that are obliged to represent the interests of individuals by virtue of their legal nature (Article 90 of the Constitution). According to the Constitutional Court, an application with the initiative to review the constitutionality of a normative legal act is not only derived from Article 3.1 of the Constitution, but also belongs to every individual on the basis of his constitutional right to participate (directly or indirectly) in settlement of state affairs (Article 37 of the Constitution), that is one of the most important forms of exercising of power by the people. Every individual shall have the right to submit the initiative on review of constitutionality of a normative legal act before the Constitutional Court through the Council of the Republic, that is through an indirect way.

When considering the legal status of the Government of the Republic of Belarus as the central body of state executive power concerning its compliance with the constitutional rules, the Constitutional Court in its Decision of 8 July 2008 "On the Conformity of the Law of the Republic of Belarus "On the Council of Ministers of the Republic of Belarus" to the Constitution of the Republic of Belarus" concluded that the content of the principle of independence of state bodies arising from article 6 of the Constitution, which enshrines the principles of the state power on the basis of its division into legislative, executive and judicial powers, is revealed through the system of checks and balances defined by the Constitution when state bodies interact, restrain and balance each other.

A special emphasis should be put on the principle of legal certainty as an integral element of the constitutional principle of the rule of law.

Legal certainty is one of the most important features of the law arising from the nature of legal rules, so it has been and remains in the focus of legal scholars, law-enforcement bodies, bodies of constitutional review. The certainty

of legal rules is a prerequisite for the exercise of the constitutional rights and freedoms of an individual.

In the Message “On Constitutional Legality in the Republic of Belarus in 2008” the Constitutional Court noted that law-making activity should be based on the principle of legal certainty, which requires clarity, accuracy, consistency, logical coherence of legal rules. The Constitutional Court continued subsequently to understand the essence and content of legal certainty, to comprehend its importance for the purposes of ensuring the constitutional legality in the state. In particular, in the messages on constitutional legality in the state in 2009 and 2011 the Constitutional Court determined the legal certainty as one of the criteria for the constitutionality of provisions of laws checked in the exercise of obligatory preliminary review and one of the elements of the rule of law. Compliance with the principle of legal certainty, according to the Constitutional Court, anticipates an ambiguous understanding and, therefore, unlawful application of legal rules entailing violation of the rights and legitimate interests of individuals. By ensuring the principle of legal certainty in the law-making there shall be conditions for consistency and predictability of the law-enforcement practice, the proper ensuring of the human rights and freedoms and guarantees of their exercise. Violation of the principle of legal certainty, on the contrary, undermines public confidence in the law and activities of state bodies.

In a state based on the rule of law the principle of legal certainty takes up a universal character, the special importance in the field of observance and protection of the human rights and freedoms, application of criminal and administrative law, regulation of tax relations, it becomes an important condition for the development of economic activities.

In that way, for the Constitutional Court the principle of legal certainty stands as one of the criteria for assessment of the constitutionality of not only law-making, but also law-enforcement practice. The uncertainty of legal rules creates conditions or is the basis for their violation or non-observance in the law-enforcement as that gives the possibility for abuse of power, violations of the rights, freedoms and legitimate interests of individuals and organisations.

Under the influence of the Constitutional Court's decisions, that gave signals on the uncertainty of legal rules (for example, the Decision of 7 July 2010 “On the Conformity of the Law of the Republic of Belarus “On Facilities only Owned by the State and Activities Carried Out exclusively by the State” to the Constitution of the Republic of Belarus”), legal certainty affirmed its importance in the sense of justice of the legislator as a necessary condition for ensuring legal security. As a result, the Code of the Republic of Belarus on Judicial System and Status of Judges (Article 22.3) empowered the Constitutional Court to consider cases and to make decisions related to legal

uncertainty. In Article 158.1 of the Law of the Republic of Belarus "On the Constitutional Proceedings" the legislator established that applications of state bodies, other organisations, individuals including individual entrepreneurs containing information on existence of legal gaps, collisions and legal uncertainty in normative legal acts submitted to the Constitutional Court shall be the ground for initiation of the proceedings on elimination of legal gaps, collisions and legal uncertainty in normative legal acts. It is important to note that according to Article 158.2 of the said Law the proceedings on elimination of legal gaps, collisions and legal uncertainty in normative legal acts may be initiated by the Constitutional Court on its own initiative.

The practice of the Constitutional Court concerning consideration of applications submitted by individuals and organisations on elimination of legal gaps, collisions and legal uncertainty in normative legal acts is aimed at strengthening the constitutional principle of the rule of law, ensuring and protection of rights and freedoms. For example, on 5 May 2014 the Constitutional Court initiated proceedings on the basis of the application of an individual who was refused a pension due to the fact that among the documents confirming the right to the pension, the applicant did not present the passport of the citizen of the Republic of Belarus as a document establishing the identity, age, place of residence and citizenship. The applicant explained the absence of the passport by refusal of its receipt due to the religious beliefs because of the personal (identification) number. After having considered the case, the Constitutional Court in its 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 realisation of the constitutional right to social security as well as the principle of social justice 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.

The said decision of the Constitutional Court was executed by the Government of the Republic of Belarus through the adoption in 2015 of the relevant resolution which establishes a list of documents, besides the passport, confirming the right to the pension and the possibility of its granting.

Thus, the Constitutional Court in a number of decisions has formulated and has developed the principle of legal certainty. The mechanism of its ensuring was enshrined, among others, in chapter 24 of the Law "On the Constitutional Proceedings" which regulates the on elimination of legal gaps, collisions and legal uncertainty in normative legal acts.

The constitutional principle of the priority of human rights and freedoms and guarantees of their exercise is recognised as the inalienable principle of the state based on the rule of law. Moreover, the priority of the rights and freedoms

and guarantees of their exercise as the supreme value and goal of the society and the State is enshrined in Article 2 of the Constitution of the Republic of Belarus. From this constitutional principle are directly derived the human right to judicial protection and the task of the Constitutional Court concerning the protection of the human rights, that is enshrined in Article 6 of the Code on Judicial System and Status of Judges. According to all accounts, the right to judicial protection is both a guarantee and a way to ensure all the rights and freedoms. The Constitutional Court by understanding the constitutional and legal meaning of legal rules formulates its legal positions aimed at the development and ensuring of the right to judicial protection, including access to constitutional justice.

The Constitutional Court decisions made on matters related to the exercise of the right to judicial protection, are enshrined in the legislation giving thereby universal meaning to the constitutional principle of the priority of human rights and freedoms and guarantees of their exercise.

In particular, in the Decision of 27 May 2010 "On the Procedure of Exercising the Right of Persons Convicted to Arrest, Imprisonment, Life Imprisonment, Persons in Detention and Administrative Detainees to Appeal before the Court against Penalties Applied to Them" the Constitutional Court recognised the need in order to exercise the constitutional right of everyone to judicial protection to determine by law the procedure and features of consideration of complaints of persons convicted to arrest, imprisonment, life imprisonment, persons in detention and administrative detainees before the court against disciplinary penalties applied to them.

The legal position stated in the said decision of the Constitutional Court was implemented in the Law of the Republic of Belarus of 4 January 2012 "On Making Alterations and Addenda to Certain Laws of the Republic of Belarus" according to which chapter 29 of the Civil Procedure Code of the Republic of Belarus is added by paragraph 6^1 "Features of consideration and settlement of complaints of persons convicted to arrest, imprisonment, life imprisonment, persons in detention against penalties applied to them and of administrative detainees against disciplinary penalties applied to them".

The Republic of Belarus applies the "European model" of constitutional review exercised by the Constitutional Court. This model is characterised by mainly two kinds of individual's access to constitutional justice: direct and indirect. Based on the conclusion of the Venice Commission, made in the issue of the 2010 study, indirect access means that any individual question reaches the constitutional court for adjudication through the intermediary of another body, whereas direct access comprises all legal means given to individuals to directly petition the constitutional court without the intervention of a third body. (paragraph 54).

The mechanism of indirect access to constitutional justice in the Republic of Belarus is based on the initiative applications submitted by individuals and organisations to the competent bodies, that in the issue of consideration thereof shall make appropriate proposals to the Constitutional Court. Initiative applications in their essence is an indication that individuals and organisations have exhausted all legal means to protect their rights and legitimate interests.

The practice of the Constitutional Court has ensured the formation of indirect access of individuals and organisations to constitutional justice, its development in legislative acts.

Indirect access of individuals and organisations to constitutional justice, as follows from Articles 60 and 116 of the Constitution, was enshrined in Article 22 of the Code on Judicial System and Status of Judges, as well as in Chapter 5 of the Law "On the Constitutional Proceedings" regulating issues of submission of proposals to the Constitutional Court by authorised bodies, submission of initiative applications and procedure of their consideration by authorised bodies.

At the present time a draft law on the further improvement of the mechanism of indirect access to constitutional justice for individuals and organisations has been submitted to the Parliament.

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in Constitutions and judicial review of constitutional amendments.

1. Do the constitutional principles enjoy certain degree of superiority in relation to other provisions in the basic law? What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?

In the existing theory and practice of constitutionalism in the Republic of Belarus there is a certain "conceptual" hierarchy of constitutional provisions.

Thus, in the preamble of the Constitution of the Republic of Belarus are enshrined the purposes of adoption of the Basic Law – the assertion of the rights and freedoms of every citizen of the Republic of Belarus, maintaining civic concord, firm foundations of government by the people and a state based on the rule of law, as well as such basic ideas that can be considered as principles:

the principle of the responsibility of the people of the Republic of Belarus for the present and future of Belarus;

the principle of the adherence of the people of the Republic of Belarus to the values common to all mankind;

the principle of the inalienable right to self-determination.

In the text of the others (except the preamble) structural parts of the Constitution are enshrined, in particular, such terms and concepts as the "supreme value", "supreme goal" (Article 2.1, Article 21.1), the principle (s) (Articles 7.1, 8.1, 18).

For more information on the constitutional principles and their classification see the information related to questions 1-6 of the section I of the Questionnaire.

The Constitutional Court of the Republic of Belarus believes that such concepts used in the Constitution as "goal", "value", "principle" taking into account their importance and substantive characteristics permit to establish a certain hierarchy within the constitutional provisions. The Constitutional Court in its decisions taken in the exercise of the preliminary review of the constitutionality of laws and the subsequent review of the constitutionality of normative legal acts, provides for interpretation of the constitutional provisions in their totality (goal, value, principles, rule), concluding to what extent the normative act (provisions of the act) under review meets the constitutional goals and contributes to their achievement; if guarantees and mechanisms enshrined in the normative act under review provide for proper and effective realisation of the constitutional values, principles and rules.

The absence in the Constitution of a specific rule regulating the relations identical with the object regulated by the normative act under review shows that the Constitutional Court in the exercise of review of constitutionality is based on the rules of the Constitution of a higher order, defining the purpose of legal regulation and aimed at ensuring the guarantee and realisation of specific values on condition of compliance with the relevant constitutional principles.

The practice of the Constitutional Court is based on the fact that in the absence of explicit rules on the hierarchy of certain constitutional provisions directly enshrined in the Constitution the relevant hierarchy results from the meaning, spirit of the constitutional matter as caused primarily by their orientation toward achievement and realisation of the mentioned constitutional goals and values, ensuring the constitutionalization of all forms of activities of the society and the state.

The information related to the question 5 of the section I of the Questionnaire it was explained that generally recognised principles and rules of the international law are important in establishing and formulating the constitutional principles. As noted, this is determined by the constitutional

provisions stipulating 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; Conclusion of treaties that are contrary to the Constitution shall not be permitted (Articles 8.1 and 8.3). In its foreign policy the Republic of Belarus shall proceed from the principles of equality of states, non-use of force or threat of force, inviolability of frontiers, peaceful settlement of disputes, non-interference in internal affairs and other generally recognised principles and norms of the international law (Article 18.1).

By virtue of Articles 116.1 and 116.4 of the Constitution review of the constitutionality of normative acts in the State shall be exercised by the Constitutional Court, the Constitutional Court shall deliver judgments on conformity of laws, decrees and edicts of the President of the Republic of Belarus, resolutions of the Council of Ministers of the Republic of Belarus, obligations under treaties and other international commitments of the Republic of Belarus, acts of interstate formations to which the Republic of Belarus is a party, other normative legal acts not only to the Constitution but also to international legal acts ratified by the Republic of Belarus.

Taking into account the above-mentioned provisions of the Constitution, as well as the provisions enshrined in its preamble, Section I "Fundamentals of the Constitutional System", it is possible to make a legitimate conclusion that as the priority and the highest legal force of the Constitution are enshrined in the national legal system, at the present time provisions of international law can be applied on condition of respect of the sovereign right of the Belarusian people to determine its own path of development, maintaining the democratic, social and legal character of the Belarusian state, inadmissibility of derogation of the constitutional rights and freedoms of individuals.

2. What approach has the constitutional court taken in terms of determining a hierarchy within the constitution? Is it possible to conclude from the jurisprudence of the constitutional court that it has given principal status to some constitutional principles over the rest of the basic law?

The Constitutional Court of the Republic of Belarus, when exercising the constitutional review of the constitutionality of normative legal acts in the state, formulates its legal positions primarily on the basis of the fact to what extent constitutionalization of public relations is ensured through the legal regulation, the legal mechanisms to achieve the constitutional goals and values, consistent implementation in rule-making and law-enforcement of the constitutional principles and rules, ensuring guarantees of the realisation and protection of the rights and freedoms as the highest constitutional values are established.

In its activities to ensure the supremacy of the Constitution of the Republic of Belarus the Constitutional Court strengthens the effect of the constitutional principles in the legal system of the state, considering these principles as fundamental foundations, guidelines, that are mandatory for all subjects of law, focusing on it not only the participants in the law-making process, but also law-enforcement bodies. In the Message "On Constitutional Legality in the Republic of Belarus in 2000" the Constitutional Court emphasised that the legal principles are universal and have a regulating effect on all spheres of social relations. The compulsory nature of these principles, according the Constitutional Court, consists in their priority in respect of other legal stipulations as well as in the extension of their effect on all subjects of law.

The Constitutional Court proceeds from the fact that rating of certain constitutional principles as explicit or implicit determines only the form of expression of the substantive characteristics, but does not prejudge in most cases their relationship to each other and therefore a strict hierarchy in relation to each other. The hierarchy can be established in terms of certain explicit principles that are complex in terms of their content and some implicit principles may be deduced from them. For example, the principle of the rule of law which includes a number of subordinate implicit principles.

At the same time, in order to characterise a phenomenon or a legal rule from the point of view of the Constitution the utmost importance will belong to those constitutional principles that are the basis of the relevant legal regulation and define the essence of the evaluated phenomenon or rule. In particular, when assessing the constitutionality of the functioning of justice in the state as a social phenomenon such principles as guarantee of justice, the principle of legality, the principle of independence of the judiciary in the administration of justice, the principle of justice on the basis of the adversarial character and equality of the parties in the process, the principle of accessibility of legal assistance, the principle of freedom to appeal against court decisions, the principle of compulsory character of court decisions for all individuals and officials shall prevail.

The importance of the constitutional principles was defined in detailed form in the Message of the Constitutional Court "On Constitutional Legality in the Republic of Belarus in 2014".

The Constitutional Court pointed out that the Constitution is the basis of the strategy of sustainable development of the society and state. The principles and rules enshrined therein shall guarantee not only the rights and freedoms of individuals but also the stability of the constitutional system, which permits to determine the perspectives of the development of the Republic of Belarus as a democratic social state based on the rule of law.

According to the Constitutional Court in modern conditions dynamic and often unpredictable development of social relations provides for an appropriate legal regulation on the basis of the Constitution. Revealing multifaceted content of constitutional principles, their consistent and purposeful application to changing legal relations, their implementation in the legislation and law-enforcement are necessary conditions for ensuring the dynamism of the constitutional and legal regulation.

The Constitutional Court protecting the constitutionally guaranteed human rights and freedoms, the constitutional order, ensuring the supremacy of the Constitution formulates legal positions in its judgments and decisions by interpreting the constitutional principles and rules with regard to specific legal relations. This activity of the Constitutional Court contributes to effectiveness of the constitutional and legal regulation, strengthening of constitutional legality.

In the publications of legal scholars and practitioners the similarity of views on the leading role and the importance of the constitutional principles in determining the overall strategy of the development of other fundamental constitutional provisions and sub-constitutional legislation can be observed.

3. How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law? How the constitution was established originally and does it explicitly provide for unamendable (eternal) provisions? Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law?

The effect of the Constitution of the Republic of Belarus and procedure of its changing are defined in Section VIII of the Constitution. According to Articles 138-140 the Constitution may be changed by drafting and adoption of the Law on Making Alterations and Addenda to the Constitution (hereinafter, unless otherwise mentioned, – the constitutional law), as well as by making alterations and addenda through a referendum.

The issues of adoption of the new Constitution of the sovereign Belarus at the beginning of the 1990s were decided in accordance with the Constitution of the Byelorussian Soviet Socialist Republic of 1978. Article 97 of the Constitution of 1978 stipulated that the adoption of the Constitution, making amendments thereto shall be carried out exclusively by the Supreme Council of the Byelorussian Soviet Socialist Republic as the highest organ of state power of the Byelorussian SSR.

The new Constitution was adopted on 15 March 1994 and published on 30 March 1994 (hereinafter – the Constitution of 1994).

According to Article 83.2 of the Constitution of 1994, the issues of adoption and making amendments to the Constitution shall fall within the competence of the Supreme Council, which, by virtue of Article 79.1 of the Constitution, shall be the supreme representative standing body and the sole legislative body of state power of the Republic of Belarus. In accordance with Article 149.1 of the Constitution of 1994 the Constitution, laws on making alterations and addenda thereto, on enactment of the Constitution and these laws, acts on the interpretation of the Constitution shall be considered as adopted if they are approved by at least 2/3 of the elected deputies of the Supreme Council of the Republic of Belarus.

At the same time, Article 149.2 of the Constitution of 1994, stipulating alterations and addenda to the Constitution may be made through a referendum, permitted to bring an issue on alterations and addenda to the Constitution of 1994 Constitution for the republican referendum which took place on 26 November 1996, in the issue of which the draft constitution proposed by the President of the Republic of Belarus was adopted by a majority of votes of citizens included in the voting lists – the Constitution of the Republic of Belarus of 1994 (with changes and additions).

Since the Constitution does not provide otherwise, it can be concluded that alterations and addenda may concern any structural element of the Constitution: the preamble, sections, chapters, articles, parts, paragraphs and provide for clarification of the content and updating titles of sections, chapters.

According to Article 140.3 of the Constitution sections I “Fundamentals of the Constitutional System” (Articles 1-20), II “Individual, Society and the State” (Articles 21-63), IV “President, Parliament, Government, Court” (Articles 79 -116), VIII “Effect of the Constitution of the Republic of Belarus and Procedure of its Changing” (Articles 137-140) can be changed only by a referendum. Consequently, the range of issues that may relate to alterations and addenda to the Constitution made by means of the constitutional law, adopted by the Parliament, is limited. Thus, the constitutional law may provide for amendments and additions to the Constitution concerning only Section III “Electoral System. Referendum” (Articles 64-78), Section V “Local Government and Self-Government” (Articles 117-124), Section VI “Prosecutor’s Office. Committee of State Control” (Articles 125-131), Section VII “Financial and Credit System of the Republic of Belarus” (Articles 132-136) and Section IX “Final and Transitional Provisions” (Articles 141-146).

In that way, the Constitution does not contain provisions on the impossibility of changing any of its provisions, i.e. the limits of the possible revision are not defined. Neither the initial Constitution of 1994 nor the Constitution of 1994 (with changes and additions) do not provide for the existence of unamendable (“eternal”) provisions.

At the same time, the Constitution establishes the requirements concerning the features of:

the subjects of the constitutional (legislative) initiative (Article 138);

the procedure for adoption of the law on making alterations and addenda to the Constitution (Article 139);

voting for the law on making alterations and addenda to the Constitution (Article 140.1).

Thus, Article 138 of the Constitution lists the subjects having the right to raise the question on making alterations and addenda to the Constitution. According to this Article, the issue of changing and adding the Constitution shall be considered by the Houses of the Parliament on the initiative of the President or of no less than 150 thousand citizens of the Republic of Belarus eligible to vote.

This circle of subjects of the constitutional initiative is limited (the President of the Republic of Belarus and individuals), in contrast to the circle of subjects of the usual legislative initiative, which also includes deputies of the House of Representatives, the Council of the Republic of the National Assembly of the Republic of Belarus, the Government of the Republic of Belarus.

Since the Constitution does not specify the procedural features of exercising the right to initiate alterations and addenda to the Constitution by individuals, this issue should be guided by the general rules laid down in the Law of the Republic of Belarus of 26 November 2003 “On the Procedure for Realisation of the Right of Legislative Initiative by the Citizens of the Republic of Belarus”.

The collection of signatures in an amount of not less than 150 thousand shall be carried out by the initiative group which represents the interests of individuals when introducing the draft law to the lower House of the Parliament.

The Parliament, in that way, does not have the right to adopt the law on making alterations and addenda to the Constitution on its own initiative, although it is empowered to adopt such a law, if the initiative comes from the President of the Republic of Belarus or individuals.

Nevertheless, this does not mean that the Parliament is excluded from the constitutional process manifesting its own initiative on the need to revise the Constitution. The Parliament may play the role of the initiator of the revision of the Constitution on the basis of Article 74 of the Constitution stipulating that a republican referendum on revision of the Constitution shall be called by the President of the Republic of Belarus on his own initiative as well as on the proposal of the House of Representatives and the Council of the Republic

passed at their separate sittings by a majority of votes of the composition (full composition) of each House (Article 74.1).

According to Article 74.2 of the Constitution the President shall, after the submission in accordance with the law for his consideration of the proposals on holding the referendum of the House of Representatives and the Council of the Republic, call a republican referendum.

It is necessary to note the feature of the wording of Article 138 of the Constitution, as the use of the word combination "The issue of changing and adding the Constitution shall be considered by the Houses of the Parliament..." At the same time, in accordance with Article 97.1.1 of the Constitution the House of Representatives shall consider, on the proposal of the President or on the initiative of no less than 150 thousand citizens of the Republic of Belarus eligible to vote, draft laws on introducing changes and additions into the Constitution.

The analysis of the content of Article 138 of the Constitution in conjunction with the mentioned Article 97.1.1 of the Constitution allows to conclude that the draft law should be submitted to the House of Representatives in the exercise of the legal (constitutional) initiative and the title and the content of the draft law should indicate that it concerns namely alterations and addenda to the Constitution.

The law on making alterations and addenda to sections III, V, VI, VII and IX of the Constitution, that is possible without holding a referendum, shall be adopted after the two discussions and approvals by the Parliament with an interval of at least three months (simple double vote). By virtue of requirements of Article 140.1 of the Constitution the law on making alterations and addenda to the Constitution shall be deemed to be adopted if no less than two thirds of the full composition of each House of the Parliament voted for them Act to amend the Constitution of the amendments shall be deemed adopted if voted for by at least two-thirds of the full composition of each House of Parliament. It is 74 deputies for the House of Representatives, that is 2/3 of the 110 deputies, and 44 members of the Council of the Republic, that is 2/3 of the 64 members.

Since the Constitution does not set other requirements for the procedure of adoption (discussion and approval) of the constitutional laws than those expressly provided in Articles 139.1 and 140.1 of the Constitution, the legislative process shall be carried out according to the rules applicable in respect of any draft law, set out in Article 100 of the Constitution and regulated in a specific manner by the Law "On the National Assembly of the Republic of Belarus" and the Rules of Procedure of the Houses of the Parliament.

It should also be noted that alterations and addenda to the Constitution shall not be made by the Parliament during a state of emergency as well as during the last six months of the powers of the House of Representatives of the

National Assembly of the Republic of Belarus. These restrictions for the Parliament concerning the time for possible amendments to the Constitution are enshrined in Article 139.2 of the Constitution.

The adoption of alterations and addenda to the Constitution through a referendum is carried out according to Article 140.2 of the Constitution. This means that a decision on changing or adding the Constitution by means of a referendum shall be deemed to be adopted if the majority of citizens on the electoral roll voted for it.

As concerns the question of changes of the constitutional principles in the national jurisdiction the following information may be useful.

As already mentioned, in the issue of the republican referendum (1996) the Constitution of the Republic of Belarus of 1994 (with changes and additions) was adopted. Some amendments made to the Constitution have filled the constitutional articles with an additional content, that resulted in the opportunity not only to clarify the substantive characteristics of already existing constitutional principles, but also to formulate new ones. For example, the more precise definition of the content of Article 13 of the Constitution determined the emergence of the principle of the free utilisation of abilities and property for entrepreneurial and other types of economic activities which are not prohibited by law.

4. Should constitutional amendment procedure be subjected to judicial scrutiny or should it be left entirely up to the political actors? What is the prevailing legal opinion in this regard among academic scholars and other societal groups in your jurisdiction?

It seems that the procedure for making alterations and addenda (amendments) to the Constitution of the Republic of Belarus should be subject to constitutional review, as the respect of this procedure (even if it is determined at the constitutional level in the very general terms) shows the proper implementation of the constitutional provisions enshrining the procedure to amend the Constitution.

For the same reason, the procedure for amending the Constitution can not be attributed to the exclusive prerogative of the political actors, that are at the least “bound” by reasons of constitutionality when taking a decision on this issue. For the sake of political situation (e.g., based on the prediction of the course of the election campaign, party purposes, etc.) politicians may be interested in establishing a procedure for amending the Constitution out of the scope of the constitutional review.

Representatives of the legal community of the Republic of Belarus, expert organisations have expressed the need to establish a full-scale constitutional

review of the procedure for amending the constitution, that is shared by the legislator and has already been reflected in the rules of the Law of the Republic of Belarus "On the Constitutional Proceedings" (see also information related to question 5 of section II of the Questionnaire).

5. Does the constitution in your jurisdiction provide for constitutional overview of the constitutional amendment? If yes, what legal subjects may apply to the constitutional court and challenge the constitutionality of the amendment to the basic law? What is the legally-prescribed procedure of adjudication in this regard?

The Law on Making Alterations and Addenda to the Constitution of the Republic of Belarus shall be checked by the Constitutional Court of the Republic of Belarus in the exercise of obligatory preliminary review of the constitutionality of laws adopted by the Parliament before they are signed by the President of the Republic of Belarus.

The obligatory preliminary review of constitutionality of laws excludes the need for the subject of law to submit an appropriate proposal on the review of the constitutionality of the adopted law. According to Article 1 of the Law of the Republic of Belarus "On the Constitutional Proceedings" the preliminary review is the exercise by the Constitutional Court of obligatory check of the constitutionality of laws adopted by the Parliament before they are signed by the President of the Republic of Belarus. Consequently, the laws submitted to the President of the Republic of Belarus for the signature, are automatically "redirected" by the Administration of the President of the Republic of Belarus to the Constitutional Court for the obligatory review.

At the same time, by virtue of the current legislation on the constitutional proceedings the constitutional laws adopted by the referendum can not be subject to constitutional review.

The procedure for exercising the review of constitutionality of the law on making alterations and (or) addenda to the Constitution is established by the Chapter 14 of the Law "On the Constitutional Proceedings" which contains the rules regulating the proceedings on review of the constitutionality of the law adopted by the Parliament in the exercise of obligatory preliminary review.

According to Article 102 of the Law "On the Constitutional Proceedings" the consideration of the case on review of the constitutionality of the law on making alterations and (or) addenda to the Constitution in the exercise of obligatory preliminary review shall be held with the use of the oral form of the constitutional proceedings in accordance with the procedure of constitutional proceedings defined by the present Law and other legislative acts taking into account the features of the case.

The scope of review of the constitutionality of the law in the exercise of obligatory preliminary review is defined in Article 54 of the Law “On the Constitutional Proceedings” stipulating that its conformity to the Constitution, the international legal acts ratified by the Republic of Belarus shall be established on the basis of:

the content of rules;

the form;

the differentiation of the competence between the state bodies, other state organisations, officials, and also between the Republic of Belarus and the interstate formation;

the procedure of its adoption.

Since the legislator does not provide for otherwise, from Article 105 of the Law “On the Constitutional Proceedings” it follows that in the issue of the consideration of the case on review of the constitutionality of the law adopted by the Parliament of the Republic of Belarus in the exercise of obligatory preliminary review the Constitutional Court shall make the decision on its conformity or non-conformity to the Constitution of the Republic of Belarus, international instruments ratified by the Republic of Belarus.

Therefore, the main feature of the procedure of checking the law on making alterations and (or) addenda to the Constitution is the exercise by the Constitutional Court of the obligatory preliminary review using the oral form of constitutional proceedings, whereas in respect of other laws in accordance with Article 101.1 of the Law “On the Constitutional Proceedings” the written form of the constitutional proceedings shall be used.

The possibility to check the constitutionality of the law on making alterations and (or) addenda to the Constitution in the exercise of obligatory preliminary review by the Constitutional Court, which was enshrined in the Law “On the Constitutional Proceedings” has not caused any objections from the legal community and expert organisations neither at the stage of endorsement of the draft law nor later.

Background: During the period of validity of the Constitution the Parliament has not adopted laws on making alterations and (or) addenda to the Constitution. Initially, the Constitution of 1994 was amended in the issue of the republican referendum of 26 November 1996. Amendments to Article 81.1 of the Constitution were also adopted via the republican referendum of 17 October 2004, as required by Article 140.3 of the Constitution.

As a general rule, the check of the constitutionality of the law in the exercise of the obligatory preliminary review does not impede the check of the constitutionality of this law in the exercise of the subsequent review its entry into force. It seems that the above-mentioned rule is “out of work” in respect of the constitutional laws.

Making alterations and (or) addenda to the Constitution by means of the law by virtue of traditions of the national legal system does not mean that at the same time two types of instruments are applied:

the Constitution itself;

the law on making amendments to the Constitution.

The rules of this law, if adopted by the Parliament in accordance with the requirements of the Constitution, after its signing by the President of the Republic of Belarus and its entry into force become an integral part of the Constitution.

In such a case it is impossible to raise the issue of checking the constitutionality of constitutional provisions, that have been already modified (amended) by the law on making alterations and (or) addenda to the Constitution in the exercise of obligatory preliminary review according to the rules of Chapter 14 of the Law "On the Constitutional Proceedings" in the exercise of the subsequent review. Moreover, the possibility of the subsequent constitutional review of constitutional rules is not allowed under the provisions of Article 116.4 of the Constitution.

6. Is the constitutional court authorised to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds? In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court's reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? Please, provide examples from the jurisprudence of the constitutional court.

The answers to these questions are actually given in the information related to the question 5 of section II of the Questionnaire, so it seems reasonable to give the following additional arguments (concerning the essence of the issues raised).

Taking into account the power of the Constitutional Court of the Republic of Belarus to exercise the obligatory preliminary review of constitutionality of laws adopted by the Parliament before they are signed by the President of the Republic of Belarus (Article 22 of the Code of the Republic of Belarus on Judicial System and Status of Judges), the features of the proceedings on review of the constitutionality of the law on making alterations and (or) addenda to the Constitution of the Republic of Belarus, adopted by the Parliament in the exercise of obligatory preliminary review (Article 102 of the Law of the Republic of Belarus "On the Constitutional Proceedings"), it should be noted

that since these laws do not provide otherwise, the Constitutional Court is empowered to check the constitutionality of amendments made to the Basic Law in terms of both substantive and procedural law.

In practice, there were no cases when the Constitutional Court assessed the constitutionality of the amendments made to the Constitution in the exercise of obligatory preliminary review (due to the absence of such laws). As already mentioned, the amendments were made to the Constitution twice by the republican referenda (in 1996 and 2004).

It is necessary to proceed from the fact that alterations and addenda made to the constitution should not destroy the constitution, unity and integrity of its provisions. This necessitates the inclusion in the constitutional process of special mechanisms that prevent arbitrary interference in the constitutional matter and guarantee the respect of the substantive and formal limits for modification of the constitutional text.

In this regard, it seems that the Constitutional Court when reviewing the constitutional law on making amendments in the exercise of the preliminary review shall be guided not only by compliance with the formal requirements set out in the above-mentioned Articles 138-140 of the Constitution concerning special procedures of making amendments to the Basic Law, but also, when identifying the meaning and spirit of the new rules within its competence, the Court shall establish their conformity (harmony) with the foundations of the constitutional order, especially the goals of democratic social state based on the rule of law, the ideas of sovereignty and democracy, respect for the human rights and freedoms and ensuring the guarantees for their implementation, ensuring the principle of separation of powers and their independence, equal protection of all forms of property, ideological diversity and pluralism of opinions.

At the same time the procedural and substantive requirements for the amendments to the Constitution do not compete with each other, because only in a consistent unity they provide for the supremacy of the Constitution and they are a due barrier for unfounded interference in its text.

In addition, the procedure for checking the constitutionality of the law on making amendments to the Constitution in the exercise of obligatory preliminary review by the Constitutional Court is not a stage of the law-making process: the Constitutional Court does not take part in the process of adoption of the amendment and the exercise of constitutional review can not be considered as evidence of “politicisation of the judiciary”.

It also seems that the source of granting powers to the Constitutional Court to review the constitutionality of amendments to the Constitution shall be first and foremost the Constitution itself or laws defining the competence of the Constitutional Court.

The possibility of exercising these powers by virtue of the traditions and practices established in the legal system of a particular State shall not be excluded. We believe that in this case the basis for the exercise of such powers shall be the main mission of the Constitutional Court – to exercise the review of the constitutionality of normative acts and to ensure the supremacy of the Constitution.

With regard to the legal consequences of the decision of the constitutional court recognising the constitutional amendment not to be conforming to the Constitution, it seems that these effects should correlate with approaches that have been established in the legal system of each particular State both in terms of fixed legal regulations and law-enforcement practice aimed at exclusion of unconstitutional provisions in the legal field including unconstitutional amendments. At the same time we believe that the assessment of constitutionality does not depend on the nature of violations – substantive and (or) procedural. In the first case, the amendment shall be modified in strict accordance with the letter and spirit of the Constitution taking into account the constitutional principles. The violation of the procedure of adoption of the amendment requires a new consideration of such an amendment with passing by the constitutional law of all stages of the law-making process provided for it.

In the case-law of the Constitutional Court there are no examples of consideration of the constitutionality of amendments to the Constitution, because, as already noted, existing amendments were adopted in 1996 and 2004 in the issue of republican referenda and the Constitutional Court has the power to exercise the obligatory preliminary review of the constitutionality of constitutional laws adopted by the Parliament before they are signed by the President.

7. Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of constitutional court's power to check amendments to the basic law? Do academic scholars or other societal groups advocate for such development? How the judicial review is observed in this regard? Would the expansion or recognition of constitutional court's authority encourage the realisation of constitutional ends or threaten its viability? Please, elaborate on existing discussion in your jurisdiction.

At the present time the obligatory preliminary review of constitutionality of laws adopted by the Parliament before their signing by the President of the Republic of Belarus, including the laws on making alterations and addenda to the Constitution of the Republic of Belarus, is carried out by the Constitutional Court of the Republic of Belarus on the basis of Article 22 of the Code of the Republic of Belarus on Judicial System and Status of Judges and the Law of the

Republic of Belarus "On the Constitutional Proceedings". The impossibility of the subsequent constitutional review of these laws on the basis of Article 116.4 of the Constitution is grounded in the reply to the question 5, section II of the Questionnaire. Otherwise, it would be possible to make a conclusion on the possibility of the review of the constitutionality of certain rules (provisions) of the Constitution.

The preliminary constitutional review of amendments to the Constitution is not carried out according to the information related to questions 5 and 6, section II of the Questionnaire. The obligatory preliminary review can only be carried out with respect to laws adopted by the Parliament their signing by the President and the amendments were made in the issue of the referendum.

In practice, the possibilities of obligatory preliminary review are widely used in relation to ordinary (current) laws. This form of review is positively perceived by the legal community and the society, as they refer to legal positions of the Constitutional Court, stated in its decisions in the issue of review of the constitutionality of laws in the exercise of obligatory preliminary review. The trend of using proposals and conclusions set out in legal positions of the Constitutional Court by the legislator, other law-making bodies in their activities has been maintained.

It seems that the recognition of the powers of the Constitutional Court on the exercise of the constitutional review of amendments to the Constitution, including the obligatory preliminary review of the constitutionality of laws adopted by the Parliament before they are signed by the President, contributes to the realisation of the constitutional goals and it is one of the most important ways to protect the Constitution by legal means.

In reference to further extension of powers of the Constitutional Court, it seems that the issues of improving the constitutional review, introduction of new forms of constitutional jurisdiction to the legal framework for shall fall within the mainstream of measures undertaken by the Head of State and Parliament for the socio-political development of the country.