

Code of the Republic of Belarus on Judicial System and Status of Judges

CHAPTER 1

GENERAL PROVISIONS

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Article 2. Judicial power

Judicial power in the Republic of Belarus shall reside in the courts established under the procedure prescribed by the Constitution of the Republic of Belarus and this Code.

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Judicial power shall be administered through constitutional, civil, criminal, economic and administrative legal proceedings.

Judicial power shall be independent. It shall interact with legislative and executive branches of power.

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Article 5. Judicial System of the Republic of Belarus

The judicial system of the Republic of Belarus shall include:

the Constitutional Court of the Republic of Belarus – a judicial body to review the constitutionality of normative legal acts in the State administering judicial power through constitutional proceedings.

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Article 6. Tasks of the courts

The Constitutional Court of the Republic of Belarus shall safeguard the constitutional order of the Republic of Belarus, human rights and freedoms guaranteed by the Constitution of the Republic of Belarus, ensure the supremacy of the Constitution of the Republic of Belarus and its direct effect on the territory of the Republic of Belarus, the conformity of normative legal acts of state bodies to the Constitution of the Republic of Belarus, the maintaining of legality in rule-making and law-enforcement, the settlement of other issues provided for by the Constitution of the Republic of Belarus, the Code and other legislative acts.

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Article 7.

Legality in administering justice

The courts shall administer justice on the basis of the Constitution of the Republic of Belarus and other normative legal acts adopted in accordance therewith.

If during the hearing of a specific case a court concludes that a normative legal act does not conform to the Constitution of the Republic of Belarus, it shall make a decision in accordance with the Constitution of the Republic of Belarus and after entering of the judgement into legal force raise, respectively, before the Supreme Court of the Republic of Belarus the issue of introducing a proposal to the Constitutional Court of the Republic of Belarus on recognising this normative legal act as unconstitutional.

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Article 14.

Obligatory force of judgements and requests of a judge. Execution of decisions of the Constitutional Court of the Republic of Belarus

Judgements entered into legal force shall be obligatory for all state bodies, other organisations as well as officials and individuals and shall be subject to the execution on the entire territory of the Republic of Belarus. Decisions of the Constitutional Court of the Republic of Belarus shall be executed under the procedure established by law.

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CHAPTER 2

CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

Article 19.

Composition of the Constitutional Court of the Republic of Belarus

The Constitutional Court of the Republic of Belarus shall be formed of 12 Judges. The Chairperson, the Deputy Chairperson and ten Judges of the Constitutional Court of the Republic of Belarus shall be Judges of the Constitutional Court of the Republic of Belarus.

The Constitutional Court of the Republic of Belarus shall set to work and be competent to make decisions when no less than eight Judges of the Constitutional Court of the Republic of Belarus have been appointed (elected).

Article 20.

Procedure of formation of the Constitutional Court of the Republic of Belarus

The Constitutional Court of the Republic of Belarus shall be formed in accordance with the following procedure:

six Judges shall be appointed by the President of the Republic of Belarus;

six Judges shall be elected by the Council of the Republic of the National Assembly of the Republic of Belarus.

In case of early discontinuation of membership of an appointed (elected) Judge of the Constitutional Court of the Republic of Belarus an appointment (election) of another Judge shall be carried out under the procedure established by the Constitution of the Republic of Belarus and this Code.

Article 21.

Procedure of election of Judges of the Constitutional Court of the Republic of Belarus

The Council of the Republic of the National Assembly of the Republic of Belarus shall elect six Judges of the Constitutional Court of the Republic of Belarus.

Candidates for the election to the posts of Judges of the Constitutional Court of the Republic of Belarus shall be nominated by the Chairperson of the Constitutional Court of the Republic of Belarus.

A person nominated for the election to the post of a Judge of the Constitutional Court of the Republic of Belarus shall have a right to decline nomination for the post. The denial shall be accepted without deliberations and voting.

As an elected Judge of the Constitutional Court of the Republic of Belarus shall be considered a person that has obtained as a result of voting a majority of votes of the full composition of the Council of the Republic of the National Assembly of the Republic of Belarus.

Article 22.

Competence of the Constitutional Court of the Republic of Belarus

The Constitutional Court shall, on the proposals of the President of the Republic of Belarus, the House of Representatives of the National Assembly of the Republic of Belarus, the Council of the Republic of the National Assembly of the Republic of Belarus, the Supreme Court of the Republic of Belarus, the Council of Ministers of the Republic of Belarus, deliver judgements on:

conformity of laws, decrees and edicts of the President of the Republic of Belarus, obligations under treaties and other international commitments of the Republic of Belarus to the Constitution of the Republic of Belarus 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 for the implementation of the law to the Constitution of the Republic of Belarus, international legal acts ratified by the Republic of Belarus, laws and decrees of the President of the Republic of Belarus;

conformity of resolutions of the Council of Ministers, acts of the Supreme Court of the Republic of Belarus, the Prosecutor General of the Republic of Belarus to the Constitution of the Republic of Belarus, international legal acts ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus;

conformity of acts of any other state body to the Constitution of the Republic of Belarus, international legal acts ratified by the Republic of Belarus, laws, decrees and edicts of the President of the Republic of Belarus.

In instances specified by the Constitution of the Republic of Belarus the Constitutional Court of the Republic of Belarus shall, on the proposal of the President of the Republic of Belarus, give a conclusion on existence of facts of systematic or gross violations of the Constitution of the Republic of Belarus by the Houses of the National Assembly of the Republic of Belarus. The consideration of this issue cannot be rejected at the initiative of the Constitutional Court of the Republic of Belarus.

In addition to the powers provided for by articles 22.1 and 22.2 the Constitutional Court of the Republic of Belarus shall:

in the exercise of the obligatory preliminary review make a decision on conformity of laws adopted by the House of Representatives of the National Assembly of the Republic of Belarus and approved by the Council of the Republic of the National Assembly of the Republic of Belarus or adopted by the House of Representatives of the National Assembly of the Republic of Belarus under the procedure stipulated in article 100.5 of the Constitution of the Republic of Belarus (with the exception of laws elaborated in connection with the conclusion, execution, suspension and termination of international treaties of the Republic of Belarus) to the Constitution of the Republic of Belarus, international legal acts ratified by the Republic of Belarus before signing of these laws by the President of the Republic of Belarus;

on the proposals of the President of the Republic of Belarus make a decision on conformity of international treaties of the Republic of Belarus that have not entered into force to the Constitution of the Republic of Belarus;

on the proposals of the Presidium of the Council of the Republic of the National Assembly of the Republic of Belarus make a decision on existence of facts of systematic or gross violations of the requirements of law by the local councils of deputies;

on the proposals of the President of the Republic of Belarus give an official interpretation of decrees and edicts of the President of the Republic of Belarus concerning constitutional rights, freedoms and duties of individuals;

on the proposals of the President of the Republic of Belarus, the House of Representatives of the National Assembly of the Republic of Belarus, the Council of the Republic of the National Assembly of the Republic of Belarus, the Council of Ministers of the Republic of Belarus state its position on conformity of the documents adopted (issued) by foreign states, international organisations and (or) their bodies and that affect the interests of the Republic of Belarus to generally recognised principles and rules of international law;

on the proposals of the President of the Republic of Belarus review the constitutionality of guidelines for rule-making and law-enforcement practice of state bodies, including judicial and law-enforcement bodies;

make a decision on elimination of legal gaps, collisions and legal uncertainty in normative legal acts;

adopt annual messages to the President of the Republic of Belarus and the Houses of the National Assembly of the Republic of Belarus on constitutional legality in the Republic of Belarus;

exercise other powers in accordance with the legislative acts.

State bodies not mentioned in articles 22.1 and 22.3, other organisations as well as individuals, including individual entrepreneurs, with the initiative of proposals subject to the jurisdiction of the Constitutional Court of the Republic of Belarus shall address the President of the Republic of Belarus, bodies entitled to make such proposals to the Constitutional Court of the Republic of Belarus. Initiative applications shall be submitted and considered under the procedure established by law.

Applications of individuals, including of individual entrepreneurs, and legal entities submitted directly to the Constitutional Court of the Republic of Belarus shall be considered under the procedure established by the legislation on applications of individuals and legal entities.

The Constitutional Court of the Republic of Belarus shall exercise review of the constitutionality of normative legal acts 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 and international treaties of the Republic of Belarus that have not entered into force both in whole and of particular provisions thereof.

The Constitutional Court of the Republic of Belarus shall not state its position on the issue that may become the matter of consideration in the Constitutional Court of the Republic of Belarus in accordance with the constitutional proceedings unless otherwise established by legislative acts.

Article 23.

Organisation of functioning of the Constitutional Court of the Republic of Belarus

The constitutional proceedings shall be determined by law.

The issues of preparation and holding of sessions of the Constitutional Court of the Republic of Belarus, ensuring conditions for carrying out powers by the Constitutional Court of the Republic of Belarus and its Judges as well as other issues of internal activity of the Constitutional Court of the Republic of Belarus, procedure and forms of participation of the Secretariat of the Constitutional Court of the Republic of Belarus in the preparation of cases for the consideration in sessions of the Court that are not regulated by this Code and other legislative acts shall be regulated by the Rules of the Constitutional Court of the Republic of Belarus approved by the Constitutional Court of the Republic of Belarus.

Article 24.

Judgements, decisions and other documents of the Constitutional Court of the Republic of Belarus

The Constitutional Court of the Republic of Belarus shall deliver judgements on the issues specified in articles 22.1 and 22.2 of the Code.

On the issues specified in article 22.3 of the Code the Constitutional Court of the Republic of Belarus shall make decisions.

On procedural and other issues arising in the course of constitutional proceedings the Constitutional Court of the Republic of Belarus, the Chairperson of the Constitutional Court of the Republic of Belarus shall issue procedural rulings.

The Constitutional Court of the Republic of Belarus shall address state bodies, other organisations, officials in the form of request or submission.

Judgements and decisions of the Constitutional Court of the Republic of Belarus shall be drawn as a single document.

Procedural rulings, requests and submissions of the Constitutional Court of the Republic of Belarus shall be drawn in the manner specified by the Constitutional Court of the Republic of Belarus.

The judgements and decisions of the Constitutional Court of the Republic of Belarus shall be final and not subject to appeal or protest.

The judgements and decisions of the Constitutional Court of the Republic of Belarus have the direct effect and do not require confirmation by other state bodies, other organisations, officials.

The judgements and decisions of the Constitutional Court of the Republic of Belarus shall enter into force on the date of their adoption unless other term is fixed in these acts.

Article 25.

Chairperson of the Constitutional Court of the Republic of Belarus

The Chairperson of the Constitutional Court of the Republic of Belarus shall be appointed by the President of the Republic of Belarus with the consent of the Council of the Republic of the National Assembly of the Republic of Belarus from among Judges of the Constitutional Court of the Republic of Belarus for a term of five years.

The Chairperson of the Constitutional Court of the Republic of Belarus shall:

arrange activities of the Constitutional Court of the Republic of Belarus;

chair sessions of the Constitutional Court of the Republic of Belarus as well as bring before the Court matters subject to the jurisdiction of the Constitutional Court of the Republic of Belarus;

arrange the work on the supervision over the execution of judgements and decisions of the Constitutional Court of the Republic of Belarus;

carry out the general management over the Secretariat of the Constitutional Court of the Republic of Belarus, appoint to the posts and discharge employees of the Secretariat of the Constitutional Court of the Republic of Belarus, approve within the established number of employees the structure of the Secretariat of the Constitutional Court of the Republic of Belarus and the staff list of the Constitutional Court of the Republic of Belarus;

submit nominations to the President of the Republic of Belarus and the Council of the Republic of the National Assembly of the Republic of Belarus for the appointment (election) of Judges of the Constitutional Court of the Republic of Belarus;

submit to the President of the Republic of Belarus, the Council of Ministers of the Republic of Belarus, other state bodies, other organisations, officials proposals to improve the legislation as well as to eliminate violations thereof;

represent the Constitutional Court of the Republic of Belarus in relations with state bodies, other organisations, including foreign and international ones;

hold personal reception of individuals, arrange the work of the Constitutional Court of the Republic of Belarus on the reception of individuals and consideration of their applications;

exercise other powers in accordance with legislative acts.

The Chairperson of the Constitutional Court of the Republic of Belarus shall issue orders on matters that fall within his competence and do not concern constitutional proceedings.

The Chairperson of the Constitutional Court of the Republic of Belarus shall be entitled to take part in the sessions of the Houses of the National Assembly of the Republic of Belarus, their committees, in the sessions of the Council of Ministers of the Republic of Belarus and its Presidium, in the sessions of other state bodies, in the sessions of the Plenum of the Supreme Court of the Republic of Belarus.

In the absence of the Chairperson of the Constitutional Court of the Republic of Belarus and the Deputy Chairperson or in case of inability to perform their functions, the powers of the Chairperson of the Constitutional Court of the Republic of Belarus shall be exercised by the oldest Judge of the Constitutional Court of the Republic of Belarus.

Article 26.

Deputy Chairperson of the Constitutional Court of the Republic of Belarus

The Deputy Chairperson of the Constitutional Court of the Republic of Belarus shall be elected by the Constitutional Court of the Republic of Belarus from among the Judges of the Constitutional Court of the Republic of Belarus upon the nomination of the Chairperson of the Constitutional Court of the Republic of Belarus for a term of five years.

The Deputy Chairperson of the Constitutional Court of the Republic of Belarus shall:

exercise the powers of the Chairperson of the Constitutional Court of the Republic of Belarus in the absence of the Chairperson or in case of his inability to perform the functions;

manage the work of structural departments of the Secretariat of the Constitutional Court of the Republic of Belarus in accordance with the arranged functions;

arrange the advanced training of employees of the Secretariat of the Constitutional Court of the Republic of Belarus;

hold personal reception of individuals;

exercise other powers in accordance with legislative acts.

The Deputy Chairperson of the Constitutional Court of the Republic of Belarus shall be entitled to take part in the sessions of the Houses of the National Assembly of the Republic of Belarus, their committees, in the sessions of the Council of Ministers of the Republic of Belarus and its Presidium, in the sessions of other state bodies, in the sessions of the Plenum of the Supreme Court of the Republic of Belarus.

Article 27.

Academic Consultative Council under the Constitutional Court of the Republic of Belarus

The Academic Consultative Council shall be established under the Constitutional Court of the Republic of Belarus. The rules of the Academic Consultative Council shall be approved by the Constitutional Court of the Republic of Belarus. The composition of the Academic Consultative Council shall be approved by the Constitutional Court of the Republic of Belarus upon the nomination of the Chairperson of the Constitutional Court of the Republic of Belarus.

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CHAPTER 7

JUDGE OF THE COSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

Article 91.

Requirements to the Judge of the Constitutional Court of the Republic of Belarus

As a Judge of the Constitutional Court of the Republic of Belarus may be appointed (elected) a citizen of the Republic of Belarus with the knowledge of Belarusian and Russian languages having a higher legal education and being a highly qualified specialist in the field of law, who, as a rule, has a scientific degree and possesses high moral standards.

The retirement age of a Judge of the Constitutional Court of the Republic of Belarus is 70 years.

Article 92.

Term of office of Judges of the Constitutional Court of the Republic of Belarus

Judges of the Constitutional Court of the Republic of Belarus shall be appointed (elected) for a term of eleven years and may be reappointed (reelected).

Article 93.

Oath of a Judge of the Constitutional Court of the Republic of Belarus

A Judge of the Constitutional Court of the Republic of Belarus shall be entitled to participate in its work only after taking an oath.

The oath of Judges of the Constitutional Court of the Republic of Belarus shall be administered by the President of the Republic of Belarus in the presence of the Chairperson of the House of Representatives and the Chairperson of the Council of the Republic of the National Assembly of the Republic of Belarus and the Chairperson of the Supreme Court of the Republic of Belarus.

The commencement of the oath rite shall be the proclamation of the decision on appointment (election) to the post of the Judge of the Constitutional Court of the Republic of Belarus, after which the Judge taking the oath shall read out the text of the oath prepared on a special blank. In the meanwhile his right hand shall be placed on the Constitution of the Republic of Belarus.

A Judge of the Constitutional Court of the Republic of Belarus shall take the oath of the following wording:

“I, (surname, name, patronymic), assume the commitment before the People of the Republic of Belarus to safeguard the constitutional order and supremacy of the Constitution of the Republic of Belarus honestly, impartially and in good faith”.

During the period of exercising of his powers in the Constitutional Court of the Republic of Belarus a Judge shall administer the oath only once.

The act of taking the oath shall be signed by a Judge of the Constitutional Court of the Republic of Belarus and kept in personal records of the Judge of the Constitutional Court of the Republic of Belarus.

After taking the oath the certificate of employment of a Judge, the gown and other articles of clothing as well as the Code of Honour of a Judge of the Republic of Belarus shall be conferred on a Judge of the Constitutional Court of the Republic of Belarus. The description, specimen, procedure and rules of providing with gowns and other articles of clothing shall be approved by the President of the Republic of Belarus or state body authorised by him.

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CHAPTER 10

EVALUATION OF JUDGES. QUALIFICATION CLASSES OF JUDGES

Article 106.

Qualification classes of judges

The highest, first, second, third, fourth and fifth qualification classes shall be set up for judges of the courts of the Republic of Belarus.

Qualification classes shall be conferred:

the highest qualification class – on the Chairperson, the Deputy Chairperson and Judges of the Constitutional Court of the Republic of Belarus.

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CHAPTER 12

SUSPENSION, RENEWAL AND TERMINATION OF POWERS OF JUDGES

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Article 124.

Termination of powers of a Judge

The powers of a Judge of the Constitutional Court of the Republic of Belarus may be ceased upon:

the resignation;

his submission of an application for unsolicited dismissal;

reaching the retirement age of a Judge of the Constitutional Court of the Republic of Belarus;

the expiration of the term of office;

the refusal to take an oath;

the termination of citizenship of the Republic of Belarus as a result of the renunciation of citizenship or its forfeiting;

the appointment (election) to another post or transfer to another position;

carrying out the activity that is incompatible with the post of a judge, non-compliance with restrictions pertaining to the public service;

the gross violation of professional duties, committing a misconduct incompatible with the public service;

the entry into legal force of judgement of conviction;

the entry into legal force of judgement of a court on recognition of a Judge as having limited legal capacity or legally incapable;

the recognition of a Judge, under the established procedure, as incapacitated for work or his inability, certified by medical conclusion, to perform functions of a Judge for a long term (not less than one year) due to the state of health;

the death of a Judge, declaring him to be dead or recognising to be missing by judgement of a court entered into legal force – without making a specific decision.

The termination of powers of the Chairperson and Judges of the Constitutional Court of the Republic of Belarus shall be carried out by the President of the Republic of Belarus with the notification of the Council of the Republic of the National Assembly of the Republic of Belarus, including termination on such grounds as the personal written application of a Judge for the resignation or unsolicited dismissal, or the submission by the Constitutional Court of the Republic of Belarus of termination of powers of a Judge on other grounds prescribed in article 124.1. In this regard the submission of the Constitutional Court of the Republic of Belarus shall be adopted by a majority vote of the full composition of Judges of the Constitutional Court of the Republic of Belarus, with the exception of the submission of termination of powers provided for by article 124.1.10, which shall be adopted by a two-thirds majority vote of the full composition of Judges.

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CHAPTER 21

ORGANISATIONAL, MATERIAL AND TECHNICAL SUPPORT

Article 183.

Organisational, material and technical support of functioning of the courts

The organisational, material and technical support of functioning of the courts within arranged powers shall be carried out:

in relation to the Constitutional Court of the Republic of Belarus – by the Secretariat of the Constitutional Court of the Republic of Belarus.

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Article 184.

Apparatus (Secretariat) of a court

The apparatus (secretariat) of a court shall ensure the work of the court on administering justice, summarising the case-law, analysing the statistics of the court, systemising the legislation, performing other functions as well as undertake measures for organisational support of functioning of the court.

The chairpersons of courts shall have assistant judges for direct exercising of vested powers.

The number of employees of the Secretariat of the Constitutional Court of the Republic of Belarus, the Apparatus of the Supreme Court of the Republic of Belarus shall be determined by the President of the Republic of Belarus upon submissions of Chairpersons of these Courts.

Employees of apparatus (secretariat) of a court, with the exception of persons rendering technical services to the court, shall be civil servants. The employees of the Secretariat of the Constitutional Court of the Republic of Belarus, the Apparatus of the Supreme Court of the Republic of Belarus, with the exception of persons rendering technical services to the Courts, shall be civil servants and be equal to the appropriate categories of employees of the Apparatus of the Council of Ministers of the Republic of Belarus with regard to conditions of payment, social, living, material and other forms of support and medical services.