

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

the 10 of July, 2009 No D-358/2009

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 Social Protection of the Disabled People” to the Constitution of the Republic of Belarus

The Constitutional Court of the Republic of Belarus comprising the Presiding Officer – Chairman of the Constitutional Court of the Republic of Belarus P.P. Miklashevich, judges T.S. Boiko, T.V. Voronovich, S.Y. Danilyuk, V.P. Isotko, V.V. Podgrusha, L. M. Ryabtsev, O.G. Sergeeva, A.G. Tikovenko, S.P. Chigrinov

on the basis of part one of Article 116 of the Constitution of the Republic of Belarus, subpoint 1.1 of point 1 and point 3 of Decree by the President of the Republic of Belarus of June 26, 2008 No. 14 “On Certain Measures to Improve the Activities of the Constitutional Court of the Republic of Belarus”

in open court session in the exercise of obligatory preliminary control considered the constitutionality of the Law of the Republic of Belarus “On Making Alterations and Addenda to Certain Laws of the Republic of Belarus on Social Protection of the Disabled People”.

Having heard the judge-speaker V.V. Podgrusha, having analysed the provisions of the Constitution of the Republic of Belarus (hereinafter – the Constitution) and the Law of the Republic of Belarus “On Making Alterations and Addenda to Certain Laws of the Republic of Belarus on Social Protection of the Disabled People”, other laws relevant to the pending question the Constitutional Court found the following:

The Law of the Republic of Belarus “On Making Alterations and Addenda to Certain Laws of the Republic of Belarus on Social Protection of the Disabled People” (hereinafter – the Law) was adopted by the House of Representatives of the National Assembly of the Republic of Belarus on June 24, 2009, approved by the Council of the Republic of the National Assembly of the Republic of Belarus on June 30, 2009 and submitted for signing by the President of the Republic of Belarus.

The Law consists of five articles. Article 1 makes amendments and additions to the Law of the Republic of Belarus of November 11, 1991 «On Social Protection of the Disabled People in the Republic of Belarus» as in force on July 14, 2000 (with the subsequent amendments and additions) and the specified Law is set out in a new wording. Article 2 makes amendments and additions to the Labour Code of the Republic of Belarus. Article 3 makes amendments and additions to the Law of the Republic of Belarus «On the Prevention of Disability and Rehabilitation of the Disabled People». Article 4 stipulates the instructions to Council of Ministers of the Republic of Belarus to bring the acts of the legislation in conformity with the Law, to take other necessary measures for realisation of the Law provisions. Article 5 sets the date of its entry into force.

When examining the constitutionality of the Law the Constitutional Court proceeds from the following.

According to part one of Article 2 of the Constitution the individual, his rights, freedoms and guarantees for their attainment manifest the supreme goal and value of society and the State. Pursuant to part two of Article 21 of the Constitution every individual shall exercise the right to a dignified standard of living, including appropriate food, clothing, housing and likewise a continuous improvement of necessary living conditions.

The State shall guarantee the rights and liberties of the citizens of Belarus that are enshrined in the Constitution and the laws, and specified in the state's international obligations (part three of Article 21 of the Constitution).

Article 22 of the Basic Law declared as the constitutional principles the equality of all people before the law and the right of every person without discrimination to equal protection of their rights and legitimate interests.

A social character of the State (part one of Article 1 of Constitution) is embodied first of all in the relation to the most vulnerable groups of population including the disabled people requiring support, special care and attention to groups of population.

According to Article 47 of the Basic Law citizens of the Republic of Belarus shall be guaranteed the right to social security in old age, in the event of illness, disability, loss of fitness for work and loss of a breadwinner and in other instances specified in law; the State shall display particular concern for veterans of war and labour, as well as for those who lost their health in the defence of national and public interests.

The securing of the constitutional guarantees of the disabled people social protection is exercised by legal regulation of relevant relations at a law level including stipulation of securing terms for the rights and legitimate interests of the disabled people.

Nothing if not the norms of the special Law «On Social Protection of the Disabled People in the Republic of Belarus» set out in a new wording (Article 1 of the Law) are pursuing the realisation of a state policy of the Republic of Belarus concerning the disabled people.

As it follows from the preamble of the Law «On Social Protection of the Disabled People in the Republic of Belarus» it aims at carrying out the effective measures of the disabled people social protection, securing of their equality and full participation in a social life.

The provisions of the Law «On Social Protection of the Disabled People in the Republic of Belarus» are set out in respect of the norms of the following laws of the Republic of Belarus «On the Prevention of Disability and Rehabilitation of the Disabled People», «On Public Health Services», «On Education of Persons with Psychophysical Development Peculiarities (Special Education)» and other legislative acts. The Law «On Social Protection of the Disabled People in the Republic of Belarus» stipulates the norms which implement the provisions of the Convention on the Rights of the Disabled People adopted by the General Assembly of the United Nations on December 13, 2006 that corresponds to the practices of the normative legal base formation in view of the universally acknowledged principles and norms of international law. A number of provisions of the specified Law are caused by the need in more exact and

clearer legal regulation of relevant relations with a view to uniform comprehension and enforcement of normative provisions.

So, the norms determining the status of the disabled people, measures of their social protection in the most significant spheres of life, first of all, measures of creation of equal with other citizens opportunities for the disabled people to participate in a social life are stipulated in the Law «On Social Protection of the Disabled People in the Republic of Belarus». That focuses on securing the realisation of the constitutional norms and principles enshrined in Articles 2, 21, 22 and 47 of the Constitution and manifests the performance of the state constitutional duty to take all measures at its disposal to create the domestic order necessary for the exercise in full of the rights and liberties of the citizens of the Republic of Belarus that are specified in the Constitution (Article 59 of the Basic Law).

Article 4 of the Law «On Social Protection of the Disabled People in the Republic of Belarus» stipulates the right of every disabled person unable to satisfy his/her vital requirements by his/her own forces to the guaranteed state support. The state policy of the Republic of Belarus in the sphere of the disabled people social protection aims at securing the full participation of the disabled in a social life and is carried out on the basis of the following principles: protection of human rights; prohibition of discrimination on the disability basis; secured availability of medical, social, professional and labour rehabilitation; the equal rights of the disabled people along with other citizens to health protection, education and a free choice of labour activity, etc.

The specified principles and directions of the state policy in the sphere of the disabled people social protection are realised in the norms of the Law «On Social Protection of the Disabled People in the Republic of Belarus». These norms provide for legal regulation of relations in the field of rehabilitation and health services of the disabled people, for means of interpersonal communication, including the state support for the language of gestures, realisation of the right of the disabled people to the basic, additional and vocational education. They aim at providing for special conditions and educational process, realisation of the rights to work and rest, available living environments, including unimpeded access of the disabled people to social and industrial infrastructure facilities, social benefits of the disabled people, technical means of social rehabilitation, domestic service, social services, financing the social support of them.

The Constitutional Court pays attention to the legislative innovation stipulated in part 4 of Article 9 of the Law «On Social Protection of the Disabled People in the Republic of Belarus». According to it the renunciation of a disabled person or his/her legal representative from the individual rehabilitation program in full or in part releases state bodies, organisations and individual entrepreneurs specialising on rehabilitation of the disabled people from responsibility for rehabilitation program carrying out. At the same time there is a lack of the mechanism implementing the mentioned norm in the Law. Therefore the Constitutional Court based on the revealed constitutional legal meaning of the specified norm deems that in the purposes of law-enforcement the release from responsibility of concerned state bodies, organisations and persons specialising on rehabilitation of the disabled people for the carried out individual rehabilitation program may take place merely in the instance of a voluntary and realised

renunciation of a disabled person or his/her legal representative from the individual rehabilitation program in full or in part. Provided that the renunciation is substantiated by appropriate proofs.

The carried out individual rehabilitation program of a disabled person depends not merely on state bodies, organisations and persons specialising on rehabilitation but on a disabled person himself/herself (his/her legal representative) as well as on their willingness and readiness to perform all the programmed rehabilitation measures. Therefore a firm renunciation of a disabled person (his/her legal representative) from the carrying out of a program in full or in part may not be imposed as the mentioned bodies, organisations and persons charge and is the ground to release them from responsibility for the failed rehabilitation program.

The Constitutional Court deems that such legislative approach will ensure the right balance of the state and individual interests, excludes the opportunity to abuse the disabled people's right by a disabled person, his/her legal representative as well as by concerned state bodies, organisations and persons. In so doing will realise the principles of mutual responsibility, rationality and justice.

The inclusion of some normative provisions duplicating the certain norms of the Law «On the Prevention of Disability and Rehabilitation of the Disabled People» in the Law «On Social Protection of the Disabled People in the Republic of Belarus» is justified as it provides for complex legal regulation though it does not meet the requirements of the Law of the Republic of Belarus «On normative Legal Acts of the Republic of Belarus», Rules of developing draft normative legal acts approved by Decree of the President of the Republic of Belarus of 11 August 2003 No. 359. Pursuant to them it is necessary to avoid duplication of norms of the effective acts. Taking into account the aim of the Law «On Social Protection of the Disabled People in the Republic of Belarus» such approach will provide for a full and systematic regulation of the interrelated issues. Otherwise the legislator should have applied reference norms that would have excluded the entire comprehension of legislative provisions. Legislative approaches to legal regulation of issues of the disabled people social protection stipulated in the Law «On Social Protection of the Disabled People in the Republic of Belarus» also involve necessary amendments and additions to other legislative acts.

The amendment of certain norms of the Labour Code and the Law «On the Prevention of Disability and Rehabilitation of the Disabled People» provided by the Law focuses on the harmonisation of the mentioned acts norms with ones of the special Law. That provides for uniform legal regulation, excludes possible ambiguous comprehension and application of normative provisions. It promotes the appropriate realisation of the legal definiteness principle.

In view of the foregoing the Constitutional Court deems that amendments and additions made by the Law to some laws of the Republic of Belarus concerning social protection of the disabled people do not conflict with the Constitution and aim at the further development of the norms and principles thereof.

The Law conforms to the provisions of Articles 97-100 of the Constitution as its form, adoption procedure and as regards the distribution of competences between the state bodies adopting the act.

Being guided by parts one and seven of Article 116 of the Constitution of the Republic of Belarus, part eighth, thirteen and fourteen of Articles 24 of the Code of the Republic of Belarus on Judicial System and Status of Judges, subpoint 1.1 of point 1 and point 3 of Decree by the President of the Republic of Belarus of June 26, 2008 No. 14 “On Certain Measures to Improve the Activities of the Constitutional Court” the Constitutional Court of the Republic of Belarus

RULED:

1. To find the Law of the Republic of Belarus “On Social Protection of the Disabled People in the Republic of Belarus” conforming to the Constitution of the Republic of Belarus.
2. The present Decision shall come into legal force from the date of its adoption.
3. To publish the present Decision according to the legislation.

Presiding Officer-
Chairman of the Constitutional Court
of the Republic of Belarus
P.P.Miklashevich