

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

28 December, 2011 No P-671/2011

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 guarantees on social protection of orphan children, children left without parental care, and also individuals who belong to the category orphan children and children left without parental care”

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, Deputy Chairman A.V. Mariskin, judges T.S. Boiko, T.V. Voronovich, S.Y. Danilyuk, V.P. Isotko, L.G. Kozireva, V.V. Podgrusha, 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 an 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 the Law of the Republic of Belarus “On guarantees on social protection of orphan children, children left without parental care, and also individuals who belong to the category orphan children and children left without parental care”.

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 the Law of the Republic of Belarus “On guarantees on social protection of orphan children, children left without parental care, and also individuals who belong to the category orphan children and children left without parental care”, 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 the Law of the Republic of Belarus “On guarantees on social protection of orphan children, children left without parental care, and also individuals who belong to the category orphan children and children left without parental care” (hereinafter – the Law) was adopted by the House of Representatives of the National Assembly of the Republic of Belarus on December 19, 2011, approved by the Council of the Republic of the National Assembly of the Republic of Belarus on December 21, 2011 and submitted for signing by the President of the Republic of Belarus.

The Law provides introduction of amendments and addenda to the Law of the Republic of Belarus “On guarantees on social protection of orphan children, children left without parental care, and also individuals who belong to the category orphans and children left without parental care” (hereinafter – the Law on guarantees on social protection of orphan children) in terms of specification of mechanisms for provision of guarantees of a right to state support for orphan children, children left without parental care, and also individuals who belong to the category orphans and children left without parental care (hereinafter – orphan-children and children, left without parental care), the contents of some guarantees provided for the mentioned categories of people, and also specification of definitions of some basic terms used in this Law.

While reviewing the constitutionality of the Law the Constitutional Court proceeds as follows.

1. In the Republic of Belarus as in a social state based on the rule of law, (Article 1 part 1 of the Constitution) the individual, his rights, freedoms and guarantees for their implementation are declared to be the supreme value of society and the State (Article 2 part 1 of the Constitution).

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.

Article 21 of the Constitution provides that safeguarding the rights and freedoms of citizens of the Republic of Belarus is the supreme goal of the State; 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; the State guarantees the rights and freedoms of citizens of Belarus that are enshrined in the Constitution and laws, and specified by the State's international obligations.

According to the Constitution childhood is under the protection of the State; parents or persons acting as parents have the right and are obliged to raise their children and to take care of their health, development and education; no child shall be subjected to cruel treatment or humiliation or engaged in work that may be harmful to its physical, mental or moral development; young people shall be guaranteed the right to their spiritual, moral and physical development (Article 32 parts 1, 3, 6).

The citizens of the Republic of Belarus shall be guaranteed a number of important social rights, including the right to work, property, health protection, social welfare, housing, education, participation in cultural life (Articles 41, 44, 45, 47-49, 51 of the Constitution).

The above mentioned constitutional provisions regarding social security and guaranteed level of rights of orphan-children and children, left without parental care, were implemented and developed in the Law on guarantees on social protection of orphan-children, whose provisions are clarified also by taking into account the provisions of other legislation to harmonize them.

2. Thus, the specification of definitions of some terms (Article 1 point 1 of the Law) in Article 1 of the Law on guarantees on social protection of orphan-children, including those relating to children's residential institutions, children's village (town), foster family, is aimed to streamlining the legislative approaches to regulate the status issues of children's residential institutions, which are providing housing and maintenance for children.

The provision of Article 2 of the mentioned Law, which defines the legislation on guarantees on social protection of orphan-children and children, left without parental care, is supplemented by the reference to the Code of Republic of Belarus on Education, what is caused by the goals and objective of this Code, and also its place and importance in the regulation of the relationships involving children.

Due to need to harmonize the provisions of the Law on guarantees on social protection of orphan-children with the provisions of the Code on education the amendments and addenda to some articles of the Law on guarantees on social protection of orphan-children (Article 1 points 2, 4-7), and also the statement of new edition of Article 11 of this Law, which regulates the granting of guarantees of right to education (Article 1 point 8).

3. Convention on the Rights of the Child dated November 20, 1989, whose obligations are to be fulfilled by the Republic of Belarus, sets the priority of interests and welfare of children in all spheres of life. Thus, this Convention obliges to take all appropriate legislative, administrative and other measures to implement the rights recognized by the Convention (Article 4), recognize the every child's right to standard of living adequate for physical, mental, spiritual, moral and social development (Article 27 point 1).

Noting the development and improvement of national legislation in accordance with the mentioned Convention, the Constitutional Court considers that the legislation regulation on providing orphan-children and children, left without parental care, with special guarantees on social protection corresponds to the social nature of the State, which is the Republic of Belarus, and is aimed to achieve protection of rights and lawful interests of the mentioned categories of people.

In particular, according to the new edition of Article 7 point 2 of the Law on guarantees on social protection of orphan-children (Article 1 point 4 paragraph 8 of the Law) the state support is provided for orphan-children and children, left without parental care, irrespectively of whether they receive pensions, benefits and it remains after they get married. State support remains while granting vacations set by the legislation on education, for medical reasons, due to a call to military reserve service or due to other valid reasons – not longer than one calendar year to take care of a child under three years old – until a child becomes one year old.

The Constitutional Court considers that such legislative approach is consistent with the requirements of the Constitution that no one can enjoy the benefits and privileges, which contradict law (Article 23 part 2), since the constitutional provision does not prevent the legislator from providing through law concrete benefits and privileges for certain categories of people taking into account financial and economical capacities of the State.

To create for orphan-children and children left without parental care adequate living conditions, to provide them with descent living standards, Article 1 points 6, 7 of the Law are dedicated, according to which the process of reimbursement of expenses for upbringing orphan-children and children left without the parental care are specified, including while they obtain an appropriate education in public educational institutions of the Republic Belarus.

4. The Constitutional Court pays attention to the contents of the new edition of Article 12 of the Law on guarantees on social protection of orphan-children, which regulates the process of granting the guarantees on the right on housing.

The essence of the amendments introduced by the Law in the mentioned Article lies in the fact that in Article 12 point 1 part 1 of the Law on guarantees on social protection of orphan-children instead of the an open list of grounds to have a need to improve housing conditions for orphan-children and children left without parental care the reference norm to the grounds, envisioned by legislative acts, is formulated. Provisions of the same Article point 2 in part of grounds, order and timing of providing with housing of social usage of the state's housing fund for orphan-children and children left without parental care are also clarified.

Based on the objectives of the Law and the subject of its regulation, the Constitutional Court finds that the replacement of direct action norms by reference norms shall not be considered as limitation of rights and lawful interests of citizens or as if it worsens the quality of the legislative regulations. The use of a reference norm is possible only in connection with provisions of other acts, what results a uniformity of the legislative regulation in part of defining the ground for recognition of the need in improving housing conditions and provision with social use housing of the state's housing fund and law enforcement.

Thus, the Constitutional Court considers that specification of certain provisions of the Law on guarantees on protection of orphan-children will allow to avoid the duplication of legislative provisions and will contribute to formation of coordinated legislative regulation.

Simultaneously, in the Law the term "the place of the original acquisition of the status orphan-children and children left without parental care" is defined, what results that mechanisms of the implementation of the right on housing gains more clear and definite character.

Principle of the legal certainty, more precise guaranteeing of rights of orphan-children, children left without parental care on maintenance of a property right on housing, from which they dropped out, is provided by the provisions of the new edition of Article 12 point 2 part 2 of the Law on guarantees on social protection of orphan-children, which establish the mechanism of state's registration of prohibition on alienation of housing, which is assigned to these categories of children.

5. Noting the direction of the provisions of the Law on further development of constitutional norms and principles of social state based on rule of law and improvement of the mechanisms of its implementation, The Constitutional Court simultaneously draws the attention of the legislator on necessity of maintenance of consistency and complexity principles of legal regulation of the relations. In particular, in the Law of the Republic of Belarus "On amendments to certain legislative acts of the Republic of Belarus on housing relations issues" dated November, 16, 2010 certain provisions of the Article 12 of the Law on guarantees on social protection of orphan-children were already exposed to certain changes and almost simultaneously the work on the project to make further changes to the specified article was carried out. Such legislative approach according to the opinion of the Constitutional Court affects the quality of the legislative and law enforcement practice, since it does not provide the adequate stability and transparency of the legislative regulation.

The procedure of adopting the Law corresponds to the Constitution, according to which the draft laws shall be considered by the House of Representatives of the National Assembly of the Republic of Belarus (Article 93 part 1 point 2) and are sent for approval or rejection to the Council of the Republic of the National Assembly of the Republic of Belarus (Article 98 part 1 point 1). The Houses of the National Assembly of the Republic of Belarus were acting within its competence envisioned by Articles 97-100 of the Constitution.

Therefore, taking into account aforementioned, the Constitutional Court concludes that the Law provisions, the form of the act and the procedure of its adoption conform to the Constitution.

Guided by parts one, seven of Article 116 of the Constitutions of the Republic of Belarus, parts eight, thirteen, fourteen of Article 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 the 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”, the Constitutional Court

RULED:

1. To recognise the Law of the Republic of Belarus “On Making Alterations and Addenda to the Law of the Republic of Belarus “On guarantees on social protection of orphan children, children left without parental care, and also individuals who belong to the category orphan children and children left without parental care” as conforming to the Constitution of the Republic of Belarus.
2. The present decision shall entry into force since the date of its adoption.
3. To publish the present decision in accordance with the legislation.

Presiding Officer-

Chairman of the Constitutional Court

of the Republic of Belarus P.P.Miklashevich