

Strasbourg, 25 February 1997  
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**N° 026/96**

Restricted  
CDL (97) 9  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**DECISION OF THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF BELARUS**

On the compliance with the Constitution and laws  
of the Republic of Belarus of paragraphs 2.2, 2.5 and 3  
of the Decree of the Supreme Council of the Republic of Belarus  
of 6 September 1996 "**On the holding of a national referendum in the  
Republic of Belarus and measures for its guarantee**".

## **DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS**

**On the compliance with the Constitution and laws of the Republic of Belarus of paragraphs 2.2, 2.5 and 3 of the Decree of the Supreme Council of the Republic of Belarus of 6 September 1996 "On the holding of a national referendum in the Republic of Belarus and measures for its guarantee".**

The Constitutional Court of the Republic of Belarus, with the following members sitting: president - V.G. Tikhini, President of the Constitutional Court; vice-president: V.A. Fadeyev, deputy to the President of the Court; judges - G.A. Vasilevich, A.E. Vashkevich, K.I. Kenik, M.I. Pastukhov, V.V. Podgrusha, N.M. Sereda, S.I. Tishkevich, R.I. Filipchik, M.F. Chudakov.

with the participation of:

representatives of the Supreme Council of the Republic of Belarus as the party in proceedings having issued the legislative act:

S.I. Kalyakin - member of the Presidium of the Supreme Council of the Republic of Belarus;

T.A. Manukova - secretary to the Standing Committee on State Structuring and Local Self-government of the Supreme Council of the Republic of Belarus;

A.V. Matusevich - director of the Belarus Institute of State Structuring and Legislation;

G.I. Yurkevich - departmental head, Directorate of court experts and legal affairs of the Secretariat of the Supreme Council of the Republic of Belarus;

experts:

V.A. Borovtsov - director of the "Borovtsov and Saley" law firm;

Yu. P. Brovka - doctor of law, professor at the international law department of Belarus State University;

A.A. Golovko - doctor of law, professor at the constitutional law department of Belarus State University;

S.E. Levshunov - master of law, lecturer, chief expert/co-ordinator of academic affairs of the National centre of "East-West" strategic initiatives;

V.V. Sazhinaya - master of law, lecturer at the department of theory and history of state and law of Belarus State University;

N.V. Silchenko - doctor of law, professor heading the department of theory and history of state and law of Grodno State University;

witnesses:

A.M. Abramovich - Deputy Chief of Staff of the President of the Republic of Belarus;

V.E. Lubovskiy - Deputy Head of the Chief Directorate of the Presidential Administration for work with legislative and judicial authorities;

A.V. Maryskin - Head of the Chief Directorate of Legal Advice of the Presidential Administration;

A.L. Plaskovitskiy - Deputy Head of the Chief Directorate of Legal Advice of the Presidential Administration,

examined, in an open court sitting, the question "Of the compliance with the Constitution and laws of the Republic of Belarus of paragraphs 2.2, 2.5 and 3 of the Decree of the Supreme Council of the Republic of Belarus of 6 September 1996 "On the holding of a national referendum in the Republic of Belarus and measures for its guarantee".

Participating in the court proceedings were:

V.N. Novikov - First Deputy to the President of the Supreme Council of the Republic of Belarus,

I.A. Mironichenko - Deputy to the President of the Supreme Court of the Republic of Belarus,

V.S. Kamenkov - Deputy to the President of the High Economic Court of the Republic of Belarus,

I.F. Sashcheko - Deputy to the Procurator General of the Republic of Belarus,

V.O. Sukalo - Minister of Justice of the Republic of Belarus.

Proceedings were instituted by the Constitutional Court on 20 September 1996 in pursuance of Article 127 paragraph 2 of the Constitution and Article 5 paragraph 2 of the Law "On the Constitutional Court of the Republic of Belarus" with a view to examining the case. The basis for the institution of proceedings was the application by the Chairman of the Supreme Council of the Republic of Belarus, S.G. Sharetskiy.

The matters subject to examination were paragraphs 2.2, 2.5 and 3 of the Decree of the Supreme Council of the Republic of Belarus of 6 September 1996 "On the holding of a national referendum in the Republic of Belarus and measures for its guarantee" (Official Gazette of the Supreme Council of the Republic of Belarus, 1996, no. 26, art.492).

In accordance with Articles 74 and 83 of the Constitution of the Republic of Belarus, the Supreme Council of the Republic of Belarus decreed the holding, in the Republic of Belarus on 24 November 1996, of a national referendum in which the secret ballot paper included the following questions:

"To approve the 1994 Constitution of the Republic of Belarus with amendments and additions (new draft Constitution of the Republic of Belarus) proposed by the President of the Republic of Belarus, A.G. Lukashenko" (paragraph 2.2).

"To approve the 1994 Constitution of the Republic of Belarus with amendments and additions proposed by communist and agrarian members of parliament" (paragraph 2.5).

In paragraph 3 of the act under consideration, the Supreme Council decreed that, in accordance with Articles 1, 14 and 39 of the Law of the Republic of Belarus "On popular votes (referendums) in the Republic of Belarus", the questions set out in the aforementioned paragraphs of its Decree were to be submitted to a binding referendum, the result of which would be final and binding throughout the territory of the Republic of Belarus.

After hearing the representatives of the parties in the proceedings, the witnesses and experts, studying the case material, examining the provisions of the Constitution, the laws of the Republic of Belarus, other normative acts and international agreements, and studying the practice of constitutional legislation in other States, the Constitutional Court has reached the

following conclusions.

Article 73 of the Constitution of the Republic of Belarus states that national referendums may be held to resolve the most important problems of the State and society.

In accordance with Article 74 of the Constitution, national referendums may be called at the initiative of the President of the Republic of Belarus, of a group of no fewer than 70 members of the Supreme Council and also of a group of no fewer than 450,000 citizens of the Republic of Belarus. In accordance with Article 83 of the Constitution, the right to call a referendum and set a date for it lies with the Supreme Council.

Article 149 of the Constitution provides for the introduction of amendments and additions to the Constitution by means of a referendum.

As was established at the sitting of the Court, draft amendments and additions to the Constitution of the Republic of Belarus were submitted by the President of the Republic of Belarus and a group of members of the Supreme Council for consideration by the Supreme Council.

In the view of the Belarusian experts and also of foreign academics in the field of constitutional law, the amendments and additions to the Constitution in question formed in effect a new draft Constitution. However, the existing Constitution of the Republic of Belarus contains no criteria for evaluating the extent and nature of the amendments and additions introduced into it. In view of this, the Court considers that the Supreme Council was entitled to submit the draft decisions proposed by the initiators to a referendum.

The Constitution and the Law "On popular votes (referendums) in the Republic of Belarus" do not specify a procedure for introducing amendments and additions to the Constitution by means of a referendum. In the opinion of the Court, machinery for adopting such amendments and additions must be controlled by legislation, as was the case, for example, with the adoption of amendments and additions to the Constitution by the Supreme Council. The establishment of and compliance with a specific procedure for holding constitutional referendums is a guarantee of stability for the Constitution, the fundamental law of the State.

As can be seen from the constitutional legislation practices of many other States, the submission of constitutional drafts to a referendum is preceded by the approval or adoption of such drafts by Parliament. A referendum may also precede the adoption of definitive decisions on the Constitution by Parliament.

With the calling of the referendum on 24 November 1996, the Supreme Council, as the supreme representative and sole legislative organ of state power in the Republic of Belarus, found itself effectively excluded from the constitutional process.

Having regard to the stipulations of Article 11 of the Law "On the Constitutional Court of the Republic of Belarus", which provide that, when verifying an act, the Constitutional Court shall take into consideration both its literal meaning and the meaning attributed to it in its practical application, the Court makes the following observations.

In the opinion of the Court, the subsequent amendments and additions made by the initiators to the initial drafts ruled out the possibility of holding a referendum on the draft decisions ratified on 6 September 1996. The Supreme Council should therefore re-examine its decree as regards submitting the texts of constitutional amendments and additions to a referendum.

The phrasing of the questions set out in paragraphs 2.2 and 2.5 of the Supreme Council decree comply neither with the requirements of the aforementioned Article 3 of the Law on referendums nor the sense of the draft decisions submitted for referendum. Under the Law, the ballot papers must set out questions and not assertions.

Moreover, the phrasing of the question in respect of the adoption of the 1994 Constitution as a whole is not legally admissible, as the referendum concerns amendments and additions to the Constitution.

In the light of these circumstances, the Court considers that the submission of the questions set out in paragraphs 2.2 and 2.5 of the Supreme Council decree to a binding referendum, whose result would be binding and not require ratification, was unlawful.

On the basis of the above and in pursuance of Articles 127, 128 and 129 of the Constitution and Articles 5, 36, 38, 40 and 43 of the Law "On the Constitutional Court of the Republic of Belarus", the Constitutional Court

HAS DECIDED:

1. to declare as contrary to the Constitution and laws of the Republic of Belarus paragraph 3 of the Decree of the Supreme Council of the Republic of Belarus of 6 September 1996 "On the holding of a national referendum in the Republic of Belarus and measures for its guarantee" in respect of the submission of draft amendments and additions to the Constitution to a binding referendum.

to consider the norm in question as not having any force of law since the date of its adoption.

2. to invite the Supreme Council of the Republic of Belarus to bring the Decree of 6 September 1996 "On the holding of a national referendum in the Republic of Belarus and measures for its guarantee" into line with the present Conclusion.

3. to publish the present Conclusion within ten days of its adoption in the "Official Gazette of the Supreme Council of the Republic of Belarus", "*Narodnaya Gazeta*", "*Zvyazda*" as well as the publications in which the decree in question was published.

4. The present Conclusion shall enter into force from the date of its adoption. It shall be final and not subject to appeal or protest.