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COMMENTS

ON THE AMENDMENTS AND ADDENDA TO THE CONSTITUTION OF THE REPUBLIC OF BELARUS AS PROPOSED BY THE PRESIDENT OF THE REPUBLIC

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Comments on the Present Constitutional Situation in Belarus

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The President of the Republic of Belarus has proposed extensive changes in the 1994 Constitution of the Republic of Belarus. At the same time, a group of MPs intend to submit a alternative draft Constitution. The present situation, amounting to a serious constitutional crisis, requires the clarification of several legal points as requested by the President of the Supreme Council of the Republic of Belarus.

One of the questions to be determined is whether the proposed draft constitution is in fact a new constitution, or a variant (amendment) of the existing one. There is no doubt that the proposed draft departs radically from the present constitution as will be explained below. On the other hand, there is no solid criterion in constitutional law to distinguish a constitutional amendment from an entirely new constitution. An amendment is formally valid in so far as it is adopted in accordance with the procedures established in the existing constitution, and depending upon the requirements of the situation, such amendments may be minor or quite extensive. Section VIII of the present Constitution of Belarus does not refer to any unchangeable principles which cannot be modified even by way of constitutional amendment.

On the other hand, if an amendment goes as far as changing the entire system of government and the basic philosophy behind it, it must more accurately be called a new constitution in a de facto (if not in a de jure) sense.

In the case at hand, revisions foreseen in Section 1 (principles of the constitutional system) and 2 (the individual, society and the state) of the 1994 Constitution can be considered relatively minor. The main thrust of the proposed amendment seems to be a strengthening of the "social" character of the state (particularly Arts. 13, 32, 42, 45, 48). Another major difference in section 1 is the Article 17, which proposes that "the Russian language shall have equal status with the Belarussian one". On the other hand, amendments proposed with respect to the governmental structure or the distribution of powers among the agencies of the state are quite extensive and radical. The most important among them can be summarized as follows:

1. The office of the President has been strengthened. Thus, he has been given the power to dissolve the Houses of Parliament, to appoint six members of the Central Committee on Elections and National Referenda, to appoint the Chairman and five members of the Constitutional Court, to appoint and dismiss the Chairman of the Committee for State Control (Art. 84), to appoint one-third of the membership of the Senate (Art. 91), and to dismiss the government or any individual minister (Art. 106). In addition to already extensive powers granted to him by the existing constitution, the granting of such extensive new powers makes the President the dominant organ in the state. On the other hand, the proposed system of government cannot be called truly presidential, for the president also plays an important role in the legislative process. Thus, in addition to his powers to dissolve the Houses and to appoint one-third of the senators, he has an effective veto power over the bills adopted by the Houses: a presidential veto can be overridden only by a two-thirds majority of the full membership of both Houses. Bills reducing public funds or increasing expenditures may be submitted to the House of Representatives only with the consent of the President or, upon his instruction, that of the Government (Art. 99). In case of a disagreement between

the two Houses over a bill, the President may demand that the final decision be taken by the House of Representatives, in which case a three-fifths majority is required (Art. 100). In urgent cases, the President may issue decrees having the force of law (Art. 101). He may also be given, by the three-fifths majority of the Houses, to issue decrees having the force of law. Such a major role in the legislative process cannot be considered compatible with a presidential system which is, by definition, based on the principle of the separation of powers.

2. The existing unicameral legislature has been changed into a bicameral one.

3. The parliament's role in the constitution amending process has been weakened while that of the president has been strengthened. Thus, proposals to amend the constitution can be put forward only by the President or 150.000 citizens (Art. 138). And presidential objections with regard to constitutional amendments or the interpretation of the constitution can be overridden only by at least three quarters of the full membership of both Houses (Art. 100).

4. The Constitutional Court's position has been weakened. Under the proposed draft, the Court can be seized only by the President, the two Houses, the Supreme Court, and the Cabinet of Ministers (Art. 116). Unlike in the existing text (Art. 127) it cannot be seized by a certain number (or fraction) of deputies or by the Procurator General. Concrete norm control is envisaged neither in the present text nor in the proposed draft. Hence, the practical value of the review of constitutionality is substantially reduced.

5. The transitional arrangements of the presidential draft are highly unusual. The incumbent president's term of office is automatically extended for a new term of office, and the existing parliament is transformed into a bicameral legislature. Under this arrangements, part of the deputies of the Supreme Council shall comprise the Senate, and the rest the House of Representatives (Arts. 143, 144).

Thus, new organs of the state will have been created without popular election, a situation hardly compatible with established democratic principles.