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**IN THE NAME OF UKRAINE**

**Constitutional Court** **decision** **UKRAINE**

**in the case of the constitutional petition Acting President of Ukraine, the Verkhovna Rada of Ukraine and the Verkhovna Rada of Ukraine on Human Rights for compliance with the Constitution of Ukraine (constitutionality) of the Verkhovna Rada of the Autonomous Republic of Crimea "About the Crimean average referendum "(the case of a local referendum in ARC)**

the city of K and its Right in N "2 1-13/2014

March 14, 2014 № 2-rp/2014

The Constitutional Court of Ukraine as a part of the judges

Baulina Yuri - presiding

Bryntsev Vasily Dmitrievich,

Vdovichenko Sergey Leonidovich,

Gultay Michael Myroslavovych,

Zaporozhtsya Mikhail Petrovich

Alexander Nikolaevich Litvinov,

Melnyk Nikolai Ivanovich

Sasa Sergey Vladimirovich

Sergeichuk Oleg,

Slidenka Igor Dmitrievich,

Peter Bogdanovich Stetsyuk - Rapporteur

Tupytskoho Alexander - Rapporteur

Shaptala Natalia K.,

Stanislav V. Shevchuk,

Victor Ivanovich Shishkin,

considered in plenary session the case of the constitutional petition Acting President of Ukraine, the Verkhovna Rada of Ukraine and the Verkhovna Rada of Ukraine on Human Rights for compliance with the Constitution of Ukraine (constitutionality) of the Verkhovna Rada of the Autonomous Republic of Crimea "About the Crimean average referendum" on March 6, 2014 y, N2 1702-6/14 (newspaper "Izvestia Krimskye", 2014, March 7).

The reason for the proceedings under Articles 39, 40 and 79 of the Law of Ukraine "On the Constitutional Court of Ukraine" became a constitutional petition of the Acting President of Ukraine, the Verkhovna Rada of Ukraine and the Verkhovna Rada of Ukraine on Human Rights.

The basis for the proceedings under Article 71 of the Law of Ukraine "On the Constitutional Court of Ukraine" is the assertion entities petitioner on the unconstitutionality of the Verkhovna Rada of the Autonomous Republic of Crimea "About the Crimean average referendum" on March 6, 2014 N2 1702-6/14 .

Having heard the report of Justice Stetsyuk PB, Tupytskoho AM and the case materials, the Constitutional Court of Ukraine

**Stated:**

1 Verkhovna Rada of the Autonomous Republic of Crimea Decree "About the Crimean average referendum" on March 6, 2014 N2 1702-6/14 (hereinafter - the Regulation) decided:

-          join the Russian Federation as a subject of the Russian Federation;

-      assigned on March 16, 2014 all-referendum (including the city of Sevastopol), which make such alternative question:

,, 1) you for the reunification of the Crimea with Russia on the rights of the subject?

2) Are you the restoration of the Constitution of the Republic of Crimea in 1992 and the status of Crimea as part of Ukraine? ",

-       approve the text of the ballot referendum on pan-March 16, 2014 and to establish that the ballots in the referendum pan printed in Russian, Ukrainian and Crimean Tatar;

adopt temporary regulations on all-referendum;

-           a Commission of the Autonomous Republic of Crimea Crimean average holding of the referendum;

-       appeal to the President of the Russian Federation and the Federal Assembly of the State Duma of the Russian Federation to the initiation of the entry into the Russian Federation as a subject of the Russian Federation.

The decree also stipulates that an issue that has received the most votes shall be deemed to express direct expression of the Crimean population, and instructed the Commission of the Autonomous Republic of Crimea Crimean average holding of a referendum to organize work to ensure a referendum in accordance with the specified temporary position, and the Council of Ministers of the Crimea - organize financial, logistical and other support holding a referendum Crimean average.

2. Subject to the constitutional right not submission - Acting President of Ukraine, Verkhovna Rada of Ukraine - in accordance with Article 112, second paragraph of Article 137 of the Constitution of Ukraine the Decree of the President of Ukraine on March 7, 2014 **N2** 261 "On termination of the Verkhovna Rada of the Autonomous ARC on March 6, 2014 **N2** 1702-6/14 "About the Crimean average referendum" suspended Terms and simultaneously applied to the Constitutional Court of Ukraine with a request to consider **its** compliance with the Constitution of Ukraine (constitutionality).According to the author of the petition, the Supreme Council of the Autonomous Republic of Crimea, adopting Resolution violated constitutional principles

implementation of State Sovereignty of Ukraine, the principles of the constitutional order, territorial organization and the exercise of state power in Ukraine.According to subject petitioner Resolution does not comply with Articles 2, 5, 8, 13, 73, 75, paragraphs 2, 3 of Article 85, Article 91, Articles 13 and 20 of Article 92, Article 132 - 138 of the Constitution of Ukraine, parts one, three of Article **1,** paragraph 7 of Article 18, Article 26 of the Constitution of the Autonomous Republic of Crimea, Articles 1, 9, 1 **0** Law of Ukraine "On the Verkhovna Rada of the Autonomous Republic of Crimea."

An petitioner - Ukraine Parliamentary Commissioner for Human Rights - appealed to the Constitutional Court of Ukraine with a request to accept the resolution invalid in accordance with article 73, paragraph 2 of Article 85, Article 137, 138 of the Constitution of Ukraine and noted that the solution question of change in Ukraine should be implemented at the national referendum.

3.        The definition of the second panel of judges of the Constitutional Court of Ukraine of 11 March 2014 constitutional proceedings for constitutional petitions Acting President of Ukraine, the Verkhovna Rada of Ukraine and the Verkhovna Rada of Ukraine on Human Rights for compliance with the Constitution of Ukraine (constitutionality) of Regulation combined in One constitutional procedure.

4.           Solving the issues raised in the constitutional petition, the Constitutional Court of Ukraine proceeds from the following.

4.1. Constitution of Ukraine states that the sovereignty of Ukraine extends throughout yiyiterytori S, part of state sovereignty is the integrity and inviolability of the territory of Ukraine within its present borders, protection of the sovereignty and territorial integrity of Ukraine is the most important function of the state, a matter of Ukrainian people (Article 2, the first part of Article 17 Constitution of Ukraine).

The Constitution of Ukraine has the highest legal force, the laws and other legal acts adopted on the basis of the Constitution of Ukraine and shall conform to it; provisions of the Constitution of Ukraine are norms of direct action, public authorities and local governments and their officials are obliged to act only on the basis of and within the limits and in the manner envisaged by the Constitution and laws of Ukraine (Article 8, second paragraph of Article 19 of the Basic Law of Ukraine).

The territorial structure of Ukraine, the legal regime of the state border defined by the laws of Ukraine (items 13, 18 of Article 92 of the Constitution of Ukraine).

4.2.       The bearer of sovereignty and the only source of power in Ukraine is the people who exercise power directly and through bodies of state power and local self-government, the right to determine and change the constitutional order in Ukraine belongs exclusively to the people and not be usurped by the state, **its** agencies or officials, no not usurp state power (Article 5 of the Constitution of Ukraine).

People's will through elections, referendums and other forms of direct democracy, citizens have the right to participate in public affairs, in national and local referenda (Article 38, Article 69 of the Constitution of Ukraine).

The right of citizens to participate in the referendum is their inalienable constitutional right.In a referendum question submitted to the state value, ie, the resolution of which affects the fate of the Ukrainian people - citizens of Ukraine of all nationalities.In a local referendum may be imposed only matters within the jurisdiction of the local government of the respective administrative-territorial unit.

4.3.      Under Article 132 of the Constitution of Ukraine territorial system of Ukraine is based on the principles of unity and territorial integrity, combination of centralization and decentralization in the exercise of state power, balanced socio-economic development of the regions of their historical, economic, environmental, geographic and demographic characteristics, and ethnic and cultural traditions.These constitutional principles of territorial structure due to the form of government of Ukraine as a unitary state.

The Constitutional Court of Ukraine in the Decision of 13 July 2001 № 11-rp/2001 (the case of administrative divisions) found that administrative unit - a compact single part in Ukraine, which is the basis for the spatial organization and operation of public authorities and local governments.

The administrative-territorial structure of Ukraine is composed of the Autonomous Republic of Crimea, regions, cities, neighborhoods in cities, towns and villages (Article 133 of the Constitution of Ukraine).According to Article 133 of the Basic Law of Ukraine Crimea and Sevastopol City are part of Ukraine as separate entities of administrative-territorial structure of Ukraine.City of Sevastopol are not part of the Autonomous Republic of Crimea, has a special status, which is determined by the law of Ukraine.

The Constitutional Court of Ukraine stressed that the principles of integrity and inviolability of the territory of Ukraine within its present borders, the spread of Ukraine's sovereignty over all its territory established by the Constitution of Ukraine.Narrowing the existing borders of Ukraine, the withdrawal of any subject of the administrative-territorial structure of Ukraine from it, change the constitutional status of the fixed local government area, including the Autonomous Republic of Crimea and Sevastopol city, as an integral part of the Ukraine by a local referendum contrary to the stated constitutional principles.

4.4.   The question of changing the territory of Ukraine are resolved only national referendum (Article 73 of the Constitution of Ukraine).All-Ukrainian referendum on issues referred to the said Article of the Constitution of Ukraine, is one of the Verkhovna Rada of Ukraine

Sy0I4 \ $ i | AI <I: IIep \ 9. <1K (paragraph 2 of Article 85 of the Basic Law of Ukraine).Organization and the conduct of elections and referenda are determined by the laws of Ukraine (paragraph 20 of Article 92 of the Constitution of Ukraine).

ARC is an integral part of Ukraine and within the powers defined by the Constitution of Ukraine, resolve issues within **its** jurisdiction (Article 134 of the Constitution of Ukraine).List of issues that are within the jurisdiction of the Autonomous Republic of Crimea, and the issues on which it has the regulation laid down in Articles 137, 138 of the Constitution of Ukraine.

The constitutional status of ARC is consistent with the Charter, ratified by the Law of Ukraine on July 15, 1997 452/97-VR **N2,** for which the main powers and functions of local government established by the Constitution or the law, a local authority within the law has full discretion to any matter which is not excluded from the scope of **its** competence **and** its solution is not assigned to any other authority (paragraphs 1, 2, Article 4).

E According to the Constitution of Ukraine under the jurisdiction of the Autonomous Republic of Crimea belongs to the organization and holding of local referendums (paragraph 2 of Article 138) in the manner prescribed by the law of Ukraine (paragraph 20 of Article 92).

Normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea and the decision of the Council of Ministers of the Autonomous Republic of Crimea shall not contradict the Constitution and laws of Ukraine and adopted in accordance with the Constitution of Ukraine and laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine and on their implementation (Article 135 of the Basic Law of Ukraine).

The Constitutional Court of Ukraine believes that the Supreme Council of the Autonomous Republic of Crimea, adopting a resolution, which provides entry into the Russian Federation as **its** subject, appeal to the President of the Russian Federation and the State Duma of the Federal Assembly of the initiation of the entry into the Russian Federation as of the subject, making the referendum mentioned issues, violated the constitutional principle of territorial 'integrity of Ukraine and went beyond its powers, and therefore does not comply with Resolution of Articles 1, 2, 5, 8, the second paragraph of Article 19, Article 73, paragraph 3 of Article 85, paragraphs 13, 18, ​​20 of Article 92, Articles 132, 133, 134, 135, 137, 138 of the Constitution of Ukraine.

The resolution also contrary to the fundamental principles of sovereignty and territorial integrity enshrined in international instruments, in particular the principle of mutual respect for the sovereign equality of each state, including political independence, the ability to change the borders in accordance with international law, by peaceful means and by agreement.As a result of these principles, States Parties shall refrain from violating the territorial integrity or political independence of any state by use of force or threat of force or in any other manner inconsistent with the Purposes of the United Nations, as well as actions aimed against the territorial integrity or the unity of any State Party (The United Nations Charter, the Final Act of the Conference on Security and Cooperation in Europe in 1975, the Framework Convention for the Protection of National Minorities, 1995).

5 Resolution formed a committee of ARC Crimean average holding of the referendum.Provisional Regulations on the Republican (local) referendum in ARC provides for a regional and district committees for the preparation and conduct of the referendum.

According to the Resolution of the Council of Ministers of the Autonomous Republic of Crimea organizes financial, logistical and other support holding a referendum Crimean average.Due to the fact that the Decision is contrary to the Constitution of Ukraine, and according to Article 81 of the Law of Ukraine "On the Constitutional Court of Ukraine," the activities of all bodies set up for the referendum, and funding for

a referendum should be stopped, and newsletters and campaign materials - destroyed.

Thus, on the basis of the case, the Constitutional Court of Ukraine has concluded that the Supreme Council of the Autonomous Republic of Crimea, adopting the Resolution "On a Crimean average referendum" on March 6, 2014 **N2** 1702-6/14, violated the Constitution of Ukraine.

Given the foregoing and guided by Articles 147, 150, and 153 of the Constitution of Ukraine, Articles 51, 61, 63, 65, 67, 69, 70, 73, 78, 79, 81 of the Law of Ukraine "On the Constitutional Court of Ukraine," the Constitutional Court of Ukraine

**Decided:**

1.             To declare invalid the Constitution of Ukraine (unconstitutional), Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "About the Crimean average referendum" on March 6, 2014 **N2** 1702-6/14.

2.        Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "About the Crimean average referendum" on March 6, 2014 **N2** 1702-6/14, declared unconstitutional terminates on the day the Constitutional Court of Ukraine thereof.

3.        Stop the activities of the Commission of the Autonomous Republic of Crimea Crimean average holding of a referendum, regional and local commissions created to hold the referendum.

4.             Council of Ministers of the Autonomous Republic of Crimea discontinue funding for a referendum to ensure the destruction of ballots, campaign materials.

**5.** Decision of the Constitutional Court of Ukraine is binding on the territory of Ukraine, is final and can not be appealed.

Decision of the Constitutional Court of Ukraine shall be published in the "Journal of the Constitutional Court of Ukraine" and other official publications of Ukraine.

**CONSTITUTIONAL COURT OF UKRAINE**