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Strasbourg, 9 May 1996
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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**MESSAGE OF THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF BELARUS**

**ON THE STATE OF CONSTITUTIONAL LEGALITY
IN THE REPUBLIC OF BELARUS IN 1995**

The Constitutional Court has spoken out in defence of the civil and political rights and freedoms of the citizens when considering the issue of constitutionality of edict No 336 of the President "On Some Measures to Ensure Stability and Rule of Law in the Republic of Belarus", dated August 21, 1995.

That edict suspended the activities of the Free Trade Unions and the primary trade-union organization of the Minsk Metro affiliated to the Trade Union of Railwaymen and Transport Builders of the Republic of Belarus. The public prosecutor's office was ordered to address the courts and have them ban the activities of those trade unions. The edict also envisaged that the participation of political parties, public organizations and trade unions in strikes at the enterprises on the List, which was approved by the Cabinet of Ministers by its Executive order No 158 on March 28, 1995, should entail the cessation of their activities. Moreover, the edict also suspended the norms of the laws pertaining to the immunity of Supreme Soviet and local Soviets deputies.

The Court has recognized that the above measures are in contradiction with the Constitution, the laws of the Republic of Belarus, the International Covenant on civil and political rights, and the ILO Convention "On the Freedom of Association and Protection of the Right to Organization" ratified by the Republic of Belarus.

Edict No 349 of the President "On Regulation of Some Privileges Awarded to Separate Categories of Citizens", dated September 1, 1995, has suspended the granting of privileges and benefits established by eighteen laws ("On social protection of citizens who have suffered as a result of the disaster at Chernobyl nuclear power station", "On the veterans", "On social protection of disabled people", "On the militia" and others). Those categories of citizens, who enjoyed such privileges and benefits, could use the municipal transport free of charge, could get a 50% rebate on the rent and household services and interest-free loans to build or purchase flats and country cottages, and could have their prescriptions made up gratis.

The Court has analyzed the norms of the Constitution, the laws and international legal acts and has come to the conclusion that the President has assumed the functions of a legislative body by holding up the provision of the privileges and benefits stipulated by laws and has thus exceeded his powers.

The protection of the citizens' rights to work involved the examination of edict No 271 of the President "On Remuneration of the Labour of Public Officials of Some State Bodies", dated July 13, 1995, for constitutionality.

The Court has also ruled that the new rates of salaries, fixed by that edict for office holders of supreme organs of State power (the Chairman of the Supreme Soviet, his deputies, chairmen of deputies' commissions, deputies of the Supreme Soviet working as professionals, the Prosecutor-General, Chairmen of the Supreme Court, the Highest Economic Court, the Constitutional Court, etc.), do not comply with the provisions of the Constitution and the laws on the Supreme Soviet, the judicial system and status of the judges, on the Constitutional Court, the Cabinet of Ministers, and on the Public Prosecutor's Office.

Besides, the Court has noted that the edict was not published and brought to everyone's notice in a manner stipulated by the law, which contradicts the Constitution and edict No 252 of the President "On the Custom Established for Publishing and Enforcing the Edicts and Executive Orders of the President of the Republic of Belarus" dated December 3, 1994.

On the initiative of Supreme Soviet deputies, who have raised the issue of mass media monopolization, the Court has considered three edicts of the President for constitutionality (edict No 19 of 4th August 1994; edict No 27 of 5th August 1994, and edict No 128 of 28th September 1994). Those edicts concerned the activities of the "Belarusian Press House" publishing house and the National State TV and Radio Company. The Court has ruled that the "Belarusian Press House" dominates the newspaper market. The abuse of such a position on the newspaper market on the part of office holders of State organs of power resulted in "white spots" in some newspapers in December 1994, which was a violation of the constitutional right of citizens to obtain complete, reliable and timely information. Negative consequences of such a situation could also be seen in the year 1995 when the "Belarusian Press House" publishing house violated the established custom by cancelling the contracts it had signed with some non-State newspapers that were then forced to seek publication outside the Republic.

The Court has also ruled that the National State TV and Radio Company is not only a part of mass media, dominating the sphere of telecasting and broadcasting, but also performs the functions of a control organ of government. In fact, such a situation has helped it establish a monopoly in the area of electronic mass media.

On the strength of this fact, the Court has recognized separate norms of the Rules on the National State TV and Radio Company, adopted and approved by edict No 128 of the President, dated September 28, 1994, to be at variance with the Constitution which prohibits monopolization by the State, public organizations or individuals of mass media.

Edict No 429 of the President, dated October 19, 1995, has made alterations in, and amendments to, the Rules on the National State TV and Radio Company, without eliminating in full the violations of the Constitution and the laws highlighted by the Constitutional Court.

The case of recognizing the constitutionality of Executive order No 15/1 "On Denomination of the Belarusian Rouble", issued by the Cabinet of Ministers of the Republic of Belarus on August 12, 1994, was followed by wide public repercussions. The Court recognized the Executive order to be constitutional, while proposing that the President, the Supreme Soviet, the Cabinet of Ministers and the National Bank should elaborate and implement measures aimed at repairing the damage the people have sustained as a result of inflation-triggered depreciation of their money on deposit in the Savings Bank. The Constitutional Court also proposed to effect property compensation by allowing the citizens to privatize their flats and plots of land free of charge or on concessionary terms, by issuing stocks and State loan bonds, and by taking other measures in order to protect the rights and legitimate interests of the citizens.

In a number of its judgements, the Constitutional Court drew attention to the necessity of observing the principle of separation of powers, in compliance with which State bodies shall act independently within the terms of their reference, interact among one another, check and balance one another.

Having considered Article 7 of the Law "On the Supreme Soviet of the Republic of Belarus" and separate articles of the Temporary Rules of Procedure of the Supreme Soviet for compliance with the Constitution, the Court came to the conclusion that the Constitution does not tolerate a situation when the Supreme Soviet, which is the supreme representative and the only legislative body, is not in existence. On the basis of the Constitution and the Law on enforcing the Constitution of the Republic of Belarus, the Court has ruled that the Supreme Soviet of the twelfth convocation had every right to exercise its powers till the first session of the legitimately elected Supreme Soviet of the thirteenth convocation.

The Court has ruled that Edict No 267 of the President "On Verification of the 1995 Budget of the Republic of Belarus and on Temporary Measures Aimed to Reduce Budget allocations", dated July 12, 1995, is not consistent with the Constitution and the Laws on the Budget, the Supreme Soviet, the President, the Cabinet of Ministers, with the laws on the 1995 budget of the Republic, and other laws. That edict made certain changes in the revenue and expense bud items, in the amounts of subsidies to local budgets of the oblasts and the city of Minsk. Again held up the provision of income tax privileges to servicemen, employees of the Ministry of the Interior and the State Security Committee. The Ministry of Education and Science was instructed to introduce tuition fees for the students of evening classes at day-time schools.

In its judgement, the Constitutional Court has pointed out that no reasons of expediency can be recognized to be of priority with respect to the Constitution, for under the Constitution it is the prerogative of the Supreme Soviet alone to make alterations in the republican budget, and only in the form of a law at that.

When examining the Laws on the Supreme Soviet and the President for the constitutionality, the Court also considered the terms of reference of the Supreme Soviet and the President and determined their role in the system of the organs of State power. The Court has recognized individual provisions of the Law on the Supreme Soviet and, in particular, the definition of the status of the Supreme Soviet by common laws to be inconsistent with the Constitution. Again, the Court admitted unconstitutionality of the exercise by the Supreme Soviet of the powers of an owner of the property of the Republic of Belarus; the taking by the Supreme Soviet of a decision on the President's resignation without putting a motion to the vote; the right of the Presidium of the Supreme Soviet to consider not only the issues pertaining to the organization and activities of the

Supreme Soviet, but also similar issues concerning the Control Chamber, the Public Prosecutor's Office and other bodies established by the Supreme Soviet and subordinate thereto; the granting by the Supreme Soviet of parliamentary immunity to ex-deputies; exercise by the Supreme Soviet of control over the activities of local authorities and self-government with the exception of the cases prescribed by legislation.

The Court has found some norms of the Law on the President to be unconstitutional: a pre-term termination of the powers, delegated to the President, in consequence of a vote of non-confidence during a nation-wide referendum; delegation of the powers of the President to the Chairman of the Supreme Soviet as of the moment the Constitutional Court has ruled that the President has violated the Constitution as a special commission has come to the conclusion that the President has committed a crime; recognition of the President's refusal to undergo a medical examination as a reason for pre-term cessation of the tenure of office of the President; the right of the President to make proposals to the Supreme Soviet to have the Chairmen of the Supreme Soviet, the Highest Economic Court, the Constitutional Court, the Board of the National Bank resign office; performance by the Security Council, upon a decision of the Supreme Soviet, of the functions of government and control body when a state of emergency is declared in the country.

The Constitutional Court holds that availability of the Laws on the Supreme Soviet and the President allows one to define precisely the sphere of activity of the supreme organs of State power and to ensure efficient relationships between them, as is required by the Constitution.

The issues of the functioning of the system of local authorities and self-government remained topical last year.

Edict No 383 of the President "On Reforming the Local Authorities and Self-Government", dated September 19, 1995, has liquidated district Soviets in towns and the organs thereof. Local administrations, which have become the legal successors of the executive committees of district Soviets, were formed on the territory of those districts. The same edict has suspended elections to district Soviets in towns. The subsequent edicts of the President — No 481 of 27th November 1995 and No 485 of 30th November 1995 — established a model structure of local administration and made alterations in, and amendments to, the Temporary Provisions on local administration.

Having examined these edicts, the Court ruled that the liquidation of district Soviets in towns and the bodies thereof, and the creation on the territory of town districts of local administrations contradicted the Constitution and the Law on local authorities and self-government, while the suspension of elections to district Soviets was inconsistent with the Constitution and the Law on the election of local Soviets deputies.

The Court has also considered the constitutionality of the Law on making amendments to the Law "On Local Authorities and Self-Government in the Republic of Belarus". The Constitutional Court has admitted that the legislative decision that the local Soviets shall exercise their powers till the first session of the local Soviets of new convocation does not contradict the Constitution.

All the judgements the Constitutional Court has passed and listed in this Message, as well as others, were published in the press.

II

Non-observance of the decisions rendered by the Constitutional Court causes great concern.

The Law on the Constitutional Court stipulates that the Court's decisions shall be binding upon all State organs, enterprises, agencies, organizations, public figures, and citizens. A failure to abide by these decisions, a failure to enforce them duly, or an obstruction to execution of the Constitutional Court's decisions shall be legally punishable. However, there is no specific law that would provide for such a liability. It is one of the reasons why the Constitutional Court's decisions are not fulfilled, as a rule.

Up to date the Supreme Soviet has not made alterations in, and amendments to, the Law "On Foreign Investments on the Territory of the Republic of Belarus" and the Criminal Code of the Republic of Belarus, as the Court suggested on October 17 and December 19, 1994.

Given the Constitutional Court's decisions, the Supreme Soviet should make alterations in, and amendments to, the Laws on the Supreme Soviet and the President, and also to the resolution of the Supreme Soviet of 13th April 1995 "On Interpretation of Paragraph 4 of the First Part of the Law of the Republic of Belarus "On Making Alterations in, and Amendments to, the Law of the Republic of Belarus "On Fundamentals of the Service in the Machinery of Government".

The Cabinet of Ministers has failed to fulfil the Court's ruling on the case "On Constitutionality of Executive Orders of the Cabinet of Ministers of the Republic of Belarus No 186 "On State Securities of the Former USSR" of 6th April 1992 and No 125 "On Redemption of Bonds of 1993 Interest-Free Loan Aimed to Purchase Durable Goods" of 5th March 1993. Nor has it taken concrete measures to implement the Court's proposals, contained in its decision on constitutionality of Resolution 15/1 of the Cabinet of Ministers of the Republic of Belarus and the National Bank of the Republic of Belarus "On Denomination of the Belarusian Rouble", dated August 12, 1994.

The Court's rulings on total or partial unconstitutionality of 11 edicts of the President, issued in the years 1994-95, are still to be implemented. Moreover, on December 29, 1995, the President issued a directive instructing the Cabinet of Ministers and other organs of State power to be guided in their activities by the edicts, which the Constitutional Court has recognized as unconstitutional. Thereby, contempt of the Constitution and the laws of the Republic of Belarus has been displayed.

III

The number of appeals made by citizens and juridical persons to the Constitutional Court, and this number is steadily increasing, is one of the major indicators of the state of constitutional legality. Whereas in 1994 there were about 300 appeals, there were upwards of 800 appeals in 1995.

The greatest number of the complaints lodged concerned the privileges and benefits, which separate categories of citizens have been denied under Edict No 349 of the President, dated September 1, 1995, and also the restrictions of the rights of working pensioners to get 100% pensions and the introduction of a contractual form of their hiring under Edict No 350 of the President, dated September 1, 1995.

Many citizens complain that no measures are being taken to repair the damages caused by the depreciation of their deposits in the Savings Bank, and also that the State fails to honour its commitments to redeem the bonds of the 1990 interest-free loan floated to purchase durable goods.

The Constitutional Court also receives complaints that have no bearing on its rulings. For the most part they are complaints about the citizens' right to housing, about pensions, delayed payments of wages and salaries, collection of State duties when the citizens address the court have their labour and other rights protected.

In their appeals to the Constitutional Court, juridical persons point to shortcomings in the economic and, above all, tax legislation, to the presence of a great number of by-laws and normative acts that lack co-ordination and, more often than not, are at variance with the law. They complain that in a number of cases they cannot find adequate protection in courts.

The growing flow of complaints to the Constitutional Court reflects the objective hardships in the social and economic situation in the Republic of Belarus. Meanwhile, this flow of complaints reveals how imperfect the current legislation is and how unsatisfactory some legislative and judicial bodies respond to complaints.

In this connection, the Constitutional Court believes that it is necessary to enact a law on citizens' appeals, the elaboration of which was mentioned in the 1994 Message on the state of constitutional legality in the Republic.

IV

The Constitutional Court holds that the state of constitutional legality in the Republic cannot be recognized as satisfactory.

The principle of separation of powers has not been duly implemented in practice. As a result, the executive branch was building up its strength illegitimately, while the role of the legislative and judicial branches was decreasing. In a number of cases, the laws were superseded by contradicting by-laws. That would make public officials violate the laws and confuse the citizens, thereby giving rise to legal nihilism.

The Court notes that such a situation has taken shape owing, to a certain extent, to the fact that the executive power ignored the Supreme Soviet of the twelfth convocation at the end of its functioning and to arbitrary interpretation of paragraph 1 of Article 100 of the Constitution. As the Court sees it, this norm cannot be interpreted as self-contained, detached from other norms of the Constitution and giving the President certain "emergency powers". The Court had repeatedly drawn attention to that norm in its rulings on concrete cases.

The confrontation between the executive and legislative powers has upset the principle of the supremacy of law which prescribes that the State, all its bodies and public figures shall be guided in their activities by the law and act correspondingly within the limits of the Constitution and the laws enacted in compliance therewith.

Under such circumstances, the Constitutional Court's rulings aimed to assure constitutional legality have given rise to systematic and purposive pressure that is being brought on the Constitutional Court, which shall be intolerable under the Constitution and the Law on the Constitutional Court. Attempts have been made to accuse the Court of destabilizing the situation. Besides, an idea has been propounded of late in the mass media that the Constitutional Court should be liquidated. This erroneous idea is at variance with the principles of a democratic State ruled by law and the world's experience of State construction.

The norms of the Constitution, which guarantee the citizens' rights and freedoms, including the right to have their economic and social interests protected, the right to work and remuneration of labour, the right to participation in solving State problems either directly or through their freely elected representatives, the right to receive complete, reliable and timely information on the activities of the organs of State power, still remain declarative in many respects. The present-day situation can be explained by economic and other reasons, by imperfect laws, by the absence of an appropriate mechanism of their enforcement, and also by an inefficient system of judicial protection of the rights and freedoms of the citizens.

Just as before, a part of the normative acts dealing with human rights are being put into effect without being promulgated or made public in a manner stipulated by the law.

It should be admitted that, in virtue of objective and subjective causes, the current legislation is being slowly brought into line with the Constitution and universally recognized norms of international law. In many respects the current legislation remains contradictory and does not meet the present-day requirements.

Underestimation of the role of the law in State and public life exerts negative influence on the state of constitutional legality. A false idea of "bad" and "good" laws is being inculcated in the citizens, and hence the "right" one has got not to observe "bad" laws. Nor is being instilled in the citizens a respect for the Constitution and laws; the principles of a democratic State ruled by law are being propagated but on a very small scale.

The Court drew attention to many of the above circumstances in its 1994 Message on the state of constitutional legality in the Republic. However, neither the President nor the Supreme Soviet has duly responded thereto.

With a view to assuring constitutional legality, the genuine protection of the citizens' rights and freedoms, to implementing the principles of a democratic State ruled by law, the Constitutional Court puts forward the following proposals.

1. To balance the activities of the legislative and executive powers, it is necessary to make alterations in, and amendments to, the Laws on the President, the Supreme Soviet and other normative acts in compliance with the Constitutional Court's decisions thereon, and to make an interpretation of paragraph 1 of Article 100 of the Constitution.

2. Proceeding from the principle of supremacy of the law, on the basis of the Constitutional Court's decisions, it is necessary to consider the issues, which have been allowed in the President's edicts, yet have been recognized as inconsistent with the Constitution wholly or partially.

3. Given that the Constitution stipulates that a human being is the supreme wealth of the State and society, the protection of the citizens' rights and freedoms should be regarded as the most important sphere of activities of the legislative, executive and judicial powers.

It is necessary to enhance the role of courts as the main guarantors of the rights, freedoms and legitimate interests of the citizens. Measures should be taken to go on implementing the concept of the judicial and legal reform adopted by the Supreme Soviet on August 23, 1992.

The post of a Human Rights Authority should be established in the Republic.

4. It should be recognized as impermissible to enforce normative acts concerning human rights before they have been promulgated or made public in a manner stipulated by the law.

5. It is necessary to draw up a program to draft new laws and revise those in force in order to bring them into line with the Constitution and the universally recognized principles of international law.

It shall be an urgent necessity to reform the civil and criminal legislations in order to form modern legal basis for developing market relations and advancing the struggle against criminality.

To improve legislative activities, it is necessary to draft and enact a law that will establish the manner in which laws and other normative acts will be drafted, passed, enforced and terminated.

6. It is necessary to make amendments to the Constitution and the Law on the Constitutional Court to enable the latter to interpret the Constitution. It should be provided that the Court is empowered to consider the constitutionality of all the legal acts issued by the supreme organs of State power, to consider and validate the complaints of the citizens lodged against violations of their constitutional rights and freedoms. Those failing to fulfil the Constitutional Court's decisions shall incur legal liability.

The Constitutional Court expresses a hope that the President and the Supreme Soviet will understand and support the proposals contained in this Message.

This Message was adopted in compliance with Article 44 of the Law "On the Constitutional Court of the Republic of Belarus" and Article 81 of the Rules of Procedure of the Constitutional Court at the session of the Constitutional Court of the Republic of Belarus held on February 1996.

Chairman of the Constitutional Court
of the Republic of Belarus

V.G.Tikhinya