CDL(1995)068e-add-restr
Strasbourg, 15 November 1995

SUMMARY OF DISSENTING OPINIONS

JUDGMENT OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION ON THE CONSTITUTIONALITY OF CERTAIN PRESIDENTIAL DECREES AND GOVERNMENTAL ORDERS

SUMMARY

OF THE DISSENTING OPINIONS OF SIX JUDGES OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

regarding the examination of the constitutionality of: decree No. 2137 of the President of the Russian Federation of 30 November 1994 on measures to restore constitutional legality and law and order in the territory of the Chechen Republic; decree No. 2166 of the President of the Russian Federation of 9 December 1994 on measures to halt the activities of illegal armed formations in the territory of the Chechen Republic and in the zone of the Ossetian-Ingush conflict; order No. 1360 of the Government of the Russian Federation of 9 December 1994 on ensuring the state security and territorial integrity of the Russian Federation, the rule of law, the rights and freedoms of citizens and the disarming of illegal armed formations in the territory of the Chechen Republic and adjacent areas of northern Caucasus; and decree No. 1883 of the President of the Russian Federation of 2 November 1993 on the fundamental provisions of military doctrine of the Russian Federation.

Dissenting opinion of Judge Vitruk

In 1991-94 in the Chechen Republic, which, under Article 65 of the Constitution of the Russian Federation, forms part of the Russian Federation, there did in fact arise an extraordinary situation requiring the central authority to take practical steps, not excluding the use of force, to restore constitutional order in the territory of the Chechen Republic. However, any action by federal authorities must be taken on the basis of and in conformity with the Constitution and the federal laws.

The executive authorities' texts under consideration viz decree Nos. 2137 and 2166 and order No. 1360, as well as decree No. 2169 of December 11 on measures to ensure the rule of law, law and order and public safety in the territory of the Chechen Republic) form a whole. It is therefore impossible to assess the constitutionality of any one of these texts in isolation.

The normative nature of these texts results from the fact that they contain not only rules defining rights and obligations but also rules of a specific kind - rules laying down principles, objectives, programmes and recommendations. This conception of a rule is such that all parts of the text, including its preamble, may be regarded as having normative force.

If the objectives set out in the preambles of the texts are examined independently of the measures they involve, they can be seen to be in conformity with the Constitution of the Russian Federation. They are designed in particular to restore constitutional legality (decree No. 2137), ensure national security, safeguard the rights and freedoms of citizens (decree No. 2166) etc. On the other hand, the measures for which the texts provide in order to attain those goals are a violation of the terms of the Constitution. Their purpose was to establish a special regime that was neither a state of emergency nor a state of war. This regime, which was described by the representative of the President and the Government as a regime for re-establishing the foundations of the constitutional system, constitutional legality and the legal order in the territory of the federal component concerned and which is known in world as "federal intervention", had no basis in Russian constitutional law when the texts in question were issued.

The special regime should have been preceded by the adoption of a federal law on the subject, particularly as regards the use of the armed forces to resolve a constitutional crisis and the curtailment of the rights and freedoms of citizens.

The regime established in the territory of the Chechen Republic has at least two main features. First, it relies heavily on the armed forces of the Ministry of the Interior and the special units of the Federal Security Service and other services, to resolve the conflict between the authorities of the Chechen Republic and the federal authority; this led to a military conflict of a domestic nature. Secondly, it entails a substantial limitation of the rights and freedoms of citizens.

Neither the Constitution nor legislation makes any provision for the special regime established by the presidential and governmental texts, and they lay down no procedural arrangements for establishing such a regime. The references by the representative of the President and the Government to the provisions of the laws on security, on defence, on the internal troops of the Ministry of the Interior of the Russian Federation, on the police and on judicial information in the Russian Federation are not legally correct, because these laws do not regulate relations in the situation existing in the territory of a federal component that has declared its sovereignty and its withdrawal from the federation.

The reference to the "Fundamental provisions of military doctrine of the Russian Federation", approved by presidential decree No. 1833, in so far as they provide for the possibility of using the armed forces to resolve domestic conflicts is not correct either, as these provisions are contrary to the Constitution of the Russian Federation and to Article 10 (2) and (3) of the law on defence act. Article 90 (3) of the Constitution stipulates that presidential decrees and orders may not be contrary to the Constitution's terms.

By promulgating decree Nos. 2137, 2166 and 2169, the President exceeded his powers under Articles 83-90 of the Constitution. The President is not free to act as he chooses, because he is required to comply with the Constitution and with federal laws (Article 90 (3) of the Constitution). The President must also observe a principle applicable to all state officials, viz they may do only whatever is provided for by law. Article 80 (2)) of the Constitution is perfectly clear on this point: the President of the Russian Federation shall adopt measures to protect the country's sovereignty, independence and territorial integrity in accordance with the procedure established by the Constitution of the Russian Federation. The obligation for the President to act within the limits defined by the Constitution is also contained in the oath of loyalty sworn by the President to the people.

The recognition of the existence of presidential powers not enumerated in Articles 83-90, ie implicit powers, denotes an illegitimate enlargement of the presidential powers, to the detriment of the powers of the Federal Parliament and the Government. The self-executing nature of the Constitution, as provided for in Article 15 (1) of the Constitution, does not admit of any arbitrary interpretation of these provisions, as that would lead to a violation of other constitutional principles and norms.

By decree No. 2166 the President of the Russian Federation delegated to the Government the powers be considered to be vested in him, ie powers concerning the use of "all the means at the state's disposal". This measure is at variance with the Constitution, which establishes the separation of powers between the President as head of state (Art. 80 (1)) and the Government, which exercises executive power in the Russian Federation (Art. 110 (1)).

The presidential decrees under consideration are in contradiction with the hierarchy of constitutional principles, where absolute priority is given to

respect for human rights and fundamental freedoms (Art. 2 of the Constitution). According to Article 18 of the Constitution, human rights and freedoms are self-executing. Unfortunately, the orientation of the presidential decrees and governmental orders towards the use of all the means at the State's disposal, without the provision of any safeguards against abuse of such means, together with the absence of any machinery for preventing violations of the rights and freedoms of the peaceable population, has resulted in grave violations of the rights and freedoms of Russian citizens.

From the foregoing I draw the following conclusion. Presidential decree Nos. 2137 and 2166 and governmental order No. 1360 are not in conformity with the Constitution of the Russian Federation, as they violate the constitutional principle of respect for human rights and freedoms laid down in Articles 2, 6 (2), 17 (1) and (2), 18 and 55 of the Constitution, as well as being inconsistent with the Constitution's demarcation of powers, because the promulgation of these texts exceeds the powers of the President and the Government as defined in the Constitution.

Moreover, the procedure employed for the enactment and bringing into force of presidential decree No. 2137 of 30 November 1994 is unconstitutional. Although the decree affects constitutional rights and freedoms, it was not officially published, which is a breach of Article 15 (3) of the Constitution. Furthermore, the procedure for examining the constitutionality of the decree was not completed in accordance with Article 43 (2) of the federal law on the Constitutional Court of the Russian Federation, on the ground that the effects of the decree had ceased to exist by the time the matter was referred to the Court.

The governmental order of 9 December 1994 is not in conformity with the Constitution of the Russian Federation as regards the procedure used for its adoption, as it was not adopted by the Government as a collegiate body.

It is also worth noting the low standard of legal drafting characterising these texts, which betrays a superficial approach to the tackling of legal problems crucial to Russia's development as a law-based state within the meaning of Article 1 (1) of the Russian Constitution.

Dissenting opinion of Judge Gadzhiyev

Citing Article 13 (5) of the Constitution of the Russian Federation, the preamble to presidential decree No. 2166 of 9 November 1994 "outlaws" activities "aimed at violating the territorial integrity of the Russian Federation, undermining state security creating armed formations or fomenting national or religious strife." This wording is not in conformity with Article 13 of the Constitution, which relates only to the activities of public associations, not to those of illegitimate organs of state power. The fact is that the elections of the Supreme Soviet and the President of Chechnya were declared null and void by the Congress of People's Deputies on 2 November 1991, which means that those organs are illegal. However, the legislation of the Russian Federation does not regulate how and by what means the activities of organs of state power that have been declared illegal are to be stopped.

According to point 1 of the decree under consideration, the Government is authorised to use "all the means at the state's disposal". There thus arises the need for an interpretation of the purport of this phrase. When normative instruments are being examined, it should be assumed that they are constitutional, and all possible methods of interpretation must be exhausted before such an instrument is declared unconstitutional.

In the case of the present decree, it may be assumed that only legal means are involved. However, under Article 74 of the federal law on the Constitutional Court of the Russian Federation, the court must, when reaching a decision in the matter, have regard not only to the literal meaning of point 1 of the presidential decree but also to the meaning attributed to it by official interpretation and legal practice. Governmental order No. 1360 of 9 November 1994 may be regarded as an instrument of official interpretation. For that reason, presidential decree No. 2166 and governmental order No. 1360 must be seen as part of an indivisible chain of normative texts.

In pursuance of the presidential decree, the Government created a normative basis for the "extraordinary situation" regime which, although different from the regimes of state of emergency and state of war, nevertheless presupposed a restriction of the rights of citizens. According to Article 55 (3) of the Constitution, however, the President was not able to delegate his powers under this section, even assuming he himself possessed such powers on account of the extraordinary nature of the situation.

Moreover, whereas in a state of emergency an exhaustive list is drawn up of temporary limitations of the rights and freedoms of citizens, paragraph 7 of point 3 of governmental order No. 1360 makes it clear that the list of restricted rights is neither exhaustive nor temporary. According to Article 55 (3) of the Constitution of the Russian Federation, such curtailment of rights by means of the introduction of a special legal regime could be effected only through the adoption of a federal law. This conclusion is confirmed by the whole logic of the constitutional rules governing such situations, in particular Articles 56 (1) and 87 (3) of the Constitution. Article 10, which provides for the separation of powers, also stipulates that the normative regulation of the rights of citizens is solely a matter for the federal legislature.

In view of the need for the urgent dispatch of troops to the Chechen Republic to prevent the outbreak of a civil war, the regulation by presidential decree of the relations resulting from the extraordinary situation is permissible in so far as Article 90 of the Constitution allows this to be done in the case of gaps in legislation.

Consequently, that section of presidential decree No. 2166 of 9 December 1994 which provides for the carrying out of a military operation involving the sending of troops for the purpose of blockading the borders of the Chechen Republic and the city of Grozny is not contrary to the Constitution of the Russian Federation, specifically Articles 71 (m), 78 (4), 80, 82, 87 (1) and 90 thereof. On the other hand, that section of presidential decree No. 2166 of 9 December 1994 which authorised the Government to use "all the means at the state's disposal", including the means of legislative regulation of the restriction of the rights and freedoms of citizens, is contrary to Articles 10 and 55 of the Constitution.

Dissenting opinion of Judge Ebzeyev

1. The discontinuation of the procedure for verifying the constitutionality of presidential decree No. 2137 of 30 November 1994, together with the classification of the matter as "secret", was justified. The Constitutional Court was required to consider the decree's constitutionality, bearing mind that, under Article 15 (3) of the Constitution, legal texts concerning human and civil rights, freedoms and obligations are inapplicable unless they have been officially published.

2. The means chosen in pursuance of the texts concerned to safeguard the constitutional order in the territory of the Chechen Republic have led to a violation of the principle of the democratic rule of law (Article 1 (1) of the Constitution), according to which state authorities may act only within the framework of the powers set forth in the Constitution. Hence, the reference in paragraph 2 of the decree to the existence of exceptional presidential powers on the basis of the "supra-positive" law of state necessity is unconstitutional.

Constitutional responsibility for the execution of a public authority's decision cannot be placed solely on those executing decisions, because the proclamation of the supremacy of rights and freedoms by the Constitution (Article 2) demands that such rights and freedoms be respected both when decisions are being adopted and when they are being executed. Consequently, so-called "excesses of implementation" cannot justify any failure to discharge that obligation.

3. The delegation to the Government of "all the means at the state's disposal" (point 1 of decree No. 2166) disregards the principle of the separation of powers laid down in Article 10 of the Constitution, as not only the constitutional powers of the Government are involved. Furthermore, the "outlawing" (paragraph 2 of the preamble to the said decree) of all anti-constitutional activity means that, from a strictly legal point of view, citizens are deprived of the inherent rights they possess from birth, which is a violation of Articles 17, 18 and 19 of the Constitution.

Whereas governmental order No. 1360 provides for restrictive measures in respect of citizens, it places no limitations either on the actions of state bodies and officials responsible for executing the order or on the use of the armed forces; and it prescribes no guarantees for protecting the civilian population as required by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts. Thus there is no observance of commitments deriving from international treaties. which, under Article 15 (4) of the Constitution, form an integral part of the Russian Federation's legal system.

Given the causal links between the said decisions, on the one hand, and the victims and destruction in the Chechen Republic, on the other, it must be concluded that the decisions and the measures for implementing them were incompatible with the requirements of the restoration of the constitutional order; and this confers on those very decisions the character of a violation of the constitutional order of the Russian Federation.

Dissenting opinion of Judge Zorkin

1. According to the information available to the Constitutional Court, the situation that had arisen in the Chechen Republic should indeed be termed extraordinary, and on this point I am in full agreement with the Court's decision. But extraordinary situations are not all identical, and they therefore call for the use of different means of response. The very concept "extraordinary situation" does not have any clear legal substance, and the Court did not determine what type of situation had arisen in the Chechen Republic.

To deal with the extraordinary situation in the Chechen Republic, the President resorted to measures that have no basis either in the Constitution or in legislation. This was not the first time that a presidential decree had been issued before the relevant statutory basis has been created.

The Court did not examine the dimension of the events in Chechnya or compare their nature with that of the measures taken. Neither the presence of bands nor the intervention justifies the reference to implicit powers. On the other hand, the circumstance that might have justified it (the organised revolt) was not established by the Court. For that reason, use should have been made of other evidence, based on precise information concerning, in particular, the Security Council's deliberations on the events in Chechnya.

2. By refusing to consider whether the decisions taken were politically expedient, the Court in fact declined to examine their legal nature, because the question of the choice of means not provided for in the Constitution is not only a political issue, but also a legal one.

3. In accordance with the requirements of the law on the Constitutional Court, what should have been done was: to study the factual aspects to the extent that this is relevant to constitutional procedures (Art. 3); to examine the circumstances of substantive importance to the case as well as the corresponding evidence (Arts. 49, 50 and 67); to assess not only the literal meaning of the texts concerned but also the meaning attributed to them by official interpretation and by legal practice (Art. 74); and to consider the texts within the context of the normative system (Art. 74). Without meeting these requirements, the Court was unable to reach a correct and fair judgement. Thus, its ruling was confined to an evaluation of the literal meaning of the texts. The Court had no right to assess the presidential and governmental texts without considering causal links between their literal purport and their application. Because of the absence of a detailed examination, was no justification for discontinuing the procedure concerning the decree of 30 November 1994 and the decree on the fundamental provisions of military doctrine.

4. Accordingly, any decision reached by the Court would be legally disputable owing to the absence of an adequate evidential basis.

5. Given the Court's responsibility for its decisions, it should have made the following declarations:

   1. The events in Chechnya were in fact of an extraordinary character. That character cannot, however, be defined more closely as the Court did not have the necessary evidential basis. Consequently, the legal content and form of the situation is not clear. Moreover, this lack of clarity is liable to endanger the very foundations of the constitutional order and the principles of a law-based state.

   2. The Constitutional Court intends to make a detailed examination of the Chechen issue and of its nature and substance. To that end, the Court requests the President to provide it with all necessary information.

   3. The Court will begin this task immediately setting a precise timetable and precise time-limits for completing it. On the basis of its findings it will deliver a judgment.

   4. Given the extraordinary nature of the situation, a moratorium on military activity in Chechnya should be introduced until the Court has completed its task.

This proposed alternative judgment is suggested not only in order to assess the past, but also for the purposes of the present and the future. The Constitutional Court must refrain from taking any decisions until it has been provided with all the relevant information. In view of the foregoing, I urge that the procedure in the present matter be reopened.

Dissenting opinion of Judge Kononov

1. In its review of the presidential and governmental texts, the Constitutional Court departed from the requirements set out in Article 74 (2) of the law on the Constitutional Court concerning the need to take account not only of the literal meaning of a text but also of the meaning attributed to it by interpretation and legal practice as well as the meaning deriving from its place in the whole system of legal texts. The presidential and governmental texts form a set of consecutive, complementary decisions on the same problem. Assessing them separately and out of context does not allow their true meaning to emerge, and creates a distorted picture of their normative nature.

2. The texts concerned are by nature exceptional laws (emergency decrees etc), because they contain all the main ingredients of a state of emergency and a state of war. Thus, the secret decree of 30 November repeatedly refers to the introduction and maintenance of a state of emergency regime in the Chechen Republic. In particular, it provides for the creation of "special forms of government" (point 4) under the aegis of the military, including a "leadership group" (point 2) etc. However, the unified command of the armed forces is possible only in exceptional cases (Article 18 of the law on state of emergency).

The emergency measures that were introduced without prior notice resulted in massive violations of the constitutional rights and freedoms of citizens. Because of this, the Court had no right under Article 43 (2) of the law on the Constitutional Court to discontinue the procedure concerning the decrees, even after its appeal.

3. The decree of 9 December 1994 is identical to the preceding decree in both title and content. The authorisation conferred on the government to use "all the means at the state's disposal" provides for his legal limitations or guarantees and is therefore open to an entirely arbitrary interpretation. By illegally declaring the opposing party to the conflict to be "outside the law", the above-mentioned wording makes it clear that the desired objectives are to be attained by any means and at any price. That was how those responsible for implementing the texts saw things, and the result has been flagrant violations of international humanitarian law.

4. Contrary to Article 15 (1) of the Constitution, the governmental order of 9 November 1994 was not the outcome of a debate within the government.

The argument of the orders's author that the repressive measures provided for in the order form part of the usual powers of organs responsible for internal affairs is unconvincing. The legislature unambiguously classified them as emergency measures pursuant to Articles 22 and 23 of the law on a state of emergency.

An analysis of the texts concerned as a whole, with due regard being had to their application, enables the expression "liquidation of armed formations" to denote an armed conflict of a non-international nature, the expression "disarmament measures" a state of emergency regime and the expression "all the measures at the state's disposal" unlimited powers for the executive in its choice of means of action. That being the case, there can be no doubt about the normative nature of the texts.

5. The powers of the President and the government are limited by the legal rules contained in the Constitution and the laws of the Russian Federation and in international treaties. By introducing a special legal regime, the President and the government violated

the requirements of Articles 55 (3), 56, 80 (2), 87, 88, 90 (3) and 102 (1) sub-paras. "b" and "v", of the Constitution of the Russian Federation, the law on a state of emergency of 17 May 1991 and Article 4 of the 1966 International Covenant on Civil and Political Rights.

That section of the texts which provides for the use of the armed forces is at variance with Articles 87 and 90 (3) of the Constitution, because these forces were involved in the conflict notwithstanding their purpose as defined in Article 10 of the law on defence of 24 September 1992.

For the same reason, the Court should have declared unconstitutional the presidential decree of 2 November 1993 adopting the fundamental provisions of military doctrine. The normative character of this decree emanates from the presidential powers set forth in Article 83 (z) of the Constitution and, Article 1 of the law on defence as well as the precepts worded in a normative form in the section enumerating cases in which the armed forces may be used.

The presidential and governmental texts violated the fundamental principles of international humanitarian law by investing those responsible for executing them with unlimited powers in choosing the means of waging military operations. In particular, they resulted in the violation of the 1949 Geneva Convention and the additional protocols thereto, and notably the Protocol of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts.

The texts under consideration contained no safeguards against illegal curtailment of human rights. Taken as a whole, they violated a whole series of constitutional provisions on human rights, including Articles 17, 23, 27, 29 (4) and (5), 35, 40 (1), 46, 48 (2), 52, 53 and 55 (3) of the Constitution.

6. The principles enshrined in the Constitution cannot all be regarded as equivalent: the individual and his rights and freedoms are unambiguously declared to be supreme values. However, the presidential and governmental texts have clearly given priority to certain other principles, to the detriment of the fundamental principle. The right of a people to self-determination does not admit of any reservations under the terms of the International Covenant on Civil and Political Rights, and is an integral part of the system of fundamental constitutional rights by virtue of Article 15 (4) of the Constitution of the Russian Federation. It would appear that territorial integrity cannot be asserted forcibly, in defiance of a people's self-determination as expressed in legal form.

The reference to extreme necessity cannot justify armed conflict either. The 1984 Siracusa Principles for interpreting limitation and derogation provisions in the International Covenant on Civil and Political Rights declare that "national security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order". Moreover, extreme necessity is a justification only if the prejudice caused is less serious than the prejudice prevented; that was not the case with the application of the texts concerned.

Dissenting opinion of Judge Luchin

The essence of this legal opinion can be summarised as follows: the normative texts of the President and the Government of the Russian Federation which are being considered by the Court are not in conformity with the Constitution of the Russian Federation in that as they have no foundation in specific constitutional rules and the allowed the armed forces to be used for the purpose of resolving a domestic conflict, which resulted in illegal curtailment on and massive violation of human rights and freedoms as well as the destruction of the social infrastructure in the territory of the Chechen Republic.

There can be no denying the causal link between the texts under consideration and the tragic events in Chechnya. Having chosen to resolve the conflict by force, the federal authorities did not take adequate measures to safeguard the rights and freedoms of citizens.

The sovereignty and territorial integrity of the Russian Federation are values of a very higher order, but they are instrumental in relation to human rights and freedoms, which are the supreme constitutional value (Art. 2). In actual fact, the entire pyramid of constitutional values was overturned. The constitutional order was asserted at the cost of victims and destruction. The safeguards afforded by the right of citizens to life (Art. 20) and the rights to the inviolability of the home (Art. 25), as well as by freedom of movement and freedom to choose one's place of residence (Art. 27), were liquidated. The dignity of the individual (Art. 21) was trampled underfoot.

To understand the content of the executive's texts, it is necessary, pursuant to Article 74 of the law on the Constitutional Court of the Russian Federation, to assess not only their literal meaning but also the meaning attributed to them by official or other interpretation or by established legal practice, as well as on the basis of their place in the general system of legal instruments. The meaning of the presidential decrees was very well understood by those responsible for executing them. The fact that the President of the Russian Federation never repudiated the actions of the ministries concerned meant that he approved the way in which those responsible for executing his decrees interpreted them.

1. There was no justification for discontinuing, on the basis of Article 43 (2) of the Constitutional Court Act, the procedure concerning the case in so far as it related to the constitutionality of presidential decree No. 2137 of 30 November 1994, because the above-mentioned provision prohibits the discontinuation of a procedure when the constitutional rights of citizens were violated by the text concerned. The adoption of the decree has had irreversible consequences, and it laid the foundations for the curtailment of the rights and freedoms of citizens in the Chechen Republic.

The decree is not in conformity with the Constitution of the Russian Federation, because it is not based on any of the Constitution's individual norms.

2. By asserting that the adoption of decree No. 2166 of 9 December 1994 fell within the limits of the President's powers, the Court went beyond the scope of the matters referred to it, which is contrary to Article 74 (3) of the law on the Constitutional Court.

The President does not possess "all the means at the state's disposal". He cannot use them unsupervised, and he certainly cannot delegate them to the Government. That would be in breach of Article 10 of the Constitution, which provides for separation of powers. Hence, the constitutionality of the decree is not upheld by Article 78 (4) of the Constitution of the Russian Federation.

The Court's ruling that decree No. 2166 of 9 December 1994 is constitutional raises objections in relation to the Court's interpretation of Article 80 of the Constitution, which does not define the President's powers (these are defined in Articles 83-89. As Article 80 stipulates that the President must act in accordance with the procedure established by the Constitution, the attempt to justify his acts by reference to the general legal principle that "everything not prohibited by law is permissible" is incorrect.

Basing the constitutionality of decree No. 2166 on Articles 82 (1) and 87 (1) of the Constitution is tantamount to acknowledging the existence of implicit presidential powers. This position is unacceptable, because the powers of the President cannot be arbitrarily deduced from his status.

Although a state's constitutional order, sovereignty and territorial integrity are very important for its security, that does not mean that armed forces whose purpose is to preserve state security may be used to put an end to domestic conflicts.

3. The Constitution is the Constitutional Court's sole yardstick for assessing the constitutionality of normative instruments. Declaring that normative instruments are constitutional on the basis of their conformity with laws that are presumed to be constitutional destroys the foundation of constitutional justice in the Russian Federation and constitutes a shift towards another model of constitutional jurisdiction.

4. There is no legal basis in the Russian Federation for the "extraordinary situation" regime of which the Court took note in the wake of the arguments of the party that issued the texts concerned. It is the very absence of a legislative basis for the "regime for restoring the constitutional order" in the federal components that renders the entire situation and the texts adopted in that connection unconstitutional.

5. The Constitutional Court confined itself to declaring governmental order No. 1360 of 9 December 1994 unconstitutional for being contrary to Articles 27 (2), 29 (4) and (5), 55 (3) and 56, (point 3, para. 1 (5) and point 6, para. 2) without making any proper assessment of the provisions of the order as a whole. In my view, the order is unconstitutional as a whole, because its rules derive logically from the President's decrees, reproduce their provisions and in fact prescribe the very same measures. It is at variance with the Constitution because it modifies the powers of the President and the government and because it is inadmissible to authorise the government to use "all the means at the state's disposal".

6. I cannot endorse the discontinuation of the procedure for assessing the constitutionality of presidential decree No. 1833 of 2 November 1993 (on the fundamental provisions of military doctrine of the Russian Federation) or of the procedure for assessing the actual provisions of that doctrine. The Court's conclusion that these provisions do not contain any normative rules is misconceived, as the approval by the President of this or that text gives it a binding, official character. As the provisions of military doctrine originally contained a wording allowing the use of the armed forces to resolve domestic conflicts, they are to that extent contrary to the second section of the Constitution and cannot therefore be applied.

7. The presidential and governmental texts under consideration are at odds with the international undertakings of the Russian Federation, in particular with Articles 14 and 15 of the Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.

In conclusion, whatever the situation that has arisen in the territory of the Chechen Republic may be, it cannot render that measures adopted constitutional, because their constitutionality must be decided at the legal, not the political level. Nor can their unconstitutionality be justified by references to "circumstances" or "expediency". There is always an alternative to using the armed forces, especially when such use is illegal. Responsibility in the matter must be borne first of all by those who took the political decisions, and only afterwards by all the others in the context of "excesses of implementation".