

Strasbourg, 18 November 1996

<s:\cdl\doc\96\cdl-inf\inf8.E>

CDL-INF (96) 8

OPINION

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

I.

**THE PRESIDENT OF THE REPUBLIC
(doc. CDL (96) 90)**

II.

**THE AGRARIAN AND COMMUNIST GROUPS
OF PARLIAMENTARIANS
(CDL (96) 71)**

**adopted by the Commission
at the 29th Plenary Meeting of the Commission
in Venice, on 15-16 November 1996**

**on the basis of contributions by
Mr S. BARTOLE (Italy)
Mr K. LAPINSKAS (Lithuania)
Mr G. MALINVERNI (Switzerland)
Mrs A. MILENKOVA (Bulgaria)
Mr E. ÖZBUDUN (Turkey)
Mr M. RUSSELL (Ireland)**

INTRODUCTION

1. Mr Sharetsky, Speaker of the Parliament of the Republic of Belarus, asked the European Commission for Democracy through Law to examine two proposals for amendments and addenda to the Constitution of the Republic of Belarus, submitted respectively by the President of the Republic and the Agrarian and Communist Groups of parliamentarians (document CDL(96)71) to a popular referendum, which is scheduled to be held on 24 November 1996. Six members of the Commission, Ms Milenkova and Messrs Russell, Bartole, Lapinskas, Malinverni and Özbudun commented on the drafts. The present opinion adopted by the Commission at its 29th meeting on 15 and 16 November 1996 is based on their comments while taking into account that the President has in the meantime substantially modified his proposals and submitted a revised draft (document CDL(96)90).¹

THE DRAFT SUBMITTED BY THE PRESIDENT OF THE REPUBLIC OF BELARUS

2. According to this proposal, the 1994 Constitution will keep its formal structure, still being divided into sections. An important addition, however, has been made, as a consequence of the introduction of a supplementary section containing final and transitional provisions. In substance, the changes proposed are of enormous importance and lead to the establishment of a completely different system of State power.

a) General principles and human rights

3. As regards the first two sections (Principles of the constitutional system; The Individual, Society and the State), several changes are envisaged, following a tendency to stress the "social" character of the State.

4. One such an example is provided by article 13 of the draft (concerning public and private property) which entrusts the State with the task of guiding private economic activity to achieve social goals, and which also expresses a State commitment to guarantee the working people the right to participate in the management of enterprises, organisations and institutions with the aim of increasing the efficiency of their work and raising socio-economic living standards. Land intended for agricultural use would be principally State-owned.

5. According to article 14, social and labour relations between organs of the State power, employers' associations and trade unions shall be conducted according to the principles of social partnership and mutual co-operation.

6. The prominence given to social rights becomes very apparent when reading other provisions of the draft, such as article 32 (equal opportunities for men and women in education and

¹ The Commission has been informed that a new text has been introduced into Parliament which should replace the text proposed by the agrarian and communist groups of Deputies. This text, which reestablishes the office of the President of the Republic, is available only in Russian and could not be taken into account in this opinion. The Commission notes that the submission of new texts shortly before the date of the referendum makes it difficult not only for the Commission but also for the people of Belarus to form an opinion on these texts.

vocational training, work and advancement; participation of youth in political, social, economic and cultural development), article 42 (right to receive a wage not below the level that can secure the employees and their family free and adequate existence), and, as a general statement, article 21, which proclaims the right to an adequate standard of living, inclusive of sufficient food, clothes, housing facilities.

7. These provisions are not at variance with the international principles on protection of human rights, even if their inclusion in the draft seems to have some worrying resemblances to the former communist regime, based on a massive presence of the State in social life.

8. In the draft three articles deserve a positive comment. Article 17 gives equal rank to Belarusian and Russian, considering both as official languages of the Republic. Another useful provision is the new Article 61, according to which everyone shall be entitled to apply to international organisations to defend his rights and freedoms, if all available domestic legal remedies have been exhausted, and, in another Chapter, the new Article 115, para. 2: "Court decisions shall be binding for all citizens and officials".

9. On the other hand, the draft does not guarantee an adequate standard of protection for the freedom of religion: after having stated that all religions and denominations shall be equal before the law, Article 16 of the draft adds that relations between the State and the religions shall be governed by the law with regard to their influence on the development of the spiritual, cultural and public tradition of the Belarusian people: this statement does not prevent any discrimination of religious organisations and contradicts the initial proclamation. The new provision that religious activity may not aim at preventing citizens from fulfilling their public, social or family obligations is also worrying and seems to invite abuse. The tendency to restrict freedom of worship is confirmed by article 31, which introduces a possibility to prohibit, on the basis of a law, religious services and ceremonies, without specifying the circumstances in which this prohibition can take place.

10. The limitation of the use of information contained in the new Article 34, para. 3, may easily be abused. Such restrictive legislation would have to be drafted with the utmost care to avoid violating freedom of expression.

11. With respect to human rights and fundamental freedoms, it has also to be borne in mind that their maintenance is closely connected with the establishment of a democratic form of government: an excessive concentration of State powers can make even the best provisions for the protection of human rights useless, if there is a lack of an effective system of checks and balances between the institutional organs. It is therefore also dangerous for human rights that the presidential draft does not respect the principle of separation of powers, giving the Head of State too many prerogatives, and depriving the parliamentary assemblies of the possibility of working as a real counterweight (see below).

b) The President and the Parliament

12. As regards the section concerning the three main organs of the State, the order of the chapters has been changed, the articles referring to the Head of State being placed before the chapter dedicated to Parliament.

13. According to Article 80 of the draft, only a citizen of the Republic who has permanently lived in Belarus for at least ten years before the election is eligible as President; the requirement of "permanency" leads to the impossibility, for someone who stayed abroad for some time (or who is now abroad but is still a citizen of Belarus), to take part in a presidential election.

14. The preponderance of the Head of State must be assessed by taking into account that the project of amendment introduces a bicameral system, giving the President the right to appoint eight members of one Chamber (the Council of the Republic, as stated by Article 91). The other members of the Council of the Republic are elected from each of the regions and the city of Minsk by secret ballot at the sittings of the local councils of deputies at the basic level of each of the regions and the city of Minsk. This conception of the Council of the Republic as a house of regional representation is surprising since the Constitution contains no rules on the regions, not even a simple list of the regions. It can therefore also not be ascertained whether the regional councils possess guarantees of their independence sufficient for such an election.

15. The two assemblies do not perform the same tasks: in fact, many functions are solely exercised by the Council of the Republic and the House of Representatives cannot interfere in any way. So, for instance, the appointment of the Chairman and the members of the Supreme Court, the Chairman and the judges of the High Economic Court, the Procurator General, the Chairman and the members of the Board of the National Bank, the Chairman of the Central Board for elections and national referenda, the Chairman of the Committee for State Control is made by the President with the sole consent of the Council of the Republic (Article 84). Moreover, in the event of natural calamity, catastrophe, disorder involving violence or threat of violence on the part of a group of individuals, the President may declare a state of emergency, needing the approval, within three days, of the Council of the Republic (Article 84); to be fully aware of the consequences of such a situation, one has to consider that, in case of a declaration of a state of emergency, there is a possibility to suspend most of the fundamental rights (Article 63).

16. Anyway, even compared to all the functions performed by the Chambers together, the influence of the President appears preponderant.

17. This is the case of the legislative process: It is not even clear whether Parliament has a general legislative competence. Article 97 no. 2 contains a list of matters to be settled by law. The ambiguous wording of this provision makes it impossible to determine whether the House of Representatives has legislative competences in other fields, having regard also to the last paragraph of Article 97 limiting the House of Representatives to the tasks expressly foreseen by the Constitution.

18. In addition, all financially relevant bills may be submitted to the House of Representative only upon the consent of the President (Article 99). Since most bills will involve an increase or decrease in State spending, this deprives Parliament to a large extent of the right of legislative initiative.

19. Furthermore, on Presidential demand or, with presidential consent, that of the Government, the Chambers shall take decisions on an entire draft or on a part of it, while retaining only the amendments proposed or adopted by the President or the Government.

20. An eventual presidential veto on a draft law can be overcome with a majority of two thirds of the members in each Chamber (Article 100); but, in case of a veto concerning amendments or addenda to the Constitution, the interpretation of it, as well as basic laws, the majority required to overrule the presidential will is raised to three-quarters of the members of each Chamber: taking into consideration the right to appoint eight members of the Council, the President, with the support of only nine additional members of this Chamber, will stop the most important bills.

21. The weakness of the Parliament is aggravated even by the schedule of its sessions: according to Article 95, the Houses shall be summoned for two regular sessions a year, for a maximum of 170 days; extraordinary sessions shall be convened only in the event of special necessity, following the initiative of the President, the Speakers of the Houses, or the majority of the full membership of each of the Houses. In other words, the assemblies do not have the power to organise independently their activity, and will have, in all probability, no time to satisfy the needs of legislation.

22. The President, on the other hand, is entrusted with the power of dismissing the Parliament, on the ground of a judgment of the Constitutional Court, in the event of systematic and flagrant violation of the Constitution by the Chambers (Article 94): this provision clearly shows that the assemblies are constantly under a threatening control, because the notion of violation is not determined and must be assessed by a tribunal whose guarantee of independence is not assured.

23. The position of the individual members of Parliament is even more precarious since Article 72 provides that members of Parliament may be dismissed "on specific grounds and according to a procedure prescribed by law". The grounds for dismissal are in no way specified in the Constitution. This provision is reminiscent of similar rules characteristic of the Soviet system and threatens the independence of the members of Parliament in a way unacceptable in any democratic system.

24. The President therefore clearly has a dominant role with respect to Parliament. If for some, though by no means all, of these provisions parallels may be found in Western constitutions, in these constitutions there exist checks and balances completely absent in the proposed draft.

c) The President and the Constitutional Court

25. The Constitutional Court will continue to be composed of twelve members, but the president will be authorised to appoint the Chairman of the Court (with the consent of the Council of the Republic), as well as five other judges; the remaining six judges will be appointed by the Council of the Republic, and, in this context, the "political weight" of the members of the Council nominated by the President could be decisive (Article 116). Taking into account that, in the event of a tie, the Chairman will have the casting vote, the Court will not appear as impartial in the eyes of the public but will be suspected as generally supporting the President's choices.

26. The role of the Constitutional Court will be considerably weakened because it can no longer be seized by a minority of Deputies but only by the Chambers. The opposition therefore no longer has the possibility to have the constitutionality of norms verified by the Constitutional Court. One also wonders which reason could justify the deletion of Article 126, para. 3 of the present Constitution: "Direct or indirect pressure on the Constitutional Court or its members in

connection with the execution of constitutional supervision shall be inadmissible and shall involve responsibility in law."

d) The President and the Government

27. As regards the Government, and the relations between this organ, the Parliament and the President, it could be argued that the system envisaged by the draftsmen can be defined as semi-presidential, with a Government which is accountable to the President and, at the same time, responsible to Parliament.

28. A deeper examination of the presidential proposal demonstrates that the situation is different. The possibility of concrete control of the Government by Parliament and, on the other hand, a margin of autonomy of the Government towards the President are characteristic of semi-presidential systems.

29. By contrast, the Presidential proposal does not respect these characteristics. It has already been explained that the Parliament is weak and, to a certain extent, influenced by the Head of the State. In addition to that, according to Article 106 of the text, the President has the right to dismiss, by his own initiative, every member of the Government (with the exclusion of the Prime Minister).

30. The presidential power is further reinforced by the provision of Article 84 (point 24), which entrusts the Head of the State with the right to repeal Government acts. And, if the House of Representatives twice rejects the presidential nominees for the post of the Prime Minister, the President shall be entitled to appoint an acting Prime Minister and to dissolve the House of Representatives, calling new general elections (Article 106).

e) The President and the referendum

31. The presidential preponderance reappears, if we look at the changes proposed with reference to the popular referendum: according to Article 74 of the draft, a referendum will be called by the President of the Republic, on his initiative or following the proposal of both Chambers.

32. In this specific case, however, the proposal must be approved by the majority of the members of each Chamber. This high quorum is probably aimed at discouraging the proposals by the Chambers, as is even more evident concerning the procedure of amendment of the Constitution (see below).

f) The President and the other bodies of the State

33. With reference to the Procurator General, which is appointed by the President (with the consent of the Council of the Republic), there is an evident contradiction in Article 126 of the draft: after stating that the Procurator General and subordinate procurators are independent in the exercise of their powers and are guided by the legislation, it is affirmed that the Procurator General is accountable to the President. This statement (together with the provision enabling the President to dismiss the Chairman of the Supreme Court) represents a serious distortion in a constitutional model which should be based on the independence of judicial power, especially

because Article 125 entrusts the Procurator's Office with the task of checking the observance of laws, decrees and edicts by anybody, following the model of the Soviet Prokuratura.

34. Moreover, the President (Article 84, no. 11) may dismiss by his own initiative the Chairman and the members of the Constitutional Court (even those appointed by the Council of the Republic), the President and the members of the High Economic Court, the Chairman and the members of the Central Board for elections and referenda, the Procurator General, the Chairman of the Committee for State Control, and the Chairman and the members of the Board of the National Bank: even if the grounds for the exercise of these prerogatives shall be provided by law (regrettably they are not defined in the Constitution), it is possible to say that the interference of the President in the sphere of other state bodies could not be stronger.

35. With regard to the Committee of State Control, the President of the Republic has also the right to appoint all the members (article 130, according to the English translation, states that the Committee "shall be established by the President"): this prerogative seems to be particularly significant, for the said organ is entrusted with the power to control the national budget execution, the use of state property, the observance of acts of President, Parliament, Government and other state bodies governing state property relationships, as well as economic, fiscal and taxation relations.

36. Such a complex of powers should be attributed to an independent organ. The examined draft tends to transform the Committee into a branch of the presidential administration, thus neutralising a further possible constitutional guarantee.

37. The Head of State, according to article 119 of the draft, shall directly (or through a procedure established by himself) appoint the leaders of local executive and administrative bodies: the principle of separation of persons, conceived in a vertical sense, is violated. The appointment of mayors by the President does not seem acceptable in a country wishing to become a member of the Council of Europe.

g) Other powers of the President

38. In a context dominated by the preponderance of the Head of the State, some powers attributed to this organ seem to have a secondary importance: so, according to Article 84 of the draft, the President may postpone a strike (for a period of no more than three months) in cases envisaged by the law; he may suspend decisions of local councils of deputies and cancel decisions of local executive and administrative bodies; he may introduce martial law within the territory of Belarus; he may appoint and dismiss the High Command of the Armed Forces.

39. More importantly, the President has the right to issue edicts and orders having binding force (Article 85). An ordinary law, according to Article 137, shall have priority on the said acts only if the authority to issue the edict has been given by this very law. The possibility given by Article 116 to the Constitutional Court to check the conformity of the presidential decrees and edicts to the laws is therefore limited to the cases in which these are issued for the purpose of implementing these laws. In any case, the draft no longer gives to the ordinary courts the possibility to question the conformity of a regulatory enactment with the law as provided for in Article 112 of the present Constitution.

40. In addition, Article 101, para. 3 gives to the President the possibility to issue "temporary" decrees "on grounds of exceptional necessity and urgency", which remain indefinitely in force "unless they are repealed by the majority of votes of the full membership of each House".

41. In other words, a large part of the legislative functions is in fact vested in the President and not in Parliament. This is all the more worrying because Parliament, to a large extent, is deprived of its right of legislative initiative (see above). Large areas will therefore be regulated by presidential decrees only.

h) The amendments and addenda to the Constitution

42. The procedure of amending and supplementing the Constitution can be opened on presidential or popular initiative (150,000 citizens, according to Article 138); the amending text has to be approved by at least two-thirds of the members of each Chamber: on this occasion the vote of the Senators appointed by the President could be decisive.

43. In any case, the Head of State can call a referendum to amend the Constitution, while bypassing the Parliament (Article 140).

44. The Chambers, deprived of the right to propose addenda and amendments to be voted by themselves, could act by means of a popular referendum; in this case (as was stated before) the quorum required by the draft is rather high, and parliamentary minorities will be virtually prevented from initiating a procedure of amendment of the Constitution.

i) The procedure of impeachment

45. Article 88 of the draft takes into account the possibility of a dismissal of the President for high treason or other (not specified) serious crime, but states that the relative inquiry shall be organised by the Council of the Republic (following a motion approved by the majority of the members of the House of Representatives), and prescribes a majority of two-thirds of the members of the Council of the Republic to decide upon the dismissal (after a similar decision which the House of Representative has to adopt with a majority of two-thirds of the members).

46. Given the mentioned presidential power of appointing eight members of the Council of the Republic, and considering the complexity of the whole procedure (which, in order to be effective, must come to an end within a month from the day that the accusation was brought) the Head of the State must be considered as virtually irremovable from office.

47. Anyway, even if the Chambers voted in favour of the dismissal, the competent court of trial would be the Supreme Court, whose members are appointed by the President: so, this instrument has little chance of being really effective.

k) Final and transitional provisions

48. The final section of the presidential draft contains six articles which are considered as final and transitional provisions.

49. If the whole constitutional text can be criticised as lacking some elementary democratic

guarantees which are now generally accepted in all the modern European constitutional systems, the transitional provisions are, without any doubt, still more at variance with democratic standards, providing for an institutional model in which the imbalance between the President and the other powers is striking.

50. According to Article 143, the President and the Supreme Council shall form the new 110-member House of Representatives from among the deputies of the present Supreme Council. If there are discrepancies between President and Supreme Council, as to the composition of this Chamber, the President shall dissolve the Supreme Council and call new Parliamentary elections. The Council of the Republic will be formed in the manner foreseen in Article 91 of the draft, i.e. 8 members appointed by the President and the rest by regional councils.

51. The principle of continuity shall be applied as regards the President and the Supreme Council (or better, the Supreme Councillors fortunate enough to have been selected for the new House of Representatives) whose powers, according to article 144 of the draft, will be prolonged. For them a full new term of office will start to be counted from the day of entry into force of the amended Constitution. It would be advisable, considering the great number of other changes proposed by the referendum, that the people had the possibility to decide, through a general election, on the composition of the new Parliament. The same can be said as regards the President: it is not correct to transform the referendum on the draft into a consultation implying a vote of confidence (or no-confidence) in the President. Moreover, the last article of the draft (146) states that President, Parliament and Government, within two months of entry into force of the Constitution, shall establish and form the other state bodies, such as the Constitutional Court. The checks and balances to the presidential prerogatives will be totally missing during the transitional period, and there will be no constitutional guarantees, given the massive influence of the Head of State, in the process of formation of Government and Parliament.

THE DRAFT SUBMITTED BY THE AGRARIAN AND COMMUNIST GROUPS OF PARLIAMENTARIANS

52. This proposal also aims at changing the form of government, introducing a sort of "gouvernement d'assemblée", in which Parliament (which would still be composed of one Chamber, such as the Supreme Council) has an obvious supremacy on all the other organs.

53. The differences between this draft and the one proposed by the President are evident. It has to be said, however, that this second project is a bit closer to the system envisaged in the Constitution now in force, which, though providing for a presidential system, puts the Parliament in a strong position, giving it the possibility to counterbalance (and, in some circumstances, to prevail over) the President.

54. Nevertheless, the agrarian and communist groups suggest abolishing the office of the President of the Republic and entrusting the Chairman of the Supreme Council with the tasks of the President. This is a serious breach of the principle of separation of powers, since the same person cannot exercise executive functions while chairing the body which has the duty of checking and approving the conduct of the executive.

a) General principles and human rights

55. The first two sections of the 1994 Constitution are kept virtually unaltered; some little variations and additions are proposed, such as in article 17, where it is proclaimed that the Belarusian language and the Russian language are both considered as official languages of the Republic (whereas, according to the 1994 Constitution, only the former can be defined as an official language).

56. Article 39 has been positively reinforced, thanks to the inclusion of a principle of non-discrimination (based on race, sex, ethnic origins, religious beliefs) of the citizens as regards access to public offices.

57. An important provision has been added: according to article 42 of the draft, citizens shall have the right to protection of their economic and social interests, including the right to form professional unions, to conclude collective agreements and the right to strike.

58. Article 49 (corresponding to article 48) contains a more detailed provision, in which it is stated that a privation of a dwelling is possible (whereas, in the present Constitution, there is an absolute prohibition of a privation) only "by a court decision or in accordance with the law prescribing a different procedure which is not in conflict with the principles of social justice". This text, in the English translation, is not very clear and seems somewhat vague.

b) Referendum

59. The articles dedicated to the electoral system and the referendum have been gathered in one chapter with only one article now referring to questions of referenda. The procedure of holding popular consultations, according to article 74 of the draft, will be determined by a law. Since nearly all powers are concentrated in the Supreme Council, it seems questionable to give no details on the conditions for the holding of a referendum in the Constitution itself. The Supreme Council may well be tempted to set the hurdles to the introduction of a referendum so high that it becomes practically impossible to introduce a referendum. The referendum would therefore be no effective check on the powers of the Supreme Council.

c) The new powers of the Chairperson of the Supreme Council

60. More relevant are the changes envisaged in the Sections concerning the prerogatives of the main state bodies.

61. All the provisions which, according to the text now in force, relate to the office of the President of the Republic, do not appear in the draft prepared by the communist and agrarian groups. On the other hand, article 82 of the said proposal states that the Chairperson of the Supreme Council shall be the highest official of the Republic, representing it while dealing with other countries.

62. Forced by the need to entitle someone to carry out some indispensable functions, and being afraid of the possible political consequences of the institution of a presidential or semi-presidential system, the drafters chose a solution which is not consistent with the principle of separation of powers.

63. This conclusion can be easily drawn as soon as we read article 83 of the project: the

Chairperson of the Supreme Council, in addition to the normal tasks usually performed by every chairman of an assembly, shall sign the laws of the Republic and other acts adopted by the Supreme Council and its Presidium; shall report at least once a year to the Supreme Council on the situation in the Republic and on the most important issues of domestic and foreign affairs; shall represent the country in the relations with organisations and bodies inside the country and abroad; shall conduct negotiations and sign international treaties; shall appoint judges of the regional city and district courts as well as judges of the regional and city economic courts.

64. All these functions are executive by nature, and, as a consequence, should belong to an organ not linked to a parliamentary assembly; this exigency can be fully appreciated if we consider that the Chairperson will not be allowed to ask the Council for a new discussion about a bill, and so the system will lack an important constitutional guarantee (which can be found not only in presidential regimes, but also in some parliamentary ones).

65. These executive functions are also incompatible with the main functions of a Speaker of an elected assembly, who should be an impartial person entrusted with the task of ensuring the correct functioning of the assembly itself and thereby guaranteeing the equal protection of all parliamentarians. This task cannot be assumed by a person who, according to article 83.3, "reports at least once a year to the Supreme Council on the situation in the Republic and on the most important issues of home and foreign affairs"; this latter function can only be fulfilled by a politically active person in charge of executive functions.

66. The power to appoint local judges, which is attributed to the Chairperson, represents another serious breach of the principle of separation of powers: it is inconceivable that a chairman of a legislative assembly can freely appoint some judges, especially when (and this is the case) the procedure of appointment is not clearly defined by the Constitution.

d) The Supreme Council and the other State bodies

67. It is essential to point out that, even if we limit our examination to the role and to the powers of the Supreme Council, the opinion on the draft must be negative.

68. In fact, according to article 79, the Council shall adopt the Constitution and its amendments; shall call national referenda; shall decide on holding elections of deputies of local councils; shall appoint the Prime Minister and approve the programme of the Government; shall set up and dissolve ministries of the Republic; shall elect all the members of the Constitutional Court, the members of the Economic Court, the Procurator General of the Republic, as well as the members of the Board of the National Bank and of the Supervisory Authority; shall determine the priorities in foreign and domestic policy; shall approve the plan of economic and social development, as well as the state budget; shall decide upon military policy, shall take decisions of amnesty; shall veto instructions by the Chairman of the Supreme Council or the Presidium, as well as resolutions passed by Council of local deputies.

69. Such a range of powers (to mention only the more important ones) gives the Supreme Council a sort of omnipotence, the independence of other state bodies being irreparably endangered.

70. The Cabinet of Ministers (Chapter 5 of the draft), which is defined as the supreme executive

and administrative body of state power in the Republic, is deprived of the possibility of auto-organisation, given the parliamentary power to set up and dissolve ministries, and considering that, according to article 98, the jurisdiction of the Cabinet, its rules of procedure and its relationships with other state bodies shall be defined by a law.

71. It is true that, even according to the Constitution now in force, the Parliament is entrusted with some administrative functions, but the proposal of amendment aims at eliminating all possible counterbalances to the parliamentary supremacy (beginning with the office of the President of the Republic). The right to appoint the Constitutional Court, as well as the Supreme Court and the Procurator General gives the Supreme Council the opportunity to interfere or, more precisely, to control the judiciary, providing the most striking example of a breach of the principle of separation of powers.

72. Last, but not least, article 138 restricts the possibility of the people, as well as of the parliamentary minority, initiating the procedure of amending and supplementing the Constitution: the provision requires a proposal of at least 250,000 citizens or 70 deputies, and the vote of two-thirds of the deputies (in two separate approvals); moreover, the amendment proposed by popular referendum can be approved only with the consent of two-thirds of the citizens included in the register of electors.

CONCLUSIONS

73. To summarise, both the examined proposals fall short of the democratic minimum standards of the European constitutional heritage.

74. Even if the text now in force contains some shortcomings, setting up a system in which the Parliament has a slight preponderance over the President (a preponderance which, to a certain extent, can be justified on the basis of the principle of popular sovereignty and which seems more theoretical than practical), both the proposals of amendment lead to an escalation of the institutional problems, in two opposite senses, towards an authoritarian evolution of the Belarusian constitutional system.

75. In other words, neither the establishment of a false semi-presidential regime, with a strong influence of the President (implying, sometimes a total control) on all other bodies of the State (Parliament included), nor the proposal of abolishing the presidential office, with the introduction of an "assembly regime" deprived of the checks and balances which avoid the omnipotence of the Parliament, can be considered as acceptable alternatives to the 1994 Constitution.

76. In these circumstances, the Venice Commission notes that the Constitutional Court of Belarus has decided that the referendum could not have a binding but only a consultative character. In accordance with this decision, the Supreme Council declared that the referendum would not be legally binding. For the Commission it is self-evident that in any country wishing to become a member of the Council of Europe, the decisions of the Constitutional Court have to be accepted and implemented by all other organs of State power.

77. The Commission therefore calls on the authorities of Belarus to abide by the decision of the

Constitutional Court and to try to find a solution to the constitutional crisis which is in harmony with European standards, a solution which can only be substantially different from both drafts treated here. The Commission is at the disposal of the authorities of Belarus if they wish to have its assistance in this respect.