



IN THE NAME OF UKRAINE

**J U D G M E N T
OF THE CONSTITUTIONAL COURT OF UKRAINE**

**In the case on the constitutional petition of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Ukrainian Parliament Commissioner for Human Rights concerning the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic Crimea “On holding the all-Crimean referendum”
(the case on the all-Crimean referendum
in the Autonomous Republic of Crimea)**

Kyiv
March 14, 2014
No. 2-рп/2014

Case No. 1-13/2014

The Constitutional Court of Ukraine consisting of Judges:

Baulin Yuriy Vasylivych - the Chairman,
Bryntsev Vasyl Dmytrovych,
Vdovichenko Sergey Leonidovych,
Hultai Mykhailo Myroslavovych,
Zaporozhets Mykhailo Petrovych,
Lytvynov Oleksandr Mykolaiovych,
Melnik mykola Ivanovych,
Sas Sergii Volodymyrovych,
Serheichuk Oleh Anatoliiovych,

Slidenko Igor Dmytrovych,
Stetsiuk Petro Bogdanovych – Rapporteur,
Tupytskii Oleksandr Mykolaiovych – Rapporteur,
Shaptala Natalia Kocyantynivna,
Shevchuk Stanislav Volodymyrovych,
Shyshkin Victor Ivanovych,

considered in the plenary session the case on the constitutional petition of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine and the Ukrainian Parliament Commissioner for Human Rights concerning the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic Crimea No. 1702-6/14 “On holding the all-Crimean referendum” dated March 6, 2014 (the newspaper “Krymskiye izvestiya”, March 7, 2014).

The consideration of the case in accordance with Articles 39, 40 and 41 of the Law of Ukraine “On the Constitutional Court of Ukraine” was caused by the constitutional petition of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine and the Ukrainian Parliament Commissioner for Human Rights.

The ground for considering the case in accordance with Article 71 of the Law of Ukraine “On the Constitutional Court of Ukraine” is the assertion of the subjects of the right in the constitutional petition of unconstitutionality of the Resolution of the Verkhovna Rada of the Autonomous Republic Crimea No. 1702-6/14 “On holding the all-Crimean referendum” dated March 6, 2014.

Having heard the Judge-Rapporteurs Stetsiuk P.B., Tupytskii O.M. and having investigated the materials of the case the Constitutional Court of Ukraine

e s t a b l i s h e d:

1. Verkhovna Rada of the Autonomous Republic of Crimea by the Resolution No. 1702-6/14 “On holding the all-Crimean referendum” dated March 6, 2014 (hereinafter referred to as “the Resolution”) decided:

- To accede to the Russian Federation as a subject of Russian Federation;
- To hold on March 16, 2014, of the all-Crimean Referendum (including the City of Sevastopol), to which to submit the following alternative questions:

“1) Do you support the reunification of the Crimea with Russia as a subject of the Russian Federation?

2) Do you support the restoration of the Constitution of the Republic of Crimea of 1992 and the status of the Crimea as a part of Ukraine?”

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

- To adopt the Temporary regulation on a republican (local) referendum in the Autonomous Republic of Crimea;

- To establish the Commission of the Autonomous Republic of Crimea on holding the all-Crimean referendum;

- To address the President and the Federal Council of the State Duma of the Russian Federation to initiate the procedure of accession to the Russian Federation as a subject of Russian Federation.

In the Regulation it is also provided that the option supported by the majority of votes shall be deemed a direct expression of will by the Crimean population, and instructed the Commission of the Autonomous Republic of Crimea on holding the all-Crimean referendum to organize conducting of the referendum in accordance with the Temporary regulation on a republican (local) referendum in the Autonomous Republic of Crimea, and the Council of Ministers of the Autonomous Republic of Crimea to organize financial, technical and other support for holding the all-Crimean referendum.

2. The subject of the right to constitutional petition – the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine – under Article 112, paragraph 2 of Article 137 of the Constitution of Ukraine by the Decree of the President of Ukraine No. 261 “On suspending the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea No. 1702-6/14 ‘On holding the all-Crimean referendum’ dated March 6, 2014,” dated March 7, 2014, has suspended the Resolution and at the same time submitted to the Constitutional Court of Ukraine the request to consider its conformity with the Constitution of Ukraine (its constitutionality). According to the author of the petition, the Verkhovna Rada of the Autonomous Republic of Crimea by adopting the Resolution violated the constitutional principles of state sovereignty of Ukraine, basics of the constitutional order, territorial organization and exercise of state power in Ukraine. As the subject of the right to constitutional petition alleges the Resolution does not match Articles 2, 5, 8, 13, 73, 75, paragraphs 2, 3 of Article 85, Article 91, Articles 13, part 20 of Article

92, Articles 132 - 138 of the Constitution Ukraine, parts 1, 3 of Article 1, paragraph 7 of Article 18, Article 26 of the Constitution of the Autonomous Republic of Crimea, Articles 1, 9, 10 of the Law of Ukraine “On the Verkhovna Rada of the Autonomous Republic of Crimea.”

The subject of the right to constitutional petition – the Ukrainian Parliament Commissioner for Human Rights – requested the Constitutional Court of Ukraine to recognize the Resolution as non-conforming with Article 73, paragraph 2 Article 85, Article 137, 138 of the Constitution of Ukraine and noted that the issue of altering the territory of Ukraine must be resolved exclusively by an all-Ukrainian referendum.

3. Under the Judgment of the Second Panel of Judges of the Constitutional Court of Ukraine of March 11, 2014, constitutional proceedings in the cases on the constitutional petitions of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine and the Ukrainian Parliament Commissioner for Human Rights concerning the compliance with the Constitution of Ukraine (constitutionality) of the Resolution were consolidated in one constitutional proceeding.

4. Resolving of the issues initiated in the constitutional petition the Constitutional Court of Ukraine proceeds from the following:

4.1. The Constitution of Ukraine proclaimed that sovereignty of Ukraine extends throughout its entire territory; integral part of sovereignty is integrity and inviolability of the territory of Ukraine within its present borders; protecting the sovereignty and territorial integrity of Ukraine is the most important function of the state and a matter of concern for all the Ukrainian people (Article 2, part 1 of Article 17 of the Constitution of Ukraine).

The Constitution of Ukraine shall be regarded as superior law; laws and other regulatory legal acts shall be adopted on the basis of the Constitution of Ukraine and shall conform to it; norms of the Constitution of Ukraine shall be the norms of direct effect; public authorities and bodies of local self-government and their officials shall be obliged to act only on the grounds, within the powers, and in the way determined by the Constitution and laws of Ukraine (Article 8, Part 2 of Article 19 of the Constitution of Ukraine).

The territorial structure of Ukraine, the legal regime of the state border shall be determined exclusively by law of Ukraine (paragraphs 13, 18 of part 1 of Article 92 of the Constitution of Ukraine).

4.2. The people shall be the bearer of sovereignty and the sole source of power in Ukraine; the people shall exercise power directly or through the state authorities and local self-government bodies; the right to determine and change the constitutional order in Ukraine shall belong exclusively to the people and shall not be usurped by the state, its bodies, or officials; no one shall usurp the state power (Article 5 of the Fundamental Law of Ukraine).

The expression of the will by the people shall be exercised through elections, referendum and other forms of direct democracy; citizens shall have the right to participate in the administration of state affairs, in all-Ukrainian and local referendums, to freely elect and to be elected to the bodies of state power and local self-government (part 1 of Article 38, Article 69 of the Constitution of Ukraine).

The right of citizens to participate in a referendum is their inalienable constitutional right. Questions submitted on the all-Ukrainian referendum must be national-level issues, i.e. the resolution of which affects the fate of all Ukrainian people – citizens of Ukraine of all nationalities. Questions submitted on the local referendum may be only issues within the jurisdiction of the local authorities of relevant administrative and territorial unit.

4.3. Under Article 132 of the Constitution of Ukraine the territorial structure of Ukraine shall be based on the principles of unity and integrity of the state territory, the combination of centralization and decentralization in the exercise of the state power, and the balanced socio-economic development of regions taking into consideration their historical, economic, ecological, geographic, and demographic characteristics as well as ethnic and cultural traditions. Such constitutional principles of territorial structure are determined by the form of state structure of Ukraine as a unitary state.

The Constitutional Court of Ukraine in its Judgment No. 11-пп/2001 of July 13, 2001, (the case of administrative and territorial structure) established that administrative and territorial unit is a compact part of the united territory of Ukraine, which is the spatial basis for organization and activity of public authorities and local governments.

The system of the administrative and territorial structure of Ukraine shall include: the Autonomous Republic of Crimea, oblasts, rayons, cities, city districts, settlements and villages (Article 133 of the Constitution of Ukraine). According to Article 133 of the Fundamental Law of Ukraine the Autonomous Republic of Ukraine Crimea and the City of Sevastopol are parts of Ukraine as separate subjects of administrative and territorial structure of Ukraine. The City of Sevastopol is not a part

of the Autonomous Republic of Crimea, has a special status determined by the law of Ukraine.

The Constitutional Court of Ukraine stressed that the principles of integrity and territorial inviolability of Ukraine within its present borders, extending of sovereignty of Ukraine throughout its entire territory are established by the Constitution of Ukraine. Reduction of the existing borders of Ukraine, withdrawal of any subject of the administrative and territorial structure of Ukraine from its body, changing of the constitutional status of administrative units, in particular of the Autonomous Republic of Crimea and the City of Sevastopol as an integral part of Ukraine, within holding a local referendum contradicts the above-mentioned constitutional principles.

4.4. Any changes to the territory of Ukraine shall be resolved exclusively by the all-Ukrainian referendum (Article 73 of the Constitution of Ukraine). Authority to call the all-Ukrainian referendum on issues indicated in said Article of the Constitution of Ukraine belongs to the Verkhovna Rada of Ukraine (paragraph 2 of part 1 of Article 85 of the Fundamental Law of Ukraine). Organization and procedure for conducting elections and referendums shall be determined exclusively by the laws of Ukraine (paragraph 20 of part 1 of Article 92 of the Constitution of Ukraine).

The Autonomous Republic of Crimea shall be an integral constituent part of Ukraine and shall resolve issues relegated to its authority within the frame determined by the Constitution of Ukraine (Article 134 of the Constitution of Ukraine). The list of matters that are under the authority of the Autonomous Republic of Crimea and areas in which it effects normative regulation is determined in Articles 137, 138 of the Constitution of Ukraine.

The constitutional status of the Autonomous Republic of Crimea complies with European Charter of Local Self-Government ratified by the law of Ukraine No. 452/97-VR dated July 15, 1997, according to which the basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute; local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority (paragraphs 1, 2 of Article 4).

4.5. According to the Constitution of Ukraine it is under the authority of the Autonomous Republic of Crimea to organize and hold of local referendums (paragraph 2 of Article 138) in the manner determined by the law of Ukraine (paragraph 20 of par one of Article 92). Regulatory legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea and decisions of the Council of Ministers of

the Autonomous Republic of Crimea shall not contradict the Constitution and laws of Ukraine and shall be adopted in accordance with and in pursuance of the Constitution of Ukraine, laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine (part 2 of Article 135 of the Fundamental Law of Ukraine).

The Constitutional Court of Ukraine considers that the Verkhovna Rada of the Autonomous Republic of Crimea by adopting the Resolution, which provides pore accession to the Russian Federation as its subject, addressing to the President and Federal Council of the State Duma of the Russian Federation to initiate the procedure of accession to the Russian Federation as a subject of Russian Federation, putting to the referendum mentioned questions, violated constitutional principle of territorial integrity of Ukraine and exceeded its authorities, and thus the Resolution does not comply with Articles 1, 2, 5, 8, paragraph 2 of Article 19, Article 73, paragraph 3 of Article 85, paragraphs 13, 18, paragraph 20 of Article 92, Articles 132, 133, 134, 135, 137, 138 of the Constitution of Ukraine.

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

5. By the Resolution, the Commission of the Autonomous Republic of Crimea on holding the all-Crimean referendum is established. Under the Temporary regulation on a republican (local) referendum in the Autonomous Republic of Crimea it is provided for establishing of territorial and district commission on preparing and holding the referendum.

According to the Resolution, the Council of Ministers of the Autonomous Republic of Crimea shall organize financial, technical and other support for holding the all-Crimean referendum. Due to the fact that the Resolution contradicts the Constitution of Ukraine and according to Article 81 of the Law of Ukraine “On the Constitutional Court of Ukraine” activity of all organs created to hold of this

referendum as well as financing activities to hold of the referendum should be terminated, and ballots and campaign materials should be destroyed.

Thus, based on the materials of the case the Constitutional Court Ukraine came to the conclusion that the Verkhovna Rada of the Autonomous Republic of Crimea by adopting the Resolution No. 1702-6/14 “On holding the all-Crimean referendum” dated March 6, 2014, violated the Constitution of Ukraine.

Given the above and pursuant to Articles 147, 150, 153 of the Constitution of Ukraine, Articles 51, 61, 63, 65, 67, 69, 70, 73, 78, 79, 81 of the Law of Ukraine “On the Constitutional Court of Ukraine” the Constitutional Court of Ukraine

r e n d e r e d t h e j u d g m e n t :

1. To recognize as non-conforming with the Constitution (unconstitutional) the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea No. 1702-6/14 “On holding the all-Crimean referendum” dated March 6, 2014.

2. The Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea No. 1702-6/14 “On holding the all-Crimean referendum” dated March 6, 2014, declared unconstitutional shall be voided on the day of rendering by the Constitutional Court of Ukraine of this Judgment.

3. To terminate the work of the Commission of the Autonomous Republic of Crimea on holding the all-Crimean referendum, and territorial and district commissions established to hold the referendum.

4. The Council of Ministers of the Autonomous Republic of Crimea must terminate funding of activities connected with holding the referendum; ensure the destruction of ballots and campaign materials.

5. The Judgment of the Constitutional Court of Ukraine shall be compulsory in the territory of Ukraine, final and may not be appealed.

The Judgment of the Constitutional Court of Ukraine shall be subject to promulgation in “Visnyk of the Constitutional Court of Ukraine” and other official publications of Ukraine.

THE CONSTITUTIONAL COURT OF UKRAINE