

STATEMENT

of the Constitutional Court of the Russian Federation in connection with violation of the status of judges of the Constitutional Court of Ukraine

The Constitutional Court of the Russian Federation has discussed the situation connected with the adoption of the Resolution “On Reaction to the Facts of Breach of Oath of a Judge by Judges of the Constitutional Court of Ukraine” by the Supreme Rada of Ukraine. This Resolution provides for early termination of powers of five judges of the Constitutional Court of Ukraine appointed by the quota of the Supreme Rada of Ukraine, it has been suggested to other State institutions to early terminate powers of seven more judges, and to the Prosecutor General of Ukraine to exercise criminal persecution of the judges of the Constitutional Court of Ukraine. The main item of “accusations” brought against the judges is, in the opinion of the Supreme Rada, the decision of the Constitutional Court of Ukraine of 30th September, 2010 on the case on observance of the procedure of amending the Constitution of Ukraine.

The discussion took place with consideration of the petition, adopted at the meeting of judges of the Constitutional Court of Ukraine on 27th February, 2014, received by the Constitutional Court of the Russian Federation.

So far as this question may in no event become a subject-matter of consideration by the Constitutional Court of the Russian Federation when exercising constitutional justice, as well as is connected not with appraisals of political nature, but with anxiety for observance of basic guarantees of the status of a judge in the country having common historic and legal roots with Russia and as well as Russia forming part of the Council of Europe, the Constitutional Court of the Russian Federation deems necessary to make a following statement.

The Constitutional Court of the Russian Federation supposes that, possessing no absolute indulgence (immunity) with regard to possible making legally

answerable, a judge may become the subject of responsibility, including in the form of early termination of powers, only in cases strictly determined by law and under the condition of precise observance of the procedure established by law, allowing to fully ensure actual and legal substantiation (aggregate of evidences) of an offence committed by the judge. Other would testify to the presence, from the legal point of view, of the signs of objective imputation, as well as to pronounced emotional tint and unfounded energy of measure of this sort. Formulation of the question of making judges of the highest court of the country answerable for a decision taken by them in the course of carrying out judicial authority, within the bounds of their powers and on the basis of their own inner conviction, witting injustice of which has not been established, allows to express doubt about the observance of basic guarantees of the status of a judge in the country.

This seems to be obviously inadmissible from the point of view of contemporary international and European approaches to the functioning of the institutions of justice and the system of State power as a whole.

In accordance with Basic Principles of Independence of Judicial Bodies, adopted at the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, held in the City of Milan from 26th August to 6th September, 1985 and approved by the Resolution 40/146 of the UN General Assembly of 13th December, 1985, the independence of judicial bodies is guaranteed by the State and is fixed in the constitution or laws of a country, and all State and other institutions are obliged to respect and observe the independence of judicial bodies (Item 1); each State – member of the UN is obliged to render respective means, allowing judicial bodies to exercise their functions in a proper way (Item 7). According to Recommendation No. R (94)12 on the issues of the independence of judges (adopted on 13th October, 1994 by the Committee of Ministers of States-Members of the Council of Europe), branches of executive and legislative power must ensure independence of judges and non-adoption of measures, which may endanger the independence of judges (Item “b” of Section 2 of the Principle I); appointed judges may not be removed

from office without weighty grounds prior to attainment of the age of compulsory retirement; such grounds – and they must be precisely established by law – may be applied in countries where judges are elected for a certain period of time, or may be determined by a judge’s inability to carry out his functions, by commission of criminal offences or serious breach of disciplinary norms (Section 2 of the Principle VI).

According to Item 5.1 of the European Charter on the Statute for Judges (DAJ/DOC (98) 23), adopted in the City of Strasbourg on 8th -10th July, 1998, breach by a judge of one of the obligation, clearly determined by the Statute may entail application of sanctions only upon the decision adopted on the basis of a report, recommendation or with the consent of a judicial instance or a body as a minimum half consisting of elected judges; the decision is taken with observance of a procedure, within the framework of which hearings are held with participation of the parties, and the judge whose case is being considered has the right to be represented; kinds of sanctions are established by the Statute, and their application is regulated by the principle of proportionality; the abovementioned decision of a body of executive power, court or a body imposing sanction may be appealed to the higher judicial instance.

The Judges of the Constitutional Court of the Russian Federation expresses hope that further actions, in essence flouting the status of court and judges characteristic of a democratic society, will not be admitted with regard to their Ukrainian colleagues.

28th February, 2014

President
of the Constitutional Court
of the Russian Federation

Valery D. Zor’kin