

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment

of 30 November 2000 No. 15-II

in the case concerning the constitutionality review of certain provisions of the Charter (Basic Law) of the Kursk Region as amended by the Law of the Kursk Region “On Amendments to the Charter (Basic Law) of the Kursk Region” of 22 March 1999.

Moscow, 30 November 2000

The Constitutional Court of the Russian Federation composed of President M. V. Baglay, and Judges N. S. Bondar, N. V. Vitruk, G. A. Gadzhiev, Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, V. D. Zorkin, A. L. Kononov, V. O. Luchin, T. G. Morshchakova, Yu. D. Rudkin, N. V. Seleznev, A. Ya. Sliva, V. G. Strekozov, O. I. Tiunov, O. S. Khokhryakova, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of a representative of the State Duma as the party which filed the request with the Constitutional Court – A. N. Korneeva, Deputy Chairman of the State Duma Committee for Local Self-Government Affairs, and Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev,

pursuant to Article 125 (Subsection “b”, Section 2) of the Constitution of the Russian Federation, Paragraph “b”, Subsection 1, Section 1, Article 3, Subsection 1, Section 2, Article 21, Articles 36, 74, 84, 85 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of certain provisions of the Charter (Basic Law) of the Kursk Region as amended by the Law of the Kursk Region “On Amendments to the Charter (Basic Law) of the Kursk Region” of 22 March 1999.

Having heard the report of Judge-Rapporteur B. S. Ebzeev, statements of the State Duma representatives, intervention by M. A. Mityukov, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation, and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

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

1. By the Decree of 24 June 1999, the State Duma filed with the Constitutional Court a request for reviewing the constitutionality of the provisions of the Charter (Basic Law) of the Kursk Region as amended by the Law of the Kursk Region “On Amendments to the Charter (Basic Law) of the Kursk Region” of 22 March 1999 and the Law of the Kursk Region “On Repeal of the Law of the Kursk Region ‘On Municipal Entities of the Kursk Region’ of 15 August 1996” of 22 March 1999.

By the Law of the Kursk Region “On Amendments to the Charter (Basic Law) of the Kursk Region” of 22 March 1999, Chapter 4, “Bodies of state power of the administrative-territorial units (districts)”, was added to the Charter and Chapter 18, “General principles of local self-government organization”, was revised. In the State Duma’s opinion, the provisions of Articles 15, 21 (Sections 2, 3 and 5), 81 (Sections 3 and 4), 82 (Section 1), 84 (Sections 1 and 2), 85 (Section 2), 89 and 90 of the Charter (Basic Law) of the Kursk Region (as amended on 22 March 1999) contradict the provisions of the Constitution of the Russian Federation on local self-government, on the division of powers between the Russian Federation and its subjects, a number of other constitutional provisions.

Resolving the matter of entertaining the State Duma’s request, the Constitutional Court of the Russian Federation ascertained that the provisions of Article 15 of the Charter (Basic Law) of the Kursk Region as amended by the Law of the Kursk Region “On Amendments to the Charter (Basic Law) of the Kursk Region” of 22 March 1999, specified by the provisions of its Article 18 on classifying village and settlement administrations as district administrations (Section 1) and electing the head of a district on the advice of the Kursk Region Governor (Section 2), as well as the provisions of Articles 84 (Section 2) and 85 (Section 2) of the Charter (Basic Law) of the Kursk Region are similar to those that had been previously considered by the Constitutional Court of the Russian Federation, and the Judgments adopted in their regard are still in force (Judgments of 1 February 1996 in the case concerning the review of the constitutionality of a number of provisions of the Charter – Basic Law of the Chita Region, of 24 January 1997 in the case concerning the review of the constitutionality of the Law of the Udmurtiya Republic “On the System of Bodies of State Power in the Udmurtiya Republic”, and of 15 January 1998 in the case concerning the review of the constitutionality of Articles 80, 92, 93 and 94 of the Constitution of the Komi Republic and Article 31 of the Komi Republic’s Law “On Executive Bodies of State Power in the Komi Republic”).

Consequently, in decision No. 165-O of 4 November 1999 the Constitutional Court of the Russian Federation stated that the provisions of Articles 15, 84 (Section 2) and 85 (Section 2) of the Charter (Basic Law) of the Kursk Region as containing norms similar to those previously

recognized by the Constitutional Court of the Russian Federation as inconsistent with the Constitution of the Russian Federation must not be applied by courts, other authorities and officials, they are subject to annulment according to the established procedure, and in this regard the State Duma's request may not be considered. In what concerns the review of the constitutionality of the Law of Kursk Region "On Repeal of the Kursk Region Law 'On Municipal Entities of Kursk Region' of 15 August 1996" the proceedings commenced by the Constitutional Court of the Russian Federation were discontinued because the Law ceased to be in force as of 17 July 1999.

In what concerns the review of the constitutionality of the provisions of Articles 21 (Sections 2, 3 and 5), 81 (Sections 3 and 4), 82 (Section 1), 84 (Section 1), 89 and 90 of the Charter (Basic Law) of the Kursk Region as amended by the Law of Kursk Region "On Amendments to the Charter (Basic Law) of the Kursk Region" of 22 March 1999, the request was accepted for consideration. These provisions are the subject matter of consideration in the present case.

2. Pursuant to Section 2, Article 21 of the Charter (Basic Law) of the Kursk Region, the bodies of state power of a district are entitled to delegate certain powers to the local self-government authorities in accordance with the Constitution of the Russian Federation, federal laws, the Kursk Region's legislation.

However, it follows from Article 132 (Section 2) of the Constitution of the Russian Federation, which states that local self-government authorities may be vested under law with certain state powers only provided that material and financial resources necessary for the exercise of these powers are transferred. It is implied that certain state powers may be assigned to local self-government authorities only by the legislator (the federal legislator or the legislators of the subjects of the Russian Federation) and only in the form of a statute taking into account the division of competence and powers between the Russian Federation and its subjects as stipulated in the Constitution of the Russian Federation (Articles 71, 72 and 73). This requirement is stipulated and specified as one of the general principles of organization of local self-government in the Federal Law "On the General Principles of Organization of Local Self-Government in the Russian Federation" of 28 August 1995 (Section 4, Article 6).

Contrary to the mentioned constitutional requirement, Section 2, Article 21 of the Charter (Basic Law) of the Kursk Region presumes that the respective powers are transferred to local self-government authorities not on the basis of a law, i.e. not within the procedure for the exercise of legislative powers by a subject of the Russian Federation, but on the basis of a decision of the bodies of state power of a district – District Council of People's Deputies (which

due to its nature and place within the system of public power cannot act as a legislative body) or district administration.

Thus, Section 2, Article 21 of the Charter (Basic Law) of the Kursk Region is inconsistent with the Constitution of the Russian Federation, its Article 132 (Section 2).

3. According to Sections 3 and 5, Article 21 of the Charter (Basic Law) of the Kursk Region, local self-government authorities are entitled to transfer a part of their powers to bodies of state power of the Kursk Region under a decision of the representative body of the local self-government or directly by the people upon an agreement; the form and procedure of transferring powers to the bodies of state power of the Kursk Region by local self-government authorities are to be defined by the legislation of the Kursk Region.

However, it follows from Article 130 (Section 1) of the Constitution of the Russian Federation directly prescribing that the local self-government ensures independent resolution by the people of the issues of local significance that may and must be resolved by local self-government authorities themselves or directly by the people and not by bodies of state power. Such legal opinion was expressed by the Constitutional Court of the Russian Federation in the Judgments of 24 January 1997 in the case concerning the constitutionality review of the Law of Udmurtiya Republic “On the System of Bodies of State Power in the Udmurtiya Republic”, and of 15 January 1998 in the case concerning the constitutionality review of Articles 80, 92, 93 and 94, Constitution of the Komi Republic, and Article 31 of the Law of the Komi Republic “On the Executive Bodies of State Power in the Komi Republic”. The bodies of state power are obliged to create necessary legal, organizational, material, financial and other conditions for the establishment and development of local self-government and to assist people in exercising the right to local self-government.

Article 72 (Subsection “m”, Section 1) of the Constitution of the Russian Federation assigns determination of the general principles of organization of local self-government to the joint competence of the Russian Federation and its subjects; it allows the subject of the Russian Federation to specify federal regulation within the scope of its powers unless it is precluded by the Constitution of the Russian Federation or federal laws. The prohibition to restrict the rights of local self-government and its powers in the issues of local significance is one of the fundamentals of the local self-government’s constitutional status (Articles 12 and 130; Section 1, Article 132; Article 133 of the Constitution of the Russian Federation). At the same time, it relates to the regulation of the rights and freedoms of man and citizen assigned to the competence of the Russian Federation (Section “c”, Article 71 of the Constitution of the Russian Federation) because any such restriction directly affects the normative and legal contents and integrity of the citizens’ right to exercise local self-government. It is precisely for this reason that

the federal legislation has no reference to the possibility to transfer powers in the issues of local significance to bodies of state power.

The constitutional principle of local self-government's independence ensuring resolution of issues by the population within the limits of its powers (Section 1, Articles 12 and 130 of the Constitution of the Russian Federation) may not be restricted by the legislator of the subject of the Russian Federation (Section 5, Article 76 of the Constitution of the Russian Federation). The provisions of Sections 3 and 5, Article 21 of the Charter (Basic Law) of the Kursk Region in their literal meaning, on the contrary, do not rule out the possibility to transfer, to an unlimited extent, the powers to resolve the issues of local significance to bodies of state power of the Kursk Region. Such regulation, contrary to the requirements of Article 55 (Section 3) of the Constitution of the Russian Federation, may not only restrict the citizens' right to exercise local self-government, but also threaten its very existence on the territory the Kursk Region.

Thus, Section 3, Article 21 of the Charter (Basic Law) of the Kursk Region in conjunction with Section 5, Article 21 contradicts the Constitution of the Russian Federation, its Articles 132 (Section 1) and 133.

However, the interaction between the local self-government authorities and bodies of state power of the Kursk Region, *inter alia* on a contractual basis, is not precluded in order to carry out common tasks directly related to the issues of local significance to the benefit of the population of a municipal entity.

4. Pursuant to Section 3, Article 81 of the Charter (Basic Law) of the Kursk Region, the people have the right to independently and voluntarily, through a referendum, resolve whether it is necessary to establish local self-government in their territory; pursuant to Section 4 of the same Article where the people have independently and voluntarily waived the right to establish local self-government in this territory, state power of the Kursk Region is exercised. In particular, pursuant to Section 1, Article 18 of the Charter (Basic Law) of the Kursk Region taken together with the mentioned provisions of the Charter, executive power in the territory of a municipal entity is exercised by the "village and settlement administrations within the unified system of bodies of state power of the Kursk Region".

Thus, it is permitted by the provisions of Sections 3 and 4, Article 81 of the Charter (Basic Law) of the Kursk Region, to abolish local self-government as such in the territory of a certain municipal entity and substitute it with bodies of state power if the decision to waive "the right to establish local self-government" has been adopted "independently and voluntarily through a referendum" by a majority of votes of the people of the municipal entity who have an active voting right.

However, as it follows from Articles 3 (Section 2) and 12 of the Constitution of the Russian Federation, local self-government is a necessary form of exercising the people's power and one of the fundamentals of the constitutional order in the Russian Federation. Within the meaning of Articles 32 (Section 2), 130, 131 and 132 of the Constitution of the Russian Federation, citizens have the right to local self-government and exercise this right through referenda, elections, other forms of direct expression of will, through elected and other local self-government bodies.

In particular it implies that citizens have the right to participate, directly or through their representatives, in the exercise of public power within the municipal entity; moreover, both the municipal entity itself and the right of the citizens living in its territory to exercise local self-government is based on the Constitution of the Russian Federation and law and not on the expression of will by the population of the municipal entity.

Any change in the territorial foundations of local self-government may not result in its waiver. The opportunity to completely abolish local self-government in a certain territory provided for by Sections 3 and 4, Article 81 of the Charter (Basic Law) of the Kursk Region, contradicts the requirements of the Constitution of the Russian Federation and federal laws on the exercise of local self-government in the territory of the Russian Federation as an essential element of the constitutional mechanism of government by the people and violates the will of the multinational people of the Russian Federation enshrined in the Constitution of the Russian Federation (Sections 1 and 2, Article 3; Article 12 and Section 1, Article 131).

Besides, by having established that if the population waives the right to establish local self-government in their territory, state power in the Kursk Region is exercised on that territory, the legislator of the Kursk Region relied on the possibility to create village and settlement bodies of state power. Meanwhile, in the Judgments of 24 January 1997 in the case concerning the review of the constitutionality of the Law of the Udmurtiya Republic "On the System of Bodies of State Power in the Udmurtiya Republic", and of 15 January 1998 in the case concerning the review of the constitutionality of Articles 80, 92, 93 and 94 of the Constitution of the Komi Republic and Article 31 of the Law of the Komi Republic "On the Executive Bodies of State Power in the Komi Republic" the Constitutional Court of the Russian Federation stated that territorial executive bodies of state power of the subject of the Russian Federation may be established in administrative and territorial units, which directly form an integral part of the subject of the Russian Federation according to its constitution (charter). It follows from this legal opinion that in territorial units, which do not directly form a part of the Kursk Region (town, village, settlement), bodies of state power may not be established pursuant to the requirements of the

Constitution of the Russian Federation; and local self-government should be exercised in these territories.

Thus, Sections 3 and 4, Article 81 of the Charter (Basic Law) of the Kursk Region are inconsistent with the Constitution of the Russian Federation, its Articles 3 (Section 2), 12, 32 (Section 2), 130, 131 and 133.

However, the people's right to independently determine territorial foundations of local self-government through the established procedure, provided that the requirement to exercise local self-government in the whole territory of the Russian Federation arising out of the Constitution of the Russian Federation is met, which right is guaranteed by the Constitution of the Russian Federation, federal laws and the laws of Kursk Region consistent with them, is not put into doubt.

5. Pursuant to Section 1, Article 82 of the Charter (Basic Law) of the Kursk Region, the basic principles affecting the choice of the municipal entities' territory are: determination of the territorial order on the basis of maximal efficiency in resolving social and economic issues of local significance; the presence of a territorial community united by common interests related to the place of residence; the presence of a production, communication and social infrastructure ensuring resolution of regional and the issues of local significance; spatial and temporal accessibility of the services provided by the municipal authorities and organizations to the population; the availability of material and financial resources ensuring activities of the local self-government authorities and minimal social standards to the residents of the municipal entity.

Pursuant to the Constitution of the Russian Federation, local self-government is recognized and guaranteed in the Russian Federation; local self-government is independent within the scope of its powers; local self-government authorities do not belong to the system of the bodies of state power (Article 12); determination of the general principles of organization of local self-government is within the joint competence of the Russian Federation and its subjects (Subsection "m", Section 1, Article 72); on matters of joint competence, federal laws are adopted and laws and other normative legal acts of subjects of the Russian Federation are adopted on their basis (Section 2, Article 76).

It follows from the mentioned provisions of the Constitution of the Russian Federation specified in the Federal Law "On the General Principles of Organization of Local Self-Government in the Russian Federation" of 28 August 1995 (Section 11, Article 5, Section 3, Article 13), in conjunction with its other prescriptive norms governing the federal order and division of competence and powers between the Russian Federation and its subjects (Section 1, Article 1; Sections 2 and 3, Article 5; Sections 2 and 3, Article 11; Articles 71, 72 and 73) that a subject of the Russian Federation is entitled to determine the procedure of formation, merger,

reorganization, and abolition of municipal entities, establishing and changing their boundaries and names.

The organization of this process, in particular by means of determining the principles affecting the choice of the municipal entities' territory, which do not contradict the Constitution of the Russian Federation and federal laws, in the incorporation act of the subject of the Russian Federation may not be in itself considered a violation of the Constitution of the Russian Federation if such principles do not act as restrictive conditions on the establishing and exercise of local self-government.

However, the general principles stipulated in Section 1, Article 82 of the Charter (Basic Law) of the Kursk Region due to uncertainty of their contents permit their interpretation as conditions restricting the choice of the territory where local self-government is exercised on the basis of the discretion of bodies of state power of the Kursk Region and contrary to the expressed will of the population. Thus the implementation of the requirement of exercise of local self-government in the whole territory of the Russian Federation prescribed by the Constitution of the Russian Federation may become dependent on the arbitrary discretion of the bodies of state power of the subject of the Russian Federation.

Thus, Section 1, Article 82 of the Charter (Basic Law) of the Kursk Region, does not conform to the Constitution of the Russian Federation, its Articles 3(Section 2), 12, 32 (Sections 1 and 2), 55 (Section 3) and 131 (Section 1).

6. According to Section 1, Article 84 of the Charter (Basic Law) of the Kursk Region, the representative body of local self-government consists of deputies elected pursuant to federal laws and the laws of the Kursk Region for a term of 5 years on the basis of universal, equal and direct suffrage by secret ballot.

The regulation of the rights and freedoms of man and citizen, including voting rights, is included under the Constitution of the Russian Federation in the competence of the Russian Federation (Subsection "c", Article 71), and the determination of the general principles of organization of local self-government in the joint competence of the Russian Federation and its subjects (Subsection "m", Section 1, Article 72). At the same time the Constitution of the Russian Federation directly prescribes that the population of the municipal entity independently defines the structure of local self-government authorities (Article 12 and Section 1, Article 131), and therefore the organization of the representative bodies of local self-government and determination of periods for the election to be held.

This constitutional requirement is specified by the Federal Laws "On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" of 19 September 1997 (Sections 1 and 2, Article 8) and "On the General

Principles of Organization of Local Self-Government in the Russian Federation” of 28 August 1995 (Subsection 6, Section 1, Article 8) adopted under Article 76 (Sections 1 and 2) of the Constitution of the Russian Federation. Under the mentioned laws, the term of office of representative bodies of local self-government and their deputies, members of other elected local self-government bodies, elected officials of local self-government is to be prescribed by the charter of the respective municipal entity and may not be less than two and more than five years.

It follows from these provisions that the term of office of the representative local self-government bodies may not be determined by the bodies of state power of subjects of the Russian Federation.

Thus, Section 1, Article 84 of the Charter (Basic Law) of the Kursk Region, to the extent that it concerns determination of the five-year term of office for deputies of representative local self-government, deprives municipal entities of the Kursk Region of the right to independently determine the terms of office for representative local self-government bodies and their deputies in their charters in line with the fundamentals of the constitutional order of the Russian Federation and within the limits prescribed by federal laws. Consequently, it does not conform to the Constitution of the Russian Federation, its Articles 12, 130 (Section 1) and 131 (Section 1).

7. The request challenges the constitutionality of the provisions of Article 89 and 90 of the Charter (Basic Law) of the Kursk Region under which the Kursk Regional Duma, the Governor of the Kursk Region and the bodies and officials authorized by them exercise state control over the activities of the local self-government authorities (Section 1, Article 89), including control over the expediency of the use of financial and material resources, property transferred to a municipal entity by the state power of the Kursk Region (Section 3, Article 89); any state control over the local self-government authorities’ activities may be conducted according to the procedure and in circumstances prescribed by the Constitution of the Russian Federation, federal laws, the laws of the region, and in its exercise proportionality between the degree of interference by the controlling body and the significance of the interest that it intends to protect shall be observed (Sections 2 and 4, Article 89); bodies of state power of the Kursk Region (the Kursk Regional Duma, the Governor of the Kursk Region, district councils of people’s deputies, heads of district administration) are entitled to request that the challenged act of the local self-government authority be annulled or brought in line with the legislation in force (Article 90).

As the applicant points out, only one case of control over local self-government is prescribed by the Constitution of the Russian Federation, namely, control of the local self-government authorities’ exercise of the state powers transferred to them. In all other cases only judicial control of the local self-government authorities’ activities is permitted. In the applicant’s

opinion, the challenged provisions of Articles 89 and 90 of the Charter (Basic Law) of the Kursk Region contradict the requirements of Articles 130, 131 and 133 of the Constitution of the Russian Federation concerning the independence of local self-government, and further they do not conform to its Article 10 because they provide for intervention in the sphere of the judicial power authorities by authorities of other branches.

From the principle enshrined in Article 15 (Section 2) of the Constitution of the Russian Federation, due to which bodies of state power, local self-government authorities, officials, citizens and their associations are obliged to observe the Constitution of the Russian Federation and laws taken in conjunction with the requirements of Articles 1 (Section 1), 3 (Section 2), 5 (Section 2), 12, 15 (Section 1), 66 (Sections 1 and 2), 76, 130, 131, 132 and 133 of the Constitution of the Russian Federation, it follows that the activities of the local self-government authorities must be consistent with the Constitution of the Russian Federation and the normative acts based on it.

The Constitution of the Russian Federation directly prescribes state control over local self-government authorities' exercise of the state powers transferred to them and presumes control of legality in their resolving the issues of local significance, i.e. the exercise of the powers of local self-government proper (Section 2, Article 132; Section 2, Article 15). The forms and means of such control, its mechanism and the procedure may not violate the guarantees of local self-government's independence stipulated by the Constitution of the Russian Federation and federal laws adopted pursuant to it and may not contradict the principle of separation of powers. Consequently, in such area of joint competence of the Russian Federation and its subjects as ensuring legality (Subsection "b", Section 1, Article 72) the limits of the powers of the subject of the Russian Federation to control the legality in exercise of local self-government are set. Pursuant to the Constitution of the Russian Federation, the framework of this control is determined by the Federal Law "On the General Principles of Organization of Local Self-Government in the Russian Federation" of 28 August 1995 (Chapter VII), other federal laws.

However, state control over the activities of the local self-government authorities is declared by Section 1, Article 89 of the Charter (Basic Law) of the Kursk Region to be a general principle of relations between bodies of state power of the Kursk Region and municipal entities. At the same time its limits, forms and the procedure of its exercise are not clearly defined, nor is defined the list of authorities and officials which exercise it. Besides, state control, within the literal meaning of Section 1, Article 89, may be exercised not only in respect of legality of the activities of local self-government authorities, but according to the provisions of Section 3 of the same Article it aims at ensuring legality and observance of the constitutional principles only "as a general rule". Thus, these provisions rely on permissibility of state control of the local self-

government authorities' activities from the perspective of its expediency and without setting out any limits of such control.

Another provision of Section 3, Article 89, stipulates state control over the expediency of the use of financial and material resources, property transferred to a municipal entity by the state power of the Kursk Region. In assessment of its constitutionality it is necessary to take into consideration that the material and financial basis of local self-government in the Russian Federation was generally formed by transferring certain property into the ownership of local self-government by bodies of state power within the process of dividing state property into federal property, property of subjects of the Russian Federation, and municipal property. Further, it shall be considered that the financial resources may be allocated to the budgets of municipal entities also from the budgets of subjects of the Russian Federation, *inter alia* without designation of a specific purpose.

Therefore, Section 3, Article 89 of the Charter (Basic Law) of the Kursk Region, assessed in its unity with Sections 1 and 2, does not rule out the imposition of virtually unlimited control over the activities of the local self-government authorities in the Kursk Region from the perspective of expediency of such activities. It is an encroachment on the local self-government's independence in resolving by the people of the issues of local significance, possession, use, and disposal of municipal property.

The arbitrary nature of state control over the activities of local self-government authorities is further proven by Section 4, Article 89 of the Charter (Basic Law) of the Kursk Region, which does not only permit interference in their activities, but also allows the controlling authority to determine the proportionality of such interference and the significance of the interests protected. Moreover, Section 1 of the same Article provides for an undefined range of bodies of state power and officials who exercise control over the activities of local self-government authorities.

Such interpretation of the provisions of Article 89 of the Charter (Basic Law) of the Kursk Region, possible within their literal meaning, contradicts constitutional determination of the limits and means of state control over the activities of local self-government authorities and, consequently, does not conform to Articles 130 (Section 1), 132 (Sections 1 и 2) and 133 of the Constitution of the Russian Federation.

These prescriptions of the Constitution of the Russian Federation are also violated by systemically united provisions of Article 89 of the Charter (Basic Law) of the Kursk Region and the provision of its Article 90 concerning the right of bodies of state power of the Kursk Region "to request that the challenged act of the local self-government authority be annulled or brought in line with the legislation in force". These provisions permit Kursk Region bodies of state

power to annul or alter without mediation by a court of local self-government authorities' acts which they believe to be unlawful. Moreover, they introduce new, not prescribed by federal law, means of holding the local self-government authorities and their officials liable. These provisions may be construed as permitting bodies of state power of the subject of the Russian Federation to adopt independent decisions annulling or suspending acts of local self-government authorities or preventing their application and thus violating the constitutional guarantees of local self-government, including the right to judicial protection and the principle of separation of powers (Articles 10, 12, 130, 131, 132 and 133 of the Constitution of the Russian Federation).

The fact that certain provisions of Sections 3 and 4, Article 89 of the Charter (Basic Law) of the Kursk Region, in fact, reproduce the provisions of Sections 2 and 3 of the European Charter of Local Self-Government (ratified by the Russian Federation on 11 April 1998) establishing the minimal guarantees of local self-government's independence does not affect the assessment of the constitutionality of the challenged norms. The Constitution of the Russian Federation and federal laws enshrine a higher level of local self-government's independence guarantees than the one provided by the international obligations of the Russian Federation; and subjects of the Russian Federation are not entitled to reduce or restrict it.

Thus, the provisions of Articles 89 and 90 of the Charter (Basic Law) of the Kursk Region in their conjunction are inconsistent with the Constitution of the Russian Federation, its Articles 12, 130 (Section 1), 132 and 133 to the extent that they create a possibility of arbitrary expansion of the scope of state control over the activities of local self-government authorities in their resolving the issues of local significance, specifically:

- allowing state control of the local self-government authorities' activities from the perspective of expediency of their decisions on the issues of local significance, in particular, expediency of the use of municipal property and material resources;
- presuming the possibility of state control by an undefined range of bodies of state power of the Kursk Region and their officials;
- not precluding influence on the local self-government authorities, unmediated by judicial procedures, aimed at annulling, altering, or suspending legal acts adopted by them.

It does not, however, follow from the above reasoning that control of legality of the local self-government activities may not be exercised by bodies of state power authorized by the Constitution of the Russian Federation and federal law. In particular, they are entitled to request the local self-government authority, which, in their opinion, adopted an act not conforming to the Constitution of the Russian Federation, federal laws or the laws of the subject of the Russian Federation, to bring it in line with the legislation in force, since such request does not result in

the annulment or suspension of the respective act, does not preclude judicial control, and does not restrict the guarantees of judicial protection for local self-government.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 74, 75 and 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize Section 2, Article 21 of the Charter (Basic Law) of the Kursk Region as inconsistent with the Constitution of the Russian Federation, its Article 132 (Section 2), because it permits transfer of certain state powers to local self-government authorities not on the basis of a law, but of a decision of the district body of state power.

2. To recognize the provisions of Sections 3 and 5, Article 21 of the Charter (Basic Law) of the Kursk Region as non-conforming to the Constitution of the Russian Federation, its Articles 132 (Section 1) and 133, because they permit transfer of powers which must be exercised exclusively by local self-government authorities or directly by the population of the municipal entity to bodies of state power.

3. To recognize the provisions of Sections 3 and 4, Article 81 of the Charter (Basic Law) of the Kursk Region providing the population of a municipal entity with an opportunity to waive the right to establish local self-government by a majority vote as non-conforming to the Constitution of the Russian Federation, its Articles 3 (Section 2), 12, 32 (Section 2), 130, 131 and 132, since it permits to terminate the exercise of local self-government in a part of the territory of a subject of the Russian Federation.

4. To recognize Sections 1, Article 82 of the Charter (Basic Law) of the Kursk Region, as non-conforming to the Constitution of the Russian Federation, its Articles 3 (Section 2), 12, 32 (Sections 1 and 2), 55 (Section 3) and 131 (Section 1), since its provisions introduce additional conditions for establishing and exercising local self-government in the Kursk Region and these conditions allow arbitrary interpretation and restrict the citizens’ right to exercise local self-government in a particular territory of the Kursk Region at the discretion of bodies of state power of the Kursk Region.

5. To recognize the provision of Section 1, Article 84 of the Charter (Basic Law) of the Kursk Region, prescribing a five-year term of office for deputies of the representative local self-government bodies of the Kursk Region as non-conforming to the Constitution of the Russian Federation, its Articles 12, 130 (Section 2) and 131 (Section 1), since the term of office for elected local self-government bodies and officials is to be determined in the charters of municipal entities pursuant to the federal law.

6. To recognize the provisions of Articles 89 and 90 of the Charter (Basic Law) of the Kursk Region on the exercise of state control over the activities of the local self-government authorities as non-conforming to the Constitution of the Russian Federation, its Articles 12, 130 (Section 1), 132 (Section 1) and 133, to the extent that they create a possibility to arbitrarily expand the limits of state control of the local self-government authorities' activities in resolving the issues of local significance.

7. Pursuant to Section 2, Article 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", all the provisions of the Kursk Region normative acts which are based on the provisions of the Charter (Basic Law) of the Kursk Region recognized as inconsistent with the Constitution of the Russian Federation by this Judgment or reproducing them, as well as provisions of all other normative acts in the Russian Federation reproducing or containing the same provisions as those recognized as inconsistent with the Constitution of the Russian Federation by this Judgment may not be applied by courts, other authorities and officials and are subject to annulment according to the established procedure.

8. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be final, shall not be subject to any appeal, it shall come into force immediately upon pronouncement, and shall be directly applicable.

9. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be published in the Collection of Laws of the Russian Federation, *Rossiyskaya Gazeta* and official publications of Kursk Region bodies of state power. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court  
of the Russian Federation

No. 15-II