

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 21 March 2007 No. 3-II

in the case concerning the review of the constitutionality of the provisions of Articles 6 and 15 of the Federal Constitutional Law “On the Referendum in the Russian Federation” in connection with complaints of V. I. Lakeyev, V. G. Solovyov, and V. D. Ulas.

Moscow, 21 March 2007

The Constitutional Court of the Russian Federation composed of President V. D. Zorkin and Judges N. S. Bondar, G. A. Gadzhiev, Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, S. M. Kazantsev, M. I. Kleandrov, A. L. Kononov, L. O. Krasavchikova, S. P. Mavrin, N. V. Melnikov, Yu. D. Rudkin, N. V. Seleznev, A. Ya. Sliva, V. G. Strekozov, O. S. Khokhryakova, B. S. Ebzееv, V. G. Yaroslavtsev,

in the attendance of V. I. Lakeyev, V. G. Solovyov, V. D. Ulas, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina; Plenipotentiary Representative of the Council of the Federation to the Constitutional Court of the Russian Federation Yu. A. Sharandin; Permanent Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation; Subsection 3, Section 1, Sections 3 and 4, Article 3; Section 1, Article 21; Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Articles 6 and 15 of the Federal Constitutional Law “On the Referendum in the Russian Federation”.

The reason for the consideration of the case is a complaint of V. I. Lakeyev, V. G. Solovyov and V. D. Ulas about violation of their constitutional rights by the provisions of Subsection 6, Section 5; Section 7, Article 6, and Section 13, Article 15 of the Federal Constitutional Law “On the Referendum in the Russian Federation” of 28 June 2004. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur B. S. Ebzeev, statements by the parties' representatives, the expert opinions of V. N. Belousov, PhD in Law, Ye. Yu. Gracheva, PhD in Law, and A. I. Lukyanov, PhD in Law, interventions of the representatives invited to the hearing, including N. A. Kulyasova, the representative of the Central Electoral Commission of the Russian Federation, a member of the Central Electoral Commission of the Russian Federation, and G. A. Zyuganov and I. I. Melnikov invited to the hearing upon the motion of the party that submitted the complaint 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. V. I. Lakeyev, V. G. Solovyov and V. D. Ulas challenge the constitutionality of certain provisions of the Federal Constitutional Law "On the Referendum in the Russian Federation", namely:

– Subsection 6, Section 5, Article 6 to the extent that they stipulate that issues concerning the adoption of the federal budget and amendments to it, the performance and alteration of internal financial obligations of the Russian Federation may not be put to the referendum;

– Section 7, Article 6, pursuant to which an issue put to the referendum must be formulated in a way precluding its multiple interpretations, so only an unambiguous answer could be given to it and uncertainty of legal consequences of the referendum results could be precluded;

– Section 13, Article 15 to the extent that it vests the Central Electoral Commission with the power to review the consistency of the referendum issue (issues) with the requirements of Article 6 of this Federal Constitutional Law and to make a relevant decision, within 10 days from the date of the first notification about the referendum issue (issues) indicated in the application for registration of the regional subgroup initiating the referendum.

1.1. On the basis of the mentioned provisions of the Federal Constitutional Law "On the Referendum in the Russian Federation", the Moscow City Electoral Commission, by its decision of 16 April 2005, denied registration of the Moscow City Regional Subgroup of the initiative group organizing a referendum of the Russian Federation. The electoral commission referred to the opinion of the Central Electoral Commission of the Russian Federation, which considered 15 out of the 17 questions proposed for a referendum of the Russian Federation inconsistent with the requirements of Subsections 6 and 7, Section 5, and Sections 6 and 7, Article 6 of the said Federal Constitutional Law. The decision of the Central Electoral Commission of the Russian

Federation of 20 April 2005, by which the opinion was adopted, was appealed by authorized representatives of the Moscow City Regional Subgroup V. I. Lakeyev, V. G. Solovyov and V. D. Ulas to the Supreme Court of the Russian Federation as contradicting the legislation in force and violating citizens' right to participate in the management of state affairs by participating in the preparation and holding of a referendum of the Russian Federation. In its judgment of 2 June 2005, the Supreme Court of the Russian Federation dismissed their claims, concurring with the opinion of the Central Electoral Commission of the Russian Federation, *inter alia* as regards recognition of certain referendum questions as inconsistent with the Constitution of the Russian Federation, restricting, denying or derogating from the generally recognized rights and freedoms of man and citizen, as well as constitutional guarantees of the exercise of these rights and freedoms. The Cassation Section of the Supreme Court of the Russian Federation, in its decision of 28 July 2005, upheld the judgment.

In the applicants' opinion, the provision of Subsection 6, Section 5, Article 6 of the Federal Constitutional Law "On the Referendum in the Russian Federation" is inconsistent with Articles 3 (Sections 2 and 3), 19 (Sections 1 and 2), 32 (Section 2), 55 (Section 3), 94, 105, 106, 108 and 114 (Section 1 "a") of the Constitution of the Russian Federation, as within the meaning attributed to them in the law-enforcement practice they permit to prohibit referendum on any issue related to the federal budget and obligations incurring expenses of the State, while in one way or another all issues relate to the budget and expenditures of the State. According to the applicants, Section 7, Article 6 of the Federal Constitutional Law "On the Referendum in the Russian Federation" contradicts Articles 19, 32 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation, as it permits broad and arbitrary interpretation of its requirements by the law-enforcement authorities. Further, the applicants see a contradiction between the provision of Section 13, Article 15 of the Federal Constitutional Law "On the Referendum in the Russian Federation" and Articles 2, 10, 11, 19, 32 (Section 1 and 2), 55 (Section 3) and 94 of the Constitution of the Russian Federation, since pursuant to the provision of the Federal Constitutional Law the Central Electoral Commission of the Russian Federation is vested with a power which, as they believe, may belong only to constitutional bodies of state power having respective competence.

1.2. During the hearing of this case by the Constitutional Court of the Russian Federation, the Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina moved to discontinue the proceedings on the case. In her opinion, neither the Constitution of the Russian Federation nor the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" determine whether the Constitutional Court of the Russian Federation has the right to review the constitutionality of federal constitutional laws.

The Constitutional Court of the Russian Federation finds no grounds to grant this motion.

Proclaiming the Russian Federation to be a rule of law State where the rights and freedoms of man and citizen are the supreme value and are protected by administration of justice, the Constitution of the Russian Federation, which has the supreme legal force and hence supremacy over federal constitutional and federal laws, does not permit existence of normative acts which may not be reviewed regarding their conformity to the Constitution of the Russian Federation in one of the types of judicial proceedings established by it (Section 1, Article 1; Article 2; Section 2, Article 4; Articles 10, 15 and 18; Sections 1 and 2, Article 118; Article 120).

The provisions of Article 125 of the Constitution of the Russian Federation in conjunction with its Articles 4 (Section 2), 15 (Section 1) and 120 imply that objects of the review by the Constitutional Court of the Russian Federation as a specialized body of judicial constitutional control ensuring supremacy of the Constitution of the Russian Federation, its supreme legal force, direct effect and application in the whole territory of the Russia Federation include, in particular, all laws adopted by the Federal Assembly (the parliament of the Russian Federation). This conclusion is supported by the use of the term “federal law” in the mentioned Articles of the Constitution of the Russian Federation and in Articles 71 (Subsection “a”), 90 (Section 3) etc., which term, as long as otherwise is not specifically stated, encompasses both federal constitutional laws and *stricto sensu* federal laws. The federal legislator relied on the same approach in determining the fundamental guarantees of Russian Federation citizens’ exercise of the constitutional right to participate in elections and referenda in the Russian Federation. Pursuant to Subsection 61, Article 2 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum”, for purposes of the said Federal Law, the term “federal law” shall encompass both federal constitutional laws and federal laws.

Federal constitutional laws adopted on the basis and in pursuance of the Constitution of the Russian Federation, with regard to their legal nature may not serve as an instrument of modifying constitutional provisions, i.e. they must conform to the Constitution of the Russian Federation, especially so if they affect the citizens’ constitutional rights and freedoms. They may be reviewed in constitutional proceedings under Article 125 of the Constitution of the Russian Federation, and this conclusion has been repeatedly confirmed by the Constitutional Court of the Russian Federation considering applications for review of constitutionality of certain provisions of federal constitutional laws (Judgment No. 10-II of 11 June 2003 and No. 3-II of 6 April 2006, Decision No. 32-O of 12 March 1998, No. 4-O of 14 January 1999 and No. 491-O of 27 December 2005). In this respect, Articles 118, 120 and 125–128 of the Constitution of the

Russian Federation establishing *inter alia* the scope of judicial constitutional review, impose the requirement to resolve, in constitutional review proceedings, all disputes which are constitutional in their legal nature and significance.

1.3. Consequently, the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case is the mentioned provisions of Subsection 6, Section 5 and Section 7, Article 6, and Section 13, Article 15 of the Federal Constitutional Law “On the Referendum in the Russian Federation” in their systemic unity with the provision of its Section 17, which determine the mechanism of judicial review of decisions by the Central Electoral Commission of the Russian Federation concerning the consistency of referendum questions with the requirements of Article 6 of the said Federal Constitutional Law.

2. Pursuant to the Constitution of the Russian Federation, the bearer of sovereignty and the only source of power in the Russian Federation as a democratic, federal, rule of law State with a republican form of government is its multinational people. The people exercise its power directly and through bodies of state power and local self-government. The supreme direct expression of the people’s power shall be a referendum and free elections (Section 1, Article 1; Sections 1, 2 and 3, Article 3).

The referendum as a nation-wide voting of citizens of the Russian Federation on issues of state significance and free elections as a means of creating bodies of people’s representation and other elective bodies of state power shall be the supreme forms of direct democracy (according to the legal opinion of the Constitutional Court of the Russian Federation formulated in Judgment No. 10-II of 11 June 2003). While each of them has its own mission in the process of exercising the people’s power, they are of equal value and, being interrelated, complement each other. Articles 84 (Subsection “c”), 92 (Section 3) and 135 (Section 3) of the Constitution of the Russian Federation, in systemic unity with its Articles 3, 32 (Sections 1 and 2) and 71 (Subsections “a” and “c”) determine the nature and content of legislative regulation of conditions and procedures for holding referenda and elections to bodies of public power, so that the citizens’ free expression of will shall be ensured both in the exercise of their right to participate in a referendum and of their electoral rights. In regulating the respective rights, the federal legislator has sufficient discretion, which nonetheless is limited by the specificity of the supreme forms of direct exercise of the people’s power, their mission and correlation.

Within the constitutional mechanism for the exercise of the people’s power, the means of forming and expressing the people’s will include not only institutions of direct democracy, but also representative democracy. A referendum ensuring direct participation of citizens in the management of state affairs and the transparency of political decision-making processes legitimized by the people’s will may not substitute the bodies of people’s representation. This

conclusion corresponds to the opinion of the Parliamentary Assembly of the Council of Europe, which, in Recommendation 1704 (2005) of 29 April 2005 stressed the complementarity of direct and representative democracy. In this respect, referenda should not be considered as an alternative to parliamentary democracy and should not be misused to undermine the legitimacy and primacy of parliaments as legislative bodies and to circumvent the principle of the rule of law (§§ 5 and 8).

Consequently, the federal legislator regulating referendum-related relations should ensure such conditions and procedures for their realization which prevent substitution of referenda for other institutions of direct democracy or posing it as a counterbalance to representative democracy institutions, *inter alia* in violation of exclusive prerogatives of the Federal Assembly or other federal bodies of state power when these prerogatives shall be exercised in other constitutionally established forms of lawmaking as a means of state decision-making.

3. Pursuant to Article 32 (Sections 1 and 2) of the Constitution of the Russian Federation, citizens of the Russian Federation have the right to participate in the management of state affairs both directly and through their representatives, to elect and be elected to bodies of state power and local self-government, and to participate in a referendum.

While it enshrines constitutionally significant requirements concerning the institution of the referendum in this Article and in Articles 84 (Subsection “c”), 92 (Section 3) and 135 (Section 3), the Constitution of the Russian Federation does not directly stipulate any procedure for holding a referendum in the Russian Federation and does not specify which issues may be put to the referendum (except for a draft of a new Constitution of the Russian Federation), and it does not name state bodies authorized to ensure holding of a referendum (except for the President of the Russian Federation who calls referenda). As follows from the mentioned Articles of the Constitution of the Russian Federation taken in conjunction with its Articles 71, 72 and 76 (Section 1), the institution of the referendum must be regulated in strict conformity with its constitutional principles by a federal constitutional law prescribing requirements concerning the form and content of questions to be put to the referendum, organization and holding of the referendum. In this respect, the federal legislator may not deny (or derogate from) the right to participate in a referendum enjoyed by citizens of the Russian Federation or disproportionately restrict it.

While establishing a legal framework to use the institution of the referendum, the federal legislator has stipulated, in Article 6 of the Federal Constitutional Law “On the Referendum in the Russian Federation”, that issues of state significance placed by the Constitution of the Russian Federation within the jurisdiction of the Russian Federation and joint jurisdiction of the Russian Federation and subjects of the Russian Federation may be put to the referendum

(Section 4). At the same time, it specifies issues which may not be put to the referendum, *inter alia* adoption of the federal budget and amendments to it, performance and alteration of internal financial obligations of the Russian Federation (Subsection 6, Section 5).

3.1. Ascertaining the specific legal nature of federal laws on the federal budget, the Constitutional Court of the Russian Federation highlighted the following points in its Judgment No. 9-II of 23 April 2004.

Due to the principle of separation of state power into the legislative, executive and judicial branches, the adoption of the budget, determination of the structure of budget revenues and expenses traditionally falls within the domain of legislative regulation. As follows from Article 71 (Subsection “h”) of the Constitution of the Russian Federation in conjunction with its Articles 10, 76 (Section 1) and 106 (Subsection “a”), the federal budget as a form of aggregation and spending of monetary funds aimed to secure functioning of public power is an independent domain of legal regulation within the jurisdiction of the Russian Federation, while in its legal form it is a special federal law on the federal budget.

The social and legal significance of the subject-matter of legal regulation by federal laws on the federal budget predetermines the determination, by the Constitution of the Russian Federation, of guarantees for social and economic feasibility of the federal budget and its balance, including a special procedure for drafting and adopting these federal laws. The federal budget (and thus a draft federal law) shall be developed and submitted to the State Duma only by the Government of the Russian Federation (Subsection “a”, Section 1, Article 114), while other draft federal laws, under Article 104 (Sections 1 and 2), may be also submitted to the State Duma by the President of the Russian Federation, the Council of the Federation and members of the Council of the Federation, State Duma deputies, legislative (representative) bodies of subjects of the Russian Federation and all other entities having the right of legislative initiative. Upon State Duma adoption, the federal law on the federal budget shall mandatorily be considered by the Council of the Federation (Subsection “a”, Article 106), while this requirement does not apply to most of other federal laws.

A special significance of the federal budget is also manifested in imposing, on the Government of the Russian Federation, of an obligation to ensure implementation of the federal budget and to submit of the federal budget implementation report to the State Duma (while it is not prescribed by the Constitution of the Russian Federation for any other federal laws), and in imposing, on the Audit Chamber of the Russian Federation, an obligation to exercise control over the implementation of the federal budget (Section 5, Article 101; Subsection “i”, Section 1, Article 102; Subsection “d”, Section 1, Article 103; Subsection “a”, Section 1, Article 114).

Consequently, the prohibition to put questions concerning the adoption of the federal budget and amendments to it to the referendum prescribed by Subsection 5, Section 5, Article 6 of the Federal Constitutional Law “On the Referendum in the Russian Federation” directly stems from the mentioned provisions of the Constitution of the Russian Federation. The absence of such prohibition predetermined by the specific nature of the federal law on the federal budget could result in substituting the Federal Assembly mechanism of decision-making on these issues, which is its exclusive prerogative enshrined in the Constitution of the Russian Federation, with another mechanism.

3.2. Pursuant to Section 3, Article 104 of the Constitution of the Russian Federation, draft laws on the imposition or cancellation of taxes, tax exemptions, issuance of state securities, changes in financial obligations of the State, and other drafts incurring expenses covered by the federal budget shall be submitted to the State Duma only along with an opinion of the Government of the Russian Federation.

The concept of “financial obligations of the State” explicitly used by the Constitution of the Russian Federation is used in the Federal Constitutional Laws “On the Government of the Russian Federation” (Section 5, Article 36) and “On the Referendum in the Russian Federation” (Subsection 6, Section 5, Article 6), however, the content of this concept is not defined.

Since regulation and protection of the rights and freedoms of man and citizen and financial regulation fall within the jurisdiction of the Russian Federation, the federal legislator adopts federal constitutional laws and federal laws in these areas (Subsections “a”, “c”, “f”, Article 71; Section 1, Article 76; Article 94 of the Constitution of the Russian Federation). Consequently, the federal legislator providing detailed legal regulation shall bear in mind that the concept of “internal financial obligations” of the Russian Federation may be given various legal meanings depending on the purpose of regulation.

In particular, the federal legislator includes in financial obligations of the Russian Federation not only state securities mentioned in Articles 75 (Section 4) and 104 (Section 3) of the Constitution of the Russian Federation, which are, pursuant to the Budget Code of the Russian Federation, are obligations of the Russian Federation as a borrower and represent a form of the state debt of the Russian Federation and a source of financing the federal budget deficit, but also any other budgetary obligations of the Russian Federation, i.e. such expenditure obligations which are performed under the federal law on the federal budget for the respective financial year (Articles 6, 89, 97 and 98 of the Budget Code of the Russian Federation).

The inclusion of budgetary rather than any expenditure obligations of the Russian Federation in the concept of “financial obligations of the Russian Federation” is predetermined by the fact that the expenditure obligations to provide federal budget funds as Russian

Federation's responsibilities under normative legal acts or agreements serving as a basis for the formation of expenses of the federal budget, as such do not oblige the bodies implementing the budget to disburse federal funds within a certain period (Articles 84 and 222, Budget Code of the Russian Federation). This rule applies even if these other expenditure obligations are prescribed by an act adopted within the current budget cycle but are not included in the federal law on the federal budget and in the summary budget breakdown for the current period. In case of need to adjust the amount of expenditure obligations accounted in the federal law on the federal budget, respective amendments should be introduced in this federal law itself.

This conclusion is in line with the legal opinion of the Constitutional Court of the Russian Federation, according to which the federal law on the federal budget shall create proper financial conditions to implement norms of other federal laws adopted prior to the adoption of the federal budget and presume allocation of certain funds and material guarantees and the need for respective expenses (Judgment No. 9-II of 23 April 2004).

Accordingly, Subsection 6, Section 5, Article 6 of the Federal Constitutional Law "On the Referendum in the Russian Federation" to the extent that that it prohibits referenda on the performance and alteration of internal financial obligations of the Russian Federation within its constitutional meaning in the system of legal regulation in force does not permit a referendum on any issues related to the budgetary obligations of the Russian Federation as such. At the same time it does not preclude a referendum on issues which may result in a change of expenditure obligations of the Russian Federation considered in the process of forming expenses of the federal budget and accepting obligations outside the temporal limits of the federal law on the federal budget.

However, the federal legislator has the right to provide detailed regulation of the conditions and procedures for referendum on issues which may have implications on the expenditure obligations of the State. Relying on the principles of rationality and fairness, these conditions and procedures may be imposed to guarantee a balanced budget and performance of the State duty to efficiently spend public finance on exercising its functions as required by the Constitution of the Russian Federation, its Articles 104 (Section 3) and 114 (Subsections "a" and "b", Section 1).

4. Pursuant to Section 7, Article 6 of the Federal Constitutional Law "On the Referendum in the Russian Federation", an question put to the referendum must be formulated in a way precluding multiple interpretations, so only an unambiguous answer could be given to it, and uncertainty of legal consequences of the referendum results be precluded.

These requirements may not be considered contradicting the Constitution of the Russian Federation and violating any constitutional rights and freedoms as they are aimed at guaranteeing

correspondence of referendum decisions to the genuine will of the people as the bearer of sovereignty and the only source of power in the Russian Federation from the point of view of the content, form and legal consequences of these decisions. Pursuant to Article 83 of the said Federal Constitutional Law, these decisions are generally binding, do not need further approval and may be annulled or amended in no other way than by a new referendum if the decision itself does not specify a different procedure for its annulment or amendment.

The Constitutional Court of the Russian Federation stated in a number of its decisions (Judgment No. 3-II of 13 March 1992, No. 8-II of 21 April 1993) certain legal opinions on requirements with regard to questions put to the referendum, and these opinions were subsequently reflected in the Federal Constitutional Law “On the Referendum in the Russian Federation”. Under these legal opinions, the formulation of an question to be put to the referendum must ensure its perception as unified in order to avoid compelling citizens to vote simultaneously for or against several unrelated questions combined in one sentence; the same question should not pertain to different levels of legislation predetermined by its hierarchy and the federal order of the Russian Federation; no combination of a sentence construed in general terms with an question of a decisive nature is possible; the question should be formulated with an aim to define the legal consequences of a referendum decision in a determinative manner as regards its contents and powers vested in the bodies of state power. Otherwise the adequacy of expression of the will by citizens of the Russian Federation participating in the referendum is put to doubt, and the exercise of the people’s will, as expressed at the referendum, by federal bodies of state power becomes problematic.

5. The Federal Constitutional Law “On the Referendum in the Russian Federation” establishes that the preparation and holding of a referendum, securing exercise and protection of the right to participate in a referendum shall be performed by electoral commissions, including the Central Electoral Commission of the Russian Federation. Among the powers of the latter this Federal Constitutional Law (Section 13, Article 15) mentions review of consistency of the referendum questions with the requirements of its Article 6.

Such review at the stage of exercising the referendum initiative is an essential element of the mechanism to protect the rights of Russian citizens to participate in a referendum and inviolability of the fundamentals of the constitutional order, rights and freedoms of man and citizen, and observance of exclusive prerogatives of the Federal Assembly and other federal bodies of state power.

5.1. By reviewing questions to be put to the referendum with regard to their form and content, the Central Electoral Commission of the Russian Federation, considering the tasks imposed on it, shall establish their actual meaning and certainty of legal consequences of the

referendum, where appropriate it shall request advisory opinions, expert reviews, additional clarifications from the referendum initiators regarding the substance and purpose of the proposed referendum questions. In the decision it shall reason its conclusions *inter alia* by providing a possible interpretation of the respective questions and legal consequences of answers. State bodies, institutions and officials are obliged to provide assistance to the Central Electoral Commission of the Russian Federation in exercise of its powers, supply information and materials, and give answers within five days (Sections 1 and 4, Article 35 of the Federal Constitutional Law “On the Referendum in the Russian Federation”).

In case the referendum question (questions) is found to be inconsistent with the criteria prescribed by law, the citizens involved in initiating the referendum shall not be deprived of the right to pursue the initiated procedure. On the contrary, they shall have an opportunity to rectify the identified violations prior to performing any acts promoting their initiative, which require considerable administrative resources and material costs, and in case of disagreement with the decision they shall be able to challenge it in court.

Consequently, the power of the Central Electoral Commission of the Russian Federation to conduct preliminary review of consistency of the referendum questions with the requirements of Article 6 of the Federal Constitutional Law “On the Referendum in the Russian Federation” does not contradict the Constitution of the Russian Federation as it is consistent with the status of the Central Electoral Commission of the Russian Federation. Moreover, this power is intended to protect the constitutional right to participate in referenda; it does not affect the competence of any federal bodies of state government and implies the possibility of judicial control over the Central Electoral Commission of the Russian Federation as a law-enforcement body authorized by the legislator, whose decisions are binding (Subsection 11 Article 20 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum”).

5.2. In Sections 13 and 17, Article 15 of the Federal Constitutional Law “On the Referendum in the Russian Federation”, the federal legislator established a mechanism of control over compliance with requirements of its Article 6 at the stage of exercising the initiative to hold a referendum. It prescribed that a respective decision of the Central Electoral Commission of the Russian Federation as a ground for denial of registration of a regional subgroup of the referendum initiative group by an electoral commission of a subject of the Russian Federation, may be appealed to the Supreme Court of the Russian Federation (the decision of an electoral commission of a subject of the Russian Federation to a supreme court of a republic or an equal court in other subjects of the Russian Federation).

Consequently, disputes regarding the compliance of the question to be put to the referendum with the requirements of Article 6 of the mentioned Federal Constitutional Law, including disputes over compliance of the referendum issues with the Constitution of the Russian Federation over possible restriction, denial or derogation from the generally recognized rights and freedoms of man and citizen, and constitutional guarantees of these rights and freedoms, i.e. disputes that are constitutional by their nature, shall be resolved without the involvement of a specialized judicial body of constitutional control established by the Constitution of the Russian Federation.

Meanwhile, as the Constitutional Court of the Russian Federation indicated in its Judgments No. 19-II of 16 June 1998 and No. 6-II of 11 April 2000, all disputes that are constitutional in their legal nature, character and consequences, shall be resolved in constitutional proceedings, which correspond to the mission of judicial constitutional control. Any other approach would violate the principles of organization and administration of justice, division of jurisdictions of the court, securing of citizens' rights and freedoms enshrined in the Constitution of the Russian Federation by administration of justice (Article 18; Section 1, Article 47; Section 2, Article 118; Articles 125, 126, and 127).

Judicial control over the Central Electoral Commission of the Russian Federation exercised by courts of general jurisdiction to the extent that it includes resolution of disputes of constitutional nature may not be recognized as proper determination of jurisdiction over such cases by the federal legislator. It does not ensure guarantees of judicial protection of the fundamentals of the constitutional order established by the Constitution of the Russian Federation, including the supremacy and direct application of the Constitution of the Russian Federation, as well as of the rights and freedoms of man and citizen. Therefore, the federal legislator giving due regard to the constitutional nature and character of disputes emerging in the process of preparation and holding of a referendum and being guided by the mentioned constitutional principles shall, under Article 128 (Section 3) of the Constitution of the Russian Federation, regulate, in a federal constitutional law, the respective powers of judicial constitutional control.

Concluding from the above and pursuant to Article 6, Sections 1 and 2, Article 71, Articles 72, 74, 75, 79 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 as conforming to the Constitution of the Russian Federation the provision of Subsection 6, Section 5, Article 6 of the Federal Constitutional Law "On the Referendum in

the Russian Federation” pursuant to which questions concerning the adoption of the federal budget and amendments to it may not be put to the referendum.

2. To recognize as conforming to the Constitution of the Russian Federation the provision of Subsection 6, Section 5, Article 6 of the Federal Constitutional Law “On the Referendum in the Russian Federation” pursuant to which questions concerning the performance and alteration of internal financial obligations of the Russian Federation may not be put to the referendum, since within its constitutional meaning in the system of legal regulation in force this provision does not permit to put to the referendum questions related to budgetary obligations of the Russian Federation. At the same time it does not preclude a referendum on issues which may result in a change of expenditure obligations of the Russian Federation considered in the process of forming expenses of the federal budget and accepting obligations outside the temporal limits of the federal law on the federal budget.

3. To recognize as conforming to the Constitution of the Russian Federation the provision of Section 7, Article 6 of the Federal Constitutional Law “On the Referendum in the Russian Federation” under which an question to be put to the referendum must be formulated in a way precluding possibility of its multiple interpretations, so only an unambiguous answer could be given to it, and uncertainty of legal consequences of a referendum results be precluded. The said provision, within its constitutional meaning, implies that formulation of the question to be put to the referendum must make sure it is perceived as unified in order to avoid compelling citizens to vote simultaneously for several unrelated questions combined in one sentence; the same question should not pertain to different levels of legislation predetermined by its hierarchy and the federal order of the Russian Federation; no combination of a sentence construed in general terms with an question of a decisive nature is possible; the question should be formulated with an aim to define legal consequences of a referendum decision in a determinative manner as regards its contents and powers vested in the bodies of state power.

4. To recognize as conforming to the Constitution of the Russian Federation the provision of Section 13, Article 15 of the Federal Constitutional Law “On the Referendum in the Russian Federation” as providing for the power of the Central Electoral Commission to conduct preliminary review of consistency of referendum questions with the requirements of its Article 6.

To recognize as non-conforming to the Constitution of the Russian Federation and its Articles 18, 47 (Section 2), 118 (Section 2), 125 and 126 the mentioned provision taken in conjunction with the provisions of Section 17 of the same Article and Article 6, as establishing a mechanism for judicial review of decisions of the Central Electoral Commission of the Russian Federation which does not prescribe resolution of legal disputes, which are constitutional in their nature, character and consequences within the framework of constitutional proceedings.

Pursuant to Section 3, Article 128 of the Constitution of the Russian Federation, the federal legislator shall regulate, in a federal constitutional law, the powers of judicial constitutional control over resolution of disputes arising out of recognition, by the Central Electoral Commission of the Russian Federation, of the referendum questions as inconsistent with the requirements of Article 6 of the Federal Constitutional Law “On the Referendum in the Russian Federation”.

5. 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 and shall not be subject to any appeal, it shall come into force immediately upon its pronouncement, shall be directly applicable, and shall not require confirmation by other authorities and state officials.

6. 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 and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 3-II