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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Comments on the draft Constitution of
the Russian Federation (CDL (93) 31)**

by

Mrs S. BOTUSHAROV (Bulgaria)

C O M M E N T S

on the Draft Constitution of the Russian federation

(edition 30 April 1993)

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The adoption of a Constitution is a matter to be decided by each particular state: its politicians, Members of parliament, constitutional experts and people in conformity with the specific national features and the constitutional traditions. One should note that the Draft Constitution incorporates some fundamental principles typical of a democratic Constitution.

These comments concentrate on Chapter 5. The Federal Assembly.

1. Description of the Federal Assembly

Article 3 of the Draft Constitution defines the Russian Federation as "a democratic republic" without making any explicit statement as to what the form of government is adopted, i.e. parliamentary or presidential. Besides, Article 4 reads that "state power is based on the separation of the legislative, executive and judicial powers". These principles underlie the bodies which exercise the powers (Article 5).

In accordance with the constitutional provisions of Article 5, the Federal Assembly is the legislature, i.e. the federal authority exercising the legislative power. Article 84 defines the Federal Assembly of the Russian Federation as "the highest representative federal body of the Russian Federation".

With a view of the existence of the two texts, probably it would be possible to formulate a uniform provision stating the essence and the fundamental characteristics of the Federal Assembly.

Is the usage of two terms, "legislative" and "representative" in the draft provisions related on the one hand, with the functions of this state body of being the legislature and, on the other hand, with the way in which it is constituted through general, direct and equal elections by the secret ballot?

2. Structure of the Federal Assembly

Pursuant to Article 5 the Federal Assembly consists of the State Duma and the Federation Council. It is worth noting that the State Duma is mentioned first. Since this is an initial provision one is left with the impression that the State Duma will be the leading House of Parliament.

Article 85 indicates the two Houses in a different order.

Probably it would be necessary to edit the wording in accordance with the place specified for the Federation Council in Chapter 5.

3. Composition of the Federal Assembly

The draft envisages different size of the membership of the two Houses and different way of their formation as stated in Article 85, paras 2 and 3.

Article 85, para 2 reads that the Federation Council is formed on the basis of two representation norms: two deputies from each component of the Federation and election of other deputies in such a way as to ensure that deputies from republics, autonomous oblasts and autonomous okrugs make up at least 50 % of the Federation Council. Is it not possible to think about merging these two sentences into one so that the new wording conveys the idea of simultaneous and consistent election procedure?

4. Status of Deputies

The status of deputies is regulated in Articles 87 and 88 of the Draft Constitution. From a systematic perspective, it

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would be advisable to lay down the conditions for electivity and non-electivity as well as the conditions for incompatibility at one place.

The wording does not make it clear when the term of office begins and ends, under what conditions it may be terminated before expiration and for what posts and activities deputies cannot be eligible, i.e. what incompatibilities exist beyond the restriction under Article 87, para 2? Is the deputies' term of office free? Is the Federation Council a standing working body? Probably some of these issues will be tackled in separate laws.

5. Powers of the Federal Assembly

The Draft Constitution builds on the separate and joint exercising of the powers of the Houses of the Federal Assembly. Their distribution is a matter of constitutional regulation which can be seen in the draft.

One might ask the following question: since the exhaustive enumeration of the powers of each House separately and the two Houses together is adopted, is it not necessary to add to the list under Article 92, instead of writing "decide other questions envisaged by the Constitution"?

The way in which the powers of each House are systematized separately might be subject to improvement. The provisions of Article 96, third power would be more accurate if the words "or confirms the act of the President..." are replaced by the words "or makes a decision on the act of the President..." This is to clarify that an imperative confirmation of the act of the President or a similar action is not implied.

One should note the degree of complexity with regard to the legislative process and the type of laws passed. Article 101 envisages a number of subjects of the right to initiate legislation. The Members of Parliament, the President and the Government are the usual subjects of this right. How is this right going to be exercised by collective subjects such as the

State Duma, the Federation Council or the legislative (representative) bodies of the components of the Federation?

The efficiency of the legislative activity is related to the legislative procedure and the majority required for passing laws.

There seems to exist a kind of discrepancy with regard to the majority pursuant to Article 97, para 2 and Article 98.

6. Relationship of the Federal Assembly with Other State Bodies

It should be pointed out that the President of the Russian Federation is a separate state body, i.e. the head of state (Article 5). At the same time, the Draft Constitution enshrines the principle of separation of powers. It would be advisable to find the place of the presidential institution in the context of this principle; and moreover, it has extensive and various powers, especially in the executive branch (Article 73).

Given the significance of the issue to adopt a new Constitution laying the democratic foundations for the government of society and the state, it would be better to specify with greater clarity the relations between the Federal Assembly and the President, the Federal Assembly and the Government, the Federal Assembly and the judiciary, the Federal Assembly and the constitutional supervision as well as to strike the balance in these relations.

The Draft Constitution (edition 30 April 1993) provides good grounds for discussion. Some of these general remarks aim at drawing the attention to professional and well-intended deliberations.

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