

Council of Europe
Conseil de l'Europe



Strasbourg, 15 June 1993

Restricted
CDL (93) 35

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Comments on the draft Constitution of
the Russian Federation (CDL (93) 31)
by
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COMMENTS ON THE TEXT OF DRAFT CONSTITUTION BY PROF. SERGIO BARTOLE

Local self-government

According to the second paragraph of art. 127 Section I " local self-government is implemented within the borders of territorial units established in republics, krays, oblasts, federal-status cities, autonomous oblasts and autonomous okrugs ". The meaning of this provision is not sufficiently clear. Does it mean that the territorial units (republics, krays, etc.) have to be the frame of the local self-government ? Or have the mentioned territorial units the legislative function of implementing the self-government by proper laws ?

The second hypothesis is apparently contradicted by the two last paragraphs of art. 127 where the task of forming the national-territorial units is given a federal law " adopted in coordination with the appropriate component of the federation ". But, perhaps, this last provision regards merely the national-territorial units, since - according to art. 62 c), only the federal law is allowed to deal with the protection of the national and ethnic groups. The point deserves a further clarification, which can perhaps be given on the basis of art. II.1 1) Section II.

The construction of the first paragraph of art. 129 Section I is difficult. If the legislative bodies are State bodies also, the meaning of the provision is unclear which forbids the State bodies to restrict " the rights of local self-government laid down by the Constitution and the laws ". The legislative bodies have obviously to abide by the Constitution but, since the legislative function involves the power of amending previous provisions laid down by the law (also when they regard rights), the legislative bodies cannot be obliged to abide by the previous laws. Only if the laws concerning

the local self-government were to be adopted with a special legislative procedure and by a special majority, they would not be amendable by the ordinary laws.

Constitutional amendments and revision of the Constitution.

Art. 131 Section I establishes a very heavy procedure for the approval of constitutional amendments and revision of the Constitution which, on one side, implies a decision adopted with a special majority by both the Chambers of the Federal Assembly, and, on the other side, the ratification by two thirds of the components of the Federation. The power of submitting proposals regarding amendments and revision of the Section I of the Constitution is not given to the people and the people does not take part in the procedure by referendum.

The provision of the first paragraph of art. 132 Section I can leave some space for misunderstanding. It does not apparently allow the submission of proposals of amendments and revision of the provisions of Chapter I of Section I of the Constitution. But the following second paragraph explicitly allows a decision of both the Chambers on such a provision whose adoption implies the dissolution of the Federal Assembly and the election of a Constitutional Assembly which has the alternative of keeping the Constitution unchanged or of starting the drafting of a new Constitution. Keeping in mind this provision, it would be better to rewrite the first paragraph stating that " the provisions of Chapter I of the Constitution can be amended or revised by the adoption of a new Constitution only ".