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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**COMMENTS ON THE DRAFT FEDERAL CONSTITUTIONAL
LAW OF THE RUSSIAN FEDERATION ON THE RUSSIAN
CONSTITUTIONAL COURT (CDL (94) 14)**

by

Jan HELGESEN (Norway)

3). In Art. 4 para. 1, there seems to be missing a reference to the statute itself; the Constitutional Court should exercise its powers in accordance with the Constitution and the "present statute".

4). I do understand the importance of a statement as contained in Art. 4 para. 2. From a theoretical point of view, however, it may be argued that in constitutional matters, where the very essence of the exercise is to review acts and legislation by the supreme organs of the state, the borderline between politics and law is very hard to define in every detail. Such a provision should, of course, be an imperative to a Constitutional Court; such a provision may, however, give rise to debates and arguments.

5). I do have some problems understanding the content of Art. 4 para. 3. Does this imply that the Constitutional Court does not try the facts of a case if the facts have been or may be assessed by ordinary courts? Would it, then, be possible or advisable for the Constitutional Court to deal with the legal aspects of the case at all?

6). Art. 5 para. 3 states that the powers of the Constitutional Court is indefinite. Such a statement can hardly be seen as a permanent guarantee, since Art. 5 para. 3 does not have the status as *lex superior*. The powers of the Court may obviously be changed by a Constitutional amendment, or by an amendment of the statute itself. .

7). Art. 11 para. 4. states that a justice of the Constitutional Court is not permitted to comment upon a case which may be brought before the Court "earlier than the decision would be made on this problem". If this implies that a justice may comment upon a decision after the sentence has been passed, it seems to me that this question should be reconsidered. I am aware of the fact that Art. 66 para. 5 requires that justices of the Court, having participated at meetings in camera, shall not "divulge the contents of the discussion and the results of voting".

8). In the English version, Art. 13 is missing.

9). According to Art. 38 para. 3, the Secretariat of the Constitutional Court is given the competence to dismiss an appeal, under certain conditions. It may be claimed that the Secretariat, by deciding that a complaint is "evidently not within the jurisdiction of the Russian Federation Constitutional Court", is exercising some kind of judicial power. Since, according to Art. 38 para. 4, an applicant is not entitled to submit an application for the second time in such a case, one might

contemplate whether it would be more appropriate to allow a Chamber of the Court to make the decision, if an appeal is dismissed according to this criterion. According to the Draft, the justices of the Constitutional Court are not involved in the decision, unless the appeal "is not within the jurisdiction" of the Court (Art. 41 para. 1, 1)). The difference seems to be whether the incompatibility with the Constitution is "evident" or not. Obviously, it might be difficult to distinguish clearly between these situations.

Oslo, April 4, 1994.

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'FH'.