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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

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strict. What does the notion "without valid reasons" mean and who will decide on it? What is the aim of this rule? Does it aim the prevention of loosing the quorum unexpected or to keep the justices from being an absentee? If the aim is the latter the rule may violate the justice's rights. What if the the justice has good reasons but do not want to make them public? Do the justices have the right to decide freely when to go on leave? If so, what about the unexpected loosing of the quorum? If not, the maximum three possibility not to participate without detailed explication to the public of the absence during the possible tenure of 30 years of a justice seems to be unacceptable.

Art. 17. para 4 foresees the determination of the term of the suspension of the justice's power in case of para 1.a/. May the suspension be used as a punishment of a term determined by the Court? The institution of the suspension in this case might be abused.

as to Art. 18.1.a

There is no exact interpretation of the notion "serious violations". On what a basis should it be decided wether the violation has been serious or not? Does this rule mean that the Court as a result of its decision "reviews" the decision of the Federation Council on the appointment of a justice and the decision of the Russian Federation President on the presentation /Art. 9.1/ even if only from a procedural point of view?

as to Art. 20.1.8

The judgement of the Court decides on a specified claim. The judgement of the Court should contain the arguments supporting the judgement /Art. 70.8/, the applied rule of the Constitution and of the Law on the Constitutional Court /Art. 70.9/ and the formulation of the judgement /Art. 70.10/ answering the question under trial. If these requirements are fulfilled by the judgement there is no reason for an interpretation of this judgement in an other case: that case should be decided by itself alone. If the judgement do not comply with the requirements set by the law there is no interpretation but the correction of the judgement is needed.

as to Art. 20.1.9

What does revision mean in this case? It cannot mean the revision of a decision brought by the Court because of the final character of the decisions of the Court /Art. 74.1/. If it is intended to mean the possibility of the Court to change its mind in a later case and revise its former practice then it should be formulated more precisely.

as to Art. 21

The article sets up two chambers of the Court of ten and nine justices respectively. Despite the otherwise meticulous regulation there is no indication how the cases will be divided between the two chambers. Will they have different competences or the workload of the two chambers will play a

role in deciding the cases? Will there be an automatical division of the cases or an assignation? In that latter case who will decide on the assignation?

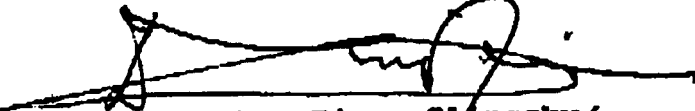
as to Art. 29

It is rather a conceptual question whether the Constitutional Court is understood as a pure court or as a court with special features due to its constitutional position. The European kind of the institutions of the constitutional review is rather characterized by the mixture of the features. The publicity during the whole procedure may encumber the realization of the special function of the Constitutional Court, as it has been indicated concerning Art. 5.1, and does not inevitably follow from theoretical reasons.

as to Art. 32.2-3.

If the workload of the Constitutional Court of the Russian Federation evolves in the same way as it has done in other countries where a constitutional court had been established the interdiction of parallel proceedings cannot be kept.

Budapest, 25th March 1994



/Prof. Dr. János Zlinszky/