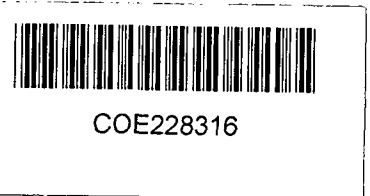




CDL (91) 10

European Commission  
for Democracy through Law

Commission européenne  
pour la démocratie par le droit



**THE NEW CONSTITUTION OF THE REPUBLIC OF BULGARIA**  
**DRAFT BASIC PRINCIPLES**

Presented by

Mr Alexandre DJEROV  
President of the Legislative Commission  
of the National Constituent Assembly.

and

Mrs Negana BOTOCHAROVA  
Member of the Commission for the  
elaboration of the Constitution

THE NEW CONSTITUTION OF REPUBLIC OF BULGARIA  
DRAFT BASIC PRINCIPLES

The Draft on new Constitution of Republic of Bulgaria is closed to the final completion and it is forthcoming to be put forward for consideration at a plenary session of the Grand National Assembly. Draft contains the fundamental principles of democratic government and individuals' life, freedom and property basic guarantees. It is paid a considerable attention to some new to the country legal principles and means in order to stand by human rights, to restrain governmental intervention, to change the economic system from centralized planning toward private markets, free competition, privatization, demonopolizing the industry and protection of investments domestic, as well as foreign, and the settlement of all the disputes and controversies in the state, regardless their nature, mainly by means of the law.

The Bill consists of eleven chapters. Preamble is not envisaged. The first chapter contains basic principles of the government. It is confirmed the republican system of government in its parliamentary form. The idea of parliamentary monarchy has its adherents, but it is not prevailing. The State is described as an unitary, democratic, social and based on law. Whole the power originates out of the people and it is fulfilled by the population and through the bodies envisaged by the Constitution itself. There is a constitutional prohibition, provided that none

## 2.

of the population groups, political party or other body, institution of the state or a single person shall pretend to implement peoples' sovereignty in order to keep its sanctity. Republic of Bulgaria is a single-nation country, where ethnical communities are inseparable part of the Bulgarian nation. Further, there are constitutional rules, which guarantee the prohibition mentioned, and the punishment of whatever discrimination, defend the equality and the conditions of tolerance and respect between the different religions and between believers and non-believers as well and native language use, where the orthodox religion is considered to be the traditional and the main one, and the official language shall be Bulgarian, as formal and compulsory in the state bodies and public relations.

The territory is united and unviolable, as well as the state borders. Any borderlines' changes could be made just by the constitutionally provided order.

The state is described by its constitutional duties to create legislative grounds and to defend the constitutional order, rights and freedoms of the citizens. The individual is considered to be on a dominant place in the relations between the state and the man, with his autonomy and independence. This is the guiding principle in constructing Chapter Two - as to individuals' rights and freedoms. The supremacy of the Constitution, its direct applicability and the hierarchy of the legal acts are raised to fundamental principles. There is a prohibition for passing an ex post facto law. It is determined

## 3.

for first time the effect of the Public International Law upon the national legislation.

The principle of the multiparty system has its own place among the basic principles. It is a rule, that none ideology shall be proclaimed and affirmed as an official, that prevents the return of our former government experience.

Main rules about the property and the economic system are also in the first chapter. Right to property is sacred and unviolable. Private property is recognized and safeguarded by the law, that determines its regime. Compulsory alienation is admissible only for the needs of the state and local communities under circumstances of a proved public necessities and after a prior and equitable compensation. There are enlisted the subjects of exclusive state property, among the generally accepted, including in the other European countries. Also freedom of business undertaking and market relations, domestic and foreign individuals and companies investment and trade protection, prohibition of monopoly and unfair competition, and consumer protection rules are stipulated. These stipulations are supposed to be developed in details further, by certain laws.

Draft Chapter Two contains a comprehensive system of the citizens fundamental rights and duties. Positive constructions on the rights and freedoms prevail over the constitutional rules, forbidding interference by law of the individual freedom. An explicit rule makes provision, that all the people are born free and equal in dignity and rights, and also that bulgarian

## 4.

citizens, wherever they are, have all rights and duties pursuant to this Constitution. It is provided a prohibition on depriving of citizenship, acquired by origin and extradition of a Bulgarian citizen. Foreigners sojourning in the Republic of Bulgaria, have a constitutional guarantee for their rights, freedoms and duties. The fundamental rights and freedoms in the Draft are conformed with the international agreements Bulgaria is a part of: Universal Declaration on Human Rights, International Treaty on Economic, Social and Cultural Rights, International Treaty on Civil and Political Rights etc. As a new point, natural and inalienable rights that so far were rejected are included. It is created a constitutional remedy against repeal or restriction of rights, and in favor of their defence. Further development of these rights and freedoms in certain legislative acts is opened.

The draft outlines right to life. It is oncoming the death penalty matter to be solved. Indeed, there exists variable public disposition and opinion, from unconditional abolition up to restricted application under certain conditions.

The draft contains classical individual and political rights and freedoms: to personal freedom and inviolability; procedural defence by attorney since the moment of detention; presumption of innocence; right to privacy and defence against illegal interference in private and family life and against encroachment on the honour, dignity and reputation; unviolability of the accommodation, correspondence and communications; right to free choice of residence, free return in the country; prohibition on any persecution or restrictions on rights for the sake of

## 5.

persuasions; freedom of conscience, choice of religion, religious or atheistic views, right to opinion and freedom to spread it broadly. Above listed rights and freedoms could be exercised completely and in a free manner in the constitutionally prescribed order and conditions. They could be restrained only by a rule of law in the limits imposed by the Constitution.

Press and other mass media are free and should not be subject of censorship. Suppression and seizure of a periodical or whatever issue could be permitted only by a judicial order.

Citizens are entitled to hold peaceful and unarmed meetings. They can freely associate themselves and participate in government, to elect and to be elected, to receive information by the authorities on matters where they have a recognized by the law interest, as well as to bring suggestions, petitions and complaints in the government bodies.

The family relations and their protection has also certain place in the Second Chapter. Particularly, there are provided special protective measures in favor of the children, mothers, orphans and born out of wedlock (in order to be ensured the equality with those, born in wedlock).

Social, economic and cultural rights and freedoms have also their own place in the constitutional text. Among others, there are the right to satisfactory standard of life, labor in accord with the educational level and professional skills, and free choice of occupation and place of employment. Social security rules in case of unemployment, disability and as to socially weak

6.

people are combined with charity encouragement. Right to strike upon law determined conditions is also provided. Health care is based on free medical services in public health establishments. The premisses shall be elaborated in detail by certain law. The education is subject of circumstantial rules. It shall be private and public. Elementary education is supposed to be compulsory, and together with the secondary education in the public schools - free of charge. Academic autonomy of the universities and colleges is envisaged. Besides compulsory study of Bulgarian, the citizens of non Bulgarian origin shall be entitled to study their native language. These rights are accompanied by the right of each individual to participate in any cultural activities and to utilize all the cultural values. The state recognizes and ensures the freedom of literature, fine arts, sciences and other forms of creativity, protects inventories, copy- and all the similar rights.

Right to private property and its inheriting is recognized and the state shall assume respective bails.

In this chapter the Constitutional draft fixes the duties of individuals to observe and perform the Constitution and the laws, to defend the country, to pay taxes, provided by the laws, to perform in a conscientious way their public service (for state officials), and to give assistance in case of emergency.

Pursuing the Draft, fundamental individual rights of citizens shall be irrevocable and every single man has a right to be protected by the State, including before the courts, when

## 7.

certain rights or legitimate interests of him are violated or threatened.

It is supposed to be nominated also a Parliamentary Defender (Ombudsman), intended to protect fundamental rights of individuals, offended by unlawful decisions or acts of administrative bodies or local authorities. This is a new to our constitutional practice institution.

The Third Chapter of the Draft is on the Parliament. Public authorities system is based on the separation of powers on legislative, executive and judicial branch doctrine. In Bulgaria, the Parliament is represented by National Assembly, that exercises the legislative power. This is the body, specifying the main directions in the internal and foreign official policy and controlling the Government. The number of members suggested is 200, elected for a term of 4 years. A nominee could be any Bulgarian citizen, on age at least 21, who is not under judicial disability, not currently imprisoned, if does not have other citizenship. Members' mandate is free and cannot be suspended by the electoral body. The draft reads, that he shall be led only by the people's interests. Along with the existing institution of representatives' inaccountability, two new institutions are introduced: the incompatibility and the ineligibility.

It is stipulated the National Assembly to be as yet with one house structure. There are isolated views in favor of two house shaped Parliament and still they do not find as many supporters.



## 8.

National Assembly shall be permanently operative body. Its organization and work shall be managed under Regulations, adopted in plenary sitting like any other decisions and laws. National Assembly shall be conducted and represented by its Chairman himself, instead of a joint leadership - so called Bureau, as it is nowadays. Sittings shall be opened, and as an exception - closed. Standing and special (ad hoc) committees shall assist to the general work and implement parliamentary control. The majority required to pass a law or other act shall be more than the half out of representatives attending the session, if there are more than the half of all the enlisted Assembly members in the conference room. There is not drawn a distinction between statutory, constitutional and ordinary legislative acts in the Draft. Besides its legislative functions, The National Assembly implements also traditional and customary to a Parliament powers. Some new points are introduced with the legislative procedure. The entitled to propose bills shall be the Government and the members of the Parliament. There shall be held two votings in order to pass a legislative act.

A new possibility is drafted for a direct exercising the right to propose drafts, by voters, if it is signed by more than 50.000 of them. This draft stipulation has provoked discussions and will be argued additionally.

As an optional is offered the delegation of legislative powers; by granting it to the Council of Ministers (Government) the power to issue enactments with the force of law on matters, that does not concern fundamental rights and duties of the

## 9.

individuals, taxation, the system of government the state organization. Granting this power shall be made explicitly, on strictly fixed matters, for a fixed period of time and by means of law, imposing the principles and criteria.

On the Government and ministers' accountability and responsibility, National Assembly is authorized to give a vote of non-confidence to the Council of Ministers as a whole or to a single member of it, as well as representatives' right to address ordinary questions, questions (interpellations) and motions or censure.

Chapter Four is devoted to the Presidential institution. The concept of the single-person Head of State is unconditionally accepted, but there have emerged two views: in favor of powerful and "weak" president. Most of all it has reflected upon the questions as follows: how to elect the president, what should be his powers and scope, and concerning the mutual relations between him and the National Assembly.

There is a suggestion for the President in the Bill to be elected by direct voting by the population for 5-years term and in a procedure, determined by a law. The President shall be a Bulgarian citizen by his origin, at least 40 years old and satisfying the conditions to be a member of Parliament nominee. There shall be elected also a Vice-President with supersessive functions. It shall not be permitted re-election more than once. Both they are not allowed to execute other representative, political, business and state duties and activities. Along with

the traditional for a Head of State powers, the President is entitled to dissolve the Parliament before its term expiration, after two consequent votes of non-confidence to the Government; to vest a mandate for constituting a Government inquiry; to sign the legislative acts, adopted by the Parliament, including to reject them returning for a new consideration. The decrees of the President shall be counter-signed by the Prime-Minister or the minister concerned, except the decrees, that the Constitution does otherwise provide for. The President has immunity, except in cases of high treason, Constitutional offence and oath's breach.

Chapter Five is upon the Government. The executive branch shall be lead by Council of Ministers, responsible before the Parliament. In this regard the classical constitutional shape and tradition was followed.

Chapter Six deserves a considerable attention. There is contained the matter of the constitutional control and redress. A new Bulgarian constitutional practice body is established - the Constitutional Court of Justice (or Constitutional Council). The stipulations are concerned with the number of justices, way of constituting, professional ability, mandate, incompatibility, immunity of the members, the purview, the awards' effects and consequences.

The points still under discussion are: whether to provide preventive procedure and consequent controll (redress), or just the first or the second one; whether this Court to be included in the single judicial branch, or to remain somewhere outside it;

11.

whether the awards shall cancel or solely to suspend the effects of the legislative and other acts: what shall be the scope in regard with level of acts questioning.

The Bill is based on 15 members structure of the Constitutional Court of Justice. One third of members shall be nominated by the Parliament, the second third - appointed by the President and the rest nominated by the high courts. The mandate is for 9 years, and the membership disqualifies for the holding of any other office or functions. The members shall not be re-elected (re appointed). The Court is entitled to hear the matters of constitutionality of legislative acts; to give a binding interpretation on the Constitution; to cancel the unconstitutional laws and decrees of the President; to solve conflicts of jurisdiction between the Parliament, The President and the Government, and between Self governing Communities and the State as well; to decide upon international agreements and treaties, and upon constitutionality of political parties and other organizations, on the presidential elections and the Central Elective Commission's decisions legality; to hear also charges against the President and Vice-President, raised by the National Assembly. The judgements shall be passed by a majority of more than half of all the Justices. They are final, can not be a subject of further appeal and are binding to all the persons. The structure and the procedures in the Constitutional Court of Justice shall be provided by a special law.

Chapter Seven concerns Self governing Communities and their administration. The Council of Ministers of the State and the

## 12.

The system of local self government shall be based on the principle that local government bodies shall be elected by the population in the community. The community shall be the executive power body in the community and shall be nominated by the council with 4 years term of office. The community shall have its own budget and property. The other two levels - district and region are with only administrative powers, representative and control functions.

The judiciary is subject of Chapter Seven. The courts are independent and irremovable. A Supreme Judicial Council establishment is envisaged. This institution is supposed to appoint, promote and dismiss the judges, public prosecutors and examining magistrates. Judicial process shall be in two instances. The courts shall be as follows: Supreme Court of Cassation, Supreme Administrative Court, courts of appeal, regional, local and martial courts.

The Administration is detailed in Chapter Nine of the Draft. There are laid the main features and requirements of state officials. They shall be requested to be politically neutral. As to their appointment and dismissal shall be taken into consideration only the professional ability, training, personal qualities and efficiency. The conditions on their membership in political parties and trade unions, and also on the appointment shall be a subject of legal rules.

13.

Chapter Ten, concerning Constitutional ammendment and alteration, and new Constitution adoption deserves a special attention. As per accepted concept this shall be realised by a Grand National Assembly. It shall consist of the operative to that moment National Assembly members, former presidents, local Self-governing communities representatives, the Constitutional Court of Justice and Supreme Judicial Council members. It shall be summoned and the proposal shall be made by 100 members of the Parliament, the Government or 500.000 voters. The Bill shall be passed by three votings by a majority of 2/3 of all the Grand National Assembly members.

The Draft does finish with Transitional and Closing provisions on number of questions, connected to the actual Grand National Assembly, setting up the legislation in conformity with the new Constitution, terms for some urgent draft laws adoption and to oncoming elections holding.

The above discussed main principles of the new Constitution draft will be a subject of substantial and in details further consideration in plenary sittings. There are possible to be made a lot of changes, amendments, cancellation of some draft rules. The Constitution shall be passed by three votings, and the majority required for its final adoption is 2/3 out of all the representatives. The practical operation and influence of the Constitution and the laws based thereupon, will discover how far the Grand National Assembly will. Intentions and democratic principles will turn themselves into an efficient legal ground for a modern european kind of government in Bulgaria.

**Complement:**

Constitution of the Republic of Bulgaria

Ch. One: Basic Principles (Art. 1-27)

Ch. Two: Fundamental Rights and Duties of Citizens (Art. 28-69)

Ch. Three: National Assembly (Art. 70-101)

Ch. Four: President of the Republic (Art. 102-115)

Ch. Five: Government (Art. 116-126)

Ch. Six: Constitutional Court of Justice (Art. 127-131)

Ch. Seven: Local Self-government and Administration (Art. 132-144)

Ch. Eight: Judiciary (Art. 145-162)

Ch. Nine: Administration (Art. 163-167)

Ch. Ten: Amendment and Alteration of the Constitution.  
New Constitution Adoption (Art. 168-174)

Ch. Eleven: Transitional and Concluding Provisions (# 1-...)