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

by  
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REMARKS ON THE REGULATION ON HUMAN RIGHTS  
IN THE DRAFT CONSTITUTION OF THE RUSSIAN FEDERATION

*I. GENERAL REMARKS*

1. The draft Constitution confirms already in the preamble the value of freedom, human rights and worthy of life as values affirmed by the people.

2. The framework for the regulation of the legal status of the individual is established by art. 1 of the Constitution which lays down the principle of the rule of law in connection with the perception of the individual, his dignity and his rights and freedoms as the highest values of the State. At the same time the Constitution refers to the natural law theory by defining these rights as inalienable. The same kind of reference one can find in art. 8 speaking about the rights "belonging from birth".

There is no doubt that this kind of regulation establishes a good basis for the legal status of the individual. Moreover, it provides the jurisprudence with the opportunity to grant legal protection to the individual if there is no specific legal provision doing it.

3. After reading of the constitutional catalog of rights and freedoms one arrives at the following general conclusions:

i) the constitutional catalogue contains an exhaustive catalogue of classic (the so called: negative) rights. They are perceived as human rights, i.e. as rights, the subject of which is everyone under the jurisdiction of the Russian Federation. I do not think that this part of the catalogue could be particularly critically commented. It seems that both the content and the formulation respond to the legislative requirements of a modern constitution.

The social rights are perceived as citizens' rights only. It results from the wording of specific provisions on the one hand, on the other from the place in the structure of the Constitution. The classic rights are dealt with in the first chapter of the Constitution the title of which is: "Human Rights and Freedoms" while the social rights are contained in the second chapter entitled: "Citizens of the Russian Federation".

**Commentary:** Art. 2 para 3 of the International Covenant on Economic, Social and Cultural Rights read: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." One can raise the question whether the discussed solution of the draft Russian Constitution remains in conformity with the quoted provision, unless the Russian Federation cannot be recognized as a

developing country. This question can be raised even taking into account art. 54 which refers to the federal law which - this is not entirely clear - might make exceptions to the constitutional norms on social and cultural rights in regard to foreigners.

It seems to be understandable that a country facing serious economic problems is afraid of obligations which can go beyond its capacities. On the other hand, however, the ICESCR does not impose on the states as obligation to provide all the foreigners with all possible social rights, irrespectively of their status. Would it not be more in line with the international obligations to state explicitly in the Constitution that the adopted solution has a temporary character, dependent on the economic potential of the State instead of making the impression that this is a solution deriving from the general concept of individual rights.

ii) the draft Constitution is perceived by its authors as legal instrument which should provide the individual with the basis for a legal claim. This is visible in the form in which the provisions are formulated. They should be self-executing. About the self-execution speaks directly art. 10 of the draft. This is also confirmed by the right of everyone to the court (art. 118). Finally, this interpretation is indirectly confirmed by the careful differentiation between the social claims laid down in the form of subjective social rights and the establishment of the aims of the state as formulated in the second chapter of the Constitution. The described characteristics is an important value of the draft.

One can have doubts, however, if it would not be better to establish limits of human rights in particular provisions instead of the general rule of art. 24. This would provide the opportunity to differentiate between the specific human rights limitations depending on the right concerned. To this question see also II.3.

iii) the draft Constitutions pays proper attention not only to proclaiming specific right and freedoms but also to their guarantees. The right of the individual to the judicial protection is granted in a way which is to be appreciated.

iv) *last but not least* the Constitution contains a clear reference to the Universal Declaration on Human Rights and to general recognized principles of law. It gives the constitutional provisions on human rights and freedoms an international context. One can wonder, however, if there should not be a reference also to the international human rights treaties binding on Russia, and in particular to the International Human Rights Covenants Russia is a party to.

## II. SPECIFIC REMARKS

1. Art. 9 refers exclusively to "ethnic minorities" what seems to be insufficient (no mention of other minorities - national, linguistic, religious). The rather wage regulation consisting exclusively in the reference to other regulations constitutes also a critical point. Taking into account the still insufficient regulation of the rights of minorities by international law makes the reference to this body of law also inadequate.

2. The definition only of the right to private property as a natural right (art. 21 para 3) seems to be a little puzzling. The explanation for this distinction could be looked for in the recent history in which the private property almost ceased to exist. Nevertheless, even taking it into account this explanation this kind of "advancement" seems to be strange.
3. The individual provisions concerning human rights do not contain any reference to limits of the rights and freedoms. Art. 24 contains a general list of specific limitations. This is interesting legislative solution but one can wonder whether the formula adopted in the International Covenants is not better one. For, specific rights require sometimes specific limitations. At the same time the list of rights which cannot be limited (last para of art. 24) seems to go to far. For example, freedom of conscience, religious or atheistic activities as well as freedom of expression of opinions could also be limited by other people rights. The same can be said about the right to privacy. On the other hand this list seems to be incomplete if considering for instance art. 26 para 1, art. 29, art. 34. The question of human rights limitations generally seems to require reconsideration. And one additional minor point, perhaps resulting from the interpretation: the protection of "the State system" is a ground for limitations of rights unfamiliar to the international documents. This general clause might be misinterpreted. It is more advisable to make use of the patterns established by the international human rights standards.
4. The provision concerning "state of emergency" (art. 25) should be more specific by mentioning which rights might or must not be suspended under this kind of state. The listing in art. 24 is insufficient in this regard.
5. One can wonder if the right to asylum is not formulated to generously. To clarify this point: someone acting for a dictatorial regime can also be "persecuted for political acts", if his/her activities violate the constitutional order of the country.
6. Art. 29 para 1 is unclear. Is the State protection to human rights meant also in the terms of the so called affirmative action.
7. I am not sure whether putting state bodies and social organizations as potential violators of human rights on the same footing (art. 31) is not misleading and cannot be source of misunderstandings.
8. In the part of the draft related to social rights one can find some very interesting principles as e.g. "Labour on the upbringing of children enjoy equal status with all other forms of labour and provides the basis for normal and fitting social security." It seems to be purposeful to make provisions of this kind as precise as possible. Using words like "preferential protection" can be confusing under circumstances. On the other hand, the insertion of some of the principles (e.g. art. 48) seems to suit better a manual than the constitution. However, taking the opposite approach might be understandable in a particular historical situation when this kind of proclamation is required.