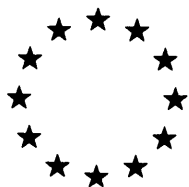


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**COMMENTS ON THE REGULATION OF HUMAN RIGHTS
IN THE REVISED DRAFT CONSTITUTION OF THE
RUSSIAN FEDERATION (CDL (93) 43)**

by
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COMMENTS
on regulation of human rights
in the revised draft Constitution of the Russian Federation

*These comments constitute a continuation of remarks
on the first version of the draft Constitution - CDL (93)41.*

I. GENERAL COMMENTS

1. The draft Constitution confirms already in the preamble the value of freedom, human rights, worthy life, civil peace and harmony, equality and self-determination of peoples, and democracy. The normative general framework for the regulation of the legal status of the individual is established by articles 1, 2 and 7. The first of these provisions lays down the principle of democracy and the rule of law. Article 2 provides for: "An individual, his rights and freedoms, are the supreme value in the Russian Federation. Recognition, observance and protection of inalienable rights and freedoms of individual and citizen shall be an obligation of the state." Article 7 characterizes Russian Federation as "a social State".

Furthermore, article 17 states *inter alia* "The basic rights shall be inalienable and belong to every person from birth." It lays down also that "rights and freedoms of individual and citizen shall be recognized and guaranteed accordingly to the generally accepted principles and rules of international law." The next article reads: "The rights and freedoms of individual shall always be in force. They shall determine the meaning, content and application of laws, impose responsibility on legislative and executive authorities, bodies of local self-government and shall be guaranteed by justice."

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.

2. The constitutional catalogue contains an exhaustive catalogue of rights and freedoms. They are perceived as human rights, i.e. as rights, the subject of which is everyone under the jurisdiction of the Russian Federation. It seems that both the content and the formulation respond, as to the principle, to the legislative requirement of a modern constitution. It should be pointed out that in the light of the draft both the so called classical rights (civil and political) and economic, social and cultural rights are perceived as human rights. This is a positive change in comparison with the first version which recognized only the first category as human rights. Although one has to assume that in some cases the notion "every person" refers rather to "every resident" of the Russian Federation than to every human being, which is in mind in regard to classical rights speaking also about "every citizen" (compare e.g. articles 38, 39, 42 para 3)..

3. 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. In the present version of the draft the formulation of rights and freedoms is even more precise. The constitutional provisions should be self-executing. About self-execution speaks the draft directly in art. 15. It is also confirmed by the right of everyone to the court (art. 46). This interpretation is indirectly strengthened by a careful distinction between social claims laid down in the form of subjective social rights and state aims.

Article 44 proclaims: "State protection of rights and freedoms of individual and citizen in the Russian Federation shall be guaranteed. Every person shall have the right to protect his own rights and freedoms using all means not prohibited by law." (see also article 47). Worth of being noted is the establishment of the individual constitutional complaint (art. 125).

The described characteristics constitute an important value of the draft.

4. The present version of the draft Constitution has brought significant improvements in comparison with the first version. The new approach to economic, social and culture rights has already been mentioned in para 2. The positive change in the language are noted in para 3. By way of example, also following solutions can be

referred to: new regulation of the protection of human rights under the state of emergency (article 56), the right to asylum (article 64), formulation of social rights, protection of national minorities (articles 24, 68, 69).

II. SPECIFIC COMMENTS

1. Like the first version of the draft, the second version lists jointly in article 55 § 3 the reasons for which restrictions can be imposed on the applicability of rights and freedoms. It means that the drafters accept the imposition of restriction on all rights and freedoms for reasons mentioned in this article. This seems to be inconsistent with the international and European standards which clearly determine which rights and for which reasons could be limited. The proposed formula leads to a situation in which all the possible reasons of limitations might be applied in regard to all of the rights and freedoms. This could open the way to misuse of power by both the legislative and the executive.
2. One can wonder if it would not be desirable to establish full "habeas corpus" instead of accepting the 48 hours detention without judicial decision (article 22).
3. In article 29, the limitation of the right of an individual can be established "on the basis of the federal legislation or upon the decision of the court". Almost identical provision is contained in article 34. It seems that the word "or" should be replaced by "and".
4. Article 30 guarantees the freedom of assembly only to citizens of the Russian Federation. The international standards speak on a human right in this regard. This limitation surprised, considering that article 29 guarantees freedom of association as a human right.

5. The right to property (article 34) continues to be "a natural right". This characteristic is not used in regard to other classical rights and insofar remains surprising.

6. One can wonder if the Constitution is a proper place for the establishment of the principle "exhaustion of the domestic remedies" (article 46) which governs the access to international procedures. This is a principle which should be laid down in the international treaties; included into the domestic legal order could lead to a misuse of power (by preventing the access to international procedures).

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