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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS
ON THE DRAFT LAW ON THE PARLIAMENT
OF THE CHECHEN REPUBLIC

(RUSSIAN FEDERATION)

by

Mr Giorgio MALINVERNI (Member, Switzerland)

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at its 64th Plenary Session
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1. *At a meeting of a working group on improving legislation of the Chechen Republic held in Gachino, on 12 April 2005, the Russian and Chechen representatives agreed to submit a number of draft laws on constitutional matters, local self-government, public administration, financial and fiscal questions, and administrative, social and cultural matters for expert appraisal by the Council of Europe.*
2. *Within that expert appraisal mission, the Venice Commission was asked to examine a number of draft laws, including the draft law on the Parliament of the Chechen Republic.*
3. *Mr Malinverni, member of the Commission, worked on the basis of an English translation of the draft law (see CDL(2005)065). The present comments were adopted by the Commission at its 64th plenary session on 21-22 October.*

Introduction

4. The draft institutes a bicameral parliament, with the Council of the Republic and the People's Assembly forming the two chambers. It emerges from the draft, and from article 13 in particular, that the two chambers do not wield equal power as they do not have the same prerogatives.
5. My comments on the draft are as follows:

I. Problems regarding legislative technique

6. Generally speaking, the draft all too frequently refers to other laws. Rather than settling a number of important points itself, it makes references to other legislative acts, which is regrettable.
7. Article 5 paragraph 3, for example, refers (needlessly) to provisions of the Constitution.
8. The same applies to Article 9 paragraph 1, which states that the procedure for electing deputies to the Parliament of the Chechen Republic is set forth in the Law "On elections to the Parliament of the Chechen Republic". Would it not be preferable to set out the procedure for election in the present draft law, so that everything concerning the Parliament appears in one and the same text?
9. Article 13 paragraph 9 provides *in fine* that the procedure for official publication of laws is determined by the law of the Chechen Republic. Here too, one might wonder whether this procedure should not be set out in the present draft law.
10. Similar criticism applies to Article 14, concerning the rules of procedure of the chambers of Parliament, which pursues no other purpose than to refer to the law and the rules of procedure of the two chambers of Parliament regarding this question.
11. Articles 19 and 20, on parliamentary committees, and standing committees in particular, do not identify the standing committees, or how many of them there are. A question of this importance would certainly merit being covered in the law.
12. Article 21 is subdivided into four paragraphs. Whereas paragraphs 2 and 3 list the tasks and responsibilities of the Council of the Republic and the People's Assembly respectively,

paragraphs 1 and 4 appear to list the prerogatives of the Parliament as a whole. Should the present paragraphs 1 and 4 not be grouped together in a single paragraph?

13. Article 29, concerning the deputies' mandate, states that their mandate is defined by the present draft law and the law on the status of deputies. As before, one might wonder whether it would not be preferable to combine all these provisions in a single law.

II. Vagueness of certain provisions

14. The draft contains a great many provisions of a vague and sketchy nature.

15. Article 2 paragraph 2, when listing the purposes and functions of Parliament, mentions supervision but fails to state which organs may be supervised or monitored by Parliament, or which acts of those organs may be subject to supervision.

16. Article 2 paragraph 4 states in very general terms that one of the tasks of Parliament is to involve citizens and public organisations in governing the Republic, and this provision is too vague.

17. Article 3 paragraph 1 refers to the Constitution and the present law, as well as to other legal acts, without specifying those acts.

18. Similarly, Article 4, in paragraphs 1 and 2, mentions that Parliament is competent to adopt laws, resolutions and other regulatory acts, without giving a very clear idea of the legal nature of those regulatory acts and their relation to laws.

19. Article 5 paragraph 8 provides that the President of the Chechen Republic and the Government shall assist the two chambers of Parliament in their efforts to establish the Republic's legal system, without it being clear, here either, as to what that assistance entails.

20. The same comment applies to Article 6, on relations between the Parliament and representative assemblies at local and municipal level.

21. In Article 10 paragraph 1, it is difficult to see how the two chambers may consist of only two thirds of the deputies. Is this because the elections are not all held on the same day?

22. Article 21 lists the responsibilities of Parliament. Paragraph 6 provides that it must fulfil other responsibilities stipulated in the Constitution, without stating what those other responsibilities are.

23. Article 26 lists the prerogatives of Parliament in all matters concerning the organisation of its own activities. Paragraph 8 states that Parliament must perform other functions stipulated in the Constitution and the laws of the Chechen Republic, without stating which other functions and laws it is referring to.

24. Article 27, on the requirements for election to the two chambers of Parliament, mentions that any candidate must be 21 years of age and be entitled to participate in elections according to the law. Would it not be preferable to clearly state the conditions to be met by candidates?

25. Article 28, on parliamentarians' immunities, states that a deputy may not be detained or arrested, except in the cases provided for by law. Again, would it not be preferable to clearly indicate in which cases, rather than referring to another law?

III. Expediency of certain provisions

26. The draft contains a number of provisions whose inclusion in the text is questionable.

27. One might question the expediency of including Article 5 paragraph 6 in the present draft, as this does not relate to Parliament as such but to disputes that might arise between different political authorities.

28. It is also unusual to grant the right of legislative initiative to judicial organs, as provided for in Article 7 paragraph 2.

29. Article 12, governing the question of minutes of the sittings, might well appear in the rules of procedure of the two chambers but not in the law itself.

IV. Shortcomings

30. While the draft contains provisions that do not have their proper place in it, it fails to settle certain important points which should be covered in the law.

31. Article 9, for example, on the procedure for electing parliamentarians, is not very clear on the electoral system used to elect deputies to the two chambers. Whereas Article 9 paragraph 2 seems to suggest that deputies to the Council of the Republic are elected under a single-member majority system, there is nothing to indicate whether the election takes place in one or two rounds.

32. As for the People's Assembly, Article 9 paragraph 3 does not indicate which system is used to elect the forty deputies making it up. Is it the majority system or the proportional system?

33. Article 28, on the immunity of parliamentarians, should state whether and under what conditions such immunity may be lifted.

V. Problems concerning the principle of separation of powers

34. Some provisions in the draft raise questions over the principle of separation of powers.

35. As the draft law was drawn up on the basis of the Constitution of the Chechen Republic, put to a referendum on 23 March 2003, the reservations expressed by the Venice Commission in its opinion (CDL- AD- 2003-2) can but be reiterated.

36. Article 3 paragraph 3 provides that the mandate of the chambers of Parliament may be terminated early in the event of the Supreme Court passing a judgment on the ineligibility of the deputies. However, it is not clear whether the Supreme Court judgment may concern the ineligibility of members of the chamber individually or the members of the chamber as a whole. Given the problems raised by this question with respect to the principle of separation of powers, it should be regulated in more precise terms.

37. Article 5 paragraph 4 states that the decrees of the President of the Chechen Republic and similar acts of the Government shall be submitted to Parliament for examination. But what does that examination entail? Must the acts of executive organs be approved by Parliament, or must Parliament simply familiarise itself with them? Here too greater precision is required.

38. Under Article 5 paragraph 7, the President of the Republic may be represented in Parliament when it debates questions concerning the competence of the Head of State. However, the draft does not indicate the exact status of the President's representatives, either in plenary assembly or in parliamentary committees.

39. In Article 10 paragraph 2, it is not clear why the President of the Republic is vested with the power to call the first sitting of Parliament before the date stipulated in the Constitution. The reasons should be given.

40. Under Article 21 paragraph 4 sub-paragraph 7, the Parliament is competent to give official interpretations of the laws of the Chechen Republic. It should not be forgotten however that the interpretation of laws is a task firstly lying with the courts and more specifically with the Constitutional Court.

41. Article 25 covers the competence of the Parliament in the administrative and legal spheres. Paragraph 6 makes Parliament competent for appeals to the Constitutional Court of the Russian Federation but does not identify the area in which such appeals may be lodged. Are these cases where there is a conflict of competence between the Russian Federation and the Chechen Republic? In which case, it should be made clear.

42. Article 21 paragraph 2, concerning the appointment, by the Council of the Republic at the proposal of the President of Chechen Republic, of the judges, president and vice-president of the Constitutional Court of the Chechen Republic, as well as justices of the peace, is problematic with regard to separation of powers and the guarantee of independence of the judiciary and also contrary to paragraph 1.3 of the European Charter on the status of judges, which states that "In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary".

VI. Problems concerning the distribution of powers between federal authorities and federated entities

43. Article 3 paragraph 4 provides for early termination of the mandate of the Chechen Parliament when a federal law on its dissolution is adopted. Given that such a measure constitutes substantial interference in the autonomy of the Chechen Republic, it would be advisable to provide an exhaustive list of grounds on which the federal authorities may dissolve the Parliament of the Chechen Republic.

44. The entire chapter 3 (article 21 and following) presupposes that all the matters for which the draft attributes responsibility to Parliament fall within the competence of Chechnya. The author of the present opinion is assuming that this is indeed the case.

45. Article 23, concerning the competence of the Chechen Parliament in the economic and social spheres, provides in paragraph 8 that it may maintain international relations in the economic sphere. This provision must be interpreted here in relation to the corresponding provisions of the Federal Constitution concerning the division of prerogatives between the Federation and the federated entities in the area of international relations and the conclusion of treaties.

46. The same applies to Article 24 paragraph 5, concerning the permanent representative missions of the Chechen Republic.

In conclusion

47. As the draft law on the Parliament was prepared on the basis of the Constitution of the Chechen Republic, put to a referendum on 23 March 2003, the reservations expressed by the Venice Commission in its opinion on that constitution (CDL- AD- 2003-2) can only be reiterated here.

48. In formal terms, the draft law suffers from a problem of legislative technique characterised by over-frequent references to other laws and a lack of clarity of drafting for numerous provisions.

49. While the expediency of certain provisions is open to question, a number of important points, such as the conditions for lifting parliamentary immunity or the method of electing the Council of the Republic or the People's Assembly, are not dealt with.

50. Some provisions raise problems of respect for the principle of separation of powers and European democratic principles, most importantly:

- the extent of the Supreme Court's powers regarding the ineligibility of members of the chambers of Parliament,
- parliamentary scrutiny of decrees of executive authorities,
- the possibility granted to Parliament of giving an official interpretation of the laws of the Chechen Republic, as this task lies firstly with the courts and with the Constitutional Court in particular,
- the appointment by one of the chambers of Parliament of the judges, president and vice-president of the Constitutional Court and justices of the peace at the exclusive proposal of the President of the Chechen Republic.

51. Where the division of prerogatives between the Federation and the federated entities is concerned, while a reading of the draft law and its sometimes ambiguous provisions allow us to hope that the division of prerogatives provided for in the Constitution has been respected, the possibility allowing the federal authorities to dissolve the Parliament of the Chechen Republic should be defined in exhaustive terms to avoid any grave interference that would be contrary to the principles prevailing in this area.