

VARIA 3 (E)

DRAFT OF THE FEDERAL CONSTITUTIONAL
LAW OF THE RUSSIAN FEDERATION ON THE
COMMISSIONER FOR HUMAN RIGHTS

Federal Constitutional Law of the Russian Federation

On the Commissioner for Human Rights in the Russian Federation*

Man, his rights, and his liberties are values of the greatest importance. It is the responsibility of the state to recognize, respect, and observe the rights and liberties of man and the citizen.

This federal Constitutional law defines the purposes, jurisdiction, and the basic forms of activity of the Commissioner for Human Rights in the Russian Federation.

Chapter I. General Provisions

Article 1

The Commissioner for Human Rights in the Russian Federation (hereinafter "the Commissioner") is appointed in accordance with the Constitution of the Russian Federation in order to strengthen state guarantees for the protection of human rights and liberties and to promote observance of and respect for human rights and dignity by state agencies, organs of local government, and officials.

Employing the means stipulated in this Federal Constitutional Law, the Commissioner assists in remedying violated rights, in improving the Russian Federation's legislation affecting human rights, in ensuring its compliance with international norms and standards, in developing international collaboration in the field of human rights, and in educating people about human rights and liberties and the forms and methods for their defense.

Article 2

In exercising his responsibilities, the Commissioner is independent and not subordinate to any state organs or officials.

In his activity, the Commissioner is guided by the Constitution and laws of the Russian Federation, by generally recognized principles and norms of international law, by international treaties to which the Russian Federation is a party, and by this federal Constitutional law.

Article 3

The Commissioner acts within the jurisdiction established by this federal Constitutional law, and is not empowered to decide matters which fall within the jurisdiction of other state agencies and officials.

The Commissioner's work supplements existing means for the protection of human rights and liberties, and does not terminate or

* Amended draft introduced by Deputy Ludmila Zavadskaya, chair of the State Duma's Subcommittee on Human Rights, in October 1994.

serve as the basis for a reconsideration of the jurisdiction of state organs now engaged in the defense and redress of rights which have been violated.

Article 4

In his work, the Commissioner gives priority to safeguarding the rights of: children; women, suffering gender discrimination; persons needing special social protection; military conscripts; and persons confined in places of involuntary detention.

Article 5

The introduction of a state of emergency or martial law on all of part of the territory of the Russian Federation does not terminate or suspend the activity of the Commissioner and does not limit his competence.

Chapter II. Appointment of the Commissioner and Termination of his Powers

Article 6

Any citizen of the Russian Federation who is at least thirty-five years of age, who possesses the necessary knowledge of human rights, experience in safeguarding rights, and an irreproachable reputation, and who enjoys public confidence and authority may be appointed Commissioner.

Article 7

The President of the Russian Federation, the Federation Council [upper chamber], deputies of the State Duma, and also all-Russian public associations may submit nominations for the office of Commissioner to the State Duma of the Russian Federation.

Nominations for the office of Commissioner are submitted to the State Duma during one month prior to the expiration of the preceding Commissioner's term.

Article 8

The Commissioner is elected to his office by a Resolution of the State Duma, adopted by the affirmative votes of a majority of the total number of deputies in a secret ballot conducted in the manner stipulated by this federal Constitutional law.

The State Duma adopts a Resolution naming a Commissioner not later than 30 days after the expiration of the preceding Commissioner's term.

Article 9

The Commissioner-elect takes the following oath upon entering into office: "I swear that I will protect the rights and liberties of man and the citizen, that I will fulfill my responsibilities conscientiously, and that I will be guided by the Constitution of the Russian Federation, by justice, and by the voice of conscience."

The oath of office is pronounced at a session of the State Duma.

The Commissioner enters into office when he pronounces the oath.

Article 10

The Commissioner is elected for a term of five years, commencing on the day the oath is taken. His powers end at the moment when the newly elected Commissioner pronounces the oath of office.

Neither the end of the term of the State Duma nor its dissolution terminates the Commissioner's powers.

The same person cannot be elected Commissioner for more than two successive terms.

Article 11

A Commissioner during the whole term of his service cannot be a deputy of the State Duma or a member (deputy) of the Federation Council or of any other representative (legislative) body of the state.

The Commissioner is forbidden to engage in political activity, to be a member of a political party or movement, or to engage in any income-producing activity except teaching or scientific, scholarly or artistic work.

Not later than 14 days after entering into office, the Commissioner must quit all activities incompatible with his status. If the Commissioner fails to comply with this requirement within the stipulated time, his powers are terminated, and the State Duma names a new Commissioner.

Article 12

The Commissioner enjoys immunity. He is not subject to the jurisdiction of the courts on criminal or administrative matters, and he is not subject to detention, arrest or search without the consent of the State Duma, except for detention at the scene of a crime, and he is also exempt from personal inspection except in circumstances stipulated by a federal Law when such inspection is necessary to safeguard the security of other persons.

An official, detaining the Commissioner at the scene of a crime, must immediately inform the State Duma, which in the course of twenty-

four hours should adopt a decision whether or not to sanction further application of this procedural measure.

Article 13

The Commissioner may be removed from office before the end of his term in the following circumstances:

- a) loss of Russian Federation citizenship;
- b) if the Commissioner is found guilty [of a crime] by the Supreme Court of the Russian Federation and the verdict enters into legal force;
- c) if the Commissioner, after receiving a warning from the State Duma, continues employment or commits acts incompatible with his status;
- d) if the Supreme Court of the Russian Federation determines that the Commissioner is incompetent, only partially competent, missing, or legally dead, and the decision enters into legal force;
- e) the death of the Commissioner.

The Commissioner's powers can also be terminated in the event of his longterm (no less than four consecutive months) inability to carry out his responsibilities for health or other valid reasons.

The Commissioner is also released from office if he submits a statement of resignation.

The removal of the Commissioner from office before the end of his term is effected by a Resolution (Postanovlenie) of the State Duma.

Article 14

In the event of the Commissioner's removal from office before the end of his term, a new Commissioner should be elected by the State Duma of the Russian Federation within two months.

Chapter III. The Commissioner's Jurisdiction and the Forms and Methods of his Activity

Article 15

The Commissioner examines complaints addressed to him by citizens of the Russian Federation, and by foreigners and stateless persons coming within his jurisdiction.

With the consent of the person whose rights and liberties have been violated, a complaint can also be filed by a third party.

Article 16

The Commissioner examines complaints about actions, failures to act, or decisions (hereinafter, actions or decisions) of state agencies, agencies of local government, and government officials which, in the opinion of the petitioner, violate his rights or restrict his liberties as specified in the Constitution of the Russian Federation, the laws of the Russian Federation, or international agreements to which the Russian Federation is a party.

The Commissioner does not examine complaints concerning decisions of the chambers of the Federal Assembly or of the state representative (legislative) organs of subjects of the Russian Federation, nor complaints about decisions of judges and courts.

A complaint about the actions or decisions of judges and courts can be accepted for examination only with respect to violations of procedure which infringe human (civil) rights in the course of court proceedings.

Article 17

A complaint should be submitted to the Commissioner in writing within one year from the time the violation of the petitioner's rights or liberties occurred, or from the time when he learned of their violation.

The complaint should contain the full name and address of the petitioner, the address and name of the agency or official whose actions are the subject of the complaint, and an account of the substance of the actions or decisions that in the petitioner's opinion have violated or are violating his rights.

In the event the requirements outlined in paragraphs one and two of this Article are not met, the Commissioner can nevertheless decide to accept a complaint for review if it has particular social significance.

Article 18

Complaints submitted to the Commissioner are exempt from government fees.

Article 19

Complaints submitted to the Commissioner by persons in places of compulsory detention are not subject to inspection by the administration of places of compulsory detention, and should be forwarded to the addressee within twenty-four hours.

Article 20

Having received a complaint, the Commissioner may:

- initiate an investigation of the complaint;
- inform the petitioner of other measures he may take to defend his rights;
- transmit the complaint to an appropriate official or agency competent to resolve the substance of the complaint;
- decline to initiate an investigation of a complaint.

The Commissioner informs the petitioner of his decision. If he initiates an investigation of the complaint, he also informs the state agency or official whose actions or decisions are the subject of the complaint.

The Commissioner's refusal to initiate an investigation of a complaint cannot be appealed.

Article 21

The Commissioner may open an investigation on his own initiative if he possesses information about wide-scale or gross violations of human rights, in cases involving particular social significance, and in cases involving the interests of persons incapable of independently availing themselves of legal means for the defense of their rights.

Article 22

In carrying out an investigation, the Commissioner may ask appropriate agencies and officials for their assistance in inquiring into any circumstances that require explanation.

The inquiry cannot be delegated to the agency or official whose actions are the subject of the complaint.

Article 23

While inquiring into a complaint, the Commissioner may:

- a) freely visit state agencies and agencies of local self-government;
- b) request and receive from state agencies, local government organs, and their officials the information, documents, and materials necessary for investigation of the complaint;
- c) receive explanations from officials with respect to issues to be resolved in the course of the inquiry;

d) conduct -- independently or jointly with competent agencies and officials -- examinations of the activity of state agencies, organs of local self-government, and officials;

e) commission competent state agencies to investigate and to prepare findings with respect to issues to be resolved in the course of the inquiry;

f) examine criminal, civil, and administrative cases after verdicts have been rendered and entered into force, and also cases which have been discontinued and materials relating to matters involving the refusal to initiate a criminal proceedings when the Commissioner is looking into complaints concerning violations of a person's rights during legal proceedings concerning administrative wrongdoing.

Judges cannot be asked for explanations of their actions.

Article 24

Information that constitutes a state, commercial, or other, legally protected secret is made available to the Commissioner in accordance with the laws of the Russian Federation.

Article 25

When initiating an investigation into a complaint, the Commissioner must allow the agency or official whose act or decision is the subject of the complaint an opportunity to explain any matters relevant to the investigation and to justify the position taken by that agency or official in its entirety.

The petitioner may be informed of the proffered explanations.

Article 26

Once it has been established that a violation of a petitioner's rights has occurred, the Commissioner may take steps of a noncompulsory character to remedy the violation prior to final resolution of a case.

Article 27

Materials received in the course of an investigation shall not be disclosed before final resolution of a complaint.

The Commissioner shall not disclose information -- learned in the course of an investigation into a complaint -- about the private lives of the petitioner or other persons without their consent.

Article 28

Depending on the results of the investigation of a complaint, the Commissioner may:

- a) inform the complainant that no violation of his rights or liberties has been established;
- b) adopt and send to the agency or official whose actions he believes have resulted in a violation of human rights his findings, containing recommendations for possible and necessary measures to remedy the violation;
- c) file with a court a petition in defense of a citizen's rights and liberties which have been violated by the actions or decisions of state agencies, organs of local self-government, or government officials, and also to participate in any subsequent court proceedings either personally or through his representative in the manner prescribed by law;
- d) petition the competent agencies to initiate disciplinary or administrative proceedings against the officials responsible for violations of human rights and liberties;
- e) petition a court or procurator to review a court decision (verdict) that has entered into force if violations of a citizen's procedural rights made in the course of legal proceedings materially influenced or could have materially influenced the court's decision;
- f) appear before and explain his conclusions to an official competent to protest decisions and court verdicts in a supervisory capacity;
- g) file a complaint with the Constitutional Court of the Russian Federation concerning a law whose application in a specific case did entail or would entail a violation of constitutionally-protected human rights and liberties.

The Commissioner's petition leads to the addressee requisitioning the case file and reviewing the legal basis for and the validity of the court's verdict.

Applications of the Commissioner submitted under paragraphs c to g of this Article are not subject to state fees.

Article 29

The Commissioner may publish his findings based on the investigation of a complaint.

The agency or official whose actions were found to violate human rights or liberties is informed of the decision to publish the findings.

Article 30

Based on study and analysis of sources of information on the violation of human rights and liberties and on conclusions drawn from the investigations of complaints, the Commissioner may also:

a) send to state agencies, organs of local self-government, and officials his observations and suggestions of a general nature bearing on safeguarding human rights and liberties and the improvement of administrative procedures;

b) submit to subjects of the law on legislative initiative proposals for amendments or additions to existing legislation, or for new legislation to correct omissions in the law, if the Commissioner believes that actions or decisions of state agencies, organs of local self-government, or officials that have violated human rights and liberties were taken on the basis of and in fulfillment of existing legislation, or because of omissions in existing legislation, or because existing legislation contradicts generally accepted principles and norms of international law or international agreements of the Russian Federation.

Article 31

In the event of gross or mass violations of human rights, the Commissioner may make a statement about them before the State Duma if, in his opinion, he lacks sufficient other means of recourse.

In exceptional cases, the Commissioner may ask the State Duma to organize a parliamentary commission to investigate the facts concerning the violations of human rights and liberties and to conduct parliamentary hearings. The Commissioner may take part in -- either personally or through his representative -- the work of such commission and in such hearings.

Article 32

No more than three months after the end of the calendar year, the Commissioner submits a report on his work to the State Duma, the Council of the Federation, the President of the Russian Federation, the Chairman of the Government of the Russian Federation, the Chairman of the Constitutional Court of the Russian Federation, the Chairman of the Supreme Court of the Russian Federation, and the Chairman of the High Arbitration Court of the Russian Federation.

The report should mention state agencies and officials systematically violating human rights and liberties and avoiding taking measures to remedy such violations. The report should also include general assessments, findings and recommendations relevant to the protection of human rights and liberties in the Russian Federation.

The Commissioner can submit to the State Duma special reports on particular issues regarding the observance of human rights and liberties in the Russian Federation.

Rossiiskoi gazeta (the Russian Gazette) is obliged to publish the Commissioner's annual report. Special reports on particular issues can be published by decision of the Commissioner in Rossiiskoi gazeta and other publications.

Article 33

Officials are obliged to render all possible assistance to the Commissioner, to make available to him requested materials and documents and other information necessary for the exercise of his authority, and to explain the legal and factual basis for their actions and decisions, with the exception stipulated in the last paragraph of Article 23 of this federal Constitutional law.

Information and explanations requested must be sent to the Commissioner within 15 days from the date the request is received. In the event of necessity, this time limit may be extended with the Commissioner's consent.

Article 34

Within one month after receiving from the Commissioner a finding containing a recommendation, an agency or official is obliged to consider it and send a written reply to the Commissioner.

If the Commissioner's recommendations have not been put into effect, an official must explain the reason for this.

Article 35

Interference in the Commissioner's activities in order to influence his decision in favor of an individual, a group, or a state agency, failure by officials to fulfill the obligations set forth in this federal Constitutional law, or interference with the Commissioner's activities in some other manner, is punishable in accordance with the law.

Chapter IV. The National Human Rights Agency of the Russian Federation

Article 36

An administrative mechanism -- the National Human Rights Agency of the Russian Federation (hereinafter, the "Agency") -- shall be set up to implement the Commissioner's activity.

The Agency is responsible for its own organization, and for the research, information, and other services needed for the Commissioner's work.

The Agency is a juridical person; it maintains payroll and other accounts, has its own seal and stationery depicting the State Seal of the Russian Federation with the name of the Agency.

Article 37

The Agency is financed by a separate line item in the budget of the Russian Federation.

The Agency independently prepares its budget and controls its expenditures.

The Agency submits financial reports as required by law.

Article 38

The Commissioner approves the Regulations (Polozhenie) governing the Agency and its departments and personally directs its work.

Within the limits set by the budget, the Commissioner determines the Agency's size, structure and table of organization.

The Commissioner issues instructions (rasporyazheniya) concerning the management of the Agency.

Article 39

The Commissioner may name his representatives in particular regions of the Russian Federation.

The Commissioner may delegate to his representatives the powers specified in points a, b, c, d, and f of Article 23 of this federal Constitutional law.

Article 40

Material guarantees for the independence of the Commissioner involving salary and medical, social security and other benefits and services shall correspond to the guarantees provided for high officials by the laws and other normative regulations of the Russian Federation.

The rights, obligations and responsibility of Agency employees and also the conditions for their employment are determined by the laws and other normative regulations of the Russian Federation and the labor legislation of the Russian Federation.

Article 41

A Council of Experts, composed of persons with the necessary knowledge of the field of human rights and liberties, can be established to advise the Commissioner on a pro bono basis.

Chapter V. Concluding Provision**Article 42**

This federal Constitutional law enters into force from the date of its official publication.