

COMMENTS ON THE DRAFT LAW OF THE REPUBLIC OF MOLDOVA ON "THE RIGHTS OF PERSONS  
BELONGING TO NATIONAL MINORITIES"

by  
Mr C Economides  
(Greece)

**A. Introductory comment**

The draft law contains many positive elements concerning the protection of minorities. On certain issues (political rights, in particular) this protection has even been strengthened. Nonetheless, lack of clarity and precision in the way a certain number of points are worded in the draft could make it difficult to implement.

**B. Specific comments**

1. Article 1

The definition of a minority is incomplete. It does not include the relevant element of nationality with the result that, *prima facie*, the definition also encompasses all foreigners. Moreover, it does not comprise the specific characteristics of a minority, in particular its language and religion (linguistic and religious minorities).

2. Article 2(3)

The wording of paragraph 3 is unclear. This provision is presumably intended to mean that no individual can be forced to declare that he or she belongs to national minority.

If this is the case, the provision (principle of free personal choice) is perfectly acceptable.

3. Article 3

This provision goes further than the corresponding provision in the Venice Commission draft.

4. Article 5

This provision on equality before the law does not expressly refer to persons belonging to minorities and is therefore too general. Where members of national minorities are concerned, I would point out that the Permanent Court of International Justice has stated that "it is necessary to ensure *de facto* equality and not merely formal equality before the law in the sense that the law should expressly prohibit the establishment of differential treatment" (Minority Schools in Albania. CPJI, Series A/B, No. 64, p. 19).

5. Article 7

This provision which applies to all citizens, does not fully conform to the definition of persons belonging to national minorities in Article 1.

6. Article 8

We feel that this provision goes too far and would be costly and therefore difficult for the State to implement.

7. Articles 9-12

We feel that the privileged status given to Russian by comparison with other minority languages should be examined more closely.

8. Article 14

Religious freedom is governed by domestic law, the content of which is unknown to us. This freedom could therefore, in theory, be incomplete.

9. Article 21

The previous comment also applies to the provision of this article.

10. Articles 27-28

Both provisions are unclear. Will the representatives of minorities be elected in the same way as other deputies, or differently?

11. Article 30

There is a danger that this provision will also be difficult to implement.

12. Article 33

This provision recognises the primacy of international law over the present law. Is this primacy guaranteed by the Constitution of the country?

**C. Final comment**

The draft Moldovan law is a praiseworthy attempt to protect persons belonging to national minorities. However, certain provisions would appear to go too far when compared with existing international documents, whereas the lack of precision in other provisions will undoubtedly make them difficult to implement.

I believe that all these questions should be re-examined.