

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

by
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1. The draft law which has been submitted to us is preceded by an introduction which describes the ethnic and linguistic situation of the country and outlines recent historical and political developments. This introduction helpfully states that the drafters have the support of the Russian-speaking electorate. Lastly, it is pointed out that this draft law does not settle the problems of the Gagauz or Transnistria regions, which are separate issues.

2. According to the introduction, the draft is unlike those debated by the previous legislature in that it pursues an individualist approach to the rights of persons belonging to minorities. This statement is rather surprising, since it seems to us that on many points the draft draws rather on a collective approach. This is the case for Article 3, which prohibits changes in the boundaries of administrative areas that seek to alter the ethnic and demographic composition of the areas in question. It is even more true of Article 30, which states that the various minorities shall have the right to approximately proportional representation in the structures of executive and judicial authorities at all levels as well as in the army and law enforcement bodies. This provision, which in fact exists in other forms in some ethnically or linguistically heterogeneous States, clearly relates to the structure of the State and goes considerably beyond the protection of individual rights.

Moreover, this provision is significant in constitutional rather than legal terms. The draft (Article 4) refers to placing the law in the context of the hierarchically superior Constitution and international treaties. With regard to treaties, Article 30 gives them superior status (it should probably be specified that this superior status shall not prevent the application of more favourable domestic rules). This superiority is self-evident where the Constitution is concerned. However, we are not aware of constitutional provisions on this subject (if, indeed, they exist). Furthermore, there is no mention of (potential) machinery for supervising the constitutionality of laws.

3. The draft gives a high priority to linguistic rights which it attributes very generously (see, for example, Article 8 in respect of education in which the State unreservedly guarantees minorities the right to receive an education in their own language or to study it as a specific subject). The general and vague nature of these provisions may make them difficult to implement. Further, some of these articles (Articles 9, 10, 11 and 12) tend to accord Russian special status compared with other minority languages. Although these provisions are somewhat ambiguous, they seem to tend to make Russian a semi-official language. At present, according to the historical introduction, the only official language is Moldovan. The status of official language in a multi-lingual State is certainly a sensitive issue, and seems to us to be principally a question of political expediency. Nevertheless, this choice is so important and decisive that we think it warrants constitutional, not just legal, status.

4. The fact that the draft does not clearly choose between the protection of individual rights and collective rights leads to inconsistency in places, or at least to difficulties of implementation. For example, Article 22 states that all associations of persons belonging to minorities shall have equal rights and none may claim to be the only representative of a given minority. This is consistent with an individual approach since associations are persons in private law and cannot monopolise the expression of a collective political will. Nevertheless, Article 24 requires ministries and local authorities to consult the associations in question in order to implement their policy on the protection of minorities. The contradiction seems clear: what would happen in practice if a very large number of associations were formed in order to defend this or that minority? How would one decide between them if certain associations challenged the representativeness of others, etc?

5. To sum up, this draft contains a number of very positive elements and is certainly a step in the right direction. However, it seems to suffer from two deficiencies: firstly, its links with the Constitution have not been clarified, nor has its connection with issues which have deliberately been left to one side (the status of the Transnistria and Gagauz regions); secondly, it does not clearly and coherently choose to adopt either an individual or a collective approach. Although claiming to draw upon the former, it appears to combine elements of the latter in a rather inconsistent way.