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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OPINION
ON THE
DRAFT OF THE ACT ON THE
ORGANISATION AND CARRYING OUT OF ASSEMBLIES
OF THE REPUBLIC OF MOLDOVA

by

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Justice

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Opinion on the draft of the Act
on the organization and carrying out of assemblies
of the Republic of Moldova

1. The draft Constitution of the Republic of Moldova in its Art. 32 pronounces the freedom of assembly. In paras (1) and (2) the article indicates the possible limitations of that freedom. I don't have a definite information on the adaptation and the final text of the Constitution but I suppose that there hasn't been a radical change in the final text.

The draft of the Act on the organization and carrying out of assemblies in its Art. 1 refers to the freedom formulated in the Constitution in stating that the aim of it is to regulate the preconditions of the realization of the constitutional right. The draft of the Act consisting of 26 articles doesn't reflect however this "constitutional right and reasonable and proportional limitations" type of regulation in the Constitution but makes by establishing a complicated system of authorization and administration the right of assembly practically possible to be severely limited or suspended. Even if the Act doesn't contain a direct limitation, it goes as much in detail concerning the form and even content of the assembly /e.g. Art. 17 para 3, Art. 11 para 2/2/ that it impresses the constitutional right in a nonconstitutional way. In general the attitude of the Act should be in accordance with the regulation of the Constitution: The authorities do not authorize the assemblies but may only administer them and in some cases put limitations on them.

2. In the first part of the draft the preconditions of carrying out an assembly are listed.

a/ It is highly questionable whether all preconditions can be subsumized under the limitations allowed by the constitution /peaceful manner, no arms, change of place: only for reasons of security or maintenance of public order/.

b/ The general formulation of the preconditions makes it very easy to counteract any assembly at will.


c/ Art. 13 para 1/2/1 seems to introduce additional preconditions in an as wide formulation that it is insufficient for any predictability.

In section II of the Act, among the rules on the procedure of the decision taking of the authorities about the assembly there are formulations that raise the question whether in case when the organizer meets all requirements the authorities still have discretionary power to decide on the authorization of the assembly. In Art. 12 para 2: "the possibility of carrying out the assembly shall be discussed".

3. The Act doesn't allow the judicial review of all decisions of the authorities. If the authorities have a discretionary power /see above/ this lack is not acceptable. Even if the authorities decide upon the existence of preconditions the limited possibility of judicial review is questionable.

In cases where there is a judicial way the procedural rule may hinder the carrying out the assembly: the authority may decide on the authorization 5 days before the assembly and even if there is a judicial way against the negative decision the court has to decide only in ten days that means after the planned time of the assembly.

Budapest, 17th July, 1995



/Prof. Dr. János Zlinszky/