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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OPINION

**ON THE
DRAFT LAW
ON THE ORGANISATION AND CONDUCT
OF PEACEFUL ASSEMBLY**

OF THE REPUBLIC OF MOLDOVA

by

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(Slovakia)

to the Draft Law of Republic of Moldova : "Organization and conduct of peaceful assembly"

Draft of the Law represents the appropriate legal basis for practical application of the constitutional right /Freedom of assembly/ to prepare and conduct of an assembly by its organizers and the right to participate in it - article 40. of the Constitution of the republic of Moldova.

I.

General Comment to the Draft of the Law on the whole.

1/Relation of the Draft to the human rights treaties.

Republic of Moldova has acceded to the International Covenant on Civil and Political Rights 26.january 1993 and Covenant has entered into force 26.april 1993. According the Article 4.section 1.moldovan Constitution : "Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights and with other conventions and treaties endorsed by the Republic of Moldova" and article 7. of the Constitution states : "The constitution of the Republic of Moldova is the supreme law of the country". No laws or other legal acts and regulations in contradiction with the provisions of the Constitution may have any legal power"

The generally binding interpretation of the article 40. of the moldovan Constitution /Freedom of assembly/ should respect article 21. of the International Covenant on Civil and Political Rights and by such interpretation is /on the other hand/ bound the legislative body of the Republic of Moldova intends to adopt the law regulating the conditions of the practical application freedom of assembly constitutional right. According to Article 21. of the Covenant the right of peaceful assembly covers both preparing and conducting of an assembly by its organizers and the right to participate in it. In contrast to article 16. of the ECHR the Covenant does not contain a provision allowing states parties to subject the freedom of assembly of aliens to special restrictions. Therefore aliens lawfully within territory of state party are entitled to freedom of assembly to the same extent as nationals. This fact fully confirms also the General Comment of Human Right Committee 15/27 of 22.july 1986 /Position of Aliens/. It seems therefore appropriate to change /reformulate/ especially wording of article 1., 4, section 2, 10, section 2. to comply with the Covenant requirements /see below in part II. of these Comments/.

2. Relation of the Draft to the other legal regulations of the Republic of Moldova.

The Draft contains any provision regulating its relation to the other laws applicable f.e. during the time of war and other public emergence situations. It is therefore recommended to precise /by one of the final articles of the law/ if the law of peaceful assembly will be fully applicable also pending the situations mentioned above /See also Article 4. of the International Covenant on Civil and Political Rights/.

II.

Comments to the concrete articles of the Draft.

1. Article 1 : Purpose of the Law.

Article 1. states that the purpose of the law is set forth the conditions for practical application of Freedom of Assembly constitutional right /Article 40. of the Constitution of Republic of Moldova/. This constitutional right is however not purposeless whereas it serves as a necessary base for realization of another constitutional rights too. /Freedom of opinion and expression - Article 32. Constitution, Freedom of Conscience - Article 31. Constitution, Right of Petitioning - Article 52. Constitution/. It seems therefore convenient to re-formulate in this sense the wording of Article 1. of the Draft and by such a way to define at least indirectly the positive scope of the application of the Law 2/Article 2. section 1. connected with article 4. section 2. of the Draft /Organizers of the peaceful assembly/.

Article 2. section 1. of the Draft confirms that under the scope of its application does not falls the peaceful assembly organized by state power institution /les organismes du pouvoir publique/ but on the other hand Article 4. section 2. of the Draft enumerates among organizers also public authorities /les organs public/. It is therefore recommended to precise terminology of these articles of the Draft to be clear whether peaceful assembly organized by public authority falls under the scope of application of the Draft.

3/Article 4. of the Draft - Organizers of the peaceful assembly.

It seems appropriate to modify the wording of this article in the light of the recommendation formulated under the Part I. section 1. of these Comments. As regards the list of potential organizers of peaceful assembly it seems useful to insert in it also legal persons registered on the territory of Republic of Moldova.

4/Article 8. - The place where the peaceful assembly may take place.

It is recommended to precise by the specific provision the term : "Immediate proximity" /la proximité immédiate/.

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This specific provision should cover at least the most important buildings /seats: the President, Parliament, Constitutional Court/ "the peaceful assembly is excluded in the circle with radius 100 metres". By such a way it is possible to maintain also the competences of local authorities prescribed by the Draft but only as regards as the peaceful assembly should take place in the immediate proximity all others /less important/ objects.

5/Article 10.section 2.-Aliens and stateless persons are not allowed to be among the participants of peaceful assembly.

See the recommendation has been formulated under Part I.section 1. of these Comments.

6/Article 11.-Time limit to present an announcement of peaceful assembly and the requirements of the announcement.

a, It seems appropriate to precise who is entitled to present the announcement of peaceful assembly on behalf of : political party, trade union, church and other religious community, non governmental organization and legal person./As regards legal person see also the recommendation under Part II.section 3.of these Comments/.

b, If the peaceful assembly will take place besides public areas it is reasonable to require /from the organizer/ the written consent of the holder or user of the immovable where the peaceful assembly should take place. It is therefore recommended insert this requirement into the list of formalities prescribed for announcement by the article 11.section 1.-7.of the Draft.

c, The time limit /15 days/ before the peaceful assembly seems very long to enable react immediately on certain public events. It is recommended to reduce this.

7/Article 14.-Decision of public authority not to grant permission to organize peaceful assembly.

Article 14.states that organizers of peaceful assembly will receive negative decision of public authority not to grant permission to organize peaceful assembly, but this provision does not fixe any time limit during which the organizers must be informed of this decision. It is recommended to amend the wording of article 14.in this sense, similar in article 13.of the Draft.

8/Article 15.-Appeal against negative decision to the court.

It is recommended to precise the wording of Article 15.by such a way that three days time limit for making appeal against the negative decision to the court starts since the moment when the organizers of the peaceful assembly have received negative decision of public authority and not from the moment when the decision has been adopted.theoretically it is possible that pending three days time limit /since adoption

of negative decision/ the organizers will not be informed of its content and receiving the decision after expiring time limit three days means that organizers has no real chance to make an appeal to the court to comply with the law requirement.

9/Article 19.-Obligations of organizers of peaceful assembly.

Article 19.of the Draft deals exclusively with the obligations either organizers or participants of the peaceful assembly.As regards as organizers it is recommended to insert into article 19.specific right enabling the organizers to inform and invite potential participants of the peaceful assembly where and when will take place, which questions and problems shall be discussed etc.This right may be applicable when the permission for the peaceful assembly has been granted.

JUDr.Ján Klučka