Strasbourg, 22 November 2002

CDL-AD (2002) 27
Or. English

Opinion no. 224/2002

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

ON THE LAW ON ASSEMBLIES OF THE REPUBLIC OF MOLDOVA

by
Mr Georg NOLTE (Substitute Member, Germany)

Endorsed by the Venice Commission
at its 52nd Plenary Session
(Venice, 18-19 October 2002)

I. Introduction

1. On 4 February 2002, the Secretary General of the Council of Europe acted under Article 52 of the ECHR to request an explanation from Moldova concerning the compatibility of the domestic legal framework with European human rights standards.

2. On 3 July 2002, the Ministers' Deputies approved the Targeted Co-operation Programme for Moldova, aimed at assisting in the implementation of commitments undertaken by Moldova (GR-EDS (2002) 25 revised).

3. By his letter of 28 August 2002, the Secretary General requested the Venice Commission to provide a legal expertise of the 1995 Law on the organisation and conduct of assemblies, as amended by the Law of 26 July 2002 (CDL (2002) 116).

4. The Commission invited Mr Nolte (member) to act as rapporteur on this issue. His comments (CDL (2002) 122) were endorsed by the Commission at its 52nd Plenary session (Venice, 18 – 19 October 2002).

II. General Comments

5. This comment concerns the Law on Assemblies of the Republic of Moldova of 21 July 1995, as amended by the Law of 26 July 2002. The comment is based on a French translation of the Law („*Loi relative a l'organisation et au déroulement des rassemblements*"). The unamended (1995) version of the Law has already been the subject of a comment by Mr Nicolas Muniz (CDL (95) 37). The present comment basically agrees with the generally critical comment by Mr. Muniz. Given the fact that the Law has already been subject to such an extensive comment, the present comments limits itself to

a. Commenting on the amendments contained in the Law of 26 July 2002 (II.)
b. Emphasizing a number of points which appear to be of particular importance (III.)

III. Comments relating to the Amendments by the Law of 26 July 2002

6. **Article 6 (2):** The provision now reads: „Il est interdit aux cadres didactiques et aux autres personnes encadrées aux institutions scolaires d'entraîner les élèves au déroulement des rassemblements non-autorisés". This provision is based on a legitimate consideration but it goes too far. The principle of political neutrality of public servants is recognized in many European countries. This principle justifies the restriction of certain political rights by public servants during the exercise of their function. In addition, it is a legitimate consideration that public servants should not abuse their position to further their personal political preferences. There are, however, also two important limitations of the principle of political neutrality:

a. Only public servants have the duty of political neutrality. Therefore, teachers in private institutions are free to exercise their political rights, in particular to freely express their opinion, subject to their contract of employment.

b. Public servants have the duty of political neutrality only during the exercise of their functions. Therefore, teachers in public schools may

exercise their basic rights in their capacity as private persons outside the school. It is legitimate, however, to impose certain restriction on private behaviour if this would clearly affect the performance of their official role.

7. Another important aspect of Article 6 (2) is that it prohibits teachers to prepare pupils for „non-authorized assemblies" (rassemblements non-autorisés) rather than for „assemblies prohibited by law". The difference is crucial. The term „non-authorized assemblies" includes those assemblies which have not yet received an „authorization" by the competent state organ but which may well be legal. „Assemblies prohibited by law" are (only) those which are in any case illegal (e.g. because the participants intend to carry arms). If the proper conditions for the holding of an assembly are present the legality of preparations for them may not depend on the fact whether the administration has already taken a decision to „authorize" them (see also comment on Article 13).

8. For these reasons, Article 6 (2) should read: „Il est interdit aux cadres didactiques et aux autres personnes encadrées aux institutions scolaires publiques d'entraîner lors de l'exercise de leurs fonctions les élèves au déroulement des rassemblements interdits par la loi". Only then it would be compatible with the European constitutional heritage.

9. **Article 14 (2):** This provision now reads: „La décision concernant le refus de délivrer l'autorisation est communiquée à l'organisateur du rassemblement dans les 48 heures qui suivent son adoption". It is difficult to see why the granting of an authorization must be delivered on the same day on which the decision is taken while the refusal to issue an authorization may be issued one day later. The requirement to give reasons for the latter cannot be a decisive difference.

10. If read together with other provisions of the Law of Assemblies the deadlines provided are likely to lead to an impossibility for organizers of an assembly to obtain legal protection against the administration. According to Article 12 (1) the municipality examines the application (at the latest) 5 days before the assembly. If the municipality refuses to issue the authorization it may wait to communicate the decision until 3 days before the assembly (Article 14 (2). Only then can a court be called upon. According to Article 15 (2) the court examines the application within 5 days from the date of the complaint. This means that the Court may wait until the projected date of the assembly is over. Such a system of rules is designed to exclude effective measures of legal protection. In this area, *ex ante* legal protection is vital.

11. **Articles 18 h) and 19 d):** These provisions are in order.

IV. Comments relating to other Articles which are of a particular importance

12. **Article 2:** The scope of application of the Law must be understood to be restricted to public assemblies.

13. **Article 3 (2):** This provision may not be interpreted as implying that the state may charge organizers or participants of assemblies relating to issues of public concern with the costs of police protection.

14. **Article 4 a):** The European Convention of Human Rights guarantees the right to freedom of assembly to „every person" (Article 11 ECHR). Article 4 a) is therefore too restrictive if it limits the right to organize assemblies only to the citizens of Moldova

15. **Article 4 b):** This provision cannot be interpreted to mean that groups of persons who are not „registered according to the prescribed modalities“ cannot organize an assembly. Such groups are covered by Article 4 a).

16. **Article 5:** It is a violation of Article 11 of the European Convention of Human Rights to require that assemblies must under any circumstances be announced to the authorities. It is true that the announcement of an assembly may, in principle, be required. This is because the authorities must have the chance to provide for security, to regulate traffic, or to safeguard the rights of others. Still, there may be situations in which people assemble spontaneously in reaction to a specific event (e.g. to the news of the death of an important personality). In this case, the principle of proportionality requires that it is sufficient if the organizers notify the authorities „as soon as possible“.

17. **Article 6 (1):** The concept of „environment“ is too imprecise and should be deleted or interpreted very restrictively. The term „normal usage of public streets“ should not obscure the fact that Article 11 of the European Convention on Human Rights requires that there can be no preference for normal traffic in all situations over political demonstrations but that the public authorities must also enable political demonstrations to take place by diverting traffic through other streets.

18. **Article 7 a):** Should read „diffamation grave de l'Etat et du Peuple“. Otherwise the provision is too vague.

19. **Article 8 (3) a):** The term „seat of the Government“ is not clear. Does this mean the building of every organ of the central government? This would not be acceptable. The term should be interpreted restrictively to cover only the most important building of the Government, e.g. the seat of the Prime Minister.

20. **Article 8 (3) b):** This provision means in practice that a great number of streets would not be available for demonstrations. This would be disproportionate. The exception of a zone in which no assemblies may take place must remain limited to the most important buildings. Other buildings can and should be protected by the police on an *ad hoc* basis.

21. **Article 10 c):** Article 11 of the European Convention on Human Rights requires that there can be no absolute preference for normal traffic in all situations over political demonstrations but that the public authorities must also enable political demonstrations to take place by diverting traffic through other streets. This must be taken into account when interpreting this provision.

22. **Article 10 d):** The words „ou d'une autre façon cynique“ are too imprecise and prone to abuse.

23. **Article 11 (1):** The comment to Article 5 applies here as well. It is disproportionate to require a prior notification of 15 days in every case. This does not leave room for spontaneous and shortly planned demonstrations, which are also protected by Article 11 of the European Convention of Human Rights.

24. **Article 11 (2) b):** The „hour of closure“ should be „the approximate hour of closure“ and there should be no sanctions if the meeting takes longer.

25. **Article 12 (6):** It may not depend on whether the municipality is „persuaded“ that the provisions of Articles 6 and 7 will be violated, but whether the „indices incontestables“ „objectively“ justify the prognosis. Otherwise a court might be tempted not to consider mistakes by the municipality.

26. **Article 13:** This provision finally makes clear that the Moldovan Law subjects the right to assembly not only to a procedure of notification, but also to a procedure of authorization. This is a very important difference. A violation of a notification requirement does not necessarily mean that the assembly itself is illegal, while a violation of an authorization requirement does. Since Article 11 guarantees the right to freedom of assembly subject to the principle of proportionality, such a broad general requirement of authorization can only be compatible with European standards if effective judicial review is available which ensures that the organisers of an assembly obtain an final decision on the permissibility of their assembly in time.

27. **Article 15:** In order to make judicial protection effective, it is suggested that the Court has the power to declare the assembly legal.

28. **Article 18 d):** This requirement can only apply where this is necessary to protect the rights of others or other important public interests.

29. **Article 18 e):** See also comment on **Article 3 (2):** This provision may not be interpreted as implying that the state may charge organizers or participants of assemblies relating to issues of public concern with the costs of police protection.

30. **Article 18 f):** See also comment on **Article 11 (2) b):** The „hour of closure“ should be „the approximate hour of closure“ and there should be no sanctions if the meeting takes longer.

31. **Article 19 b):** Perhaps this is a problem of translation: The term „recommendation“ implies that there is no binding legal force.

32. **Article 20 (1):** It should be make clear that the Law of Assemblies itself cannot be the basis for criminal sanctions, except where it specifically and expressly says so. Therefore the provision should read: „...selon les conditions et les modalités prévues par la loi“.

33. **Article 20 (2):** Perhaps this is again a problem of translation: The terms „exigences légitimes“ and „l’outrage proféré“ are too vague.

34. **Article 20 (3):** This provision is unusual and does not appear to be very practical.