

COMMENTS ON THE DRAFT CONSTITUTION OF MOLDOVA

by
Ergun OZBUDUN (Turkey)

The draft Constitution of Moldova seems, on the whole, capable to provide the legal basis of a democratic and pluralistic state. Most of the fundamental rights (including a long list of social rights) commonly found in modern democratic constitutions are recognised by the draft. Again in conformity with the recent trend in modern democratic constitutions, several references are made to the application of international law (Arts. 8, 15, 16, 17, 18). Particularly important in this regard is Article 15 (1) which states that the constitutional limitations on the rights and liberties of citizens are to be interpreted in conformity with the Universal Declaration of Human Rights and other treaties to which Moldova is a party.

As a matter of current political reality, the most important constitutional question that Moldova faces today is to preserve the integrity of the state. The present draft seems to leave most of such difficult matters to ordinary or organic laws. For example, it is stated that the official language is Romanian, and the use of other languages is to be regulated by law (Art. 13). Similarly, the state "recognises and guarantees the right to preserve, develop and express the ethnic, cultural, linguistic and religious identity to all the citizens" (Art. 10). However, no concrete constitutional safeguards have been provided for this rather abstractly expressed principle. Particularly, in the article on the right to education (Art. 41) no mention was made to the right to receive education in one's mother's tongue. In a similar vein, the state is described as "unitary" (Art. 1) and the status of local administrations is left to an organic law without any constitutional guidelines (Art. 107). Briefly, these are all too important matters to be left to ordinary or even organic laws. A constitution is, in a sense, a social contract. In a multi-ethnic and multi-linguistic society, it should at least provide the basic guidelines and constitutional safeguards governing the relationships between the central government and local administrations, and between different ethnic/linguistic communities.

With regard to Article 53 (para. 2) a more suitable formulation would be as follows: "The restriction should be in proportion to the exigencies of the situation and should not in any case infringe upon the essence of a right or liberty."

Article 80 (para. 3) is not clear perhaps due to a missing line. Is a referendum to be held to approve or reject the dismissal resolution by the Parliament?

Article 84, which gives the President the power to dissolve the Parliament if the adoption of a law is delayed for more than three months may, in practice, lead to too frequent dissolutions.

In Article 104, it should be specified whether what is meant is the majority of all members, or the majority of members present and voting. To enhance government stability, the first formulation is preferable.

Article 117 should specify the powers of the Public Prosecutor's office.

With regard to Article 121, it does not seem appropriate to impose upon all future governments a "protectionist" economic policy. What if a political party which favours free trade wins a majority in Parliament?

The draft constitution of Moldova creates a Constitutional Court with wide powers. However, there are a number of questions to be clarified with regard to the powers and functions of the Constitutional Court. For example, it is rather uncommon for a Constitutional Court to exercise the review of constitutionality "on its own initiative" (Art. 126, 1, a). Likewise, it is uncommon for such a court to express its opinion on the initiatives of the revision of the constitution. Furthermore, it is not clear whether such opinion is binding or only consultative (Arts. 126, 1, b; 132, 3). Finally, it is not specified on whose request review proceedings can be started. It is preferable to include such principles of constitutional jurisdiction in the constitution.