

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

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Article 1

This article defines the notion of a minority. Rather curiously, however, it makes no mention of the distinctive criteria of minority groups, namely a group of persons who speak the same language and share the same religion, traditions and culture. These common features, which are objective characteristics, nonetheless appear in all previous definitions. See also Article 27 of the International Covenant on Civil and Political Rights.

Mentioning only negative criteria (those who "do not belong to the ethnic group that makes the majority ... and consider themselves to be of other ethnic origin") is not sufficient. A minority cannot be defined solely in contrast with the majority. It is important to determine its constituent elements.

Moreover, Article 1 does not mention nationality as a defining element of a minority. It simply refers to persons "who live" on the territory of the Republic of Moldova. Do the drafters also intend that foreigners be included among persons who may belong to minorities in this State? Again, all previous attempts to define minorities have included the condition of nationality.

Article 2, para. 3

This provision is curious, to say the least, since it is not difficult to supply evidence of belonging to a minority.

Article 3

This article is acceptable, but would it be useful to make it more positive by providing that when authorities divide the state territory into administrative or electoral districts, they shall as far as possible take account of the existence of minorities, at least in areas where they are concentrated.

Article 4

This provision is not very clear (which could be due to the translation). In any case, it is rather unusual for a law to set out what the Constitution should cover.

Article 5

This article confines itself to guaranteeing the right of persons belonging to a minority to enjoy the principle of equality, but does not provide for the principle of positive discrimination for minorities, as a number of international conventions do. Is this a deliberate omission or an oversight?

Article 7, para. 2

Given its general scope and the fact that it is not particularly "normative", this provision should appear at the beginning of the Law, perhaps even in the preamble.

Article 8

The right of persons belonging to a minority to receive education in their own language and to study it entails a not inconsiderable financial commitment on the part of the State. Thus, it would seem difficult to grant this right indiscriminately to all minorities, regardless of their size. In my view, the State can only be required to recognise this right "as far as possible possible" and only for minorities which represent a significant percentage of the population. In Moldova, some minorities represent a tiny proportion of the population. Is it therefore realistic to force the state to incur a heavy financial burden for very small minorities?

Articles 9 and 10

The same applies to Articles 9 and 10. Article 9 does not specify whether the right of persons to use their own language freely concerns private relations or whether it also extends to relations with authorities.

Moreover, as regards languages other than Moldavan, is it justifiable to give a special place to Russian, even though this language was for a long time the country's official language when Moldova was part of the Soviet Union when Russians represent only 13% of the population? Why not other languages?

Article 17

The wording of this article is not very clear. Is the State expected to take positive steps to facilitate such contacts? In my view, it should be enough to provide that the State must not impede such contact.

Article 19

The right provided for in this article should be reserved exclusively for persons with Moldavan nationality. However, this is not stated, at least not explicitly.

Articles 27 and 28

Neither of these articles is very clear. How is this participation to be organised? Should the representatives of minorities represent those minorities as elected representatives of the people, like other parliamentary representatives, or as special representatives of minorities elected, for example, on special lists?

In their current form, these articles are not directly applicable. They are too vague and imprecise.

Article 30

Surely it is excessive to require that statistics on the percentage of minorities be published twice a year? The relative proportions of the different groups of the country's population are unlikely to change so fast as to make two statements a year necessary.

General comment

This draft law affords relatively important rights for persons belonging to minorities, but says nothing about the mechanism for monitoring respect of those rights. Should this silence be taken to mean that persons belonging to minorities may enforce their rights before ordinary courts, in the same way as other citizens?

Or, conversely, should an ad hoc monitoring system be provided for?