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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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Draft Law of the Republic of Moldova in Relation to the
Organization and Holding of Associations

The purpose of the draft law is to realize and protect the constitutional right of the Moldavian citizens to organize and establish peaceful associations and set up responsibility for breach of the Draft Law.

The draft Law should be compatible with the Convention on Human Rights, especially Articles 6, 8 and 11, respect the sen

Comments on Articles 2, 5, 16, 18 and 20 of the Draft Law.

Article 2 defines five types of associations which are exempted from the regulations of the Draft Law. In my opinion, having regard to the protection of individual rights as defined in article 8 of the Convention, the list of exemptions should include associations established on privately owned grounds, buildings or dwellings. In those cases, such associations should also be exempted from the special legal regulation.

Article 5 represents an important part of the Draft. In order to organize and establish an association, the organizer of the association is required to announce such an intention to the appropriate Municipal authority. This announcement initiates an administrative proceedings for approval. The administrative decision must be made in advance of the establishment of such an association.

The Draft provides for judicial revision, where the administrative decision forbids the establishment of the association. It is not clear whether the judicial body has full jurisdiction to revise such a decision or whether it is only entitled to review the limited question of law in contrast, Article 6 of the Convention empowers judicial bodies with full

jurisdiction when dealing with judicial revision. Clearly, such a judicial body should have full jurisdiction. Additionally, Draft is silent as to whether the revisional judgment is final or whether there is a further right of appeal to an upper judicial body.

Further, according to Article 16, should fresh circumstances arise after the municipal authority has issued a decision of approval, it is empowered to cancel the association (with the duty to inform the organizers), without, however, the association thereafter having the right to judicial review. Clearly this is also inappropriate.

Additionally article 18 empowers official persons of municipal authorities, police and other administrative legal authorities to require the organizers to suspend the operation of their association if such authorities from the view that the association is in breach of articles 6 and/or 7 of the Draft Law. In such cases the organizers are obliged to suspend the operation of the association without any recourse to judicial revision. Again, this is clearly inappropriate. In my view, articles 16 and 18 should include the same level of protection by way of judicial review as is presupposed by the Convention.

Finally it, in relation to article 20 it is not clear whether the penal, administrative or material responsibility of the association's organizers is an objective one or based on an intention to break the law. In my view, the articles should clarify whether the legal responsibility is based on an objective or subjective test.