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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

ON THE PROPOSED AMENDMENT TO THE LAW ON PARTIES AND OTHER SOCIO-POLITICAL ORGANISATIONS OF THE REPUBLIC OF MOLDOVA

by

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1. The Venice Commission has been requested to provide an opinion on an amendment to the law of the Republic of Moldova on parties and other socio-political organisations[1]. The present law is law number 718-XII of 17 September 1991, which has been extensively amended and added to in 1993, 1996, 1998, 1999 and 2000. The amendment under consideration has been passed in the parliament of Moldova in December 2002.

2. Under the existing law, in order for its statutes to be registered a political party or socio-political organisation must have at least 5,000 members domiciled in at least half of the administrative and territorial units of level 2 and at least 600 in each of the aforementioned administrative and territorial units (Article 5 (a)). This provision was amended in 1999 and I am not aware of what the law was before then. Once a political party's statutes are registered, there appears to be no provision in the existing law which requires it to maintain any particular level of support or membership in order to remain registered. I have no information on what parties at present have their statues registered in Moldova or what registration requirements they had to comply with.

3. While a political party or socio-political organisation must have a geographical distribution of membership as already referred to in order to have its statutes registered, the existing law does not appear to require parties to be organised on a regional basis. Article 20 provides that parties and other socio-political organisations *may* be sub-divided into territorial organisations with a minimum number of members as laid down by the statutes. This provision was added in 2000. It appears to be an enabling provision, and it does not appear to require a political party to have a branch organisation organised on a regional basis.

4. The principal effects of the proposed amendment to the law on which the Venice Commission's opinion is sought are as follows:

   (i) A proposed amendment to Article 18 of the law will require all political parties and socio-political organisations to provide the Ministry of Justice each year with its membership lists in order to reconfirm the number of its members. This must be done in each year not earlier than 1 January and not later than 1 March. At present once registration takes place there is no requirement for it to be renewed.

   (ii) Article 20 of the law will be amended to require parties and other socio-political organisations to establish, in at least one half of the administrative territorial units of level 2, structural sub-divisions of the party. These territorial organisations of the party must have a minimum number of members in accordance with the law. The existing law, while requiring a geographical distribution in party support at the time of registration permits but does not appear to require parties to establish a territorially based branch organisation.

   (iii) Article 31 of the law will be amended to enable the Ministry of Justice to request the Supreme Court of Justice to order the suspension of activity of a party or other socio-political organisation if the party has not convened a conference or congress during a period of four years, if the party has failed to present its

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[1] *Doc. CDL (2002) 118*

membership lists in any particular year, or if it is established, at the time of verifying the membership lists, that the number of members of the party or other socio-political organisation has fallen below the limit established by the law for registration of the statute, or if the territorial organisations of the political party envisaged in the amendment to Article 20 have not been established.

5. It appears that this law is intended to have immediate effect, with the result that political parties will have to provide their membership lists not later than 1 March this year, and in addition will have to establish the necessary territorial structures within that period. It is understood that local elections are due in May. It would appear that political parties which fail to meet the conditions of the new law by 1 March may be suspended in accordance with the new law, as a result of which they will be unable to contest the local elections in May.

The European Convention of Human Rights

6. Since the major legal issue to be addressed in considering the draft law is that relating to the registration, suspension and prohibition of the activities of political parties it may be useful at this stage to recall some key aspects of the jurisprudence of the European Court of Human Rights on this issue.

7. In the case of *United Communist Party of Turkey and Others v Turkey* (133/1996/752/951) the Court in its judgment of 30 January 1998 stated that in view of the importance of democracy in the Convention system there could be no doubt that political parties came within the scope of Article 11. (§25). Article 11 protected not only the right to form an association but also had the effect that its dissolution by a country's authorities must satisfy the requirements of Article 11 paragraph 2 (§.33).

8. The Court reiterated that notwithstanding the autonomous role and particular sphere of application of Article 11 that Article must also be considered in the light of Article 10. The protection of opinions and the freedom to express them was one of the objectives of the freedoms of assembly and association as enshrined in Article 11 (§42). The Court continued (at §43)

> "That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy. As the Court has said many times, there can be no democracy without pluralism. It is for that reason that freedom of expression enshrined in Article 10 is applicable, subject to paragraph 2, not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb."

Recalling that interference with the exercise of the rights enshrined in Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is "necessary in a democratic society", the Court had the following to say

> "Consequently, the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and

compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts. The Court has already held that such scrutiny was necessary in a case concerning a Member of Parliament who had been convicted of proffering insults; such scrutiny is all the more necessary where an entire political party is dissolved and its leaders banned from carrying on any similar activity in the future." (§46)

9. These principles were reiterated by the Court in its judgment of 8 December 1999 in the case of *Freedom and Democracy Party (ÖZVEP) v Turkey (Application No. 23885/94).*

The Venice Commission Guidelines

10. At its 41st plenary session on 10-11 December 1999 the Venice Commission adopted guidelines on the prohibition and dissolution of political parties and analogous measures. As the matters dealt with in the guidelines are central to the issues raised by the draft Moldovan law I quote them in full:

(i) States should recognise that everyone has the right to associate freely in political parties. This right shall include freedom to hold political opinions and to receive and impart information without interference by public authority and regardless of frontiers. The requirement to register political parties will not in itself be considered to be in violation of this right.

(ii) Any limitations to the exercise of the above-mentioned fundamental human rights through the activity of political parties shall be consistent with the relevant provisions of the European Convention for the Protection of Human Rights and other international treaties, in normal times as well as in cases of public emergencies.

(iii) Prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution.

(iv) A political party as a whole cannot be held responsible for the individual behaviour of its members not authorised by the party within the framework of political/public and party activities.

(v) The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to

the rights of individuals and whether other, less radical measures could prevent the said danger.

(vi) Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding or unconstitutionality and shall be deemed as of an exceptional nature and governed by the principle of proportionality. Any such measure must be based on sufficient evidence that the party itself and not only individual members pursue political objectives using or preparing to use unconstitutional means.

(vii) The prohibition or dissolution of a political party should be reserved to the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial.

The Amendment to the Law

11. The provisions in question, by providing for the suspension of political parties which fail to meet certain criteria, *prima facie* interfere with freedom of association. Therefore the test to be applied according to the jurisprudence of the European Court of Human Rights in considering whether these interferences can be justified is whether the provisions in question can be regarded as "necessary in a democratic society". The restrictions in question can be justified only for "convincing and compelling reasons".

12. The Venice Commission has taken the view that prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence or a political means to overthrow the democratic constitutional order. While the Venice Commission envisaged that the freedom of association in political parties might be subjected to a requirement to register political parties, any provisions in relation to such registration must be such as are necessary in a democratic society and proportionate to the object sought to be achieved by the measures in question.

13. I have no information as to what legislative purpose is intended to be achieved by the measures in question. In principle, however, it would seem that registration might be justified as a means to ensure compliance by a political party with the law – for example, to provide a mechanism to ensure that political parties do not seek to change the order of the State by violence, and to provide a mechanism to suppress them if they do. Measures which provide for the suspension of parties advocating violence may, for example, be justified by reference to such a purpose.

14. So far as concerns provisions relating to numbers of members, the only possible legitimate purpose for such a provision would seem to be to require at least a certain minimum membership to avoid groups which are so small as to have no realistic prospect of election from getting their names on the ballot paper, or to have rights of access to publicly-funded broadcasting. However, while clearly the presence of a large number of candidates who have no hope of election on a ballot paper can be confusing for electors, there are other means to avoid such an outcome – such as by requiring a nomination to be signed by a number of electors. If non-registration can be used to deny a political group other rights, such as the right to assemble or disseminate information or otherwise

promote their ideas, it is a disproportionate solution and therefore unacceptable. Every group of citizens, no matter how small, must have these rights.

15. Even assuming some such provision could pursue a legitimate legislative purpose, it would be important to ensure that the membership threshold was not set so high as to prevent genuine groups from organising as parties. The threshold seems to be very high in a state whose population is only four million.

16. In an earlier opinion (CDL-AD (2002) 28)[2] the Commission was critical of the membership thresholds which had been proposed. At the time these membership thresholds were described as having been set very high and as constituting a serious barrier to the creation of new political parties. The levels in question were the same as are now required to be established on an annual basis. In my opinion these thresholds create a serious barrier to the maintenance of political parties. In addition, the requirements as to organisation in more than half of the country make it impossible to organise regionally based parties. Whatever about the arguments for requiring parties contesting a national election to be nationally based in at least half of the country, there seems to be no necessity in a democratic society to prevent parties organised on a regional basis from contesting local elections. The existence of locally based parties is a well-established and recognised feature of many democracies throughout the world and it is particularly appropriate that in relation to local elections people should be able to come together on the basis of local issues and organise themselves in particular localities rather than nationally. A law which prevents this taking place cannot be considered to be necessary in a democratic society and is therefore not compatible with the right of freedom of association guaranteed in the European Convention on Human Rights.

17. In order to comply with the new laws, political parties will not only have to compile lists of members at short notice but will have to establish branch structures in a substantial part of the Republic of Moldova. Political parties will have to comply with these requirements within a period of a matter of weeks or else lose the right to contest an election which is taking place in several months time. Even if the new requirements were reasonable in themselves and pursued some legitimate legislative purpose to introduce them at such short notice on the eve of an election could not be regarded as either necessary or a proportionate response to the objective of ensuring that only *bona fide* political parties are registered. The measure cannot be regarded as justified in a democratic society.

18. In the light of the views already expressed I have not considered whether the provisions in question are compatible with Article 3 of the First Protocol of the European Convention on Human Rights which requires that elections "ensure the free expression of the opinion of the people in the choice of the legislature".

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[2] *This opinion was endorsed by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002).*

Gagauzia

19. It would be recalled that the Constitution of Moldova in Article II enables certain parts of Moldova to be granted special forms of autonomy. Pursuant to these provisions, Gagauzia was established as an autonomous territorial entity by an organic law of 23 December 1994. Under this law Gagauzia has a representative People's Assembly with legislative powers.

20. I have no information as to whether the present law and its proposed amendment govern the organisation of parties which may wish to contest elections to the People's Assembly in Gagauzia. It is clear that a purely Gagauz party would be unlikely to be able to command the geographically-wide support required in the law. If the proposed law is applicable to the organisation of parties and the right to contest elections in Gagauzia this would, in my opinion, raise serious questions. Pending clarification I do not propose to express any further opinion on this aspect of the question.

Conclusion

21. In conclusion, both the content of the draft law and the proposed manner of its introduction in a short time frame are incompatible with freedom of association as guaranteed in the European Convention on Human Rights. This measure cannot be regarded as necessary in a democratic society. It potentially creates a serious obstacle to the holding of free and fair elections. It has the potential to prohibit *bona fide* political parties which will be unable in the timeframe envisaged to meet the conditions established by the new law and will thereby effectively be prevented from contesting elections.