



Strasbourg, 8 February 2018

CDL-REF(2018)007

Opinion No. 917 / 2017

Eng.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF MOLDOVA

DRAFT LAW (*)

**ON MODIFICATION OF ARTICLE 42
OF THE CONSTITUTION
ON THE RIGHT TO FREEDOM OF ASSOCIATION**

AND

EXPLANATORY MEMORANDUM

(*) *Translation provided by the Moldovan authorities.*

DRAFT

LAW

**ON MODIFICATION OF ARTICLE 42
OF THE CONSTITUTION
OF THE REPUBLIC OF MOLDOVA**

The Parliament adopts this constitutional law.

Unique article. - Article 42 of the Constitution of the Republic of Moldova, adopted on July 29, 1994, (republished in the Official Gazette of the Republic of Moldova, 2016, No. 78, article 140), with the subsequent amendments and completions, shall have the following content:

"Article 42. Right to association

(1) Everyone has the right to freely associate with other persons, including to form trade unions or patronages, and to join them.

(2) Exercise of the right to free association may be limited only in cases expressly prescribed by law, if such limitation is a necessary measure in a democratic society, to ensure national security, public order, prevention of crime, protection of health, morals or rights and the freedoms of others ”.

SPEAKER OF THE PARLIAMENT

Translation from Romanian into English

INFORMATIVE NOTE
to the draft Law on the amendment of Article 42 of the Constitution of the Republic of
Moldova

The conditions that required drawing up the project, the pursued objectives.

The right to association, though fundamental, is now fragmented in Articles 41 and 42 of the Constitution.

Internationally, provisions on the right of association are contained in the Universal Declaration of Human Rights (Article 20, Article 23 (4)), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 11), and The Covenant on Civil and Political Rights (Article 22).

In many Member States of the European Union (France, Germany, Spain, Italy, Greece, Portugal, Denmark) the right of association is enshrined in the basic act, and sometimes regulated in detail, and the limitations on its exercise are specified.

In order to establish at the Constitution level the right to association in the fullness of its forms so as to be in conformity with the international acts to which the Republic of Moldova is a party, the draft Law on the amendment of Article 42 of the Constitution of the Republic of Moldova is proposed.

The main provisions of the project

At present, the Constitution of the Republic of Moldova divides the freedom of association into two components: the freedom of founding and affiliation to trade unions (Article 42) and the freedom of parties and other social-political organizations (Article 41). The Constitution does not expressly provide for general freedom of association in other forms, although this right is guaranteed under international treaties on fundamental rights and freedoms.

For these reasons, it is proposed to amend the Constitution so that Article 42 is one that enshrines the right to association in general, incorporating the right of association in trade unions and employers. The right of association in patronage is regulated, as is the case in the Constitution of Spain and Romania.

At the same time, it is proposed to preserve the content of article 41 due to the fact that the association in political parties involves some specific regulations.

The proposed text for paragraph 1 of Article 42: „(1) *Everyone has the right to freely associate with other persons, including to form and join trade unions, and any employer has the right to constitute and to have affiliation to the patronage.*” has a content similar to paragraph 1 of Article 11 of the ECHR, excluding the provisions on the freedom of peaceful assembly, as it is already contained in Article 40 of the Basic Law.

The right of association is not absolute, its exercise may be restricted, but in a democratic society, the limitations to a fundamental right must be restrained. Thus, paragraph (2) of art. 42 imposes 3 mandatory conditions for any limitation of the right to free association, namely limitation:

- to be provided by law;
- it is necessary in a democratic society;

- it is required to protect one of the following areas:

- a) national security;
- b) public safety;
- c) defense of order and prevention of committing crimes;
- d) protecting health or of morals;
- e) protection of the rights and freedoms of others.

It should be noted that these limitations are taken from paragraph 2 of Article 11 of the ECHR, thus being transposed into national law..

The results of anti-corruption expertise

The expertise report is positive.

Economic and financial foundation

The promotion of the draft Law on the amendment of Article 42 of the Constitution of the Republic of Moldova, which proposes to supplement the Supreme Law with provisions on the right to free association, does not require budgetary expenditure.

The way to incorporate the project into the system of normative acts in force, normative acts to be drafted or modified

In order to implement the provisions of this draft law, it is not necessary to modify the existing normative framework.

Respect for transparency in decision-making

In order to comply with the provisions of the law no. 239 of 13.11.2008 on transparency in the decision-making process, the Project was placed on the official website of the Ministry of Justice (the Decision Transparency Director, the Draft Normative Acts to Coordination, and the government portal particip.gov.md Bodies that endorsed the draft Law: Academy of Sciences, Employers' Association of Public Services, Ministry of Information Technology and Communications, Ministry of Internal Affairs, National Confederation of Trade Unions, National Confederation of Employers, People's Advocate Office, Ministry of Labor, Social Protection and the Family, Ministry of Environment, Ministry of Transport and Road Infrastructure, Ministry of Finance, Ministry of Defense, Ministry of Education, Ministry of Culture, Ministry of Agriculture and Food Industry, Ministry of Health, Ministry of Regional Development and Construction the Ministry of Youth and Sports, the Ministry of Foreign Affairs and European Integration, the Ministry of Economy.

**Minister
Vladimir CEBOTARI**