

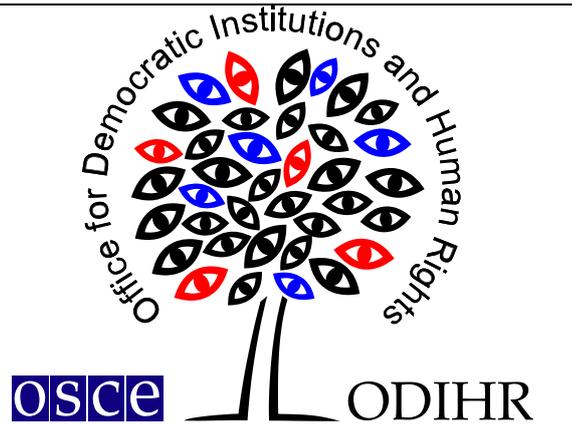
Warsaw, 20 March 2007

Opinion-Nr.:

[Opinion-Nr.: POLIT – MDA/078/2007

(IU)]

[www.legislationline.org](http://www.legislationline.org)



## OSCE/ODIHR COMMENTS

### ON THE DRAFT LAW OF THE REPUBLIC OF MOLDOVA

### ON POLITICAL PARTIES

*This Opinion is based on the analysis provided by Dr. Matthias Hartwig, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Heidelberg, Germany*

**TABLE OF CONTENTS:**

1. INTRODUCTION
2. SCOPE OF REVIEW
3. EXECUTIVE SUMMARY
4. ANALYSIS AND RECOMMENDATIONS

## **I. INTRODUCTION**

1. On 18 January 2007, the OSCE/ODIHR was requested by the OSCE Mission to Moldova to review the draft Law of the Republic of Moldova on Political Parties (hereinafter referred to as the “draft Law” or the “Draft”).
2. These Comments have been prepared based on the Russian and an unofficial English translation of the draft Law. However, due to certain inconsistencies between the two translations the Moldovan text was referred to as well.

## **II. SCOPE OF REVIEW**

3. The Comments analyze the draft Law from the viewpoint of its compatibility with the relevant international and regional standards and the OSCE Commitments. The Comments also examine the draft Law in light of international best practices on regulation of political parties and freedom of association, as well as the relevant caselaw.
4. The standards referred to by the Comments may not be only those legally binding for the Republic of Moldova, but may include international instruments not binding upon Moldova as well as documents of declarative or recommendatory nature which have been developed for the purpose of interpretation of relevant provisions of international treaties.
5. The OSCE/ODIHR notes that the opinion provided herein is without prejudice to any other opinions or recommendations that the OSCE/ODIHR may wish to make on the issues under consideration.

## **III. EXECUTIVE SUMMARY**

6. The draft Law marks important progress towards improving the regulatory framework for political parties in Moldova. In particular, the proposal to introduce state funding to political parties is commendable as a potential encouragement for multiparty democracy.
7. The draft Law nevertheless suffers from excessively onerous registration requirements, as well as from vagueness and lack of specificity particularly as far as party dissolution and suspension of activities are concerned.
8. Below follows a detailed list of recommendations:
  - a) It is recommended that the provisions of the Draft concerning the registration procedure be revisited, the requirement of minimum membership be lowered and the requirement of broad territorial representation be deleted (Article 9 para 1 d). It is also recommended that the registration fees be reasonable and justified (Article 9 para 4 of the Draft).
  - b) With respect to the membership in a political party, it is recommended that the legislators consider possible options for the integration of foreigners and stateless persons (Article 7 of the Draft).
  - c) It is recommended that Article 29.1 be reviewed to remove the ambiguity, as in its current reading the Article does not make it clear whether the amount of private donations should not exceed: (a) 0.05 per cent of the projected income of the state budget, i.e. the amount of state

funding provided to parties, or (b) 0.05 per cent of the amount that is designated by the State to the qualified parties in a given year (i.e. 0.05 per cent of 0.05 per cent).

- d) It is recommended that provisions concerning the financing of political parties be revisited and the possibility of financing by Moldovan nationals resident abroad be introduced (Article 28 para 8 of the Draft).
- e) It is recommended that the provisions of the Draft related to the financial oversight be elaborated so as to introduce an enforceable control mechanism in order to safeguard the implementation of funding-related provisions. It is also recommended that sanctions proportional to the violations of financial management procedures be introduced.
- f) It is recommended that the provisions of the Draft concerning dissolution be amended so that dissolution is only possible if a party advocates the use of violence to achieve its goals or if it puts into question the basic democratic values of the Constitution (Article 25 of the Draft). In particular, as far as the proposal to include party “inactivity” as a ground for dissolution is concerned, it should be excluded as disproportionate. Instead, it is recommended to introduce an option of “downgrading” a party to a regular association (such as an NGO or a public movement, depending on the specifics of Moldova’s domestic law) not enjoying the privileges normally extended to political parties (such as, for instance, the tax exemption provided for by Article 28 para 5 of the Draft), in order to respect freedom of association while preventing an undue financial burden on the State where the political party remains inactive. Finally, special attention should be paid to wording the relevant provisions so as to eliminate vagueness and enhance specificity. The procedure of declaring political parties unconstitutional by the Constitutional Court remains to be elaborated and must be brought in line with the proceedings before the Chisinau Court of Appeals.

## **IV. ANALYSIS AND RECOMMENDATIONS**

### ***4.1 Registration of political parties***

9. The draft Law requires that a party be registered in order to be recognized and treated as such. All the rights and privileges as well as the obligations of the parties presuppose the establishment of the party by registration.<sup>1</sup> The registration is not unconditional. In addition to formal requirements such as the requirement to submit the declaration, the party charter, the program and the list of members, the party seeking registration must have at least 5,000 members who must represent at least half of territorial-administrative units of the second level of the administrative structure with at least 150 persons in each unit.<sup>2</sup> Under the Law on Territorial-Administrative Division of the Republic of Moldova, the territory of the country is subdivided into some 900 first-level units, which include towns, villages and communes, and 35 second-level units, which include 32 rayons, municipalities of Chisinau and Balti and the Autonomous Territorial Unit of Gagauzia. As the status of the Transdnestrian region is not defined by the Law, it is unclear whether the territorial-administrative units located on the left bank of the Dniestr (Nistru)

---

<sup>1</sup> Draft Law, Article 9.

<sup>2</sup> *Id.*, Article 9 para 1 lit. d.

river are counted while determining the minimum number of units in which a political party needs to be represented in order to get registered. This might result in differentiated interpretation and application of the law in party registration procedures. With classifications of units offered in the current Law on Territorial-Administrative Division, the Draft can be interpreted as requiring that at least 17 of these be represented. The party has to pay a registration fee equivalent to 10 times the average salary.<sup>3</sup>

10. The registration can be annulled if afterwards it becomes clear that the conditions of the registration were not fulfilled. However, the annulment must be declared in a court decision.
11. The requirement that a political party be registered is in principle compatible with norms and standards of international law. However, setting the minimum party membership threshold at a level of 5,000 persons may be problematic. In principle, this requirement may be justified and may be introduced in order to better structure the party landscape and to avoid confusion among the voters. There are states which set the minimum threshold at even a higher level.<sup>4</sup> However, it should be noted that Moldova's total population is 3.4 million, a significant proportion of whom are temporarily resident abroad for work or study reasons. It is a well known fact to be observed in the majority of new democracies in East-Central Europe that many parties have great difficulties in finding members as for historical reasons there is little experience with freely founded independent parties. Economic and social situation may serve as an additional deterrent for active political participation. For instance, in Germany with its well-developed party system only two biggest parties would overcome the requirement to have more than 0.15% of the population as members. A high threshold for registering an association as a party could reduce the representation of the pluralistic will in the parliament. Even though the goal of having serious parties participating in elections and of unifying the political movements is understandable, the currently proposed system could lead to the contrary result, as politically active persons could be forced to try to be elected as independent candidates what will diversify the political landscape even more. It is therefore recommended that the minimum membership requirement be reconsidered and reduced.
12. Another related issue concerns the requirement of territorial representation. Although the draft Law does not require that a party be represented nationwide, it obliges it to cover half of the districts of the country. This provision, which is contained in the Law on Parties and Socio-Political Organization currently in force, was assessed negatively in the 2004 and 2006 Joint Opinions of the OSCE/ODIHR and Venice Commission of the Council of Europe (VC/CoE) on the Electoral Code of Moldova.<sup>5</sup> It is emphasized in the 2006 Joint Opinion that "*Any group of common interests related to a limited geographical area – whether a minority group or not – may have big difficulties in registering a party with the requirement for support across the country.*"<sup>6</sup> This requirement is hence disadvantageous for the formation of parties representing minority communities and smaller regionally-based or issue-driven political parties. As the Framework Convention on Ethnic Minorities explicitly requires that the States guarantee "*in all areas of economic, social, political and cultural life, full and effective equality*

---

<sup>3</sup> *Id.*, Article 9 para 4.

<sup>4</sup> The Russian Federation, for instance, requires 50,000 members.

<sup>5</sup> The Joint Opinions are available at [http://194.8.63.155/documents/odihr/2004/07/4381\\_en.pdf](http://194.8.63.155/documents/odihr/2004/07/4381_en.pdf) and [http://194.8.63.155/documents/odihr/2006/03/18510\\_en.pdf](http://194.8.63.155/documents/odihr/2006/03/18510_en.pdf).

<sup>6</sup> Joint Opinion of the OSCE/ODIHR and VC/CoE, 20 March 2006, p.12.

*between persons belonging to a national minority and those belonging to the majority,*<sup>7</sup> the current requirement of territorial representation is disproportionate with respect to the goal it pursues (i.e. the goal to avoid political territorialism or even separatism).<sup>8</sup> For the same reason, the prohibition against establishing a party on the basis of ethnic and/or racial criteria stipulated by Article 3 para 7, may be found incompatible with international law in the absence of evidence that the party in question acts to stir up ethnic and/or racial animosity or hatred.

13. It is recommended that the amount of the registration fees be adjusted to be proportional to the actual registration costs. The rationale behind this is that the fees should not be set at such level so as to dissuade individuals from exercising their freedom of association.
14. The Article 20 para 4 obliges political parties to provide the Ministry of Justice with updated membership lists one year ahead of every election. Taking into account that elections to different national and local representative bodies take place every second year, this requirement is likely to place a significant administrative burden on political parties. As noted in the 2004 Joint Opinion, *“once a party is registered and has run for elections, the results of the elections could be sufficient evidence of its support. Only the need for renewed registration of such parties, which never gained support during elections, is admissible. Submitting membership lists to the government if a party has won seats in Parliament in a number of municipalities or rayons, seems at best unnecessarily bureaucratic, at worst, abusive.”*<sup>9</sup> Furthermore, the draft Law does not stipulate how the verification of membership lists is carried out. The uncertainty concerning the standards and procedures to be followed in the examination of lists raises issues concerning potential unfairness and selective enforcement. Should the provision remain in the law, further elaboration on verification methods could be included.

#### **4.2 Membership in political parties**

15. Article 7 affords the right to join political parties to Moldovan nationals only, and excludes foreigners and stateless persons.
16. The exclusion of all forms of membership by foreigners and/or stateless persons in a party, even though deemed acceptable according to the provisions of Article 16 of the ECHR, is no longer in line with the current international legal developments. In particular, the Recommendation 1500 (2001) of the Parliamentary Assembly of the Council of Europe recommends that the Committee of Ministers *“reappraise the desirable minimum standards for the treatment of non-citizens residing in a country, in particular concerning their political participation at all levels, with a view to granting the right to vote and stand in local elections to all legally established migrants irrespective of their origin, and invite member governments to take all appropriate action to ensure their implementation.”*<sup>10</sup> Moreover, the European Convention on the

---

<sup>7</sup> See Framework Convention on National Minorities, Section II, Article 4 (*“The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.”*). Full text of the Framework Convention is available on the web at <http://conventions.coe.int/treaty/en/Treaties/Html/157.htm>.

<sup>8</sup> The question if a party may pursue the autonomy of a region of the country will be analyzed below.

<sup>9</sup> Joint OSCE/ODIHR and VC/CoE Opinion on the Electoral Code of Moldova, 12 July 2004, page 9.

<sup>10</sup> Recommendation 1500(2001) of the Parliamentary Assembly of the Council of Europe on Participation of Immigrants and Foreign Residents in Political Life in the Council of Europe Member States. The full text of the

Participation of Foreigners in Public Life at a Local Level requires that the State Parties guarantee to foreign residents on the same terms as to its own nationals “*the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defence of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association.*”<sup>11</sup>

17. It is therefore recommended that the drafters consider allowing foreign nationals and stateless persons to participate in political party activities. This recommendation should not be interpreted so as to preclude the imposition of certain lawful restrictions (such as, for example, the minimum duration of residence requirement).

### **4.3 Political party financing**

18. The draft Law contains specific regulations on the sources of funding of political parties. These sources are enumerated in Article 28 and include dues from the party members, donations, fundraising activities and grants from the State budget. There are, however, some restrictions as outlined below.
19. The Article 29.1 aims to set the limit on the amount a political party is allowed to receive as donations. However, the formulation would benefit from additional clarification as in its current reading the Article might result in misinterpretation. It is not clear whether the amount of donations should not exceed: (a) 0.05 per cent of the projected income of the state budget, i.e. the amount of state funding provided to parties<sup>12</sup> (which would be logical if the aim were to strike a fair balance between the State and private financing), or (b) 0.05 per cent of the amount that is designated by the State to the qualified parties in a given year (i.e. 0.05 per cent of 0.05 per cent).<sup>13</sup> As the latter would mean a significantly lower figure, the text of the Article should be reviewed to remove the ambiguity. This analysis is based on the assumption that the drafters intended to set the limit at 0.05 per cent of the projected income of the state budget, i.e. the amount of state funding provided to parties.
20. In addition, the draft Law bans private donors from exceeding the ceiling amount of 500 average wages per year in donations to one or more parties. The ceiling for legal entities is set at 1000 average wages. The donations must be made public with the names of sponsors and the amounts provided by them disclosed.<sup>14</sup> Additional special publication obligations apply during electoral campaigns. Parties are prohibited to receive funding from foreign and anonymous sources as well as from state enterprises.<sup>15</sup>
21. The limitation of private sponsorship of political parties by establishing an absolute maximum of private “subsidies” is a justifiable infringement upon the freedom of association, as it serves to strike a certain financial balance among the parties and to

---

Recommendation is available on the web at <http://assembly.coe.int/Documents/AdoptedText/ta01/erec1500.htm> (last visited on 20 March 2007).

<sup>11</sup> European Convention on the Participation of Foreigners in Public Life at a Local Level, Article 3. The full text of the Convention is available on the web at <http://conventions.coe.int/Treaty/en/Treaties/Html/144.htm> (last visited on 20 March 2007).

<sup>12</sup> *Id.*, Article 31 para 1.

<sup>13</sup> *Id.*, Article 29.

<sup>14</sup> *Id.*, Article 30 para 1.

<sup>15</sup> Draft Law, Articles 28 and 30.

prevent individual parties from engaging in unfair competition. On the other hand, such requirement does not impose forced equality. By setting the ceiling amount at a level equivalent to the sum paid by the State to all parties, it allows individual donors to exercise preferential treatment based on their political opinions and judgments, which may only be found reasonable.

22. It is also acceptable – and indeed a common practice in many domestic legislations on political parties – to limit the maximum amount an individual may pay as a donation in order to prevent parties from becoming dependent on individuals.
23. If, as in the draft Law in question, the private funding of one party shall not exceed the amount which the State pays to all parties, this provision should not be seen as undermining the independence of parties.
24. The limitation of the amount of donations given by one person to one or several parties contributes to the maintenance of a pluralistic democracy. Setting the ceiling amount at 500 average wages of the country appears acceptable.
25. The prohibition on financing of political parties from foreign sources is justified as far as this provision concerns foreign States, foreign nationals and/or foreign-based organizations. The Venice Commission Guidelines on the Financing of Political Parties states that “[p]olitical parties may receive private financial donations. Donations from foreign States or enterprises must however be prohibited. This prohibition should not prevent financial donations from nationals living abroad.”<sup>16</sup>
26. However, as currently worded, Article 28 para 8 is too far-reaching as it aims to prohibit any financing from abroad, which would effectively preclude Moldovan nationals permanently or temporarily residing abroad from making donations to political parties. Such prohibition would run counter to both the above-cited Venice Commission Guidelines on the Financing of Political Parties, and Article 2 para 3 of the Electoral Code of Moldova, which expressly allows Moldovan nationals residing abroad to participate in the elections. Therefore, it would be not justifiable, since not necessary in a democratic society, to ban these persons from the participation in party financing. Such ban would also violate Article 14 of the ECHR insofar as the nationals of the country residing abroad are discriminated in the exercise of their freedom of association with respect to those resident in Moldova. The possibility that they might be wealthier than Moldovan residents cannot justify the differential treatment, since the restrictions on donations by private individuals serve as a sufficient safeguard against this risk.

#### *4.3.1 Financing by the State*

27. State financing is one of the sources of political party funds. The maximum for all parties is set at the level of 0.05% of the projected State income of the year in question.<sup>17</sup>
28. The draft Law sets the requirement for equal treatment of all parties.<sup>18</sup> The provisions on the financing of parties by the State, however, allow for differential treatment of parties as outlined in Article 5 para 5. The State support is dependent on the electoral results. 50 per cent of designated State funds are allocated among political parties proportionally

---

<sup>16</sup> CDL-INF (2001) 8, Venice Commission Guidelines and Report on the Financing of Political Parties, para A(b)(6).

<sup>17</sup> *Id.*, Article 32.

<sup>18</sup> *Id.*, Article 5 para 3.

based on the number of mandates received during last parliamentary elections. Hence, in line with Article 86 para 2 of the Electoral Code of Moldova, the parties that did not overcome the 4 per cent threshold will not be eligible for State funding. The draft Law also precludes the parliamentary parties, which did not form parliamentary factions, from the financial allocations.<sup>19</sup> The remaining 50 per cent of state financial allocations are distributed to political parties that received in last local elections not less than 20 mandates in representative organs of administrative-territorial units of the second level, proportionally to the number of votes received.

29. The financing of the political parties by the State is a common practice in most of the European States. Notwithstanding a possible financial dependence of the parties *vis-à-vis* the State, which would undercut the separation between the State and the parties it is generally accepted especially if the State is not the only “sponsor” of political parties. The limitation of the State financing of the parties set at 0.05% of the income of the State budget assures that the parties will not be “bought” by the State.
30. The difficult issue of equal treatment of political parties in relation to State financing is addressed by the Draft in an acceptable manner. The Guidelines of the Venice Commission on the Financing of Political Parties allow for a restriction of the State funding to parties which gained a mandate on the national or the regional level. However, it should be taken into account how many parties will be excluded from the State financing and which part of the population they are representing.

#### *4.3.2 Transparency and oversight*

31. As mentioned above, the rules on party financing are paralleled by obligations for parties to publish their funding sources. However, no procedure of a permanent control of the party’s budget has been established, as for example an audit by an independent financial body (court of finances, etc.).
32. The requirements concerning the transparency of the financing of political parties are fully legitimate and justified by the necessity to disclose to the voters who is funding and therefore influencing the party, thus enabling them to make a rational choice in the elections. However, the draft Law makes a serious omission by failing to introduce an audit procedure in which the parties may guarantee that the financial provisions are respected by all parties in the same way. It is pivotally important to bear in mind that transparency-related requirements, however strict, will only yield fruit when there is an effective control mechanism in place. It is therefore recommended that an enforceable control mechanism be developed to safeguard the implementation of funding-related provisions.
33. To ensure due implementation of financial regulations it is imperative that the law provide for a set of enforceable provisions on internal control as well as independent monitoring and oversight, including effective, proportionate and dissuasive sanctions for violations.<sup>20</sup> It is recommended that the drafters complement the draft Law by such provisions as well as possibly by a set of implementing regulations.

---

<sup>19</sup> A parliamentary faction must be formed by at least 5 MPs. See description of the work of the Parliament of the Republic of Moldova at <http://www.parlament.md/structure/factions/en.html> (last visited on 16 March 2007).

<sup>20</sup> See Article 14 Council of Europe Recommendation (2003) 4 (“*States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns.*”) and Article 16, ditto (“*States should require the infringements of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.*”)

#### **4.4 Suspension of party activities and party dissolution**

34. Party's activities may be suspended if they infringe upon the provisions of Article 1-3 of the Constitution of the Republic of Moldova, which guarantee the indivisibility and the unitarian character of the State, the territorial integrity, the State sovereignty and the democracy and the rule of law. The specific restrictions concerning the unitarian character of the State and its territorial integrity are related to the fairly recent establishment of independent Moldova and influenced by the ongoing separatist conflict with Transnistria, a chiefly Russian-speaking part of the Republic of Moldova.<sup>21</sup> For the same reasons, the establishment of political parties on the basis of ethnicity is prohibited, as described above.
35. The Ministry of Justice is the authority vested with the power to order suspension of political party's activities for six months and, in case the violations revealed were not eliminated or corrected, for another year. During an electoral campaign this power is vested in the Chisinau Court of Appeals.<sup>22</sup>
36. Suspended parties are prohibited from the use of mass media, banking activities and political activities. Party activities can be suspended for six months with the possibility of extension to one year. If the inconsistencies with the principles laid down in Articles 1-3 of the Constitution persist during one year, the Ministry of Justice or the Prosecutor General will submit a request to the Chisinau Court of Appeals to dissolve the party<sup>23</sup>. If the inconsistencies are eliminated, the party may take up its activities within five days.
37. The request to dissolve a party can be based on the claim that *"a) the goal or the party's activity has become illicit or contrary to the public order; b) the fulfillment of the party's will is accomplished through illicit ways or means or contrary to the public order; the party pursues goals other than those stipulated by the statute or its program; the party is proved to be inactive; the party is acting on the basis of its modified statute and program; after the rejection of this party's demand to register the amendments and completion of the statute and its program; the party pursues its activity within the period when its activity is suspended accordingly to this law; the number of party's members is reduced to less than five thousand; the Constitutional Court has declared this party unconstitutional."*
38. The draft Law provides for the Constitutional Court as the authority for declaring a party unconstitutional. However, neither the Draft nor the Law on the Constitutional Court<sup>24</sup> provide for a detailed procedure whereby a party may be declared unconstitutional.
39. Similarly, a party may be dissolved if the goal or the party's activity has become illicit or contrary to the public order. However, the draft Law does not specify the exact meaning of "illegality"; the wording is rather vague and any breach of the law may potentially serve as a reason for dissolution. The notion of public order is not defined either.
40. Finally, the draft Law lists as grounds for dissolution "inactivity"<sup>25</sup> of the party and its deviation from the goals of the charter or program.

---

<sup>21</sup> For the historical and political background see the judgment of the European Court of Human Rights of 8 July 2004, *Ilascu and Others v. Moldova and Russia*.

<sup>22</sup> Draft Law, Article 24.

<sup>23</sup> *Id.*, Article 25.

<sup>24</sup> See the Law on the Constitutional Court, Article 4 para 1.

<sup>25</sup> See Draft Law, Article 25 para 3.

41. The Venice Commission Guidelines on the Prohibition of Political Parties and Analogous Measures provide that “[t]he 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.”<sup>26</sup> Similarly, the European Court of Human Rights (hereinafter referred to as “ECtHR”) has emphasized in its caselaw that a party may only be prohibited under exceptional circumstances, i.e. when the party uses violence in order to achieve its goals. The member States do not dispose of any margin of appreciation in this context.
42. In interpreting Articles 10 and 11 of the ECHR, the ECtHR has held: “*La Cour a déjà estimé qu'un parti politique peut mener campagne en faveur d'un changement de la législation ou des structures légales ou constitutionnelles de l'Etat à deux conditions : (1) les moyens utilisés à cet effet doivent être à tous points de vue légaux et démocratiques; (2) le changement proposé doit lui-même être compatible avec les principes démocratiques fondamentaux.*”<sup>27</sup> Differentiating between the fundamental principles of the constitution and the fundamental democratic principles the ECtHR continues: “*Aux yeux de la Cour, le fait qu'un tel projet politique passe pour incompatible avec les principes et structures actuels de l'Etat turc ne le rend pas contraire aux règles démocratiques. Il est de l'essence de la démocratie de permettre la proposition et la discussion de projets politiques divers, même ceux qui remettent en cause le mode d'organisation actuel d'un Etat, pourvu qu'ils ne visent pas à porter atteinte à la démocratie elle-même.*”<sup>28</sup> These holdings can be transposed to the respective provisions of the Moldovan law on political parties. Even if the unitarian character of the State is considered to be a fundamental principle, the goal of a political party, for instance, to establish a greater autonomy for certain regions cannot serve as a ground for prohibiting a party, as long as this goal is pursued by peaceful means.
43. The ECtHR rulings imply that the possibility to prohibit a party for the only illegality of its acts or its goals, without specifying the type of the illegality would not only leave it with the State bodies, i.e. the majority to set up the criteria under which a party can be prohibited; besides, even minor misdemeanors could serve as a ground for a verdict on a party. A prohibition under such circumstance would not only violate the freedom of association, but beyond it would run counter to the principle of pluralistic democracy – which includes pluralism of opinions as well as or the organizations that promote these opinions and that are competing for the political power. The same is true with respect to the possibility to prohibit a party for the only violation of the public order. While preservation of public order may serve as a legitimate ground for restricting the exercise

---

<sup>26</sup> CDL-INF (2000) 1, Venice Commission Guidelines on the Prohibition of Political Parties and Analogous Measures, Guideline 5.

<sup>27</sup> *Socialist Party of Turkey and Others v. Turkey*, judgment of 12 November 2003, at para 38.

<sup>28</sup> *Id.* at para. 43.

of freedom of association,<sup>29</sup> the international law requires that these restrictions be “*prescribed by law and which are necessary in a democratic society.*”<sup>30</sup>

44. In practical terms, this requirement translates into a requirement for highly specific legislative provisions making it possible to prohibit a party only in the case of grave breaches of essential norms of the democratic society. It is recommended that the relevant provisions of the draft Law be revised to eliminate vagueness and enhance specificity.
45. The aforementioned holds true also with respect to the suspension of the activities of a party.
46. The provision allowing dissolution of a political party on the grounds of deviation from its charter or program appears questionable. Party programs are as a rule interpreted in a very flexible manner, and it should therefore be left at the discretion of the party governing bodies to word these programs. Besides, in real-life situations party programs often need continuous revision and updating so that to ensure consistency with the actual requirements of the day. Political compromises very often can be reached only by giving a very broad interpretation – to say the least – to party programs. If a party could be prohibited for meeting political requirements, the political life would be seriously endangered.
47. Similarly, dissolution of a political party for the reasons of its “inactivity” may be indeed unnecessary as well as a disproportionate response to the legitimate concern of the State (first of all, the concern that parties may unduly benefit from State-provided funds and privileges). Since an “inactive” organization would not benefit from the most important privilege of a party, i.e. the participation in elections, it would consequently lose the access to State financing which, in accordance with the draft Law, depends heavily on whether or not the party participates in the elections.<sup>31</sup> An indeed preferable response that would allow to both respect freedom of association and prevent “inactive” parties from unduly benefiting from State-provided privileges would be to introduce an option of “downgrading” a party to a regular association (such as an NGO or a public movement, depending on the specifics of Moldova’s domestic law) not enjoying the privileges normally extended to political parties (such as, for instance, the tax exemption provided for by Article 28 para 5 of the Draft). This would allow to avoid dissolution while preventing an undue financial burden on the State where the political party remains inactive.

---

<sup>29</sup> See the International Covenant on Civil and Political Rights, Article 22 para 2 (“*No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, **public order (ordre public)**, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*” Emphasis added. )

<sup>30</sup> *Id.*

<sup>31</sup> See Draft Law, Article 32 (“(1) *The annual amount allocated from the state budget for financing political parties constitutes 0, 05% of the projected accumulation in the state budget for a budgetary year and is distributed as follows: a ) half is rendered to political parties proportionally with mandates obtained in the parliamentary elections and validated by the setting up of the new legislature of the Parliament of the Republic of Moldova, covering the following conditions: - have been registered by the Central Electoral Commission as electoral opponents; surpassed the electoral threshold at the parliamentary elections; - have been organized in parliamentary factions lawfully set up. b) half is distributed to political parties proportionally with number of votes obtained in the general local elections, if these acquired not less than 20 offices in the representative bodies of the second level territorial-administrative units.*”)