

INFORMATIVE NOTE on the Law on ensuring and restoring public order during public events

**To Mr. Dorin Recean,
Minister of Interior of Republic of Moldova**

Dear Mr. Minister,

Promo-LEX noted the draft *Law on ensuring and restoring public order during public events* (hereinafter the bill) prepared by the Ministry of Interior and submitted for public discussion.

In this context, we wish to inform you that, on 2 October 2012, Promo-LEX organized a public debate on the mentioned bill, where objections to the bill were presented. Similarly, lawyers of the Association repeatedly participated in discussions with the authors of the adapted bill, and put forth objections to certain provisions, which are inconsistent with existing legal norms.

Promo-LEX does not preclude the necessity of completing Law No.26 with provisions that regulate the maintenance and restoration of law and order, but following a repeated analysis of the bill, we are concerned with the intention of limiting freedom of assembly expressed in the bill, and suggest to revision the need to adopt an organic law on this matter. In our opinion, this bill has the hidden purpose to remove from use the already enforced Law no.26 on public meetings.

I also want to note that, even if it will be submitted and approved, this bill will fall into disuse. On the other hand, the bill contains several deficiencies, which conflict with

existing legislation and the latest reforms promoted by the Ministry.

Without providing an extensive list, we reiterate that the biggest criticisms refer to the duplication or divergence between some norms provided in Law no.26 on public meetings and the debated bill, including:

- **A double notification procedure** by requiring organizers of public meetings to notify in writing both the local government and the “territorial authority of the MOI”;
- **Principle of the Law** – excluding one of the principles guaranteed by Law No.26, and namely the presumption in favor of holding a public meeting, which may result in the suspension of certain peaceful public meetings;
- **Obligations of the organizers** to present an extensive list of information about the public meeting, especially if the meeting will be attended by foreigners;
- **Actors responsible for maintaining and restoring public order** – this allows interference of political subdivisions of the MOI (*after the MOI reform, it is presumed that the ministry is politically controlled, while some of its subdivisions, namely GPI, are apolitical, based on the method of appointment of the leadership*) in the event of interruption of public meetings, and may exclude the police, which is a separate apolitical entity within the MOI, from maintaining and restoring public order;
- **Extended list of situations when a public assembly can be suspended, etc.**- if, in its current reading, Law No. 26 provides three situations in which a public meeting may be suspended, the bill in discussion extends this list to 17 situations, which represents a clear and unfounded limitation of freedom of assembly. Moreover, some situations provided in the bill, such as the right to suspend public meetings for breach of public morality, operate with very vague terms that are not

defined in the law and could lead to discrimination against certain decisions of the organizers and participants to the meeting.

While we do not want to dwell in detail, taking into account that we had presented the Association's position on these issues before, we note that this general list of deficiencies is not complete, but we want to draw attention to the most important problems and shortcomings of bill. Moreover, the position of the Association in this regard is identical to the arguments used by the CNP and other specialized organizations.

In the following paragraphs, we will try to provide arguments that confirm the position of the Association of the need to revise the intention of the MOI to promote this bill.

Indeed, according to Art. 2 p. 2 of Law No.26, religious assemblies in the form of official divine services or other traditional events, sports events, cultural, artistic and other entertainment are not subject to the provisions hereof. In discussions, the authors of the bill noted that these meetings are to be handled with utmost care.

However, Art. 24. p. 2 of Law No.26 provides that until the adoption of special laws, the actions referred to in Article 2 para. (2) shall be conducted under the provisions of the current law. Thus separating the conduct of meetings by notifying the MOI, provided in the bill, has no relevance so long as specific rules for the organization of meetings specified in Art. 2 o.2 of Law no. 26 have not been established.

We believe that the introduction of compulsory notification of the MOI for these meetings is not intended to ensure public order, but is a direct interference in the right to conduct these types of meetings. The legislature expressly stated that special legal rules shall be adopted that establish the organization and conduct of these meetings. Thus the bill

should not contain any specific rules on notification, therefore Arts. 5 and 6 contain abusive provisions.

With regard to police actions in meetings, we mention the following. Article 72 p.3 of the Constitution sets out the categories of domains that can be regulated by organic law. In our case, Law No.26 provides quite clearly, in Articles 21 and 22, how to suspend and disperse a meeting.

This legal act, which is an organic law, does not establish the need to adopt other organic laws to implement these rules. If the MOI believes that these rules are not clear enough, it should explain these inconsistencies. Note that Parliament Decision No.1275 of 15 February 1993 **on the approval of special means and their use by the law enforcement and military carabinieri of the Interior Ministry also refers to in the way to intervene to terminate or disperse a mass unrest.**

The Interior Ministry submitted the draft organic law, but failed to explain the need for *a special law* instead of a normative act adopted by the Government. According to Art. 102 p.2 of the Constitution, government decisions are adopted to carry out the laws. Thus the procedures and methods of intervention required under Arts. 21 and 22 of Law No.26 may be provided by a decision of the government.

In conclusion, Dear Mr. Minister, we respectfully request you to revisit the MOI position on the issue, take into consideration the objections mentioned, and inform the Association about your decision.

Sincerely,

Alexandru Postica

Director of Human Rights Program

Association Promo-LEX

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