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country report

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Controversial NGO law passed in the Republic of Moldova

Support of political parties is crucial

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On June 11, 2020, the Moldovan parliament passed the new “Law on Non-Governmental Organizations” (NGO law). It quickly became a bone of contention within the government led by the Socialist Party (PSRM). A reform of this law was mentioned as a prerequisite for further macro-financial assistance by the EU.¹ The main innovations concern rules for the support of political parties provided by NGOs. Close to a month after its adoption, the official legal text is still not available, however key elements are known and are briefly presented below

Background

A first law regulating the work of non-governmental organizations was passed in 1996, a few years after Moldova became an independent state. A reform of the previous NGO law became necessary due to the 2019 reform of Moldovan civil law and the growing need for a simpler registration and administration of non-governmental organizations (NGOs), as well as for the clarification of the ways and the circumstances under which NGOs may provide support to domestic political parties.

The draft law was adopted in the first reading as early as April 2018.² In the discussion about a new Moldovan NGO law, however, there were strongly divergent reform approaches, which at that time (under a government led by the "Democratic Party of Moldova") generated the worry that the activities of civil society organizations, including foreign foundations, could be restricted.

Controversial questions about the financing of "political organizations"

This brings us to the most controversial and practically relevant point of the new NGO law. Even before the first reading (in April 2018), attempts were made to largely limit the support for Moldovan NGOs from abroad, including through multilateral organizations. At the current second and last reading of the law, this financing option has now been promoted to the core problem of the reform, on grounds that a state must defend itself against external influence, especially in political matters. The same argument was also to be applied to the support for the Moldovan political parties, which receive support from NGOs in various forms. The currently governing PSRM submitted amendments to that effect. Among other amendments, the PSRM proposed an absolute ban on “political lobbying” by NGOs, which, in conjunction with the foreign financing ban, would have implicitly prevented the work of the largest part of Moldovan civil society.

Questionable parliamentary procedure during second reading

According to its own Rules of Procedure, during the second reading the Moldovan Parliament has to consider all proposed amendments to a law. More than 150 amendments to the NGO law were submitted. Due to time constraints, however, the MPs had to limit themselves to the most important (and most controversial) points.

Prior to the reading, the Legal Affairs Committee of the Moldovan Parliament submitted a report with all changes discussed or adopted in the Committee.³ The opposition MPs claim that the current committee chairman - representing the PSRM - has added a number of fundamental amendments by the PSRM group to the report shortly before the parliamentary session. This was also confirmed by the statements made by the chairman himself in the plenum: he justified his approach by saying that his last changes should be discussed directly in the plenum, "in order not to waste time".

This indeed broke the Rules of Procedure but will hardly result in the NGO law being null and void, since the controversial aspects have been taken into consideration during the second reading in the plenum, and the plenum voted almost unanimously on the matter. According to the Rules of Procedure, it is possible to submit amendment proposals without a decision by the respective parliamentary committee.⁴

(Un)acceptable party support

The most problematic regulations are contained in Paragraphs 4 and 5 of Article 6 of the NGO Law, dealing with the "support of political organizations". The law distinguishes between NGOs established by socio-political organizations and parties (political NGOs) and all others.

The so-called political NGOs shall continue to be able to offer political parties and socio-political organizations services free of charge, in order to strengthen their organizational capacities. Any other services (i.e. meaning those not aiming to build capacity) may not be provided free of charge. This limits the political activities of NGOs in the broader sense, but at the same time does not prohibit free of charge capacity building and other kinds of services for political parties. Purely material aid (in any given form) to political parties would however be illegal.

The law stipulates certain exceptions: the mentioned restrictions will not be applied to the support of non-political actors (e.g. human rights NGOs).

During election campaigns, however, the law puts a general ban on providing services or material aid to parties or candidates, as well as a ban on organizing campaigns by NGOs. They may still promote elections in general, organize debates and observe elections.

Foreign financing remains admissible and is not subject to any new further direct or indirect restrictions. The draft also does neither impose a state register of foreign-funded NGOs, nor does it impose any obligation to flag foreign financing in any form.

The regulations affect all NGOs equally, regardless of their purpose, and do not appear to be disproportionate:

- › Each non-governmental organization must publish an annual activity report. The draft law only stipulates the necessary general elements of such a report, without specifying the scope or content (implemented measures, general information on material and financial resources, and "other information").

- › The state may adopt “proportionate regulations” aiming to combat money laundering and terrorism.
- › An NGO may only be dissolved if this is necessary in a democratic society.

The Moldovan Parliament is apparently trying to strike a balance between the political activity of NGOs and national political interests. For those NGOs, which do not provide support for political parties in their work anyway, hardly anything will change.

Assessment

This law was passed at a time of newly intensified debates about the values and principles of the rule of law. Through questionable reform proposals, the PSRM almost infringed EU requirements in the legislative process and risked stopping macro-financial assistance in the middle of an economic crisis.

Depending on the interpretation of these regulations, certain risks remain for non-governmental organizations. The legal provisions indeed reflect basic general regulations. But in an environment where judicial arbitrariness has repeatedly occurred in the past, the criterion of “dissolution if necessary in a democratic society” (to give an example) can be an unpredictable factor.

A mindset, which dictates that the danger always comes “from the outside” and the state acts as the only defender of national interests is just a reminder that the opinion of those in power should not always be decisive. The “defence of national interests” invoked as justification appears to be farfetched. In the end, principles of the rule of law are again to suffer. The fact that the general standards of freedom of assembly and freedom of expression are being attacked during a mainly domestic crisis shows the Moldovan society’s development potential. This was also confirmed by media coverage of the NGO law prior to the second reading.

All over the world, NGOs play the acknowledged role of expressing their critical opinions (critical of the government as well), but also of making concrete contributions to shaping policy in their respective field. Silencing such voices, which are essential for the development of a state, poses obvious dangers. A conviction of the Republic of Moldova by the European Court of Human Rights (ECHR) in Strasbourg, especially with regard to a possible violation of

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visions of the Moldovan NGO law, also seems possible.

At the time of final editing of this article, the official version of the law was still not available.

Hartmut Rank

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https://www.europarl.europa.eu/cmsdata/208888/2020-June-11_Joint-Statement_Bureau-European_and_International_Cooperation_EU-Moldova-PAC_EN.pdf - Joint declaration of the EU-Moldova Association Committee of the European Parliament of June 2020.

www.kas.de

² florian.feyerabend@kas.de / LegislationDocument.aspx?Id=6947c466-0912-4ba7-84b6-b350e646f03c - Text of the version adopted on April 3, 2018 at first reading.

³ <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/ro-RO/Default.aspx> - Report of the Legal Affairs Committee of the

Moldovan Parliament on the new NGO law.

The text of this publication is published under a

⁴ <http://www.parlament.md/CadrulLegal/RegulamentulParlamentului/tabid/154/language/ro-RO/Default.aspx> - Rules of Procedure of the Moldovan Parliament, Article 46 (4).

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