

Organization for Security and Co-operation in Europe High Commissioner on National Minorities

H.E. Mr. Nicolae Tabacaru

Foreign Minister of the
Republic of Moldova
Chisinau

The Hague, 2 November 1999

Dear Mr. Minister,

I have the honour to address you with reference to the draft law concerning the amendment to the Law on Advertisement of the Republic of Moldova. I understand that your Government has approved the draft by Government decision No. 656 (9 July 1999) and submitted it to the Parliament. Additionally, I was informed that the Parliament of Moldova has recently considered the draft in the first reading.

While fully appreciating that promotion of the Moldovan language on the territory of your Republic is desirable and should be supported, I feel obliged to draw your attention to some aspects of the draft law which are contrary to Moldova's international obligations and commitments.

The amendment in question provides in Article 8, paragraph 3, that advertisement must be in the State language. Upon the wish of advertisers, a parallel translation may be added to the Moldovan text. However, by imposing the mandatory use of the State language in private advertising, the amendment contradicts the freedom of expression.

Specially, the amendment introduced by your Government in Article 8, paragraph 3, concerns language use in private commercial advertisement. As such it constitutes a legislative measure taken by the State in the area of language use in the private sphere. Consequently, it falls within the realm of the freedom of expression protected by Art. 19 of the International Covenant on Civil and Political Rights (ICCPR) and Art. 10 of the European Covenant on Human Rights (ECHR), of which Moldova is part to both. According to these provisions the State can prescribe the use of a particular language in the private sphere only when there exists a legitimate public interest to introduce restrictive regulations pertaining to the use of a language. Such restrictive regulations must fall within one of the grounds deemed permissible according to Art. 19 (3) ICCPR and Art. 10 (2) ECHR.

Generally, restrictions are only permissible in cases where respect of the rights or reputation of others, or protection of national security, public order, public health or morals are at stake. In the case at hand, no such ground appears applicable, nor has your Government invoked or demonstrated such a ground, as far as I understand. The reference in the explanatory note to the draft to "advertisement as an important field" or to the distribution of "huge editions of advertising publications in Russian" does not meet the necessary standard, it is too broad and undetermined and cannot be seen as appropriate justification for the restriction of the freedom of expression under Art. 19 ICCPR or Art. 10 ECHR.

Thus, the envisaged amendment to Article 8, paragraph 3, of the Law on Advertisement imposes unjustified restrictions to the freedom of expression. I would therefore recommend that your Government withdraw law from consideration of the Parliament.

With regard to the issue of language use in general, I can only encourage the Government of Moldova to use more effectively means for promoting the State language. I am ready to support measures aimed at strengthening the position of the State language in the private sphere by means of education and encouragement.

I look forward to learning the views of your Government on this matter.

Yours sincerely,

Max van der Stoep
OSCE High Commissioner on National Minorities