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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**Notes on the fact-finding trip to Chisinau
(22 to 26 May 1999)**

by
Mr Kaarlo Tuori (Finland)

1. The trip Mr Sergej Kouznetsov and myself made to Moldova had as its main objective to gather information about the laws on Local Public Administration and on Administrative and Territorial Organisation, adopted by the Moldovan Parliament in November 1998. Our focus was especially on the impact of these laws on the status of the Gagauz and Bulgarian minorities. In addition, we participated with the delegation of the Congress of Local and Regional Authorities in the monitoring of the local elections, held on the 23rd of May.

2. We were especially interested in seeing, how the elections took place in Gagauzia. We visited several polling stations in Komrat, the capital of Gagauzia, and had a discussion with the chairman of the central election committee of Gagauzia. There was no sign of any boycott, nor did we notice any significant irregularities at the polling stations. We were, though, approached at one polling station by an observer and a candidate for mayor of Komrat, who made complaints about the partiality of the public television of Gagauzia in giving emission time to the candidates. However, we had no possibility to check the merits of these complaints.

3. In Komrat, we discussed with the president of the popular assembly of Gagauzia and the chairman of the committee of foreign affairs of the assembly. In the discussion, the Gagauz representatives voiced concern not only about the Law on Local Administration but also on two other recent events. According to them, the authorities of Moldova had declined to organise a referendum on joining Gagauzia in two localities where the number of signatures, required by Art. 5(2) of the Law on the Special Status of Gagauzia, had been gathered. In addition, the Constitutional Court of Moldova had recently given a decision, where it had declared unconstitutional the procedure for appointing judges regulated by Art. 20(2) of the Law on the Special Status of Gagauzia.

We did not consider it possible to discuss further the decision adopted by the Constitutional Court. Instead, the issue of the local referendum was taken up in the meetings held with the central authorities. The representatives of the Parliament assured us that legal provisions on local referendums will be amended in order to solve the problem referred to by the Gagauz representatives.

4. The relationship of the Law on Local Administration and the Law on the Special Status of Gagauzia was discussed also in Chisinau. On May the 24th we met the head of the unit for local administration of the state chancellery, the *Bashkan* (the chief executive) of Gagauzia and the president of the popular assembly of Gagauzia, representatives of the department for national minorities as well as the chairmen of the committees for human rights and legal affairs of the Parliament of Moldova. Finally, on May the 25th we had discussions with representatives of the Ministry of Justice.

5. The main substantive issue in the relations of the two laws concerned the relationship of the powers of the *Bashkan*, i.e. the elected chief of executive of Gagauzia, and the prefect, who, according to the Law on Local Administration, is appointed by the government and is supposed to represent the viewpoint of central authorities. We explicitly posed the question, whether a potential contradiction between the Law on Local Administration and the Law on the Special Status of Gagauzia is supposed to be resolved according to the principle of *lex specialis*

or the principle of *lex posteriori*. In our first discussions, the representatives of the central authorities either denied the possibility of a contradiction and claimed that, for example, the powers of the *Bashkan* and the prefect are complementary rather than contradictory, or implied that *lex posteriori* would be the standard to be applied. In our last discussion with the representatives of the ministry of justice, we managed to show in an unchallengeable way, resorting to a concrete example, that the two laws may in fact contradict each other. The Moldovan authorities now stated that the principle of *lex specialis* should be applied to resolve potential contradictions. When asked whether this position can be considered an official answer, they stated that they could speak only for the central administration. On our part, we expressed as our view that the application of *lex specialis* would clear the problems under consideration. This point should, I think, be stressed in the opinion of the Commission.

6. As a summary, the discussions on the issues concerning Gagauzia give reason to optimism. Thus, the Gagauz representatives repeatedly emphasised that they are satisfied with the status conferred by the present organic law. No complaints as regards for example the language and cultural rights of the Gagauz minority were made, and the discussion with the representative of the department for national minorities also left the impression that the central authorities and the respective minorities are working in co-operation in these fields.

7. The other main problem in our discussions with Moldovan authorities concerned the impact of the Law on Administrative and Territorial Organisation on the Bulgarian minority, living in the southern part of the country. One of the main purposes of the law is to rationalise regional administration by replacing the former district with larger units called *judet*. The reform also means that the district of Taraclia, where the majority of the population apparently belong to the Bulgarian minority, is incorporated into the larger *judet* of Cahul.

The Bulgarian minority had been invited to discuss with us on May the 24th, but for some reason their representatives did not show up. From the Moldovan authorities we got the information that, according to the bill submitted to the parliament, the Taraclia district would have remained a separate *judet* but the parliament had voted for the incorporation of Taraclia into the *judet* of Cahul. The president of the republic had used his suspensive veto but again the parliament had refused to accept the solution proposed by the government.

The Moldovan authorities maintained that Taraclian authorities had been consulted before the law was passed but the exact nature of these consultations remained unclear. On the other hand, the authorities also maintained that the unofficial referendum organised in Taraclia in January 1999 did not meet the requirements of a reliable consultation. We did not manage to get any additional information concerning this "referendum".

We were told by the Moldovan authorities that the majority (55 %) of the Bulgarian minority actually lives outside the former district of Taraclia and that their cultural and other needs can in fact be better attended to within the larger *judet*. Our discussions with the representative of the department for national minorities, herself of Bulgarian origin, also implied that the actual concern of the spokesmen for the former district of Taraclia does not concern cultural or language rights issues. This was confirmed by other representatives of the Moldovan authorities who maintained that the dissatisfaction is mainly of economic nature. According to the Moldovan authorities, a sub-prefect responsible for the former district of Taraclia had also been appointed.

8. The fact, however, remains that at least among the officials of the former district of Taraclia; the new territorial administrative division has been considered a violation of minority rights. This was also evidenced by the boycotting of the local elections in Taraclia.

On the basis of the information we managed to get, it is very hard to say whether the new law contradicts with the Framework Convention for the Protection of National Minorities, especially Art. 16 of the Convention. My suggestion is that the Commission should refrain from a definitive position and, at most, generally point to the significance of Art. 16.