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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

SECRETARIAT MEMORANDUM^(*)

on

THE LEGAL CODE OF GAGAUZIA

**adopted by the People's Assembly of Gagauzia
(the Khalk Toplushu)
on 14 May 1998**

^(*) Drawn up on the basis of the opinion set out in document CDL (98) 41.

Following the preparatory meeting on the Legal Code of Gagauzia held in Strasbourg in April 1998, the rapporteurs adopted their opinion on the Code (CDL (98) 41), which was sent to the authorities who had requested it in early May.

Subsequently, the rapporteurs and the Secretariat learnt that the People's Assembly of Gagauzia had adopted the Code unanimously on 14 May.

The adopted text arrived at the office of the Venice Commission on 5 June 1998.

It is noticeable that some of the recommendations made by the experts from the Venice Commission and the Congress of Local Authorities have not been followed.

1. Gagauz autonomy

Article 2 of the Code, on the hierarchy of legislation, still appears to omit Moldovan laws and talks only of the direct and exclusive action of the Legal Code on Gagauz territory. According to Article 2, para. 3 the hierarchy is as follows:

1. the Moldovan Constitution;
2. the Legal Code of Gagauzia;
3. Gagauz laws.

However, certain other articles include the law on the special legal status of Gagauzia (Articles 70, 98 and 100) and Moldovan laws (Articles 6, 8, 83 and 89) in this hierarchy just below the Moldovan Constitution, which may give rise to confusion.

There has been no change to the wording of Article 8 (numbered Article 7 in the version examined by the experts) on the incorporation of areas with a majority Gagauz population into Gagauzia, in spite of the fact that the Working Group considered that it failed to comply with the provisions of the Organic Law on the status of Gagauzia (particularly Article 5 thereof). According to the Organic Law on the status of Gagauzia the organisation of a referendum is the responsibility of the Moldovan authorities. Therefore, the Court of Gagauzia is not entitled to confirm the results as stated in Article 8, para. 7 of the Legal Code.

2. Human rights

The text of the Legal Code adopted by the People's Assembly of Gagauzia has retained the chapter on human rights, thereby reiterating the guarantees provided for in the Constitution of the Republic of Moldova.

Article 18 still contains the sentence on "building a democratic society" which has no prescriptive effect.

The original wording of Article 19, stipulating that "no-one shall be arbitrarily deprived of life", has been retained, although the death penalty has been abolished in

Moldova; this statement may be regarded as contrary to Moldovan legislation because it could be construed that it is possible to inflict the death penalty in a “non-arbitrary” manner.

It is not stipulated in Articles 25 para. 2, 26, 27, 37 para. 1 and 40 whether the fundamental rights guaranteed therein apply to everyone on Gagauz territory (including foreigners) or just to Gagauz “citizens”.

3. Separation of powers

Though some of the rapporteurs’ recommendations on the powers of the People’s Assembly have been taken into account in the new version of the Legal Code, Article 51 para. 7 still states that the Assembly is entitled to “decide on the procedure for the composition and functioning of the local authorities”. This provision may be regarded as contrary to the European Charter of Local Self-Government which grants local authorities a considerable degree of independence in the area of management. This is not taken into account in the latest version of the Legal Code.

4. Electoral system

There are no articles on the electoral system in the Legal Code.

5. Conclusions

Quite a number of positive changes have been made in the Legal Code adopted by the People’s Assembly compared to the text originally submitted to the Council of Europe experts. However, we can only regret the fact that some of the recommendations contained in the opinion on the Legal Code of Gagauzia have not been taken into account.

The text still contains a large number of passages copied directly from other legal instruments and this may lead to confusion as to the hierarchy of the rules applied.

Furthermore, the absence of any description of the electoral system in the Legal Code creates a legal vacuum. Finally, it is not certain whether some of the provisions on local authorities comply with the European Charter of Local Self-Government, which was signed and ratified by the Republic of Moldova.