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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

MEMORANDUM

**QUESTIONS RAISED
CONCERNING THE CONFORMITY OF THE LAWS
OF THE REPUBLIC OF MOLDOVA
ON LOCAL ADMINISTRATION
AND ADMINISTRATIVE AND TERRITORIAL
ORGANISATION
TO CURRENT LEGISLATION
GOVERNING CERTAIN MINORITIES**

In their report on the honouring by Moldova of the commitments entered into on its accession to the Council of Europe, the Rapporteurs, Mr Columberg and Mrs Durrieu, wondered whether the laws on local administration and administrative and territorial organisation as adopted by the Moldovan Parliament were compatible with the Moldovan Constitution and the Institutional Law on the Status of Gagauzia (para. 102 of Document AS/Mon (1998) 52 rev. 2 of 14 January 1992), and requested an opinion from the Venice Commission on this matter. This secretariat memorandum is aimed at pinpointing the problems potentially raised by the aforementioned laws.

I. The Law on Local Administration in the Republic of Moldova

1. The Law on Local Administration in the Republic of Moldova was adopted on 6 November 1998. It sets out the general framework for the organisation of local authorities and their interaction with the central authorities through representatives in the regions (counties) and municipalities.

2. Where the Gagauz region is concerned, the Law on Local Administration in the Republic of Moldova is liable to clash with the Law on the Special Status of Gagauzia of 1994 and the Legal Code of Gagauzia adopted in July 1998 by the People's Assembly of Gagauzia. The Law on the Special Status of Gagauzia and the Law on Local Administration are both organic laws. The Legal Code of Gagauzia amounts to a constitution for the autonomous region, but it is difficult to determine its position in the hierarchy of Moldovan norms. At all events, the lack of a clear hierarchical relationship between these prescriptive texts is a problem which has already been noted by the Venice Commission in its opinion on the Legal Code of Gagauzia [CDL (98) 41].

3. Article 2 of the Law on the Special Status of Gagauzia of 23 December 1994 stipulates that "*the administration in Gagauzia shall operate on the basis of the Constitution of the Republic of Moldova, the present Law and the legislation of the Republic of Moldova (except where otherwise provided in the present Law) and in conformity with the Legal Code of Gagauzia and the decisions of the People's Assembly*".

4. Article 2 para. 2 of the Law on Local Administration provides that "*the organisation and operation of local administration in the autonomous territorial entities shall be determined by the Law on the status of the corresponding region and the present Law*".

5. These two provisions would suggest that the two laws are complementary. However, a number of legal problems arise when the two texts are examined.

6. Article 107 of the Law on Local Administration designates the *prefect* as the representative of the central authorities in the regions, including the autonomous entities. The Law on the Status of Gagauzia does not provide for any central authority representative. Moreover, Articles 21, 22, 23 and 24 of the Law on the Status of Gagauzia lays down that the heads of the prokuratura, the department of justice, the department of national security and the police exercising their functions in the autonomous regions shall be appointed by the corresponding Moldovan ministers, with the agreement of the People's Assembly, whereas Article 110 of the Law on Local Administration stipulates that the *prefect* must nominate candidates for these functions and ensure the smooth operation of the departments in question. Furthermore, the Law on the Status of Gagauzia stipulates that the *Bashkan* is the

supreme authority of the executive in Gagauzia (Art. 14 para. 1); again, the Law on Local Organisation does not specify the relationship between the *prefect's* powers and the rather similar powers of the *Bashkan*. For example, Articles 113, 114 and 115 of the Law on Local Administration are likely to clash with Article 14 paras. 6, 7 and 8 of the Law on the Status of Gagauzia.

7. Article 12 of the Law on Local Administration provides that the prefect shall be appointed by decree of the Government of Moldova and shall represent the central authorities at local level. This text contains no specific provisions on Gagauzia, and so the prefect of this autonomous entity exercises the same powers as his opposite numbers in the other regions (counties). At the same time, the *Bashkan* is established in his functions by the President of the Republic of Moldova and is a member of the Government of Moldova (Article 14 para. 4 of the Law on the Status of Gagauzia). According to the Law on the Status of Gagauzia, the *Bashkan* has an important, special position in the executive hierarchy, unparalleled in ordinary local administration; he also takes part in the appointment of *prefects* as a member of the Government of Moldova. This situation, which is linked to the *Bashkan's* special position, is apparently not taken into account in the Law on Local Administration, Article 109 para. 2 of which lays down that there are no subordinate relations between the *prefect* and the local authority bodies.

8. A comparison between the Law on Local Administration and the Legal Code of Gagauzia highlights even more obvious contradictions.

9. The first question is that of the relations between, on the one hand, the *prefects* and *sub-prefects* provided for in the Law on Local Administration and, on the other, the heads of local administration provided for in the Legal Code of Gagauzia (Article 82). The Legal Code describes the latter as local civil servants, since their powers are determined by local legislation (Article 82 para. 2).

10. Furthermore, the fact that the Law on Local Administration contains no specific provision on Gagauzia (which is for the moment the only autonomous territory with a reasonably well defined status) raises a problem vis-à-vis interpretation of the provisions of the Law on the Status of Gagauzia and the Legal Code of Gagauzia. For instance, it is uncertain whether and to what extent the provisions of the Law on Local Administration will affect the powers of the People's Assembly and what will be the position of the Court of Gagauzia in the Moldovan judicial system (especially as regards its powers to interpret legal rules adopted by local authorities).

11. One separate question is that of the provisions of the Legal Code regarding their "exclusive" legal force in the territory of Gagauzia (Article 2) and the People's Assembly's power to set aside any decisions by the "*public authorities of Gagauzia that are contrary to the provisions of the Legal Code*" (Article 51 para. 9). In view of the fact that the Legal Code of Gagauzia devotes a whole chapter to human rights protection, it might be wondered whether and how the aforementioned powers of the People's Assembly and the exclusivity of the provisions of the Legal Code of Gagauzia can be reconciled with the prefect's powers, particularly those based on Article 111 (d) of the Law on Local Administration, to the effect that "*the prefect can order the public authorities to take the requisite measures to prevent offences/crimes and ensure respect for human rights*".

12. The problems of possible clashes as described above could be solved by interpreting the Law on Local Administration in such a way that its provisions would be inapplicable where contrary to those of the Law on the Status of Gagauzia, the latter being a *lex specialis* as compared with the Law on Local Administration, which is a *lex generalis*. Such an interpretation could be based on Article 111 of the Moldovan Constitution, which authorises the granting of autonomy status to certain regions in southern Moldova on the basis of an institutional law, such as the 1994 Law on the Status of Gagauzia. This interpretation also derives from the fact that the new Law indirectly but indisputably recognises the existence and validity of the 1994 Law on the Status of Gagauzia, because Article 2 para. 2 of the Law on Local Administration reads: "*The organisation and operation of local authority bodies in an autonomous territorial unit with special status shall be regulated by the law on the status of the said unit and the present law*".

13. However, since this issue is highly complex and all uncertainty about the scope of the autonomy of the region in question must be eliminated, it would no doubt have been better to include details, in the provisions of the new Law, on how and to what extent the adoption and enforcement of the latter would affect the provisions of the Law on the Status of Gagauzia.

II. The Law on Administrative and Territorial Organisation in the Republic of Moldova

14. The Law on Administrative and Territorial Organisation in the Republic of Moldova was adopted on 12 November 1998. Article 4 para. 2 of the Law recognises the specificity of "*a number of areas in the south of the Republic which constitute territorial administrative units with special status defined by institutional laws*"¹, and we might suppose that this applies to Gagauzia, according to the Law on the Status of Gagauzia. Article 8 para. 1 lists the towns and cities with municipality status, and includes Komrat, the administrative centre of Gagauzia. Annex 3 to this Law lists the towns and villages belonging to the autonomous territorial unit of Gagauzia. Its territory is also split into three counties.

15. A reading of the text does not reveal any obvious contradictions with current legislation on Gagauzia. However, it should be noted that the new Law empowers the Moldovan Parliament to vote to change the administrative boundaries of the regions, whereas the Legal Code of Gagauzia assigns the People's Assembly of Gagauzia the task of holding referendums on such matters and validating the results (Art. 8 paras. 7-9).

16. Broadly speaking, some of the provisions of the Law on Administrative and Territorial Organisation in the Republic of Moldova are not sufficiently clear. In particular, Articles 18 and 19 stipulate that the Moldovan Parliament is responsible for changing the status of a given administrative entity, on a motion from the Government and the local authorities and "*after consulting the citizens*"². Nevertheless, the law does not go into detail on the procedure for the said consultation.

¹ The same approach is adopted in Article 4 para. 3, which apparently refers to Transnistria in the following terms: "a number of areas on the left bank of the Dniestr".

² It is interesting to note here that the legislation in force when the law in question was adopted provided for consulting the population concerned before any move to change any region's administrative boundaries (Rules on matters relating to the territorial and administrative organisation of the Republic of Moldova, enforced under Law 741-XIII of 20 February 1996).

17. The Commission has been apprised that the ethnic Bulgarian minority in the Tarakliya region are currently at loggerheads with the Moldovan central authorities over the provisions of this Law. The minority in question reportedly objects that the Law on Administrative and Territorial Organisation has changed administrative borders in such a way as to integrate the Tarakliya region into a larger administrative unit, thus reducing the proportion of the minority population in the region.

18. This situation might raise problems vis-à-vis the Framework Convention for the Protection of National Minorities (1 February 1995), to which Moldova is a Contracting Party. Article 16 of this Convention lays down that "*the Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention*".

19. Furthermore, when acceding to the Council of Europe Moldova agreed to base its policy on minorities on the principles set out in Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe. Article 11 of the draft Protocol appended to this recommendation provides that "*in the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state*". In interpreting this provision, the Commission has pointed out that it is "*necessary for States to take into account the presence of one or more minorities on their soil when dividing the territory into political or administrative sub-divisions as well as into electoral constituencies*" [Opinion on the interpretation of Article 11 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, CDL-INF (96) 4].

20. Even though it is difficult to imagine the practical consequences of enforcing the Law in question, it is beyond doubt that the manner in which its provisions are interpreted and applied could greatly affect the rights of persons belonging to minorities. Consequently, it is vital that the Moldovan authorities ensure that the rights secured for persons belonging to the ethnic Bulgarian minority under the Framework Convention and the principles of Recommendation 1201 are fully respected and not jeopardised by the implementation of the provisions of the Law in question.
