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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

LAW
ON MODIFICATION AND ADDITION
TO THE CONSTITUTION
OF THE REPUBLIC OF MOLDOVA

Comments by:

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Comments on the Draft Law

*“On changes and amendments to the Constitution
of the Republic of Moldova”*

The following comments concern the proposal submitted to the national parliament on November the 6th 2001.

1. The proposed changes and amendments concern constitutional provisions on the status of the autonomous territory of Gagauzia. It is not entirely clear whether amendments to the organic law on the Special Legal Status of Gagauzia from 1994 are also intended. If so, these amendments should be examined together with the proposed changes and amendments to the Constitution.
2. According to the proposed Art. 73, the Popular Assembly of Gagauzia would be granted the right to legislative initiatives. The scope of this initiative is not regulated although, obviously, this initiative is not intended to cover the whole field of national legislation.
3. Articles 110(1), 111(2), 111-1(4) and 111-1(6) refer “special organic laws” which apparently would constitute a new hierarchical level between the Constitution and “ordinary” organic laws in the legal order of Moldova. If such a new hierarchical level is introduced, provisions on it should also be added to Chapter Three, Section Three of the Constitution: to Art. 72 (Classification of Laws) and Art. 74 (the Passing of Laws and Resolutions). The hierarchy of norms should be as clear as possible.
4. The requirement of clarity also concerns the respective scope of the various types of regulation applicable in Gagauzia. In addition to laws adopted by the Moldovan parliament, these include the Legal Code of Gagauzia, as well as other legal acts

(laws) adopted by the Popular Assembly of Gagauzia. At present, it is unclear, e.g., to which extent the legislative competence of the Popular Assembly in the fields enumerated in Art. 12(2-3) of the organic law on the special legal status of Gagauzia is of exclusive nature. The Constitution does not at present even involve any explicit provision on the legislative power of the Popular Assembly of Gagauzia.

5. According to the proposed 111(1) of the Constitution, “the territorial autonomies have representative and executive bodies according to the law”. The term “representative” could be replaced by “legislative”. In addition, even Chapter Three Section Three should include a provision on the legislative powers of the Popular Assembly of Gagauzia and, possibly, even a reference to legislative powers to be exercised by other autonomous territorial entities.
6. The expression “according to the law” gives way to the interpretation that for example the powers of the Gagauzian self-governing bodies could be regulated even through other laws than the (special) organic law.
7. The proposed Art. 111(3) is excessively vague and could be interpreted as conveying to the Government almost unlimited controlling powers. In addition, the emphasis in the control of legality with respect to autonomous entities should not lie in the Government but in the Constitutional Court. The expression “within the law’s framework” can be interpreted as allowing for the introduction of new control mechanisms through ordinary laws.
8. In order to facilitate the control through the Constitutional Court, the appropriate Moldovan authority, such as the Ministry of Justice, should have the power to submit to the Court a legal act adopted by the Popular Assembly of Gagauzia which the authority considers to exceed the powers of the Assembly. At present, the law on the Special Legal Status of Gagauzia only conveys the Popular Assembly of Gagauzia the power to submit to the Constitutional Court legal acts adopted by the legislative or executive authorities of the Republic of Moldova which it considers to infringe the autonomous powers of Gagauzia (Art. 12(3), par. i).
9. The meaning of the expression “within the law’s framework” is unclear even in Art. 111-1(1). The wording can also here be interpreted as allowing for the circumscription of the Gagauzian autonomy through ordinary legislation adopted by the national parliament.

10. According to the proposed Art. 111-1(4), the budgetary process in Gagauzia shall be regulated through the special organic law determining the status of Gagauzia. This is the only issue which Art 111-1 on “the Territorial Autonomy Gagauzia” explicitly requires to be regulated through the special organic law. It is essential for the constitutional protection of the autonomy of Gagauzia that the issues which belong to the exclusive scope of regulation of the special organic law are enumerated in the Constitution.

11. The proposed Art. 111-1(6) contains a provision on the qualified majority required for changes and amendments to the special organic law on Gagauzia. A question in need of further consideration is whether the appropriate location for such a provision is here or in Chapter Three Section Three of the Constitution.

12. In Finland, changes and amendments to the Law on the Autonomy of the Aland Islands require not only a qualified majority in the national parliament but also the consent of the Legislative Assembly of Aland. The constitutional guarantees for the autonomy of Gagauzia would be further enhanced by a corresponding requirement of the consent of the Gagauz Popular Assembly for changes and amendments to the (special) organic law on the Special Legal Status of Gagauzia.

13. During the visit of the delegation of the Venice Commission to Chisinau in February 2002, the representatives of the Gagauz Popular Assembly presented their draft law on constitutional changes. This draft law aims at transforming Moldova into a federative state with the present Republic of Moldova and Gagauzia as its constitutive (and equal) entities. As such, the draft law can be considered an unrealistic basis for any further discussions. Given the various national and ethnic minorities in Moldova, as well as the still unsolved problem of Transnistria, developments in a federative direction in the relations between the Republic of Moldova could also have disruptive effects with regard to the entire state structure of the country.

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