

**Gagauzia
Dialogue**
•••

CMI
MARTTI AHTISAARI
PEACE FOUNDATION



The centre-autonomy institutional arrangements and relationships of the Gagauz Autonomy

Chisinau 2021



The analysis of the centre-autonomy institutional arrangements and relationships of the Gagauz Autonomy has been carried out in the framework of the project “Supporting Inclusive Dialogue and Strengthening Capacities for a Better Functioning Gagauz Autonomy in Moldova” funded by Sweden. The report has been compiled by two experts, Ms. Zdenka Machnyikova and Mr. Ion Beschieru.

The views and opinions expressed in this report belong to their authors and do not represent official positions of Crisis Management Initiative or the Swedish Embassy in Chisinau.

CIP DESCRIPTION OF THE NATIONAL BOOK CHAMBER OF THE REPUBLIC OF MOLDOVA

The centre-autonomy institutional arrangements and relationships of the Gagauz Autonomy / CMI Martti Ahtisaari Peace Foundation, Gagauzia Dialogue; prepared by Zdenka Machnyikova, Ion Beschieru. – Chişinău: S. n., 2021 (Imprint Plus SRL). – 126 p. : tab.

Bibliogr: p. 109-111. – F. f. de tit. – Published with financial support of Sweden. – 100 ex.

ISBN 978-9975-3433-6-7.

342.54(478)(047)

C 34

EXECUTIVE SUMMARY

This report on the centre-autonomy institutional relationships has been prepared to support the work agenda of the Parliamentary Working Group on Gagauzia of the Moldovan Parliament and People’s Assembly of the ATU Gagauzia (PWG) on improving functioning of the centre-autonomy institutional arrangements. It was developed by international expert Zdenka Machnyikova¹ and national legal expert Ion Beschieru² in the framework of the project “Supporting Inclusive Dialogue and Strengthening Capacities for a Better Functioning Gagauz Autonomy in Moldova” funded by Sweden and implemented by Crisis Management Initiative (CMI) since 2015.

The Parliamentary Working Group on Gagauzia was established by the Moldovan Parliament in November 2015 and is composed of equal numbers of representatives from the Moldovan Parliament and the Gagauzia People’s Assembly. CMI has been providing Good Offices to the PWG since 2015. Throughout the dialogue process facilitated by CMI within the official and particularly the more informal settings, the members of the PWG identified the need for improved or new mechanisms for clarifying the autonomy competencies, and for prevention and resolution of possible disputes arising between the central authorities and the ATU Gagauzia. A comprehensive mapping of current institutional set-up of the autonomy was mandated by

¹ Ms. Zdenka Machnyikova is an expert in international and constitutional law and has worked over the past twenty-five years with international organizations, governments and other principal actors, on political negotiations, including peace-settlements, constitutional and legislative reforms, as well as institutional and administrative arrangements in numerous countries, including Georgia, Ukraine, Baltic states, Bosnia and Herzegovina, Kosovo, Cyprus, Sri Lanka, Iraq.

² Mr. Ion Beschieru is an expert on local government reforms and decentralisation and has worked for the national association of local authorities from Moldova (CALM) and several international organisations, managing among others a Council of Europe regional program on local governance in Eastern Partnership countries. He is also an expert in the Group of Independent Experts of the Council of Europe on the European Charter on Local Self-Government.

the Parliamentary Working Group on Gagauzia Autonomy as part of support to the PWG activities in 2018 (in the Roadmap adopted by Decision 12 of the PWG in 2017) and requested from CMI.

The main objective of this background report is to map the overall institutional set-up in the context of the implementation of the autonomy arrangement, the functionality of existing instruments, mechanisms and procedures and to look at the opportunities to improve and utilize the established functions of these instruments, as well to look at new institutional development, where required. The report provides a reference resource and a comprehensive baseline for the PWG, and other relevant stakeholders, institutions, policy makers, as well as international donor agencies, civil society and other actors interested on Gagauzia Autonomy issues.

Content of the report: The analysis examines the institutional system of centre-autonomy relations as a whole, trying to avoid a piecemeal approach to suggesting new mechanisms or procedures without a thorough examination of the effectiveness of the existing arrangements and their mutual relationships. The report provides analysis of the following areas of centre-autonomy institutional arrangements:

1. Participation of the autonomy in the national decision-making process (Moldovan Government and Parliament);
2. Autonomy's self-governing bodies and relations with central authorities;
3. State oversight and dispute resolution mechanisms;
4. Mechanisms for centre-autonomy dialogue.

The chapters provide thorough analysis of the legal framework and existing practice. Importantly, each sphere signposts sectors for consideration of the PWG and relevant authorities for possible improvement of the existing institutional arrangements and more specifically includes recommendations for the development of new institutional mechanisms.

FINDINGS AND RECOMENDATIONS

Analysis of the current system of institutional interrelations between the central authority of the state and the ATU Gagauzia shows that the institutional structure offers the necessary basic features for the functioning of the autonomy within the state political structure. The complex legal framework and relatively weak entrenchment of the autonomy status requires high level engagement of the ATU Gagauzia in the national legislative and decision-making processes to further the implementation of autonomy competencies foreseen for the territorial unit. In this regard, improving institutional relationships and mechanisms requires the special focus of the central and the autonomy authorities.

The analysis identified several areas for capacity-building and for ensuring effectiveness of the existing arrangements, and points to further institutional development in managing better the interrelations between the central government and the autonomy. There is a need for continuous support and broadening of the confidence-building measures between the central and autonomy authorities. Cooperative dialogue requires an understanding of autonomy functioning within the state and how the institutional mechanisms need to adhere to and reflect this general principle. From this perspective, capacities and improved understanding of how an asymmetrical model of self-governance can work within the state are important components of the necessary confidence building measures.

Another element required for successful and progressive dialogue lies with improving the capacities of ATU Gagauzia itself. A clear vision on the priorities for the autonomy and demonstrated capacity to deliver on governance over devolved matters is important for sustainable and credible dialogue. In this respect, the analysis lays the groundwork for future discussion, and creates a foundation for building sustainable and credible solutions to address the legal framework and institutional system of relations towards effective functioning of the autonomy within Moldovan state governance.

Key considerations/recommendations in the area of centre-autonomy relations:

- ❖ **Participation of the autonomy in the national decision-making processes:** The autonomy has several instruments for participation and representation of the autonomy's needs and interests at the national level. Principally, they include ex-officio membership of the Governor in the Government and the right of People's Assembly to initiate national laws. However, the effective functioning of these instruments should be better secured procedurally and through capacity-building measures such as:
 - Enhancing the capacities of the Governor's office for participation in government-decision making through strengthening the capacities of the Governor's office at the central level and ensuring procedures for early consultations in the development of laws and policies that affect the autonomy;
 - Reconsidering functioning of the ministerial collegiums as a vehicle for participation at the central executive level and finding an effective format of participation in national policy development affecting the autonomy;
 - Obligatory consultations with the autonomy authorities on the legislative initiatives submitted in the Parliament affecting the autonomy; and enhancing the autonomy's capacities for efficient submission of legislative proposals.

- ❖ **Autonomy's self-governing bodies and relations with central authorities:** Relations between the central authorities and the autonomy regarding the exercise of autonomy powers and competencies are largely impacted by the lack of a detailed clarification of competencies between the central authorities and the autonomy's legislative and executive bodies. Given the current legal framework for local legislation-making, and the subsequent central oversight of this legislation through administrative control and judicial review, the autonomy's ability to exercise its legislative powers is limited. Moreover, the implementation of administrative competencies of the autonomy's executive authorities requires effective

contact with the central level ministries. The following measures should be considered:

- Improving co-ordination and establishing regular communication channels between the Executive Committee and relevant Ministries. In this regard specific working groups could provide a practical means to resolving specific issues concerning the competencies.
- ❖ **Centre-autonomy dialogue and dispute resolution mechanisms.** The effective functioning of the autonomy arrangement requires further implementation, including through legislative measures. From this perspective a bilateral dialogue process on several levels could address pertinent issues connected with effective implementation of the autonomy governance. The following measures should be considered:
- **Parliamentary dialogue** – the Parliamentary Working Group: Enhancing capacities and procedural framework of the work of the PWG towards building political consensus around joint proposals;
 - **Governmental mechanism on clarification of competencies** Establishing a mechanism dedicated to the clarification of competencies at the executive level, where policies are developed, could provide an effective channel for discussion on clarification of the autonomy’s governance responsibilities, and coordination of policies in the field of shared competencies;
 - **Problem solving preventive mechanism:** In addition to the formal option of the Governor raising issues at the meetings of the Government, establishing a high-level preventive dispute resolution mechanism or a bilateral channel with a trigger procedure might provide an effective channel for resolving disputes.

A more detailed list of findings and recommendations is presented in the Table “Summary of spheres of centre-autonomy institutional arrangements for consideration of the Parliamentary Working Group” in the Annex to this report.

A background report prepared to support
the work of the Parliamentary Working Group on Gagauzia



CONTENTS

EXECUTIVE SUMMARY.....	3
ABBREVIATIONS.....	11
GLOSSARY.....	12
1. Introduction.....	16
1.1 Background.....	17
1.2 Objectives.....	18
1.3 Content.....	20
1.4 Methodology.....	20
2. General introduction to the ATU Gagauzia.....	23
2.1 Political structure and territorial organisation of Moldova.....	25
2.2 Autonomy self-governance institutions and devolved competencies.....	26
2.3 Participation of the autonomy in decision-making at the national level.....	27
2.4 The autonomy's economy and fiscal relations with the centre.....	28
2.5 Legal framework and implementation of autonomy status.....	29
3. Participation of the autonomy in the national decision-making process.....	32
3.1 The Governmental decision-making process.....	35
3.1.1 The Governor of the autonomy is a member of the Government.....	35
3.1.2 Provision of legal opinions (avis) on draft normative acts.....	37
3.1.3 Ministerial collegiums, ministerial working groups on legislation and ad hoc working groups addressing specific issues concerning autonomy.....	38
3.1.4 Conclusions.....	39
3.1.5 Potential areas for further discussion by the Parliamentary Working Group.....	41
3.2 The Parliamentary legislative process.....	42
3.2.1 Representation in the Parliament.....	45
3.2.2 Legislative initiative of People's Assembly.....	46
3.2.3 Legal opinions (avis) on draft legislation and consultations with the People's Assembly.....	50

3.2.4 Language of submission of draft laws	51
3.2.5 Conclusions.....	52
3.2.6 Potential areas for further discussion by the Parliamentary Working Group.....	54
4. Autonomy’s self-governing bodies and relations with central authorities.....	56
4.1 The People’s Assembly (Halk Toplushu).....	59
4.1.1 Exercise of autonomy powers to adopt local laws	59
4.1.2 Legislative procedures for the adoption of autonomy laws	62
4.2 The Executive Committee of ATU Gagauzia and relationships with central level.....	62
4.2.1 Public employment and remuneration policies	63
4.2.2 Fiscal relations	65
4.2.3 Relations between the Executive Committee and deconcentrated public administration structures	67
4.3 Conclusions.....	68
4.4 Potential areas for further discussion by the Parliamentary Working Group.....	69
4.4.1 People’s Assembly and autonomy legislation.....	69
4.4.2 Executive Committee.....	70
5. State oversight and dispute resolution mechanisms between the centre and the autonomy.....	71
5.1 Centre-autonomy dispute resolution by the Constitutional Court	74
5.2 State oversight and resolution of disputes concerning normative acts of the autonomy.....	77
5.2.1 Current practice of state administrative control and judicial review	79
5.3 Alternative or extra-judicial dispute resolution in the context of the ATU Gagauzia.....	83
5.4 Conclusions.....	84
5.5 Potential areas for further discussion by the Parliamentary Working Group	85
5.5.1 Constitutional Court dispute resolution	85
5.5.2 State oversight and resolution of disputes concerning normative acts of the autonomy.....	86
5.5.3 Extra-judicial dispute resolution	87

6. Mechanisms for centre-autonomy dialogue	88
6.1 Introduction to centre-autonomy dialogue mechanisms.....	89
6.2 Centre-autonomy dialogue created for the implementation of the 1994 Law.....	90
6.2.1 Joint dialogue mechanisms between the Moldovan central authorities and the Gagauz autonomy	92
6.2.2 Existing dialogue mechanisms – the Parliamentary Working Group on Gagauzia	92
6.2.3 Legislative activity pursued by the Parliamentary Working Group on Gagauzia	94
6.2.4 Organisation and structure of the Working Group's Dialogue Mechanism	95
6.3 Conclusions.....	100
6.4 Potential areas for further discussion by the Parliamentary Working Group	102
6.4.1 Parliamentary dialogue.....	102
6.4.2 Executive level mechanisms for clarification of competencies.....	103
6.4.3 Problem solving preventive mechanisms	103
7. Conclusions	104
8. Bibliography.....	108
9. Annex: Summary of areas of centre-autonomy institutional arrangements for consideration of the Parliamentary Working Group.....	112



ABBREVIATIONS

Art.	Article
ATU	Autonomous Territorial Unit
CMI	Crisis Management Initiative
EU	European Union
JMC	Joint Ministerial Committee (a consultative body between the UK Government and devolved administrations in Scotland, Wales and Northern Ireland)
LPA	Local Public Administration
MoU	Memorandum of Understanding
MP	Member of Parliament
NUTS	Nomenclature of Units for Territorial Statistics
PAG	People’s Assembly of ATU Gagauzia; also known as ‘Halk Toplushu’
PWG	Parliamentary Working Group on Gagauzia ³
VAT	Value Added Tax
1994 Law, Law 344/1994	Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995

³ The official title of the Parliamentary Working Group on Gagauzia is the “Working group for ensuring, within the constitutional norms, the functionality of the autonomous territorial unit of Gagauzia and of the legislative provisions of the Republic of Moldova in relation to the special status of ATU Gagauzia”.

GLOSSARY

Decentralisation The transfer of authority and responsibility for public functions from the central government to subordinate government agencies placed in the administrative territories or to self-governing territorial units (e.g. regions and municipalities) or the private sector. There are three major forms of administrative decentralisation: deconcentration, delegation and devolution.

Deconcentration and deconcentrated public services Specialized institutions of the central public administration in the territory subordinated to ministries and other central public authorities. Unlike devolution, where competences are transferred to self-governing territorial units, in the case of deconcentration, the administrative competencies are transferred from ministries and other central public authorities to their own institutions located in the territory.

Delegation Shifts responsibilities for decision-making and administration of public functions to semi-autonomous organisations not wholly controlled by the central government, but ultimately accountable to it (e.g. state forestry company).

Devolution Devolution is the statutory delegation of powers from the central government of a sovereign state to authorities at a subnational level, such as a regional or local level. Devolved territories usually have the power to make legislation relevant to the area and exercise authority over the territory, thus granting them a higher level of autonomy.

Delineation/ clarification of competencies

The process of distributing powers (competencies) between a state (central level authorities) and sub-national territorial units/autonomies and their corresponding legal entrenchment. A combination of various legal techniques of exclusive, reserved and residual powers is usually used.

The “clarification of competencies” is sometimes preferred term by various stakeholders from Chisinau and Comrat implying that the delineation of competences already happened in Constitution and 1994 Law and only more nuanced and more detailed legal entrenchment and proper horizontal and vertical harmonisation in the national and autonomy legislation is needed. Within this report “clarification of competencies” is mostly used for the current process of specifying ATU Gagauzia competencies in greater detail. The delineation of competences is used in the report as a term for general distribution of powers.

Entrenchment of the Special Status of the autonomy

The constitutional, legal and procedural guarantees of an autonomy’s special status. In specialized literature several forms of entrenchment are distinguished, among which the general entrenchment - explicit regulation of the autonomy status in the national constitutions, special entrenchment - special rules for the amendment of the autonomy provisions that makes the process of the amendment of the statute more difficult, regional entrenchment - that means that a separate regional reaction through the representative assembly of the sub-state entity or through a regional referendum is envisaged whenever the legislation concerning the autonomous region arrangement is being amended. For more on the types of autonomy arrangement’s entrenchment see Suksi Markku, *Autonomy: Applications and Implications*, Martinus Nijhoff Publishers, The Hague: 1998, pgs. 50-52.

Harmonisation of legislation

This includes (1) the consolidation of legislation, encompassing the implementation of the special status of the ATU Gagauzia through its reflection in national legislation, and (2) responding to the problem of discrepancies between local legislation adopted by the People’s Assembly and national laws. In the previous work of the Working Group, this process was referred to under the general term of ‘harmonisation of legislation’. However, the two goals should be distinguished, as the first is tied to reflecting the special status of the autonomy in national legislation, and the second is related to the lack of specific division of competencies between the central authorities and the autonomy.

Local law or legislation

Normative acts adopted by the People’s Assembly of ATU Gagauzia applicable on the territory of the autonomous region, as provided by Article 12 of the 1994 Law.

Normative act

A notion used in the text to encompass laws and implementing legislation.⁴

Organic laws

A category of laws foreseen by the Constitution of the Republic of Moldova (Article 72) that are situated, according to their legal force, below constitutional laws and above ordinary ones. Organic laws can be adopted in specific fields foreseen by the Constitution and have a special procedure for adoption compared to ordinary laws (implies more readings, higher number of votes – majority of all elected MPs). There is a special procedure for amending the organic law on special status of the autonomy requiring the vote of 3/5 of all elected MPs.

⁴ National legislation defines normative acts in detail in the Law on normative acts No. 100 from 22.12.2017// Official journal No. 7-17 from 12.01.2018, as “a legal act adopted, approved or issued by a public authority, which has a public, binding, general and impersonal character and which establishes, modifies or repeals legal norms governing the formation, modification or termination of legal relations and which are applicable to an indefinite number of identical situations”.

Primary legislation	The legislation passed by a legislative body of a state (in the international comparative state practice this is sometimes transferred to territorial autonomies or federal units).
Secondary legislation	Subordinate normative acts made for the implementation of the primary legislation (acts usually issued by the executive branch or by territorial units within the boundaries laid down by primary legislation).
Subsidiarity principle	Public responsibilities shall generally be exercised by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
Territorial autonomy	Territorial autonomy is a defined geographical territory that, in relation to the majority of other subnational territories, enjoys a special status including some legislative powers, within the state, but does not constitute a federal unit, or an independent state (Pär M. Olausson, 2007).



Introduction



1.1 Background

The Gagauzia Parliamentary Working Group was formed by the Moldovan Parliament in November 2015 and is composed of equal numbers of representatives from the Moldovan Parliament and the People's Assembly of Gagauzia. CMI provides Good Offices for the functioning of the PWG as part of a project delivered by CMI and funded by Sweden. The report is funded within the framework of the project.

This report has been prepared by International and Moldovan legal experts for the Parliamentary Working Group on Gagauzia to support the activities of the 2018 Working Group Road Map, adopted by Decision No. 12 of the WG in 2017.

By providing comprehensive information about the institutional arrangements governing the current relationship between the centre and the Gagauz autonomy, the report provides a baseline for future work of the PWG based on its Road Map's goal: *Improving the capacity and effectiveness of procedural and institutional frameworks for functioning of the autonomy and strengthening of relations with the Centre.*

The information is organized into a mapping and analysis of each relevant aspect of the centre-autonomy institutional arrangements, and signposts potential areas for further discussion by the PWG. In particular, the report explores specific possibilities for the creation of different mechanisms for clarifying competencies and for preventing and resolving potential issues arising with regard to centre-autonomy relations.⁵

⁵ See the mandate of the PWG in Parliament decision No. 206 from 20.11.2015, Article 4; and more specifically the Decision of the PWG No. 12 from 13.12.2017, outlining the tasks of the PWG: "Improving the capacity and effectiveness of procedural and institutional frameworks for functioning of the autonomy and strengthening of relations with the central authorities:

- Development of a concept of a mechanism for harmonizing the legislation and delineation of competencies;
- Considering a possibility for establishment of a permanent mechanism for consultations in order to prevent and resolve possible difficulties in relations between central authorities and ATU Gagauzia."

1.2 Objectives

The primary objective of this report is to provide a background to inform and contribute to the PWG's discussions on specific institutional development and improvements to the current institutional arrangements and practices regarding centre-autonomy relationships.

Another aim of the report is to provide a reference resource for all stakeholders in centre-autonomy relations, including international donors, civil society and others interested in the issues at hand and to inform productive interactions based on a common understanding of the issues and possible opportunities to find potential solutions. A shared level of awareness and understanding is vital to generate substantive discussion on the issues with regard to both existing problems and to generate the systemic changes required for improved relationships and better functioning of the autonomy.

Therefore, the main goal of this background report is to map the overall institutional set-up in the context of the implementation of the autonomy arrangement, the functionality of the existing mechanisms and procedures and to look at the opportunities to improve their functions, as well as to look at new institutional development, where required.

The analysis also follows specific objectives tied to the issues that the dialogue has been trying to address. These include the consolidation of legislation, encompassing implementation of the special status of the ATU Gagauzia through its reflection in national legislation and responding to the problem of discrepancies between the local legislation adopted by the People's Assembly of Gagauzia and national laws. In the previous work of the PWG, this process has been referred to under the general term of 'harmonisation of legislation'. However, the two goals should be distinguished, as the first is tied to reflecting the special status of the autonomy in the national

legislation⁶, and the second is related to the lack of specific division of competencies between the central authorities and the autonomy.⁷

The work and the process pursued by the PWG to address these two streams of legislative issues demonstrated that a systematic and systemic approach is required. The final objective of this background report is to inform the discussion of the PWG on the development of mechanisms that could systematically address clarification of competencies and offer a space for continuous dialogue. The above issues cannot be tackled alone by new institutional mechanisms. They need to be addressed within the wider framework of existing instruments including the autonomy's participation in national level decision-making, state oversight, dispute resolution and the centre-autonomy dialogue process.

Several studies of centre-autonomy relations have been made in the past to address specific issues (see the Bibliography). These studies provided an important resource for this report. The report covers comprehensively all legal and institutional instruments and mechanisms of centre-autonomy relationship, as there is a need to use such an analysis to lay the groundwork for future discussions, and create a stable, agreed-upon foundation for sustainable and credible solutions to address the legal framework and institutional set-ups for the autonomy arrangement. This analysis therefore attempts to examine the system as a whole, trying to avoid a piecemeal approach to suggesting new mechanisms or procedures without a thorough examination of the effectiveness of the existing arrangements and their mutual relationships.

⁶ The legislative framework governing the autonomy arrangements is complex. It is governed by the 1994 Law that sets out the features of the autonomy's functioning and arrangements and by the later introduced constitutional entrenchment of the principles governing the autonomy. Moreover, the autonomy's functioning is affected by numerous national laws impacting and regulating the systems that apply to the autonomy, where the special status of the autonomy has not been fully expressed or consolidated. This means that the autonomy's legal framework needs to address these inconsistencies and ensure a certain coherence of the autonomy regime and of the centre-autonomy relations.

⁷ The competencies of the autonomy in specific spheres are all shared with central level and only broad spheres, such as education, health, culture, environment, etc. have been noted in the autonomy act. The lack of specification of competencies affects the functioning of the People's Assembly of ATU Gagauzia, where the lack of clear boundaries of its competencies results in situation where the legislative regulation of the autonomy is perceived as overstepping national legislation and is being cancelled in the general courts through the lawfulness control of local legislation.

1.3 Content

The substantive content covers the following areas:

Participation of the autonomy in the national decision-making process

This chapter outlines the extent and methods of the autonomy's participation in the decision-making processes of Moldovan Government and Parliament, including the national legislation-making.

Autonomy's self-governing bodies and relations with central authorities

This chapter examines the autonomy's self-governing bodies, the extent of their powers and functions exercised from the perspective of their relations with the central level.

State oversight and dispute resolution mechanisms

This chapter looks at the state oversight and the existing dispute resolution mechanisms.

Mechanisms for centre-autonomy dialogue

This chapter explores the existing centre-autonomy dialogue and reflects on potential dialogue mechanisms necessary for implementing the autonomy arrangements.

1.4 Methodology

This background report was prepared by one international and one Moldovan legal expert, with contributions from the Legal Expert Group supporting the Parliamentary Working Group on Gagauzia. The analysis and the conclusions are presented within the context of the mandate and work of the PWG on Gagauzia on possibilities of introducing new mechanisms for clarifying the autonomy competencies, and to prevent and resolve possible disputes arising between the central authorities and the ATU Gagauzia.⁸

⁸ See Parliament decision No. 206 from 20.11.2015, Article 4; and the Decision of the PWG No. 12, 13.12.2017, point 2.

The reasons for undertaking a comprehensive analysis of centre-autonomy relations are two-fold. Firstly, the autonomy regime and its effective functioning within the state structure requires certain level of coherence of the principles applied to asymmetrical models of self-governance within the political structure of a state. Therefore, institutional development concerning the organisation of centre-autonomy relations should avoid a piecemeal approach to providing solutions to the existing problems facing the functioning of the autonomy within Moldovan state system. Secondly, a broader objective of the PWG is to develop recommendations for improving co-operation between central authorities and ATU Gagauzia considering good European comparative practices. In this respect, the study shows the autonomy's unique set up and highlights how the current centre-autonomy arrangement operates within the existing legal framework, how it works in practice considering the reality of the political context and capacities of the relevant institutions, and how this can be addressed for more effective functioning of the autonomy within Moldovan state structure.

The analytical process and signposting of areas for further consideration by the PWG has included a comprehensive consultative process aimed at gaining a wider range of perspectives and crosscutting insights about the institutional set-ups, inter-relations and procedures tied to the functioning of the autonomy. Importantly, this also served as a vital consultative process for clarifying views on the specific areas of institutional relations and mutually informing and raising awareness among the key stakeholders about the possible opportunities, obstacles and the desired changes in approaching the institutional set-ups. In this regard, several workshops, and joint, as well as individual consultations were organized with representatives of the Gagauz authorities, the Executive Committee and the Peoples' Assembly of ATU Gagauzia, as well as the central authorities of the Republic of Moldova including line ministries, the State Chancellery, deconcentrated services in the ATU Gagauzia, the Parliament's Secretariat, and non-governmental stakeholders both from Comrat and Chisinau. Individual consultations were also held with interested international organisations and development agencies present in Moldova and involved in political and socio-economic issues, and the development of the autonomous region.

The European comparative perspective was important for an understanding of the needs of the central authorities and the autonomy in terms of institutional development, whether capacity-building measures, effective functioning of existing mechanisms or the creation of new ones. In this regard, a study trip was organized for representative of the Moldovan Government and the Executive Committee of the ATU Gagauzia to the South Tyrol autonomy and to Eurac Research, an institute specializing in autonomy comparative research. Eurac Research has also provided a peer review of the current report.

Reflecting the objectives of the analysis, the experts have largely adopted a legal approach to researching the subject trying to lay down a solid description of the existing legal framework, at the same time reflecting the political nature and context within which the report's subject is placed. The research builds mainly on legal analysis, political science and, where relevant, uses comparative perspective in order to identify approaches and instruments to address the legal and institutional development of the Gagauz autonomy regime set-up and the centre-autonomy relations.

This report has mapped and examined the current autonomy arrangement and considered potential solutions for either adjusting the system or coming up with more efficient forms of autonomy participation, centre-autonomy co-ordination and management of the relationship. Some of the recommendations are directed specifically at the autonomy authorities, but most require joint co-operation for their implementation. The aim of this analysis is to signpost opportunities to develop the institutional capacities needed to effectively carry out these functions, to highlight the opportunities and to insert procedures that might allow for more efficient autonomy participation and the co-operation needed for the effective functioning of the autonomy in the state system. In addition, the analysis is intended to create an information base for better understanding of the autonomy system in Moldova. This is the first step towards providing a baseline to inform the existing attitudes and general culture surrounding centre-autonomy relations and provide a path towards a more co-ordinated and co-operation-focused approach. This is needed to ensure better governance of the autonomy, as well as, to find its unique place within the Moldovan territorial administrative structure.

2

General introduction to the ATU Gagauzia



The autonomous region⁹ was established in the early 1990s after the establishment of the Moldovan state to safeguard the rights of the Gagauz population living on its territory. In 1994, after intense negotiations, the Moldovan Parliament passed the Law on the Special Legal Status of Gagauzia¹⁰ referred to in this report as the ‘1994 Law’, that established the autonomy as an integral part of the Republic of Moldova. This Law can be changed and amended only through a special procedure, with the vote of three-fifths of the elected members of Parliament. Unlike some comparative examples,¹¹ the consent of the autonomy is not needed to amend the law. In 2003, the autonomy arrangement obtained a constitutional guarantee following an amendment of Article 111 of the supreme law. According to Article 111, paragraph 1, “Gagauzia is an autonomous territorial unit with a special status and representing a form of self-determination of the Gagauzian people, which constitutes an integrant and inalienable part of the Republic of Moldova and shall solve independently, within the limits of its competence, pursuant to the provisions of the Constitution of the Republic of Moldova, in the interest of the whole society, the political, economic and cultural issues”.

⁹ ATU Gagauzia is located in the south-eastern part of Moldova, with a total area of 1832 km² and a population of 134535 inhabitants, out of which Gagauz (83.8%), Bulgarians (4.9%), Moldovans (4.7%), Russians (3.2%), Ukrainians (2.5%), others (0.9%) (2014 census). The 1994 Law defines that the official languages within the territory of the autonomy are Moldovan, Gagauz and Russian. According to the 2014 census, 80% of the population declared the Gagauz language as their mother tongue, around 10% Russian and only less than 4% Moldovan. In practice, Russian is the predominant language used in the autonomy’s administration, education system and other social spheres. In an attempt to increase the status and use of the Gagauz language, in 2018 the People’s Assembly adopted a local law meant to increase the usage and study of Gagauz language. In schools, the education process is organized predominantly with Russian as the language of instruction and Gagauz and the Romanian taught as a subject.

¹⁰ Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

¹¹ The Åland Islands and Danish home rule territories for example. Autonomy Act of 1991 ensures Åland’s constitutionally guaranteed autonomy, which can only be amended by a two-third majority of both the Åland and Finnish Parliaments; it cannot be unilaterally altered or revoked. The Acts concerning Home Rule on the Faroe Islands and Greenland are no longer to be classified as pieces of ordinary Danish legislation, but must be regarded as ‘Constitutional Laws’ on a level superior to ordinary Parliamentary Acts. However, they are at a normative level inferior to the Constitution itself. In this relation, the two Acts could not be unilaterally amended by the Danish legislator, such amendments would require negotiations and agreement between the parties involved, followed by a regional referendum confirming the amendment. For more information see the International Journal on Minority and Group Rights 20(2013) Brill, Leiden, 2013, Suksi, Markku: Explaining the Robustness and Longevity of the Åland Example in Comparison with other Autonomy Solutions, pgs. 56-65.

2.1 Political structure and territorial organisation of Moldova

When it comes to the political structure, Moldova is a unitary state with two-level local public administration system (districts and municipalities) and with a relatively centralized system of public administration. The asymmetrical structure has been a phenomenon within the current structure and the autonomy has been until recently included among the units of local administration at the level of districts in the relevant national laws, thus not fully reflecting the special devolved autonomy competencies.¹² In 2020, amendments to the Law on local public administration, on administrative decentralisation and on territorial organisation of the country assigned to the territorial unit of Gagauzia, a special administrative level¹³. Also, the country's administrative-territorial reform that is under consideration could lead to the merging of the current 32 districts into several administrative regions. As there might be a new regional structure, the special status of the autonomous region has to be considered and taken into account in forming relations with the central authorities in this new system.

The territory of the autonomy and its population are organised around the following constituting factors prescribed in 1994 Law. Article 5 of this law stipulates that the ATU Gagauzia includes all municipalities where the Gagauz population constitutes over 50% of the population. Localities where the Gagauz ethnicity constitutes less than 50% of the population may be included in the autonomy on the basis of the freely expressed will of a majority of the electorate, revealed during a local referendum conducted on the initiative of no less than one-third of the electorate. Localities included in the autonomy also have the right to secede from Gagauzia as a result of a local referendum, conducted at the initiative of at least one-third of the electorate, but not until a minimum of 12 months has passed following its initial inclusion in the autonomy.

¹² See former Article 1 of Law on local public administration No. 436 from 28.12.2018 // Official Journal No. 32-35 from 09.03.2007.

¹³ Law No. 270 from 16.12.2020 for amending and supplementing some legislative acts (Law No. 436/2006 on local public administration - Articles 1, 2, 5; Law No. 435/2006 on administrative decentralisation - Article 4) // Official Journal No. 353-357 from 22.12.2020 and Law No. 272 from 16.12.2020 for the amendment of the Law No. 764/2001 on territorial-administrative organisation of Moldova // Official Journal No. 353-357 from 22.12.2020.

2.2 Autonomy self-governance institutions and devolved competencies

Gagauzia's representative authority is the **People's Assembly**¹⁴, which is directly elected for a four-year term based on a majoritarian electoral system, with electoral districts established for each municipality of the autonomy¹⁵. The assembly is endowed with the right to adopt local laws in the field of science, education, culture, communal services, housing, urban planning, health protection, sport, budgetary and taxation issues, economy and environment, labour relations and social security.¹⁶ These competencies are shared with the central level without particular specification of autonomy powers in these fields. Further, the People's Assembly's competencies include decisions on the territorial organisation of Gagauzia, participation in the promotion of internal and external policy of the Republic of Moldova on issues that concern the autonomy, setting rules on local governments' organisation, calling and organizing People's Assembly's and municipal elections, local referendums. They also adopt regulations on symbols of Gagauzia. The People's Assembly also has the right of legislative initiative in the national Parliament and if legal acts of the central authorities infringe upon the competencies of Gagauzia, the assembly is entitled to appeal to the Constitutional Court.¹⁷

¹⁴ Article 111, paragraph 3 of the Constitution of the Republic of Moldova from 29.07.1994 // Official Journal No. 1 from 12.08.1994; Article 7 of Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

¹⁵ Article 27 of the Election Code of ATU Gagauzia, No. 60-XXVII/V from 31.07.2015.

¹⁶ The Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995, Article 12, paragraph 2: "People's Assembly shall adopt laws in the field of: a. science, culture, education; b. housing management and urban planning; c. health services, physical culture and sports; d. local budget, financial and taxation activities; e. economy and ecology; f. labour relations and social security."

¹⁷ Ibid, Article 12, paragraph 3: "The competence of the People's Assembly shall also include: a. solution in a legal manner of questions of the territorial organisation of Gagauzia, the establishment and modification of the categories of localities, the borders of the districts, towns and villages, and their naming; b. participation in the implementation of the internal and external policy of the Republic of Moldova connected with the interests of Gagauzia; c. setting rules for the organisation and activity of local public administrative authorities of Gagauzia and of civic associations, with the exception of parties and other voluntary political organisations; d. setting, organising and conducting elections of deputies for the People's Assembly and approving the composition of the Central Election Committee for carrying out the elections; setting election date for local public authorities of Gagauzia; e. conducting local referendums concerning questions that are within the competence of Gagauzia; f. adoption of regulations on the symbols of Gagauzia; g. establishing of titles of honour and awarding of decorations; h. examination of the issue and initiation of a proposal to the Parliament of the Republic of Moldova concerning the declaration of a state of emergency on the territory of Gagauzia and the introduction under such circumstances of a special form of administration in order to ensure the protection and security of the inhabitants of Gagauzia; i. the right to appeal in a manner fixed by law to the Constitutional Court of the Republic of Moldova concerning the voiding of enactments by the legislative and executive authorities of the Republic of Moldova if they infringe on the powers of Gagauzia."



The head of the autonomy is the **Governor** (Bashkan), directly elected by the population of the Gagauz Yeri for a 4-year term. The Governor is the highest official in Gagauzia and oversees all the public administrative bodies of the autonomy.¹⁸ Permanent executive power in Gagauzia is exercised by a collective body, the **Executive Committee**. Its members are appointed by the People's Assembly at its first session following elections, at the proposal of the Governor, who also heads the Executive Committee.

The Executive Committee has responsibilities tied to elaboration and implementation of policies in the fields of devolved autonomy competencies. It also has the right to initiate legislation in the People's Assembly and has an important role in delivering public services (directly or through subordinated autonomy institutions) to the population of the region, both in the area of its own competences, and those shared with the centre.

2.3 Participation of the autonomy in decision-making at the national level

A particular feature of the Gagauz autonomy is the participation and membership of Gagauz officials in the Moldovan Government. In this regard, the Governor of Gagauzia is appointed by a decree of the President of Moldova as an ex-officio member of the national Government. In addition, the members of Gagauzia's Executive Committee are appointed as members of the collegiums of the corresponding ministries at the proposal of the autonomy's Governor. Compared to other autonomy arrangements, where autonomy representatives are invited to Government meetings only if the issue discussed concerns the autonomy¹⁹, Gagauzia has a strong presence of autonomy representatives in the central executive.

¹⁸ Article 14, paragraph 1, Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

¹⁹ During the study trip to South Tyrol autonomy by the Parliamentary Working Group, the Italian practice with regions has been discussed. When it comes to the relations between the executives of regions and national Ministries in Rome, it is up to the Ministries to invite the concerned region (if needed). When it comes to South Tyrol, this is also the case, however, very often many things are discussed and mediated via the members (who in part are also MPs) of the bilateral Commission of Six established for implementation of the Autonomy Act. Also, the Governor of South Tyrol regularly goes to Rome to meet with relevant Ministers and staff. It is a matter of political practice rather than specific normative guarantees.

In terms of mechanisms and opportunities for the autonomy to participate in legislation-making at national level, the 1994 Law arrangement doesn't provide the autonomy with a direct²⁰ representation in the Parliament. However, in 2003 the autonomy was guaranteed the right to initiate legislation in the Parliament. Regarding the representation, a recent change in 2017 introduced a mixed electoral system that provided representation of constituents of the region with two seats in the Parliament, due to the territorial unit being made up of two single member electoral districts.²¹ The ability of the autonomy to influence law-making on the national level was limited, as the number of seats attributed to the region was small, however these seats did provide Gagauzia with a channel to access and participate in central decisions. This system was again changed in 2019 when proportional representation was reintroduced for parliamentary elections. Moreover, recent dialogue between the centre and autonomy could potentially result in an expressed specific obligation to consult the autonomy on draft laws that concern it and its residents.²²

2.4 The autonomy's economy and fiscal relations with the centre

The 1994 Law stipulates that the land, mineral resources, water, flora and fauna, other natural resources, movable and immovable property situated on the territory of Gagauzia shall be the property of the people of the Republic of Moldova and at the same time shall represent the economic basis of the Gagauz autonomy. The law also provides that the autonomy's budget shall include any type of revenues established by the legislation of the Republic of Moldova and by the People's

²⁰ For example, the Åland Islands are identified as a special constituency for the purposes of the election of one MP to the Parliament of Finland. On the other hand, in Italy the existence of the regional South Tyrolean People's Party generates, through a general elections system, a certain number of MPs that represent interests of South Tyrol in Italian Parliament.

²¹ The last parliamentary elections (February 2019) involving the mixed electoral system resulted in 3 MPs coming from Gagauzia (2 in the single member electoral districts and 1 on party lists), which compared with the representation in the previous legislatures, has not resulted in increased representation. Comparably, the old proportional electoral system resulted in the 2010-2014, as well as in the 2014-2019 Parliament legislatures in 4 MPs from Gagauzia being elected to the Parliament. For more information on the results of different recent Parliamentary elections - <https://a.cec.md/ro/alegeri-si-referendumuri-2830.html>

²² Article 209, paragraph 2 of the draft Code of Parliamentary rules and procedures, No. 374 registered in the Parliament on 02.11.2018 and adopted in first reading on 22 November 2018.



Assembly. ATU Gagauzia has a special position compared to other territorial units when it comes to the autonomy's revenues, that are composed, in addition to its own revenues, of 100% of the VAT, Personal Income Tax, Corporate Income Tax, excise on the goods subject to this type of tax that are produced on the autonomous territory and earmarked transfers from the centre.²³ Although, as mentioned above, the 1994 Law provides that the ATU Gagauzia budget also includes revenues established by the People's Assembly, in practice the representative body of the autonomy cannot introduce any additional (fiscal) taxes that are not foreseen by national legislation²⁴. The provision only refers, and can be interpreted, in the light of their right to approve additional non-fiscal revenues, such as income from selling any public property, from borrowing, grants, etc.

2.5 Legal framework and implementation of autonomy status

The legal framework for functioning of the autonomy consists of a variety of legal norms, featuring the Constitution, 1994 Law, as well as different national laws regulating and impacting the autonomy status. Implementation of devolved competencies is also governed by local laws adopted by the People's Assembly. This framework creates a comprehensive system, in which the mutual relationships are complex and sometimes create an environment of incoherence of the normative regulations governing the functioning of the autonomy. More specifically, the legal framework governing the autonomy arrangement is principally ensured by the Constitution and the 1994 Law. However, other organic Laws, such as the Law on Local Public Administration and the Law on Administrative Decentralisation have an impact on the autonomy and determine its status and competences, especially taking into account that newer organic laws have precedence over older organic laws.²⁵

²³ Article 5, paragraph (3) of the Law on local public finance No. 397 from 16.10.2003 // Official Journal No. 248-253 from 19.12.2003.

²⁴ This is also valid for other administrative-territorial units of Moldova - the system of local taxes is strictly regulated by the National Tax Code and local governments are not allowed to introduce new/additional local taxes.

²⁵ For more on the position of the 1994 Law in the hierarchy of norms of Moldova and the precedence of newer organic laws see the section 5.1 Centre-autonomy dispute resolution by the Constitutional Court and footnote 57 of this report.

The serious issue that impacts the functioning of the autonomy, as well as the mutual relations between the central authorities and the autonomy is the fact that the 1994 Law has granted competencies to the autonomy in very general terms, e.g. field of culture, education, health, etc., and at the same time, all competencies in the specified sectors are shared between the autonomy and the centre without principles and rules of their application. In comparative practice, the spheres are often defined broadly, however the self-governing territories are given some primary self-rule over certain areas and residual powers in others remain with the state and in some areas, they share responsibilities.²⁶ The current situation creates many problems for the implementation of competencies and the legislative regulatory powers that have been assigned to the People's Assembly.²⁷

Lastly, the situation of implementation of autonomy's competencies is further complicated by the regulation of system of the normative acts in Moldova. The 1994 Law provided the People's Assembly with the right to adopt local laws in the area of devolved competencies²⁸. The place of these laws in hierarchy of norms has not been explicitly defined in either the Law on special status of ATU

²⁶ A good representation of how competencies could be devolved is demonstrated by the South Tyrol autonomy arrangement that provides different types and specific rules how the powers are delineated and devolved. The autonomy has a threefold competence: primary competence that includes power to freely regulate a given matter by simply obeying only the general framework of Italian Constitution, the international treaties and the fundamental principles of Italy's legal framework. When legislating in the field of secondary competence, the autonomy must respect relevant national general framework laws, while the integrative legislative competence has a subordinate character by regulating the implementing features. Only some basic legislative sectors still rest exclusively with the central state, such as foreign affairs, defence, internal security, monetary and fiscal policy, civil and penal law. Importantly, the autonomy statute foresees an establishment of Joint Commission that serves for implementation of autonomy competencies and addresses many issues concerning the centre and autonomy competencies issues. For more examples of comparative practice see Thomas Benedikter, *The World's modern autonomy systems: Concepts and Experiences of Regional Territorial Autonomy*, EURAC research, Bolzano: 2009.

²⁷ From the perspective of comparative practice, a certain level of clarity regarding the devolved competencies is needed. However, on the other hand attempts aiming at a very detailed and concrete legislative distribution of powers and delineation (e.g. the 1999 reform of the Swiss Constitution and Belgium's large-scale "outsourcing" of the distribution of powers to detailed special laws) have largely failed to achieve this. Shared responsibilities are often inevitable given the complexities of governance today hence intergovernmental relations become crucial. Of course, these relations may be dominated by government level (most often national) that is better-resourced in terms of funding and administrative capacities. Thus, the focus should be on the practice of intergovernmental relations and mechanisms.

²⁸ Article 12 of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

Gagauzia or the Constitution. The Law on normative acts establishes the requirement of adherence of the ATU laws to national legislation.²⁹ With the establishment of central administrative control and judicial review, which were not foreseen in the 1994 Law³⁰, Gagauzia's local laws are completely subjected to the regulation established by national laws. Without clearer delineation, the scope of what the legislative body or the executive body of the autonomy can perform is constrained by this legal regime.

ATU Gagauzia has recourse to a dispute resolution mechanism, represented by the right of the People's Assembly to address the Constitutional Court in cases where the acts of the legislative and executive authorities of Moldova are not in line with the provisions of the Article 111 of the Constitution. The compliance of Gagauzia's local laws with the national legal framework is, on the other hand, reviewed by the general courts, based on the submissions of the State Chancellery office located in Comrat.

The ATU Gagauzia arrangement requires further implementation, including reflection of autonomy special status in the national legislation. The need to address some of the issues impacting effective functioning of the autonomy has resulted in several dialogue processes being pursued between the central authorities and the autonomy. Several joint commissions have been created between central and autonomy authorities, including the current PWG that was established as a permanent dialogue platform in 2015.³¹

²⁹ Both Article 2 of the Law on special legal status of ATU Gagauzia and Article 17 of the Law on normative acts No. 100, 22.12.2017 require accordance of the norms adopted by autonomy authorities with the legislation of the Republic of Moldova. Article 12, paragraph (6) of the 1994 Law provides that the normative acts of Gagauzia contradicting Constitution and the Law on Special Legal Status of ATU Gagauzia are void.

³⁰ The Law on special legal status of ATU Gagauzia did not foresee the current administrative control over the acts of the autonomy, it only requires for its acts to be sent for information to the Government and Parliament within 10 days of their adoption (Article 13, paragraph 4 and Article 17, para (3) of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995). The Constitutional amendments of 2003 introduced state oversight over the autonomy acts, providing in Article 111, paragraph 6 that "The Government, under the terms of the law, performs control over the observance of the legislation of the Republic of Moldova within the autonomous territorial unit of Gagauzia."

³¹ For more information on the Parliamentary Working Group on Gagauzia see Chapter 6 Mechanisms for centre-autonomy dialogue.

3

**Participation
of the autonomy
in the national
decision-making
process**



The selection of the necessary mechanisms ensuring effective functioning of institutions of self-governance, as well as effective representation of the autonomy in the decision-making at the central level, creates the foundations of well-functioning self-government within the state political structure. This plays an important role for all autonomies, ATU Gagauzia not being an exception. In fact, given the situation regarding the implementation of the autonomy arrangements and the need for further clarification of competences, the participation creates for the autonomy an important channel to pursue the implementation of the arrangement for which the further national level legislative incorporation is needed.³²

The institutional systems and levels of attributed powers to autonomies often differ from those of regular regional or territorial units within a state. This is sometimes, in comparative practice, reflected by specific forms for autonomy participation at the national level including mechanisms of representation and participation in national decision-making (be it governmental or legislative).³³ Joint bilateral mechanisms that include mutual consultations are also often established and provide additional dialogue channels for representation of autonomy interests and needs.³⁴ Although participation plays an important role, as some representation is required and this is sometimes ensured through

³² For more information see the section 5.1 of the Chapter 5 State oversight and dispute resolution mechanisms between the centre and the autonomy.

³³ For example, the Acts concerning Home Rule on the Faroe Islands and Greenland contain provisions which create for the autonomous territories a right to be heard on the legislative and administrative matters of the central government that affect them. Åland's MP elected on behalf of special Åland Islands constituency is required to represent the interests of the Ålandic people in all Finnish affairs. Åland's MP has historically been given a position on the powerful Constitution Committee, however, the representation by one MP is considered as not being very effective. Åland may however submit initiatives on reserved matters to the Finnish Government, which must then present them to the Finnish Parliament for consideration. The most powerful means by which Åland can make its interests known at the Finnish level is through a special opt-out/veto that Åland enjoys in relation to international affairs.

³⁴ For more on bilateral mechanisms for further legislative implementation of clarification of competences and bilateral dispute and problem-solving mechanisms see Chapter 5 State oversight and dispute resolution mechanisms between the centre and the autonomy and Chapter 6 Mechanisms for centre-autonomy dialogue.

elected representatives and the autonomy's consent in national legislation-making concerning autonomy matters, the nature of the autonomy's arrangements is normally characterized by independent performance of governance in the devolved areas of competencies. Of course, although some level of co-ordination and co-operation is required, there is relatively low level of representation of an autonomy in the national decision-making process. Obviously, all is dependent on the context and political structure of the state. For instance, in federative structures there is much bigger weight given to provinces and regions, including autonomies, in decision and policy-making processes at the central level. In case of the ATU Gagauzia the mechanisms for participation at the central level that have been established provide comparatively a much stronger inclusion in the central governmental bodies and participation in national legislative process.

The existing set-up for ATU Gagauzia is represented by three principal forms of participation at the national level. The 2003 constitutional changes provided the autonomy's assembly with the **right to initiate legislation** in the Parliament. The 1994 Law also gives the Governor a **membership of the national Government**. Similarly, the representatives of autonomy's executive body could participate in the work of **collegiums of state ministries**. In addition, specific joint ad hoc mechanisms and commissions with the participation of the autonomy representatives (such as ad hoc parliamentary or ministerial working groups) had been established in the past twenty years, attempting to further the implementation of the special legal status of the autonomous-territorial unit of Gagauzia.

This chapter is divided into two general sections. The first reviews the decision-making processes at the national executive level from the perspective of the ATU Gagauzia's possibilities and leverages to influence Governmental decisions and preparation of draft national legislation and policies that might impact autonomy matters. The second part looks into the possibilities, including the autonomy's right of a legislative initiative, to impact development of national legislation and importantly to advance implementation of the special status of the autonomous region in Parliament. The participation in the bilateral dialogue mechanisms is examined specifically in chapter 6 on Mechanisms for centre-autonomy dialogue.

3.1 The Governmental decision-making process

The principal instrument for the representation of autonomy interests in the central Government is the membership of the autonomy's *Governor in the national Government*. Next to this key mechanism, the autonomy has been also granted the possibility for representatives of the autonomy's Executive Committee to participate in the Government's *Ministerial collegiums*. In addition to these specific forms of participation, the ATU authorities can comment on drafts of national legislation and acts of the Government by submitting *legal opinions (avis)*, an option granted to all local public authorities in the Republic of Moldova.

There are also other possibilities that could be used but do not always offer regular or effective means for participation. From the perspective of affecting the development of national policies and draft legislation, the possibility to take part in *ad hoc working groups for development of legislation* offers a very effective channel for representing the interests of the autonomy.

The following analysis hopes to provide reflections on the functions of these mechanisms, on the practice of their use, and look into the possibilities of developing more efficient procedures or mechanisms for the autonomy to participate in decisions that will impact it.

3.1.1 The Governor of the autonomy is a member of the Government

The Governor of the autonomy plays a key role in representing the interests of the autonomy at the national level. The 1994 Law established an element of power-sharing between the ATU Gagauzia and central government by guaranteeing the Governor of the autonomy an ex-officio membership of the national Government.³⁵ The role of the office is tied to its function of being the Governor of the territorial autonomous unit, and represents its affairs at the central level. The differences in roles of different members of a government are

³⁵ Article 14(4) of Law on special legal status of Gagauzia No. 334 from 23.12.1994 // Official journal No. 3-4 from 14.01.1995.

reflected in different mandates and the functions that are performed. In this regard, the members of a government that have a portfolio and head a ministry can submit draft normative acts, provide opinions and vote on the decisions of a government on draft acts or policies. The Governor, lacking a portfolio or ministry, can only vote and provide opinions, he/she cannot submit draft governmental acts.³⁶ Although, this may seem limiting, the autonomy has a right of legislative initiative in the national Parliament, which provides the autonomy authorities with a relatively influential tool for advancing its interests towards implementation of the autonomy special status and the autonomy competencies.

Just like any other Government member, the Government's rules of procedure provide the Governor with the right to submit objections and proposals on any draft decision, but these proposals can only be accepted or rejected by vote. In this regard, the mechanism's efficiency is subject to political will and context.

Regarding procedural guarantees to consult the Governor on draft laws and government's decisions concerning the autonomy, the new Law on Normative Acts and the newly adopted Rules of Procedures of the Government of the Republic of Moldova adopted in 2018³⁷ introduced changes that impact the guaranteed consultation process. The previous Rules of Procedure of the Government of the Republic of Moldova³⁸ required that draft governmental decisions and ordinances regulating issues related to ATU Gagauzia were coordinated with the Governor.³⁹ The new Rules of Procedures of the Government adopted in 2018 do not contain a similar requirement or any specific provision

³⁶ Article 38 of the Rules of procedures of the Government, Decision No. 610 from 03.07.2018, requires that submission of draft Governmental acts is the competence of the ministries and of other central administrative authorities. Furthermore, Article 40 mentions that other authorities can only submit draft governmental acts (including draft laws that are adopted by the Government's decisions and further submitted to the Parliament for consideration) through a ministry or other central administrative authority subordinated to the Government.

³⁷ Government's Decision No. 610 from 03.07.2018 on approving the Rules of procedures of the Government // Official Journal No. 245 from 04.07.2018.

³⁸ Law on the normative acts of the Government and other authorities of central and local public administration No. 317 from 18.07.2003 // Official Journal No. 208-210 from 03.10.2003 and the Rules of procedures of the Government approved by Government Decision No. 34 from 17.01.2001 // Official Journal No. 8-10 from 25.01.2001.

³⁹ Article 8 of Rules of Procedures of the Government adopted by Decision No. 34 from 17.01.2001 // Official Journal No. 245 from 04.07.2018.



concerning the autonomy Governor's membership in the national executive. According to the new Rules of Procedure, the draft agenda for a Government meeting is approved by the Prime Minister, and the corresponding materials are submitted by the State Chancellery to the members of the Government at least 48 hours before the meeting. From the perspective of effective development of legislation and providing input into the draft laws and governmental norms, this is a very short time to prepare opinions and suggestions for changes. In addition, the submitted legislative drafts are usually already well developed, so proposing amendments and changes at this stage would have little likelihood of being incorporated and approved by the Government.

3.1.2 Provision of legal opinions (avis) on draft normative acts

When it comes to the development of draft legislation and its adoption by the Government there are two opportunities for the autonomy to represent its views: 1) in the first stage of legislative development, through the procedure for legal opinion (avis)⁴⁰ and 2) in the second stage, when draft laws are submitted to the members of the Government before a meeting of the Government (see the above discussion for a description of the Governor's opportunities to present opinions and vote on the adoption of these draft decisions).

The Government's new Rules of Procedures stipulate that draft acts are sent to relevant public authorities by the State Chancellery to seek their legal opinion (avis), following the adoption of a list of affected stakeholders at a meeting of the State Secretaries of Government Ministries. Proactively submitted opinions from other subjects that were not included on the official list of affected stakeholders are also considered.⁴¹ Opinions on a proposed law are collected by the Ministry that initiates the draft.

The above instruments show that procedural possibilities for participation are in place. However, according to interviews conducted in the course of this

⁴⁰ The requirement of Law on local public administration No. 436, 28.12.2006 // Official Journal No. 32-35, 09.03.2007, Law on normative acts and Law on transparency in decision making process.

⁴¹ Article 196 of Rules of procedures of the Government, Decision No. 610 from 03.07.2018 // Official Journal No. 245 from 04.07.2018.

research, the ATU Gagauzia authorities have not been receiving requests to submit opinions on relevant draft legislation. On the other hand, they have utilized existing procedures upon their own initiative in only a few instances⁴². The core issue preventing necessary consultation of ATU Gagauzia is insufficient screening of draft laws for their impact on the autonomous territory, by both the autonomy and the Government.

3.1.3 Ministerial collegiums, ministerial working groups on legislation and ad hoc working groups addressing specific issues concerning autonomy

At the formation of the autonomy arrangement, a formal channel of autonomy representation in Ministries was introduced through the possibility for the heads of departments of the Executive Committee to take part in meetings of Ministerial collegiums.⁴³

A review of the functioning of this format has revealed that this form of participation offers very limited possibility to effectively represent autonomy issues in the executive branches of the Government. It also does not serve as an effective information channel for the autonomy about the agenda of the Ministries that might affect autonomy matters.

Ministerial collegiums⁴⁴ convene irregularly, and in the case of some Ministries are not used very often. They serve mainly as an intermittent forum for the exchange of information within Ministries. In addition, after the central

⁴² For instance, in the process of elaboration of the adoption of the Law on unitary system of salaries in the public sector, No. 270 from 23.11.2018 // Official Journal No. 441-447 from 30.11.2018.

⁴³ According to Article 19 of Special Status Law at the proposal of Gagauzia's Governor, the Heads of specialized directorates of the Executive Committee are included in the collegiums of the Ministries of Government of the Republic of Moldova.

⁴⁴ The Ministerial collegiums are advisory boards that are dealing with issues related with the organisation of the activity of the respective ministry in view of promoting policies, solving urgent problems, preparing short and long-term forecasts. Also, the collegiums are discussing issues related to the activity of the administrative authorities subordinated to the respective ministry, examine the draft normative acts, debate the reports and information presented by the heads of the subdivisions of the ministry and of the subordinated administrative authorities. The collegiums consist of the Minister (the president of the collegium), the State Secretaries, the Heads of internal subdivision of the central apparatus of the Ministry, as well as the Heads of organisational structure from the field of competence of the Ministry and other persons (maximum 15 members in total). Each Ministry organizes the agenda of the collegiums, as well as the schedule of convening the meetings.

administration reform,⁴⁵ many Ministries' competencies and decision-making procedures have changed, and the operation of collegiums in the new amalgamated system of ministries has become difficult.

From the autonomy perspective, participation in the collegiums is also irregular, often coupled with barriers caused by lack of linguistic proficiency in the state language. Perspectives from both Chisinau and Comrat indicate that collegiums do not provide an effective channel of communication and participation, and more effective channels at the departmental level might be needed.

An additional mechanism for participation of the autonomy in the legislative process at the Governmental level is represented by specific working groups for development of legislation and policies. These are highly effective mechanisms for influencing draft legislation, as they allow the presentation of autonomy views at the very conception of draft laws, policies and reforms. However, they are an irregular and ad hoc format for participation and require an invitation for the autonomous authorities to take part in the meetings of a working group. In practice, the autonomy authorities have only been marginally participating in these groups.⁴⁶ In some cases, specific ad hoc technical working groups on specific issues concerning the autonomy have been convened, and proved to be a very practical and effective channel for addressing targeted issues.⁴⁷

3.1.4 Conclusions

From the formal perspective, the current channels allowing ATU Gagauzia to participate in Moldova's central Government provide guarantees for autonomy representation opportunities at the national level. In particular the Governor's

⁴⁵ In 2017, in accordance with the Strategy of public administration reform for 2016-2020, adopted by Government's Decision No. 911 from 25.07.2016, the Parliament adopted a new list of ministries, merging the existing 16 ministries into 9. For more information see the Law No. 189 from 21.07.2017 // Official Journal No. 265-273 from 28.07.2017.

⁴⁶ For instance, in the process of elaboration and adoption of the Law on unitary system of salaries in the public sector, No. 270 from 23.11.2018 // Official Journal No. 441-447 from 30.11.2018.

⁴⁷ For instance, in the process of the local public finance reform from 2015 or elaboration and adoption of the Education code of the Republic of Moldova No. 152 from 17.07.2014.

membership in the Government, is a unique mechanism for the autonomy's interests to be represented at the national level. From the comparative perspective this is a quite exceptional representation. However, the resulting impact on the Government's policies, acts and decisions is limited. Regarding the established functions of these mechanisms, there are objective reasons for this situation. The Governor can from the formal perspective only marginally impact the decisions of the Government, as she/he only has one vote on all matters discussed by the Government, including on matters that affect the autonomy. Therefore, government decisions are subject to the policies of a particular administration and political context. Nevertheless, the Governor's membership provides an effective tool of access to the work of the Government and its agenda in the development of policies and national legislation, and for influencing these decisions. This mechanism could potentially be a more effective tool to communicate the autonomy's interests, if there are increased capacities of the Governor's office at the central level accompanied by guaranteed consultation procedures that would allow the Governor and the executive authorities to respond in a timely and considered manner to policy and legislation developments affecting the autonomy.

Regarding other formats of participation, the mechanism providing for autonomy representation in the Ministerial collegiums seems to be ineffective, and given the relevance of collegiums in central Government, outdated. More targeted, regular communication channels should be considered, such as joint ministerial working groups that would address issues in areas of shared competencies in a continuous manner, connected with specific issues that are of concern to the autonomy or the central authorities. To make more effective use of the role of Governor's office in the development of national legislation, the ATU Gagauzia Executive Committee must increase its capacity to follow the national legislation process and provide input into the legislation and policy development processes.

In this respect, several recommendations can be considered to improve existing mechanisms, establish new procedures or formats of participation and increase capacities for participation and representation of autonomy issues in the central Government.

3.1.5 Potential areas for further discussion by the Parliamentary Working Group

- Increase the capacity of the Governor's office to monitor the legislative agenda of the Government and Ministries regarding the development of draft laws and strengthen capacities of Governor's office in Chisinau with legal advice services and human resources. The specific capacities and channels within the structures of the Executive Committee should be considered to ensure increased input from the Executive Committee to the work of the Governor at the central level.
- Establish and strengthen the Executive Committee's monitoring of the legislative agenda at the governmental level, and increase the capacity for submitting official opinions, both at the Ministerial level of consideration and during development of draft laws when the interests of the autonomy are affected.
- Re-establish the obligatory requirement for consulting and coordinating with the Governor when decisions may impact the region and its competencies.⁴⁸ It is highly desirable that the consultation process takes place in the early stages of preparation of a policy or draft acts and regulations. This should be reflected in the regulations on the development of normative acts, as well as in the ex-ante methodology for policy development.
- The authors of governmental decisions and the meetings of the State Secretaries should consider whether the provisions of draft acts impact the autonomous territorial unit. This should be a standard methodology while composing the lists for the avis process. In this regard, it would be practical to increase the capacities of the Governor's office to be able to monitor the agendas of State Secretary meetings.⁴⁹

⁴⁸ According to point 8 of the previous Government's Regulation (Government's Decision No. 34, 17.01.2001), "the draft Government decisions and ordinances regarding the issues related to ATU Gagauzia are coordinated with the Governor of ATU Gagauzia".

⁴⁹ The agenda of the State Secretaries meeting is published on the webpage of the State Chancellery at least two days before the meeting.

- In addition to the mechanism of participation in the ministerial collegiums by the Executive Committee, new, more effective forms of participation should be considered that would ensure regular communication channels with the Ministries. These participation models could take the form of joint ministerial and autonomy working groups or commissions that would meet regularly to discuss the issues affecting autonomy, and provide technical dialogue for the clarification of competencies. These meetings could also provide an information channel for the Executive Committee about forthcoming legislative reforms and possibilities to participate in the working groups for development of specific national legislation, policies and sectoral reforms.

3.2 The Parliamentary legislative process

ATU Gagauzia has been provided with several instruments to participate in the national legislative process. The key mechanism is provided through *the right to initiate national laws in the Parliament*. Another, more general form of participation is also shared by other public institutions and territorial units in the form of the possibility to contribute to the preparatory process of draft legislation through submission of *legal opinions (avis)* on the laws submitted to the Parliament. Regarding the representation in the Parliament, there is no special representation of the autonomy within the electoral law. The old mixed *electoral system*⁵⁰ provided representation in the national legislature of the autonomy constituents by two seats allocated based on single member electoral districts.⁵¹ This system was applied to all territorial units in Moldova.⁵² In 2019 the electoral law reverted back to proportional electoral system that was applied before the change in 2017.

⁵⁰ Article 79 of the Electoral Code of the Republic of Moldova No. 1381 from 21-11-1997 // Official Journal No. 81 from 8.12.1997. The mixed electoral system was introduced in 2017 by Law No. 154 from 20.07.2017 through the amendment of the Electoral Code and other relevant legislative acts.

⁵¹ Government Decision on the approval of the permanent single member electoral districts No. 970 from 15.11.2017 // Official Journal No. 399-410 from 17.11.2017.

⁵² For example, the Åland Islands are identified under Article 25 of the Constitution as a special constituency for the purposes of the election of one MP to the Parliament of Finland.

The existing specific forms of participation are represented by the autonomy's right of legislative initiative granted to the legislative body of ATU Gagauzia, as described above, and through specific *joint parliamentary commissions* that were established in the national Parliament over the course of several decades to address the implementation of the special legal status and the arrangements set out in the 1994 Law. In this regard, the Parliament's Decision No. 345 from 23-12-1994 on the implementation of the Law on special legal status of ATU Gagauzia⁵³ charged the Government with the creation of a joint commission composed by representatives of the Government and of the municipalities from the autonomous territory to implement the Law.⁵⁴ In the past twenty years additional commissions have been formed to further pursue a political dialogue on legal solutions that can facilitate the implementation of the autonomy arrangements. These bodies have provided recommendations to the People's Assembly and the Parliament to adopt specific legal solutions for the implementation of the autonomy's special legal status and competencies.⁵⁵

The effective participation and influence on the law-making process in the Parliament is very important for the autonomy, especially since the legal entrenchment of the autonomy status is not very strong and the Parliament can easily amend laws that directly or indirectly affect the status of the autonomy. The Law on the special legal status of ATU Gagauzia can be amended only through a special procedure requiring a qualified majority procedure in the Parliament,⁵⁶ however, the law itself is of an organic nature. In this respect, the Constitutional Court implied in a decision on inadmissibility of a particular case that the 1994 Law has no special position among norms that have the form

⁵³ The Parliament's Decision No. 345 from 23-12-1994 on the implementation of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994.

⁵⁴ The commission was formed to oversee and pursue negotiations on the implementation on the Law on special legal status of ATU Gagauzia. After a certain period, the commission was dissolved based on the conclusion that the commission achieved its purpose.

⁵⁵ For more information on the work of these commissions see Chapter 6 Mechanisms for Centre-Autonomy Dialogue.

⁵⁶ Article 27(2) of Law on special legal status of Gagauzia No. 334 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

of an organic law⁵⁷. In current practice, in the case of discrepancies between two legislative acts with equal legal force, with different solutions to the same subject of regulation, the provisions of the most recently adopted law will be applied. In relation to this, there was a legislative initiative to address this issue and to ensure protection of the autonomy status. The PWG through an initiative of the People's Assembly suggested to amend the 1994 Law, introducing the provision that the Law could be amended by the Parliament only if there was the consent of the People's Assembly. This draft Law was examined in Parliament in 2016; however, it had only gone through the first reading, when a substantive amendment was proposed to replace 'consent' with 'consultation' of the People's Assembly.⁵⁸ As no agreement was reached, the draft was not advanced further through the legislative procedure. In 2020 the draft law was resubmitted by a group of MPs and remains to be considered. It should be added that this initiative to require the obligatory consent of the autonomy for amendments to the 1994 Law would not address the issue of other organic laws amending matters that might impact the autonomy, and the arrangements made and foreseen in the 1994 Law, through changes in their substantive provisions. It is obvious that there is a need for constructive dialogue to further address the guarantees of the autonomy arrangement, but also importantly to pursue implementation of the autonomy competencies for which further legislative clarification is needed.

⁵⁷ See Constitutional Court's Decision No. 30, 29 April 2016, paras 31-34: "Having analysed in relation to the new provisions of the Law on the Prosecutor's Office, the authors' allegations of the special nature of Law No. 344-XIII from 23.12.1994 on the special legal status of Gagauzia, and in this regard the prioritized application of the provisions of Article 21 of the current law, regulating the procedure for appointing the chief prosecutor of the Prosecutor's Office of ATU Gagauzia", the Constitutional Court notes the following. According to Article 111 (7) of the Constitution, the law regulating the special status of the autonomous territorial unit of Gagauzia can be changed by three-fifths of the votes of elected deputies of the Parliament. At the same time, the mentioned constitutional norm attributes to the law regulating the legal status of Gagauzia the category of organic laws. The Constitutional Court further emphasized that, according to Art. 72 p. (1) of the Constitution, the Parliament adopts constitutional, organic and ordinary laws. In its previous practice, the Constitutional Court noted that no organic law can have greater legal force in relation to other organic laws passed by Parliament (Constitutional Court Decisions No. 9 of 18 February 1999 and No. 12 of 11 March 1999). The Constitutional Court concluded in para 34 that "both laws are organic laws and have the same legal force, and in case of disagreement, the general principles of the application of the law in time are used." The Court doesn't refer to the other general principle of application of Law – Lex specialis derogat legi generalis, also established in Article 5, para 3 of the Law No. 100 on normative acts.

⁵⁸ The draft Law No. 318 amending Article 27 of the Law on special legal status of Gagauzia (Gagauz-Yeri), registered in the Parliament on 15.07.2016.

The following analysis hopes to provide reflections on the functions of the above-mentioned participatory mechanisms, on the practice of their use, and to look into the possibilities of developing more efficient procedures or mechanisms for participation of the autonomy in the national legislative process to address the implementation of the 1994 Law arrangements.

3.2.1 Representation in the Parliament

In 2017 the electoral system was changed, introducing a mixed electoral system where 50 Members of the Parliament (MPs) are elected by proportional representation from closed party lists and 51 MPs are elected in single-member constituencies on a first-past-the-post majority basis.⁵⁹ The first and only elections using this system were held on 24 February 2019. The mixed electoral system provided for representation of the autonomy constituents by allocating two seats that were granted to ATU Gagauzia within the single member district system. This system of single member electoral districts representation applied to the entire territory of the country, the single electoral districts being established for all territorial units of second level.⁶⁰ The small number of allocated seats and the impossibility for voters to recall MPs, who do not fulfil their mandate in accordance with the electoral program, diminished the potential effectiveness of representing the interest coming from the region. In addition, as practice showed, an important share of the candidates registered in single member districts in ATU Gagauzia were representing national parties. The record of the last Parliamentary elections showed that introduction of single

⁵⁹ In 2017, Law No. 154 from 20.07.2017 amending the Electoral Code No. 1381 from 21.11.1997 // Official Journal No. 81 from 8.12.1997 introduced a mixed electoral system for the elections in the Parliament of Moldova, with one national constituency electing 50 Members of the Parliament (MPs) by proportional representation from closed party lists, together with 51 MPs elected from 51 new single-member constituencies on a first-past-the-post majority basis. Article 80, paragraph (4), g) of the amended Electoral code had prescribed that single-member constituencies established within the autonomous territorial unit of Gagauzia should not exceed its borders or be mixed with localities outside the border of the region.

⁶⁰ In order to ensure an optimal organisation of electoral districts and a balanced representation, the single member electoral districts could be composed from territorial units of first level belonging to several administrative districts (rayons), while the bigger territorial units of second level could be divided in several electoral districts (such as Gagauzia, Chisinau and Balti municipalities). The number of voters in one single member electoral district could vary from 55 to 65 thousand voters, with a maximum 10% deviation allowed. See Article 80 of Electoral Code of the Republic of Moldova in the redaction from 2017.

member districts in Gagauzia lead to political parties not including representatives from the region in their lists of candidates for the proportional system for the national electoral district. The recent electoral results for representation from Gagauzia produced 3 MPs from the region, which comparably with the representation in the previous legislatures, did not result in increased representation.⁶¹ In 2019 the electoral law reverted back to the proportional electoral system that was applied before the change in 2017.

3.2.2 Legislative initiative of People's Assembly

The right of the People's Assembly to legislative initiative is guaranteed by Article 73 of the Constitution. The People's Assembly can initiate any type of laws (with the exception of changes to the Constitution) in the Parliament, and the Constitution does not provide limits on the range of issues that can be submitted. Although the right to submit laws on the national level represents an opportunity to participate in the legislative process, in practice, or so, the record shows, the efficiency of securing the autonomy interests in the national legislative process has been in the past relatively low. According to various reports, since the introduction of the right to legislative initiative in 2003, only one out of 12 draft laws submitted by the People's Assembly has passed from the examination stage to discussion in the Parliament's plenary (general debate).⁶² At the level of the ATU Gagauzia, various studies and reports⁶³ supported by interviews and discussions, point out that there is a need to increase the capacity of the People's Assembly to elaborate quality draft national laws and to promote them in the process of their adoption. The reports also note that, from the perspective of the autonomy, there is a need to

⁶¹ Comparably, the old electoral system has resulted both in 2010-2014 and in the 2014-2019 in 4 MPs from Gagauzia being elected in the Parliament. For more information on the results of recent Parliamentary elections - <https://a.cec.md/ro/alegeri-si-referendumuri-2830.html>

⁶² See for example Elena Cuijuclu, Mihail Sirkeli, Implementation of the status of Gagauz-Yeri Autonomy: challenges and prospects, Pilgrim-Demo: 2015, page 11 and Ilmars Solims, Viorel Zabolotnic, The legislative initiative of the Peoples' Assembly of ATU Gagauzia and the legal opinions on the normative acts drafted by the central public authorities, Council of Europe: 2016.

⁶³ Report of Council of Europe, The legislative initiative of the Peoples' Assembly of ATU Gagauzia and the legal opinions on the normative acts drafted by the central public authorities, Council of Europe: 2016.

identify the actual problems affecting the functioning the autonomy, and importantly, to have an integrated approach to their legislative settlement.⁶⁴

More recently, after the creation of the PWG in 2015, legislative steps have been taken by the national Parliament to address the clarification of competencies. Several laws submitted by the Peoples' Assembly were adopted by the Parliament in 2017. This included the revisions in the culture and health laws.⁶⁵ There was political consensus reached on the content of these Laws. It is also important to note that the quality of the draft laws that were adopted in the Parliament is the result of the work of the PWG, which was achieved with the support of the technical legal expert group and the legal services of the Parliament. In addition to these laws, amendments proposed by the PWG to the Law on local public administration, Law on administrative decentralisation and Law on territorial-administrative organisation of the country, have been adopted in 2020 that introduced a special level of administration for the autonomous territorial unit.⁶⁶ Considering the current set up, the efforts and process followed by the PWG in its sectoral work on clarification of competencies in culture and health fields, has been highly consultative. Due to the support to the PWG and existence of such joint mechanism, input from both the central and autonomy executive branches was incorporated into preparation of these

⁶⁴ Elena Cuijuclu, Mihail Sirkeli, Implementation of the status of Gagauz-Yeri Autonomy: challenges and prospects, Pilgrim-Demo: 2015, page 17.

⁶⁵ Four laws have been amended in the field of culture, Law on libraries No. 160 from 20.07.2017 // Official Journal No. 301-305 from 8.08.2017; Law on museums No. 262 from 07.12.2017 // Official Journal No. 7-17 from 12.01.2018; Law on military graves and war memorials No. 161 from 20.07.2017 // Official Journal No. 335-339 from 15.09.2017; Law amending Law on public monuments No. 232 from 10.11.2017 // Official Journal 429-433 from 08.12.2017. Two additional laws on amending the laws on Law on territorial-administrative organisation of the Republic of Moldova No. 764 from 27.12.2001 // Official Journal No. 16 from 29.01.2002, the Law on administrative decentralisation No. 435 from 28.12.2006 // Official Journal No. 29-31 from 02.03.2007 and the Law on local public administration No. 436 from 28.12.2006 // Official Journal No. 32-35 from 09.03.2007 were submitted by the Working Group and later changed in the deliberations of the Parliament, and were returned by the President of the Republic of Moldova for Parliament reconsideration. A third Law No. 318 amending of the Law on special legal status of Gagauzia (Gagauz-Yeri), registered in the Parliament on 15.07.2016, has passed only the first reading. The proposals have been resubmitted by a group of MPs and first two have been adopted in 2020.

⁶⁶ Law No. 270 from 16.12.2020 for amending and supplementing some legislative acts (Law No. 436/2006 on local public administration - Articles 1, 2, 5; Law No. 435/2006 on administrative decentralisation - Article 4) // Official Journal No. 353-357 from 22.12.2020 and Law No. 272 from 16.12.2020 for the amendment of the Law No. 764/2001 on territorial-administrative organisation of Moldova // Official Journal No. 353-357 from 22.12.2020.

laws. In addition, the joint parliamentary platform has played a significant role in the wider exposure of, and advocacy for these drafts in the Parliament. The process has allowed for a more systemic approach on the implementation of the autonomy status, its competencies, and their reflection in the national laws. The specific analysis, and recommendations for further implementation of the dialogue process between legislators from Chisinau and Comrat, is provided in Chapter 6 Mechanisms for Centre-Autonomy Dialogue.

When it comes to the legislative procedure in the Parliament, some new changes have been introduced in the new draft Code of Parliamentary rules and procedures, which passed its first reading in the Parliament on November 22, 2018.⁶⁷ The previous practice treated draft laws submitted by the People's Assembly in the same way as drafts submitted by MPs. This meant that the autonomy's legislature was required to submit only a draft law and an explanatory note. It was not required to submit other supporting documents, such as legal, anticorruption assessments, opinions from other public authorities, and the results of public consultations.⁶⁸ Now, the new draft Code of Parliamentary rules and procedures explicitly secures this exception only for MPs, while all other subjects of a legislative initiative⁶⁹ need to submit the full package required by the new Law on normative acts.⁷⁰ Although in principle,

⁶⁷ The draft Code is still in the parliamentary procedure with different adjustments being considered.

⁶⁸ According to Article 40 of the Law on normative acts No. 100, from 22.12.2017 // Official Journal No. 7-17, 12.01.2018, the draft normative act is submitted together with the accompanying file containing:

- a) information note;
- b) where appropriate, the ex-ante analysis report or regulatory impact analysis;
- c) the opinions and recommendations, in original, received from consulted public authorities and during the public consultations;
- d) expert reports (anti-corruption, legal expertise, etc.), in original;
- e) summary of the objections and proposals of the public authorities and synthesis of the recommendations of the civil society representatives, if any, indicating the acceptance or argumentation of rejection of the proposals, objections and recommendations;
- f) the compatibility declaration of the Centre for Harmonisation of Legislation and the updated compliance table for projects marked with the EU logo;
- g) a comparative table, reflecting the regulations in force and the proposed amendments, for proposals containing modifications to the normative acts in force;
- h) other materials, as the case may be, on the basis of which the draft normative act was drafted.

⁶⁹ The Government, the President and the People's Assembly.

⁷⁰ Article 70 of the draft Code of Parliamentary rules and procedures, No. 374 registered in the Parliament on 02.11.2018. <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4433/language/ro-RO/Default.aspx>

these requirements would allow for preparation of better quality laws by the People's Assembly, given the current capacities of the People's Assembly, the immediate application of these requirements will make it very difficult for the autonomy's legislature to effectively submit draft laws into parliamentary procedure. A few technical issues resulting from these new procedural requirements also need to be considered. The procedures foreseen by the draft Code do not specify how the People's Assembly should request expertise from the different central public authorities, or what leverage the autonomy has to obtain the documents that must be annexed to the submission of a draft law. In this respect, a clear procedure for obtaining the necessary expertise, supporting reports, as well as the compatibility declaration from the Centre for EU Legal Harmonisation should be specified.

At the level of the autonomy, specific procedures for the development of draft national laws by the People's Assembly are missing. The People's Assembly's rules of procedure regulate in detail the procedure for adoption of local laws, but procedures for elaboration and submission of draft national laws to the Parliament are not regulated at the autonomy level. The Law on normative acts and the Rules of Procedure of the Parliament contain rules that are valid for all subjects of the legislative initiative right, but the People's Assembly having its own legislative decision-making process, should establish their own procedure for development of draft national laws to be submitted in the Parliament by the autonomy. The potential procedure should foresee the involvement of all relevant public autonomy institutions, inter alia the Executive Committee, in the process.⁷¹ More recently, steps have been taken by the People's Assembly in the proposal of the new Rules of Procedures to address this issue.

⁷¹ In this regard, there is no clarity on who can initiate or recommend to the People's Assembly to elaborate a draft law to be submitted in the national Parliament; who is responsible for drafting the legislative initiative; whether the People's Assembly needs to request an opinion from the Executive Committee; how the draft laws are to be debated in the People's Assembly commissions.

3.2.3 Legal opinions (*avis*) on draft legislation and consultations with the People's Assembly

Similar to the process of development of the governmental drafts, the Gagauz authorities have the opportunity to provide legal opinions on the draft laws submitted to the Parliament.⁷² The current process requires that the draft legislation is sent by the responsible committee of the Parliament to concerned parties.⁷³ Importantly, new changes requiring compulsory consultations on matters concerning the autonomy have been proposed by the PWG in the current Rules of Procedures of the Parliament. At the same time, the new draft Code of Parliamentary Rules and Procedures, considered in the Parliament, also establishes an explicit obligation to consult the People's Assembly and ask for opinions regarding the laws related to the special status, competencies or other matters related to the autonomy. Article 209 paragraph 2 stipulates that such drafts should be sent for opinion (*avis*) of the People's Assembly of Gagauzia. The Assembly should respond within 30 days or another period set by the resolution of the Speaker of the Parliament. Failure to submit an opinion within the prescribed period does not prevent the examination of a draft law. This new provision is a positive step forward to secure obligatory consultations with the People's Assembly on draft laws that might affect autonomy. However, it stops short of the right of consent over the changes concerning the autonomy special status arrangements advocated by the autonomy.⁷⁴

From the perspective of the autonomy, the need for a more active approach in promoting autonomy interests in the national legislative process has been

⁷² Article 57 of Rules of procedure of the Parliament adopted by Law No. 737 from 02.04.1996 // Official Journal No. 50/237 from 07.04.2007 require an opinion (*avis*) from the permanent commissions of the Parliament, the legal department of the Parliament Secretariat, and when needed from the Government and concerned parties.

⁷³ The responsible committee will examine the draft law within 60 working days, ensuring the public consultation of thereof, if the Permanent bureau of the Parliament will not set another term. Regarding public consultations, according to the Rules of Procedure, the responsible committee organizes public hearings and public debates and could request an opinion by mail.

⁷⁴ PWG Decision No. 31 from 28.06.2016 on the approval of the draft Law to supplement Article 27 of the Law No. 344-XIII from 23.12.1994 on the special status of Gagauzia (*Gagauz-Yeri*). The draft Law was initially submitted to the Parliament by People's Assembly (draft Law No. 318 from 15.07.2016) and then resubmitted in 2020 by a group of MPs (draft Law No. 328 from 17.06.2020) but has not been adopted so far by the Parliament.

reflected in establishment of a process monitoring draft national legislation by the Legal department of the Secretariat of the People’s Assembly.⁷⁵ If necessary, the Legal department is expected to prepare draft legal opinions and to submit them to the People’s Assembly for examination and approval. The People’s Assembly has also recommended that the Governor should ensure a similar monitoring by the Executive Committee of draft normative acts (including draft laws) prepared at the Governmental level. The People’s Assembly monitoring mechanism has only begun its work. It ensures that the draft laws registered in the Parliament are screened for relevance to the implementation of the autonomy’s competences and submits the identified issues for further examination in the People’s Assembly commissions. The establishment of this monitoring mechanism at autonomy level complements the new proposal in the draft Code of Parliamentary rules and procedures for obligatory consultations with the People’s Assembly. Some specific recommendations to increase the efficiency of the new monitoring mechanism and the ability to provide legal opinions are provided below.

3.2.4 Language of submission of draft laws

According to Article 47 of the Parliament’s Rules of Procedure, draft laws are submitted for consideration in the state language with translation in Russian. The current practice allows MPs to submit draft laws either in Romanian or in Russian and the Secretariat of the Parliament is responsible for their translation into the respective language. The new provisions from the Draft Code of Parliamentary Rules and Procedures follow the rules established in the new Law on Normative Acts that requires that laws are submitted in Romanian (and when required with translation into Russian).⁷⁶ The new Law on Normative acts

⁷⁵ People’s Assembly Decision No. 99-VI/VI from 08.09.2017 on the establishment of the monitoring mechanism of the changes in the national legislation.

⁷⁶ Article 54 of the Law on normative acts establishes that the text of the draft normative act is prepared in Romanian. It further stipulates that the author of the draft normative act submits to the authority with the right to adopt, approve or issue it, the draft normative act in Romanian, with the translation in Russian language, when required. The drafts of the normative acts of the administrative territorial units with special legal status are elaborated in Romanian and in one of the official languages used on the respective territory. The translation of the draft normative act in one of the languages with international use is ensured, if necessary, by the authority competent to adopt, approve or issue the respective act.

shifts the obligation to translate laws into Russian to the phase of publication of adopted laws in the collection of laws of the Republic of Moldova.⁷⁷ The draft laws, therefore, might not be available in Russian language from the initial phase of the legislative procedure in the national legislature and can be translated in Russian only when the Law is adopted in final reading and sent for publication.

The language of the submission of draft laws and normative acts is an important cross-cutting issue that impacts the participation of ATU Gagauzia from several perspectives. It affects the autonomy's ability to monitor the draft legislative process at national level, as well as to prepare and submit opinions on draft legislation. These language requirements highlight the need to introduce policies and measures that would secure that both the executive and legislative bodies of the autonomy are able to participate in the legislative process at the national level. This is connected to the need for an overall policy to address existing language issues with regards to the autonomy, including knowledge of the state language within the autonomy, as well as the multilingual policy of the autonomy. At the same time, language policies need to be considered in a wider context of multilingual character of population and when changing language requirements, special measures should be contemplated to allow for accommodation of this fact.

3.2.5 Conclusions

Representation and participation of the autonomy in the national legislative process is of crucial importance to the autonomy from the perspective of the need to further the legislative implementation of the autonomy special legal status and the autonomy competencies. The mechanisms and means of participation in the national legislative process have seen some important progress in the recent period. The realisation by both the central and the autonomy authorities for the need to enhance procedural guarantees has led to suggestions to increase capacities, and introduce new guarantees, to enable

⁷⁷ See Article 56 (7) of the Law on normative acts No. 100 from 22.12.2017 // Official Journal No. 7-17 from 12.01.2018.



active and effective participation of the autonomy in the legislative process. These have been demonstrated by establishing a monitoring mechanism within the People's Assembly to screen draft national legislation, and by the proposal in the draft Code of the Parliamentary rules and procedures for compulsory consultations and requesting the legal opinion of the People's Assembly on draft laws that concern or affect autonomous status or autonomy matters.

These steps could be considered as good progress towards enhancing the effective participation of the autonomy, in particular towards furthering the implementation of the autonomy arrangements in the national legislation process. However, these new practices will only ensure successful results in the implementation of the autonomy arrangements if they are supported by increased capacities to utilize these mechanisms. As these have not yet been effectively implemented (or adopted), it remains to be seen how they will increase the efficiency of representation of the autonomy interests in the Parliament. The PWG also plays an important role in these processes, serving as a joint platform for seeking solutions and agreements on issues concerning the autonomy. The PWG is an important vehicle for discussions on the solutions required to address the functioning of the autonomy, however given the advisory nature of its decisions, an increased focus of the PWG and all interested stakeholders on advocacy for potential solutions is required to reach a political consensus within the Parliament.

In conclusion, the existing mechanisms allow the autonomy to be proactive in setting the legislative agenda through submission of draft laws that aim to secure the implementation of the autonomy arrangements. However, the leverage of the autonomy in the legislative decisions is limited. Nevertheless, the autonomy could increase impact by very proactive participation in the national legislative process.

The following recommendations point out several opportunities and practical steps, both at the level of the autonomy and within the Parliament itself that would contribute to increasing the efficiency of exercising the legislative initiative right by the Peoples' Assembly and to effective and productive dialogue between the legislators.

3.2.6 Potential areas for further discussion by the Parliamentary Working Group

Legislative initiative of the autonomy

- A clear normative framework at the autonomy level regulating procedures for the elaboration of draft national laws by the Peoples' Assembly should be elaborated. This should also include regulation of procedures for preparation of national draft laws by the Executive Committee and the People's Assembly.
- Increase the capacities of the Peoples' Assembly to fulfil the standards of the legislative process at national level. This will require:
 - Increasing the capacities of the PAG's Secretariat and its legal services in drafting skills of national laws, including through enhancing the ability to fulfil the procedural and formal requirements in submitting the draft laws;
 - Following and analysing the national legislative framework, including improving legal interpretation skill regarding the national legislation;
 - Improving linguistic skills in the state language.
- Establish clear channels and procedures for consultations with the relevant central level authorities, in particular the Ministries, in the preparatory phases of drafting national laws.
- Increase procedural capacities and possibilities to ensure promotion of the People's Assembly initiatives in the legislative process. This would require establishing communication channels between the PAG and the Parliament Secretariats to ensure information on the process and status of the submitted draft laws; as well as increasing the capacities of the Secretariat of the People's Assembly to track the legal and expert opinions on the legislative initiatives and to present the draft legislative initiatives in the relevant standing committees.
- In advocacy for adoption of the draft laws submitted by the People's Assembly, the PWG should be involved in promotion of and advocacy for the agreed solutions among the political parties in the Parliament.

- Specific recommendations on the dialogue process of the PWG, which provides a joint platform for the dialogue on consolidation of national legislation to implement the autonomy status, are provided in Chapter 6 Mechanisms for Centre-Autonomy Dialogue.

Legal opinion (avis) and consultations with the People’s Assembly on national draft laws

- The guarantee to consult and ask for a legal opinion of the People’s Assembly when a draft law affects the autonomy arrangement, as set out in the new draft of the Parliament’s rules of procedure, should be supported. If adopted, internal procedures for screening should be considered to ensure fulfilment of this compulsory consultation requirement in case the procedure is not followed.
- Increase the capacity of the People’s Assembly’s legal office in skills of drafting legal opinions (avis). This should be coupled with improving knowledge of the state language, and in the short term, by increasing the capacities of translation services. In this regard, the capacity of the People’s Assembly’s legal office to monitor and analyse the national draft laws should be strengthened. It is important that the Executive Committee is involved in the process of developing the opinions. Internal reporting in the People’s Assembly on the monitoring process of national legislation should also be considered.
- Specific protection of the autonomy status was suggested by the PWG in a draft law submitted by the People’s Assembly to the Parliament, which introduced the provision that the 1994 Law could be amended by the Parliament only if there is consent of PAG. Although the draft law has not been further pursued after the first reading due to differing positions in the Parliament, consideration should be given to entrenchment of the Special Status Law and importantly the protection of the autonomy status in the overall system of the legislative framework of Moldova.

4

**Autonomy's
self-governing
bodies and
relations with
central authorities**



The relations of a central level Government and an autonomy always function within the wider context of the structure and organisation of territorial administration of the country. How an autonomy is incorporated and treated within this organisation is largely determined by the political structure of a state, depending on whether it is a unitary, regionalized or federal state, and to what extent the state applies the subsidiarity principle in its governance through the decentralisation of the state powers. These are the key factors influencing the organisation of the mutual relations between the centre and the autonomy territory as sub-national unit of the existing territorial structure of a state.

Autonomies, however, often differ from other sub-national territorial units in the nature of their competencies, legislative powers, the level of self-governance granted, and other specific features. These political arrangements also create specific institutional relations and systems of checks and balances, reflecting the fact that they have been established as a resolution to a conflict and for the protection of a specific ethno-national community living within the borders of the state. These facts are often reflected in the different institutions that are established within an autonomy, as well as the different relationships of the central institutions with the autonomous territory.

In the specific context of Moldova, the system of local public administration, with the exception of ATU Gagauzia, is characterized by a symmetric territorial-administrative organisation, without a regional level.⁷⁸ ATU Gagauzia has a special legal status and has a different and unique position in comparison to other local government units of Moldova. The autonomy was created based on a political agreement entrenched in both the 1994 Law and in the Moldovan Constitution. The ATU Gagauzia has the power to adopt local laws and it has been granted the right to independently solve certain political, economic and

⁷⁸ Moldova is a unitary state organized in a two-level local public administration system (districts and municipalities) and a special administrative level for the autonomy, with the reform of administrative decentralisation being in progress. At the same time, Moldova is divided in 6 development regions, but they don't have a legal entity status, are not territorial-administrative units and do not have elected bodies. Institutionally they are subordinated to the central public administration (regional development ministry). They are created for planning, implementation and evaluation of regional development policies. Similarly, based on the development regions, in 2017, 6 NUTS regions have been established for statistical purposes.

cultural issues within the limits of its competencies. This position is reflected in the special relations and participation of the representatives of the autonomy's executive in the national governmental structures, as well as the right to propose candidates for the heads of some deconcentrated services. However, when it comes to the system of the centre's relationship with the autonomy as a self-governing territory, it is to a large extent, assimilated alongside the district and municipal authorities, although it has been given a special administration level⁷⁹.

From the perspective of the centre's relations towards the autonomy's institutional structures, be it within the wider structure of the national administrative-territorial organisation or the specific autonomy self-government arrangement, the approach by the centre is characterized by *the state oversight* required to ensure that the constitutional order and rights of citizens are respected by the autonomy's authorities.⁸⁰ When it comes to different levels of governance and devolution of competencies, depending on the nature of the transferred competencies, *co-ordination and co-operation* between the centre and the autonomy is often required to ensure effective and efficient implementation of the competencies exercised by the self-governing territory, therefore requiring specific channels of communication or representation to be established. Finally, the placement of deconcentrated services in the autonomy's territory represents an important component of the centre-autonomy relationship.

⁷⁹ Law No. 270 from 16.12.2020 for amending and supplementing some legislative acts (Law No. 436/2006 on local public administration - Articles 1, 2, 5; Law No. 435/2006 on administrative decentralisation - Article 4) // Official Journal No. 353-357 from 22.12.2020 and Law No. 272 from 16.12.2020 for the amendment of the Law No. 764/2001 on territorial-administrative organisation of Moldova // Official Journal No. 353-357 from 22.12.2020.

⁸⁰ More concretely, central oversight is directed at the assurance of protection of citizens, adherence to the rule of law and good governance principles on the territory of the autonomy. It is also needed to guarantee that the protection of territory, land and resources that is part of national territory and heritage is properly assured. The same applies to the use of public financial resources. This oversight is more specifically represented by general courts, offices of internal security and police, and when it comes to finances by the means of an audit. In situations where legislative and regulatory competencies have been assigned, the state ensures through judicial control that the local laws stay within the limits of the devolved competencies.

The following two sections focus on how these types of relationships and functions are applied in the context of the autonomy, in particular how these are organized in the context of the legislative powers of the People's Assembly and of the competencies performed by the Executive Committee.

4.1 The People's Assembly (Halk Toplushu)

Authority of the ATU Gagauzia is vested in its representative and executive bodies. The People's Assembly is the representative authority for the region. The 1994 Law provides the People's Assembly with the right to adopt local laws in the areas of the autonomy's devolved competencies. In addition to its legislative function, the People's Assembly oversees the activity of the autonomy's executive body, appoints public officials and makes proposals to the central authorities for heads of some deconcentrated structures of the central Government located in Gagauzia⁸¹. In addition to these functions, the People's Assembly also has the right to initiate legislation in the National Parliament⁸², and to submit applications for review of the Constitutional Court in cases where national level normative acts infringe the competencies of the autonomy.⁸³ These specific functions are discussed in a greater detailed in different parts of this report.

4.1.1 Exercise of autonomy powers to adopt local laws

The Law on the special legal status of ATU Gagauzia enumerates the areas where People's Assembly can adopt local laws, but these fields are defined in general terms, without further specification or clear delimitation of these competencies between the national level and the autonomy level. In this regard, the material scope of the autonomy's competencies in each specific sphere is

⁸¹ For more information on other functions fulfilled by People's Assembly see Liuba Cuznetova, Functional and institutional analysis of the Gagauzian People's Assembly, UNDP, Chisinau: 2017, pg. 7.

⁸² For more information on the People's Assembly legislative initiative in the national Parliament see section 3.2.2 from Chapter 3 Participation of the autonomy in the national decision-making process.

⁸³ For more information on People's Assembly right to make submissions to the Constitutional Court see section 5.1 from Chapter 5 State oversight and dispute resolution mechanisms.

not defined. In this situation, when most of the autonomy competencies accorded in the 1994 Law are shared with the centre, the People's Assembly does not have a clear framework that outlines the areas it can specifically regulate. In these circumstances, the laws adopted by the autonomy are often challenged through the system of the state control and judicial review of local legislation due to the differing regulation of local autonomy laws from national laws.⁸⁴ The recent efforts of the Parliamentary Working Group have resulted in some changes in specific national laws in the field of culture, which clarify the autonomy's competencies to regulate specific area according to its own rules.⁸⁵ In this regard, there is a clear need for a systemic process of clarification of autonomy competencies and their legal entrenchment. This will largely address the principal problems with current application of administrative control and challenges to local laws in the general courts.

When it comes to legislating, the 1994 Law provided the People's Assembly with the right to adopt local laws in the area of devolved competencies.⁸⁶ On average the People's Assembly adopts around 20 local laws per year.⁸⁷ The nature of these laws has not been defined in either the Law on special status of ATU Gagauzia or the Moldovan Constitution. The system of normative acts of Moldova is regulated by the Law on Normative Acts. It divides, based on the Constitution, the national laws of Moldova adopted by the Parliament into three categories: constitutional, organic, ordinary (each category has specific voting procedures).⁸⁸ The full list of all acts of the Moldovan normative system

⁸⁴ Some limited data on the number of annulled local laws are noted in Chapter 5 of this Report. For example, the statistics provided by the legal service of the People's Assembly secretariat note that in the period 2013-2018, 11 different local laws and decisions of the ATU legislative assembly have been cancelled in full or separate provisions of the respective enactments have been annulled in the court.

⁸⁵ For example, the four laws in the field of culture adopted by Parliament in 2017 - Law on libraries No. 160/2017; Law on museums No. 262/2017; Law on military graves and war memorials No. 161/2017; Law on public monuments No. 192/2017.

⁸⁶ Article 12 of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

⁸⁷ In 2013 the People's Assembly adopted 27 local laws, in 2014 – 20, in 2015 – 13, in 2016 – 13, in 2017 – 21, in 2018 – 11 local laws. See the new database of the ATU local laws at https://drive.google.com/drive/folders/1v_vlBgF7y3vRD-GPgQjHmByB55LOGSPa

⁸⁸ See Article 8 of the Law on normative acts and Article 72 of the Constitution of Republic of Moldova.

can be found in Article 6 of the Law on normative acts.⁸⁹ This article, although logically starting with the constitutional norm and laws of the Parliament and proceeding to other norms, does not establish explicitly the hierarchy of norms. This is treated in Article 7 that establishes legal force of normative acts, stating that “the legal force of normative acts is determined by the competence and status of the issuing public authority, as well as, by the category of the act. The limits of competence regarding the adoption, approval or issuing of normative acts are set by the Constitution of the Republic of Moldova, by Law No. 136/2017 on the Government and other normative acts”. These provisions establish the principle, however they do not explicitly clarify the hierarchy of norms and the legal doctrine would have to be applied by courts in cases of the issues that might arise in this respect. The regulation of the system of norms does not determine explicitly the place of local laws in hierarchy of norms. Nevertheless, the Law on normative acts prescribes in Article 17 that the normative acts adopted by the authorities of the unit with special legal status have to adhere to the national legislation of the Republic of Moldova.⁹⁰ When judicial control of local acts is applied, in the case of contradictions with national laws, the ATU laws are being cancelled.⁹¹

4.1.2 Legislative procedures for the adoption of autonomy laws

When it comes to the actual practice of development and adoption of autonomy laws, the autonomy’s legislative process has established procedures to check

⁸⁹ Article 6 of the Law on normative acts provides that the legislation of the Republic of Moldova consists of the following normative acts:

- a) the Constitution of the Republic of Moldova;
- b) the laws and decisions of Parliament;
- c) the decrees of the President of the Republic of Moldova;
- d) the decisions and ordinances of the Government;
- e) the normative acts of the central public administration authorities;
- f) the normative acts of the autonomous public authorities;
- g) the normative acts of the authorities of the autonomous territorial units with special legal status;
- h) the normative acts of the local public administration authorities.

⁹⁰ Both Article 2 of the Law on special legal status of ATU Gagauzia and Article 17 of the Law on normative acts No. 100, 22.12.2017 require accordance of the norms adopted by autonomy authorities with the legislation of the Republic of Moldova.

⁹¹ For more on this see Chapter 5 State oversight and dispute resolution mechanisms between the centre and the autonomy.

the adherence of its local laws to the national legislative framework. In this regard, the Legal service of the People’s Assembly examines the compliance of draft local laws with the provisions of the national legislation,⁹² and an opinion of the Justice department of the ATU Gagauzia (a deconcentrated structure of the Ministry of Justice located in Comrat) is requested.⁹³ The draft local laws are also sent for the opinion of the Executive Committee, which examines adherence to both national and local legislation.⁹⁴ However, although the above-mentioned procedures are in place, the local laws emerging from this process often do not pass the oversight control performed by the centre.⁹⁵

4.2 The Executive Committee of ATU Gagauzia and relationships with central level

The Executive administration of the autonomy is represented by the Executive Committee, a collective body headed by Governor, with responsibilities tied to the elaboration and implementation of policies in the fields of devolved autonomy competencies. In the exercise of its functions, the Executive Committee adopts decrees and decisions, based on collegial decision-making. It also has an important role in delivering public services (directly or through subordinated autonomy institutions) to the population of the region.

The competences of the Executive Committee are defined in Article 17 of the 1994 Law, however, similar to the autonomy’s legislative body, they are very broadly defined without clear specification and distinction from central authority competencies in the respective areas. The lack of clarification of the competencies of Gagauzia’s executive authorities in the fields of shared competences creates uncertainty regarding the boundaries of the Executive Committee’s regulation and governance and regarding the financing.

⁹² Article 63 of the People’s Assembly’s Rules of procedures No. 2 from 21.12.2012.

⁹³ Article 77 paragraph (2), Article 86 paragraph (1), Article 87, paragraph (1), Idem.

⁹⁴ Article 61 paragraph (5) and Article 63 paragraph (2), Idem.

⁹⁵ See Chapter 5 State oversight and dispute resolution mechanisms between the centre and the autonomy.

How the Executive Committee makes decisions and exercises the administration of the autonomy is a complex and broad area of study. This report examines the subject principally from the perspective of the centre-autonomy relations; therefore it falls beyond its scope to make an exhaustive analysis of the Executive Committee's powers in various fields, or to review the Committee's internal decision-making procedures and business processes.⁹⁶ The following sections focus on the key aspects and issues related to decision making at the autonomy level which are instrumental to the efficient functioning of the autonomy arrangement and examines them from the perspective of the distribution of competencies between the centre and the autonomy. The analysis mostly concerns the problems which arise due to unclear distribution of powers between the centre and the autonomy, and looks at their impact on the efficient realisation of the autonomy executive body's competencies. The analysis also looks at the relationships arising from the presence of deconcentrated services on the territory that are part of the Executive Committee and intertwining of central executive structures into the autonomy's administration.⁹⁷ The following analysis shows three demonstrative examples to illustrate the specific impact of the above-mentioned situation.

4.2.1 Public employment and remuneration policies

One of the examples of specific areas concerning the competencies demonstrating the issue are public employment and remuneration policies. From a comparative perspective, sub-national self-governing units (and autonomous regions in particular) often have full discretion to determine the staffing and wages of the civil servants and employees within their administration, provided that they have sufficient financial resources and safeguards to meet the general rules of accountability and good governance, and that clear principles

⁹⁶ A detailed functional analysis of the ATU executive body, its structure, decision making procedures and administrative processes has been provided within the European Union's project "Support to Local Public Authorities in the ATU Gagauzia" implemented by the Executive Committee with the support of local and international experts.

⁹⁷ Several decentralized structures of central public administration are part of the Executive Committee with full voting rights in decision making.

governing the civil service are in place. Employment and remuneration policies are important tools for the autonomy to ensure that public services are delivered to a good standard, to have a well performing self-governing administration, and to create incentives for the population to take public jobs within the autonomy.

When it comes to staffing policies, the Executive Committee, and other authorities of ATU Gagauzia, enjoy a partial competence in this respect. The staffing of the Executive Committee is adopted by the People's Assembly following a proposal by the autonomy's executive body. However, the final staffing arrangements of both the Executive Committee and the People's Assembly must be endorsed by the central authorities. This practice of endorsing staffing charts applies to all local public authorities across Moldova⁹⁸.

In terms of remuneration policies, the wages of all civil servants and other employees in the public sector of ATU Gagauzia are determined by central level regulation, and the Executive Committee and People's Assembly, have no decision-making powers⁹⁹. It is worth mentioning that the 1994 Law provides that the Executive Committee shall ensure the regulation of wages in the territory of the autonomy.¹⁰⁰ However, due to the fact that newer organic laws have assumed this competence at the national level, the autonomy's competence as outlined in the 1994 Law is over-ruled by the organic Law on the unitary system of remuneration in the public sector. As mentioned above, the right to determine public staffing and remuneration policy is a very important attribution for any autonomy and self-governing territorial units, and should be addressed accordingly.

4.2.2 Fiscal relations

Public finance represents a considerable aspect of centre-autonomy relations, and constitutes an important base for the development of the region and for

⁹⁸ Article 67 of the Law on the public function and the status of the civil servant No. 158 from 04.07.2008 // Official Journal No. 840 from 01.01.2009.

⁹⁹ Law on the unitary system of remuneration in the public sector No. 270 from 23.11.2018 // Official Journal No. 441-447 from 30.11.2018.

¹⁰⁰ Article 17, paragraph (1), letter c) of the Law on special legal status of ATU Gagauzia.

the implementation of its adopted policies. This area is clearly a very comprehensive topic, therefore only main features defining centre-autonomy relations in this sphere will be touched upon in this analysis to demonstrate how the relationship works.

ATU Gagauzia has a special position compared to other territorial units when it comes to the revenues of the autonomy budget. In this regard, the region's budget is composed, in addition to its own sources of revenues, of 100% Personal Income Tax, 100% Corporate Income Tax, 100% VAT on the goods produced and services delivered on the territory of the autonomy, 100% excise on the goods subject to this type of tax that are produced on the territory of the ATU Gagauzia, as well as by earmarked transfers and other revenue sources according to the law.¹⁰¹ Comparably, the territorial administrative units of Level II (rayons) only get in addition to their own revenues 25% of the Personal Income Tax, as well as some earmarked and non-earmarked transfers. Another specific feature of ATU Gagauzia's fiscal and budgetary relations is that the region is not participating in the equalisation transfers scheme that applies for other local self-governing units of the country, but this is a result of the fact that the autonomy is not contributing to the formation of the national fund for the support of territorial units (the Personal Income Tax, that is the main source of the respective support fund, remains in full amount in the autonomy budget).

Regarding the elaboration and adoption of the autonomy's budget, the ATU Gagauzia authorities enjoy a substantial autonomy that is based on clearly defined sources of revenue, from both its own revenues and shares of state taxes. In terms of expenditure, the autonomy's budget is mostly composed of non-earmarked funds¹⁰², thus the ATU Gagauzia authorities enjoy a high degree of independence in deciding its spending priorities. However, the centre-autonomy relations in this sphere are characterized by a high degree of co-ordination. The Ministry of Finance issues the annual methodological notes, checks the draft budget and receives regular and annual reports on the budget's execution.

¹⁰¹ Article 5, paragraph (3) of the Law on local public finance No. 397 from 16.10.2003 // Official Journal No. 248-253 from 19.12.2003.

¹⁰² Meaning that they are not linked with a specific spending area or priority, they are of general purpose and a self-governing territorial unit can decide on spending priority. The earmarked funds – such as some transfers for the education, for road maintenance, etc. are confined to a specific area or spending purpose.

The interviews conducted with autonomy and central authorities' representatives confirmed that currently many issues regarding the distribution of tax base between the centre and the autonomous region have been resolved. This is also confirmed by various studies and reports prepared by non-governmental organisations and independent experts.¹⁰³ On the other hand, when it comes to resources from different national development funds¹⁰⁴, the ATU Gagauzia authorities are concerned about the issue of participation in these funds. From the perspective of some Comrat stakeholders, the autonomy has a reduced access to and receives a reduced level of benefits from these resources, compared to the percentage of the national population and territory that the region represents. In addition, some of the stakeholders claim that the autonomy is not well represented in the boards of the respective funds, and doesn't enjoy proper participation in the process of selection of projects to be funded.¹⁰⁵ The system of distribution of public finances is complex and must be seen from a systemic point of view. It is often the case that autonomies manage to negotiate different arrangements, as fiscal policies and fiscal relations constitute a cornerstone of the self-governance of the autonomy. It is therefore the ATU Gagauzia arrangements in this sphere must be seen considered from the perspective of the specific existing financial arrangement and whether participation in other national funds should be secured.

¹⁰³ See the report launched in July 2019 by "Expert-Grup", which notes that "the evolution of the revenues compared to 2014 shows clearly that the system for the formation of the revenues for Gagauzia is more advantageous compared to the rest of the country. So, in 2018 Gagauzia has registered compared to 2014 the highest growth of its share in the consolidated budgets of local authorities, by 1.51%. Also, Gagauzia has registered the highest level of total per capita budget revenues, of 5497,4 lei, which constitutes 189% growth compared to 2014. Starting with 2017, Gagauzia has advanced Chisinau regarding the budget revenues per capita, in 2018 the difference consisted of 268 lei or 5.1% more, and compared to Balti this difference is considerably higher, 1398 lei or with 34.1% more (in Gagauzia)." Dumitru Budianschi, The financial autonomy in the Republic of Moldova: the evolution of the local budgets, Expert-Grup, Chisinau: 2019, pg. 6.

¹⁰⁴ Such as National Regional Development Fund, Energy Efficiency Fund, Ecological Fund, National Road Fund, Social Investments Fund, etc.

¹⁰⁵ These issues have been raised by Gagauz representatives on different occasions, including during the conducted interviews for the elaboration of this report and in the meetings of the Parliamentary Working Group on Gagauzia and in the meeting with Executive Committee on 8 December 2020. For more information issues raised and the decisions of the PWG on the distribution of national development and capital investments funds see <http://www.parlament.md/Actualitate/RaporturileParlamentuluicuiUTAGagauzia/tabid/237/language/ro-RO/Default.aspx>

4.2.3 Relations between the Executive Committee and deconcentrated¹⁰⁶ public administration structures

There are several deconcentrated services and structures of the central public administration situated in the autonomy's territory.¹⁰⁷ Some of them cover Gagauzia's administrative territory only, while some others also serve several neighbouring districts. The co-ordination of these deconcentrated services is assigned to the territorial office of the State Chancellery in Comrat, the office that also conducts administrative control on the acts adopted by the ATU Gagauzia authorities. A more detailed description and analysis of the specific role of the territorial office of the State Chancellery in Comrat and the centre-autonomy relations attached to this function are presented in Chapter 5 State Oversight and Dispute Resolution Mechanisms.

As the result of recent central public administration reforms, some deconcentrated services that were previously present in Comrat, e.g. Ecological Inspection, were closed/merged with other structures or moved to another location. Although these are central public administration services, the Gagauz authorities expressed their concern and dissatisfaction with the removal of offices from the territory. This case is important to mention from the much larger perspective of the autonomy's participation in decision-making processes at the national level. The unsatisfactory nature of these results from the perspective of the autonomy confirms the points and recommendations raised in earlier chapters, which conclude that in the process of such reforms, proper consultation and permanent communication between the central and autonomy authorities is needed.

An analysis of the structure of the Executive Committee shows a unique intertwining of central executive structures with the autonomy's administration. Several central authority deconcentrated departments are part of the

¹⁰⁶ Deconcentrated services according to the public administration system of Moldova are specialized institutions of the central public administration placed in the territory that are subordinated to ministries and other central public authorities. Unlike the decentralisation, where competences are transferred to self-governing units, in case of deconcentration, the administrative competencies are transferred from ministries and other central public authorities to their institutions placed in the territory.

¹⁰⁷ For instance, the State treasury, the Agency for Public Services, Agency for Unemployment, Labour Security Inspection.

Gagauz Executive Committee, however, they are subordinated to central public authorities¹⁰⁸. The heads of these deconcentrated structures participate in the meetings of the Executive Committee and have voting rights. ATU Gagauzia authorities propose candidates for the heads of these general departments to be approved by the respective ministry or central public authority.¹⁰⁹ The membership and participation of these structures in the meetings of the Executive Committee can be partly beneficial and may allow for an increased co-operation and exchange of information between the centre and the autonomy.

4.3 Conclusions

The relations between the central authorities and the autonomy regarding the exercise of autonomy powers and competencies are largely impacted by the lack of a detailed clarification of competencies between the central authorities and the autonomy's legislative and executive bodies. Given the current legal framework for local legislation-making, and the subsequent central oversight of this legislation through administrative control and judicial review, the autonomy's ability to exercise its legislative powers is limited. The national legal framework sets the requirement for accordance of autonomy's norms with the system of national laws. This is a regular condition for self-governing units with regulatory or legislative powers, however it is usually applied in circumstances where the distribution of legislative powers and competencies is clearly defined. With the subsequent establishment of administrative control performed by state and the judicial review in which national laws have precedence over local laws, the autonomy's powers to develop local legislation are significantly constrained. In this regard, the autonomous authorities have a real challenge when legislating in the areas of shared competencies. Local legislation can be more specific, but cannot contradict the national laws.

From the procedural point of view, the local regulations that require to assess

¹⁰⁸ General Department of Justice of ATU Gagauzia, the General Department of Internal Affairs and the General Department of Information and Security.

¹⁰⁹ For instance, the head of the General Department of Justice of ATU Gagauzia is appointed by the Ministry of Justice on the proposal of People's Assembly.



accordance of autonomy laws with national legislation are in place. However, without a high level of preliminary co-ordination with the central level Ministries about what the autonomy can regulate, it is very difficult to ensure adherence to the national laws and to satisfy the requirements of the existing set-up. These issues could, to a certain extent, be mitigated through proper clarification of the competencies between the centre and the autonomy in areas of the devolved competencies.

4.4 Potential areas for further discussion by the Parliamentary Working Group

4.4.1 People's Assembly and autonomy legislation

- Establishing a systematic process to clarify the autonomy's competencies would set a clear framework for the People's Assembly to legislate, through the development of local laws, and for the adoption of policies necessary to realize the competencies that have been devolved to the autonomy. A more detailed clarification of ATU Gagauzia competencies would also largely address the issue requiring local laws to fully adhere to national legislation, because the limits of the People's Assembly regulation by local laws would be very clearly specified. Specific recommendations for the process and for implementing mechanisms for the clarification of competencies are noted in the chapter on the centre-autonomy dialogue.
- Improving communication in the elaboration phase between the drafters of local laws and relevant Ministries.
- Increasing the capacity of the legal services of the Executive Committee and of PAG to follow and analyse national legislation, including by developing standard procedures and forms for reflection on the adherence with the national legislation in the information note accompanying draft local laws and in the legal opinions, would ensure adherence to the national legislation framework but would also create a space for co-operation with the central level on issues of concern to the autonomy.

4.4.2 Executive Committee

- The clarification of the autonomy competencies, including in the administrative sphere, would provide for clear delineation of the authority of the Executive Committee and would provide a transparent framework for its decision-making.
- Improving co-ordination, establishing regular communication channels and creating specific working groups between the Executive Committee and relevant Ministries could provide a practical means to resolving specific issues concerning the shared competencies.¹¹⁰

¹¹⁰ Same proposal noted in point 3.1.5 in the Chapter 3 Participation of the autonomy in the national decision-making process and point 6.4.2 in Chapter 6 Mechanisms for centre-autonomy dialogue.

5

**State oversight
and dispute
resolution
mechanisms
between the
centre and the
autonomy**



The administrative territorial organisation of a state, the organisation of local self-governance, and the relationships between centre and sub-national units are usually established in the supreme law of a country, the constitution. The system of state control, combined with defined dispute resolution mechanisms between the different levels of governance, represents a standard element of state administrative system, ensuring that the principles for the organisation of mutual relationships are respected by both the central authority and the self-governing territory.

From the comparative perspective, a mutual system of checks and balances exists between a centre and an autonomy, to ensure that these principles are respected by both levels. From the perspective of the state, this is represented by the oversight by central authorities, which ensure that the implementation of the autonomy's competences stays within the bounds of the national constitution and rule of law.¹¹¹ Usually, this mechanism is exercised when the autonomy exceeds its competences, and a judicial review is put in place to check the legislative acts adopted by the autonomy.¹¹² From the perspective of

¹¹¹ In addition to judicial control over autonomy acts, sometimes there is an official position within an autonomy that fulfils the role of the state representation. This may take a form of a Governor or a Prefect. Often their function is of a diplomatic nature, ensuring the co-operation with a state, rather than having a role in decision-making of the territory. For example, the Governor of Åland is appointed by the President of Finland following agreement with the Speaker of the Åland Parliament (Lagting). The Governor is tasked with representing the Finnish Government and the President of the Republic, and is responsible for coordinating the activities of the Finnish State on the Åland Islands. This includes heading the State Department of Åland, which coordinates shared Åland-Finland strategies for monitoring language interests, education within the State administration, and public services. The Governor of Åland also occasionally acts as bilateral mediator between Åland and Finland, for instance by engaging in disputes about 'overlapping' policy areas. For legislative issues, the Governor uses the Åland Delegation to mediate disputes.

¹¹² The comparative experience shows that various systems are applied and that they constantly evolve. For example, the new Italian Constitution of 2001 abolished the proceedings of rejections of laws through the central Government (still written in Article 55 of the Autonomy Statute). Before then, whenever the Regional and Provincial laws were approved by the Regional or Provincial Parliament, they had not been in force yet. They had to be transmitted to the Government Commissioner of the State. The central Government was controlling the laws in order to see if these were legal or in agreement with the national interests. It had 30 days to endorse it or, should the law go beyond their competence or contrast with the national interests, to send it back. If the central Government did not take any decision within these 30 days, the bills became law and came into force after their publication. The Regional or Provincial Parliament could change the rejected law, by taking into account the objections of the central Government or else they could approve it in the

the autonomy, a judicial dispute resolution also aims at protecting the autonomous entity from both the limitations of its competences and interference by central authorities in its jurisdiction. These mechanisms are used to resolve disputes over the distribution of competences in specific situations, for example when one or the other side may have overstepped previously established boundaries, or where there is a need to provide more clarity on a situation through re-examination of the principles established in the constitution.

The resolution of these disputes usually takes the form of a review by the Constitutional Court¹¹³, or occurs within a dedicated autonomy dispute resolution mechanism set out in an autonomy agreement or an autonomy act.¹¹⁴ The elevation of a dispute resolution activity from the general courts to a constitutional court or specialized autonomy dispute resolution mechanism reflects the special political importance accorded to the autonomy and its creation as a means of resolving conflict within the state, often safeguarding the ethnic and linguistic identity of a specific community living inside its borders. The same importance may be applied to possible disputes over an autonomy's legislation, to ensure that the autonomy stays within the boundaries of its competences. The act of reviewing an autonomy's legislation within a constitutional court demonstrates the power of the legislative autonomy.¹¹⁵

same version with the absolute majority of votes (18 members of the Provincial Parliament and 36 for the Regional Parliament). In the latter case the central Government could not reject the law another time, but had to contest it before the Italian Constitutional Court - within 15 days - if it conflicted with the Constitution, or before the Parliament, for clashes of interests. If the central Government did not take any decision, the law could come into force 15 days after the transmission to the Government Commissioner. The new proceeding permits the Central Government only to contest the regional and provincial laws before the Constitutional Court. In the meantime, and until the eventual negative decision of the Court, the laws are in force.

¹¹³ Ibid.

¹¹⁴ Constitutional Courts play a primary role as a dispute resolution mechanism, however, alternative dispute resolution mechanisms with a focus on problem-solving can also be part of autonomy designs. An example of such a mechanism can be found in the Åland Delegation, established under Act on the Autonomy of Åland, (1991/1144), Article 19 and 55-57. In other cases, an autonomy arrangement may be guaranteed by an international agreement, and dispute resolution can in such cases assume an international dimension. This was the case of South Tyrol under the United Nations negotiations and ultimately dispute resolution under International Court of Justice, or the agreement on the Åland Islands under the League of Nations.

¹¹⁵ There is also another form of oversight concerning the acts and rules emanating from the executive and administrative bodies of an autonomy, when disputes are referred to administrative courts (if these form a part of the judicial system of a country). However, the exercise of this type of administrative control depends on the level of independence of the autonomy in its administrative competences.

5.1 Centre-autonomy dispute resolution by the Constitutional Court

When it comes to the legislative framework for dispute resolution mechanism(s) in the context of ATU Gagauzia, the 1994 Law established the right of the People's Assembly to address the Constitutional Court in cases where the competences of the autonomy are infringed by normative acts emerging from the legislative and executive authorities of Moldova.¹¹⁶ This right to ask for the review of the constitutionality of the laws and decisions of the Parliament, decrees of the President, decisions and orders of the Government, and any ratified international treaties that might infringe the status of the autonomy, has been further reflected in the Law on the Constitutional Court and the Code of Constitutional Jurisdiction.¹¹⁷ The new changes to the Law on the Constitutional Court established that an appeal by the autonomy can only be made on the grounds of Article 111 of the Constitution (which regulates the basic principles of the entrenchment of the Gagauz autonomy in the Constitution).¹¹⁸

In principle, the system of dispute resolution within the Constitutional Court may seem to formally provide Gagauzia with a good instrument of redress to protect its powers and resolve disputes between the centre and the autonomous territory. However, to a large extent, the protection of the autonomy arrangement depends on the level and types of entrenchment of the autonomy's status and its competences within the legislative framework of the country. This is where the weakness of the dispute resolution mechanism to adequately address competency and jurisdictional disputes resides.

¹¹⁶ Article 12 paragraph 3. (i) and paragraphs 4-6 of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

¹¹⁷ Article 25, point j) of the Law on Constitutional Court No. 317 from 13.12.1994 // Official Journal No. 8 from 07.02.1995, but also Article 38, point j) of the Code of constitutional jurisdiction No. 502 from 16.06.1995 // Official Journal No. 53-54 from 28.09.1995.

¹¹⁸ Law No. 24 from 04.03.2016 on amending and complementing certain laws // Official Journal No. 100-105 from 15.04.2016.

In many autonomy contexts, the autonomy act laying out the form of its self-governance is part of the constitutional framework of a country,¹¹⁹ though it not unusual that the self-governance of a specific territory and more practical modalities attached to autonomy are outlined through the country's ordinary legislation. Nevertheless, the resulting political agreement is secured by the specific entrenchment of the autonomy arrangement through special procedures,¹²⁰ and by according the autonomy act a constitutional or higher normative power within the legislative hierarchy of norms.¹²¹ In this regard it is usually very difficult to modify an autonomy arrangement by ordinary legislation¹²².

In the context of ATU Gagauzia, the autonomy provisions in the Moldovan Constitution provide only principles for the autonomy's self-governance.¹²³ This means that the Constitutional Court has rather limited options to resolve disputes that may arise regarding the jurisdiction and the competences of the autonomy. The autonomy status, and the modalities of its self-government, are regulated by the 1994 Law, an organic law that is not given any preference or otherwise elevated position among other laws of the same rank, despite the fact that there is a differing procedure for changing it.¹²⁴ The Constitutional Court's position regarding this issue is that there are no differences in the nature of the organic laws of Moldova (despite the fact that there is a special entrenchment procedure for changing the autonomy statute) and more recent laws of the same rank will apply. This means that the autonomy statute can be

¹¹⁹ Autonomy Statute of Trentino-Alto Adige/Südtirol was adopted under Constitutional Law No. 1 from 10.11.1971. For the unified text see the Presidential Decree No. 670 of 31 August 1972.

¹²⁰ See for example regional referendum of the Autonomy of Basque Country required on the national laws concerning autonomy in Article 46 and 47 of the Statute of the Autonomy of Basque Country of 18 December 1979.

¹²¹ For example, the amendment to the Act on the Autonomy of Åland that can be passed only by the same procedure as an amendment to the Constitution without making the autonomy act a formal constitutional law. For more details see Suksi Markku, Explaining the Robustness and Longevity of the Åland Example in Comparison with Other Autonomy Solutions, pgs. 56-65, International Journal on Minority and Group Rights 20(2013) Brill, Leiden: 2013.

¹²² Ordinary legislation in this context means legislation that is below the constitutional rank legislation.

¹²³ Article 111 of the Constitution of the Republic of Moldova from 29.07.1994 // Official Journal No. 1 from 12.08.1994.

¹²⁴ The Law can be changed and amended only through a qualified majority, with the vote of three fifths of the elected members of Parliament. Article 27, the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

materially changed by newer legislation of an organic character.¹²⁵ In this regard, the recommendations of the Venice Commission for a higher entrenchment of the autonomy arrangement, made in 2003 in the context of the attempt to review the constitutional provisions concerning the autonomy, remain valid.¹²⁶ A higher entrenchment of the autonomy arrangements in the system of Moldovan legislation would address the issue of stability and protection of the autonomy status.

In practice, the autonomy has made a low number of submissions to the Constitutional Court for review. The limited options for resolving competency issues and addressing the protection of the autonomy arrangements may play a role in the relatively limited use of this dispute resolution mechanism on the part of the autonomy authorities. Moreover, as an analysis of the autonomy's exercise of this mechanism points out, the number of autonomy submissions to the Constitutional Court that have been successfully accepted for review is low.¹²⁷ In this regard, it would be beneficial for the autonomy to improve the institutional capacities and abilities of the PAG to develop quality submissions that would fulfil the procedural requirements and would be reviewed by the Court on merits.

¹²⁵ Although there is a special entrenchment, requiring specific voting procedures for adopting and making changes to the 1994 Law, provisions of the most recently adopted organic law would apply. For more information see the footnote 57.

¹²⁶ Venice Commission Opinion on the Law on modification and addition in the Constitution of the Republic of Moldova, Strasbourg, 21 August 2002, Opinion No. 191/2001 CDL-AD (2002) 20 Or. Eng. The report in paragraph 18, pg. 4 notes 'special organic laws' "should be distinguished from organic laws on both material and formal level" (The material level is the fact that the special organic law establishes the territory, institutions, symbols, official languages and powers of the autonomy and the formal one is the specific procedure for adoption and possible modification of special laws). See also paragraphs 24-25, pg. 6., which note that the 1994 Law should be given a constitutional underpinning.

¹²⁷ Elena Cuijuclu, Mihail Sirkeli, Reciprocal control between the centre and autonomy: experience of implementing the Gagauz statute, Pilgrim-demo report: 2015, pgs. 8-13. The report notes that "according to the reports of the Constitutional Court for the period 1995-2015, the People's Assembly has submitted only seven submissions: 1 submission - in 1998, 1 submission - in 1999, 4 submissions - in 2001 and 1 submission - in 2013. None of these submissions was examined by the court on their merits. All submissions, except for the last one, were sent back and their examination was denied based on Article 40 part (3) of the Code of Constitutional Jurisdiction." The report further summarized following reasons for sending submissions back to the author: 1) submission was unfounded and lacked subject matter on which the submission is based; 2) there was no causal link between the contested provisions and the existing constitutional norms; 3) submission did not meet formal requirements of a submission; 4) the author of the submission did not provide additional information and did not answer the questions of the Constitutional Court within the specified period of time.

5.2 State oversight and resolution of disputes concerning normative acts of the autonomy

It is important to point out that addressing the position of the 1994 Law within the Moldovan legal systems would not resolve the specific competency disputes that arise between the centre and the autonomy in the areas of shared competences. As previously noted, the lack of rules for dividing shared responsibilities regarding the autonomy's competencies in specific spheres within the 1994 Law remains the obstacle to the autonomy's execution of its devolved powers, at both the legislative and the executive level. Most of the devolved competencies outlined in the 1994 Law are shared, and there is no clear distribution of competences or specification of the principles that would establish rules for their implementation. This impacts on the autonomy's legislation-making. When it comes to the autonomy's legislative acts, the 1994 Law requires that any normative acts of Gagauzia that contradict the Moldovan Constitution and the 1994 Law shall be declared void.¹²⁸ However, the autonomy law, when it was created, did not specify any mechanism of verification of the autonomy acts with national legislation.¹²⁹ The mechanisms for resolving disputes over autonomy acts were only later incorporated into the system governing the autonomy's self-governance. The amendments to the Constitution in 2003 established control over the autonomy by the central authorities in Article 111 (6).¹³⁰

¹²⁸ Article 12(6) of the Law on special legal status of Gagauzia No. 334 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

¹²⁹ There is an argument that is sometimes advanced from the perspective of the autonomy that Article 12(6) requires only verification against Constitution and the 1994 Law. However, the legislation-making and legislative framework for adoption of the autonomy local laws have to be read in the entirety of the whole 1994 Law, which in Article 2 stipulates that Gagauzia is governed on the basis of the Constitution of the Republic of Moldova, the present law and other laws of the Republic of Moldova (with exceptions provided by the present law), Legal code (Ulozenie) of Gagauzia and normative acts of the People's Assembly (Halk Toplushu) of Gagauzia, to a degree that they do not conflict with the Constitution and legislation of the Republic of Moldova. This clearly sets the normative boundaries also for the local legislation requiring its adherence to the full normative basis of national laws.

¹³⁰ Article 111, paragraph 6 of the Constitution of the Republic of Moldova from 29.07.1994 // Official Journal No. 1 from 12.08.1994 stipulates "The Government, under the terms of the law, performs control over the observance of the legislation of the Republic of Moldova within the autonomous territorial unit of Gagauzia."

Normative acts adopted by the People's Assembly are now subjected to administrative control performed by the State Chancellery. In the case of the ATU Gagauzia authorities, the system of state administrative control is identical to the system outlined for the local public authorities. The territorial office of the State Chancellery established in Comrat¹³¹ is one of ten offices that cover the entire country, with the same status of the office and the procedures for conducting the administrative control. The State Chancellery Territorial Office ensures compliance with the Constitution and the 1994 Law but also with other normative acts of the state. Compliance disputes are referred to the general courts based on the submissions of the State Chancellery Territorial Office. The State Chancellery office sends notifications requesting that the decisions and local legislation are brought in line with national laws. If the issues are not rectified by the relevant authority or there is no reply, the concerned act or decisions are sent for a review to a general court within 30 days of a refusal to remedy the adopted decision or within 60 days of silence from the concerned authority. Given that there is no clear delineation of competences, the autonomy's normative acts, in principle, must fully adhere to the national legislation framework which subordinates the autonomy's legislation-making to the regulation established in the national laws. The asymmetrical model and specific nature of the autonomy is not reflected in the control mechanism (as in some other comparative cases)¹³² and operates in the same way for all local authorities in Moldova.

¹³¹ The territorial office of the State chancellery in Comrat was established in 2011. The office has 5 staff members, including the head of office, the deputy head and the main specialist and a superior inspector and administrative staff. The office is responsible for co-ordination of the deconcentrated state services in Comrat, for the administrative control that covers 26 municipalities of ATU Gagauzia and activities of the Peoples' Assembly, Executive Committee and the Governor of ATU Gagauzia.

¹³² For example, in Åland Islands, according to the Autonomy Act, all legislation passed by the Parliament of Åland must be approved by the President of Finland within a period of four months. The President may use veto powers if a law exceeds Åland's legislative competence, or if it affects the security of the country. Therefore, Åland is subject to clear though limited supervision by the centre, though this right remains very much a formality that is unused. In order to avoid a veto, before any draft legislation is presented to the President, it must be sent to the Åland Delegation, which reports on whether the local Parliament (Lagting) has exceeded its authority when adopting legislation. This report is sent to the Supreme Court, which in turn sends its view to the President of Finland. This Delegation has been so far effective in preventing any major disputes from breaking out between Åland and Finland. See also South Tyrol practice of elevating the dispute resolution over local laws to the Constitutional Court, noted in the footnote 112.

In this relation, the autonomy authorities maintain the political position that dispute resolution regarding the autonomy's laws should be elevated to a resolution by the Constitutional Court.¹³³ This position does not correspond with the currently established normative system set out in the Moldovan legislative framework where autonomy normative acts have to be in accord with the national laws. However, from the perspective of devolution of regulatory powers, where in comparative practice usually some primary competencies are transferred to an autonomy in the case of issues of specific concern to the community living within the autonomous territory, the position of the autonomy's laws in the normative system should be considered. This may be required to ensure that the self-governing authority can effectively exercise its legislative and executive authority in these areas. If such would be the case, a corresponding system of dispute resolution should also follow.

5.2.1 Current practice of the state administrative control and judicial review

As noted above, the centre and the autonomy hold different positions concerning how local Gagauz laws are examined for their accordance with national legislation through the government's administrative control oversight and general courts. The situation is also aggravated by discrepancies in the legislative framework governing the system of administrative and judicial control concerning the autonomy.

In particular, there are inconsistencies in the legislation covering the implementation of Article 111(6) of the Constitution. The 1994 Law did not foresee any state oversight control mechanisms. It required the local laws and the decisions of the PAG and the decisions of the Executive Committee to be sent to the Parliament and the Government within 10 days of their adoption *for information purposes*¹³⁴. The current system of oversight over autonomy

¹³³ Peoples' Assembly resolution No. 510-XXXIV/V from 09.08.2016.

¹³⁴ "Laws and regulations adopted by the People's Assembly shall be sent to the Parliament and the Government of the Republic of Moldova within 10 days from the date of adoption, for information purposes" and "Decrees and decisions of the Governor of Gagauzia and of the Executive Committee shall be sent to the Government of the Republic of Moldova within a 10-day period from the date of adoption, for information purposes". Article 13, paragraph 4 and Article 17, para (3) of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

legislation was established in 2003 following the inclusion of the principle in Article 111 of the Constitution stipulating that “the Government, under the terms of the law, performs control over the observance of the legislation of the Republic of Moldova within the autonomous territorial unit of Gagauzia”. The requirement within the Constitution is general, and the implementation of this principle has not been followed up by full harmonisation across the relevant legal framework, including the 1994 Law. The procedure for the administrative control is described by the Law on Local Public Administration. However, the law does not include the acts adopted by the People’s Assembly and the Executive Committee among the acts that are subject to the mandatory control of lawfulness.¹³⁵ In fact, it is only the Governmental Regulation on the organisation and functioning of the territorial offices of the State Chancellery, that is implementing legislation, that explicitly includes the normative acts adopted by the Peoples’ Assembly and by the Governor and the Executive Committee of ATU Gagauzia among the acts that are subject to the mandatory administrative control. Although this may be seen just as a technical legislative issue, this is an important argument used by the ATU Gagauzia authorities to justify not sending local laws for administrative control.

In this situation, there is a need to clarify the legal basis for the central administrative control over the decisions and local laws of the ATU Gagauzia authorities, but more importantly, there is a need to resolve the issue of clarification of ATU Gagauzia authorities’ competences. This would greatly alleviate the problem of administrative control of the autonomy by clearly setting the scope for the legislative regulation of the People’s Assembly, and define and clarify the areas that could be governed by local laws. Moreover, as noted above, consideration should be given to the nature and position of the autonomy laws in the normative system.

When it comes to actual practice, the ATU Gagauzia authorities do not send their adopted acts to the territorial office of the State Chancellery in Comrat for administrative control. The Executive Committee sends its adopted decisions directly to the Government’s office in Chisinau as it is foreseen by the 1994 Law,

¹³⁵ Article 64 of the Law on local public administration No. 436 from 28.12.2006 // Official Journal No. 32-35 from 09.03.2007.



on an irregular basis, while the People's Assembly does not send its adopted decisions and local laws at all.¹³⁶ A new legislation establishing an electronic State Register of Local Acts, that requires that the decisions adopted by the Executive Committee and the local laws adopted by People's Assembly, are uploaded in the system.¹³⁷

The People's Assembly has formally expressed its opinion on this issue¹³⁸, noting its disagreement with the established system of administrative control by the territorial office of the State Chancellery and subsequently by the general courts. In this context, the PAG suggested that contentious issues regarding powers of the People's Assembly of Gagauzia to regulate certain matters should be referred to the PWG. Only after this, in the case that a consensus cannot be found within the PWG, should the issue be sent for resolution in the Constitutional Court, and not resolved by the general courts system.

So far, the Parliamentary Working Group on Gagauzia has not acted as a dispute resolution mechanism. The PWG was established as a dialogue platform acting in realm of legislation development. Nevertheless, the PWG has mandated a group of legal experts to map the discrepancies between the national and ATU Gagauzia legislation in four sectoral fields (culture, healthcare, economy and environment) and in a preventive manner has tried to clarify the scope of the People's Assembly competence to regulate in these areas.¹³⁹ Given that under the current system, where the Gagauzia's local laws have to adhere to the national legislation, clear clarification of the autonomy's competences could, to a certain extent, mitigate the problems arising in relation to the position of the local laws and the administrative control mechanism system, currently disputed by the autonomy.

¹³⁶ Government's Report on the lawfulness control of the acts adopted by local public administration authorities exercised by State Chancellery territorial offices in 2016
https://cancelaria.gov.md/sites/default/files/document/attachments/f.titlu-raport_pub_2016.pdf

¹³⁷ See Article 10(2) of the Law on local public administration No. 436 from 28.12.2018.

¹³⁸ Peoples' Assembly resolution No. 510-XXXIV/V from 09.08.2016 on the "illegality of checking the legality of laws and regulations adopted by the People's Assembly of Gagauzia by the courts of the general jurisdiction of the Republic of Moldova".

¹³⁹ In the result of this mapping exercise, four laws have been adopted by the Parliament in the field of culture where the competences of ATU Gagauzia authorities have been regulated, namely in the Law on libraries No. 160/2017; Law on museums No. 262/2017; Law on military graves and war memorials No. 161/2017; Law on public monuments No. 192/2017. In addition to these four laws, six other draft laws were elaborated by PWG.

Finally, the role and function of the *methodological support and administrative control of the State Chancellery* to the autonomy should be considered from the perspective of the special status of the autonomy within the administrative territorial structure. The territorial offices of the State Chancellery are responsible not only for administrative control, but also for providing legal and methodological assistance to the local public administration authorities. This also includes providing *preventive consultation and opinion on the lawfulness of draft decisions and other normative acts before they are adopted*, and participation, if invited, in the meetings of the authority (for instance local council, etc.) to provide advice if requested. From the perspective of the autonomy and ability to make independent decisions on its delegated competencies, this system offered to Moldova's other local public administration authorities, combining methodological support and control, might not seem entirely appropriate. Taking into account the general position of the ATU Gagauzia authorities towards the administrative control, it could be useful to consider separating the methodological support from administrative control of legislation. The two functions could be assigned to different central public authorities.

In sum, it could be said that the systems of state administrative control, and judicial control via the general courts, are quite often used,¹⁴⁰ due to several factors. In a situation where there is lack of clarity concerning competences, it is unclear what the ATU Gagauzia authorities could regulate and manage. Therefore, at present, a number of autonomy laws are being sent for the courts review by the Government. Given the established system and observance of the requirement of adherence to the national norms applied in the court proceedings, the national legislation overrules these local laws as a matter of principle. The clarification of competences between the centre and the

¹⁴⁰ There is a lack of comprehensive official statistics on the number of local laws challenged in courts that has been annulled. The annual reports of the State Chancellery don't separately reflect cancellation of the decisions of the ATU authorities and local laws. The statistics provided by the legal service of the People's Assembly secretariat note that in the period 2013-2018, 11 different local laws and decisions of the ATU legislative assembly have been cancelled in full or separate provisions of the respective enactments have been annulled in the court. The research in Elena Cuijuclu, Mihail Sirkeli, Reciprocal control between the centre and autonomy: experience of implementing the Gagauz status, Pilgrim-Demo: 2015, pgs. 14-15, mentions that in the period December 2013 – July 2015, 6 Regulations adopted by People's Assembly have been challenged, 5 of which have been cancelled, and 3 local laws, 2 of them have been annulled.

autonomy is crucial, and the key issue to resolving the matter. As a temporary measure, before appropriate clarification of competences is achieved, better co-ordination and consultation with central level ministries in preparation of local laws will help to preventively address the issue of scope of the ATU Gagauzia regulation.

5.3 Alternative or extra-judicial dispute resolution in the context of the ATU Gagauzia

One of the recommendations of the PWG was to consider the establishment of a specific dispute resolution mechanism between the central authorities and the autonomy. When it comes to alternative mechanisms to resolve disputes between the centre and the autonomy, bilateral mechanisms could be very useful to resolve disputed issues outside of the court system. However, within the ATU Gagauzia context, without a clear distribution of competences, it would be very difficult to mediate any differences in the positions concerning the autonomy competences. The clarification of competencies and their subsequent legal entrenchment is paramount for the exercise of the autonomy's devolved powers. It is therefore important to stress that even if the current system of entrenchment of the autonomy arrangement and the issue of the nature of the autonomy's normative acts are not immediately considered, a clear clarification of competencies would provide the autonomy authorities and central institutions with clear boundaries within which to perform their functions. In this regard, the areas for potential disputes over competencies would diminish and there will be definite rules within the legislative framework for addressing possible disputes.

However, an alternative bilateral dispute resolution could still be considered. This could play a preventive role for resolving specific issues, sometimes of a political character, that might arise and could be resolved outside of the judicial revisions. In the past, some issues have been resolved and mediated through informal channels, by discussions between the Governor of Gagauzia and the Prime Minister. However, the success and use of such means of resolving disputes is very much tied to the interpersonal relationship between political leaders. From the formal point of view, the Governor is a member of the Government and can thus raise issues concerning the autonomy in this body, however this format does not

allow for a specific bilateral discussions and resolution of the problems. Drawing from comparative practice, several alternative options and formats could be considered. Extra-judicial mechanisms involve trigger procedures or preventive problem-solving mechanisms established on a parity basis.¹⁴¹ Other formal dialogue mechanisms and channels also offer a platform for addressing possible problems that may arise in the context of realisation of the autonomy's arrangements within the state.¹⁴² Therefore, any alternative, extra-judicial dispute resolution mechanism should be considered within this wider framework of centre-autonomy mechanisms. The consideration of new mechanisms should ensure that the institutional set-up is established and used in such a way as to efficiently address the state oversight and co-operation, and the realisation of autonomy competences, so that there is no unnecessary proliferation of mechanisms.

5.4 Conclusions

When discussing the question of dispute resolution mechanisms, the role of such mechanisms within the state governance system of other countries that have established a territorial autonomy within their political structure should be properly understood. These mechanisms are created as a guarantor of the maintenance of stability within the state, providing mutual guarantees of the stability of the joint political agreement, as well as guarantor of fairness and mutual respect in its application. On the other hand, they are meant to also ensure the role of the state

¹⁴¹ A Joint Ministerial Committee in the United Kingdom has been set up to discuss significant issues between the three devolved administrations at a high level to quickly overcome difficulties. See Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee presented to Parliament by the Deputy Prime Minister by Command of Her Majesty, December 2001. https://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/constitution/devolution/pubs/odpm_dev_600629.pdf

¹⁴² An example of such a mechanism is the Åland Delegation. It is a joint body of Åland and Finland. It was created by the first Autonomy Act in 1920 and its initial task was to calculate the sum of money to be transferred from Finland to Åland; today its responsibilities are much greater and it has developed an important dispute resolution function. According to the Autonomy Act, all legislation passed by the Parliament of Åland must be approved by the President of Finland within a period of four months. The President may use veto. In order to avoid a veto, before any draft legislation is presented to the President, it must be sent to the Åland Delegation, which reports on whether the local Parliament has exceeded its authority when adopting legislation. This report is sent to the Supreme Court, which in turn sends its view to the President of Finland. This Delegation has been so far effective in preventing any major disputes from breaking out between Åland and Finland. For detailed regulation see Article 19 and 55-57 of Act on the Autonomy of Åland, (1991/1144).

as caretaker of public order, rule of law, human rights and good governance, ensuring that local territorial governing structures respect these fundamental principles and stay within the bounds of the constitutional order of a state.

From this perspective, dispute resolution mechanisms should be set up in such a way that they can effectively respond to disputes between central and the autonomy authorities, but must be also perceived as being able to deliver fair treatment to both parties. If such mechanisms do not deliver needed solutions to disputes, tensions on both sides can rise and without effective means to resolve them, the situation can lead to the re-emergence of conflict.

In the context of the established Constitutional Court dispute resolution mechanism, it is important to address the issue of the level of entrenchment of the autonomy arrangement in the national legislative framework of a country. It is also necessary to point out that many current centre-autonomy disputes arise from the lack of clear distribution of shared competencies. In this respect, the clarification of autonomy's competencies in the national legislative framework could to a large extent mitigate the current disputes arising between the central authorities and the autonomous territory in the devolved spheres.

5.5 Potential areas for further discussion by the Parliamentary Working Group

5.5.1 Constitutional Court dispute resolution

- Higher entrenchment of the autonomy arrangement, also recommended by the Venice Commission¹⁴³, would provide stability and safeguards to the autonomy arrangements and would contribute to establishing an

¹⁴³ Venice Commission Opinion on the Law on modification and addition in the Constitution of the Republic of Moldova, Strasbourg, 21 August 2002, Opinion No. 191 / 2001 CDL-AD (2002) 20 Or. Eng. The Report in paragraphs 24-25, pg. 6 notes: [24] "More fundamentally, if the solution arrived at in 1994 is intended to represent a lasting solution to the problem of Gagauzian autonomy and self-determination, it would represent a better protection for the legal order established by the 1994 Law if the essential features of that law (and not merely the right to make such a law) were reflected in the Constitution. Unless and until this is done the 1994 Law remains vulnerable to further incursion by decisions of the Constitutional Court or to being amended or abrogated by a three-fifths majority in Parliament"; [25] "It seems, therefore, that there are good reasons why the 1994 Law should be given a constitutional underpinning, both to avoid any question about its compatibility with the constitutional framework and possibly to avoid the essential features of it being altered without the consent of the people of the autonomous region." See also paragraph 18, pg. 5 on the nature of 1994 Law as a special organic law.

effective system of resolving the disputes between the centre and the autonomy through the Constitutional Court.

- There is a need to address clarification of the autonomy's competencies through the establishment of a regular dialogue mechanism dedicated to detailed clarification of competencies. Clearly defining the competences of the central Government and the autonomy would largely contribute to resolving current competency disputes arising between the central authorities and the autonomous territory.
- From the perspective of the autonomy, in order to better utilize the current Constitutional Court judicial dispute resolution system, the People's Assembly could:
 - Increase its capacities for monitoring national legislation and other normative acts from the perspective of the autonomy;
 - Increase the capacities of the ATU authorities in preparing the constitutional submissions, in following the procedures for admissions and in strategic litigation.

5.5.2 State oversight and resolution of disputes concerning normative acts of the autonomy

- The right of People's Assembly to adopt local laws in the devolved areas distinguishes the autonomy from other units of local self-government of the Moldovan state, therefore the review and judicial solutions to the autonomy legislation should mainly be applied when the autonomy might overstep its jurisdiction. However, until the competencies are clarified, it would be very difficult to genuinely apply the system without limiting the power of the autonomy to adopt local laws and without running into disputes.
- Consideration should be given to the position of autonomy laws within the normative system of the country to allow the autonomy to realize its regulatory powers and to ensure that the special self-governing territory can autonomously exercise the competencies that it was accorded in the 1994 Law. The dispute resolution mechanism concerning

the autonomy laws should reflect the special position of the ATU Gagauzia, as a self-governing territorial unit with powers to adopt local laws. In this regard the system of oversight should reflect this difference in the nature of the autonomy's powers and the dispute resolution should be adjusted accordingly.

- From a long-term perspective of the autonomy governance, in the process of preparation of the laws of the People's Assembly, the establishment of an effective preventive system of analysing the local legislation in the context of the national legislative framework should be considered. Specific measures for achieving this are enumerated in Chapter 4 on law-making at the ATU Gagauzia level.
- Current national legislation requires better clarification of the legislative basis for the submission of the adopted Gagauzia's acts to state administrative control.

5.5.3 Extra-judicial dispute resolution

- Preventive, problem solving dispute resolution channels that could be established on a bilateral basis should be considered. These may have the format of a high-level preventive dispute resolution mechanism or a bilateral channel with a trigger procedure. Establishment of such mechanisms should be considered within the wider system of dialogue mechanism between central institutions and the autonomy and of the participation instruments of the autonomy in the state level bodies.

6

Mechanisms for centre-autonomy dialogue



6.1 Introduction to centre-autonomy dialogue mechanisms

There are two different types of dialogue that can be pursued in the context of an autonomy: dialogue processes with the objective of reaching an agreement towards forming an autonomy; and dialogue processes necessary for the implementation of the agreed autonomy arrangements.

The first type of dialogue is where *autonomy arrangements are established or reviewed*. These processes usually take the form of bilateral or multilateral negotiations, and are sometimes carried out in the context of constitutional and legislative reforms and/or through international mediation.¹⁴⁴ The second type of dialogue is sometimes carried out by specific joint bilateral mechanisms that are charged with *further implementation of the autonomy arrangements*, for which co-ordination and negotiation with the central level is required.¹⁴⁵

These mechanisms play a significant role in the development of the legal and political status of an autonomy, and represent key institutions within the system of managing centre-autonomy relations. They should be distinguished from the participatory instruments enabling autonomy representation in the national governments and/or parliaments, either through elected representatives or other participatory channels in the national Executive.¹⁴⁶ In particular, when the centre-autonomy system includes shared competencies, specific mechanisms of co-ordination are often established to ensure that there are agreed rules governing their implementation.

¹⁴⁴ See e.g. a special ad-hoc Commission of 19, established in 1961, to settle the conflict in South Tyrol, the work of which led to preparation, negotiation and adoption of the Second Autonomy Statute adopted by Constitutional Law No. 1 of 10.11.1971. Internationally the South Tyrolean question was prominently present at UN level since 1960. For more information, see Elisabeth Alber, South Tyrol's Negotiated Autonomy in Treatises and documents, *Journal of Ethnic Studies* 78/2017, pgs. 41–58.

¹⁴⁵ See, for example, the Commission of Six, composed on the basis of a double parity principle (both in terms of linguistic groups representation and centre-autonomy parity) was established to deal with the implementation of the Autonomy Statute of South Tyrol. The Commission adopts enactment Decrees that are formally part of Italian law, but they do not need a debate or approval of the national parliament. Due to the special procedure and agreement reached by the Commission that enjoys a very high degree of respect, they cannot be amended unilaterally by the state. For more information see Francesco Palermo, South Tyrol's special status within Italian Constitution in *Tolerance Through Law: Self Governance and Group Rights in South Tyrol*, Leiden-Boston: 2008, pgs. 144-146.

¹⁴⁶ See Chapter 3 Participation of the Autonomy in the national decision-making process.

Often, there is no clear cut between the above-mentioned types of dialogues, as the autonomy arrangements are constantly evolving, responding to the territorial, administrative and constitutional reforms, as well as to the changing needs of the autonomy in the course of performing its self-governing powers. However, there is also a third type of dialogue which can be entered into, to *resolve specific disputed issues arising in the centre-autonomy relations*, which can take the form of ad hoc commissions charged with the resolution of a specific matter, or be represented by a formal standing channel for dispute resolution, established outside the judicial dispute resolution mechanism between the central authorities and the autonomy. This type of dispute resolution dialogue was discussed in the previous chapter, but will be also examined here, within the wider context of dialogue mechanisms between the central authorities and the autonomy.

6.2 Centre-autonomy dialogue created for the implementation of the 1994 Law

The following analysis is principally focused on dialogue mechanisms that have been established in the context of implementing the arrangements of the 1994 Law, which outlines ATU Gagauzia's special status, and also the dialogue processes and communication channels that currently exist regarding the autonomy. The 1994 Law specified that the guarantor for the full implementation of the Law is the Republic of Moldova¹⁴⁷ and Government has been charged with the implementation of the Law by a resolution of the Parliament.¹⁴⁸ While the institutional arrangements for the autonomy's interaction with central authorities, such as its memberships in the Government, have the potential to uphold the interests of and raise issues concerning the autonomy in the central Government, these mechanisms do not allow for the dedicated bilateral discussions needed to address issues regarding further implementation of the autonomy arrangement or the legislative matters that

¹⁴⁷ Article 25 of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.

¹⁴⁸ Parliament's Decision No. 345 from 23.12.1994 on the implementation of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995.



arise between the central authorities and the autonomy in the ATU Gagauzia context. In the past, this role has been fulfilled by *ad hoc joint commissions* established between the central and the autonomy authorities, both at the governmental and parliamentary levels, with varying degrees of failures and successes in addressing the implementation of the 1994 Law arrangements and issues arising in the context of the functioning of the autonomy within the administrative structure of the state.

When it comes to the functioning of the Gagauz autonomy within the state political structure, the implementation of an asymmetrical model of self-governing territory within the Moldovan administrative-territorial system has created several challenges, both to the central authorities, and to the autonomy. These have resulted in the very general description of the autonomy arrangement within the Constitution of the Republic of Moldova in 2003,¹⁴⁹ and also in the limited understanding and attention that has been paid to the autonomy status in some national laws. This has resulted in a rather complex framework of legislative regulations that apply to the governance of the autonomy and to exercising its legislative and executive powers, represented by discrepancies between the 1994 Law and national laws, and also between the national legislative framework and the adopted local autonomy laws (caused principally by the problem of missing detailed delineation of competencies). A quick review of the efforts to solve these issues is provided below.

6.2.1 Joint dialogue mechanisms between the central authorities and the Gagauz autonomy

Since 1994, there have been several attempts to address the autonomy arrangements through bilateral dialogue between the autonomy representatives and the central authorities. The Parliamentary Commission on elaboration of proposals for bringing legislation in compliance with the Constitution of the Republic of Moldova on issues related to the special status of the autonomous

¹⁴⁹ For more on the constitutional review process see Venice Commission Opinion on the Law on modification and addition in the Constitution of the Republic of Moldova, Strasbourg, 21 August 2002, Opinion No. 191/2001 CDL-AD (2002) 20 Or. Eng, para 26 and 27 pg. 6.

territorial unit of Gagauzia, established in 2001, focused mainly on constitutional proposals. However, the discussions did not reach a consensus on the proposed solutions, and in the end the work of the Commission resulted in separate proposals from the People's Assembly and the MPs of the Parliament.¹⁵⁰ The Commission was dissolved in 2003. There were other attempts at the dialogue and in 2005 another working group was formed to address the question of division of competencies. The work of the group was suspended without any legislative solutions after a shift in the political representation of the autonomy. Efforts to pursue a dialogue on these issues under a working group established in 2014 concluded with a similar result.¹⁵¹ The reasons for the lack of progress in these dialogue processes vary, but there are some common underlying factors and approaches which are elaborated below in the context of specific recommendations for developing means and preconditions for engaging in an effective process of resolving the underlying issues hindering the effective functioning of the autonomy.

6.2.2 Existing dialogue mechanisms – the Parliamentary Working Group on Gagauzia

More recent attempts at dialogue between the central authorities and the autonomy resulted in the establishment of the *Parliamentary Working Group on Gagauzia* between the People's Assembly and the Parliament of Moldova in 2015, serviced by the secretariat of the Parliament.¹⁵² The establishment of the working group is the result of an informal dialogue between political representatives from Chisinau and Comrat, supported by the good offices of the international non-governmental organisation Crisis Management

¹⁵⁰ Idem.

¹⁵¹ See more in Elena Cuijuclu, Veaceslav Craciun, Mechanisms for dialogue and co-operation between the centre and the autonomy, Pilgrim-Demo: 2017, pg. 20; and Cornel Ciurea, Veaceslav Berbeca, The case of Gagauzia: developments and recommendations from civil society of the Republic of Moldova, Chisinau: 2015, pgs. 6-10 http://viitorul.org/files/4588295_en_policy_brief.pdf

¹⁵² Parliament's decision No. 206 from 20.11.2015 on establishment of the working group for ensuring, within framework of constitutional norms, of the functionality of the autonomous territorial unit of Gagauzia and of the legislative provisions of the Republic of Moldova vis a vis the special status of ATU Gagauzia // Official Journal No. 330-331 from 08.12.2015.

Initiative (CMI) in the frame of the project “Supporting the Efficient Exercise of Gagauzia’s Autonomous Powers within Moldova’s Constitutional Framework”, funded by Sweden.¹⁵³ In comparison to previous commissions and working groups, the PWG is a permanent mechanism for political dialogue between the representatives of the People’s Assembly and the Moldovan Parliament.

When examining the ongoing dialogue process pursued through the Parliamentary Working Group, representatives from both the central authorities and ATU Gagauzia have claimed that the PWG has proved a valuable vehicle for attempting to address legislative issues concerning the implementation of the autonomy arrangements.¹⁵⁴ The creation and activity of the PWG has established trust and co-operation between the authorities in the centre and the autonomy, which has led to significant direct and indirect achievements. Confidence-building has been an important focus of the activities of the working group, and created an important basis for keeping the talks and the agenda of the PWG progressing towards specific results.¹⁵⁵ The PWG has several objectives, including establishing a continuous dialogue between the centre and the autonomy, consolidating the national legislation with the special status of the ATU Gagauzia and aligning the autonomy statute with the Constitution. Other goals are the delineation of competencies between the central and autonomy bodies by analysing national and the autonomy legislation, and formulating legislative proposals for their modification; the completion and formulation of recommendations to improve co-operation between central authorities and the ATU Gagauzia in line with good European practices; and the creation of a permanent consultation mechanism for preventing and resolving possible problems between the central authorities

¹⁵³ See the CMI’s Report on Gagauzia Parliamentary Working Group
<http://cmi.fi/wp-content/uploads/2018/11/GagauziaParliamentaryDialogueEnglish.pdf>

¹⁵⁴ Press release of Gagauzia Dialogue Platform: Gagauzia Working Group develops strategies to continue the Chisinau-Comrat dialogue process in the next parliamentary period, July 11, 2018, Chisinau,
<https://cmi.fi/2018/07/16/gagauzia-working-group-explores-strategy-next-stage-dialogue-process/>

¹⁵⁵ For more information see 2015-2018 in retrospect – Gagauzia Dialogue
<http://cmi.fi/wp-content/uploads/2018/11/GagauziaParliamentaryDialogueEnglish.pdf>

and ATU Gagauzia.¹⁵⁶ The decision on the establishment of the PWG has also been tied to the mandate of the existing constitutional framework, a limitation that has been pointed out by some as a weakness of the working group.¹⁵⁷

6.2.3 Legislative activity pursued by the Parliamentary Working Group on Gagauzia

Following extensive dialogue and co-operation, the PWG proposed several draft laws on the consolidation of national legislation with the 1994 Law, and amendments to laws in the specific spheres of autonomy competences, clarifying the competence of the ATU Gagauzia to have separate regulation in these areas.¹⁵⁸

¹⁵⁶ Parliament decision No. 206 from 20.11.2015, Article 4. - The objectives of the working group are:

- 1) establishing a continuous dialogue between the Parliament of the Republic of Moldova and the People's Assembly of Gagauzia in order to ensure, within the frame of constitutional norms, the functionality of ATU Gagauzia and the legislative provisions of the Republic of Moldova;
- 2) the analysis of the compliance of the provisions of Law No. 344-XIII from 23.12.1994 on the special legal status of Gagauzia (Gagauz-Yeri) with the provisions of the Constitution of the Republic of Moldova and the presentation of proposals for necessary amendments that would exclude possible contradictions;
- 3) elaboration of the action plan to ensure the functionality of the special status of ATU Gagauzia and the legislation of the Republic of Moldova in accordance with the constitutional provisions and with Law No. 344-XIII from 23.12.1994 on the Special Legal Status of Gagauzia (Gagauz-Yeri);
- 4) consolidating the national legislation in relation to the special status of ATU Gagauzia and delineation of competences of the central and autonomous bodies by analysing the national and autonomous legislation and formulating drafts for their modification and completion;
- 5) to formulate recommendations for improving co-operation between Central Authorities and ATU Gagauzia in line with good European practices;
- 6) creating a permanent consultation mechanism for preventing and resolving possible impediments between the central authorities and ATU Gagauzia.

¹⁵⁷ Elena Cuijuclu, Veaceslav Craciun, Mechanisms for dialogue and co-operation between the centre and the autonomy, Pilgrim-Demo: 2017, pg. 28.

¹⁵⁸ Four laws have been amended in the field of culture: Law on libraries No. 160 from 20.07.2017 // Official Journal No. 301-305 from 8.08.2017; Law on museums No. 262 from 07.12.2017// Official Journal No. 7-17 from 12.01.2018; Law on military graves and war memorials No. 161 from 20.07.2017// Official Journal No. 335-339 from 15.09.2017; Law amending Law on public monuments No. 232 from 10.11.2017 // Official Journal 429-433 from 08.12.2017. Two additional laws on amending Law on territorial-administrative organisation of the Republic of Moldova No. 764 from 27.12.2001 // Official Journal No. 16 from 29.01.2002, the Law on administrative decentralisation No. 435 from 28.12.2006 // Official Journal No. 29-31 from 02.03.2007 and the Law on local public administration No. 436 from 28.12.2006 // Official Journal No. 32-35 from 09.03.2007 that have been submitted by the working group and later changed in the deliberations of the Parliament, has been returned by the President of the Republic of Moldova for Parliament's reconsideration. These proposals have been resubmitted by a group of MPs in 2020 and adopted by the Parliament. A third Law No. 318 amending the Law on special legal status of Gagauzia (Gagauz-Yeri), registered in the Parliament on 15.07.2016 has passed only first reading and has now been resubmitted on the Parliament's agenda.

The small-steps approach pursued in the process of legislative amendments has proved to be an important strategy, showing that advancing smaller issues that can more easily find consensus between Chisinau and Comrat can contribute to creating mutual trust, and paves the way for solving more complex issues. In this regard important laws on local public administration, administrative decentralisation and territorial organisation have been amended to establish a special administrative level for Gagauzia. In addition, the systematic process of clarifying competencies in specific fields was also an important capacity building exercise. Both the group of legal experts supporting the PWG, and the involved authorities including the Peoples' Assembly and the PWG, were able to apply a 'learning by doing approach' to finding the best way to address existing legislative inconsistencies, and learned lessons to be applied to advancing the clarification of competencies process.

6.2.4 Organisation and structure of the Parliamentary Working Group's Dialogue Mechanism

When it comes to the dialogue process pursued in the context of the PWG, there are several aspects of the formal mandate, organisation¹⁵⁹ and the activities of the PWG that should be considered to improve the effectiveness of this dialogue mechanism. In comparison with former ad hoc commissions, the PWG is established as a standing regular mechanism. However, an important factor that impacts its work is the length of the mandates of the legislators from both the autonomy's assembly and the Parliament. Given that electoral processes occur every two years, either within the Parliament or the People's Assembly, the work of the PWG is constantly interrupted as the members of the PWG can change twice during the four years, depending on the results of the elections.

¹⁵⁹ The Parliamentary Working Group's Decision No. 1 from 23.02.2016 on the approval of the Rules of Procedures of the working group for ensuring, within framework of constitutional norms, of the functionality of the autonomous territorial unit of Gagauzia and of the legislative provisions of the Republic of Moldova vis a vis the special status of ATU Gagauzia.

In comparative practice, there are relatively few mechanisms that have been established that pursue adjustments to the legislative framework concerning clarification of competencies. Typically, these have been previously well defined in the autonomy statutes, and in situations when interpretation is needed or specific questions arise around the scope of the competencies, the autonomy statutes have set out dispute resolution mechanisms in advance to address these issues, usually with a judicial format.¹⁶⁰ In some contexts, the advisory opinion of a bilateral body is sought to resolve the matter, such as in the case of the Åland Delegation.¹⁶¹ However, there are few examples where, outside of the national legislative process, a bilateral body has been foreseen by an autonomy act to implement the autonomy statute and to clarify in a greater detail the specific competencies of the autonomy. This is the case of the Commission of Six of the autonomy of South Tyrol.¹⁶²

Within the Moldovan context, and given the nature of issues that require legislative resolution, the centre-autonomy dialogue must be able to result in changes of the national legislative framework. However, the current PWG mechanism is essentially of an advisory nature, as the joint agreements reached

¹⁶⁰ Articles 97-98 of the South Tyrol Autonomy Statute establishes an appeal to the Constitutional Court in the matter of competencies. More specifically, Article 97 stipulates: "1. Without prejudice to the measures contained in Articles 56 and 84, paragraphs 6 and 7, of the present Statute, Regional or Provincial laws may be contested before the Constitutional Court for violations of the Constitution or of the present Statute or of the principle of equality between the linguistic groups.

2. Impugnment may be undertaken by the Government.

3. Regional law may also be contested by one of the Provincial Parliaments of the Region, Provincial law by the Regional Parliament or by the other Provincial Parliament in the Region."

In addition, Article 98 provides: "1. Laws and acts having the force of law of the Republic may be contested by the President of the Region or of the Province following a resolution of the respective Parliament, for violation of the present Statute or of the principle of protection of the German and Ladin linguistic minorities.

2. Should an Act by the State encroach upon the sphere of competence assigned by the present Statute to the Region or the Provinces, the Region or the respective Province may appeal to the Constitutional Court for a ruling in regard to the matter of competence.

3. The appeal shall be lodged by the President of the Region or that of the Province, following a resolution by the respective Government.

4. A copy of the notice of impugnment and the appeal on grounds of conflict of competence must be sent to the Government Commissioner in Trento if it concerns the Region or the Province of Trento and to the Government Commissioner in Bolzano/Bozen if it concerns the Province of Bolzano/Bozen."

¹⁶¹ For more details see the footnote 132 and 142 of this report.

¹⁶² Article 107 of the South Tyrol Autonomy Statute adopted by the Constitutional Law No. 1 from 10.11.1971. For details see footnote 164.

in the PWG and further submitted by the People's Assembly, are subject to the decisions and changes in the parliamentary legislative process. Given this factor, and also that this is not purely a bilateral negotiation mechanism with outcomes that constitute a final formal agreement, to ensure a real-world impact the MPs within the PWG must represent the whole political spectrum of the Parliament, and the consensus reached by the PWG on important legislative issues must be also negotiated with the political factions. This should be one of the important roles that needs to be considered in the PWG's future dialogue process.

The experience of the PWG in dealing with the clarification of the competencies process has also confirmed that there should be *a regular platform and mechanism that could address the long-standing shortcomings regarding clarification of competencies on an on-going basis*. From this perspective, establishing the process, and creating a mechanism for the systematic clarification of competencies between Chisinau and Comrat would greatly advance the governance of the autonomy and implementation of the autonomy arrangements. The need for technical expertise has been clearly demonstrated by the work of the Legal Expert Group that supports the work of the PWG. In this regard, having technical discussions in the specific spheres of shared competencies requires the involvement of the executive governmental level. In this context, establishing a *joint working group or a mechanism within the Executive* that can continuously work on technical issues would provide necessary continuity and stability for the legislative dialogue addressing legislative issues and clarification of competencies. Several options and formats, discussed below, could be considered.

Experience from other autonomy contexts shows that in these types of dialogue processes, there is a level of technical discussions that must be held. However, at the same time, such processes also require political input to achieve mutual agreement and acceptable political consensus.¹⁶³ This dynamic is very important, as there may be differing attitudes of national leading political representation towards the proposed decentralisation. Given the fact that the autonomy normally has very limited power to influence the national legislative process, be it through its guaranteed representation or through indirect representation of

¹⁶³ Francesco Palermo, *South Tyrol's special status within Italian Constitution in Tolerance Through Law: Self Governance and Group Rights in South Tyrol*, Leiden-Boston: 2008, pgs. 44-45.

the elected representatives originating from the territory, these decisions are often mediated outside of the national legislative process on bilateral basis, following the parity principle.¹⁶⁴ However, it should be remarked that there are situations where decisions reached have not been acted upon due to a lack of political support. In this respect, the idea of developing a dialogue process that can have integrated means and strategies to solidify and reinforce the political consensus is very important. A strong influencing factor that has often shifted the attitudes of national governing authorities in such cases is the demonstration of the ability and capacity of an autonomy to manage the specific devolved matters, validating the benefits of the subsidiarity principle.¹⁶⁵

One of the other objectives of the PWG was to look at the possibilities of creating a *permanent consultation mechanism for preventing and resolving possible problems between the central authorities and the ATU Gagauzia*. The role of extrajudicial dispute resolution, and its use in the context of the Gagauz autonomy, has been partially discussed in the previous chapter. The function of such mechanism should be considered from two perspectives: exploring what issues would such a mechanism tackle in the light of other mechanisms, either existing or potential new ones that might be charged with a special mandate; and from the wider perspective of existing participatory, communication channels and dispute resolution mechanisms being part of the current setup of centre-autonomy relations.

In this regard, the role of such a problem-solving preventive mechanism should be considered within the wider context of existing dialogue mechanisms between legislators, as well as in the light of the need to establish a focused

¹⁶⁴ For example, the Commission of Six in Italy. According to Article 107 of the Special statute for Trentino-Alto Adige/Südtirol, the executive measures implementing the present Statute shall be issued by legislative decree, following consultation of a joint Commission [...]. Within the Commission referred to in the previous paragraph a special Commission for the executive measures relating to the matters assigned to the competence of the Province of Bolzano shall be appointed, made up of six members, of whom three shall represent the State and three the Province. One of the representatives of the State must belong to the German-speaking group; one of the representatives of the Province must belong to the Italian-speaking group. Special statute for Trentino-Alto Adige/Südtirol, Constitutional Law No. 1 of 10 November 1971.

¹⁶⁵ European Charter of Local Self-Government, Strasbourg, 15.X.1985 // European Treaty Series - No. 122. Article 4 notes that public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

process and mechanism on specific issues such as the detailed delineation of competencies. The function and possible impact of such mechanism should be also reviewed in the context of the current set-up of centre-autonomy relations in terms of communication and participation channels, and dispute resolution mechanisms. It is beyond doubt that there are numerous issues that need to be tackled regarding the functioning of the autonomy in the current system. Some of the issues that arise in the context of the autonomy, especially those related to the national legislative process, have been referred to the current Parliamentary Working Group. In this regard, it is necessary to distinguish between the debate about establishing the delimitation of competencies that require further legislative expression and the debate over the interpretation of what exact competencies have actually been assigned once devolved.

Regarding the latter, the Constitutional Court has limited possibilities to address these issues, as its role is to review the constitutionality of national laws. In these circumstances it might not be able to play such an effective role in resolving disputes concerning competencies. In this situation, there may be a role for an independent channel that can act quickly to resolve competency issues before they enter the legislative process realm and a subsequent administrative and judicial review of the local laws adopted by People's Assembly in the implementation of these competences. On the other hand, if the system of relations and consultation between the central authorities and the autonomy will resume an efficient way of functioning, this might provide a sufficient channel to mediate between differences of views and positions on the subject.

There are, however, situations that go beyond the legislative matters that might need to be addressed and require resolution over disputed issues or competencies. In some comparative contexts, special mechanisms between high-level executive representatives from the central authorities and the self-governing unit have been established to reach constructive consensus, such as the Joint Ministerial Committee between the UK Government and the devolved administrations in Northern Ireland, Scotland and Wales.¹⁶⁶ However, it should be noted that in the

¹⁶⁶ The Joint Ministerial Committee (JMC) is established by an MoU between the UK Government and the devolved administrations in Northern Ireland, Scotland and Wales. Its purpose is to provide central

context of Gagauzia's autonomy, the Governor is a member of the national Government, with the possibility to raise issues directly. Autonomy representatives have observed, however, that a specific bilateral exchange platform might be better suited to deal with the same important issues. In this respect, a trigger procedure that might initiate specific process of discussions could be considered.

6.3 Conclusions

Comparative practice could well inform the current dialogue process; however, it is important to be aware that the mechanisms used in other cases have been developed in the specific context of particular states with differing arrangements for the self-governing territories. The dialogue between the centre and the autonomy and the relevant dialogue and problem-solving mechanisms need to be tailored to the current processes and conditions specific to the Moldovan system, and to the autonomy issues themselves that require resolution.

The existing permanent platform of the Parliamentary Working Group provides a necessary forum to discuss and propose solutions to the long-standing problems regarding the implementation of the autonomy's arrangements. Although the current parliamentary dialogue mechanism was successful in reaching and proposing joint solutions, further progress is subject to the legislative process of the national Parliament, and some of the proposals have not been accepted by the national legislature. As noted from some other contexts, while technical dialogue and agreements are necessary for discussions on autonomy matters, political will and bargaining also play a large part in these processes, even within mechanisms that are established on a parity basis and outside of the context of a legislature. In this regard, the composition, strategies and methods of the work of the

co-ordination of the overall relationship between the administrations. Its terms of reference are: to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities; where the UK government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in different parts of the UK, to keep the arrangements for liaison between the UK government and the devolved administrations under review; to consider disputes between the administrations. The JMC is a consultative, rather than an executive body and may meet in a range of formats, including plenary meetings chaired by the Prime Minister or her representative. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

Parliamentary Working Group should be considered to ensure that political consensus can be built around the proposed solutions of the PWG.

It is self-evident that wider confidence-building measures between central and autonomy executive authorities, across the whole political spectrum, and with wider civil society in Moldova could contribute greatly to a more constructive dialogue process and needed shift in relations and attitudes. For the centre-autonomy dialogue to achieve more satisfactory outcomes on autonomy issues, there must be a greater understanding of how an asymmetrical model of self-governance can work within the Moldovan system, and what autonomy self-governance means in the overall structure of the administrative territorial organisation of the Moldovan state. An important component of the necessary confidence building measures also lies within ATU Gagauzia itself, and the need to demonstrate its capacity deliver the governance over the devolved matters. The involvement of citizens in developing strategies in specific policy fields of competence would support this objective and add important legitimacy to the needs and requests raised by the autonomy in the centre-autonomy dialogue.

When it comes to mechanisms for a specific dedicated dialogue or bilateral problem-solving, the dialogue pursued within the PWG has clearly shown that the process of clarification of competencies necessitates a systemic approach. This requires a continuous and stable process, but also for the autonomy Executive Committee and the Government Ministries and authorities responsible for development of policies in the specific fields to be involved in the dialogue process, in addition to political dialogue. Systemic solutions should also be developed to address the process of the clarification of competencies. In particular, establishing a mechanism dedicated to the clarification of competencies, and consideration of the legislative format of the clarification, would provide one of the most important contributions to improving the governance within the autonomy and its functioning within the state political structure, and for the implementation of the autonomy status.

Finally, in further developing institutional dialogue mechanisms and processes, a step-by-step approach might provide a good basis for improving confidence-building and developing the capacities needed to run successful processes and exchanges. The order in which various mechanisms are established should be

taken into consideration, bearing in mind that clear distribution of competences is key to the success of subsequent dispute resolution mechanisms. In addition, this mechanism should be tested in practice, to indicate whether additional instruments addressing the resolution of disputes and possible problems are required. In this regard, incremental approach should be considered. These observations demonstrate why the creation of a specific standing mechanism dedicated to the clarification of competencies, possibly at the executive level, either in the form of a stand-alone mechanism or composed of several commissions working on specific areas, might seem to be a priority, as the detailed clarification of competencies is key to resolving many issues that arise in the context of implementing the autonomy arrangements.

6.4 Potential areas for further discussion by the Parliamentary Working Group

6.4.1 Parliamentary dialogue

Parliamentary Working Group

- Consideration should be given to follow-up procedures for the agreements reached by the PWG to be implemented in the Parliament (e.g. at present, draft laws prepared by the PWG are submitted by the Peoples' Assembly to the Parliament, where they are examined and adopted by the legislative body according to existing general procedures, not taking into account that these proposals have been previously negotiated and endorsed by the PWG).
- Increasing capacities of the PWG, and involving the Secretariat of the People's Assembly more actively.
- Increasing involvement of the executive authorities both from Chisinau and Comrat in the work of the PWG. In this regard, revisions to the Regulation of the PWG should be considered, foreseeing a stronger role for executive authorities and the co-operation modalities with Government, Ministries and with the Executive Committee.

Dialogue between the Chairman of the People's Assembly and the Speaker of the Parliament

- Regular or ad hoc meetings addressing legislative issues and legislative activity planning, as well other issues concerning the autonomy, could become an established practice between the People's Assembly and the Parliament, as is the case with other subjects of legislative initiative such as the Government.

6.4.2 Executive level mechanisms for clarification of competencies

- Establishing a joint mechanism that would negotiate the clarification of competencies at the governmental technical level. Such a process could take one of the following formats or be a combination of both:
 - A joint mechanism between the executive levels that would establish a permanent channel for clarification of competencies and possibly for resolution of the issues concerning the competencies of the autonomy;
 - Specific technical working groups/commissions on the specific areas could be established between the Ministries and the Executive Committee;
 - The format of deliberations should reflect parity, this would help the joint mechanism to become a powerful institutional tool of co-operation and conflict prevention between the centre and the autonomy.

6.4.3 Problem solving preventive mechanisms

- In addition to the formal option of the Governor raising issues at the meetings of the Government, it might be worth establishing a high-level early dispute resolution mechanism or a bilateral channel with a trigger procedure.

7

Conclusions



The territorial autonomy arrangement is a very unique feature in the political structure of states and it requires well-built and clear system of relations establishing the mutual legal and institutional inter-relationships that make the devolution of central competencies for the benefit of the local ethno-national community work. The autonomy arrangements are established to stop a conflict, to protect certain ethno-national group (sometimes with cross-border affiliation), or to ensure effective governance of remote territorial entities. The nature of the specific arrangements to a certain extent reflects these factors. However, the underlying principle for these arrangements is granting a certain level of autonomy in the decision-making over specific areas of competence on the territory of the autonomy. In addition, sub-national governance and the system of interrelations to the central level is a constantly evolving and dynamic process. In this regard, the existing situation and arrangements of the ATU Gagauzia should be viewed from these general perspectives and dynamics.

The analysis of the legal framework shows that the formal system of interrelations between the central authority of the state and the ATU Gagauzia offers the necessary basic features for the autonomy's functioning within the Moldovan state. However, the legal set-up and the relatively weak entrenchment of the autonomy status requires high level engagement in the national legislative process for the autonomy to secure functioning of the autonomy arrangement and to further the implementation of the special status foreseen for the territorial unit. The autonomy has been given relatively strong mechanisms (such as the Governor being a member of the Government, and the right of People's Assembly to initiate national laws) that provide good instruments for participation and representation of the autonomy's needs and interests at the national level. Their effective functioning should be better secured procedurally and through capacity-building measures. Importantly, it is essential to say that these mechanisms have been set up to provide regular channels of interaction between the centre and the autonomy. The effective functioning of the autonomy arrangement, however, requires further implementation through

legislative measures, including importantly the further clarification of the autonomy competencies in areas of shared responsibilities. From this perspective a bilateral dialogue process should be pursued to tackle some of these issues. In this context, the mechanism of a permanent joint dialogue platform for legislative debate represented by the Parliamentary Working Group is an important contribution to the needed process for implementation of the autonomy arrangement in the Moldovan legislative framework. With regard to the future effectiveness of this dialogue process, strategies and methods of the work of the Parliamentary Working Group should be reviewed to ensure that political consensus can be built around the proposed solutions of the PWG. When it comes to mechanisms for a specific dedicated dialogue or bilateral problem-solving, the dialogue pursued within the PWG has clearly shown that the process of detailed clarification of competencies requires the autonomy executive body and the central government Ministries and other authorities responsible for development of policies in the specific fields to be actively involved in the dialogue process. In this regard establishing a technical mechanism at the executive level dedicated to the clarification of competencies could provide an effective channel for discussion. The process of mapping of the centre-autonomy relationships and mechanisms has also revealed the need for continuous support and broadening of the confidence-building measures between central and autonomy authorities. These efforts need to cut across the political spectrum but also involve wider Moldovan political elite and society, to create a culture of constructive dialogue and positive shift in relationships. From this perspective, capacities and improved understanding of how an asymmetrical model of self-governance can work within the state are important components of the necessary confidence building measures.

Another necessary element required for successful and progressive dialogue on autonomy issues between Comrat and Chisinau also lies with improving capacities of ATU Gagauzia itself. The clarity and vision on the priorities for the autonomy and demonstrated capacity to deliver on the governance over the devolved matters is important for sustainable and credible dialogue. The involvement of citizens in developing policy strategies in specific fields of competence would support this objective and add important legitimacy to the needs and requests raised by the autonomy in the centre-autonomy dialogue.



In conclusion, an understanding by both sides that for the autonomy functioning within the state a cooperative dialogue is required and that the institutional mechanisms in this respect should adhere to and reflect this general principle, is a very important factor. This background report highlights several areas for the discussion of the Parliamentary Working Group and other decision-makers to advance the dialogue on improving the functioning of the centre-autonomy institutional arrangements. In this respect, the analysis lays the groundwork for future discussions, and creates a foundation for building up sustainable and credible solutions to address the legal framework and institutional setups for the autonomy arrangement.



Bibliography



National legal framework

1. Constitution of the Republic of Moldova from 29.07.1994 // Official Journal No. 1 from 12.08.1994
2. Code of constitutional jurisdiction No. 502 from 16.06.1995 // Official Journal No. 53-54 from 28.09.1995
3. Electoral Code of the Republic of Moldova No. 1381 from 21.11.1997 // Official Journal No. 81 from 08.12.1997
4. Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995
5. Law on local public administration No. 436 from 28.12.2006 // Official Journal No. 32-35 from 09.03.2007
6. Law on local public finance No. 397 from 16.10.2003 // Official Journal No. 248-253 from 19.12.2003
7. Law on transparency in decision making process No. 239 from 13.11.2008 // Official Journal No. 215-217 from 05.12.2008
8. Law on normative acts No. 100 from 22.12.2017// Official Journal No. 7-17 from 12.01.2018
9. Law on the public function and the status of the civil servant No. 158 from 04.07.2008 // Official Journal No. 840 from 01.01.2009
10. Law on Constitutional Court No. 317 from 13.12.1994 // Official Journal No. 8 from 07.02.1995
11. Rules of procedure of the Parliament adopted by Law No. 737 from 02.04.1996 // Official Journal No. 50/237 from 07.04.2007
12. Parliament's Decision No. 345 from 23.12.1994 on the implementation of the Law on special legal status of ATU Gagauzia No. 344 from 23.12.1994 // Official Journal No. 3-4 from 14.01.1995
13. Government's Rules of procedure, Decision No. 610 from 03.07.2018 // Official Journal No. 245 from 04.07.2018
14. Constitutional Court Decisions No. 9 from 18.02.1999 and No. 12 from 11.03.1999

ATU Gagauzia acts

15. People's Assembly Decision No. 99-VI/VI from 08.09.2017 on the establishment of the monitoring of the changes in the national legislation
16. Peoples' Assembly resolution No. 510-XXXIV/V from 09.08.2016 on the "illegality of checking the legality of laws and regulations adopted by the People's Assembly of Gagauzia by the courts of the general jurisdiction of the Republic of Moldova"

Publications

17. Cornel Ciurea, Veaceslav Berbeca, The case of Gagauzia: developments and recommendations from civil society of the Republic of Moldova, Chisinau: 2015
18. Dumitru Budianschi, The financial autonomy in the Republic of Moldova: the evolution of the local budgets, Expert-Grup, Chisinau: 2019
19. Elena Cuijuclu, Mihail Sirkeli, Implementation of the status of Gagauz-Yeri Autonomy: challenges and prospects, Pilgrim-Demo: 2015
20. Elena Cuijuclu, Mihail Sirkeli, Reciprocal control between the centre and autonomy: experience of implementing the Gagauz status, Pilgrim-Demo: 2015
21. Elena Cuijuclu, Veaceslav Craciun, Mechanisms for dialogue and cooperation between the centre and the autonomy, Pilgrim-Demo: 2017
22. Elisabeth Alber, South Tyrol's Negotiated Autonomy in Treatises and documents, Journal of Ethnic Studies 78/2017
23. Francesco Palermo, South Tyrol's special status within Italian Constitution in Tolerance Through Law: Self Governance and Group Rights in South Tyrol, Leiden-Boston: 2008
24. Ilmars Solims, Violer Zabolotnic, The legislative initiative of the Peoples' Assembly of ATU Gagauzia and the legal opinions on the normative acts drafted by the central public authorities, Council of Europe: 2016
25. Liuba Cuznetova, Functional and institutional analysis of the Gagauzian People's Assembly, UNDP, Chisinau: 2017

26. Suksi Markku, Explaining the Robustness and Longevity of the Åland Example in Comparison with Other Autonomy Solutions, pgs. 56-65, International Journal on Minority and Group Rights 20(2013) Brill, Leiden: 2013
27. Suksi Markku, Autonomy: Applications and Implications, Martinus Nijhoff Publishers, The Hague: 1998
28. Thomas Benedikter, The World's modern autonomy systems: Concepts and Experiences of Regional Territorial Autonomy, EURAC research, Bolzano: 2009
29. Venice Commission Opinion on the Law on modification and addition in the Constitution of the Republic of Moldova, Strasbourg, 21 August 2002, Opinion No. 191/2001 CDL-AD (2002) 20 Or. Eng.

Websites

<https://a.cec.md/ro/alegeri-si-referendumuri-2830.html>

<http://www.parlament.md/Actualitate/RaporturileParlamentuluicuUTA-Gagauzia/tabid/237/language/ro-RO/Default.aspx>

https://cancelaria.gov.md/sites/default/files/document/attachments/f.titu-raport_pub_2016.pdf

https://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/constitution/devolution/pubs/odpm_dev_600629.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Developed_Administrations.pdf

<https://gagauziadialogue.md>



Annex

**Summary of areas of
centre-autonomy
institutional
arrangements for
consideration of the
Parliamentary
Working Group**



1. Participation of the autonomy in the national decision-making process

1.1 Governmental decision-making process

Mechanisms/ procedures	Areas for consideration	Comments
Governor – ex-officio member of the national Government	<ul style="list-style-type: none"> The capacity of <u>the Governor’s office to monitor the legislative agenda</u> of the Government and Ministries should be increased and capacities of Governor’s office in Chisinau with legal advice services and human resources should be strengthened. 	The opportunities offered by the membership of the Governor in the national Government and his/her participation in the meetings of the Government may not be sufficient and effective if not coupled with efficient involvement of the Governor’s office and the ATU Gagauzia authorities from the early stages of preparation of draft laws that may affect the ATU Gagauzia.
	<ul style="list-style-type: none"> The specific capacities and channels within the structures of the Executive Committee should be considered to ensure <u>increased input from the Executive Committee to the work of the Governor at the central level.</u> 	
	<ul style="list-style-type: none"> It is suggested to re-establish <u>the obligatory requirement for consulting</u> and coordinating with the Governor when decisions may impact the region and its competencies.¹⁶⁷ 	The Rules of Procedures of the Government of the Republic of Moldova adopted on 3 July 2018 hasn’t included the obligation to consult the Governor of ATU Gagauzia on draft laws concerning the autonomy contained in the previous Rules of Procedures of the Government.

¹⁶⁷ According to point 8 of the previous Government’s Regulation (Government’s Decision No. 34 from 17.01.2001), “the draft Government decisions and ordinances regarding the issues related to ATU Gagauzia are coordinated with the Governor of ATU Gagauzia”.

<p>Legal opinion (avis) on governmental acts</p>	<ul style="list-style-type: none"> • It is highly desirable that <u>the consultation process takes place in the early stages of preparation</u> of a policy or draft normative acts and regulations. This should be reflected in the regulations on the development of normative acts, as well as in the ex-ante methodology for policy development. • The <u>meetings of the State Secretaries</u> and the authors of draft laws and other governmental decisions should consider whether the provisions of draft acts impact the autonomous territorial unit while composing the lists for the avis process. • <u>The Executive Committee's capacity to monitor the national legislative agenda</u> should be increased and its capacity for submitting official opinions strengthened. 	<p>The core issue preventing necessary consultation of ATU Gagauzia is insufficient screening of draft laws for their impact on the autonomous territory, by both the government and the autonomy.</p>
<p>Representation of the Executive Committee in the work agenda of the national Government Ministries (ministerial collegiums)</p>	<ul style="list-style-type: none"> • More effective forms of participation should be considered (in addition to the ministerial collegiums) that would ensure regular representation and communication channels with the Ministries. These participation models could take the form of <u>joint ministerial and autonomy working groups or commissions</u> that would meet regularly to discuss the issues affecting autonomy and provide technical dialogue for the clarification of competencies. • These meetings would also provide an information channel for the Executive Committee about forthcoming legislative reforms and possibilities to participate in the <u>working groups for development of specific national legislation</u>, policies and sectoral reforms. 	<p>Ministerial collegiums convene irregularly. In this regard, the participation in the ministerial collegiums by the representatives of the Executive Committee offers very limited possibility to effectively represent autonomy issues in the executive branches of the Government.</p>

1.2 Parliamentary legislative process		
Legislative initiative of the autonomy	<ul style="list-style-type: none"> • <u>A clear normative framework at the autonomy level</u> regulating procedures for the elaboration and submission to the Parliament of draft national laws by the Peoples' Assembly should be elaborated. This should also include regulation of procedures of preparation of national draft laws between the Executive Committee and the People's Assembly. 	Specific procedures at the autonomy level for the development of draft national laws by the People's Assembly are missing.
	<p><u>Capacities of the Peoples' Assembly to prepare national legislation</u> according to the standards of the legislative process at national level should be increased. This will require:</p> <ul style="list-style-type: none"> • Increasing the capacities of the PAG's Secretariat and its legal services in drafting skills of national laws, including through enhancing the ability to fulfil the procedural and formal requirements in submitting the draft laws; • Following and analysing the national legislative framework, including improving legal interpretation skill regarding the national legislation; • Improving linguistic skills in the state language. 	The Law No. 100 on normative acts introduces more complex requirements for submission of draft national legislation that has not been followed in the previous process. This would require enhanced capacities in the PAG.
	<ul style="list-style-type: none"> • <u>Clear channels for consultations with the relevant central level</u> authorities, in particular the Ministries, in the preparatory phases of drafting national laws should be established in an effort to prevent opinions rejecting the PAG legislative national initiatives. 	
	<p><u>Capacities and procedural possibilities to ensure promotion of the PAG draft national laws</u> should be increased by:</p> <ul style="list-style-type: none"> • establishing communication channels between the People's Assembly and the Parliament Secretariats to ensure information on the process and status of the submitted draft laws as well as public authorities' opinions; • increasing the capacities of PAG to present the draft initiatives in the relevant standing committees. 	

<p>Parliamentary Working Group</p>	<ul style="list-style-type: none"> The PWG should increase its involvement in the promotion of and advocacy for the agreed solutions of the PWG among the political parties in the Parliament. 	<p>Specific recommendations for the PWG dialogue are in the section on Mechanisms for centre-autonomy dialogue below.</p>
<p>Legal opinion (avis) and consultations with the People's Assembly on national draft laws</p>	<ul style="list-style-type: none"> <u>The guarantee to consult and ask for a legal opinion of the People's Assembly</u> when a draft law affects the autonomy, as set out in the new draft of the Parliament's rules of procedure, should be supported. If adopted, internal procedures for screening should be considered in the Parliament to ensure fulfilment of his compulsory consultation requirement. 	<p>Impact of national legislation on the autonomy should be considered by the Parliament in the legislative process. Until recently, there was only an obligation of the Government to consult the Governor on the draft laws that affect the autonomy that was expressly stated. In this regard a similarly expressed guarantee in the parliamentary procedure would provide the autonomy with opportunity to react to draft laws that might impact on autonomy matters.</p>
	<ul style="list-style-type: none"> The capacity of the People's Assembly's legal office in <u>drafting skills of legal opinions (avis)</u> should be increased. Improving <u>knowledge of the state language</u>, and in the short term, increasing the capacities of translation services should be ensured. The capacity of the People's Assembly's legal office to monitor and analyse the national draft laws should be strengthened. <u>Internal reporting</u> on the relevant draft laws in the People's Assembly in this respect should also be considered. 	<p>A new monitoring mechanism of the draft national legislation was established in PAG in 2017 which started to work and needs to develop its capacities.</p>

<p>Amendment procedure to the Autonomy statute (the 1994 Law)</p>	<ul style="list-style-type: none">• Specific protection of the autonomy status was suggested by the PWG in a draft law submitted by the People’s Assembly to the Parliament, which introduced the provision that the 1994 Law could be amended by the Parliament only if there is consent of PAG. Although the draft law has not been further pursued after the first reading due to differing positions in the Parliament, consideration should be given to the position to ensure the <u>enhanced entrenchment</u> of the Special Status Law and importantly the protection of the autonomy status in the overall system of the legislative framework of Moldova.	<p>At present the 1994 Law can be changed and amended only through a special procedure, with the vote of three fifths of the elected members of Parliament, however the 1994 Law can be changed on material level by newer organic laws regulating same subject matter.</p>
---	---	---

2. Autonomy's self-governing bodies and relations with central authorities

2.1 People's Assembly

Clarification of competencies and adoption of local laws

- Establishing a systematic process to clarify the autonomy's competencies would set a clear framework for the People's Assembly to legislate, through the development of local laws, the policies necessary to realize the competencies.

Although the 1994 Law enumerates the areas where People's Assembly can adopt local laws, these fields are defined in general terms, without further specification of these competencies between the national level and the autonomy level. This creates a situation when the People's Assembly does not have a clear framework that outlines which areas it can specifically regulate.

- The capacity of the legal services of the Executive Committee and of the People's Assembly to follow and analyse national legislation, including by developing standard procedures and forms for reflection on the adherence with the national legislation in the information note accompanying draft local laws and in the legal opinions, should be increased. This would assist the long-term process of ensuring adherence to the national legislation framework but would also create a space for co-operation with the central level on the issues of concern to the autonomy.

The systems of state administrative control, and judicial control of local laws via the general courts are quite often used. In a situation where there is lack of clarity concerning competences, it is unclear what the ATU Gagauzia authorities could regulate and manage. In these conditions, before systematic clarification of competences is achieved, better co-ordination and consultation with central level ministries in preparation of local laws will help to preventively address the issue of scope of the ATU Gagauzia regulation.

- Communication in the elaboration phase between the drafters of local laws and relevant Ministries should be enhanced. This would contribute to better quality of law making.

2.2 Executive Committee		
<p>Clarification of competencies concerning the Executive Committee</p>	<ul style="list-style-type: none"> • The <u>clarification of the autonomy competencies, including in the administrative sphere</u>, would provide for clear delineation of the authority of the Executive Committee and would provide a transparent framework for its decision-making. 	<p>The lack of clarification of the competences of Gagauzia’s executive authorities in the fields of shared competencies creates uncertainty regarding the boundaries of the Executive Committee’s regulation and governance and regarding the financing.</p>
	<ul style="list-style-type: none"> • <u>Communication channels should be established</u>, in this regard specific <u>working groups</u> between the Executive Committee and relevant Ministries could provide practical means to resolving specific issues concerning the shared competencies. 	<p>The communication between the Executive Committee and relevant ministries is insufficient and in the conditions where there is lack of clear clarification of competencies, this leads to conflicts and subsequent cancelation of the ATU Gagauzia local normative acts in the general courts.</p>

¹⁶⁸ Venice Commission Opinion on the Law on modification and addition in the Constitution of the Republic of Moldova, Strasbourg, 21 August 2002, Opinion No. 191 / 2001 CDL-AD (2002) 20 Or. Eng. The Report in paragraphs 24-25, pg. 6 notes: [24] “More fundamentally, if the solution arrived at in 1994 is intended to represent a lasting solution to the problem of Gagauzian autonomy and self-determination, it would represent a better protection for the legal order established by the 1994 Law if the essential features of that law (and not merely the right to make such a law) were reflected in the Constitution. Unless and until this is done the 1994 Law remains vulnerable to further incursion by decisions of the Constitutional Court or to being amended or abrogated by a three-fifths majority in Parliament.”; [25] “It seems, therefore, that there are good reasons why the 1994 Law should be given a constitutional underpinning, both to avoid any question about its compatibility with the constitutional framework and possibly to avoid the essential features of it being altered without the consent of the people of the autonomous region.” See also paragraph 18, pg. 4 stating “special organic law” should be distinguished from organic laws on both material and formal levels.

3. State oversight and dispute resolution mechanisms between the centre and the autonomy

3.1 Constitutional Court dispute resolution		
The right of PAG to make submissions to the Constitutional Court	<p>From the perspective of the autonomy, in order to better utilize the current Constitutional Court judicial dispute resolution system and to defend better the autonomy interests before the Constitutional Court, <u>the People's Assembly</u> should:</p> <ul style="list-style-type: none">• Increase its <u>capacities in monitoring of the national legislation</u> and other normative acts from the perspective of the autonomy;• Increase <u>the capacities of the ATU Gagauzia authorities in the submissions writing</u>, in following the procedures for admissions and in the strategic litigation.	<p>The number of autonomy submissions to the Constitutional Court which have been successfully accepted for review has been small due to insufficient quality of applications regarding the procedural requirements or the existing material scope for the Court's consideration.</p>
	<ul style="list-style-type: none">• <u>Consideration should be giving to the entrenchment of the autonomy arrangement in the hierarchy of norms</u>, also recommended by the Venice Commission¹⁶⁸. This would provide stability and safeguards to the autonomy arrangements and would contribute to establishing an effective system of resolving the disputes between the centre and the autonomy through the Constitutional Court.	<p>The ATU Gagauzia autonomy provisions in the Moldovan Constitution provide only principles for the autonomy's self-governance. The autonomy status, and the modalities of its self-government, are regulated by the 1994 organic law. The position of the Constitutional Court is that no organic law can have greater legal force in relation to other organic laws and in case of disagreement, the general principles of the application of the law in time are used (Constitutional Court Decisions No. 9 from 18.02.1999 and No. 12 from 11.03.1999). In this situation newer organic laws can materially amend the provisions of the 1994 Law that regulate the same subject matter.</p>

3.2 State oversight and resolution of disputes concerning normative acts of the autonomy

<p>Administrative control and judicial review of the normative acts of the autonomy</p>	<ul style="list-style-type: none">• <u>More precise legislative basis for state administrative control of the adopted Gagauzia's acts should be established.</u>	<p>The 1994 Law did not foresee state oversight control mechanisms, it only required the local laws and the decisions of the Peoples' Assembly and the decisions of the Executive Committee to be sent to the Parliament and the Government within 10 days of their adoption for information purposes. The administrative control has been established in 2003 in Article 111(6) of the Constitution. In the subsequent legislation on administrative control (i.e. Law No. 436/2006), the acts adopted by the ATU Gagauzia authorities are not expressly noted.</p>
	<ul style="list-style-type: none">• Establishing a <u>systematic process to clarify the autonomy's competencies</u> would set a clear framework for the People's Assembly and Executive Committee to legislate, through the development of local laws and to adopt the policies necessary to realize the competencies.	<p>The People's Assembly's right to adopt local laws in devolved areas distinguishes the autonomy from other units of local self-government of the Moldovan state, therefore the review and judicial solutions to the autonomy legislation should mainly be applied when the autonomy might overstep its jurisdiction. However, until the competencies are clarified, it would be very difficult to genuinely apply the system without limiting the legislative powers of the autonomy and without running into disputes.</p>
	<ul style="list-style-type: none">• Consideration should be given to the position of <u>autonomy laws</u> within the normative system of the country to allow the autonomy to realize its powers to adopt local legislation and to ensure that the special self-governing territory can autonomously exercise the competencies that it was accorded in the 1994 Law. In this regard, the system of administrative control and judicial review of local laws should reflect the special position of the ATU Gagauzia, as a self-governing territorial unit with powers to adopt local laws.	<p>The nature of ATU Gagauzia local laws has not been defined in either the Law on special status of ATU Gagauzia or the Moldovan Constitution. The regulation of the system of norms does not determine explicitly the place of local laws in hierarchy of norms. The new Law on normative acts in general prescribes in Article 17 that the normative acts adopted by the authorities of the unit with special legal status have to adhere to the national legislation of the Republic of Moldova.</p>

4. Mechanisms for centre-autonomy dialogue

4.1 Parliamentary dialogue

<p>Parliamentary Working Group</p>	<ul style="list-style-type: none">• Consideration should be given to <u>follow-up communication and promotion</u> for the agreements reached by the PWG to be implemented in the Parliament.• The support capacities for the PWG should be increased, in particular by involving in addition to the Secretariat of the Parliament, also <u>the Secretariat of the People's Assembly more actively</u>.• Increasing <u>involvement of the executive authorities</u> both from Chisinau and Comrat in the work of the PWG. In this regard, revisions to the Regulation of the PWG should be considered, foreseeing a stronger role for executive authorities and the co-operation modalities with Government, Ministries and with the Executive Committee.	<p>The draft laws agreed upon by the PWG are submitted by the Peoples' Assembly to the Parliament, where they are examined and adopted by the legislative body according to existing general procedures, not taking into account that these proposals have been previously negotiated and endorsed by the PWG.</p>
<p>Regular or ad hoc meetings between the Chairman of the People's Assembly and the Speaker of the Parliament</p>	<ul style="list-style-type: none">• <u>Regular or ad hoc meetings</u> addressing legislative issues and legislative activity planning, as well other issues concerning the autonomy, could become a good practice between the People's Assembly and the Parliament.	<p>Regular or ad hoc meetings between the Chairman of the People's Assembly and the Speaker of the Parliament may pave the way for additional mechanisms to be utilized, such as participation in the permanent committees' work, in the activity of thematic working groups (for instance created to draft a specific law, or within the special parliamentary commissions), etc.</p>

4.2 Executive level mechanism for clarification of competencies

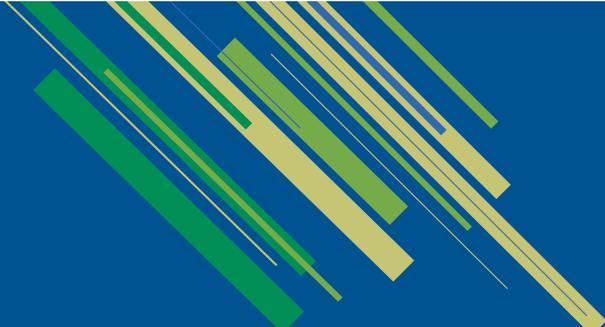
Joint mechanism at the governmental level for clarification of competencies

Establishing a joint mechanism that would pursue the clarification of competencies at the governmental level. Such a process could take one of the following formats or be a combination of both:

- A joint mechanism between the executive levels that would establish a permanent channel for clarification of competencies and possibly for resolution of the issues concerning the competencies of the autonomy;
- Specific technical working groups/commissions on the specific areas could be established between the Ministries and the Executive Committee;
- The format of deliberations should reflect parity, this would help the joint mechanism to become a powerful institutional tool of co-operation and conflict prevention between the centre and the autonomy.

The experience of the PWG in dealing with the clarification of competencies process has also confirmed that there should be a regular platform and mechanism that could address the long-standing shortcomings regarding clarification of competencies on an on-going basis. In this regard, having technical discussions in the specific spheres of shared competencies requires involvement of the executive governmental level that can continuously address the issues and provide necessary regularity and stability for the legislative dialogue addressing legislative issues.

4.3 Problem solving preventive mechanisms		
<p>Bilateral dispute resolution</p>	<ul style="list-style-type: none"> In addition to the formal option of the Governor raising issues at the meetings of the Government, it might be worth to consider establishing a <u>high-level dispute resolution mechanism</u> or a <u>bilateral channel with a trigger procedure</u>. 	<p>The Governor is a member of the national Government and thus can raise issues concerning the autonomy in this body, however this format does not allow for a specific bilateral discussions and resolution of the problems.</p> <p>In addition, the system of general courts is often used and results in cancelation of autonomy local laws. This does not solve the issues between the centre and the autonomy, as the autonomy authorities adopt repeatedly the same decisions and/or laws that are again challenged in the courts. An alternative extrajudicial dialogue mechanism might help preventively address the issues that might arise.</p>



facebook.com/GagauziaDialogue
www.gagauzialogue.md
www.cmi.fi
e-mail: cmi.chisinau@cmi.fi