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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OPINION ON THE LAW  
OF THE GAGAUZ AUTONOMOUS TERRITORIAL UNIT  
ON THE ELECTION OF THE GOVERNOR  
OF GAGAUZIA (MOLDOVA)**

**Adopted by the Council for Democratic elections  
at its 22<sup>nd</sup> meeting  
(Venice, 18 October 2007)  
and the Venice Commission  
at its 72<sup>nd</sup> plenary session  
(Venice, 19-20 October 2007)**

**on the basis of comments by  
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## 1. Introduction

### 1.1 Background

1. Following an invitation by the Moldovan authorities, the Congress of Local and Regional Authorities of the Council of Europe (CLRAE) monitored the election of the Governor (Bashkan) of Gagauzia (Moldova) held on 3 and 17 December 2006.

2. While recognising the improvement made in the administration of the election of the Governor (Bashkan) since the previous election, observers of the CLRAE concluded that "the conduct of this election was not completely in accordance with international standards".<sup>1</sup> They emphasised that significant shortcomings need to be urgently addressed in particular in view of the upcoming local elections. In their report, the Congress observers underlined that "progress is needed to ensure consistency between the Gagauzian electoral legislation and the Moldovan Electoral Code as well as to ensure the impartiality of the Central Election Commission of Gagauzia if Moldova is to fully meet its commitments regarding international and Council of Europe election principles and standards".<sup>2</sup>

3. Congress observers at the same time noted:

- a. that the election of the Bashkan (Governor) of Gagauzia is regulated by the Law of the Autonomous Territorial Unit of Gagauzia No. 32-XXXIII/I and that this Law includes provisions which are not consistent with the Electoral Code of Moldova;
- b. that Law No. 32-XXXIII/I was amended only a few months prior to the election and that these amendments were not submitted to the Venice Commission for assessment;
- c. that the composition of the Central Election Commission of Gagauzia as well as the fact that this body is set up on ad hoc basis does not guarantee its impartiality;
- d. that the electoral campaign was characterised by unequal access to the media as well as by an unclear use of administrative resources for electoral purposes and the absence of accountability of all candidates regarding the campaigning material;
- e. that major inaccuracies remain with regard to the voters' register;
- f. that in certain polling stations, voters' lists were typewritten and handwritten;
- g. that a significant number of voters were included in the supplementary lists on election day, including during the second round;
- h. that modifications concerning the registration on mobile voting lists were introduced between the two rounds.<sup>3</sup>

### 1.2 Mandate

4. Determined to follow the progress made by the Authorities of Moldova with a view to implementing the recommendations addressed in a Recommendation in 2007, the Congress of Local and Regional Authorities of the Council of Europe (CLRAE), among other measures, invited the Venice Commission to make an expertise of the recently amended Law of the Autonomous Territorial Unit of Gagauzia No. 32-XXXIII/I on the election of the Governor of Gagauzia (Moldova) with a view to guaranteeing its coherence with the Electoral Code of Moldova and its compliance with Council of Europe standards on electoral matters.<sup>4</sup>

5. The comments are made on the basis of the English translation of the draft and without the possibility of receiving further clarifications. It is therefore possible that some issues were misinterpreted.

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<sup>1</sup> CG/BUR(13)75.

<sup>2</sup> CG/BUR(13)75.

<sup>3</sup> CG/BUR(13)76.

<sup>4</sup> CG/BUR(13)77.

### 1.3 Reference Documents

#### 6. This opinion is based on:

- *Law of Gagauz Autonomous Territorial Unit on Election of Governor (Bashkan) of Gagauzia (Gagauz-Yeri) (Unofficial English translation) (CDL-EL(2007)022).*
- *Electoral Code of Moldova (CDL-EL(2007)019).*
- *Previous Joint opinion on the Electoral Code of Moldova (CDL-AD(2004)027; CDL-AD(2006)001).*
- *Recommendation 213 (2007) on the election of Bashkan (Governor) of Gagauzia (Moldova) observed on 3 and 17 December 2006, The Congress of Local and Regional Authorities, Council of Europe 12 February 2007.*
- *Explanatory Memorandum on the election of Bashkan (Governor) of Gagauzia (Moldova) observed on 3 and 17 December 2006. The Congress of Local and Regional Authorities, Council of Europe 12 February 2007 (CG(13)43PART2).*
- *Resolution 232 (2007) on the election of Bashkan (Governor) of Gagauzia (Moldova) observed on 3 and 17 December 2006.*
- *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report. Adopted by the Venice Commission at its 52<sup>nd</sup> session (Venice, 18-19 October 2002) (CDL-AD(2002)023rev).*

7. *The present Opinion was adopted by the Council for Democratic Elections at its 22<sup>nd</sup> meeting (Venice, 18 October 2007) and the Venice Commission at its 72<sup>nd</sup> plenary session (Venice, 19-20 October 2007).*

## 2. General remarks

8. In its essence, but also in most of its provisions, the Law on the election of the Governor of Gagauzia (Moldova) follows the recommendations set forth in the Code of Good Practice in Electoral Matters issued by the Venice Commission in October 2002<sup>5</sup> and the prevailing practice in democratic countries where competitive elections are administered. The Law on the election of the Governor of Gagauzia in a standard manner stipulates universal and equal suffrage and secret and direct election. It can be noted that for the most part the provisions of the Law thereon provide for a transparent electoral process as well as ensure rather solid possibilities for electoral control and two forms of controlling mechanisms – an administrative (via Central Election Commission) and judicial (via decisions of the Court of Appeal at final instance).

9. Despite the quoted standard solutions, this electoral law has some provisions that cannot be claimed to be in compliance with the recommendations of *the Code of Good Practice in Electoral Matters* nor with prevailing practice in democratic countries. These provisions particularly refer to the organisation of the Central Election Commission and to the manner of keeping voters' registers i.e. universal suffrage eligibility.

10. On the basis of the aforementioned, it could be argued that some of the problems pertaining to the election of the Governor of Gagauzia, held in December 2006, as noted by the monitoring mission of the Congress of Local and Regional Authorities of the Council of Europe, have grounds in the text of the election law itself. Nevertheless, some electoral irregularities, also noted by the Congress, do not in themselves derive from the electoral law, but result from *contra legem* i.e. factual violation of the provisions of the electoral Code of Moldova, failure to

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<sup>5</sup> CDL-AD(2002)023rev.

act in compliance with its provisions or by means that allow political factors in electoral process to ignore them.

### **3. The structure of the law**

11. The Law only regulates the election of the governor, whereas the elections of the People's Assembly of Gagauzia are regulated by a separate law. It is recommended that all election laws of Gagauzia be consolidated into a single law so as to avoid repetitions and inconsistencies.

12. Some provisions seem to be taken over from another law without being adapted to the case of an election of governor for the whole territory. This will be commented below.

13. Several provisions are different from the corresponding provisions of the Law of Moldova on elections. As already recommended by the CLRAE in their 2007 draft report and recommendations, the legislation of Gagauzia should be consistent with the main principles of the electoral legislation of Moldova, when reflecting the European electoral heritage.

### **4. The electoral system**

14. The governor is elected in a majority-based system with a possible run-off. In the first round of election, a candidate with more than half of the valid votes cast is elected (Article 68). If no candidate obtains more than half of the votes, a run-off is organised between the two candidates with the highest number of votes in the first round (Article 69 (1)). In this round, according to Article 69 (5), the candidate who obtains the highest number of votes is elected.

15. This is the most common and straightforward rule for a majority vote with a run-off. However, Article 70 (and Article 88 (b) for repeat elections) seems to add another condition for a valid election, requiring the winning candidate to also win a number of votes higher than half of the voters *participating* in the elections, not only more than half of the *valid votes*. This would mean that even invalid votes are counted in. First of all, it is confusing to first define one criterion for being elected and later changing this to a stricter one. Secondly, it seems unnecessary to make it more difficult to be elected in the runoff. More than half of the valid votes should suffice.

16. Articles 69 (8), 86 and 87 (5) provide, in addition, turnout requirements for a valid election: in the first round at least half, in the run-off at least one third and in a repeat election (both first and second round) at least one third of the electorate should participate for the elections to be valid. Firstly, one may argue that there is no logical reason for having different turnout requirements for the first and the second round of the same election. For a repeat election, it may be logical to reduce the requirement, since the voters already have had a chance to participate.

17. The most important question is, however, to what extent one should have turnout requirements at all. Often, such requirements do not lead to more participation. Repeat elections will normally have a lower turnout than the original one, and they are costly to administer. In addition, a repeat election with 33% turnout is not any more democratic than a first round with, for example, a turnout of 48%. It is a principle of democracy that the political decisions are made by those who take part in the decision-making process. Those persons restraining from participation should not make the decisions by "staying at home". The threshold may cause an endless cycle of elections without results and diminish the functioning of democracy in the region. It is recommended to remove turnout requirements for the governor elections.

## **5. The election administration**

### *5.1. Structure and composition of the electoral administration. Election of the members*

18. The election administration has three layers:

- The Central Election Commission (CEC), which one may consider renaming for example Gagauz Election Commission to distinguish it from the CEC of Moldova;
- The District Electoral Commissions (DEC), which are called “Electoral Constituency Councils” in the translation;
- The Polling Station Committees (PSC) which are called “Electoral Offices of the polling stations” in the translation.

19. According to Article 15 (1), the CEC creates the electoral bodies and electoral councils to organise and conduct the elections. Article 16 lists the electoral bodies, which include the CEC, constituency councils and electoral offices of polling stations. No other electoral bodies are provided for. The wording of Article 15 (1) is not clear about which organs have to be formed in the time limit stated in that Article.

20. The 9 members of the CEC are approved by the People’s Assembly upon recommendations by the Assembly, the executive committee and the judiciary. This does not seem to have guaranteed an independent composition and alternative nomination procedures should be considered.

21. The middle level commissions are called “constituency” in the translated name. If it is a correct translation, it may be confusing since the whole territory is a single constituency when it comes to elect the governor. However, if it is just a term for an administrative layer (which may coincide with constituencies for the election of the Assembly) one should make that clear in the Law.

22. Article 19 (1) regulates the elections within the CEC and states that a person is elected “with a majority of votes by members of the commission”. This should be clarified. The commission has nine members and one interpretation would be that at least 5 members have to vote for a candidate to be elected. The term “majority” sometimes means more than half and sometimes most votes (plurality only), so this should be stated clearly. If one need more than half of the members and not only of those present and voting, one should have a rule for what happens if no candidate obtains such a majority. One may consider requiring more than half of those present and voting, and if no candidates obtain that, a new vote is carried out between the two candidates with the highest number of votes and in this vote the one with the highest number of votes is elected. In case of a tie, one may call a new meeting with a repeat vote, and in the end a lot may decide. Even though one should try to achieve consensus or large majorities behind votes, one also needs to avoid stalemate situations.

23. Similarly, Article 20 (2) should refer to more than half of those present and voting instead of the majority of the members. Article 20 (1) already specifies a quorum of more than half the members for passing valid decisions in the CEC.

24. These comments are also valid for the DECs (Article 30 (7)) and PSCs (Article 36 (2)).

### *5.2. An ad hoc Commission*

25. The Law on the election of the Governor of Gagauzia provides that the Central Electoral Commission of Gagauzia “is made up of nine members confirmed by the People’s Assembly of

Gagauzia *not later than 60 days before the Election Day*”, that it is formed in a way that representatives of three main power branches in the Autonomous Territorial Unit – People’s Assembly, the executive committee and law courts – propose each three members of the commission,<sup>6</sup> as well as that its mandate is “effective throughout electoral campaign”<sup>7</sup>.

26. The solution stipulated by the election law entails that the Central Election Commission is set up as an *ad hoc* body, actually (“not later than 60 days before the Election Day”) and that its mandate is only relevant for the election concerned (“effective throughout election campaign”). The temporary form of this central body is clearly indicated by the provisions that regulate employment-legal status and salaries of the members of the Election Commission who, during the tenure in the Commission, temporarily left their regular businesses and jobs.<sup>8</sup>

27. Regardless of the fact that Gagauzia is an autonomous territorial unit and the fact that the Republic of Moldova has its central electoral commission, the recommendation from *The Code of Good Practice in Electoral Matters* of the Venice Commission stated that “any central electoral commission must be *permanent*”<sup>9</sup> has its full sense and applies fully to this concrete case under consideration. As an autonomous unit in the Republic of Moldova, Gagauzia conducts elections at all levels of power in the autonomous territorial unit on the basis of its own election laws and rules where the Central Election Commission of Gagauzia plays a central role. In such a situation, the *permanent* status of the Central Election Commission and it being a *state body* with its permanent address and a distinct number of full-time competent staff is a vital element for stability of the election process. Unless this is the case, the Central Election Commission will lend itself to adjusting their specific stands to political parties and political leaders i.e. their passing interests.

28. The fact that the Central Election Commission is not a permanent body, but an *ad hoc* structure, gives rise to other trends that affect the electoral process: a) insufficient integration of the electoral commission into the government structure; b) lack of a centralised and continuously updated election IT-supported system; c) lack of regular publications, periodicals and appropriate electoral statistics; d) lack of organised monitoring of the development and modernisation of election techniques; e) lack of organised and appropriate staff training for quality election administration etc.

29. In compliance with the aforementioned, we believe that the establishment of a permanent Central Election Commission for the autonomous territorial unit of Gagauzia would not only contribute to the stability of the electoral process, but also strengthen the independence and efficiency of its electoral administration.

### 5.3. *Incompatibility*

30. Articles 2, 30 and 36 define the incompatibilities of the commission’s and committees’ members. It is probably implied, but it should be explicitly stated that commissioners cannot be candidates for the elections.

### 5.4. *Revocation of electoral commissions' members*

31. Article 22 (2) on removing members of the CEC should probably refer to the bodies nominating – not appointing – the members. If it is meant that the appointing authority is the one which removes them, one should simply state the People’s Assembly.

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<sup>6</sup> Law of Gagauz Autonomous Territorial Unit on Election of Governor (Bashkan) of Gagauzia (Gagauz-Yeri), art.18.

<sup>7</sup> Law of Gagauz Autonomous Territorial Unit on Election of Governor (Bashkan) of Gagauzia (Gagauz-Yeri), art. 19.

<sup>8</sup> Law of Gagauz Autonomous Territorial Unit on Election of Governor (Bashkan) of Gagauzia (Gagauz-Yeri), Art.

23.

<sup>9</sup> CDL-AD(2002)023rev, II.3.1.c.

32. The possibility to revoke a member of the CEC is very open and the decision is made by bodies appointing the members of CEC. As mentioned, a wide possibility for revocation is incompatible with the principle of impartiality of electoral bodies. It would be preferable to provide a limited and precise list in Article 22, possibly including a list of penal and administrative offences. The criterion "if they take actions that unfit their functions" is too wide and gives rise to concern about possible abuses.

33. Article 22 does not specify the procedure for revocation. It remains unclear whether the right to revocation rests on the People's Assembly as the body confirming the members or on the different organs including the Assembly of Gagauz-Yeri and law courts as bodies which proposed the members to the Assembly. In both cases, it would appear that these organs have the power to dismiss a CEC member, even without any court decision. If it were the assembly itself that had the power to investigate the "serious violations", a procedure for granting the defence of the charged CEC member should be stipulated, and some possibility to appeal should be foreseen. It is not specified according to which procedure the law courts may revoke the membership of CEC.

34. The same has to be recommended for the revocation of members of electoral councils and offices (Article 37).

#### 5.5. *Staff of the electoral administration*

35. According to Article 26, the staff of the CEC is employed for the electoral period and is relieved from permanent office. Even when the membership of electoral bodies is limited to a specific term, the headquarters and staff members should be, at least partially, composed of a permanent staff.<sup>10</sup> It could secure the stability of practice by electoral bodies, as well as persistent know-how. With *ad hoc* staff the problems encountered in former elections can be carried over to the next elections, including problems with voters' lists.

36. According to Article 26, the staff of the CEC is confirmed by the executive committee and recommended by the CEC. It is not clear whether the executive committee is bound by the recommendation. It is of great importance for the impartiality of electoral bodies to decide on their personnel independently from political or administrative bodies. Thus, it might be suggested to give the CEC the decisive role in selecting and hiring personnel.

#### 5.6. *Training of electoral commissioners*

37. According to Article 29 (j), the CEC, in the electoral period, ensures the training of electoral commissioners. For the effective conduction of elections, it is important to secure the training of personnel already before the electoral period starts. It is too late to start the training procedure two months before the election day. It would be advisable therefore to form the composition of electoral bodies well in advance of the elections in order to allow for the training to take place earlier.

#### 5.7. *Funding of electoral administration*

38. According to Article 27, the CEC has to present a request to the executive committee within a term established by the latter regarding the inclusion of expenses related to its functioning and conducting elections in the budget. The commission indicates the kinds of activities that it intends to hold during the electoral campaign. The same is derived from Article 39 (2).

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<sup>10</sup> See the Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev, II.3.1.c: "The central electoral commission must be permanent in nature".



39. It is vital to secure adequate funding for the electoral bodies. It is for the legislator to regulate the procedure for preparing the annual budget of Gagauzia. Nevertheless, the Law gives rise to concern about practices, as the executive committee is allowed to establish the term too late to effectively conduct the elections. The indications provided to the executive committee must remain restricted.

#### 5.8. *Electoral constituency councils (District Electoral Commissions)*

40. Electoral constituency councils have many duties similar to the duties of CEC (e.g. Article 31 a), i) and j)). It would be advisable to avoid duplication of duties by different electoral bodies, as this might cause different decisions to be made on the same matters by different level electoral bodies. This kind of situation would undermine the authority of the bodies and entail criticism by political parties to the election process.

#### 5.9. *Electoral offices of polling stations (Polling Station Committees)*

41. Electoral offices of polling stations are formed according to Article 33 (7) no later than 25 days before the Election Day. Polling stations are created according to Article 33 (2) no later than 20 days before the Election Day. Those time limits are very short and give rise to concern about impartiality and the possibility to give the members good training. The electoral offices of polling stations have very little time to check the voters' lists.

42. Also, it is impossible to understand how the polling stations could be formed later than the electoral offices of polling stations.

#### 5.10. *Other remarks on electoral administration*

43. Article 24 (i) states that the CEC reports to the People's Assembly, the governor and the executive committee. There seems to be little reason for including the governor here, not least since the incumbent may be a candidate, and it does not seem to serve a purpose to include this office here.

44. Article 32 uses the term "district electoral office" which is not defined anywhere. From the context one may assume that the meaning is "polling station committee" (PSC).

In Article 39 (3) the text is incomprehensible, as the CEC has to report to itself.

## 6. **Voters' lists**<sup>11</sup>

45. The quality of the voters' lists has been an issue for Moldova in every election since its independence. An effort is being made at the national level to create a centralised register based on the civil register. However, it has still been found necessary to allow voters to vote without being registered by showing a residence certificate and be entered on a supplementary voters list. This means that voters are registered on election day, which is against the Code of Good Practice in Electoral Matters.

46. The Code of Good Practice in Electoral Matters emphasises the importance of having a *permanent* voters' register,<sup>12</sup> that is *regularly up-dated*.<sup>13</sup> But, providing that accuracy of the

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<sup>11</sup> Comments 46-50 of the Joint Opinion on the Electoral Code of Moldova by the Venice Commission and OSCE/ODIHR (CDL-AD(2006)001) are pertinent as well in the present opinion, as the regulation on controlling the voters lists is similar.

<sup>12</sup> "Electoral register must be permanent"- CDL-AD(2002)023rev, I.1.1.2. i.

<sup>13</sup> "There must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period;" – CDL-AD (2002)023rev, I. 1. 1.2. ii.

voters' register is verified "at the domicile of the electors",<sup>14</sup> the Law on election of governor of Gagauzia opens a legal possibility for the behaviour criticised by the observer mission of the Congress of Local and Regional Authorities of the Council of Europe, that the voters' lists were checked via a "door-to-door" system just before the beginning of the electoral campaign and were thus updated and displayed *outside polling stations*. As the Congress delegation concluded, this kind of practice with some examples of typewritten and even handwritten lists, made the quality of voters' register quite poor, which may have led to various types of abuses in the electoral process.<sup>15</sup>

47. The non-permanent character of the voters' register and its instability is also encouraged by those provisions in the election law that open the possibility to register on election day. Therefore, voters who did not appear in the list of their residence's polling station were eligible to be included in a supplementary list on polling day by producing their permanent residence permit duly stamped by the Regional Authorities (Article 60).<sup>16</sup> As pointed out in the Congress of Local and Regional Authorities of the Council of Europe's report on the last governor's election in Gagauzia, it was noticed that there was a large number of voters who requested and obtained to be registered on the supplementary voters' list. This produced a very controversial situation where a high number of voters (between 10 and 25 per cent of the total electorate) were registered *on election day* without, in many cases, adequate checks and all that *in accordance with the law*.

48. In relation to the aforementioned, it is necessary to point out that the Code of Good Practice in Electoral Matters states that "the registration should not take place at the polling station on election day"<sup>17</sup> and that the supplementary register should primarily become "a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register"<sup>18</sup>, and not for those who have changed their residence and that they want to regulate their right to vote *on the very election day*.

49. This raises the concern of multiple voting. Previous Venice Commission recommendations for Moldova have recommended that if supplementary voters lists are deemed necessary, one may consider the "issuing of voters' cards, or the introduction of double envelopes for such votes. The double envelope has an outer one with the voter's name and other data, which can be checked against other voters' lists for multiple voting. After the check, the envelope is opened, and the ballot, inside a secrecy envelope, is only opened when the identity envelope is removed."<sup>19</sup>

50. The authorities in Gagauzia should therefore change the provisions of the Law on elections of the governor that directly contribute to the non-permanent character of the voters' register and undermine its stability. Changes in this direction, by making the voters' register permanent and by regularly up-dating it, will make possible abuses and manipulations with the voters' register more difficult and therefore increase the regularity of the election process.

51. The Gagauz registers should be made in the same manner as the ones for general elections in Moldova and thus benefit from the improvements made there. It seems to be fully up to the municipalities to keep the registers in Gagauz elections.

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<sup>14</sup> Law of Gagauz Autonomous Territorial Unit on Election of Governor (Bashkan) of Gagauzia (Gagauz-Yeri), art. 43.

<sup>15</sup> CG/BUR(13)75.

<sup>16</sup> Article 60 states:

(2) *Electors from the area of the polling station who are not included in electoral lists are registered in an additional list when they present a document to certify their domicile in the territory of that polling station. The polling station keeps the certificates allowing them to vote and annex them to the report.*

<sup>17</sup> CDL-AD(2002)023rev, I. 1. 1.2 iv.

<sup>18</sup> CDL-AD(2002)023rev, I. 1. 1.2 vi.

<sup>19</sup> Venice Commission and OSCE/ODIHR joint recommendation of 2004.

## **7. Right to vote**

52. According to Article 13 (1) (c), persons sentenced to detention in terms under a final decision of a court of law cannot vote while Article 13 (2) (c) stipulates that cannot be elected “individuals [who are] sentenced to jail terms by law court who expiate their punishments in prisons”. According to the practice of the European Court of Human Rights in the *Hirst vs the United Kingdom* case, a general limitation of the right to vote in parliamentary elections for persons in detention under a decision of the court is not proportional and violates Article 3 of the 1 Protocol to the ECHR. The elections of the Governor of Gagauzia are not parliamentary elections and the provisions mentioned seem not apply in this case. Nevertheless, clarifications should be done between both restrictions as well as vis-à-vis the practice of the European Court of Human Rights and the issue of proportionality.. Indeed, a general restriction on all persons sentenced to imprisonment by a court, not taking into consideration the length of the imprisonment, could be disproportionate.

53. According to Article 13 (3), if the office the candidate occupies is unfit for the post that he bids for, he must be relieved from this office during the electoral campaign. This might easily restrict, in practice, the chances of opposition candidates compared with the governor in office, as he still has the income. Persons in other posts might avoid taking part in elections if their chances are little to avoid losing their jobs. In democratic countries, it is more common not to restrict the right of a candidate to be in other posts of offices, but to relieve them from their office after the results of elections are promulgated.

## **9. Scheduling elections**

54. Article 14 states that the People’s Assembly schedules the elections within three months *after* the mandate of the incumbent Governor expires. This means that the term of office would be extended by more than three months, if the Assembly so decides. One should, for regular elections, make sure that the new Governor is taking office upon the end of the incumbent’s term, which would mean that the elections should be set for at least a month before the end of the term.

## **10. Registration of candidates**

55. According to Article 40 (2), the Court of Appeal may annul the registration of a candidate who has received undeclared or foreign finances. Such a measure is not very effective, as it is usually difficult in these cases to discover the real source of finances. The source is usually discovered after the elections. There is no regulation for such cases (annulment of the results of elections, administrative or criminal sanctions).

56. According to Article 54 (3), once the CEC registered the electoral candidate, the latter holds the right to display electoral posters. It follows that such right is restricted before registration. Freedom of expression, provided in Article 10 of ECHR and in the Moldovan Constitution, provides freedom of expression of political views at all times. There can be no legitimate reason to restrict the freedom of expression before the electoral campaign or registration of candidate.

## **11. Nomination of candidates**

57. Candidates need to have turned 35 years (Article 45). This is a high lower age requirement and one may consider lowering it. There is no reason to believe that the voters will not be able to make their judgement and only elect a young person if s/he has extraordinary talents.

58. In order to nominate a candidate, the documents must contain *inter alia* the candidate's profession (occupation), function and job (Articles 48 (2) and 51 (5), 55), biography of the candidate (Article 51 (1) (c)), income declaration of candidate for the last two years before the year of elections, as well as sources of income (Article 51 (1) (e)) and medical certificate of candidate issued by a medical institution where he is registered (Article 51 (1) (f)). For the fundamental right to stand in the elections, the formalities to be registered should be minimised and information asked have a legitimate reason. The information mentioned does not have such a reason. There is no possibility to refuse the registration of a candidate based on that information. It is up to the citizens having the right to vote to select the best candidate for the governor's post. The information listed above may have an impact on the decision by voters, but the law should not oblige the candidates to provide information to the electorate. It should be suggested to amend the Law and not ask the above-mentioned information from the candidates in order to be registered.

59. As regard the health certificate, Article 51 (1) f) requires candidates to enclose a health certificate with their application, but it is not said anywhere what it is to be used for. This requirement should therefore be taken out.

60. Article 46 (2) states that (a) parties, (b) blocks and (c) citizens may nominate candidates. Article 47 regulates how an initiative group can be formed. The initiative group probably refers to the citizens of alternative c) of Article 46, and therefore Article 46 (c) should have a clear reference to the initiative groups of Article 47.

61. According to Article 48 (5), the person who collects signatures of electors signs every paper of subscription lists in the presence of the head of the local public administration authority of the territory where the signatures are collected. This procedure does not guarantee the independence and impartiality of the registration of candidates. The person who has collected the signatures may sign the papers in front of electoral bodies or notaries, where the political pressure on the signatory person is minimised.

62. The last sentence of Article 48 (2) "*The subscription lists will contain only signatures of candidates who reside in one locality*" seems to be unnecessary for governor elections.

## **12. Funding of campaign**

63. The regulation of the financing and the equality of the campaign is not very detailed and might give rise to malpractice. The text of of the Law should further elaborate the powers of the regulatory body, which should be the CEC. The present regulation merely provides the general principles and does not specify in detail the publication of campaign financing and the means of controlling media equality.

64. Article 41 (3) stipulates that the candidates will have their loans for campaigning written off in proportion to their support in the elections. However, paragraph (4) mentions that *unelected* candidates must repay their loans within two months. If one applies paragraph (3) it seems to be *all* candidates who have to repay the *balance* of their loans after the elections. This needs to be clarified.

## **13. The campaign**

65. Article 54 (1) states:

*"Citizens of the Republic of Moldova who reside in Gagauzia, parties and other social-political organisations, electoral blocs, candidates and their reliable persons hold the right to*

*discuss the electoral programmes of electoral competitors, their political, professional and personal skills freely and under all aspects, as well as to canvass or to call against candidates at meetings, gatherings with voters, via mass media or any other forms of communication which exclude the violation of public order and ethic norms.”*

66. This paragraph basically allows citizens and candidates to exercise what is within the fundamental right of speech. Such regulations, even if they state the obvious, are often included in the election laws of new democracies. When this is done, one should not restrict the rights to citizens of the Republic of Moldova “who reside [in] Gagauzia”. The Law is valid in Gagauzia and should regulate the activities taking place there independently on where the citizens reside.

67. There are only very general provisions (Article 53 (1)) for equal conditions for all candidates when it comes to the media. Further elaborations on free advertisements, fair coverage in the current affairs programmes etc should be included.

68. More precisely, no provision in the Law specifies which body controls the equality of chances to use the mass media or display posters. In order to avoid divergences of interpretation on the use of privately-owned poster display space, improvements need to be made to the provisions regulating the allocation of spaces for the display of campaign posters.

69. The equal access to public resources (offices, cars, buildings, etc) in general has been a matter of concern during previous elections and should be further elaborated in the Law.

70. According to Article 40 (1) foreign organisations may not provide material support for electoral campaigns. Such restrictions are quite common in new democracies in Eastern Europe, but it also restricts equal subsidising of political parties by international organisations promoting democracy and pluralism. Any publicly orientated conferences or seminars where political parties' views are disseminated may not be organised by foreign organisations and such a restriction is excessive.<sup>20</sup>

#### **14. The ballot papers**

71. Article 34 (a) states that the PSCs are insuring the integrity of ballot papers. It is not clear what that means, and it seems not to belong here, since the ballot papers will be issued centrally and are the same for the whole territory.

72. Article 55 (2) does not allow two candidates to have equal symbols, but the regulation should be extended to prohibit similar symbols or symbols that can give rise to confusion among voters.

#### **15. Size of polling stations**

73. According to Article 33 (2), the size of polling stations may not exceed 3000 voters. The maximum recommended size of polling stations should be 1500 voters, with the average not over 1200. Otherwise it is very likely that too many voters gather in the polling station and the elections procedure would not be calm. In polling stations with too many voters registered the danger of violations of the results by electoral body might increase as the impact of violation increases. The larger the polling station, the larger its impact on the overall results and the more eager the administration or political parties might be to influence the results in the polling station.

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<sup>20</sup> See in particular [http://venice.coe.int/docs/2006/CDL-AD\(2006\)014-e.asp](http://venice.coe.int/docs/2006/CDL-AD(2006)014-e.asp).

## **16. Accessibility to the polling stations**

74. It has been noted in recent elections that most polling stations were inaccessible for people with disabilities and present accessibility difficulties for elderly persons. The Law does not provide requirements for the accessibility to the polling stations. As the rooms are provided by local authorities, it might be better to include a general principle in the Law on the accessibility to the polling stations.

## **17. The voting time**

75. The election law determines the voting time from 7 a.m. to 9 p.m. It would be good to have a provision in the Law that grants the right to vote to every person who happens to be at the polling station at the time when it closes down (i.e. 9 p.m), provided s/he has been there in the time envisaged for voting. Thereby, it provides that no voters can be prevented from voting due to the possibility of a crowded polling stations. In case of elections in Gagauzia, such a provision may be important and the Law should prescribe the possibility that as many as 3,000 voters can vote at one polling station.

## **18. The voting**

76. By Article 44 (1) electors are told at least 7 days before the elections where the headquarters of the polling station is where they will cast their ballots. The Article does not specify the means of telling such information and it will depend on decisions made by the CEC. It could be suggested to amend the Law and oblige the local electoral bodies to divide such information in mass media or better by post (mail). In the latter case, the shortcomings of voters lists may become apparent sooner and amendments to them could be made in time.

77. Article 61 (1) allows a voter to request assistance to fill in the ballot paper. In order to restrict this practice only to situations where it is necessary, one may include a requirement to record all such cases with names of the voter and the one assisting him or her in the Polling Station Committee protocol.

## **19. Voting in the army units**

78. The Law on the election of the governor of Gagauzia has no provisions about voting in the army except that "soldiers can cast their votes in the locality where the military unit is based".<sup>21</sup> Bearing in mind the recommendations from the Code of Good Practice in Electoral Matters of the Venice Commission that "military personnel should vote at their place of residence whenever possible", as well as that if this is impossible that "it is advisable that they be registered to vote at the polling station nearest to their duty station",<sup>22</sup> it would be advisable to amend and precisely define the provisions on army voting accordingly. The question is: who are the members of the electoral office of the polling stations in the army? This deserves attention and should be addressed in the election law.

## **20. Voting in the detention facilities**

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<sup>21</sup> Law of Gagauz Autonomous Territorial Unit on Election of Governor (Bashkan) of Gagauzia (Gagauz-Yeri), art. 33.

<sup>22</sup> CDL-AD(2002)023rev, I.3.3.2 ix.

79. According to Article 62 (6) persons detained on basis of arrest warrants till the court passes a verdict can vote at the verbal or written request in the detention facilities. The Law does not provide the means for making the request. It could be suggested to clarify the provision and allow detained persons to vote in the prison without any request to the electoral bodies, but to the prison administration. All detention facilities should have a mobile ballot box at least at the request of the administration of detention facility.

## 21. The count

80. The sequence of events during the count should be clarified in Article 63, for example in the following way:

Before opening the ballot box:

- Enter the total number of ballot papers received in the protocol;
- Count the spoiled ballots and enter the number in the protocol;
- Count the unused ballots and enter the number in the protocol;
- Count the number of signatures on the ordinary voters lists and enter the number in the protocol;
- Count the number of voters on the supplementary voters lists and enter the number in the protocol;
- Pack and seal unused and spoiled ballots.

Only after this is done should the ballot boxes be opened. This is to make sure that the reconciliation of numbers is done in a proper manner without merely entering figures that seem to match. The experience in Moldova has not always been good when it comes to reconciling election results.

81. Article 65 (1) defines the content of the polling station protocols as follows:

*"The electoral office of polling station issues two copies of proceedings, which comprise:*

- a) the number of voters included in electoral lists;*
- b) the number of voters included in additional lists;*
- c) the number of voters who received ballot papers;*
- d) the turnout of participants;*
- e) the number of invalid ballot papers;*
- f) the total number of valid votes;*
- g) the number of valid votes for every electoral candidate;*
- h) the number of ballot papers received by electoral office of polling station."*

82. For some of these entries, it is not obvious what the source of information is and some important figures which may be used for reconciliation and control are missing. It is recommended to include the following in the protocols:

To be entered before opening the ballot box:

- a) the number of ballots received;
- b) the number of spoiled ballots;
- c) the number of unused ballots;
- d) the number of voters included in electoral lists;
- e) the number of voters voted according to the signatures on the lists;
- f) the number of voters included in additional lists.

To be opened after opening the ballot box:

- g) the number of ballots in the mobile ballot box;
- h) the number of ballots in the ordinary ballot box;
- i) the number of invalid ballot papers;

- j) the total number of valid votes;
- k) the number of valid votes for every electoral candidate.

83. There are no requirements for PSC to reconcile the figures. It is recommended that the PSC compare:

- o a with b + c + g + h
- o e + f with l + j,

and that any discrepancies be recorded. There should be rules for actions by higher commissions in case of unreasonable discrepancies.

84. The protocols at DEC (Article 66) and CEC level (Article 67) should have similar, aggregated information.

## **22. Tabulation and publication of results**

85. Article 74 mandates the CEC to issue preliminary results, which is good for transparency. Paragraph (3) says that the CEC is in charge of adding up the final results. One should add that the CEC should publish the tabulation from polling station to territory level. This will enhance the transparency and enable parties, observers and the press to check the polling stations they have observed and verify that the tabulation is correct.

## **24. Election observation**

86. In Article 76 party and domestic observers are being allowed for, but there seems to be no provisions for international observers.

87. According to Article 17 (2), the CEC has the right not to accept the representatives of electoral contestants. In this case the decision has to contain explanations. It is the task of the legislator to provide conditions in law for the refusal to register the representatives of contestants. Legitimate conditions for refusal could be associated with the restrictions on the right to vote or with the membership of electoral bodies.

## **25. Judicial procedures**

88. Paragraph 97 of the Joint Opinion on the Electoral Code of Moldova by the Venice Commission and OSCE/ODIHR (CDL-AD(2006)001) is pertinent as well in the present opinion, as the regulation is similar.

89. According to the Law, the CEC examines appeals and contestations against decisions and actions of electoral constituency councils and electoral offices of polling stations and makes decisions on their execution (Article 29 (l) and Article 78 (1)). It remains unclear from Article 79 whether such decisions of the CEC may be appealed in the law courts in the region of the electoral office or council (Article 79 (1)) or in the Court of Appeal (Article 79 (3)), as originally it is the decision of district electoral commissions or polling stations' committees which restrict contestants rights, but a decision is also made by CEC on the contestation. If both ways of procedure are open, a person presenting an appeal has two different possibilities: either to appeal to the CEC (it is possible to appeal straight to the first instance court according to Article 79 (2)) or to appeal the decision of the CEC on the appeal to the Court of Appeal.

90. The powers of the courts in solving the contestations against constituency councils and electoral offices of polling stations are not set out. It is not clear, what the court might decide: does it have the right to annul the results of elections in the polling station or constituency



council? Such a power would not be in accordance with the power of the Court of Appeal to confirm the results based on the report by the CEC (Article 71 (2)). In the latter case, political parties, citizens or candidates are not allowed to contest the results; the contestations might still be pending before the courts by the time the results are confirmed according to the time limits set out in Article 71 (3).

## **Conclusions**

91. These comments on the Law of Gagauz Autonomous Territorial Unit on Election of Governor (Bashkan) of Gagauzia (Gagauz-Yeri) were prepared on the basis of a recommendation of the Congress of Local and Regional Authorities of the Council of Europe that monitored the election of the Governor (Bashkan) of Gagauzia (Moldova) held on 3 and 17 December 2006. The Monitoring mission of the Congress concluded that some irregularities it found in the election of governor of Gagauzia in December 2006 might have derived from the Gagauz election law. The Congress therefore requested the Venice Commission to examine this Law and to establish whether it is in compliance with international standards in order to preempt possible irregularities from appearing in the forthcoming local elections in Gagauzia.

92. The Law has a number of provisions that are not in conformity with the Code of Good Practice in Electoral Matters of the Venice Commission and international standards on administering elections in democratic countries. Unless these provisions are changed, they can be an impediment to administering a regular, fair and transparent election process in Gagauzia in the future. The following areas are the most important to raise:

- The legislation of Gagauzia should be consistent with the main principles of the electoral legislation of Moldova as far as they are in conformity with European standards.
- The criteria for winning the runoff should be the same as for the first round of elections and the turnout requirements should be removed.
- Regarding the electoral administration, there should be a permanent Central Election Commission.
- On the same topic, there should be clearer rules regarding the revocation of members of the electoral commissions.
- The right to vote should not be too restrictive for some categories of voters, such as in detention facilities and in army units.
- There should be clearer provisions on the restrictions of the registration of candidates.
- The Law should ensure a fair campaign for all candidates.
- The counting process should be reviewed.
- The complaints and appeals process should be clarified.

93. Bearing in mind that earlier changes in this election law were made without being submitted to the Venice Commission for expert analysis, it would be useful to involve the Venice Commission in the work on future amendments that would aim at improving this Law and ensuring full harmonisation with common European democratic standards.