

# CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

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## **Recommendation 110 (2002)<sup>1</sup> on local and regional democracy in Moldova**

The Congress,

1. Recalling:

*a.* Article 2, paragraph 3 of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, which entrusts it with the preparation of regular country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe;

*b.* CLRAE Resolutions 31 (1996), 58 (1997) and 106 (2000) establishing guiding principles for the preparation of the above-mentioned reports;

*c.* CLRAE Recommendation 38 (1998) on the situation of local and regional self-government in the Republic of Moldova and Recommendation 84 (2000) on regional democracy in Moldova, in which it made a number of observations and suggestions to the Moldovan parliamentary and governmental authorities;

*d.* CLRAE Resolutions 59 (1998) on the situation of local and regional self-government in the Republic of Moldova, and Resolution 103 (2000) on regional democracy in Moldova, in which it decided to continue monitoring the development of local and regional democracy in that country;

2. Having taken note of the outcome of the official visits by Mr Claude Casagrande (France, L) and Mr Yavuz Mildon (Turkey, R), rapporteurs,<sup>2</sup> to Chişinău and Comrat (Gagauzia) in 2001 and 2002, as presented in the information reports recently approved by the CLRAE Bureau;<sup>3</sup>

3. Having examined the monitoring report on the situation of regional democracy in the Republic of Moldova drawn up by the rapporteurs on behalf of the Institutional Committee;<sup>4</sup>

4. Having taken note of the legal opinion on the reform laws passed by the Moldovan Parliament in December 2001 on territorial organisation<sup>5</sup> and local public administration,<sup>6</sup> drawn up by Professor John Loughlin, member of the Group of Independent Experts on the European Charter of Local Self-Government, under the rapporteurs' direction, as presented in the appendix to the monitoring report mentioned in paragraph 3 above;

5. Thanking:

*a.* the Moldovan presidential, parliamentary and government authorities for the information and remarks provided at meetings with the rapporteurs;

*b.* Professor John Loughlin and Mr Dan Medrea, experts; Mr Riccardo Priore, Secretary of the Institutional Committee, and Mr Günter Mudrich, Secretary of the Chamber of Regions, for the help they have given the rapporteurs in carrying out their task;

6. Welcoming the Republic of Moldova's ratification of the European Charter of Local Self-Government (2 October 1997), which came into force in Moldova on 1 February 1998;

7. Regretting that the Republic of Moldova has not yet ratified the European Charter for Regional or Minority Languages and the Convention on the Participation of Foreigners in Public Life at Local Level,

8. Wishes to draw the attention of the Moldovan presidential, parliamentary and governmental authorities to the following considerations and recommendations:

A. The enactment of the reform laws mentioned in paragraph 4 above:

*a.* the associations representing Moldovan local and regional authorities were not consulted prior to the enactment of this legislation. This constitutes a violation of Article 4, paragraph 6 of the European Charter of Local Self-Government, which states that "Local authorities shall be consulted, in so far as possible, in due time and in an appropriate way, in the planning and decision-making processes for all matters which concern them directly.";

*b.* no proof has been provided that the local communities were duly consulted as required under Article 5 of the European Charter of Local Self-Government, which stipulates that "Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.";

*c.* it is unacceptable in a democratic state that such a wide-ranging reform should be decided without genuine, open and official consultation of the institutions concerned;

*d.* in this connection, it is also to be regretted that:

*i.* in order to rapidly implement the reform laws in question, despite the criticism voiced by the Congress, the Parliament of the Republic of Moldova wasted no time in deciding to hold early local elections, thereby prematurely ending the terms of the local and regional representatives in office;

*ii.* the Moldovan authorities failed to consult the Council of Europe on the laws in question before enacting them, despite promises to do so;

*e.* the fact that the Constitutional Court of Moldova, taking account of the observations made by the President of the Congress on behalf of the CLRAE Bureau, subsequently set aside the decision to hold early elections, is a positive sign;

B. The political expediency of the reform laws mentioned in paragraph 4 above:

a. the need to bring government closer to the citizens and reduce the number of public officials – arguments used by the Moldovan Government to justify the reform – should not be incompatible with democratic principles and European standards in such matters;

b. the fact that there were shortcomings in the legislation in this area was no reason to sweep away the existing system, particularly since it had in the first place been established with difficulty, and with the political and financial support of the entire international community working in the Republic of Moldova;

c. while reaffirming that the Moldovan authorities are totally free to decide how they wish to organise the local and regional administrative structures in their country, the decision to reintroduce the districts (*raïony*) is probably based on a poor assessment of the underlying problems;

d. indeed, the main reason given by the Moldovan authorities to justify the reintroduction of the districts was that the citizens had asked that government services be brought closer to where they live;

e. this objective could have been attained simply by decentralising services on the basis of existing structures in the former districts. In deciding to replace the ten existing regions by thirty-two districts, the Moldovan authorities have *de jure* and *de facto* increased the number of decision-making centres and, consequently, the amount of bureaucracy involved;

C. Substantive legal issues linked to the reform laws mentioned in paragraph 4 above:

a. reference should be made to the legal opinion mentioned in the said paragraph 4 of this recommendation. The Moldovan authorities' attention is drawn to the following points:

i. at least as regards the underlying reasoning, the new administrative sub-division of the territory established under Law 764-XV appears to be at variance with the spirit and the basic principles of the European Charter of Local Self-Government;

ii. this is borne out by:

– statements by the First Deputy Prime Minister of the Republic of Moldova, who is responsible at government level for local and regional affairs and has publicly declared that the territorial reform adopted by parliament in December 2001 is intended to help consolidate the “vertical hierarchy” between central and local authorities;

– a decision of the Constitutional Court of the Republic of Moldova, published in Official Gazette No. 46-48 of 4 April 2002, finding that a significant number of the provisions of Law 781-XV (2001) on local public administration were unconstitutional, in particular on account of the hierarchical relations established between local and central authorities;

b. in this connection, the law mentioned in paragraph ii above breaches the European Charter of Local Self-

Government because, having its basis in the concept of interaction of the representative and executive powers and introducing substantial changes in the status and method of election of local elected representatives, it places those elected representatives under the authority of central government both in law and in fact. This is incompatible with Article 7, paragraph 1 of the Charter, which states that “The conditions of office of local elected representatives shall provide for free exercise of their functions.”;

c. from the same point of view, the provisions making it possible for local authority elected bodies to be removed from office or suspended by higher (or central) authorities without any judicial decision are contrary to Article 8 of the European Charter of Local Self-Government;

d. it is hardly surprising that the Moldovan Constitutional Court found the provisions mentioned in items b and c above unconstitutional;

e. it must be stressed that the above-mentioned law constitutes a serious retrograde step even as regards the powers and responsibilities of sub-national authorities. It has exacerbated the overlapping that already existed under the previous legislation. This constitutes a breach of Article 4, paragraph 4 of the European Charter of Local Self-Government, which provides “Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.”;

f. with regard to local authority financial resources, the new legislation no longer makes a clear mention of the right of local authorities to set local taxes. In this connection, attention can be drawn to Article 9, paragraph 3 of the European Charter of Local Self-Government, providing “Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.”;

D. Implementation of the reform laws mentioned in paragraph 4 above:

a. the statement by the Prime Minister, following the Constitutional Court decision, in which he confirmed that the term of office of existing local and regional authorities would be respected and that early local elections would not be held, is to be welcomed;

b. in this connection, any preliminary steps to establish the district administrative authorities (*raïony*) set up under Law 764-XV on territorial organisation must not undermine the autonomy of the local and regional authorities currently in office;

c. in future the Moldovan authorities might consider the possibility of treating these districts as “purely administratively decentralised” authorities, offshoots of the state, which would make it possible to keep the regions (*judets*) as autonomous, “politically decentralised” authorities. A territorial organisation along those lines could moreover be confirmed through a revision of the constitution in due course. The Congress is ready to assist the Moldovan authorities in taking such steps;

E. Relations between the Moldovan authorities and the Council of Europe, on one hand, and associations of local and regional elected representatives, on the other hand, in the field of local and regional democracy:

*a.* attention must also be drawn to the Prime Minister's undertaking, *vis-à-vis* the Congress rapporteurs, that the Moldovan Government would in future refer to the Council of Europe for opinion on any further bill on local public administration and territorial organisation being prepared by the parliament;

*b.* in the light of Article 4, paragraph 6 of the European Charter of Local Self-Government (see paragraph 8.A. *a* above), it is very important that the associations representing local and regional authorities in the Republic of Moldova should henceforth be consulted concerning any reform (or issue) directly affecting local and/or regional elected representatives. Such consultation should take the form of an institutional dialogue based on regular meetings and exchanges of information and official documents;

*c.* to facilitate the establishment of a working environment conducive to dialogue with the above-mentioned representatives and foster the inception of such co-operation in a climate of trust, it is proposed that the Congress organise a meeting of all the parties concerned (the relevant central authorities and representatives of the local and regional authorities) in Chişinău in the next few months;

F. The autonomous region of Gagauzia:

*a.* the Congress takes note of the assertions by the Prime Minister of the Republic of Moldova to the Congress rapporteurs that Gagauzia's autonomy would not be affected by the above-mentioned reform laws;

*b.* the Congress takes note of the proposals for constitutional reform concerning the status of Gagauzia made by the relevant State Committee;<sup>7</sup>

*c.* since the Venice Commission was already preparing an opinion on those proposals, the President of the Congress forwarded the rapporteurs' comments to the Venice Commission, so that it could take them into account when adopting its opinion;<sup>8</sup>

*d.* the Venice Commission's opinion,<sup>9</sup> taking into account the Congress's comments, was adopted in March 2002;

*e.* with regard to the conflict caused by the holding of a referendum in Gagauzia with the aim of removing the governor of the region (*Bashkan*) from office, it can be asserted, following a fact-finding visit by the relevant rapporteur, that:

*i.* no decision on holding a referendum was ever officially taken, in accordance with the law, by the People's Assembly of Gagauzia;

*ii.* no decision on holding a referendum was ever published in the Official Gazette of the People's Assembly of Gagauzia, in accordance with the relevant legal provisions;

*iii.* the time-limits laid down by law for organising a referendum were not observed;

*iv.* the charges against the *Bashkan* concerning his management record and responsibilities should be clarified before a competent court in accordance with the legislation in force, or before the People's Assembly of Gagauzia in accordance with its procedures and rules. It is therefore surprising that the highest Moldovan authorities called on the population of Gagauzia to participate in the referendum aimed at removing the *Bashkan* from office, when they had no legal basis on which to act;

*f.* whilst regretting that the attempt to organise the above-mentioned referendum provoked violent reactions, the Congress nevertheless expresses strong reservations regarding the violent arrest of Mr Ivan Burgudji, Director of the Legal and Protocol Department of the autonomous region of Gagauzia, by the Moldovan Information and Security Services. He was then accused of actively resisting the holding of the referendum which, however, had no legal basis (as stated in paragraph *e.iv* above);

9. Calls on the Moldovan authorities to take account of the above considerations and recommendations, with a view to honouring their commitments regarding local and regional democracy and the functioning of the rule of law within Council of Europe member states;

10. Invites the Moldovan authorities to make a statement at the next CLRAE mini-session (14-15 November 2002), so as to inform members of the Congress of the measures adopted or envisaged in order to implement this recommendation;

11. Requests that the Committee of Ministers and the Parliamentary Assembly closely follow the implementation of this recommendation by the Moldovan authorities in their work on the Republic of Moldova;

12. Invites the Secretary General of the Council of Europe to take the necessary steps to involve the Congress in work concerning the Republic of Moldova done by the Directorate of Co-operation for Local and Regional Democracy of the Council of Europe Secretariat.

1. Debated and adopted by the Congress on 5 June 2002, 2nd Sitting, (see Doc. CG (9) 6, draft recommendation, presented by Mr C. Casagrande and Mr Y. Mildon, rapporteurs).

2. These visits took place from 29 to 30 October 2001, from 28 to 30 January, from 18 to 20 February and on 4 April 2002 respectively.

3. Documents CG/Bur (8) 95, CG/Bur (8) 118 and CPR/Bur (8) 14.

4. Document CG (9) 6 Part II.

5. Law 764-XV (27 December 2001).

6. Law 781-XV (28 December 2001).

7. The Chair of this committee sent the President of the Congress a request for an opinion on these proposals

8. These comments are set out in the explanatory memorandum to this recommendation.

9. The Venice Commission's opinion is appended to the explanatory memorandum to this recommendation.