

The Distribution of Competences between Centre and Autonomy

Issues and Options in the Functioning of the Gagauz Autonomy in Moldova

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0. Introduction

The distribution of competences between centre and autonomous entity is a highly significant dimension of any autonomy arrangement. It relates to the legitimacy that residents of the autonomous entity, desiring a greater degree of self-governance, will accord to the polity of the state as a whole. Additionally, the distribution of competences between the two levels of governance is important for the functioning of the autonomous arrangements. This relates, first, to the need for clarity about which level of governance exercises which functions exclusively, in which areas powers are exercised concurrently, and which competences may be delegated from the centre to the autonomous entity on a case-by-case basis. Second, it is essential that the exercising of any competences by the autonomous entity is properly resourced by the centre. Third, the autonomous entity needs to have a sufficient level of capabilities (in a technical and human resources sense) to discharge its allocated functions in an efficient and effective way. As a final point, the distribution of competences between centre and autonomy also requires coordination and arbitration mechanisms to be in place to ensure that there is a certain degree of policy coherence and that any disputes between centre and autonomy about the distribution of competences can be resolved in a way that process and outcome are acceptable to both sides.

This paper will begin with outlining some general principles for the distribution of competences between centre and autonomy. It will then assess the current state of affairs in relation to Gagauzia. Finally, different options will be discussed for addressing current issues in the functioning of the Gagauz autonomy.¹

1. General Principles for the Distribution of Competences between Centre and Autonomy

The main point to bear in mind in any discussion about the distribution of competences between centre and autonomy is that the allocation of competences to the autonomous entity are to enable its population to exercise a greater degree of self-governance over their own affairs, but that this exercise of executive and legislative power has to occur within the overall framework of the country's constitution. This means that, while the autonomous entity will be relatively free to exercise its powers within areas in which it holds certain executive and legislative competences, it cannot do so contrary to the stipulations of the constitution. Bearing in mind this fundamental principle, the distribution of competences between centre and autonomy has two basic dimensions: (a) the nature of competences and their implications and (b) guiding principles of their distribution between the two levels of government.

¹ Another issue that is in some ways specific to the situation in Moldova is the question of competences assigned to local government. This is an issue that requires a state-wide approach, but needs to bear in mind the specific situation of the Gagauz autonomy. A detailed discussion of the issues and options available is therefore not part of this paper but will require separate and more extensive treatment.

(a) The nature of competences and their implications

The following distinctions can be made:

Exclusive competences

Either Central or Autonomous Governments have powers to legislate and adopt legally binding acts in a specific area. Both exercise their powers within the framework of the constitution and other relevant legislation. *This is the most preferable way of dealing with the distribution and exercise of competences, as long as exclusive competences are clearly defined and delineated.*

Shared competences

Central and autonomous governments have powers to legislate and adopt legally binding acts in a specific area. The autonomous government exercises its powers in so far as the central government has not exercised, or has decided to stop exercising, its competence. *This is a potentially conflictual way of dealing with the distribution and exercise of competences. It should be avoided wherever possible. If there have to be some shared competences, it would also be necessary to determine exactly which level of government exercises these competences under what circumstances.*

Framework competences

The central government retains the ability to define standards and guidelines within a specific policy area, but leaves it to the autonomous government to draft and pass specific legislation within these boundaries that apply on the autonomous territory. *This is a fairly common situation, especially in federations and not dissimilar to delegated competences. Framework competences, however, limit the central government to setting a broad framework for law and policy making, and do not imply that its competences extend beyond setting these general standards and guidelines.*

Delegated competences

The central government may, in matters within its exclusive competence, grant to the Autonomous Government the authority to legislate and adopt legally binding acts in the specific area within the framework of the principles, bases, and directives established by a specific law, which also establishes the degree and method of control the Central Government and/or Parliament wish to exercise over the way in which the Autonomous Government exercises this authority. *This would allow for both 'interference' by the Central Government and includes the possibility of delegated competences being revoked.*

(b) Guiding principles of the distribution of competences between centre and autonomy

The principle of **subsidiarity** regulates the exercise of powers. It is intended to determine whether the Central Government can intervene or should let the Autonomous Government take action. In accordance with this principle, the Central Government may intervene in areas which do not fall within its exclusive competence only insofar as the objectives of the intended action cannot be sufficiently achieved by the Autonomous Government but can rather, by reason of the scale or effects of the proposed action, be better achieved at Central Government level. *In the case of autonomy being granted on the basis of the demographic distinctiveness of the majority of the population in the autonomous territory, the principle of subsidiarity is the most important and needs to take account of the specific nature of the devolution process.*

The principle of **administrative capacity** implies that competences should only be devolved to a lower level of government if it has the human and material capacity to discharge the functions arising from such an act of devolution effectively. *The principle of administrative capacity is a very important principle as well, and its significance must not be underestimated: an Autonomous*

Government overwhelmed by the competences assigned to it, as desirable as these may be to have, and unable to muster the human and material resources for their effective discharge is destined to fail. While material resources can and should, to a large extent, be provided by the Central Government, ensuring sufficient human resources is essentially a task of the Autonomous Government. In cases of low levels of pre-existing human resources, devolution of competences may be delayed—they could be assigned to the Autonomous Government in relevant legislation in principle while their actual devolution could be made dependent on the Autonomous Government's parliament or executive applying for them to be devolved.

The principle of **proportionality** means that action taken by the Central Government, in terms of its form and content, does not exceed what is required to achieve the objectives set out in the Constitution (and/or the 1994 Law). *The principle of proportionality is relevant in the exercise of government competences in matters that affect the autonomous territory. It would be useful to establish coordination and consultation mechanisms in these areas between Central and Autonomous Governments (such as those seemingly already existing in relation to foreign policy).*

The principle of **economic efficiency** means that it must be economically feasible and, ideally, more efficient to exercise a specific competence at one particular level of government rather than another. *While not unimportant, this principle is least significant for the distribution of competences between Central and Autonomous Governments as these are, in cases like Gagauzia's, driven first and foremost by concerns of conflict resolution.*

2. The Current State of Affairs in Relation to Gagauzia

(a) The relevant legal provisions of Gagauzia's autonomy

The autonomy of Gagauzia is regulated according to an organic law of 1994, the so-called Law on the Special Legal Status of Gagauzia (Gagauz Yeri), which is special in the sense that it can only be amended with a 60% majority in the Parliament of the Republic of Moldova. The autonomy arrangements of Gagauzia are additionally entrenched in the Constitution of the Republic of Moldova (Art. 111).

Art. 12/2 of the 1994 Law assigns legislative competences to the People's Assembly of Gagauzia in six areas:

- 1) science, culture, education;
- 2) housing management and urban planning;
- 3) health services, physical culture and sports;
- 4) local budget, financial and taxation activities;
- 5) economy and ecology;
- 6) labour relations and social security.

In addition, Art. 12/3 assigns further competences to the People's Assembly that straddle the boundaries of law-making (c, e, f, g), administrative and executive powers (a, d, e), policy coordination (b, h), and recourse to arbitration mechanisms (i):

- a) solution in a legal manner of questions of the territorial organisation of Gagauzia, the establishment and alteration of the categories of localities, the borders of the regions, 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) defining the structure of the organisation and activity of local public administrative authorities of Gagauzia and of citizens' 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 elections for local public administrative 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) creation of titles of honour and institution of decorations;
- h) examination of the question 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 with a case concerning the voiding of enactments by the legislative and administrative authorities of the Republic of Moldova if they infringe on the authority of Gagauzia.

(b) Issues currently impeding a proper functioning of the Gagauz autonomy

The main issue in relation to Art. 12 is the lack of clarity about the nature of competences listed in Paragraph 1. The unqualified enumeration of these six areas of competences would mean, in line with standard interpretations of similar legal and constitutional documents, that these are exclusive legislative competences of the People's Assembly of Gagauzia. This view is also taken by the leadership of the People's Assembly:

The 1994 Law does not stipulate for the separation of powers between the Popular Assembly of Gagauzia and the Parliament of Moldova with regard to the elaboration of laws and does not define the place of the laws in the hierarchy of normative acts. The content of the Law suggests that the Popular Assembly is not responsible for making laws in all spheres. The spheres that are beyond the competence of the Popular Assembly should follow the laws adopted by the Parliament. In case of conflict, the priority is given to the laws adopted by the Popular Assembly.²

At the same time, there is a refreshing sense of realism and understanding on the part of the leadership of the People's Assembly who realize the current difficulties arising from the lack of clarity over the nature of the competences assigned to Gagauzia:

An important step in the enhancement of relations between the "center and Gagauzia" would be an agreement or treaty about clear distribution of competences between the Republic of Moldova and Gagauzia.³

There follows then an indicative list of exclusive competences for the autonomy and the centre, respectively, and an enumeration of joint competences, even though it is not always clear how the principle of 'jointness' would operate in the areas mentioned, as well as in others that might arise in the process of further discussions.

The leadership of the Parliament of Moldova has set out its position in relation to the nature of competences assigned to the Gagauz autonomy in the 1994 law by stating that the 'territorial autonomous unit was invested with the right to issue

² "Report on some criteria of the legislative establishment of the competences of the Administrative Territorial Unit Gagauzia".

³ "Exclusive and joint competences of the central and autonomous governments in Moldova"

local normative acts with the applicability on its respective territory.⁴ Further references are made to various provisions of the Constitution of the Republic of Moldova. These include, on the one hand, a focus on

the notion *resolve by its own*, which reiterates the autonomy and emphasises the impossibility for the central authorities to intervene in the settlement of the problems that depend on the competences of the territorial autonomous unit Gagauzia, consecrated by Constitutions and laws, except for the situation imposed on case by case basis in accordance with the legislation.⁵

On the other hand, there are also a number of relatively restrictive interpretations of the Constitution in relation to the status and nature of competences of the Gagauz autonomy:

[T]he Gagauz autonomy, however wide would it be, is an administrative one, and the competences of the Gagauz authorities or, on case by case basis, of the public authorities, to resolve the problems of the autonomy; these authorities carry out an activity in framework of a unitary state and not outside of it.

Thus, the constitutional provisions, by which it is stipulated that *Gagauzia is a territorial autonomous unit with a special status*, in fact stress the fact that this territorial autonomous unit, being established beside the districts, has a special status, reiterating the applicability of the principle of local autonomy to its organisation and functioning.

While the latter of these statements concerns the relationship centre—autonomy—local authorities, and should be dealt with in a separate analysis, the former statement's use of the notion 'administrative autonomy' is somewhat worrying. On the one hand, the leadership of the Parliament of Moldova is correct in asserting, implicitly, the primacy of the Constitution of the Republic of Moldova. On the other hand, 'administrative autonomy' is too narrow an interpretation of the status of Gagauzia according to both the Constitution and the 1994 Law. The People's Assembly of Gagauzia has been clearly assigned legislative competences in various areas, that is, it does not merely adopt state laws to local conditions but has the power to legislate of its own initiative. It is important that this be acknowledged explicitly by the Parliament of the Republic of Moldova, regardless of the outcome of any subsequent clarification of the nature of competences assigned to the Gagauz autonomy.

A second main issue is the extent to which Gagauzia at present has the capabilities to discharge properly its functions in all these areas. A proper assessment of this goes beyond the scope of this paper, but the following consideration of options will take account of any shortcomings, temporary or otherwise, that might exist in this respect.

3. Options for the Future

Options for resolving the current impasse in the proper functioning of the Gagauz autonomy have to be considered more generally in the framework of the Moldovan state and specifically with regard to the issue of distribution of competences.

⁴ "Constitutional foundations of autonomy in Găgăuzia"

⁵ "Constitutional foundations of autonomy in Găgăuzia"

Moldova in general would benefit from an arrangement of asymmetric decentralization that would, on the one hand, preserve the nature of Moldova as a unitary state, while on the other hand allowing for different levels of autonomy to be enjoyed by different sub-state territorial entities. The example on which Moldova could be modeled would be that of the United Kingdom of Great Britain and Northern Ireland where Scotland, Wales and Northern Ireland, as well as London as capital city, enjoy different levels of autonomy while England (the largest and most populous part of the country) remains without any self-governance other than at the level of local authorities.

Adopting this approach, the Moldovan state could afford to grant substantial self-governing rights, as, for example, enshrined in the 1994 Law for Gagauzia, to sub-state territorial entities like Gagauzia and Transdnistria, while preserving the overall unitary character of the state.

The UK model has further features that could be adapted for use in Moldova, including Gagauzia. First of all, it distinguishes between devolved, reserved and excepted powers, signifying legislative competences that are enjoyed by the sub-state entity (devolved), those that can be devolved at a future time (reserved), and those that are exclusive to the centre (excepted). These are specifically enumerated in an Act of Parliament and thus enjoy a relatively high degree of legal entrenchment (probably as much as is possible in a country without a written constitution).

The UK example is also worthwhile considering as a model because of its use of the notions of primary and secondary legislation. This can also be illustrated with a view to the arrangements of the South Tyrolean autonomy, which, additionally, uses the notion of tertiary legislative competence. The distinction between these three levels of legislative competence has its source in the legal boundaries to which they are confined. Thus, South Tyrol's primary legislative competences (i.e., the areas in which it enjoys exclusive powers) are only constrained by the Italian constitution and the country's EU and other international obligations. Secondary legislation, that is legislation in areas of concurrent/joint/shared competences, is constrained by framework legislation in which the centre determines the basic principles of legislation while the province makes the detailed arrangements as they are to apply in South Tyrol. Tertiary legislative competence is constrained in two ways. First, it is only in specifically 'delegated' policy areas beyond the stipulations of the autonomy statute in which such competence can be exercised by the province. Second, provincial legislation has to comply with a range of particular constraints specified in individual cases of delegated legislative competence, as well as with the more general constraints imposed on primary and secondary competences.

Combining notions of devolved, reserved and excepted powers with those of primary, secondary and tertiary legislative competence would be useful for improving the functioning of the Gagauz autonomy in two ways. On the one hand, it would facilitate the clear distribution of competences between centre and autonomy by assigning to the autonomy different types of legislative competence in different devolved policy areas. In addition, some of those policy areas could remain on a 'reserved list' until such time when the autonomy has developed sufficient capabilities to discharge its functions in a specific area and asks for it to be devolved into its competence. Finally, excepted powers would be those that remain exclusively with the centre.

4. Conclusion

There are a number of issues at present that impede the proper functioning of the Gagauz autonomy, and they are in no small measure related to the vague definition of the competences that the autonomy is to enjoy according to the 1994 Law.

There are some significant differences between the two sides relating to the interpretation of relevant legal provisions for the Gagauz autonomy, especially as they exist in the Constitution and the 1994 Law. Centre and autonomy have recognized this and seem prepared to resolve these matters in a constructive way.

Bearing in mind the overall situation in Moldova and the specific requirements necessary for enhancing the functioning of the Gagauz autonomy, it appears that adopting a model of asymmetric decentralization similar to the United Kingdom and utilizing notions of devolved, reserved and excepted powers (in operation in the UK) and of primary, secondary and tertiary legislative competences and their respective boundaries (used in Italy and the UK) would offer an appropriate way of moving towards clarification and resolution of the issues in relation to the distribution of competences that are among the current obstacles to a properly functioning Gagauz autonomy.