

Overcoming Political Deadlock in Gagauzia: Options for EUSR Mediation Team

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The following observations reflect a *political* rather than *legal* assessment of the current situation in Gagauzia and possible ways to help the local parties break out of the political deadlock that has been created by the results of the latest elections to the People's Assembly of Gagauzia (GPA) and subsequent events detailed in EUSR briefing notes. However, the options presented in the following take into account, as much as possible, the existing legal framework (principally, the Constitution of the Republic of Moldova, the 1994 Law on the Special Legal Status of Gagauzia, the Code of Gagauzia).

The options presented below should also be seen as political principles for the parties to agree on. It should be noted that, as political principles, they can be technically realised in a number of different ways, and some indication will be given about such possible ways. Once agreed as political principles by the parties, they will also require concrete implementation procedures to translate them into legally viable language.

1. Relevant Legal Provisions

Existing legal provisions should be seen both as constraints on the framing of a political agreement between the parties and as an opportunity to realise such an agreement within the existing legal framework. Such provisions exist as follows:

- A. In the Constitution of the Republic of Moldova (confirming the status of Gagauzia as an autonomous entity within the Republic of Moldova, but severely constraining the exercise of any real power by Gagauzia independently of the centre):
 - a. Article 69: The Parliament of Moldova as the only law-making body in the Republic of Moldova
 - b. Article 72: Classification of the legal hierarchy of laws in the Republic of Moldova
 - c. Article 73: Right of Gagauzia to legal initiative in the Parliament of the Republic of Moldova
 - d. Art. 110: Territorial organisation of the Republic of Moldova
 - e. Art. 111: The Status of Gagauzia
 - f. Art.s 112 and 113: Village, town and district councils
- B. In the 1994 Law on the Special Status of Gagauzia (establishing the competences of the autonomy and basic principles of governance in very vague terms open to interpretation an frequently challenged as contradicting the Constitution of the Republic of Moldova):
 - a. Art. 2: Applicable laws constraining the exercise of Gagauzia's autonomy
 - b. Art. 9: incompatibility of holding elected office with other paid employment (cf. Art.s 28 and 48/2 of the Code of Gagauzia)
 - c. Art. 10: election of officers of the GPA (cf. Art.s 52ff. of the Code of Gagauzia)
 - d. Art. 12/3(d): The role of the Central Election Commission (of Gagauzia)
 - e. Art. 14/9: suspension of the Governor (cf. Art. 70 of the Code of Gagauzia)
 - f. Art. 14/10: removal of the Governor by the GPA
- C. In the Code of Gagauzia (establishing the principles of governance for the Gagauz autonomy in ways that are confusing, exceed competences defined in the 1994 Law on the Special Legal Status of Gagauzia, and partially contradict the Constitution of the Republic of Moldova):
 - a. Art. 10: Separation of powers

- b. Art. 28/5(2): Ineligibility to stand for elected office (in combination with Art. 48/2 of the Code and cf. Art. 9 of the 1994 Law on the Special Legal Status of Gagauzia)
- c. Art. 47: Role of the Tribunal of Gagauzia and the Central Electoral Commission (of Gagauzia) in approving election results
- d. Art. 48/2: Incompatibility of membership in the GPA with other paid employment
- e. Art. 51/3, 6, 8, 12: Competence of the GPA for the interpretation of laws, the approval of the Executive Committee, the removal of public officers, and the conduct of elections
- f. Art.s 52-55: Election and competences of Speaker and Deputy Speakers, election method of the speaker, recall of the Speaker (cf. Art. 10 of the 1994 Law on the Special Legal Status of Gagauzia)
- g. Art. 56/3: Non-dissolution of the GPA in the first year after elections (in combination with Art. 68/10)
- h. Art. 68: Competences of the Governor
- i. Art. 68/10: Dissolution of the GPA by the Governor
- j. Art. 70: Dismissal of the Governor by the GPA (cf. Art. 14 of the 1994 Law on the Special Legal Status of Gagauzia)
- k. Art.s 84-85: Tribunal of Gagauzia
- l. Art. 88: Prosecutor of Gagauzia

2. Options for Overcoming the Present Deadlock

It is desirable, initially, to facilitate agreement between the deadlocked parties about political principles to overcome the current impasse and to commit them to longer-term reforms of the Code of Gagauzia that assure all parties that they cannot be permanently excluded from power in Gagauzia. Three principle options can be outlined in this context:

- A. The parties agree to accept whatever legal judgement is passed on the current situation. AND they commit themselves to a reform process that ensures a more equitable distribution of positions between the major factions in relation to one or more of the following:
 - a. Speaker and Deputy Speakers of the GPA
 - b. Chairmanship of GPA Committees
 - c. Seats on the Executive Committee

ADVANTAGES: This would not contravene existing legal provisions and indicate the parties' trust in each other and the rule of law. Any future deal on equitable distribution of positions could also be accomplished within current provisions for competences of the GPA.

DISADVANTAGES: Trust between the parties is lacking and trust in the judicial system is not equal among them. At the very least, the Supreme Court of Moldova would need to accept being the ultimate arbiter in this process.

- B. The parties agree to rotate the offices of Speaker and Deputy Speaker between them at the half-term point of the mandate of the current GPA. AND they commit themselves to a reform process that ensures a more equitable distribution of positions between the major factions as above.

ADVANTAGES: This would be a 'painless' solution and could proceed from the basis of the candidate of the Communist Party of the Republic of Moldova (CPRM) who supposedly won the elections on 12 June (or a mutually agreeable substitute) assuming the Speakership of the GPA for the first period, and the Formuzal/Dudoglo candidate winning on 16 June (or a mutually agreeable substitute) succeeding him/her in the second period.

DISADVANTAGES: Trust between the parties might be lacking for such an arrangement, in particular as there are no realistic mechanisms to enforce the rotation at the half-term point.

- C. An interim agreement by the parties to one or more of the following:
- a. Ensure that the position of one of the two Deputy Speaker positions is filled by a candidate nominated by the CPRM
 - b. Ensure an equitable distribution of the Chairmanship of GPA Committees among the major factions
 - c. Ensure an equitable distribution of seats on the Executive Committee among the major factions

AND a commitment by the parties to a reform process that ensures that one or more of the above are made permanent in relevant legal provisions.

ADVANTAGES: This offers both parties a face-saving solution being able to demonstrate to their supporters that they did not back down without winning major concessions. It also assures party leaderships that regardless of the outcome of future elections they could not be marginalised in the political process as is currently possible. Such a deal would also be legal in that it can be implemented in ways that do not contradict current provisions. It also offers parties the opportunity to demonstrate their joint commitment to a solution by supporting unanimously proposed candidates for the relevant positions in the GPA.

DISADVANTAGES: This could create a relatively complex power sharing arrangement and lock future political actors in a deal that they did not negotiate. There is also a certain potential for political deadlock in the Executive Committee and for the instrumentalisation of political power gained in the Presidium of the GPA, Committees of the GPA, and the Executive Committee.

3. Further Considerations

Politically (and perhaps legally), options A and C are preferable. Option B should be kept in mind, but is clearly the one wrought with most potential for failure in the medium term.

Power sharing arrangements foreseen in Options A and C should be presented to the parties sequentially, starting with the Presidium and moving towards the Executive Committee. *Ad hoc* judgements may have to be made about whether more power sharing or less will create more stability in the short and long term.

If Option C is chosen, this might include a provision that, as a gesture of trust by the current GPA majority, the Deputy Speakers are elected first.

The overall political package deal negotiated may have to include further elements:

- Resolving the question of pending criminal cases against political leaders in Gagauzia;
- Resolving the question of the eligibility to hold elected office and the compatibility of this with other positions of paid employment;
- A commitment by the parties to agree on candidates for relevant positions, including, possibly, an agreement that particular people will not be nominated for any particular position;
- An (internal/external) financial package to bolster economic development in Gagauzia and to put the finances of the autonomy on a more secure long-term footing;
- A commitment by the government in Chisinau to introduce legislation in the Parliament of the Republic of Moldova to clarify and consolidate the legal status and competences of Gagauzia;
- A commitment by the parties in Gagauzia to amend the Code of Gagauzia in order to make it fully compatible with the Constitution of the Republic of Moldova and the 1994 Law on the Special Legal Status of Gagauzia, as well as to conform with any agreement on future governance structures reached as part of the attempt to break the current deadlock.

In the medium to long term, it can be expected that three major factions will vie for power in Gagauzia: the CPRM, the Formuzal camp, and the Dudoglo camp. Their political agendas and (external) supporters need to be considered when deciding on the technical mechanisms to implement any power sharing agreement and its scope. For example, stipulating a qualified majority for the election of Speaker/Deputy Speakers and Committee Chairs of the GPA and for the approval of the Executive Committee might encourage coalitions of just two of these factions (imagine a 40-30-30 balance of power under conditions requiring approval by 3/5 or 2/3 of GPA members), whereas a mathematical allocation formula of positions, such as the d'Hondt system, would ensure the representation of all major factions in positions of power. The latter might also necessitate the creation of a third Deputy Speaker position and/or an adjustment in the number of committees and/or Executive Committee portfolios .

Finally, the implications of any deal reached for the future settlement of the conflict with Transnistria need to be borne in mind in relation to:

- The workability of any self-governance arrangements within a unitary Moldovan state;
- The commitment of the central government to respect the rule of law and not to interfere in, or instrumentalise, the judiciary;
- The commitment of the central government to respect agreements between local parties as long as these do not contradict existing relevant legislation;
- The preparedness of the central government to accept external mediation in domestic disputes;
- The preparedness of the EU, and especially the EUSR, to offer impartial, legally sound, and politically feasible advice on how to overcome potential deadlocks;
- The preparedness of the EU to support necessary reforms with technical expertise and financial aid.