

Russian Draft Memorandum on the basic principles of the state structure of a united state in Moldova (Kozak Memorandum)

17 November 2003

MEMORANDUM On the basic principles of the state structure of a united state

1. The Republic of Moldova and Transnistria (hereinafter -the parties) realizing their responsibility for unifying the country, assuring civil peace and full-fledged democratic development, have agreed that the final resolution of the Transnistrian problem should be realized through the transformation of the state structure of the Republic of Moldova with the goal of creating a united, independent, democratic state based on federal principles with the borders of the Moldovan SSR on 1 January 1990.

2. The sides believe that realizing the practical mechanisms for resolving the Transnistrian problem is possible on the basis of joint work on, preliminary nationwide discussion of, and approval of a new Constitution of a united state - the Federal Republic of Moldova.

3. In the new Constitution of a unified state the following basic principles of state structure should be strengthened:

3.1 The Federal Republic of Moldova (hereinafter - the Federation) is a democratic, - sovereign, federal state based on the principle of territorial unity, unified principles for building state power, and unified defense (for the transitional period), customs and monetary-currency spaces.

The Federation is a neutral, demilitarized state. The conditions and process for deconstructing the Armed Forces, social and other guarantees for servicemen of the Republic of Moldova and Transnistria will be determined by federal organic law.

Until the full demilitarization of the Federation, the Armed forces will be formed and function on the basis of the territorial principle of staffing military units and may not be used to secure order and social safety on the territory of the Federation. The command of the Armed forces of the Federation will be carried out by an empowered federal organ of the executive branch. The approximate numbers of the organs for defense of law and order and social safety will be determined by federal organic law.

3.2 On the territory of the federation, freedom of movement of people, goods, services and capital is recognized and guaranteed.

3.3 The Constitution of the Federation, federal organic laws on the competencies of the federation adopted in accord with the constitution and federal organic laws on joint competencies of the federation and subjects of the federation, and also other acts of the federal organs of state power adopted to implement the Constitution and federal laws are valid on the entire territory of the federation and must be carried out by all organs of state power, organs of local government, juridical and physical persons.

3.4 The territory of the federation is composed of the territory of the Subjects of the Federation and federal territory.

Federal territory is the territory of the Federation outside the territory of the Subjects of the Federation.

Within the boundaries of federal territory all of the authority of the legislative, executive and judicial branches as regards the competencies of the subjects of the federation is carried out by the federal President, the federal Parliament, the federal Government and the federal courts directly or, in situations set forth by laws of the federal territory, by organs of local self-government.

3.5 The Transnistrian Moldovan Republic is a subject of the federation, a state entity within the federation, and forms its own state organs of the legislative (the Supreme - Soviet of the TMR), executive (president of the TMR and government of the TMR) - and judicial branches, has its own constitution and legislation, state property, independent budget and tax system, and also its own state symbols and other attributes of state status.

The autonomous-territorial formation of Gagauzia is a subject of the federation and maintains its own state organs of the legislative, executive and judicial branches, has its own constitution and legislation, state property, independent budget and tax system and also its own state symbols.

3.6 The constitutional-legal status and borders of the subjects of the federation cannot be changed without their consent.

3.7 The state language of the Federation is Moldovan. Russian is an official language on the entire territory of the Republic of Moldova. Other official languages in addition to Moldovan and Russian on the territories of the subjects of the federation may be set out - in the constitutions of the subjects of the federation. Official documentation on the territory of the respective subjects of the federation in all organs of state power and local self-government will be carried out in the state and official languages.

The federation guarantees all citizens living on its territory the right to maintain their native language and the creation of conditions for its study and development.

3.8 The federation is a subject of international law and a member of worldwide and regional international organizations for membership in which being an international legal subject is a prerequisite. The federation is the legal successor to the Republic of Moldova in its international relations.

3.9 The federation will set up international relations with other states and international organizations and conclude international treaties and agreements. Ratified treaties of the federation and generally accepted principles of international law have a priority over federal legislation.

3.10 International treaties on competencies of the federation will be ratified by federal ordinary laws.

3.11 International treaties dealing with joint competencies of the federation and the subjects of the federation (hereinafter – joint competencies) shall be ratified by federal organic laws. In carrying out negotiations on concluding international treaties that involve joint competencies, the federal government will carry out preliminary consultations with the organs of state power of the subjects of the federation with the goal of taking into account the opinions of the subjects of the federation and will ensure the participation in the negotiations of representatives of the relevant organs of the subjects of the federation in accord with procedures that will be set out in federal organic law.

3.12 Subjects of the federation may be members of worldwide and regional international organizations for membership in which international legal status is not a mandatory condition, maintain international relations, conclude international treaties on competencies of the subjects of the federation and establish representation in other states that do not have the status of diplomatic representations or consular establishments.

3.13 Subjects of the federation have the right to leave the federation in case a decision is taken to unite the federation with another state and (or) in connection with the federation's full loss of sovereignty.

3.14 The departure of a subject of the federation from the federation is carried out on the basis of a decision taken in a nationwide referendum of the subject of the federation by a majority of votes of all voters registered on the territory of the subject of the federation. The referendum will be called by the legislative (representative) organs of state power of the subject of the federation in the case that the basis for departure is present.

Organization and material-technical efforts to carry out the referendum will be handled by the organs of state power and local self-government of the subject of the federation.

3.15 The competencies of the federation, joint competencies and also competencies of the subjects of the federation will be established in the constitution of the federation.

4 Competencies of the federation are:

4.1 Federal state property and its management;

4.2 Regulation of the currency, currency emissions

4.3 Air, rail and water transport

4.4 Foreign policy, foreign trade and international treaties of the federation, questions of war and peace.

4.5 Citizenship of the federation, questions of emigration and immigration;

4.6 Setting out procedures for the production, sale and purchase of arms and military equipment, the production of poisonous substances and narcotics and procedures for their use;

4.7 Setting out the status of and defending the state borders, the airspace of the Republic of Moldova, and the regime for the border zone;

4.8 Collision Law

4.9 Meteorology, geodesics, cartography, standards, weights, the metric system, and time;

4.10 Federal statistical and bookkeeping records;

4.11 Federal state awards and titles.

5. Subjects of joint competency are:

5.1 Regulation of human rights and freedoms, the rights of national minorities;

5.2 Customs regulations, activities of the Federal Central Bank;

5.3 Energy systems, pipelines, communications;

5.4 Judicial systems, the organization and activities of the law enforcement authorities, criminal and criminal-procedural law, amnesties and pardons, legislation about violations of administrative law;

5.5 Civil, labor, civil-procedural and arbitration-procedural legislation, legal regulation of intellectual property, general principles of the organization and activity of notaries;

5.6 Ownership, use and management of land, mineral wealth, water and other natural resources;

5.7 Delimitation of federal property and the property of subjects of the federation.

5.8 The federal budget, federal taxes, collections and other required payments, state regulation of prices for goods and services, antimonopoly regulation;

5.9 Defense of the ecology and guaranteeing ecological security, defense of unique natural regions, monuments of history and culture of federal importance;

5.10 General principles of education and social security;

5.11 Questions of the battle against catastrophes, natural disasters, epidemics and liquidating their consequences;

5.12 General principles of foreign economic activities of citizens and legal entities;

5.13 Electoral law.

6. Competencies of the subjects of the federation are:

6.1 Regulation of external economic activity regarding competencies of the subjects of the federation carried out by the organs of state power of the subjects of the federation at their own expense, and also the external economic activity of the citizens and organizations within the limits of their authority as established by federal organic laws;

6.2 Establishment of the system of the organs of state power of the subjects of the federation;

6.3 Administrative legislation in the area of regulation of the activity of the organs of state power of the subjects of the federation;

6.4 Questions of local self-government, establishment and guaranteeing of the rights of citizens to local self-government;

6.5 Legislation pertaining to families and housing;

6.6 Questions of healthcare;

6.7 Organization and activities of the bar;

6.8 State property of the subjects of the federation and its management;

6.9 Confirming and implementing the budget of the subjects of the federation, control over the implementation of the budgets of the subjects of the federation;

6.10 Culture and art, defense of monuments of history and culture of regional importance, physical culture and sport;

6.11 Questions of urban planning and architecture;

6.12 State awards and titles of the subjects of the federation;

6.13 Questions of additional measures for social security for citizens living on the territory of the subjects of the federation at the expense of the budgets of the subjects of the federation;

6.14 Other questions not related to the competencies of the federation or joint competencies.

7. a) Regulation of relations regarding the competencies of the federation, including determining the powers of all levels and branches of public power as regards these competencies, is established by federal ordinary laws.

b) Regulating relations on joint competencies, including establishing the powers of all levels and branches of public power as regards these competencies, is established by federal organic laws.

c) Federal ordinary laws and federal organic laws establishing the powers of the organs of public power of the subjects of the federations on competencies of the federation and on joint competencies, the establishment of which involves budgetary expenditures, should include provisions calling for the expenditure from the federal budget of subsidies to the budgets of the subjects of the federation and (or) municipal budgets, and also the methodology for accounting for these subsidies.

d) Regulation of relations among the competencies of the subjects of the federation, including establishing the powers of the organs of state power and local self-government of the subjects

of the federation, is established by laws of the subjects of the federation.

Regarding competencies of the subjects of the federation, the organs of state power of the subjects of the federation have full state power.

e) Relations on questions delegated by the constitution of the federation to the competencies of the subjects of the federation outside the boundaries of the subjects of the federation are regulated by the laws of the federal territory.

f) Legal regulation of relations among the competencies of the Federation and joint competencies may be established by laws of the subjects of the federation within the bounds of the legal authority of the subjects of the federation established in the constitution of the federation, federal organic laws and federal ordinary laws.

8. a) The federal budget is compiled from federal taxes, collections and other required payments established by federal organic law, and also through income from the privatization and use of federal property.

b) The budgets of the subjects of the federation are compiled from regional taxes and collections established by laws of the subjects of the federation, receipts from privatization and other use of state property of the subjects of the federation, and also through funds raised through federal taxes, collections, fines and other income as established through federal organic law.

c) The composition and approximate rates of municipal taxes and collections will be established by federal organic laws.

9. a) The federal legislative organ of state power is the Federal Parliament, which consists of two houses – the Senate and the House of Representatives.

b) The Senate consists of 26 Senators, elected for 5 years, of whom 4 are elected by the National Assembly of the autonomous-territorial formation of Gagauzia, 9 by the Supreme Soviet of the TMR, 13 by the House of Representatives of the Federal Parliament.

Senators' mandates are imperative.

c) The House of Representatives consists of 71 deputies, elected for four years in accordance with federal organic laws on the basis of universal, direct, equal electoral law in secret votes from one electoral district in accordance with the proportional system of election.

10. a) Federal organic laws are adopted by the House of Representatives with a simple majority of votes of the established number of members of the House, and are confirmed by the Senate by a simple majority of votes of the established number of members and must be promulgated by the federal President. In the case that the Senate does not confirm federal organic laws, the law is considered to be rejected.

b) Federal ordinary laws are adopted by the House of Representatives with a simple majority of votes of the established number of members of the House, and are confirmed by the Senate by a simple majority of votes of the established number of members and must be promulgated by the federal President.

Vetos by the Senate of federal ordinary laws and vetos by the federal President of federal organic laws and federal ordinary laws can be overridden by the House of Representatives through a repeat adoption of the law in question by a qualified majority of not less than 2/3 of the established number of members of the House of Representatives.

c) Laws of the federal territory are adopted by the House of Representatives by a simple majority of the established number of members of the House of Representatives and must be promulgated by the federal President. Laws of the federal territory do not need to be confirmed by the Senate.

d) Changes in the constitution of the federation are made by Federal constitutional laws, which are adopted in the House of Representatives by a majority of not less than 2/3 of the votes of the established number of members of the House, and are confirmed by the Senate by a majority of not less than 4/5 of the votes of the established number of members of the Senate.

In the case that the Senate does not confirm federal constitutional laws, the law is considered to be rejected.

11. The head of state is the federal President, who is elected for five years in accordance with federal organic laws on the basis of universal, direct, equal electoral law in a secret vote in one electoral district for the entire territory of the Federation.

12. a) Executive power in the Federation is carried out by the federal Government.

b) The Chairman of the federal Government and the members of the federal Government are confirmed by the Senate after appointment by the federal President. The Chairman of the Federal Government has deputies, two of who are appointed by the federal President on the request of the Chairman of the Federal Government and with the agreement of the organs of state power of the subjects of the federation.

c) The positions of director and deputy director of the federal organs of executive power are mixed in accordance with the principle of proportional representation of the subjects of the federation. The procedures for establishing the representation of the subjects of the federation in the organs of the executive branch are established by relevant federal ordinary and (or) federal organic laws.

d) The nomination or dismissal of officials occupying leading positions in the federal organs of the executive branch and other officials of the territorial organs of the executive branch are carried out in organs in the subjects of the federation charged with carrying out authorities linked to federal competencies, and also joint competencies, are accomplished with the agreement of the competent organs of the state powers and authorities of the subject of the federation.

13 A federal Supreme Court, appellate courts, and courts of the first instance will be formed to administer civil, administrative and criminal judicial work in the Federation in accordance with federal organic laws.

To administer constitutional law, a Constitutional Court will be established.

13.1 The Federal Supreme Court is the highest appellate and (or) appeals court on civil, administrative and civil matters. The Supreme Court is formed by the Senate.

13.2 The Federal Constitutional Court consists of 11 judges, six of whom are appointed by the House of Representatives, 1 by the National Assembly of the autonomous territorial formation of Gagauzia, and 4 by the Supreme Soviet of the TMR. The members of the Constitutional Court are confirmed by the Senate.

13.3 Judges of the courts of first and appellate instance in the subjects of the federation are appointed by procedures determined by laws of the subjects of the federation.

14. In the Federation's constitution it foresees a transitional situation, establishing that:

14.1 The Senate will take form not later than 1 February 2005.

14.2 Deputies of the Chamber of Representatives of the first session after the adoption of the Federal Constitution will be elected no later than 30 April 2005 in accordance with an agreement on electoral procedures between the Parliament of the Republic of Moldova and the Supreme Soviet of Transnistria's election procedures. (Means the Communist Party – with its big majority – and TN set the electoral procedures.)

14.3 The Government of the Republic of Moldova will resign its own authority before the elected Senate, which will confirm the Chairman of the federal government according to procedures set out by the Federal Constitution.

14.4 Elections for the Federal President will be conducted on the basis of federal organic law not later than 31 May 2005.

14.5 Reorganization or annulment of courts functioning in the Republic of Moldova and in Transnistria upon the formation of the federal Supreme Court and other courts in accordance with new Constitution will be carried out according to procedures and terms established by federal organic laws.

14.6 The order and terms of formation of the federal organs of executive powers will be carried out on the territory of the Subjects of the Federation regarding federal competencies and joint competencies will be set by relevant federal ordinary laws and federal organic laws. Until the passage of these laws, the organs of executive power in Transnistria will carry out their duties in accordance with the laws of Transnistria if no other agreement is made between the federal government and the relevant organs of state power of the TMR.

14.7 Federal taxes, collections and other obligations on the territory of the TMR will be collected from 1 January 2007. Until 1 January 2007, the TMR will contribute to the federal budget each year 1/6 of the expenditures of the federal budget for the support of the federal organs of state power, with the exception of expenditures for paying off and servicing the state debt of the Republic of Moldova entered into prior to the date of entry into force of the Constitution of the Federation, and also the expenditures for maintenance of the federal organs of state power that carry out competencies of the subjects of the federation outside the territory of the subjects.

14.8 Financial obligations of the Republic of Moldova entered into prior to the entry into force of the Federal Constitution will be covered through expenditures from the federal budget; financial obligations of Transnistria – through expenditures from the budget of the TMR.

14.9 There shall be no review of the laws of Transnistria passed before entry into force of the federal constitution regarding state, municipal, and private property. They will be respected and defended on the entire territory of the federation.

14.10 Delimitation of the property rights for public property of Transnistria into federal property and the property of the TMR will take place in accordance with federal organic law on the basis of the division between federal and joint competencies as set out by relevant federal laws and federal organic laws.

14.11 Until 2015, federal organic laws are confirmed by the Senate by a majority of 1/3 of the votes of the established membership.

14.12 Until 2020, the House of Representatives will be elected in accordance with federal organic laws on the basis of universal, direct, equal electoral rights in secret votes in accordance with proportional electoral systems on the basis of federal and regional lists of candidates (established according to the population of each territory).

14.13 Until 2015 decisions of the Constitutional Court require the votes of no less than 9 members.

15 To prepare a draft of the Federal Constitution the sides created the JCC made up of plenipotentiary representatives, together with a number of observers from the OSCE, EU, Venice Commission, and COE.

The JCC will work on the basis of its rules and will consider the principles for the state structure included in this Memorandum definitive and obligatory in preparing the draft Constitution.

The draft of the Federal Constitution will be published in the mass media for nationwide discussion by 31 March 2004. A national referendum on the question of accepting the constitution will be carried out no later than 31 October 2004.

The leadership of the Republic of Moldova and Transnistria take on themselves the obligation and guarantee to create all necessary conditions to carry out the referendum on the entire territory of the Republic of Moldova in its internationally recognized borders in accordance with the democratic standards of the OSCE and COE.

From the day of ratification of this Memorandum, no limits will be allowed on political and social activities on the sides' territories or on the distribution of information by mass media registered by the relevant organs of the sides, the movement of representatives of the organs of state power and citizens.

Agitation on the question of participation in the referendum, and also on the question of the referendum shall take place without any limitation in accordance with the laws of the sides.

The Constitution of the Federation will be considered adopted if a majority of those who take part vote for it on the territory of the sides counted individually. Voting will take place according to one ballot to be agreed by the sides.

Rejection of the Federal Constitution in the referendum does not change the factual position of the sides. In this case the sides take upon themselves the obligation to continue work to prepare and bring to referendum a new draft Federal Constitution within 6 months.

This non-official translation of the Russian memorandum was sent on the "EU-Moldova" list by Ionas Aurelian Rus.