

Representation of Autonomous Entities at the Level of the Central Government: Options and Recommendations for Gagauzia

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0. Introduction

The representation of the authorities of autonomous entities at the level of the central government is a critical issue in the overall design of institutions incorporating self-governing territorial entities within a state, primarily because of the impact that effective representation (or lack thereof) has on the overall functioning of the arrangements made:

- (1) it ensures that there are effective channels of communication to express the interests of the autonomous entity vis-à-vis the centre (and vice versa), and
- (2) it ties the autonomous entity into the institutions of the state as a whole and gives it a stake and voice in the overall performance of institutions at the centre.

In this sense, representation is more than a mere presence of elected officials or civil servants from an autonomous entity at the level of central government. Such presence is only meaningful if it carries adequate influence on the policies of the central government, especially as these pertain to the autonomous entity. The level of adequate influence can be determined on the basis of the size of the autonomous entity (in terms of territory and population relative to the overall state), the nature of the underlying dynamics that led to its creation, and the overall construction of the state.

Bearing these observations in mind, this paper will first present a survey of existing practice drawing on a wide range of different cases. This will serve to put into perspective the specific situation of Gagauzia and offer the background against which the paper will subsequently assess the current situation of Gagauzia (under the provisions of the 1994 Law on the special legal status of Gagauz Yeri) and make recommendations for an effective representation of Gagauzia at the level of central government of Moldova.

I. The Current Practice of Representation Autonomous Entities at the Level of the Central Government

(A) Representation in the Executive

This can take the form of executive power sharing or cooptation. Executive power sharing, that is power sharing in the executive branch of government can be mandatory or voluntary. Mandatory power sharing can be achieved through one of the following ways of executive formation:

- Through the use of the d'Hondt or another mathematical formula that allows parties to choose cabinet posts in sequential order based on the strength of their presence in a representative body (normally a legislative assembly). This method guarantees executive participation of all major parties/groups and avoids potentially protracted coalition negotiations. This form of executive formation is used in Northern Ireland.
- Through a requirement for cross-constituency representativeness of the executive that determines the degree of 'group' representation in the executive. This option normally means that different parties/groups will need to negotiate a coalition agreement but are constrained in doing so by the precise nature of the requirement for cross-constituency representativeness (e.g., predetermined proportions between different parties/groups reflecting their power or census data, or proportions reflecting relative strength in a

representative assembly). This option allows for a certain degree of flexibility in the formation of executives and enables parties to form governments on the basis of substantive policy agendas. This form of executive formation is used in South Tyrol and in Bosnia and Herzegovina.

- Through requiring the executive to enjoy qualified and/or concurrent majority support in a representative assembly. This usually means that the executive needs to have more than a mere 50%+1 support in the assembly and guarantees that groups whose representative parties are in a minority position are included in the process of executive formation. Concurrent majority support furthermore ensures that any executive formed also enjoys majority support in each group whose consent is required. It should be noted that this method does not per se mandate the establishment of power sharing executives (i.e., executives in which members of different groups participate in a meaningful way), but in practice it gives minority representatives the bargaining power that is essential to ensure their participation in the executive. This option, too, allows for flexibility in the formation of executives and enables parties to form governments on the basis of substantive policy agendas. This form of executive formation was proposed in Macedonia in 2007 as part of an agreement between ethnic Albanian and Macedonian parties (it is also referred to as the Badinter rule in Macedonia).

Apart from these methods that require executive power sharing through the use of particular practices of executive formation, executive power sharing can also emerge as a result of a combination of other factors, including the use of particular electoral systems and the type and depth of cleavages that exist between groups and the parties that represent them. For example electoral systems that produce outcomes that are representative of both numerical group strength and internal group divisions and cleavages that cut across groups along, for example, ideological lines can produce executives in which ideologically affiliated parties from different groups form an executive. It is important to note, however, that such outcomes are unpredictable, may lead to the permanent exclusion from executive power of particular groups or parties, and are thus normally not very attractive to weaker groups, especially after intense violent conflicts.

Executive power sharing may also extend to the substantive work of the executive. Meaningful power sharing in this context relates to the collective nature of executive decision making and can be further specified by requirements for qualified and/or concurrent majority voting for all or particular executive decisions to ensure that all groups' interests are reflected in the work of the executive rather than merely those of the majority. In turn, a high degree of autonomy of each member of the executive within his or her portfolio minimises the danger of executive paralysis, especially if executives are formed without formal coalition agreements.

The other form that representation in the central executive can take is cooptation. This can be achieved by making sub-state level officials *ex officio* members of relevant central government departments. This arrangement is symbolic and emphasises the special relationship between central government and self-governing entity. It may also be necessary where self-governing entities represent administrative-territorial 'oddities' that do not fit into the pre-existing structures of authority in a given country. Co-optation thus becomes a potential mechanism to deal with this kind of irregularity and ensure that the special circumstances of the self-governing entity are borne in mind in the process of state-level law and policy-making. For co-optation to be effective as a mechanism of coordination between institutions created for conflict prevention and settlement, it is essential that those co-opted adequately represent the interests

of the self-governing entity. That means, centrally appointed governors that do not enjoy democratic or other legitimacy would be unsuitable and not fulfil the purpose of co-optation to ensure meaningful representation of the interests of self-governing entities in central decision making. The arrangements for the Autonomous Region of Muslim Mindanao in the Philippines provide for all members of the autonomous entity's executive to be co-opted into the relevant subject ministries at the centre and for the elected Governor to be a member of the central government. Similar arrangements for ensuring the representation of regional officials at the centre apply in the case of Brussels and Bougainville.

(B) Representation in the Legislature

The nature of representation of autonomous entities in the central legislative process is dependent on both the nature of the legislative system (unicameral vs. bicameral) and the method by which the legislature is selected. Meaningful legislative representation is, thus, first of all a function of the overall representativeness of the members of the legislature, and therefore highly dependent on the electoral system chosen.

Among the electoral systems on offer, PR systems generally offer the best way of ensuring the election of an assembly that is broadly representative of the different cross-sections of the population. For majority/plurality systems to perform the same function, very specific circumstances need to be present, such as a high degree of compactness of ethnic-group settlements coinciding with electoral district boundaries. However, some of the disadvantages of majority/plurality systems are then simply transposed to the level of intra-group political competition. In situations in which different political parties compete with one another within one ethnic group, majority/plurality systems may be able to guarantee the political representation of the *group* but not necessarily of all significant *visions* within it.

Representation in the legislature *per se*, however, must not be equated with meaningful participation of representatives of autonomous entities in the central legislative process. There are further mechanisms that need to be in place for such meaningful participation to take effect, and this can be achieved, among others by:

- qualified and/or concurrent majorities for specific decisions;
- mandatory consultation of permanent bodies considering special areas of legislation;
- distribution of key offices in the assembly.

The nature and purpose of qualified and/or concurrent majorities for specific decisions has already been elaborated in the context of the formation and work of power sharing executives above. What is equally significant, however, is a set of legislative procedures that will have a major impact on the degree to which legislative representation and participation, in the presence of these specific voting procedures, is actually meaningful. These include the procedures by which special voting is required—they can either be triggered by motions from a particular number of representatives (e.g., 50%+1 representatives of a particular group, x% of members of the assembly as a whole), and/or they can be pre-determined for certain areas of legislation (e.g., budget, education, culture, regional development).

Representation in the legislature may also manifest itself in procedures that require mandatory consultation of permanent bodies considering special areas of legislation that may or may not be composed of members of the legislature alone

(e.g., mandatory consultation of/approval by a council of minority representatives).

As far as the work of the assembly is concerned, representation can manifest itself in the distribution of key offices in the assembly, such as speaker and deputy speaker(s), and chairs and deputy chairs of committees. Their election and/or selection can be conducted by any of the methods elaborated for executive formation, while their particular powers to influence the working of the legislature will vary from case to case but should also be agreed upon in ways that reflect meaningful participation of all groups concerned.

In cases of bicameral assemblies, the distribution of powers between the two chambers is of great significance. Upper chambers usually represent territorial entities within a state (regions, federal states, etc.) by either giving them equal voting power regardless of the size of the population they represent or weighing their votes in terms of their relative population size. Key questions that arise are the extent to which the upper chamber can veto decisions made by the lower chamber, the threshold for overturning such decisions in the lower chamber (e.g., qualified and/or concurrent majorities), and the degree to which upper chamber consent is required for particular decisions (e.g., concurrent and/or qualified support in both chambers for constitutional changes).

(C) Representation in the Judiciary

Meaningful representation of autonomous entities in the judiciary is a third important dimension of participation in the branches of central government. It acquires its importance from the role that judicial institutions play in any political system that relies on the rule of law and the separation of powers (between executive, legislature, and judiciary). In efforts to prevent or resolve conflicts its significance is heightened if conflict settlements lead to institutional arrangements that are legally entrenched and protected.

Representation and participation in the judiciary relates primarily to selection procedures of judges (and prosecutors) at all levels, qualified majority voting on courts, different types of courts that are established, the applicability of different types of judicial systems, and distinct procedure and sanction functions exercised by judicial institutions.

The selection and appointment of judges and prosecutors can either be carried out by and within judicial institutions themselves, by organs of the executive, or by legislative bodies. It is also conceivable to have sequential and/or concurrent approval procedures in place (e.g., the executive selects personnel, but appointment is conditional to legislative approval). Another option is to have special appointment panels in place that comprise of representatives of different stakeholders (government, civil society, including professional bodies, different groups and/or parties representing them). Representation and meaningful participation in the selection and appointment procedures can either rely on pre-determined quotas, can use mechanisms such as language requirements to ensure that different autonomous entities are represented fairly (and can engage with judicial institutions in an equitable manner), can utilise special voting procedures (qualified/concurrent majorities), or invoke mathematical formulas such as the d'Hondt mechanism. The latter might be particularly appropriate for the appointment of senior judicial personnel.

Qualified majority voting on courts, as a form of meaningful representation and participation in the day-to-day operation of judicial institutions, can be mandatory in particular for decisions on constitutional matters and those that directly affect the implementation and operation of institutions agreed. Combined with

appropriate selection and appointment procedures, this would ensure that the interests of an autonomous entity cannot be permanently overruled by the interests of the centre.

Establishing different types of judicial institutions can further increase the quality of representation in the judicial system. While proportional, or otherwise qualified, selection and appointment procedures for judicial personnel and qualified majority voting on courts can enhance the overall functioning of participation in the judicial system, different types of courts can further contribute to this, and additionally increase the visibility of representation. A constitutional and/or supreme court with an active judicial system to which special selection and appointment procedures and qualified majority voting apply will satisfy such visibility concerns, as well as deliver on substantive representation and participation requirements. Dividing the court system between criminal, civil, administrative, and constitutional branches will furthermore minimise the dangers of politicising judicial practice outside constitutional rulings.

(D) Representation in the Civil Service

This aspect of representation applies predominantly to the degree to which personnel in these institutions is representative of different autonomous entities. Proportionality is usually achieved by either pre-determined quotas (of recruitment and/or representation targets) and/or by more indirect measures such as requirements for civil servants to be bilingual. The methods to deal with senior appointments are essentially identical with those discussed in relation to the appointment of judges and prosecutors above, but will also depend on the structure of the civil service. For example, broadening the meaning of 'senior' positions to include deputy heads of particular departments within the civil service increases the number of positions significantly and might make it easier to reach equitable deals between different stakeholders (provided, of course, that deputies enjoy real powers as well). In South Tyrol, for example, strict quotas exist for recruitment to civil service positions based on ethnic proportions between the German-speaking, Italian and Ladin communities (determined in regular linguistic censuses), with an additional requirement for all civil servants to be bilingual in German and Italian.

(E) Representation in 'High Office'

Representation in high office emphasises a point already made above—the need for representation to be visible, i.e., to be seen in the distribution of key posts with high and/or institutional public profile across the different branches of government and civil service. This can be achieved by means of permanent or rotating cross-constituency distribution of senior government posts, such as president, prime minister, and speaker of the legislature, as well as their deputies, bearing in mind the relative power that these offices are endowed with. Further arrangements in this regard may include a collective presidency, with or without a rotating chairmanship, or even a rotating monarchy. High office also extends into other branches of government, including the judiciary, where the post of chief justice and/or president of the constitutional court can become part of a set of comprehensive arrangements for the representation and participation of autonomous entities in the central government. In Iraq, for example, the offices of President, Prime Minister and Speaker of Parliament are divided between the three main ethnic and religious communities in the country (Shi'a, Sunni, and Kurds). In Bosnia and Herzegovina, a three-member collective presidency involves a representative each of the Bosniak, Serb and Croat communities, with the chairmanship rotating among them. Malaysia has a rotating monarchy in place.

II Recommendations for Gagauzia

The situation of Gagauzia is in many different from that of a fair number of the examples provided above. Gagauzia is small relative to the overall territory and population of Moldova, the relationship between central government and autonomous entity is by-and-large constructive and no major security concerns exist, and Moldova is a unitary state with a national party system. These factors, on the one hand, constrain the options available for representation of the autonomous entity at the level of the central government, while also limiting the need for entrenched, formal, mandatory power sharing, on the other.

Representation of Gagauzia in the centre is currently ensured in three principle ways:

- (1) Through the electoral process, Gagauzia achieves representation in the parliament in Chisinau.
- (2) The arrangements under the 1994 Law on the Status of Gagauzia, provide for membership of all members of the Gagauz executive committee in government ministries in the centre, including a cabinet-level position for the Governor.
- (3) Gagauzia has the right to legislative initiative in the national parliament of the Republic of Moldova.

Principle recommendation: The current level of representation in the centre should be maintained.

The fact that Gagauzia has been given the right to legislative initiative in the central legislature is a very rare, if not unique, instance of this kind of representation and participation in the central legislature. It can potentially provide an effective mechanism to introduce legislation in the national parliament in areas that remain in the competence of the central government but that have a particular impact on Gagauzia.

Existing provisions under the 1994 Law do not, however, amount to the kind of participation in decision making that is equated with formal power sharing: the number of Gagauz members of parliament and the nature of the Moldovan party system prevent effective legislative power sharing, while cabinet-level representation is a form of cooptation not offering real power or influence. Having said that, both cooptation and parliamentary representation potentially can provide important channels of communication of Gagauz concerns to the central government and are thus essential for the proper functioning of the Gagauz autonomy.

In addition, both sides should consider the establishment of a standing committee on Gagauz affairs in the Moldovan parliament that could consider the impact of any new legislation on Gagauzia and its autonomous status and suggest, as appropriate, amendments to proposed bills. A similar arrangement could be established within the executive branch, with the aim to advise the government on policy issues affecting Gagauzia. This should be coupled with existing cooptation mechanisms in order to avoid duplication of tasks and increase the effectiveness of existing mechanisms of Gagauz representation in the centre.

Furthermore, given the positive experience of both sides with the work of the Joint Technical Working Group, it could be considered to establish a mechanism that offers opportunities for regular consultation between members of the Moldovan parliament and the Gagauz assembly. This could include both elected representatives and technical experts.

Recommendation: Establish a standing committee on Gagauz affairs in the Moldovan parliament and create similar arrangements within the executive branch utilising the current cooptation mechanisms. Consider other mechanisms on an ad hoc basis.

In relation to representation in the judicial system, no specific arrangements exist. However, there is a past instance of a Gagauz judge sitting on the Moldovan Constitutional Court.

Recommendation: Both sides should consider the possibility of appointing suitably qualified judicial personnel from Gagauzia to positions in the central judicial institutions.

Likewise, there are no specific arrangements for participation in the civil service. Given the specific situation of Gagauzia, there seems to be limited need for such provisions, provided that personnel of central government agencies operating in Gagauzia includes suitably qualified individuals from the autonomous entity.

Recommendation: Both sides should consider the possibility of a consultation process between them in relation to the appointment of staff to central government agencies operating in Gagauzia. This might be combined with special training programmes to ensure that a suitable number of qualified individuals are available for appointments.