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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPUBLIC OF MOLDOVA**

**DRAFT OPINION**

**ON THE DRAFT LAW**

**ON THE ETHNO-CULTURAL STATUS**

**OF THE DISTRICT OF TARACLIA**

**on the basis of comments by**

**Mr Nicos ALIVIZATOS (Member, Greece)**  
**Mr Josep Maria CASTELLA ANDREU (Member, Spain)**  
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**TABLE OF CONTENTS**

<b>I. Introduction .....</b>	<b>3</b>
<b>II. Preliminary Remarks.....</b>	<b>3</b>
A. Background .....	3
B. Constitutional and legal framework.....	6
C. Content and purpose of the draft law .....	8
<b>III. Analysis .....</b>	<b>9</b>
<b>A. General remarks .....</b>	<b>9</b>
1. Constitutional issues .....	9
a. Does the Constitution provide for districts with special status? .....	9
b. Does the Constitution allow for special status based on ethnic criteria? .....	10
c. Justification for special treatment.....	11
2. Position of the draft law in the Moldovan legal order.....	12
a. Nature of the draft law.....	12
b. Interrelations with the relevant international treaties and Moldovan legislation.....	12
<b>B. Specific remarks.....</b>	<b>13</b>
1. Notion of the ethno-cultural status / ethno-cultural district.....	13
a. Definition of the ethno-cultural status .....	13
b. Principles of the status of the ethno-cultural district of Taraclia .....	14
c. “Rights” of the ethno-cultural district.....	15
2. Principles of the organisation of the ethno-cultural district of Taraclia.....	17
3. Powers of the ethno-cultural district.....	19
a. Ensuring the right to preserve and develop the Bulgarian language.....	19
b. Ensuring the right to education in/of Bulgarian .....	20
c. Ensuring the right to the protection of the national culture.....	21
d. Economic and financial base of the ethno-cultural district .....	22
4. Added value of the ethno-cultural status.....	23
<b>IV. Conclusions.....</b>	<b>24</b>

## I. Introduction

1. By a letter dated 31 March 2016, the authorities of the Republic of Moldova requested the opinion of the Venice Commission on the draft law on the ethno-cultural status of the district of Taraclia (CDL-REF(2016) 0), hereinafter “the draft law” .
2. Mr N. Alivizatos, Mr J.M. Castella Andreu and Mr J. Velaers acted as rapporteurs on this Opinion.
3. On 12-13 September 2016, the rapporteurs visited the Republic of Moldova and held meetings in Chisinau and Taraclia with representatives of the central authorities (the Ministry of Justice, the Ministry of Culture, the Parliament, the Bureau for Interethnic Relations), of the local authorities and of the Bulgarian minority from Taraclia, as well as with the representatives of the civil society and of international organizations present in the Republic of Moldova. The delegation is grateful to the Moldovan authorities and to other stakeholders met for the excellent co-operation during the visit.
4. This Opinion is based on the English translation of the Draft Law provided by the Moldovan authorities, which may not accurately reflect the original version on all points. Some of the issues raised may therefore find their cause in the translation rather than in the substance of the provisions concerned.
5. *The present opinion was adopted by the Venice Commission at its ... Plenary Session (Venice, ... 2016).*

## II. Preliminary Remarks

### A. Background

6. As indicated in the Explanatory Note to the draft law, following an address to the authorities of the Republic of Moldova by the Council of Taraclia District in July 2015, a group of deputies of the Moldovan parliament elaborated the draft law proposing that the district of Taraclia, inhabited in a compact manner by a majority of persons belonging to the Bulgarian minority of the Republic of Moldova, be provided a new, “ethno-cultural” status, as a way to enhance the protection of this minority and its identity. The draft law, signed by 8 deputies, was registered with the Parliament and submitted to examination by the relevant parliament’s committees.
7. Taraclia is one of Moldova’s 32 districts, with, according to the 2004 census, a population of 44,000 inhabitants out of which 65.5 % are ethnic Bulgarians and 14 % Moldovans (alongside Gagauz and Ukrainians)<sup>1</sup>. Both in terms of population and surface, Taraclia is among the smallest districts of the Republic of Moldova. If the majority of Bulgarians from the Republic of Moldova know (and speak) Bulgarian, most of them, as most minorities in the country<sup>2</sup>, also speak and use Russian including in daily life, while only a small percent (7 %) speak the state language. Several secondary schools, as well as a Bulgarian-Moldovan university<sup>3</sup> jointly financed by Bulgaria and the Republic of Moldova, are

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<sup>1</sup> According to the population census of 2004, out of a total of 3 383 332 persons, at the time of the census, persons belonging to national minorities represented roughly 23,8% of the population: Ukrainians 8,4%; Russians, 5,9%; Gagauz, 4,4%; Romanians, 2,2%; Bulgarians, 1,9%; Roma, 0,4%; Jews, 0,1%; other nationalities, 0,5% (see <http://www.statistica.md/pageview.php?l=en&idc=295&id=2234>). The last population and housing census was held in the Republic of Moldova in 2014, however its results are not yet available.

<sup>2</sup> In its Third Opinion on Moldova adopted on 26 June 2009 (ACFC/OP/III(2009)003), § 119, the Advisory Committee of the Framework Convention for the Protection of National Minorities notes that “many persons belonging to national minorities use Russian as the language of communication with the authorities and that Russian is still considered as the language of interethnic communication”.

<sup>3</sup> See ACFC/OP/III(2009)003, § 138: “the Advisory Committee welcomes the development of “experimental schools”, in which part of the teaching is provided in the minority languages (Ukrainian and Bulgarian so far) and where multilingualism is promoted. It also notes with interest that the Bulgarian University of Taraclia is now

operating in the district of Taraclia. There are also a number of Bulgarian-populated villages outside the district of Taraclia; however, the draft law under examination only deals with the district of Taraclia.

8. The draft law envisages the ethno-cultural status of this district as a form of “ethno-cultural self-determination” and regulates the operation of the district within this framework. It determines the principles, the objectives, the rights and the organisational base of the ethno-cultural district and guarantees the right to maintain and develop the Bulgarian language, culture and identity.

9. It is important to recall that the existence/retention of the district of Taraclia has been and remains a sensitive issue, which has already been the subject of complex political discussions at domestic level, involving also international organisations, including the Venice Commission, in the context of a previous territorial-administrative reform, in 1998. The actual existence of Taraclia as a distinct administrative unit is the result of a compromise found in 1999, after tense political negotiations, as a way to accommodate the expectations of the Bulgarian minority leaving in the southern part of the country.

10. In that context, in the Opinion it prepared, at the request of the Parliamentary Assembly, on the 1998 Moldovan laws on local administration and on administrative and territorial organisation, the Venice Commission emphasised that, as follows from article 5 of the European Charter on Local Self-Government, no changes to the local administrative territorial division of the country should be made without prior consultation of the local communities concerned<sup>4</sup>. The Commission furthermore recalled that the Republic of Moldova is a Contracting Party to the Framework Convention for the Protection of National Minorities, whose Article 16 lays down that: “*the Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention*”.<sup>5</sup> Without taking a stand on the concrete modalities of the administrative-territorial reform, the Commission called upon the Moldovan authorities to ensure that the rights of the Bulgarian minority are fully respected and not jeopardised by the implementation of the reform.

11. According to the information provided to the Venice Commission, the Public Administration Reform Strategy 2016-2020 of the Republic of Moldova indeed includes, among its specific objectives, the authorities’ commitment to “*develop the concept and a Road Map on the Administrative-Territorial Reform in the Republic of Moldova (including elimination of districts)*”, aiming at establishing new administrative-territorial units, “*whose authorities would be capable of providing high quality services to its inhabitants, ensuring, at the same time, local democracy based on the interests and preferences of stakeholders, on the universal values, such as human rights, gender equality and social inclusion*”. According to the information provided to the Venice Commission, the strategy aims *inter alia* at implementing recommendations and expectations of the international partners of the country that the Republic of Moldova should build up a modern, efficient and more rationalized public administration, including through reforming the country’s administrative territorial organisation. It seems that different concepts or models are being contemplated in this field, although at this stage the reform has yet to start.

12. The Moldovan authorities are confident that, when the reform will be implemented, an acceptable solution will be found, through appropriate dialogue and consultations, to accommodate both the general objectives of the reform and the interests of the persons belonging to the Bulgarian and other minorities. The Rapporteurs have however been

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providing teaching to about 300 students, in particular in the fields of history, culture and language of the Bulgarian minority”

<sup>4</sup> See CDL-INF(1999)014, Opinion on the questions raised concerning the conformity of the laws of the Republic of Moldova on local administration and administrative and territorial organisation to current legislation governing certain minorities, § 21

<sup>5</sup> See CDL-INF(1999)014, § 23

informed that, while the overall reform is necessary, the design of a new administrative territorial organisation is not imminent, most probably not for the coming two or three years.

13. It is important to stress that, in view of the specific situation prevailing in the country, where the thorny issues of its nationhood and statehood continue to be subject of debate, and taking into account the complex geopolitical situation in the region, any territorial reform constitutes a highly sensitive task. It is also important to recall that the Moldovan authorities are already confronted with the major challenge of a part of the Moldovan territory (Transnistria) being *de facto* out of their control, and with complex and sometimes tense relations with the local authorities of Gagauzia, an administrative territorial unit which benefits from a constitutionally based specific status of autonomy.

14. In November 2015, the Legal Affairs Department of the Moldovan Parliament provided a detailed legal opinion on the draft law, concluding that the draft raised issues of constitutionality and of discrimination against other minorities living in the Republic of Moldova. It pointed to problems of legal clarity as regards the concepts and the terminology used in the draft law, as well as of legislative technique and of consistency, both internal to the draft, and with the legislation in force. The opinion at the same time noted that, as it results from the 2004 population census, out of the 26 administrative-territorial units forming the district of Taraclia, ethnic Bulgarians form the majority of the local population in 8 villages and the town of Taraclia, while in the other units the majority of the population is formed by ethnic Moldovans, Ukrainians, Russians and Gagauzians.

15. In the view of the Moldovan Government, in its official opinion adopted law in February 2016, the draft law raises problems of constitutionality and potentially unfair treatment in respect of other national minorities of the Republic of Moldova. According to the Government, the legislation in force already contains the guarantees required by the draft law for the protection and support of the identity and culture of Moldova's Bulgarians', as well as for their participation in public affairs. This includes legal guarantees for the prior consultation of the local population in case of changes to the administrative-territorial structure. The Government moreover refers to the globally positive assessment, by the monitoring bodies of the Framework Convention, of Moldova's - legislative and practical - efforts to protect its minorities, including the Bulgarian minority.

16. While authors<sup>6</sup> and supporters of the draft law present it as a way to enhance guarantees for the preservation of the identity of the Bulgarian minority (and see the existence of Taraclia district, with a special status, as *the* pre-requisite for this), the representatives of the current political majority in the Moldovan Parliament, consider that, in addition to the constitutional and other issues it raises, the draft - and the special status it proposes - is not needed. In their view, the guarantees it contains are already provided by the Constitution and the legislation in force. In addition, a particular concern has been consistently voiced during their dialogue with the Rapporteurs, namely that such a piece of legislation, and the special status proposed by it for Taraclia, a status based on an ethnic criteria, constitutes a politically motivated proposal, entailing the risk of destabilizing the Republic of Moldova, fragmenting further its territory, and a potential threat to its unitary character.

17. The purpose of the present opinion is not to address in an exhaustive and detailed manner all provisions of the draft law but to address the main legal issues which, in the Commission's view, would require further consideration. Nor it is the intention of the Venice Commission to take the place of the national authorities to decide whether the adoption of the draft law is a necessary and appropriate step. The national authorities are better placed than an international body to take such a decision, taking account of national peculiarities and the wider context.

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<sup>6</sup> Some of the parliamentarians who were among the authors of the draft when it was submitted to the Moldovan Parliament in 2015 have in the meantime reconsidered their position and are currently opposing its adoption, for reasons similar to those invoked by the representatives of the present majority.

18. The Venice Commission has examined the draft law in the light of the standards of the Council of Europe that are of relevance for the protection of national minorities.

19. In particular, the Venice Commission took into account, in the assessment of the draft law, the principles enshrined in the Framework Convention with regard to the protection, by the State Parties to this Convention, of the specific identities and cultures of persons belonging to national minorities and the effective participation of these persons in public affairs. As a contracting Party to the Framework Convention<sup>7</sup>, the Republic of Moldova committed to "*promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage*" (Article 5 of the Framework Convention) and "*to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them*" (Article 15 of the Framework Convention) as well as to *refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention* (Article 16 of the Framework Convention). Relevant findings of the monitoring bodies of the Framework Convention in respect of the Republic of Moldova and measures taken by it to protect and support its minorities have provided a useful background for the current Opinion.

20. In its Opinion n° 345/2005 "on the Draft Law on the Statute of National Minorities living in Romania",<sup>8</sup> the Venice Commission stated that: "*The introduction of a model of cultural autonomy for national minorities may [...] be considered a positive and useful step to reinforce their participation in public affairs, in particular in those countries where national minorities account for a significant proportion of the total population and where there are shortcomings in the existing scheme of participation. Whether or not this diagnosis applies [...] is a question that ultimately needs to be given a political response by the authorities, in consultation with those concerned [...]*" (§ 59). These considerations have also been taken into account in the context of the present opinion.

21. The Commission also took into account, in its analysis, the European standards applicable to the implementation of local self-government principles, as laid down in the European Charter for Local Self-Government, to which the Republic of Moldova is also party.

## **B. Constitutional and legal framework**

22. The Constitution of the Republic of Moldova in its Article 13 (2) provides that "*the State shall acknowledge and protect the right to the preservation, development and use of the Russian language and other languages spoken within the territory of the State.*" Its Article 16 guarantees (2) that "*all citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.*"

23. According to Article 109 (1) of the Constitution, "*public administration within the administrative-territorial units shall be based on the principles of local autonomy, decentralisation of public services, eligibility of the local public administration authorities and consultation of citizens on local problems of special interest*". Paragraph (3) of Article 109 adds that the implementation of the aforesaid principles "*may not alter the unitary character of the State*".

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<sup>7</sup> The Republic of Moldova ratified the Framework Convention on 26 November 1996; the convention entered into force in respect of the Republic of Moldova on 1 February 1998.

<sup>8</sup> CDL-AD(2005)026

24. The administrative-territorial organisation of the Republic of Moldova is established by Article 110 of the Constitution. As laid down by its provisions,

*“(1) The territory of the Republic of Moldova, in terms of administrative organisation, is structured in villages, towns, districts and the autonomous territorial unit of Găgăuzia. Certain towns may be declared municipalities under the law.*

*(2) Places on the left bank of the Dniester River may be assigned special forms and conditions of autonomy, according to the special statutory provisions adopted by organic law.*

*(3) The status of the capital of the Republic of Moldova, the city of Chişinău, is regulated by organic law.”*

25. Article 111 provides the constitutional framework for Găgăuzia, designated as “an autonomous territorial unit having a special statute and representing a form of self-determination of the Găgăuzian people”, which “constitutes an integrant and inalienable part of the Republic of Moldova and shall solve independently, within the limits of its competence, pursuant to the provisions of the Constitution of the Republic of Moldova, in the interest of the whole of society, the political, economic and cultural issues.” As indicated in paragraph (7) of article 111, “the organic law that governs the special statute of the autonomous territorial unit of Găgăuzia may be amended with the vote of three fifths of the elected members of Parliament.”

26. The framework established by the Constitution and related principles have been implemented, in particular, through the organic Law no. 764 of 27.12.2001, which governs the administrative and territorial organization of the Republic of Moldova, the organic Law no. 436 of 28.12.2006 on local public administration, as well as the Law no. 741 of 20.02.1996 on rules for settling administrative and territorial issues.

27. Article 4 of the Law on the administrative-territorial organization provides an exhaustive list of the administrative-territorial units of the country’s territory: districts (« raioane »), towns and villages. Five most important towns<sup>9</sup> (playing a particular role in the economic, social-cultural, scientific, political and administrative life of the country) are provided the status of “municipiu” (article 6 (1)). The law further explicitly establishes that the status of Chisinau as the capital of the country shall be regulated by organic law.

28. The law also provides, in its article 11(2), for the possibility to attribute, by Government decision, to villages and towns of particular importance for the country’s economy, history or culture the status of historical centre, cultural centre or train transportation hub. No such special status is provided for the districts.

29. Chapter III of the Law on the administrative-territorial organization stipulates that the creation and suppression of administrative-territorial units and potential changes to their boundaries may only be decided after prior consultation of citizens (article 17 (1)). Such consultation is also required for changing boundaries as a result of the necessity to transfer an administrative-territorial unit within another unit and for the transfer of the administrative centre of a unit.

30. The organic Law on the rights of the persons belonging to national minorities and the legal status of their organizations (Law n°382-XV of 19 July 2001, thereafter the Law on national minorities) provides the legal framework for the protection of the country’s national minorities, and obliges the state to “facilitate the creation of the necessary conditions” for the persons belonging to national minorities to preserve, develop and express their ethnic, linguistic, cultural and religious identity. It guarantees equality before the law and equal protection before the law to persons belonging to national minorities, and prohibits any discrimination based on the national minority affiliation.

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<sup>9</sup> Chisinau, Balti, Bender, Comrat and Tiraspol.

31. The various provisions of the law contain specific guarantees for the realization of the rights of persons belonging to national minorities in various spheres: equal access to education and teaching of and in the minority language; free establishment, in accordance with the law, of private minority educational establishments at all level; use of the minority languages for topographical indications, for the acts of the local public administration and in official communications at local level (including the obligation to publish all normative acts, official communications and other information of national importance in both state language and Russian); access to the media and availability of public media programmes in the languages of national minorities, right to establish mass media institution in minority languages; respect of and support for the cultural activities of national minorities; the right of persons belonging to national minorities to free religious affiliation and to use of their name in the minority language.

32. Finally, under Article 9 of the Law on national minorities, *'[t]he state guarantees that the modification of the administrative and territorial organization of the Republic of Moldova will not pursue the modification of the ethnic and demographic composition of the territories. Upon the making of such modifications, there shall be taken into account the local public opinion including the opinion of persons belonging to national minorities.'*

33. It is important to note that, in April 2015, in the framework of a different political setting from the current one, the Moldovan Parliament adopted in the first reading a Bill amending the Moldovan Law on the administrative-territorial organization so as to introduce the possibility to *"provide, by law, the status of national-cultural district to those districts having a particular importance in the sphere of the national economy, as well as for the history and culture of the state"*. As it clearly results from the Explanatory Note, which makes explicit reference to Taraclia and the objective of providing it the status of a "national-cultural" district, the aim pursued by the authors of the Bill was to introduce a legal framework making it possible, should this be found constitutional, to attribute, by law, a special status to districts. The current draft law would thus appear as a subsequent step in reaching this objective. It is not clear whether the 2015 Bill is on the agenda of the current legislature.

### **C. Content and purpose of the draft law**

34. As already indicated, the new draft is intended to preserve the ethnic identity and ensure a better protection of the Bulgarian community living in the district of Taraclia through the recognition and regulation of the "ethno-cultural status" of the district, a peculiar form of "ethno-cultural self-determination" or "ethno-cultural self-governance".

35. The draft law contains quite detailed regulations on the various aspects of the "ethno-cultural" district; it provides specific rights (powers) to the district, establishes conditions, allocates/divides responsibilities (between the state and the local authorities) and measures to be implemented for the realisation of the guaranteed rights.

36. The main concepts introduced by the draft, their potential impact on the situation of the Bulgarian minority of the Republic of Moldova and the specific provisions involving measures and mechanisms to enforce them will be discussed in the subsequent parts of the present opinion.

37. However, it would be important to point out that, from the discussions held by the Rapporteurs with various stakeholders, including the local authorities of Taraclia, it appeared that the reason having led to the proposed special status was in fact only to a certain extent linked to the actual situation of the Bulgarian minority. Although deficiencies exist as well as scope for improvement<sup>10</sup>, the representatives of the Bulgarian minority acknowledge the

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<sup>10</sup> Bulgarians of the Republic of Moldova are confronted in particular, like other minorities in the country, with a shortage of educational material and qualified teachers for the provision of education in/of the minority language, and for the teaching of the state language, which constitute an increasing concern for the local population. Difficulties are also reported with regard to the access to media in minority language and more generally, to the preservation of the specific linguistic identity of minorities other than the Russian one (in particular, the use of

efforts made by the Moldovan state, despite major and longstanding economic and financial, as well political difficulties, to accommodate the needs of this and other minorities. These efforts - but also remaining deficiencies - have also been highlighted by the monitoring bodies of the Framework Convention on the Protection of National Minorities<sup>11</sup>.

38. The main concern put forward by most supporters of the draft law was that the current district, whose retention appears essential to them, might disappear in a larger administrative unit, in the framework of a future administrative-territorial reform (see also paragraph 11 above). In their view, this will negatively affect the linguistic and cultural identity of Bulgarians from Taraclia, their access to certain public services and their participation in the decision-making.

### **III. Analysis**

#### **A. General remarks**

##### **1. Constitutional issues**

39. Article 4 of the draft law contains an important clause, stating that the legal regulation of the status of the ethno-cultural district of Taraclia as a constituting part of the Republic of Moldova shall comply with the International instruments and principles of relevance for the Republic of Moldova in the field of minority protection, the Constitution (articles 110, 111 and 113), the domestic legislation on national minorities, on public administration and on the country's administrative-territorial organisation, as well as 'this law and other laws and normative acts of the Republic of Moldova'. From the reference to "this law", one may conclude that by "legal regulation" of Taraclia's status of ethno-cultural district shall be understood any subsequent rules for the enforcement of this status, as established by the draft law ("this law"). No further reference to such subsequent rules is made in the draft law.

40. It is obvious that the conformity with the Constitution should apply first and foremost to the draft law itself, especially since the draft aims at introducing a special status for the operation of a particular administrative-territorial unit of the country, vested with special powers and rights and based on specific organisation principles.

41. From that perspective, several questions may be raised: Does the Moldovan Constitution provide a basis for districts with special status? Does the Moldovan Constitution allow for the provision of special status based on ethnic criteria? What is that justification for such a special status?

##### *a. Does the Constitution provide for districts with special status?*

42. First, the draft law is not clear on the relationship between the present "district of Taraclia" on the one hand, and the "ethno-cultural district of Taraclia" on the other hand. Does the district of Taraclia continue to exist or it ceases to exist and is replaced by the "ethno-cultural district of Taraclia? Does the draft law only provide for an "ethno-cultural status" for the existing Taraclia district - as the title suggests - or does it create a district of another type, an "ethno-cultural district of Taraclia", as several articles<sup>12</sup> of the draft law suggest.

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minority languages other than Russian in the communication with the administrative authorities appears very limited).

<sup>11</sup> See CM/ResCMN(2010)6, Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Moldova, adopted by the Committee of Ministers on 5 May 2010 at the 1084th meeting of the Ministers' Deputies; Advisory Committee of the Framework Convention for the Protection of National Minorities by Moldova, Third Opinion on Moldova adopted on 26 June 2009 (ACFC/OP/III(2009)003).

<sup>12</sup> This designation ("ethno-cultural district of Taraclia") is used in articles 1, 2, 4, 5, 6, 11, 13, 15 and 16 of the draft.

43. In both hypotheses the question arises as to whether the draft law is in compliance with the above-quoted article 110 of the Constitution of the Republic of Moldova, which only provides for six types of administrative-territorial units: 1) villages, 2) towns, 3) districts, 4) the autonomous territorial-unit of Gagauzia (UTA Gagauzia), 5) a special status for places on the left bank of the Dniester river and 6) the city of Chisinau, with the special status of capital of the Republic of Moldova.

44. Should the purpose of the draft law be to provide for a seventh type of administrative-territorial unit, it will then raise an issue of constitutionality, as the introduction of another type of administrative-territorial unit would require an amendment of Article 110 of the Constitution.

45. Should the draft, on the contrary, only aim at introducing a special, “ethno-cultural status”, for only one of the districts, the Taraclia district, which would remain a “district” in the sense of Article 110 of the Constitution, then the question arises whether this article of the Constitution allows for the creation of districts with a substantially different status, based on specific principles of organization and operation, and involving allocation of rights, powers and obligations to both local and central (state) powers.

46. In the view of the Venice Commission, it is doubtful whether article 110 the Constitution may be interpreted as providing for more than one type of district or substantially different statuses for the districts it establishes, since this article itself provides in an exhaustive manner for the special status of specific territorial units, namely and precisely the Autonomous Territorial Unit (UTA) Gagauzia, the places on the left bank of the Dniester river and the capital of Chisinau. Moreover, article 111 specifies the concept and the key elements of the special status provided to Gagauzia and the rules governing potential changes to this status. This is also corroborated by the fact that article 113 of the Constitution provides for uniform rules (no exception being mentioned or allowed) for the District Council. Chapter VI of the Law on the local public administration<sup>13</sup> regulates in detail the competences and functioning of the district authorities, without allowing for exceptions for any particular type of district.

47. The administrative - territorial units that have been (or may be) provided special status are also specified, in an exhaustive manner, by the Law on the administrative-territorial organization, which strictly follows the constitutional text. The Law refers expressly to the towns of Chisinau, Balti, Bender, Comrat and Tiraspol as the towns enjoying the status of “municipiu”, the city of Chisinau as the country’s capital, the status of which is to be regulated by organic law, and to the administrative-territorial units located on the left bank of the Nistru river which may be provided a special status (a closed list of the concerned 147 units is included an annex to the Law). Gagauzia, as such, is not referred to in this Law, since its autonomous status is governed by a special law<sup>14</sup>.

48. The implementing legislation seems thus to confirm that the constitutional provisions on the administrative-territorial organization of the Republic of Moldova have been interpreted and implemented by the Moldovan legislator in an exhaustive/restrictive manner. Undoubtedly, it is ultimately a matter for the Moldovan Constitutional Court to determine whether these constitutional provisions may also be interpreted more extensively.

*b. Does the Constitution allow for special status based on ethnic criteria?*

49. Article 10 of the Moldovan Constitution, while stating “*the unity of people of the Republic of Moldova*” (which is “*the common and indivisible motherland of all its citizens*”), at the same time recognizes and guarantees the right all its citizens “*to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity*”. Moreover, Article 13, which

<sup>13</sup> Law on public administration n° 436-XVI of 28.12.2006

<sup>14</sup> Law n° 344 of 23.12.1994 on the Special Legal Status of Gagauzia (Gagauz-Yeri)

guarantees the protection of the state language, also establishes that the State “*will acknowledge and protect the right to the preservation, development and use of the Russian language and other languages spoken within the territory of the State*”. On these bases, the Law on national minorities has established, as already indicated, a general framework for “*the rights of persons belonging to national minorities and the legal status of their organisations*”.

50. The question arises however whether the Moldovan Constitution also envisages the ethnic criterion as a principle enabling creation of administrative-territorial units with a special status, and vested with “self-organisation and self-governance rights”. The examination of Articles 109 to 113 of the Constitution shows that there is no such principle in the Moldovan Constitution. The UTA Gagauzia constitutes an exception, decided at a particular moment, marked by specific, particularly tense circumstances, in the recent history of the country, and is expressly mentioned by the Constitutional text.

*c. Justification for special treatment*

51. As previously indicated, opponents to the draft law consider, in the light of the equality and non-discrimination principles (Article 16 of the Constitution), that providing the Taraclia district with a special “ethno-cultural” status would be discriminatory towards other minorities living in the Republic of Moldova. In its legal opinion of February 2016, the Government points out that, “*while the adoption of special rules for national minorities would not be contrary to the international standards and practice in electoral matters, introducing a special status for the Bulgarian minority only would be an unfair step in respect of other national minority communities*”. According to various sources, both official and non-official, there would be indeed signals in the Republic of Moldova that, if the draft law is passed, further minority communities would be prepared to require a similar special status. This is a prospect which, given the complex geopolitical circumstances currently prevailing in the Republic of Moldova, is met with great concern by the Moldovan authorities.

52. In the light of the principle of fair and equal treatment of all minorities, the question indeed arises as to which reasons may justify introducing a special status for the protection of one minority only for the district of Taraclia, and not for other districts where the minority population forms a substantial part of the local population.

53. The preamble to the draft law does not contain such a sufficiently convincing justification, as it only refers, in very general terms, to “the rights of ethnic minorities, aspiring to maintain peace and interethnic harmony”, and to “the historic conditions of the development of the Bulgarian culture, supporting the aspirations of the Bulgarian community towards ethno-cultural self-governance”.

54. A possible justification for a special legislation might be that, unlike the other districts, the persons belonging to the national minorities in the district of Taraclia have specific needs of minority protection and/or that these needs are not complied with or not sufficiently by the state under the current arrangements. It is not the role of the Venice Commission to assess whether such an allegation - if it were made - would be justified. The Commission can only observe that the Advisory Committee of the Framework Convention has until now not highlighted specific needs and shortcomings that would justify an alternative and more local system of protection for the district of Taraclia. At the same time, while encouraging states to adopt support measures and policies adapted to the specific needs of persons belonging to national minorities, the Advisory Committee repeatedly stressed, in its opinions, that “the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.”<sup>15</sup>

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<sup>15</sup> See ACFC, First Opinion on the implementation of the Framework Convention on the Protection of National Minorities by Denmark, paragraph 14.

55. Another possible justification for this special legislation seems to be the circumstance that Bulgarians live on the territory of the district of Taraclia as a compact group, which is the majority of the population within its borders: in the view of the authors of the draft, this circumstance permits and induces to foster self-organization and self-government of the Bulgarian community under a different administrative setting, that of a district with a special - ethno-cultural - status.

56. It should also be noted, however, that the introduction of a special status for the district of Taraclia would not mean that its declared aim - that of preserving and developing the national identity of the Bulgarian community - would be entirely reached, since its scope will not cover those Bulgarians who are living in localities situated outside Taraclia.

57. Whether the establishment of such a district is possible under the present Moldovan Constitution and whether the reasons mentioned above are sufficient to justify the special treatment of the Bulgarian minority in Taraclia, will ultimately have to be assessed by the Constitutional Court of Moldova.

## **2. Position of the draft law in the Moldovan legal order**

### *a. Nature of the draft law*

58. The draft law is not explicit with regard to the nature of the proposed law and its position in the hierarchy of laws of the Republic of Moldova, although this is particularly important aspect when it comes to interpretation and implementation of legislative provisions. Article 72 of the Constitution establishes that the organic laws shall govern a list of subjects, including "organisation of local administration, of the territory, as well as the general regulation of local autonomy", as well as other matters for which the Constitution requires adoption of an organic law or for which the Parliament considers an organic law necessary. Ordinary laws shall intervene in any field of social relationships, except the spheres regulated by constitutional and organic laws. According to Article 74 of the Constitution, all organic laws "shall be adopted by the vote of the majority of the elected members of the Parliament, following at least two readings", whereas "ordinary laws and decisions are adopted by vote of the majority of the present members of the Parliament". In the absence of any indication, one may conclude that the draft has been envisaged as an ordinary law.

59. Of particular note is the fact that, in its article 6, the draft law establishes a special procedure for changing the status of the ethno-cultural district, as it requires "the consent of its inhabitants, expressed in a local referendum". However it is not clear when this special procedure would apply, nor if every amendment of the law would require a referendum. On the other hand, it seems that the approval of the draft law, and therefore the introduction of the ethno-cultural status, does not require a referendum. Moreover, the law itself could be abrogated without referendum.

### *b. Interrelations with the relevant international treaties and Moldovan legislation*

60. Article 4 of the draft law establishes, as mentioned before, that the "legal regulation of the status" of the ethno-cultural district of Taraclia "shall comply with" international acts regarding the protection of national minorities and local self-government (including the Framework Convention and the European Charter of Local Self-Government) as well as with the Moldovan constitutional principles and relevant legislation. Article 4 finally disposes that if an international treaty ratified by the Republic of Moldova establishes other rules than those set in the new law, "the rules of the international treaty shall be enforced". These provisions may be seen as redundant. Nevertheless, they make unequivocally clear the intent of the authors of the draft to ensure that the ethno-cultural status of Taraclia district shall be consistent with relevant international and national (general) norms.

61. The position of the draft law in the Moldovan legal order and its interrelation with other laws are of crucial importance for its future application and interpretation and should have been specified, either in its preamble or in the Explanatory Note. If compared to the Moldovan general legislation on local administration and the protection of national minorities, the draft may be considered as a *lex specialis* and generally coherent with this legislation.

62. Yet, since the ethno-cultural district of Taraclia is a district, be it a special one, it would have been logical, from a perspective of legal certainty, transparency and coherence, that such a special law be coupled with a reference, in the law on administrative-territorial organisation, to potential specific rules for such “special” districts. However, there is no such provision in that law, which is in fact in line with the framework established by the Constitution for the country’s administrative-territorial organisation.

63. It is recalled that, in April 2015, a bill was passed by the Moldovan Parliament in the first reading, which would introduce the status of “national-cultural district” into Moldova’s legislation, by modifying article 11 of the Law on the administrative-territorial organization. As mentioned before, this article only allows special status, under certain circumstances, for villages and towns. This would mean that the final adoption of the 2015 amendment would be a pre-condition, subject to the confirmation of its conformity with the Constitution, for the adoption of the current draft law.

64. The clarification of the inter-relations between the draft law and the general laws mentioned in its article 4 can be a key to avoid future legal uncertainties as to which law shall be declared applicable in concrete situations. However, should the draft be adopted and confirmed as *lex specialis*, this would not solve all the problems related to the articulation of the relationship between the draft and these and other laws and between the powers of the district and those of the state, as will be discussed hereafter.

## **B. Specific remarks**

### **1. Notion of the ethno-cultural status / ethno-cultural district**

65. One of the main difficulties in assessing the draft law lies in that the notion of “ethno-cultural status” or “ethno-cultural district”, which are both being used in the draft alternatively, are not clearly defined, nor clearly distinguished.

#### *a. Definition of the ethno-cultural status*

66. The notion of the “status of the ethno-cultural district of Taraclia”, as defined in Article 1 (“a form of ethno-cultural self-determination of the citizens of the Republic of Moldova who live as a compact community on the territory of the Taraclia district and identify themselves ethnically as Bulgarians”), would lead to conclude that the “ethno-cultural status” of the district of Taraclia is something different from the “district” of Taraclia, regarded as a territorial and administrative unit of the Republic of Moldova. Indeed, the “ethno-cultural status” of the district (also designated as “ethno-cultural district” in Article 1 and in further provisions, such as, for instance, Article 11 and Article 13) is presented as a “form of ethno-cultural self-determination” which shall represent the Bulgarian community, while the institutions of the district as territorial and administrative unit should, of course, represent all the communities which live on its territory.

67. Nevertheless, some other provisions, focused on the organisation and the operation of the district itself, would rather indicate the recognition of a wider autonomy (of specific powers, rights and benefits, related with ethno-cultural issues) on behalf of the existing district of Taraclia and of its inhabitants, including others than ethnic Bulgarians, as a “constituting part” of the Republic of Moldova (Article 4)<sup>16</sup>.

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<sup>16</sup> Article 6 establishes that “in accordance with this law, the district shall be denominated ‘the ethno-cultural district of Taraclia’ and that its “administrative centre” shall be the town of Taraclia; while Article 7 establishes that the “Commission for interethnic relations and the protection of national minorities interests” shall be

68. In conclusion, the “old” district would acquire a new special ethno-cultural status (and corresponding specific competences in the fields of language, culture, national identity), which would allow Bulgarians of Taraclia district to organize themselves, through the institutions of the existing district, regarded as an administrative-territorial unit, and the proposed new arrangements, would help achieve the objectives established by Article 3 of the draft law: preserving and developing and development the Bulgarians’ identity implementing measures for the “sustainable socio-economic development of the district”, “the efficient functioning of all the authorities of the district”, enhancing bilateral co-operation with Bulgaria and other countries in the fields of education and culture, and “maintaining and deepening the friendship relations among the inhabitants of the district, irrespective of their ethnical identity”. However, the “ethno-cultural district” as such is nowhere defined in the draft law, nor is it defined by any other Moldovan law (otherwise the draft law would have referred most obviously to such law).

69. On the other hand, the attribution of the new, ethno-cultural status, brings with it the requirement of a stronger commitment of the state “authorities” (including legislative and “executive authorities”) to protect the identity of Bulgarians living in the district (this can be inferred, in particular, from Chapters III and IV). Moreover, the new law aims at creating “legal conditions for the interaction between the state and the society for the protection of the citizens of the Republic of Moldova in the process of choosing their forms and ways of ethno-cultural development” (see the preamble of the draft law). The recognition of the ethno-cultural status should foster this interaction: according to Article 2, one of the “principles of the status” is “combining social initiatives with state’s support” (Chapters III and IV contain several provisions which are coherent with this principle). From this perspective, ensuring coherence between the draft law and further relevant provisions in the Moldovan legislation, in particular the provisions of the law on local public administration establishing the division of powers between the state and the local authorities, is essential (see comments below).

*b. Principles of the status of the ethno-cultural district of Taraclia*

70. Article 2 of the draft law lists, as principles on which the ethno-cultural status of the district of Taraclia “is based” (“the principles of the status”): the principles of free ethnic self-identification, the principle of “self-organisation and self-governance”, the principle of combining social initiatives with state’s support, the principle of respect for the specific identity of different ethnic communities, and the principle of legality.

71. The realisation of the “rights” of the “ethno-cultural district” shall thus be pursued through both ethno-cultural self-determination (which, as it may be inferred from a combined reading of Article 1 and Article 2 of the Draft law, appears to involve self-identification, self-organization and self-governance), and cooperation (as it results from different provisions of the draft law).

72. These principles, which may be qualified as foundational or constitutive of the ethno-cultural status, are not defined by the draft law. Also it is not quite clear how they have been selected. Most probably, the list provided is a combination of key principles applicable to the sphere of minority protection, with local-self-government and participatory principles and the self-evident imperative of legality. They do not appear to coincide (or coincide only partly) with those enumerated in article 109 of the Constitution, and designated as principles guiding the organisation and operation of local public administration: “local autonomy, decentralisation of public services, eligibility of the local public administration authorities and consultation of citizens on local problems of special interest”. The same Article 109 also establishes, in its paragraph 3, the constitutional limit of these principles: their enforcement “may not alter the unitary character of the State”.

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established under the district Council of Taraclia and directed by a non-Bulgarian, to “represent and defend [...] the cultural and social interests of ethnic communities” (written in plural). Further provisions concern the relationship of the district with the non-Bulgarians, including prohibitions of discrimination.

73. It is important to note at this point that the draft law (Article 6) establishes a clear difference (“is not identical”) between the recognised “status of ethno-cultural district” and “the right to national and territorial self-determination of the district of Taraclia”, which is not granted.” This is coherent with the constitutional principle of the Republic of Moldova as a “unitary and indivisible State” and with the attribution of the national sovereignty to “the people of the Republic of Moldova” as a whole (Article 2 of the Constitution).

74. In the absence of sufficient clarity with regard to the concepts of “self-organisation” and “self-governance”, this is a welcome clarification: since there is no (positive) definition in the draft law of the status of ethno-cultural district, this clause indicates what such a district is not. This is an especially important clause in view of the high political sensitivity of any initiative which might potentially undermine or interfere with the principle of the unitary and indivisible nature of the Moldovan state.

*c. “Rights” of the ethno-cultural district*

75. There is no precise list of competences of the ethno-cultural district in the draft law, but these can be inferred by considering its objectives and “rights” (Articles 3 and 5) and, in particular, by considering what is established in Chapters III and IV in order to ensure the rights to preserve and develop the Bulgarian language and the national culture of the Bulgarian community (Articles 8-15 contain a list of tasks, powers and responsibilities of both the state authorities and the ethno-cultural district).

76. It appears that most of these rights are in fact a confirmation of the rights guaranteed to all persons belonging to national minorities by the 2001 Law on national minorities, as follows:

- According to Article 5 a) of the draft law, the ethno-cultural district of Taraclia has the right “to receive necessary support from the authorities and local cultural authorities for preserving national identity, development of the Bulgarian language and culture.” Article 5 (1) of the 2001 Law imposes on the state “the obligation to facilitate the creation of necessary conditions for the persons belonging to national minorities (to) be able to reserve, develop and express their ethnical, cultural, linguistic and religious identities.”
- According to Article 5 b) of the draft law the ethno-cultural district of Taraclia has the right “to appeal to legislative and executive authorities and local authorities representing their ethnic and cultural interest”. Article 12 (1) of the 2001 Law guarantees to all persons belonging to national minorities the right “to appeal to public institutions in writing or verbally in the Moldovan or Russian languages and to obtain the response in the language in which the application was formulated.”
- According to article 5 c) of the draft law the ethno-cultural district of Taraclia has the right “to establish mass-media outlets, in accordance with the legislation of the Republic of Moldova and to receive and disseminate information in the Bulgarian language”. Article 13 (1) of the 2001 Law guarantees to all persons belonging to national minorities and their organisations the right, “in accordance with the law, to establish mass media institutions as well as to publish literature in the language of national minorities.”
- According to article 5 e) of the draft law the ethno-cultural district of Taraclia has the right “to observe national traditions and customs, to revitalise and develop popular trades and artistic handcrafts.” Article 15 of the 2001 Law guarantees to all persons belonging to national minorities “the right to observe national holidays and to commemorate their historical dates, to participate in the performance of the traditional rituals of their people, to use their national symbols privately.”
- According to article 5 f) of the draft law the ethno-cultural district of Taraclia has the right “to establish education, science and research institutions and cultural institutions and

ensure their functioning in compliance with the legislation of the Republic of Moldova. Article 6, 4) of The 2001 Law provides that people belonging to national minorities and their organizations are entitled to create, in accordance with the law, pre-school institutions and private educational institutions of all levels.

- According to article 5 h) of the draft law the ethno-cultural district of Taraclia has the right “to establish, relying on the legislation of the Republic of Moldova, without discrimination, humanitarian contacts with citizens and social organisations from other countries.” Article 17 of the Law of 19 August 2001 provides that the state shall contribute to facilitating humanitarian contacts of persons belonging to national minorities with their historical motherland.”

77. One may conclude that Article 5 and corresponding more detailed provisions in Chapter III and Chapter IV empower the ethno-cultural district with decision-making and instruments to implement rights that the Law on national minorities aims to ensure to all persons belonging to the national minorities in every district of the Republic of Moldova.

78. Article 5. 2 of the draft law moreover states that, “*pursuant to the legislation of the Republic of Moldova, the ethno-cultural district of Taraclia may be awarded further rights in the field of education and culture*”. Yet, no reference is made to the specific legislation that the authors had in mind in this regard nor is specification made of the additional rights that may be granted.

79. It is also noted that the scope of the objectives and benefits involved by the “ethno-cultural status”, as described particularly by Article 3, seems to go beyond the preservation and development of the cultural heritage of the Bulgarian community. These include also, in general, “*formulating and undertaking a series of measures meant for the carrying out of economic investment and social projects for the sustainable socio-economic development of the district*”. Yet, socio-economic issues are not explicitly regulated, as the reference to such issues contained in Article 3 is not developed. More explicit provisions on the concrete involvement of the district in the realization of social and economic projects would have permitted a better delimitation and understanding of the concept of ethno-cultural district and the envisaged scope of its competences. Also, it is not clear which specific rules should be applied in this field in the district of Taraclia.

80. Article 5.4 of the draft states as a general principle: “*The realisation of the right to the status of ethno-cultural district must not infringe on the interests of other communities.*” This is a welcome provision. Furthermore, one of the declared objectives of the status is “*maintaining and deepening the friendship relations among the inhabitants of the district irrespective of their ethnical identity*” (Article 3 (e)). Coherently with this objective and with the general anti-discrimination provisions contained in the Framework Convention (Article 4) and in the Moldovan Law on national minorities (Article 4), Article 5 of the draft law establishes that “*participation or non-participation in the activity of the ethno-cultural district of Taraclia may not serve as grounds for limiting the rights of the citizens of the Republic of Moldova and the national identity may not serve as grounds for limiting participation or non-participation in the activity of the ethno-cultural district of Taraclia*”.

81. That being said, the different treatment of districts in this respect may lead to a different treatment of the persons belonging to the national minorities in these districts. The question therefore arises, for what reasons these rights are only guaranteed in the district of Taraclia, and not in the other districts?

82. Finally, it should be recalled that, in minority protection, the notion of rights is usually associated with the individuals belonging to national minorities, in particular under the Framework Convention, an instrument which is underpinned by an individual human rights-

based approach.<sup>17</sup> It is noted, on the one hand, that the draft law attributes *rights* to the “ethno-cultural district”, and on the other hand that, throughout the draft, reference is made, without distinction, to the rights of the district of Taraclia, the rights of the individuals belonging to minorities or to the rights of the minority. While this may be only a formulation problem,<sup>18</sup> it raises an issue of consistency with the Law on national minorities, which clearly reflects the country’s individual-based approach to the protection of national minorities.

## 2. Principles of the organisation of the ethno-cultural district of Taraclia

83. Both the “principles of the status” (Article 2) and the “principles of the organization” (Article 6) are intended to establish how the “objectives of the status” (Article 3) shall be achieved. While the “principles of the status” are more general and form the basis for the actual existence of such a status, the “principles of the organization” should normally be more detailed - a specification of the principles of the status - and specifically concern the composition and functioning of the authority of the district, their relations with central and local authorities and the relations between public authorities and society within the district.

84. Yet, although Chapter II is entitled “*Principles of the organization of the ethno-cultural district of Taraclia*”, it hardly contains organizational principles or specific elements of the organization of the ethno-cultural district. The long article 6 only contains one specific organisational rule: it specifies that one of the vice-presidents of the district shall be elected from among the non-Bulgarian councillors. For the rest, its provisions mainly relate to: a political justification for the creation of the ethno-cultural district of Taraclia (the “specific geographical position” and “the economic and social relations and the established historical, cultural and linguistic traditions”); the denomination of the district as “the ethno-cultural district of Taraclia”; the delimitation of its territory; the right to use its own symbols; the use of Bulgarian and Russian for official communication on its territory, besides the state language.

85. Article 6 (10) imposes on the state to ensure the functioning of a number of key public services. While four matters are mentioned (urgent medical care, police, exceptional situations and the Tvardita Cadastre Bureau), it is unclear whether the list is exhaustive or indicative and why there is a need for a specific rule on this matter for the District of Taraclia only. More generally, the draft fails to state clearly the domains for which the state retains the competence.

86. At the same time, Article 6 contains two important principles or guarantees which alone seem to constitute the main and ultimate aim of the legislative initiative having led to the present draft law. First, it stipulates that “*[t]he status of the ethno-cultural district of Taraclia may not be changed without the consent of its inhabitants, expressed in a local referendum*” (paragraph 6). Second, it requires that “*[u]pon administrative and territorial reforming, the Republic of Moldova shall guarantee the preservation, integrity and full functioning of the ethno-cultural district of Taraclia within its existing borders*” (paragraph 4).

87. As previously indicated, these principles are coupled with the important clause stating that the proposed status does not amount to a right “to national and territorial self-determination of the district of Taraclia”. Article 6 also provides that “*this status shall ensure*

<sup>17</sup> According to article 1 of the Framework Convention, « *t]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation* » the Explanatory Report of the Framework Convention further states, in relation to article 1 above, that the article « *refers to the protection of national minorities as such and of the rights and freedoms of persons belonging to such minorities. This distinction and the difference in wording make it clear that no collective rights of national minorities are envisaged (see also the commentary to Article 3). The Parties do however recognise that protection of a national minority can be achieved through protection of the rights of individuals belonging to such a minority.* »

<sup>18</sup> The draft in the state language version also uses the term « rights » in relation to the district.

*the compulsory functioning of the structures of all the central public authorities on the territory of the ethno-cultural district*", which may also be understood as an (important) guarantee that the state will continue to operate in the "ethno-cultural district" through its de-concentrated agencies.

88. It is important to point out that guarantees similar to those contained in Article 6 (6) of the draft are already provided by the Moldovan legislation. Article 9 of the Law on national minorities stipulates that "[t]he state guarantees that the modification of the administrative and territorial organization of the Republic of Moldova will not pursue the modification of the ethnic and demographic composition of the territories. Upon the making of such modifications there shall be taken into account the local public opinion including of persons belonging to national minorities". Both provisions apply the principle laid down in above-quoted Article 16 of the Framework Convention. It is further recalled that, under article 109 of the Moldovan Constitution, consultation of citizens on local problems of special interest is one of the basic principles of local public administration. In the light of the constitutional principle, Article 8 of the Law on the local public administration provides that, on issues of particular importance for the administrative-territorial unit, the population may be consulted by the way of local referendum. In view of the existing guarantees, one might wonder whether Article 6 (6) of the draft law would bring significant added value to the existing legal framework.

#### *Institutional organisation*

89. An institutional novelty is introduced by Article 7 establishing a "Commission for interethnic relations and the protection of national minorities' interests", placed under the district council of Taraclia, and being directed by a non-Bulgarian councillor. This Commission will have no decision making power, but only the power a) to represent and defend the interests "of ethnic communities" within the state institutions; b) to "take part in the preparation of the programmes, draft normative acts and other decisions related to the interests of the citizens belonging to national minorities "on the respective territory"; c) to consult the Government and bodies of the executive power with respect to "national issues" of Bulgarians of the Republic of Moldova. Determining the method of establishment and functioning of the Commission is left to the normative acts of the local authorities.

90. In the first place one might question whether the principles of the establishment, composition and functioning of the Commission can entirely be delegated to the "local authorities". As, if this is not a formulation error, this Commission not only will have to deal with the interests of the community of the Bulgarians, but more in general also with the "interethnic relations" and "*the legitimate interests of the citizens of the Republic of Moldova who identify themselves with certain ethnic communities constituting national minorities on the respective territory*", the law itself should specify some minimum rules on the representation of these minorities in the Commission.

91. Second, several aspects of the powers attributed to the Commission lack clarity, in particular : how will the Commission to defend and represent the interests of the ethnic communities within the state institutions Moldova (and which state institutions?) and how does this power relates to - and does it entail more than - the right of the ethno-cultural district "to appeal to legislative and executive authorities and local authorities representing their ethnic and cultural interests" ; what does it mean that the Commission "takes part in the preparation of .." what is the form and the impact of this participation? will the validity of the decision be affected if it was taken without due participation of the Commission? Does the reference to "draft normative acts" imply that the Commission has to be consulted during the law making process? And how can this privilege for one district only be justified?

92. Finally, to avoid any unnecessary overlapping of competences and duplication of tasks, the relationship between the "Commission" and the "Bureau for Interethnic Relations" (public institution established at central level, in charge of the realization of the state policy for inter-ethnic relations and functioning of languages), and the "Co-ordination Council of Ethno-

cultural Organisations” (a non-governmental umbrella organization of associations of national minorities), would need to be clearly specified.

### 3. Powers of the ethno-cultural district

93. Chapter III (Articles 8-12) and IV (Articles 13-15) contain more specific provisions, assigning both the state and the ethno-cultural district the responsibility to ensure, respectively, “*the right to preserve and develop the Bulgarian language*” and related educational rights, and “*the right to the maintenance and the development of the national [Bulgarian] culture*”.

94. By describing tasks and powers of the central and local authorities in these fields, these provisions establish a division of competences between the State and the district. In general, the draft specifies what the ethno-cultural district of Taraclia *may* do (Article (11) and Article (13)) and what the “authorities” (including legislative ones) or the “executive authorities” of the Republic of Moldova *shall* do (Articles 9 (1), 12, 14, 15) or *may* do (Article 9 (2)) do in order to ensure enjoyment by the ethnic Bulgarians of such linguistic and cultural rights.

#### a. Ensuring the right to preserve and develop the Bulgarian language

95. Several provisions of the draft law relate to the preservation and development of the Bulgarian language, which according to Article 3 (a) is one of the objectives of the draft. This is a legitimate aim especially that, in the specific circumstances of the Republic of Moldova, where the use of the Russian language prevails in most areas inhabited by national minorities, maintaining the languages of the concerned minorities and their specific linguistic identity appears to be a particular challenge. Article 5 (a) grants to the ethno-cultural district the right to receive necessary support from the state and local authorities in this field.

96. Article 6 (8), states that, for official communication on the territory of the ethno-cultural district of Taraclia, Bulgarian and Russian shall be used, besides the official state language. It recalls that, pursuant to the legislation of the Republic of Moldova, Russian is a language of interethnic communication.

97. Articles 8 and 9 in Chapter III impose on the Republic of Moldova specific obligations to ensure a): state protection - social, economic and legal protection - of the Bulgarian language and b): the realisation of the constitutionally protected right to preserve, develop and use the Bulgarian language. Specific support measures that the State *shall* and *may* provide in this field are detailed in Article 9 of the draft.

98. It is not entirely clear to the Venice Commission whether these provisions only confirm rights and obligations that are already mentioned in national legislation, and more specifically in the 1992 decree of the President of the Republic on measures for the development of Bulgarian national culture and in Articles 5 (1), 7, 8, 10, 11 (2) and (3), 12 (3) and 16 of the 2001 Law on national minorities, or whether they further enlarge these rights.

99. To the extent that they only confirm these rights, the above mentioned provisions of the draft law are superfluous and might even create confusion as they could be interpreted as a limitation of the rights of the Bulgarian national minority to the rights mentioned in these provisions. To the extent that they enlarge the rights of the Bulgarian national minority in the ethno-cultural district of Taraclia, the question arises, in the light of the principle of fair and equal treatment of all minorities, as to whether similar rights should not be granted to the national minorities, including Bulgarians, in other districts.

*b. Ensuring the right to education in/of Bulgarian*

100. Both the state authorities and the ethno-cultural district of Taraclia will exercise powers in the field of education. Several provisions of the draft law make reference to the existing legislative framework for education in the Republic of Moldova: as a rule, the various measures to be taken by the state or by the ethno-cultural district are to be “in compliance with the legislation of the Republic of Moldova” (see Articles 5 (1) ( f), 10, and 11 (1) (i) and 11 (2)). Reference is made in particular to the legislation on the functioning of languages and the Code of Education<sup>19</sup> (Article 12 (1)).

*b.1 Division of powers*

101. The obligations assigned to the state authorities include, mainly (article 12): to create, upon proposal by the national communities, groups and classes with teaching in Bulgarian in public schools, to create public kindergarten and schools with teaching in Bulgarian and with the study of Bulgarian language history and culture, as well as institutions of complementary education for studying Bulgarian language and culture; to contribute, including financially, to the preparation, acquisition and publication of pedagogical material and literature for such teaching; to organise the training and upgrading of relevant staff; to provide support (material, legal etc.) for the creation of private institutions of education in Bulgarian.

102. The powers attributed to the ethno-cultural district in this field appear to correspond to the tasks usually assigned, in most countries, to local authorities in areas inhabited by national minorities, irrespective whether or not the administrative-territorial area concerned enjoys a special status. In the original version of the draft law, these powers are not formulated as obligations<sup>20</sup> and include in particular (Article 11): to create “non-governmental” pre-school and school institutions at all levels (primary, secondary and higher) or groups/classes with education in Bulgarian within such institutions or to make proposal to the state authorities for the creation of groups/classes in Bulgarian within public educational institutions; to participate in the development of relevant educational standards, curricula and pedagogical material; to manage teacher and other staff training for private education institutions, to conclude relevant collaboration contracts with foreign non-governmental organisations. In addition, the ethno-cultural district is in charge ensuring the study of the state language in “non-governmental” educational institution, in accordance to the legislation of the Republic of Moldova.

103. The articulation of the division of powers between the state authorities and the ethno-cultural district appears as a specification of the guarantees provided to national minorities in the fields of language and education by the Moldovan Constitution, the law on national minorities, the Code of education and other relevant laws.

104. Yet, it is not clear whether the draft law is the *lex specialis* in this field and, if so, whether it amends Article 6 (1) of the Law on national minorities. Does the state still has the general responsibility to ensure the education rights of the persons belonging to national minorities in the district of Taraclia, or it will, to a certain extent, also depend upon the initiatives taken by the ethno-cultural district of Taraclia whether these education rights will be ensured or not? Will the state only have to create governmental education institutions (as required by Article 12(1) (b)) in so far as the ethno-cultural district does not sufficiently create non-governmental education institutions or is it the other way around? Or, in other words, which obligation takes precedence over the other? In addition, no clear distinction is made between the rules/obligations which applicable at national level and those applicable only to the Taraclia district.

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<sup>19</sup> Law n° 152 of 17 July 2014

<sup>20</sup> (“raionul etnocultural Taraclia poate” – in English “the ethno-cultural district may”)

### *b.2 Extent of the state's obligations*

105. It should be pointed out in this connection that the obligation imposed on the state in Article 12 (1) (b), to create governmental education institutions with teaching *in* Bulgarian, goes beyond the state's obligation under Article 14.2 of the Framework Convention, which leaves Parties a wide measure of discretion: "the Parties should endeavour to ensure, as far as possible [...]". Of course, as indicated by the Explanatory Report to the Framework Convention, it belongs to each state Party to decide, taking account of their own particular circumstances and available resources, the extent of their commitment to provide such teaching.

106. The position of the Moldovan authorities on this particular point results clearly from Article 6 (1) of the Law on national minorities, according to which the state *guarantees* the realization of the right to access to education in state language and in Russian, and *creates conditions* for the implementation of the right to education in minority languages. The same Article 6 provides in turn that persons belonging to national minorities and their associations are entitled to establish themselves private educational institutions of all level. It belongs to the Moldovan legislator to decide whether to add (or not) new obligations for the Moldovan state in this field.

### *b.3 Compliance with the existing legal framework*

107. Also, it is important to note that, unlike Articles 5, (1)( f), 10, and 11(1) ( i) and 11 (2), of the draft law, Article 11 (1) (a) to (h) of the draft does not explicitly state that the ethno-cultural district of Taraclia shall exercise the rights mentioned in these provisions "in compliance with the legislation of the Republic of Moldova." Does this mean that the state legislator can no longer enact legislation, applicable to the Taraclia district, on the creation of non-governmental education institutions, on the management of the training and the upgrading of the teaching staff, or on the contracts with foreign non-governmental organisations? Should this be the correct interpretation, how does this comply with article 60 (1) of the Constitution, underlying the role of the Parliament as the sole legislative authority of the State and with article 35 (5) of the Constitution stating: "The educational institutions, including those not financed by the State, shall be set up and operate under the rule of law."

### *c. Ensuring the right to the protection of the national culture*

108. As in the educational field, while the ethno-cultural district of Taraclia will be entitled to exercise powers (Article 13), the authorities of the Republic of Moldova will have obligations in relation to the maintenance and the development of the "national culture" (Article 14).

109. In concrete terms, the ethno-cultural district will be entitled to: establish non-governmental cultural institutions and ensure the functioning thereof; establish cultural unions, professional and amateur art groups, groups for the study of the ethno-cultural heritage of Bulgarians; carry out cultural events, promote research in the field of the Bulgarian culture; publish cultural works in the Bulgarian language and other languages; establish "non-governmental" training institutions in the cultural field; submit proposals relating to the national culture of the Bulgarian community to the state authorities and the local administration; conclude international contracts for co-operation in the cultural field.

110. The state authorities will in turn be under the obligation to: take into consideration the proposals of the ethno-cultural district when implementing regional cultural development programmes; consider the district's proposals for introducing the study of the history, language and traditions of Bulgarians in the educational programmes in Bulgarian language; direct the work of the state and municipal cultural institutions to meet the ethno-cultural needs; organise sections on minorities' culture, history and social life within state and municipal archives; support the ethno-cultural district in opening non-government institutions of national culture;

ensure the preservation of minority historic and cultural monuments; carry out other activities likely to help maintaining and developing the minorities' national culture.

111. Here again, it is not sufficiently clear to the Venice Commission whether these provisions only confirm rights and obligations that are already protected by the national legislation or whether they further enlarge these rights.

112. To the extent that they only confirm these rights, the above mentioned provisions of the draft are superfluous and might even create confusion as they could be interpreted as implying a limitation of the rights of the Bulgarian national minority in the ethno-cultural district of Taraclia, to the rights mentioned in these provisions. To the extent that they enlarge the rights of the Bulgarian national minority in the ethno-cultural district of Taraclia, the question arises, in the light of the principle of fair and equal treatment of all minorities, as to whether similar rights should not be granted to the national minorities, including Bulgarians, in other districts.

113. Here once more, it is noted that, unlike Articles 5 (1) (f), 10, and 11 (1) (i) and 11 (2), or Article 14, Article 13 of the draft does not explicitly state that the ethno-cultural district may exercise the rights mentioned in this article "in compliance with the legislation of the Republic of Moldova." Does this mean that, in exercising those rights, the ethno-cultural district of Taraclia can infringe the relevant Moldovan legislation? Or does this mean that the state legislator can no longer enact legislation applicable to Taraclia on the issues mentioned in Article 13?

#### *Access to media and media coverage*

114. According to Article 15 of the draft, the "state" audio-visual media shall offer airtime to the ethno-cultural district of Taraclia and the state authorities shall support and encourage the non-governmental media offering to the ethno-cultural district of Taraclia the possibility of free coverage for the activity thereof. The programs of organisational and financial support for media can provide support for the media of the ethno-cultural district of Taraclia.

115. It is not sufficiently clear to the Venice Commission whether these provisions only confirm rights and obligations that are already mentioned in the national legislation or whether they further enlarge these rights.

116. To the extent that they only confirm these rights, the above mentioned provisions of the draft law are superfluous and might even create confusion as they could be interpreted as implying a limitation of the rights of the Bulgarian national minority in the ethno-cultural district of Taraclia, to the rights mentioned in these provisions. To the extent that they enlarge the rights of the Bulgarian national minority in the ethno-cultural district of Taraclia, the question arises, in the light of the principle of fair and equal treatment of all minorities, as to whether similar rights should not be granted to the national minorities, including Bulgarians, in other districts.

#### *d. Economic and financial base of the ethno-cultural district*

117. As regards the realisation of the rights of the ethno-cultural district, this shall be carried out, according to Article 16, with the financial means of the district, of institutions, organisations and individuals, as well as with "other means not prohibited by the law".

118. This provision lacks clarity. Moreover, the impression is that no prior impact assessment has been conducted in terms of financial and other resources demanded by the implementation of the draft law. This is all the more surprising considering that the main reason for the proposed status was to counteract evolutions that might occur in the context of a wider reform aiming at enhancing performance and efficiency of the Moldovan public administration.

119. According to the draft law, the executive authorities can offer support to the ethno-cultural district from the budgetary means, in compliance with the budget legislation, and the peculiarities of the ethno-cultural district of Taraclia shall be reflected in the Programme for the

social and economic development of the Republic of Moldova. The local authorities have the right, in compliance with the state legislative acts, to support the ethno-cultural district from the local budget (except for the transfers from the state budget).

120. To the extent that this provision enlarges the financial means that the ethno-cultural district of Taraclia can receive from the state budget for the protection of its national minorities, the question arises, in the light of the principle of fair and equal treatment of all minorities, as to whether the same possibility should not be offered also, taking into account their peculiarities, to other districts inhabited by national minorities.

121. Moreover, the question arises as to whether any additional financial means granted, on the basis of this draft law, for the national minorities in the ethno-cultural district of Taraclia, would not be to the detriment of the national minorities, including Bulgarians, in other districts, especially in the context of the economic and financial difficulties faced by the country.

#### **4. Added value of the ethno-cultural status**

122. It is not the task for the Venice Commission to examine in detail the various parts of the Moldovan legislation to assess whether the draft law only confirms rights and obligations that are already protected by relevant national norms or whether they further enlarge these rights and obligations.

123. According to detailed comparative information provided by the Moldovan authorities, most if not all powers granted by the draft law to the ethno-cultural district in the fields of language, education and culture and/or related rights are at present regulated by corresponding provisions of the existing Moldovan legislation. In particular, such regulations may be found in articles 9(7), 10(2), 10(3) and 10(4), 21(1) and 21(7), 36(1), 37(1) and 37(4), 39(3), 40(6) and 46(8), 41, 51(1)-(3), 133(1) and 133(2) of the Code of Education; articles 6(1), 6(2), 6(4), and 13(2) of the Law on national minorities; point 2 of the Government Decision n° 876 of 22 December 2015 on ensuring textbooks; articles 11(9), 51(1)(f) and 54(a) of the Audio-visual Code<sup>21</sup> of the Republic of Moldova.

124. The Venice Commission reiterates its view that, to the extent that the draft law only confirms rights and obligations that are already protected by existing national norms, apart from a symbolic gesture towards the Bulgarian minority, the attribution of a special (“ethno-cultural”) legal status to the Taraclia district appears superfluous and might even create confusion as to the scope of the rights provided to the Bulgarian minority in this district.

125. At the same time, it appears that, even taking into account the findings of the monitoring of the implementation of the Framework Convention by Moldova, although shortcomings have been noted in areas of importance for the Bulgarian minority, it would be difficult to conclude that Bulgarians in the Taraclia district have been highlighted as the only minority facing difficulties which would entitle them to a special, preferential, legal protection. Moreover, although there is no prohibition in this respect, there is no such a right in international law which would require a special territorial structure for the protection of one particular national minority.

126. In the light of the above considerations, it may be concluded that there are substantial reasons to question the added legal value of the proposed “ethno-cultural status”.

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<sup>21</sup> Law n° 260 of 27 July 2006

#### **IV. Conclusions**

127. The draft law provides for a special ethno-cultural status for the Taraclia district of the Republic of Moldova, as a mechanism to ensure the protection of the Bulgarian community which lives on the territory of the district as a compact group and represents the majority of the population within its borders.

128. Through the proposed ethno-cultural status, the draft law assigns rights and powers to the district of Taraclia, but also to the state authorities, in the main areas of interest for the Bulgarians living in the district. Its declared aim is to ensure the preservation, protection and development of linguistic and cultural identity of Bulgarians in Taraclia, in line with the Constitution, the domestic legislation and relevant international instruments to which the Republic of Moldova is a Party.

129. The draft nevertheless raises serious issues of legal certainty. It fails to a great extent to provide clear, precise and consistent legal definitions and regulations for the specific concepts and principles it introduces, which appear as essential for the operation of the proposed ethno-cultural district. The division of responsibilities, under the ethno-cultural status, between the state authorities and the district lacks the necessary clarity. Also, the draft law seems to mix rules for the protection of Bulgarians at national level and specific arrangements envisaged for the district of Taraclia. To summarise, the concept itself of "ethno-cultural district" is not properly defined, which may give rise to many problems of interpretation and implementation. On the other hand, in the opinion of the Venice Commission, it brings little added value to the existing legal framework.

130. Moreover, the draft raises clear issues of constitutionality and consistency with the relevant domestic legislation. The nature of the proposed law, its position in the Moldovan hierarchy of legal norms and its relations with other legal acts are not specified, which is likely to lead to difficult interpretation and implementation problems.

131. The Venice Commission understands at the same time that, beyond the rights guaranteed by its provisions in key areas of minority protection (language, education and culture), the draft law (and the envisaged ethno-cultural status) has been proposed as an additional guarantee for the preservation of existing Taraclia district in the context of upcoming administrative-territorial reforms in the Republic of Moldova. It is essential however to ensure that such preferential treatment for one particular minority and the corresponding territorial unit, is in conformity with the applicable constitutional and legal provisions.

132. It belongs to Moldovan authorities to decide whether to grant or not to grant such a special legal status to the district of Taraclia, based on the assessment of the purpose, the necessity, the added legal value and the impact of such status, in consultation with all those concerned and taking into account the specific circumstances prevailing in the Republic of Moldova. While such a status would not go against international norms and principles in this field, there is no such right to special territorial arrangements for minorities in international law. In addition, it appears that the adoption of the proposed status may create a precedent for other Moldovan districts or minorities, which could potentially claim similar special treatment.

133. In the view of the Venice Commission, in order to avoid unnecessary confusion and misunderstandings, as well as undue tensions, it would be important to conduct a thorough review of the current legal framework for minority protection, with a view to verifying whether existing concerns and shortcomings in the protection of Bulgarians in the Taraclia district, as well as, more generally, of persons belonging to national minorities in the Republic of Moldova, may not be addressed under the legislation in force, without resorting to a new legislation. The conclusions of the monitoring procedure of the Framework Convention in respect of the Republic of Moldova should be of particular help in that context.

134. At the same time, in the context of any future administrative-territorial or other reforms in the Republic of Moldova, effective and constructive dialogue with the local population, including the national minorities, such as Bulgarians in the district of Taraclia, will be indispensable, and should be the key for accommodating legitimate efficiency and rationalisation purposes, and equally legitimate concerns of national minorities.

135. In particular, it will be essential to identify, through close consultations with the minority communities, the most appropriate solutions to ensure implementation of the concerned reforms without undermining the effective enjoyment of minority rights and without affecting disproportionately persons belonging to national minorities.

136. In the light of the considerations contained in this opinion, the Venice Commission invites the Moldovan authorities in particular:

- to examine the conformity of the draft law and the proposed ethno-cultural status/ethno-cultural district with the constitutional provisions regulating the administrative-territorial organisation of the country and the operation of the local public administration;
- to verify the consistency of the draft law with the domestic legal framework for the country's administrative-territorial organisation and the operation of local public administration, as well as for the protection of national minorities;
- to review the existing legislation with the view to making sure that adequate and sufficient legal guarantees are available, including in terms of consultation and participation, for ensuring that the implementation of any administrative-territorial reforms will not result in a diminution of the effective enjoyment of their rights by the persons belonging to national minorities, including Bulgarians in the Taraclia district.

137. The Venice Commission remains at the disposal of the Moldovan authorities should they need further assistance.