



Reciprocal control between the center and autonomy: experience of implementing the Gagauz status

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This research paper was prepared in the framework of the project “Increasing Civic Participation Among Youth and Civil Society in ATU Gagauzia (2015)”, implemented by the OSCE Mission to Moldova in partnership with NGO Pilgrim-Demo from Gagauzia. The OSCE Mission to Moldova provided financial support for this publication. This support does not imply endorsement by the Mission of the content, design or presentation of the information and opinions contained therein.

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Annotation

Reciprocal control between the center and territorial autonomy is one of the key mechanisms for ensuring the constitutional and legal order in the state. On the one hand, clear rules and control procedures allow authorities of the autonomy to protect their right to participate in the decision-making process, and on the other hand – provide opportunity to the state to effectively monitor this process when observing the Constitution and the competencies. The issue of the limits and nature of the state control is relevant for the Republic of Moldova. In this analysis we research the issue related to the mechanisms of control of the decisions adopted by the People's Assembly of Gagauzia and central authorities, their effectiveness and feasibility. In order to fulfil the purpose of our study we examined positive experience of Italy (based on the example of South Tyrol) and Finland (Åland Islands) in relation to control mechanisms, reviewed control norms and procedures in Moldova and described its experience. The study revealed the problem of efficiency in the use of constitutional control mechanism, which requires development of the capacities of the People's Assembly of Gagauzia in the protection of their rights. The following obstacles were identified: absence of clear competences of the autonomy and central authorities and their regulation, which weakens capacity of Gagauzia in implementing its status. Administrative supervision of the People's Assembly by the Government and requirement that autonomy laws should comply with the national legislation applicable in all areas differ from the general practice related to the functioning of the autonomies and reciprocal control.

Key words: territorial autonomy, central authorities, constitutional control, administrative supervision, Constitutional Court, Gagauz-Yeri.

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INTRODUCTION

The relevance of analysing the issue of reciprocal control between central authorities and autonomous entities is dictated by the need to develop some effective institutional and legal instruments to resolve existing contradictions in the legislative process. Control, which is one of the most important mechanisms for ensuring constitutional order in the country, requires clear rules and procedures. Clear control mechanisms would allow authorities of the autonomy to protect their right to participation in the decision-making process at the national and local levels and ensure independent functioning of the institutions. Control exercised by central authorities allows the state to effectively support this process by observing the Constitution and the competencies of the region. Constitutional Court played a key role in accumulating positive experience of resolving conflicts between the center and the regions and in the division of their competences in the countries with autonomous entities.

In the case of the Republic of Moldova, the issue of the limits and the nature of state's control over the autonomy is important for this study. The effectiveness and appropriateness of the existing system, where central authorities carry out administrative supervision of the laws adopted by the People's Assembly and the possibility of carrying out constitutional control of the decisions adopted by the highest state authorities, is controversial.

In this analysis we research the issue related to the mechanisms of control of the decisions adopted by the People's Assembly of Gagauzia and central authorities, their effectiveness and feasibility. In order to fulfil the purpose of our study we examined positive experience of Italy (based on the example of South Tyrol) and Finland (Åland Islands) in relation to control mechanisms, reviewed control norms and procedures in Moldova and described its experience. The study revealed the problem of efficiency in the use of constitutional control mechanism, which requires development of the capacities of the People's Assembly of Gagauzia in the protection of their rights. The following obstacles were identified: absence of clear competences of the autonomy and central authorities and their regulation, which weakens capacity of Gagauzia in implementing its status. Administrative supervision of the People's Assembly by the Government and requirement that autonomy laws should comply with the national legislation applicable in all areas differ from the general practice related to the functioning of the autonomies and reciprocal control.

The study includes an introduction, two parts, conclusions, references and attachments. The first part examines experience of the existing control mechanisms between central authorities in Italy based on the example of South Tyrol and Finland in the Åland Islands. The

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second part makes an overview of the control mechanism in the Republic of Moldova and the description of how it is used in practice. For this purpose, authors of the study analysed requests addressed to the Constitutional Court of the Republic of Moldova and the decisions of the court adopted since 1995 and until 2015. Authors of the study also analysed materials of the case files examined by the administrative court of Comrat with the period December 2013 until June 2015.

IMPLEMENTING CONTROL MECHANISMS BETWEEN CENTRAL AUTHORITIES AND AUTONOMIES: BASIC ELEMENTS AND POSITIVE EXPERIENCE

Existence of reciprocal control and dispute resolution mechanisms between central authorities and autonomy represent essential tools that guarantee the constitutional and legal order in the state. On the one hand, control exercised by central authorities ensures implementation of the Constitution and the laws by the authorities of the autonomy. For this purpose, an arbitration mechanism is set up to check legislative acts adopted by the autonomy. Usually, control is carried out in cases when autonomy exceeds its powers [20, p. 170]. On the other hand, judicial control aims at protecting autonomous entity from limitation of its competencies and interference of central authorities in its jurisdiction. Moreover, disputes related to distribution of powers can be resolved through judicial proceedings [21, p. 42]. Disputes between central authorities and autonomy are settled by the Constitutional Court. In some countries, this role is exercised by the Supreme Court.

In order for control mechanism to be used efficiently, some clear rules and procedures need to be provided in the Constitution or other laws of the state. Existence of some clear control mechanisms will empower authorities of the autonomy to protect their right to participate in the decision-making process at the national and local levels and ensure independent functioning of institutions. Control exercised by the central government allows the state to effectively support this process within the framework of the Constitution and the existing competencies of the region.

The practice of positive functioning of territorial autonomies (South Tyrol, Åland Islands, and others) demonstrates high level of confidence in the independent judiciary that ensures separation of powers and regulates relations between the center and the region. In certain circumstances autonomies successfully use judicial mechanism in the process of resolution of disputes existing between provisions of national and provincial laws. Moreover, because of special activism of South Tyrol in protecting its rights before central authorities in the Constitutional Court, it made a significant contribution to the development of Italian regionalism as a whole [22, p. 216].

Control exercised by the central government over the autonomies has considerably changed as a result of recent constitutional reforms in Italy and Finland. In case of Åland Islands, the Autonomy Act adopted in 1991, which is currently in force, prohibits the state to exercise control of the legislative and executive activity of the autonomy. This change was prompted by

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the expansion of legislative and administrative competences of the Åland Islands [18, p. 155]. Control is carried out by the President of Finland in respect of the laws adopted by autonomy's parliament. According to the procedure, the President shall address the Supreme Court in order to receive its opinion on the law. In case of the negative opinion issued by the Supreme Court, President may veto the whole law or some of its parts. Based on the provisions of the Autonomy Act of 1991, Åland Parliament shall send the decision to adopt the respective legislative act to the Ministry of Justice and the Åland delegation. Åland delegation, which consists of the representatives of central government and the autonomy and which is chaired by the Head of Åland Islands, shall submit its opinion on the draft law to the Ministry before decision to pass the draft law is submitted to the President. The law may be revoked by the President fully or partially in cases when the Åland Parliament goes beyond its competences or when the adopted law regulates issues of internal or external security of the state [16, Article 19].

Considering that there is no Constitutional Court in Finland and the supreme authority to interpret the Constitution belongs to the Constitutional Committee of the Parliament, the President's right to veto can be overruled by the decision of the respective Committee. The Constitutional Committee provides opinions on the constitutionality of draft laws and on their compliance with the Constitution and the Autonomy Act, by checking compliance of Government's decisions related to the autonomy with the competencies outlined in Art. 27 of the Autonomy Act [19, p. 80].

According to M. Suksi, judicial system of Finland is quite complex as there is no single body to interpret the Autonomy Act in a coherent and systematic manner. However, researcher provides strong argument saying that because the Supreme Court passes judgments on the legislative competences of both Åland and Finnish Parliament upon the request of the President, there are strong arguments to support the view that the Constitutional Committee should consider Supreme Court opinions as authoritative interpretations of the Autonomy Act [19, p. 80].

Legislative system of Finland is quite peculiar because it provides equal status to the laws of Åland and Finnish Parliaments. Both legislative bodies have exclusive competences in relation to each other, which are clearly regulated by the Autonomy Act. In the situation where administrative bodies and courts cannot decide whether national or local legislation should apply in the Åland Islands, institutions can request the opinion of the Supreme Court. Also, in accordance with Art. 106 of the Constitution of Finland, courts may decide to apply constitutional provisions if they consider that in a particular situation autonomy law clearly contradicts with the Constitution. Contradictions between authorities of the Åland Islands and the state on the issues of administrative management can be settled by addressing the Supreme

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Court by both parties. According to the procedure, before sending its decision, the Court shall seek the opinion of the relevant institutions and the Åland Delegation. [19, p.80].

In case of South Tyrol, the administrative supervision by the State Commissioner has been changed to judicial review. Until the constitutional reform of 2001, State Commissioner was representative of the center in the regions and was monitoring the activities of local authorities in the provinces. In addition to the representation and coordination in the public field, the Commissioner was ensuring preventive control of the regional legislation. According to the procedure, the Commissioner had to be informed about the law adopted by the Assembly of the province within 30 days since the adoption in order to conduct expert examination of the law, otherwise central authorities were rejecting the law as contradicting with the national interests or as going beyond the competence of the Assembly and sending the law back for additional revision. After the reform of 2001, article of the Constitution that referred to the preventive control of the regional/provincial legislation and supervision of the activities of provinces by State Commissioner was repealed. Although the position of the State Commissioner was preserved, its responsibilities were changed and are now more of advisory nature. According to the Statute of the Autonomy, the Commissioner shall supervise the activities of state agencies and administrative bodies in the periphery; ensures public order and security in the province; directs and monitors that composition and the work of public institutions in the province is proportional. Another important change for the regions was the change of the status of their laws. Legislation of provinces gained equal footing with the national legislation [23, p.129], and may be subject to Constitutional Court control after promulgation of the law.

Constitutional Court of Italy plays crucial role in resolving the conflicts emerging between the central government and the regions. Some of the decisions adopted by the Constitutional Court led to emancipation of some regions, and the center was subsequently restricted to intervene in the jurisdiction of the peripheries and the mechanisms of cooperation were changed based on the new principle of “loyal cooperation”. The principle of “loyal cooperation” formulated by the Constitutional Court envisaged a flexible mechanism of interaction between the central government and the regions based on coordination, consultation and cooperation in the field of lawmaking process [23, p.126]. Joint commissions composed of representatives of the central government and autonomies with special status represent one of the mechanisms of such cooperation. An enhanced role of joint commissions, which are created on the basis of parity, and the high status of the decrees adopted by them represent the result of the efforts undertaken by the Constitutional Court [17, p.150]. The Court developed some basic principles that strengthened this institutional instrument. Based on the principles and doctrines of

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the Court, joint commissions were transformed from advisory bodies into lawmaking bodies. On the basis of case-law, it was established that commissions may only be formally recognized as supplementary advisory bodies of the government, which were created on the basis of cooperation and represent decision-making bodies. Decrees of the commissions approved by the Government cannot be amended or canceled by the Parliament and are subject to constitutional review. Subsequently, joint commissions have been recognized as the most powerful and fundamental institutional mechanism of autonomy development and autonomy cooperation with the central government [17, p.150-153]. The following disputes have been resolved based on the court decisions: disputes related to quotas for linguistic groups in the partially private institutions; the use of linguistic regime in the province; change of the names of locations; proportional representation in the regional and provincial assemblies, etc.

The above-mentioned elements and the experience of the two states with territorial autonomies represent different approaches to the implementation of reciprocal judicial control. Despite differences in the systems and procedures, there are still some common features that unite these cases. They include the single principle of checking the compliance of the laws of the autonomy with the Constitution of the state and with the competencies of the legislative body of the autonomy, as well as the lack of administrative and preventive control exercised by central authorities in respect of the decisions adopted by the province.

RECIPROCAL CONTROL: EXPERIENCE OF THE REPUBLIC OF MOLDOVA

Control mechanisms in the Republic of Moldova

Creation of the mechanisms of reciprocal control in the Republic of Moldova has its origin in the Law No. 344-XIII of 23 December 1994 on the Special Legal Status of Gagauzia (furthermore the Law No. 344-XIII), adopted in 1994. Art. 12 part (3) p. i), (4) - (6), which refers to the right of the People's Assembly to address the Constitutional Court in case competences of the autonomy are violated by the legislative and executive authorities of Moldova. The Law envisages that legal relations should be regulated by the President or the Parliament following cancellation of the normative act or some of its parts which violate competences of Gagauzia. Application of the contested normative act should be suspended until court issues its decision. It should be noted that according to the law, normative acts of the autonomy should comply only with the Constitution and the Law №344-XIII [1]. However, the law does not specify any mechanism of their verification by central authorities and resolution of the disputes.

The right of the People's Assembly to address the Constitutional Court in order to review constitutionality of the laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government, as well as international treaties to which Republic of Moldova is a party, and which are limiting competences of Gagauzia was further reflected in the Law on Constitutional Court [2, Art. 25] and the Code of Constitutional Jurisdiction [3, Article 38 point j)]. The mechanism of control over the authorities of the autonomy belongs to the general court system of the state, and namely represents the competence of the courts of general jurisdiction.

Amendment of the Constitution in 2003 has partly strengthened the status of the autonomy, however a new type of control by central authorities envisaged in Art. 111 h. (6) has significantly reduced the areas of People's Assembly activity. As a result of this amendment, Constitution introduced Government's control over observance of the legislation of the Republic of Moldova in the autonomy. Considering that legislative competence of the People's Assembly was not developed in the constitutional laws and national legislation, all normative acts adopted by the People's Assembly are subject to administrative control on the equal footing with normative acts adopted by the local public administration bodies of the second level in order to check their compliance not only with the Constitution, but also with the Law No. 344-XIII and with the whole legislation of the state. Therefore, disputes arising between the center and the

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autonomy are settled by the first instance administrative court on the basis of requests submitted by the territorial Office of the State Chancellery of the Republic of Moldova in Comrat.

Therefore, State Chancellery of the Republic of Moldova exercises administrative supervision in Gagauzia through its territorial office in Comrat on the basis of Art. 111 h. (6) of the Constitution and part 2 of Article 13 of the Law No. 317 from 18.07.2003 on the Normative Acts of the Government and other central and local public administration authorities. According to the legislation of the Republic of Moldova, all orders, regulations, instructions, rules and other normative acts, including local laws adopted by the People's Assembly, are issued only on the basis of and in order to ensure implementation of the laws, as well as regulations and ordinances of the Government.

Practice of addressing the Constitutional Court of the Republic of Moldova on issues related to the status of the autonomy

In practice, during the twenty-year period since the existence of the autonomous entity, no constitutional control of the laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government, as well as international treaties to which Republic of Moldova is a party and which are limiting competences of Gagauzia was exercised on the basis of requests addressed by the People's Assembly. The People's Assembly has rarely made use of its right to address the Constitutional Court. According to the reports of the Constitutional Court for the period 1995-2015, the People's Assembly has submitted only seven requests: 1 request - in 1998, 1 request - in 1999, 4 requests - in 2001 and 1 request - in 2013. None of these requests was examined by the court on the merits. [10; 12; 13] All requests, except for the last one, were sent back and their examination was denied based on Art. 40 part (3) of the Code of Constitutional Jurisdiction. Regulation on the procedure of examining requests submitted to the Constitutional Court reveals in details the reasons for sending requests back to the author: 1) request is unfounded and lacks subject matter on which the request is based; 2) there is no causal link between the contested provisions and the existing constitutional norms; 3) request does not meet formal requirements of an request; 4) the author of the request did not provide additional information and did not answer the questions of the Constitutional Court within the specified period of time [7].

In its request addressed in 2013, People's Assembly requested a review of the constitutionality of certain provisions of the school curriculum for primary, gymnasium and lyceum education levels in 2013-2014 academic year, approved by the Order of the Ministry of Education of the Republic of Moldova No. 679 from 04 July 2013 (subjects "Romanian language

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and literature” and “History of Romanians”). According to the author, the introduction of the subject “Romanian language and literature” and “History of Romanians” in schools teaching in the Gagauz language the right of the Gagauz people to study the state language, Moldovan language, and the History of Moldova is violated, despite the fact that this right is guaranteed by Article 35 of the Constitution; the challenged provisions violate Article 7, 13 part (1), 35 part (3) and 111 part (2) of the Constitution, as well as Article 12 para. (1) of the Framework Convention on the Protection of National Minorities [5]. Constitutional Court decided that the request was inadmissible on the grounds that examination of administrative normative acts, which is the subject of this dispute, does not fall within its jurisdiction and shall be examined by the administrative court [see Attachment, table 1]. In reality, this request did not refer to the competencies of the autonomy. The law however requires that only violation of the competences empowers the People's Assembly to address the Constitutional Court.

Thus, we can conclude that all requests addressed by the People’s Assembly were poorly prepared, and it exercises this right extremely inefficiently. Because of the lack of access to the requests addressed by the People’s Assembly, it was impossible to analyze their content and the issues raised.

Central government also enjoys the right to address the Constitutional Court and to request reviewing constitutionality of the Law on Special Legal Status of Gagauzia. Since the adoption of the Law three applications were accepted for examination of the Constitutional Court. In one case an article of the Law which was subject of review was partially declared unconstitutional. The first request [see Attachment, table 2] was submitted by a deputy of the Moldovan Parliament in 1995 and related to the constitutionality of the provision of Art. 1 part (4) of the Law on Special Legal Status of Gagauzia, which, in the opinion of the author, was contrary to Article 1 and 2 of the Constitution of the Republic of Moldova on the sovereignty, independence, unity and indivisibility of the state. The Court confirmed that the provision related to the right to self-determination of Gagauzia in case the Republic of Moldova losses its independence is in compliance with the Constitution and the international law. The interpretation of this part of the article of the Law has brought more clarity in the understanding by the public and political community of the particularities of the territorial autonomy, the existence of which does not increase the risk of undermining the foundations of the sovereignty and unity of the state [15].

The second claim was filed by the Minister of Justice of the Republic of Moldova in 1999 [see Attachment, table 3] on the constitutionality of Article 20 part (2) of the Law on the Special Legal Status of Gagauzia on the appointment of judges in the autonomy by the Decree of the

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President at the proposal of the People's Assembly, and after coordination with the Superior Council of Magistracy. This procedure however differs from the provisions of the Constitution, where the Supreme Council of Magistracy is the only body empowered by the Constitution with the right to submit candidates for the appointment of judges to the President of the Republic of Moldova. The court ruled that Article 20 part (2) was unconstitutional [11].

The last claim to the Constitutional Court was addressed by the General Prosecutor of the Republic of Moldova in 2011 [4]. The claim related to the control of constitutionality of the provisions of Art. 21 parts (2) and (3) of the Law on the Special Legal Status of Gagauzia and Art. 40 part (5) of the Law on the Prosecutor's Office. Provisions of these laws empowered People's Assembly to submit proposals to the General Prosecutor for the appointment of candidates for the position of prosecutor of Gagauzia, which, in the opinion of the author, are contrary to the principle of separation of powers and independence of the prosecutor's office, as well as to the provision that the right to put forward candidates for the position of prosecutors belongs solely to the Superior Council of Prosecutors. However, the court proceedings were discontinued because General Prosecutor recalled its claim, arguing the recall by adoption of the Strategy for Justice Sector Reform in the Republic of Moldova 2011-2015, which envisages changing given procedure [7].

In 2014 deputies of the Parliament filed a request on the control of constitutionality of Article 14 part (4) of the Law on Gagauzia [9; see Attachment, table 4]. According to this provision, the Governor of Gagauzia is appointed as member of the Government by the Decree of the President. Request of the authors was denied on its merits, because the respective issue, which related to the expediency of the law, is not within the court's competence. The Court explained in its decision that the respective provision, which operates in the framework of Article 97 of the Constitution on the composition of the Government, is not contrary to the law, to the constitutional principles of local public administration and constitutional norms related to the competence of the Government and central public administration authorities.

The only request to the Constitutional Court was sent by the deputy of the Parliament [10; see Attachment, table 5], and which was not related to the review of the constitutionality of the provisions of the Law No. 344-XIII, however touched upon the issues of minorities, especially the Gagauz minority. This is also a unique case, when a deputy of the Moldovan Parliament of Gagauz origin addressed the Constitutional Court in order to protect the rights of its ethnic group. In his request, deputy of the Moldovan Parliament asked to check the constitutionality of the provisions of Art. 73 part (2) of the Election Code, according to which Parliamentary elections are organized based on one national constituency, as well as the provisions of Art. 203

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establishing that the Code comes into force on the date of its publication and is applied from the date of its adoption. According to the author of the request, elections to the Parliament based on one national constituency do not guarantee election of the representatives of Gagauzia. The Court ruled that Article 73 part (2) of the Electoral Code is constitutional and does not restrict the constitutional right of the citizens to access political positions, public service, and does not violate the principle of equality of the casted vote. In fact, this decision interprets the law and the Constitution on the issue of minority representation in the legislative body of the country, which is still important for the authorities and political leaders of the autonomy.

During the entire period of the existence of the Gagauz autonomy, we can see that the number of requests addressed to the Constitutional Court both on behalf of the People's Assembly and of the central government is quite small. Following the amendments to the Constitution introduced in 2003 and Moldovan legislation, which require that normative acts adopted by the authorities of Gagauzia shall be in compliance and aim at implementing the laws and regulations and ordinances of the Government, most of the control is exercised by the State Chancellery. It is necessary to note the lack of clear boundaries between competences of the autonomy and competences of the center in the region. The Constitution does not regulate the competences of the autonomy and the Law on the Special Legal Status, which regulates the areas where People's Assembly can adopt laws, does not have special status in the legislation of the Republic of Moldova. Moreover, if its provisions contradict the later adopted organic law, provisions of the latter law are taken as a basis. This fact makes the autonomy weak and unable to protect its rights, both in the Constitutional and Administrative Court. Ultimately, the right to address the Constitutional Court becomes an ineffective means of control by the central government.

Administrative supervision of the autonomy by the Government

As previously mentioned, Government's control of the compliance of the legislation of the Republic of Moldova in the autonomy is carried out since 2003 on the basis of Art. 111 part (6) of the Constitution and part 2 of Article 13 of the Law No. 317 of 18.07.2003 on Normative Acts of the Government and other central and local public administration authorities through territorial offices of the State Chancellery of the Republic of Moldova in Comrat. This study tackles only the issue of exercising control of the Resolutions and local laws of the People's Assembly of Gagauzia.

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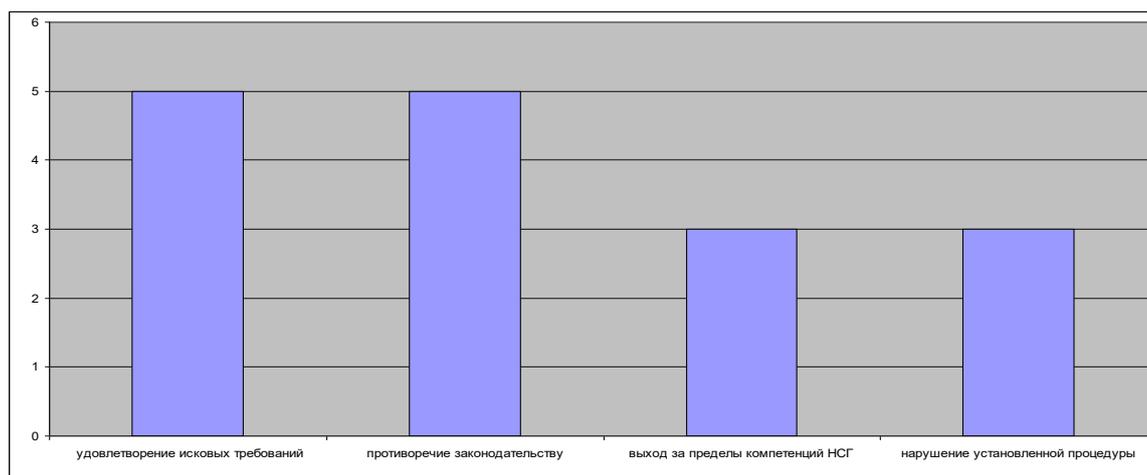
Based on data provided by the administrative court of Comrat, only files dated from December 2013 are available for the public. Therefore, our analysis is limited to the time period since December 2013 and until June 2015. In total territorial office of the State Chancellery appealed against 6 Regulations and 3 local laws. Regulations that were appealed had crucial political importance for the autonomy. In the same period the process of dismissal of the Gagauz Governor, M. Formuzal, was initiated, the Executive Committee received the vote of confidence, the process of organizing local referendums was initiated and the date of local elections was set.

It is important to note that territorial office of the State Chancellery carries out control in Gagauzia both of the observance of the national and local legislation. Most of the appealed Regulations (5 of 6) were canceled by the administrative court on the grounds of violation not only of the national legislation (including the Law No. 344-XIII), but also of the Gagauzia Statute and local laws. Half of Regulations were recognized as going beyond the competence of the People's Assembly and in violation of the established procedure. Only in one case claims of the territorial office were dismissed as unfounded.

Control by the central government is carried out effectively, and the territorial office promptly responds to violations of the legislation and competences by authorities of the autonomy. For example, as a result of the court decision from December 2013, Regulations of the People's Assembly on dismissal of the Governor of Gagauzia and on the appointment of the acting Governor of the autonomy were cancelled because of the violation by the People's Assembly of the legislation and the existing procedure. Thus, shortly M. Formuzal continued to act as Bashkan. Regulations that referred to consultative (on external vector of Moldova's development) and legislative (on suspended status to external self-determination of Gagauzia) referendums in Gagauzia, as well as to validation of their results, were also canceled as being illegal and in violation with the Constitution, competences, national and local laws and established procedure. Another example is related to setting the date of general local elections, where People's Assembly decided to set a separate date for Gagauzia. The Assembly has also appointed the electoral body to conduct these elections. Subsequently, decision of the People's Assembly on setting the date of elections to the local public authorities of Gagauzia was canceled by the court as illegal on its merits and as adopted in violation with the law (national and local) and with the competences.

Diagram 1. Results of the court's decision on the review of the Regulations adopted by the People's Assembly in the period December 2013 to June 2015.

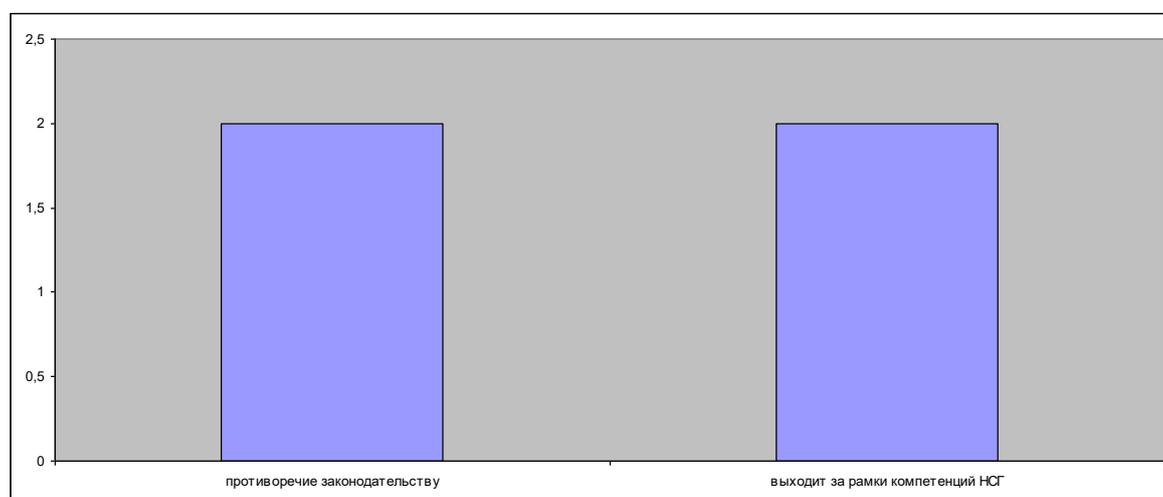
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Review of the local laws adopted by the People's Assembly is carried out in accordance with the Constitution and national legislation. During the researched period, 3 local laws were appealed by the territorial office, and in 2 cases some of the provisions of the laws were canceled by the court.

In 2014, Title VI of the Statute of Gagauzia (Gagauz-Yeri) was amended by the local law No. 36-XX/V from 04.11.2014 on establishment of a special court of Gagauzia - the Tribunal. Its main task was to check the compliance of all subordinated normative acts with the Law No. 344-XIII and the Statute of Gagauzia. According to the People's Assembly, the Tribunal should become an arbitrator between legislative and executive branches in the autonomy. These provisions were challenged in the court by the territorial office and canceled as illegal and as adopted in violation of the Constitution and national legislation and in violation with the existing competences.

Diagram 2. Results of the court's decision on the review of the Regulations adopted by the People's Assembly in the period December 2013 to June 2015



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According to Art. 115 part (4) of the Constitution, the organization and competences of the law courts, as well as judicial procedure, shall be laid down by the organic law, which represents the exclusive competence of the Parliament. Based on the practice of the states with territorial autonomies, in the vast majority of cases, including in Italy and Finland, judicial power represents the exclusive competence of the center. Perhaps, the attempts to create a separate court of law in the autonomy represent mere manifestation of resistance to the administrative control on behalf of the Government.

The second case related to the request against Article 13 and Article 14 of Chapter IV of the Law No. 24-XV/II of 26.12.2000 on investments and investment activities of the Executive Committee that includes provisions on the system of benefits for investors and the manner of elimination of preferential tax treatment of investors. The Court acknowledged inconsistency of the Law No. 344-XIII, Statute of Gagauzia and of the respective the law with some norms of the Tax Code of the Republic of Moldova, and existence of certain problems in the legislative process, however the decision was to reject the request as unfounded.

The third case is related to the cancellation of the Law No. 46-XXIII/V of 04.11.2014 on introducing amendments to the Law of Gagauzia No. 66-XXVIII/III of 10.07.2007 on Television and Radio. According to the current national legislation, People's Assembly has no competence to adopt normative acts in the field of television and radio, as well as in the field of licensing business activity. Accordingly, it was ruled that the Law on Television and Radio is in violation with the law.

In summing up the review of the administrative supervision of the laws and regulations of the People's Assembly, a significant level of contradictions with the national legislation and frequent deviation from competences is noted. The People's Assembly insists that local laws should be adopted in accordance with the Constitution, the Law No. 344-XIII and Statute of Gagauzia. In this context, People's Assembly does not recognize the obligation to subordinate local laws to the Law of the RM on Normative Acts of the Government and other central and local public administration authorities, which provides that normative acts adopted by authorities of the autonomous territorial entities with special legal status shall be subordinated to the hierarchically superior acts. However, it is interesting to note that in some judicial disputes People's Assembly referred to the national laws.

CONCLUSION

The Long-lasting successful practice of the states with autonomous entities represents the result of the experience of cooperation between the center and the regions in the field of reciprocal control. This experience demonstrates the effectiveness of ensuring constitutional and legal order in the state through judicial control mechanisms.

In most cases, central authorities do not supervise activity of the legislative body of the autonomy. Supervision is mainly conducted in order to identify cases of excess of powers. This practice is recognized as positive experience of the countries with autonomous entities. However, such a model of control requires clear distinction of the competences between central and local authorities and their regulation in the Basic Law.

In the case of Gagauzia, the problem of division of competences is not resolved, and it represents a source of permanent contradictions with the center. Exercising control over the observance of the legislation of the Republic of Moldova in the autonomy becomes an important impediment in the decision-making process of the People's Assembly. Another problem represents the status of local laws adopted by the People's Assembly, which are recognized as normative acts of local public administration authorities of the second level, which means that there is a virtual absence of legislative competence. It is especially important for the People's Assembly to develop its institutional capacity and skillful personnel in the field of protection of their rights before the Constitutional Court and in the decision-making process. The study showed that over twenty years since the existence of the autonomous entity, no constitutional control of the laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government, as well as international treaties of the Republic of Moldova limiting the competences of Gagauzia was exercised based on the requests of the People's Assembly. The People's Assembly has rarely used its right to address the Constitutional Court. Furthermore, all requests of the People's Assembly were poorly prepared, and the respective right was used extremely inefficiently. On the contrary, the administrative supervision exercised by the Government in the region is carried out in a timely and successful manner.

Development of the capacity of Gagauz autonomy to fully implement its status requires constant attention on behalf of central authorities and the region itself. In the area of reciprocal control it is necessary to take measures in order to improve its mechanisms and the capacities to use them.

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RECOMMENDATIONS:

- To use experience of Italy in exercising control of the normative acts of the autonomy;
- Ensuring effective control depends on the clearly defined competences of the central government and autonomy and their legislative entrenchment;
- Entrenching competences in the constitutional laws represent the most important guarantor of the protection of the rights of the autonomy. Both autonomies represent good examples here (South Tyrol and the Aland Islands);
- Raising the status of the normative acts of the People's Assembly to the level of laws will lead to an increasing implementation of the Law No. 344-XIII;
- Efficient use of the mechanism of constitutional control by the autonomy requires development of institutional capacities and abilities of the People's Assembly staff.

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ATTACHMENT 1. Description of the requests addressed to the Constitutional Court of the RM and its decisions

Table A.1.1. Requests addressed by representatives of central authorities to the Constitutional Court in 1995.

Date/No. of request	Institution	Request	The ground of the request	Type of the decision	Content of the decision	коментарии
21.12.1995	Deputy of the Parliament Vasilii Nedeliciuc	Request on the constitutionality of Art. 1 part (4) of the Law No. 44-XIII of 23 December 1994 "on the Special Legal Status of Gagauzia (Gagauz-Yeri)".	The right of Gagauz minority to self-determination undermines national security and contradicts with Art. 1 and 2 of the Constitution of the RM on sovereignty, independence, unitary and indivisible nature of the state.	Decision No. 35 on constitutionality of Art. 1 part (4) of the Law No. 344-XIII of 23 December 1994 on "Special Legal Status of Gagauzia (Gagauz-Yeri)".	It is unacceptable to interpret the right to self-determination of the Gagauz people as a limitation of national sovereignty. This right was not guaranteed to Gagauz people but to the Gagauz population only in the case when Moldova changes its status of independence. On the other hand, this article can be interpreted correctly only by taking into account the other articles of the law. There is neither contradiction with Art.1-3 and 137 of the Constitution of the Republic of Moldova nor with the international law.	Dissenting opinion of the Constitutional Court judge G. Susarenco: The Constitution of the Republic of Moldova recognizes that this territory is populated only by people of the Republic of Moldova. This right should be not changed into a privilege. The concept of "Gagauz people" leads to the disruption of the sovereignty of the unitary status of the state and is unconstitutional. Sovereignty is indivisible and is not transmitted through a special form of autonomy to the representative bodies. The state is unitary and indivisible, which means that there is only one legislative, executive and judicial power.

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Table A.1.2. Request addressed by representatives of central authorities to the Constitutional Court in 1999

Date/No. of request	Institution	Name, short description of the request	Grounds of the request	Type of the decision	Description of the decision	Comments
06.05.1999	Minister of Justice, Ion Paduraru	Complaint on the control of constitutionality of Art.20 part (2) of the Law No. 344-XIII of 23 December 1994 on "Special Legal Status of Gaguzia (Gagauz-Yeri)". The norm contradicts to Art. 116 part (2) of the Constitution of the Republic of Moldova.	According to Article 20 part (2) of the Law "judges of the courts of Gagauzia are appointed by the decree of the President of the Republic of Moldova based on the proposal of the People's Assembly of Gagauzia, with the consent of the Superior Council of Magistracy." Request of the author is based on the fact that according to the Constitution, judges of the courts, including the Chairperson and members of the Supreme Court of Justice are appointed by the President of the Republic of Moldova or the Parliament at the proposal of the Superior Council of Magistracy. This constitutional order differs from the order proposed by the law subjected to the constitutional control.	Regulation No. 4 on control of constitutionality of Art.20 part (2) of the Law No. 344-XIII of 23 December 1994 on the "Special Legal Status of Gagauzia (Gagauz-Yeri)" of 06.05.1999	To declare Article 20 part (2) of the Law No. 344-XIII of 23 December 1994 "On the Special Legal Status of Gagauzia (Gagauz Yeri)" unconstitutional. The Constitutional Court notes that in order to ensure independence of the judiciary throughout the Republic of Moldova, provisions of Article 6, 72 part (3) p. e) and f), Article 109, Article 111, Article 116 h. (2) and (5), Article 122 and Article 123 envisage the principle of appointment of judges throughout the whole territory of the Republic of Moldova by the President of the Republic of Moldova and the Parliament based on the proposal of the Superior Council of Magistracy. The judicial power in the entire territory of the Republic of Moldova, including Gagauzia, is exercised only within the courts, which are the only public authorities empowered to administer justice in the state.	Special opinion (Nicolae KISEEV, Ion VASILATI) of the judges who do not support the court's decision, as they take into consideration the fact that the existing procedure of appointment of judges, by taking into account the views of the People's Assembly, do not contradict the right of the Superior Council of Magistracy to put forward candidates. Decision of the Constitutional Court is limiting the powers of the People's Assembly. Decision of the court is more political than legal, and by its consequences it creates new problems.

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Table A.1.3. Request addressed by representatives of central authorities to the Constitutional Court in 2001

Date/ No. of request	Institution	Name, short description of the request	Grounds of the request	Type of the decision	Description of the decision	Comments
14.12. 2011	General Prosecutor of the RM	Complaint related to the control of constitutionality of some provisions of Art. 21 parts (2) and (3) of the Law No. 344-XIII of 23.12.94 on the Special Legal Status of Gagauzia (Gagauz-Yeri) and Art. 40 part (5) of the Law No. 294-XVI of 25.12.2008 on Prosecutor's Office	The disputed provisions of the laws are contrary to Articles 6, 109, 111, 124 part (3) and 125 part (1), part (2) part (5) of the Constitution. Provisions of the law, which is subject to constitutional control, granting People's Assembly of Gagauzia with the competence to submit proposals to the General Prosecutor to appoint candidate for the position of Prosecutor of Gagauzia, based on the principle of separation of power in the state, as well as the principle of independence of the Prosecutor's Office, the autonomous institution within the judiciary system, such as Superior Council of Prosecutors, is the only body entitled to submit proposals to the General Prosecutor for appointment and promotion of prosecutors.	Decision No. 6 of 14.12.2011 on discontinuation of the proceedings on the case related to control of constitutionality	in case the request is withdrawn, the Constitutional Court decides to discontinue the proceedings because of the withdrawal of the request	On 12 December 2011, General Prosecutor has withdrawn his request, arguing that on 25 November 2011 Parliament adopted in the final reading the Justice Sector Reform Strategy for 2011-2015, which envisages amendment of the criteria and the procedure for the selection, appointment and promotion of prosecutors.

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Table A.1.4. Request addressed by representatives of central authorities to the Constitutional Court in 2014

Date/ No. of requ est	Institution	name, short description of the appeal	Ground of the appeal	Type of the decision	Content of the decision
No. 22a/2 014	Deputies of the Parliament	Request No. 22a/2014 on the control of constitutional ity of Art.14 part (4) of the Law No. 344 of 23 December 1994 on the Special Legal Status of Gagauzia (Gagauz- Yeri)	On 23 December 1994 Parliament adopted the Law No. 344-XIII on the Special Legal Status of Gagauzia (Gagauz-Yeri). Art.14 part (4) of this Law stipulates that the «Governor of Gagauzia shall be confirmed as member of the Government by the Decree of the President of the Republic of Moldova». Since adoption of this law, this norm has never been subject to amendments. According to the opinion of the authors of the request, this norm contradicts with Art.2, Art.6, Art.7, Art.96, Art.97, Art.107, Art.109, Art.110, Art.111 and Art.113 of the Constitution, as well as with the provisions of international documents.	Decision No. 7 of 2 April 2014 on the refusal to examine the request by merits	The Constitutional Court notes that the interaction process between the Gagauz authorities and the Government is regulated by the legislation without damaging the constitutional principles of local public administration, as well as the constitutional provisions related to the competence of the Government and the central public administration bodies. Article 107 of the Constitution stipulates that ministries represent the central authorities of the state. Based on the law, they are implementing the policy of the Government, its decisions and orders, exercise control over their areas and are responsible for their activities. The Constitutional Court draws attention to the fact that, according to Article 97 of the Constitution, in addition to the Prime Minister, the First Deputy and the Deputy Prime Minister, Ministers, the composition of the Government may also include other members specified by the organic law. The norm of the law, which provides that the Governor of Gagauzia is a member of the Government, reflects decision of the legislator adopted on the basis of the respective constitutional article. In the previous jurisprudence, the Constitutional Court noted that the issue of expediency of the law is not within its competence, and represents exclusive competence of the Parliament. In the context of the above, the Constitutional Court considers that the subject of the respective request exceeds the statutory limits of its competence, since the issues raised in the request are related to the expediency of the law and not to the constitutionality of the law, and thus do not represent the competence of the Parliament.

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Table A.1.5. Request addressed by representatives of central authorities to the Constitutional Court in 1998

Date/No. of request	Institution	name, short description of the appeal	Ground of the appeal	Type of the decision	Content of the decision
1998	Deputy of the Parliament XIII legislature Fiodor Angheli	Description: Unconstitutionality of the provisions of Art. 73 part (2) of the Election Code. According to this article, elections in the Parliament are conducted in one national constituency. Provisions of Art.203, stipulating that the Code enters into force on the day of its publication and is applicable from the day of its adoption.	According to the author of the request, elections in the Parliament based on one national constituency do not guarantee that representatives of Gagauzia will be elected in the Parliament, and is thus violating the provisions of Article 16 part (2) of Article 38 and 39 of the Constitution; Art.203 of the Election Code that stipulates that the Code is applicable not from the moment when it enters into force, but on the date when it is adopted, are contrary to Article 76 of the Constitution.	Decision, B: Decision No. 16-18/5 on approval of the report on implementation of the constitutional jurisdiction in 1998	The court noted that according to Article 61 of the Constitution, the Parliament is elected based on universal, equal and direct, secret and free vote in accordance with the Organic Law on Elections. Therefore, Parliament is entitled to accept any form of elections or any order of distribution of the MP seats. The legislature is freely deciding which of the electoral systems is to be adopted - majoritarian, proportional or mixed - and what order of seats distribution is to be set for the candidates. The Court noted that the 4% threshold set for independent candidates does not restrict the constitutional right of access of citizens to political positions or public offices and does not violate the principle of equality of the votes cast. The court found that provisions of Article 73 part (2) of the Election Code are constitutional. Elections of the deputies to the Parliament of the XIII and XIV legislatures in one national constituency suggest that also representatives of national minorities, including the Gagauz, were elected in the respective legislatures. In accordance with Art. 203, Election Code enters into force on the date of its publication and shall apply from the date of its adoption. The Court found that the phrase "... and is applicable from the date of the adoption" contradicts with Article 76 of the Constitution. The law comes into force on the date of its publication or within the timeframe stipulated in the law itself; non-publication of the law shall entail its invalidity. The Election Code was adopted by the Parliament on 21 November 1997 and published in the "Monitorul Oficial of the Republic of Moldova" N 81 of 08 December 1997. Therefore, Parliament decided to apply the non-existent organic law (M.O., 1998, N54-55, Article 23).

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ATTACHMENT 2. Actions addressed to the administrative court against People’s Assembly and the results of court proceedings

Table A.2.1. Requests on cancellation of the Decisions of the People’s Assembly and the results of court proceedings

Date	Case No.	Request	Decision of the first instance court	Contradictions with legislation	Goes beyond the People’s Assembly competences	Violation of the existing procedure
26.12.2013	3-103/2013	On cancelation of the Decision No. 202-C3/V of 15.11.2013 "on the dismissal of the Governor of Gagauzia, Mr. M. Formuzal" and No. 203-C3/V of 11.15.2013 "On appointment of the Acting Governor of Gagauzia, Mr. M. Formuzal" as illegal, as being adopted in violation of the law and in violation of the established procedure	Requests need to be satisfied, decisions of the People’s Assembly No. 202-C3/V of 15.11.2013 "On the dismissal of the Governor of Gagauzia, Mr. M. Formuzal" and No. 203-C3/V of 15.11.2013 "On the appointment of the Acting Governor of Gagauzia, Mr. M. Formuzal" need to be cancelled as illegal, and as adopted in violation of the law and in violation of the established procedure	yes	no	yes
03.01.2014	3-120/2013	On cancelation of the Decision No. 207-C3/V of 27.11.2013 "on the dismissal of the Governor of Gagauzia, Mr. M. Formuzal" and No. 203-C3/V of 11.15.2013 "On the suspended status of people of Gagauzia to external self-determination" and No. 208-C3/V of 27.11.2013 "On organizing a consultative referendum in Gagauzia" as illegal, as having been issued in violation of the law	Requests need to be satisfied, decisions of the People’s Assembly No. 207-C3/V of 27.11.2013 "on the suspended status of people of Gagauzia to external self-determination" and No. 208-C3/V of 27.11.2013 "on organizing a consultative referendum in Gagauzia" need to be declared illegal	yes	no	no
02.04.2014	3-24/2014	On cancelation of the Decision of the People’s Assembly No. 250-C3/V of 31.01.2014 on organizing a consultative referendum in Gagauzia "on the suspended status of people of Gagauzia to external self-determination" and No. 251-C3/V of 31.01.2014 "on organizing a consultative referendum in Gagauzia as illegal	Requests need to be satisfied. Decision of the People’s Assembly No. 250-C3/V of 31.01.2014 "on organizing a legislative referendum in Gagauzia" on the suspended status of people of Gagauzia to external self-determination" and No. 251-C3/V of 31.01.2014 "on organizing a consultative referendum in Gagauzia – need to be cancelled as illegal.	yes	yes	yes
20.06.2014	3-105/2013	On cancelation of the Decision of the People’s Assembly No. 198-XVI/V of 15.11.2013 "On the vote of confidence to the Executive Committee of Gagauzia" as illegal	Requests need to be rejected as illegal, as submitted in violation of the law, and unfounded	no	no	no
04.02.2015	3-101/2014	On cancelation of the Decision of the People’s Assembly No. 254-C3/V of 14.02.2014 "On confirmation of the results of legislative and consultative referendums in Gagauzia organized on 04.02.2014"	Requests need to be satisfied. Decision of the People’s Assembly No. 254-C3/V of 14.02.2014 "On confirming the results of the legislative and consultative referendums of Gagauzia, organized on 04.02.2014" need to be canceled as illegal by substance, and adopted in violation of the law and of the competences	yes	yes	yes
21.05.2015	3-47/2015	On cancelation of the Decision of the People’s Assembly Nr. 364-C3/V of 09.04.2015 "On setting the date for local public administration elections of Gagauzia" as illegal by substance, and as adopted in violation of the law and the competences	Requests need to be satisfied. Decision of the People’s Assembly No. 364-C3/V of 09.04.2015 "On setting the date of elections to local public administration bodies of Gagauzia" need to be cancelled as adopted in violation with the law and of the competences	yes	yes	no

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Table A.2.2. Requests on cancelation of the laws adopted by the People’s Assembly and the results of court proceedings

Date	File No	Requests	Decisions of the first instance court	Contradictions with legislation	Goes beyond the People’s Assembly competences	Violation of the existing procedure
24.03.2015	3-128/2014	On cancelation of part (3) and (4) Art. 1 of the Law of Gagauzia No. 36-XX/V of 11.04.2014 "on introducing amendments in Chapter VI of the Gagauz Statute (Gagauz-Yeri)", as illegal by substance, as being adopted in violation of the law and competences	to fully satisfy the requests. Cancel as illegal by substance, and as being adopted in violation with the law and competences parts (3) and (4) Art. 1 of the Law on Gagauzia No. 36-XX / V of 11.04.2014 "On amendments to Chapter VI of Gagauz Statute (Gagauz Yeri)"	yes	yes	no
16.04.2015	3-155/2014	On cancelation of Art. 13 and 14 of Chapter IV of the Law of Gagauzia No. 24-XV/II of 26.12.2000 on investments and investment activity of the Executive Committee as illegal by substance, as being adopted in violation of the law and competences	to dismiss as unfounded	no	no	no
01.06.2015	3-163/2014	On cancelation of the local law of Gagauzia No. 46-XXIII/V of 04.11.2014 "on introducing amendments to the Law of Gagauzia No. 66-XXVIII/III of 10.07.2007 "on Television and Radio" and decision of the People’s Assembly of Gagauzia No. 328-XXIII/V of 04.11.2014 "on the Law of Gagauzia on introducing amendments to the Law of Gagauzia No. 66-XXVIII/III of 10.07.2007 "On Television and Radio "	to satisfy the requests. To annul as illegal the Law of Gagauzia No. 46-XXIII / V of 04.11.2014 "On introducing amendments to the Law of Gagauzia No. 66-XXVIII/III of 10.07.2007 "On Television and Radio" and Decision of the People’s Assembly No. 328-XXIII/V on 04.11.2014 "on the Law of Gagauzia on introducing amendments to the Law of Gagauzia No. 66-XXVIII/III of 10.07.2007 "On Television and Radio"	yes	yes	no