

LEGAL PERSONALITY AT LOCAL LEVEL:

MOLDOVA Country Case



Centre of Expertise for Good Governance
Strasbourg, 23 September 2021
CEGG/PAD(2021)11

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present report was prepared by the Council of Europe’s Centre of Expertise for Good Governance in the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”, based on contributions from its expert Mr Viorel Zabolotnic. The document is structured in accordance with the questionnaire formulated by the Specialised Parliamentary Committee.

MOLDOVA

1	Population	4.034 millions
2	Size	32 890 km ²
3	National Day	27 August
4	Form of state government	Parliamentary Republic
5	Administrative-territorial system, quantity of municipalities	Unitary 864 villages (<i>sate</i>) – 34 towns/cities (<i>orase</i>) – 32 districts (<i>rayons</i>) – autonomous territorial unit with special legal status of Gagauzia
6	Parliament, quantity of Members of Parliament, term	Unicameral parliament: 101 MPs (for 4 years)
7	GDP (USD)	11 562 millions ¹
8	Human Development Index	0.750

1. ***Who has legal personality (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country at local level, the community (or “administrative territorial unit”) or the authority (council, executive...)?***

In the Republic of Moldova, both the administrative-territorial units and the local public administration authorities have legal personality.

The administrative territorial organisation of the Republic of Moldova is foreseen by Art. 110–113 of the Constitution of the Republic of Moldova <https://www.presedinte.md/titul1> and Art. 4–7 of the Law no. 764/2001 on the administrative territorial organisation of the Republic of Moldova (https://www.legis.md/cautare/getResults?doc_id=125095&lang=ru). Thus, the territory of the Republic of Moldova is organised into administrative territorial units, as it follows: villages (communes), cities, rayons and the autonomous territorial unit with special legal status of Gagauzia (ATU Gagauzia), which are legal entities that belong to public law and have their own patrimony (Art. 3 paragraph 2 of the Law no. 764/2001).

To promote the general interests of the inhabitants of the administrative territorial units, the local public administration authorities are elected by the local community and are subjects of local autonomy and through which local autonomy is actually achieved (Art. 5 of the Law no. 436/2006 on local public administration, https://www.legis.md/cautare/getResults?doc_id=126281&lang=ru).

¹ Source : <https://unctadstat.unctad.org/countryprofile/GeneralProfile/en-GB/498/index.html>

According to Art. 3 paragraph 2 of the Law no. 764/2001, the public authorities of the administrative territorial unit are bodies that constitute the local public administration system, aimed at satisfying the general interests of the inhabitants of the administrative territorial unit.

In the Republic of Moldova, the local public administration authorities are of 3 levels (Art. 1 of the Law no. 436/2006):

- first level of local public administration authorities – bodies are set up and operate on the territory of the village (commune), town or city (municipium);
- second level of local public administration authorities – bodies are set up and operate in the rayons (districts), Chisinau and Balti cities;
- special level of local public administration authorities (ATU Gagauzia).

The first level authorities are:

- The mayor: the representative authority of the population of the administrative-territorial unit and executor of the local council, elected by direct vote;
- The local council: the representative and deliberative authority of the population of the administrative-territorial unit.

The second level authorities are:

- The president of the rayon: the executive public authority of the rayon council elected by the rayon council;
- The rayon council: the representative and deliberative authority of the rayon population (Art. 41 paragraph 1 of the Law no. 436/2006).

The special level authorities are:

- The People's Assembly: the representative and deliberative authority of ATU Gagauzia (Art. 7 of the Law no. 344/1994 on the special legal status of Gagauzia - Gagauz-Yeri, https://www.legis.md/cautare/getResults?doc_id=109411&lang=ru);
- The governor (Başkan): the supreme and executive official of ATU Gagauzia, to whom all the authorities of the public administration of Gagauzia have to report (Art. 14 paragraph 1 of the Law no. 344/1994);
- The executive committee: the permanent executive body of ATU Gagauzia (Art. 16 paragraph 1 of the Law no. 344/1994).

However, there are no express provisions in the legislation of the Republic of Moldova regarding the legal personality of local public administration authorities. This status results from the Laws indicated above and from the Constitution of the Republic of Moldova, which mentions in Art. 111 par. 3 the existence of representative and executive bodies in ATU Gagauzia and in Art. 112 the existence of local public administration authorities (elected local councils and elected mayors) that exercise local autonomy in villages and cities and act as autonomous administrative authorities.

In practice, in accordance with the provisions of the Law no. 220/2007 on state registration of legal entities and of individual entrepreneurs, in order to become a public authority (legal person with full rights and responsibilities) it is necessary to register in the State Register of legal entities of the Republic of Moldova. Therefore, immediately after the validation of the elections, the elected mayor or the president of the elected rayon is concerned about this (https://www.legis.md/cautare/getResults?doc_id=126282&lang=ru).

2. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), does the State possess a similar legal status?***

Yes, also the State has the status of a legal person belonging to public law.

According to Art. 173 of the Civil Code of the Republic of Moldova no.1107/2002, legal entities belong to either public or private law. At the same time, Art. 174 of the Civil Code mentions that the State and the administrative territorial units are legal persons belonging to public law, which participate in the civil legal relations on equal positions with the other subjects of law (https://www.legis.md/cautare/getResults?doc_id=125043&lang=ru).

Important: The attributions of the State are exercised by its bodies, in accordance with their competence (Ex. President, Parliament, Government, Ministries, Agencies, etc.).

3. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, sub-region, county...)?***

The intermediary units with legal personality are described at (1) above: the rayons (32) and ATU Gagauzia as a special unit, divided into three districts.

In order to streamline the cooperation of central and local public administration authorities, local communities and non-governmental organisations in planning and achieving a balanced territorial socio-economic development, in order to directly support the socio-economic development of disadvantaged areas, the Law no. 438/2006 on Regional Development in the Republic Moldova (https://www.legis.md/cautare/getResults?doc_id=107434&lang=ru) was approved. Thus, the Republic of Moldova has 6 development regions (North, Center, South, ATU Gagauzia, Chisinau and Transnistria) which are operational territorial units for planning, evaluation and implementation of the regional development policy, but they are not administrative-territorial units and do not have legal personality.

4. ***In case intermediate-level communities (regions, sub-regions, counties...) are not granted legal entity status, which authority has such a status at these levels?***

In the Republic of Moldova all administrative territorial units have legal personality: the first level - village (commune) and city, the second level - rayon, Balti city, Chisinau city and ATU Gagauzia.

At the same time, all the public authorities stated at point 1 above (mayor and local council; president of the rayon and rayon council; People’s Assembly, governor (Başkan) and executive committee of ATU Gagauzia) have legal personality, too.

However, there are no express provisions in the legislation of the Republic of Moldova regarding the legal personality of local public administration authorities. More details are described at (1) above.

5. ***Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.***

Art. 174 of the Civil Code of the Republic of Moldova no. 1107/2002 mentions that the State and the administrative-territorial units are legal persons of public law (https://www.legis.md/cautare/getResults?doc_id=125043&lang=ru). At the same time, Art. 3 paragraph 2 of

the Law no. 764/2001 mentions that all administrative-territorial units have legal personality, have property, have the right to settle and run, within the law, in their own name and in the interests of the local population, an important part of public affairs, and the public authorities of the administrative territorial unit which are bodies with general and special competence constitute the local public administration system (https://www.legis.md/cautare/getResults?doc_id=125095&lang=ru).

In conclusion, the Civil Code of the Republic of Moldova no. 1107/2002 (general law) and the Law no. 764/2001 on the administrative-territorial organisation of the Republic of Moldova (special law) reflect this issue.

6. ***In case in your country a notion “municipality” or its analogue is stipulated in the legislation, is this notion applied to a community or a territorial unit? Or does this notion apply only/also to a local self-government authority (councils or their executive bodies)?***

“Municipalities” in everyday speech are all the units on tier 1, rural and urban. The term is not one appearing as such in law and is quite imprecise, but normally it means territorial unit.

Separately, the official term “municipium” designates an urban locality with a special role in the economic, socio-cultural, scientific, political and administrative life of the country, with important industrial, commercial structures and institutions in the fields of education, health and culture (Art. 7 of the Law no. 764/2001). According to Art. 8–9 of Law no. 764/2001, the status of “municipium” is assigned to the 13 larger towns: Chisinau, Balti, Bender, Cahul, Ceadir-Lunga, Comrat, Edinet, Hincesti, Orhei, Soroca, Straseni, Tiraspol and Ungheni.

The first two “municipia” (Chisinau and Balti) are units of level 2, on a par with the rayons; the rest are units of level 1, and hence municipalities in the broader sense.

Chisinau is the capital of the Republic of Moldova. The statute of Chisinau as “municipium” is reflected by Law no. 136/2016 (https://www.legis.md/cautare/getResults?doc_id=120556&lang=ru).

7. ***May bankruptcy proceedings be instituted against a local community or “administrative territorial unit” in your country? (yes or no)***

No. Bankruptcy proceedings cannot be initiated against administrative-territorial units.

Art. 1 paragraph 3 of the Insolvency Law no. 149/2012 (https://www.legis.md/cautare/getResults?doc_id=123197&lang=ru) provides that the State, administrative territorial units and public legal entities are not subjects of insolvency (bankruptcy).

8. ***If you answered “yes” to question No.7, please answer the following question. Do general bankruptcy proceedings applicable to other legal entities apply to local communities or “administrative territorial units” in your country? If any special proceedings are in place, what are key criteria of bankruptcy of a local community or “administrative territorial unit” and three to four special aspects that make bankruptcy proceedings against local communities or “administrative territorial units” different from bankruptcy proceedings against other legal entities?***

—

9. ***Do the laws of your country provide for suspension of local self-government authorities of a local community or “administrative territorial unit” (local councillors or executive bodies) from the management of affairs when the local community or “administrative territorial unit” enters into voluntary administration? (yes or no)***

No.

10. ***If you answered “yes” to question No. 9, please elaborate what are conditions for introduction of the voluntary administration, what government authority is responsible for the voluntary administration, and what is the period of voluntary administration?***

—

11. ***Do claimants, both legal entities and individuals, lodge their claims with a local community or “administrative territorial unit” in regard to any and all local issues? Do the laws of your country allow that a person may file a lawsuit directly with a local self-government authority or its official, but not with a local community?***

According to Art. 53 of the Constitution of the Republic of Moldova, any person prejudiced in any of his/her rights by a public authority by way of an administrative act or failure to solve a complaint within the legal term, is entitled to obtain acknowledgement of the declared right, cancellation of the act and payment of damages. Therefore, if a natural or legal person considers that they have been violated in a right, they can appeal to the public authorities (mayor or local council; president of the rayon or rayon council; People’s Assembly, governor – Bașkan – or executive committee of ATU Gagauzia) for the recognition of the claimed right, annulment of the act and reparation of the damage. In practice, natural or legal persons make appeals, according to the competence, to:

- The City Hall (mayoralty) – functional structure that assists the mayor in exercising his legal duties;
- The apparatus of the president of the rayon - functional structure that assists the president of the rayon in the exercise of his legal attributions;
- The executive committee of ATU Gagauzia – the permanent executive body of Gagauzia.

It should be noted that in case of a lawsuit against a local public administration authority, it is necessary to follow the preliminary procedure (request). The details regarding the administrative procedures are foreseen by the Administrative Code of the Republic of Moldova no. 116/2018 (https://www.legis.md/cautare/getResults?doc_id=16072&lang=ru).

12. ***Does your country hold officials of local self-government authorities disciplinarily or financially (civilly) liable for ineffective or unlawful decisions (where such decision results from a political position, error or incompetence, but is not a criminal offence)? If so, may damages be recovered from the property of the official at fault rather than from the property of the local community or “administrative territorial unit” (for example, joint and several liability of the local community/“administrative territorial unit” and the official or recovery from the official by recourse)?***

According to Art. 9 of the Law no. 768/2000 on the status of the local elected official, the local elected official may not be subjected to persecution or criminal liability for the votes or political opinions expressed in the exercise of the mandate (https://www.legis.md/cautare/getResults?doc_id=94188&lang=ru).

At the same time, according to Art. 23 of Law no. 436/2006, the local councillors are jointly liable for the activity of the local council and for the decisions that they voted for. In addition, each councillor bears legal responsibility, according to the legislation in force, for their own activity carried out in the exercise of the mandate.

According to Art. 83 of Law no. 436/2006, mayors and vice-mayors, presidents and vice-presidents of rayons, councillors, secretaries and staff of city halls and apparatuses of presidents of rayons are legally liable in accordance with the legislation in force for illegal acts committed in the exercise of office.

Most of the staff of the city halls and apparatuses of the rayon presidents are civil servants: the provisions of Art. 131 of the Code of Conduct of the civil servant no.25/2008 stipulate that they are liable to disciplinary or criminal proceedings (https://www.legis.md/cautare/getResults?doc_id=107130&lang=ru).

13. ***What legal status do the local self-government authorities have if the local community or “administrative territorial unit” is a legal entity and hence recognised as subject of legal rights and responsibility? How is the scope of the legal personality of local self-government authorities defined in this case?***

The local public administration authorities, organised in accordance with the law, operate in the administrative-territorial units.

According to Art. 174 of the Civil Code of the Republic of Moldova no.1107/2002, the attributions of the administrative territorial units are exercised in the relations with other subjects of law by their bodies (local public administration authorities), in accordance with their competence (e.g. local councils, mayors, presidents of rayon, rayon councils, People’s Assembly, Governor - Başkan - and Executive Committee of ATU Gagauzia, etc.).

However, there are no express provisions in the legislation of the Republic of Moldova regarding the legal personality of local public administration authorities. More details are described at (1) above.

14. ***Who can act on behalf of a local community or “administrative territorial unit” directly in court? On what grounds? Do the laws of your country allow that a local community or “administrative territorial unit” is represented in external relations (in court, for example) by the State or a government authority?***

The mayor (Art. 29 paragraph 1 point n) of the Law no. 436/2006), the president of the rayon (Art. 52 paragraph 2 of the Law no. 436/2006) and the governor (Başkan) of ATU Gagauzia (Art. 60 of the Regulation of Gagauzia – Gagauz-Yeri, <https://halktoplushu.md/index.php/ulozhenie-gagauzii>) can act on behalf of a local community or “administrative territorial unit” directly in court.

The laws of the Republic of Moldova do not reflect that a local community or “administrative territorial unit” is represented in external relations by the State or a government authority. However, if the natural person is not satisfied with the decisions of national courts, they may appeal to international courts for the defence of a fundamental right. In this case, the Republic of Moldova is represented by the Government Agent according to Art. 5 of Law no. 155/2015, which represents the Republic of Moldova at the European Court of Human Rights and contributes to ensuring the execution of the decisions of the European Court in cases directed against the Republic of Moldova (https://www.legis.md/cautare/getResults?doc_id=84401&lang=ru).

15. ***If in your country the State or a local community “administrative territorial unit” has changed their legal personality over the past thirty years, please indicate how long did the transformation take and what were the milestones of the transformation?***

Yes, this is the case of the territorial-autonomous unit of Gagauzia (Gagauz-Yeri). Autonomy is guaranteed by the Constitution of the Republic of Moldova and regulated by Law no. 344/1994 and the Gagauz Autonomy Act of 1994. Gagauzia is an autonomous territorial unit with a special status which is a form of self-determination of the Gagauz community.

Historically, the most important stages of the transformation were:

- 1) in November 1989, the Gagauz minority declared the establishment of the Gagauz Autonomous Soviet Socialist Republic as part of the Moldovan Soviet Socialist Republic.
- 2) A year later, in December 1990, the separatist movement Gagauz Halki (“the Gagauz people”) proclaimed the so-called Gagauz Republic in the Comrat, Ceadir-Lunga and Vulcanesti districts of the MSSR.
- 3) The conflict that followed was resolved after December 1994 in the Parliament of Chisinau, which recognised the territorial autonomy of the Gagauzians (Law no. 344/1994 on the special legal status of Gagauzia). In 1995, the borders of the new autonomous region were established following a local referendum.
- 4) At the beginning of 2002, the political situation worsened after the deteriorating relations between Chisinau and Tiraspol in 2001. There were statements that deputies from Chisinau would not be allowed to enter the region without the permission of the Gagauz authorities.
- 5) On October 4, 2013, the terms “Romanian language, literature and history” were banned in Gagauzia.
- 6) On November 27, 2013, the People’s Assembly of ATU Gagauzia adopted two decisions, “On the conduct of the legislative referendum on the separate status of the inhabitants of Gagauzia on external self-determination” and “On the conduct of the consultative referendum.” The actions violated the provisions of the Constitution of the Republic of Moldova, the Electoral Code of the Republic of Moldova and other legislative acts. An illegal referendum took place on February 2, 2014 in which 98,9% of the community voted that Găgăuzia would declare independence in case the Republic of Moldova loses its sovereignty; and 98,5% opted to join the Eurasian Customs Union.
- 7) In December 2020, the Law on local public administration no. 436/2006 and the Law on administrative decentralisation no. 433/2006 were amended, including clarifications in legislation regarding the special level of autonomy of ATU Gagauzia by increasing the importance of the People’s Assembly, the Governor (Başkan) and the Executive Committee of ATU Gagauzia.

16. ***If in your country the State or a local community/“administrative territorial unit” changed their legal personality amid external or internal armed conflicts, were any risks identified for the territorial integrity or national security as a result of this change? If so, what preventative actions were taken to avoid these risks?***

In the case of the Republic of Moldova it is relevant to analyse the armed conflict on the Dniester (1992) and, accordingly, the special legal status of autonomy of the localities on the left bank of the Dniester (Transnistria).

On 2 September 1990 Transnistria declared its independence from the Soviet Socialist Republic of Moldova, and on 25 August 1991 from the Soviet Union, identifying Tiraspol as its capital. This provoked the outbreak of the conflict in the region. After signing a ceasefire Agreement between the Republic of Moldova and the Russian Federation on 1992, the Government of the Republic of Moldova no longer has any authority or control over the Transnistrian region.

Transnistria is recognised internationally and by the Government of the Republic of Moldova as an autonomous region with special legal status as a part of the Republic of Moldova.

Hence, according to Art. 110 paragraph 2 of the Constitution of the Republic of Moldova, the Parliament of Chisinau adopted Decision no. 117/2005 "On the initiative of Ukraine on the settlement of the Transnistrian conflict and on measures for democratisation and demilitarisation of the Transnistrian area" (https://www.legis.md/cautare/getResults?doc_id=20868&lang=ru) and Law no. 173/2005 on the basic provisions of the special legal status of localities on the left bank of the Dniester (Transnistria) (https://www.legis.md/cautare/getResults?doc_id=16014&lang=ru). The law stipulates that Transnistria will become a special autonomous territorial unit (ATU), in the composition of the Republic of Moldova, a status similar to that of Gagauzia. The representative body of Transnistria will be the Supreme Council, which will adopt local laws and normative acts, as well as the "Fundamental Law of Transnistria", which must not contradict the Constitution of the Republic of Moldova.

The judiciary is exercised by judges and law enforcement agencies, which are components of the system of courts and law enforcement bodies of Moldova.

According to the law, after fulfilling the conditions for demilitarisation and democratisation of the Transnistrian region, the negotiation process for the joint elaboration of an organic law on the special legal status of Transnistria will take place, which will be one of the last major steps in the legal settlement of the Transnistrian dispute.

The legal status of the localities on the left bank of the Dniester (Transnistria) remained unclear, because the normative acts approved by the Chisinau Parliament are not recognised by the de facto authorities from Tiraspol and are not applied in this territory (Transnistria).

As a result of the analysis of the adopted Decision no. 117/2005, Law no. 173/2005 and other public data (even though information on this specific issue is limited) no risks for territorial integrity or national security were identified as a result of the change of the status of Transnistria, because the change did not happen. Negotiations are still taking place between the parties in the "5 + 2" format.

The present layout of the report was produced in the framework of the Council of Europe Programme
“Enhancing decentralisation and public administration reform in Ukraine”