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**State Consolidation and
National Identity**

La consolidation de l'Etat et l'identité nationale

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This publication contains the reports presented at the UniDem Seminar organised in Chisinau on 4-5 July 2003 by the European Commission for Democracy through law in co-operation with the Ministry of Foreign Affairs of the Republic of Moldova.

The European Commission for Democracy through Law (Venice Commission) is an advisory body on constitutional law, set up within the Council of Europe. It is composed of independent experts from member states of the Council of Europe, as well as from non-member states. At present, more than fifty states participate in the work of the Commission.

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Cet ouvrage contient les rapports présentés lors du Séminaire UniDem organisé à Chisinau les 4 et 5 juillet 2003 par la Commission européenne pour la démocratie par le droit en coopération avec le ministère des Affaires étrangères de la République de Modova.

La Commission européenne pour la démocratie par le droit (Commission de Venise) est un organisme consultatif en matière de droit constitutionnel, créé au sein du Conseil de l'Europe. Elle est composée d'experts indépendants d'Etats membres du Conseil de l'Europe, ainsi que d'Etats non membres. Plus de cinquante Etats participent aux travaux de la Commission.

INTRODUCTORY ADDRESS

Mr Nicolae DUDĂU
Minister of Foreign Affairs of the Republic of Moldova,
Chairman-in-Office of the Committee of Ministers
of the Council of Europe

Mr. Secretary,
Distinguished guests,
Honourable participants,

It is an immense pleasure for me to welcome you to the Capital of the Republic of Moldova, and to the International Seminar *"State Consolidation – National Identity"*, organised by the European Commission for Democracy through Law in co-operation with the Ministry of Foreign Affairs of the Republic of Moldova and the Department for Interethnic Relations.

The organisation of this Seminar is part of the Moldovan Chairmanship of the Commitee of Ministers of the Council of Europe which was initiated on 15 May 2003 at the 112th Ministerial Session in Strasbourg. Following the aim of implementing the idea of *"unity through diversity"*, we are strongly convinced that this seminar, with the participation of representatives of state authorities, as well as local and international experts in the concerned field, will contribute to:

- the achievement of greater unity between member states of the Organisation, as well as the reconciliation of spiritual, cultural and political values;
- highlighting the social and cultural diversity in the European space, in order to create a common patrimony, which would have, at the outset, the mutual understanding and the acceptance of differences.

The subject concerning state consolidation and national identity represents one of the most challenging issues in the contemporary world due to the different approaches for tackling this matter by various legal systems, which differ from state to state, from nation to nation.

The increasing importance of the national factor in the world became an overall recognised reality that served as a basis for the affirmation that the twentieth century will go down in world history as an époque of nations.

Nowadays, we can witness the process of strong manifestation of nations' self-determination at the international level, of ethnic minorities and linguistic groups within different states that generate qualitative changes in ethnical structures and has a certain impact on the evolution of interstate relations. In this context, it is worth mentioning that interstate co-operation for the protection of the rights of persons belonging to national minorities constitutes an essential prerequisite in the establishment and keeping of neighbourly relations, stability and security.

As the world is progressing in the twenty-first century, we find ourselves increasingly concentrating our attention on the society around us. Possibly owing to this and notwithstanding the conflicts and tension, reconciliation of peoples is being achieved.

The newly independent state of the Republic of Moldova is no exception to this trend and is making every effort, as a sovereign state, to both build up a prosperous society with a level of life which reflects its potential, and to gradually become integrated into the international community.

In the period which began with the declaration of its independence in 1991, the Republic of Moldova, like other states from Central and Eastern Europe, found itself facing the unprecedented task of setting up new political and democratic institutions, of carrying out profound economic reforms and of creating the legislative framework necessary to support these irreversible changes. Moldova has selected its own political, social and economic model in conformity with its national characteristics, with the features of its human and economic potential and with geopolitical conditions of this region.

Following the independence of the Republic of Moldova, various political forces promoted different and contradictory opinions concerning the future of the new country. These opinions were reflected in the actions of the Republic of Moldova in defining the priorities of its foreign policy. Adopting the decision to follow the path of democratic reforms, our state identified the following main objectives of its foreign policy:

- Consolidation of the country's sovereignty and independence;
- Ensuring territorial integrity;
- Affirmation of Moldova as a stabilising factor in the region;
- Promotion of democratic reforms for the transition to a market economy and for the population's prosperity;
- The building of a law-abiding state, in which liberty, fundamental human rights and duties will be guaranteed in compliance with international standards.

The process of state consolidation of the Republic of Moldova is principally determined by its placement on the world map. Being situated in the Southeast part of Europe, Moldova represents a bridge of connection between Central and Eastern Europe. Due to this fact, the maintenance of co-operation in all its forms with the CIS countries, as well as the objective of gradual integration in European structures can be mentioned as part of the foreign policy of the Republic of Moldova.

Another factor which contributes to the consolidation of our state is determined by the poly-ethnic and multi-confessional nature of our society. Moldova, as a result of its historical evolution during the centuries, has a large number of various ethnic peoples (Ukrainians, Russians, Gagauz, Bulgarians, Jewish, Germans, Gypsies, Poles etc.) on its territory.

In this context, we can mention that the Republic of Moldova has acceded to the major international instruments concerning national minorities. Our Constitution stipulates the right to maintenance, development and expression of ethnical, cultural, linguistic and religious identity for all people living in the Republic of Moldova.

The elaboration and promotion of a constructive and tolerant policy as regards national minorities represents an essential element in ensuring the consolidation of democracy which

contributes to a better understanding between peoples, as well as to internal and international stability.

Humanity will be poor if the culture of a specific group is unknown or destroyed. We must enrich the people of the planet with everything that is good in each member of the population. In this context, Moldova is in favour of ethno development in order to allow national minorities to develop their cultural potential in such a way that they could contribute to the common heritage of humanity.

However, it must be mentioned that the process of society integration and consolidation very often is accompanied by numerous difficulties of political, socio-economic, conceptual and spiritual character. And here, I would like to refer to the 1992 conflict in the Eastern region of our country, the consequences of which have been felt for a long period at national and regional level.

In this context, we welcome the initiative of Mr. Vladimir Voronin, President of the Republic of Moldova concerning the elaboration of a new Constitution, with the involvement of Venice Commission experts, which would constitute an important step towards the consolidation of the reintegrated state - the Republic of Moldova.

In conclusion, I would like to stress that nowadays it is essential to foster the tendencies towards regional and global integration. This objective could be reached by taking into consideration the specific values and interests which determine their identity and existence, contributing to the general development and maintenance of the cultural diversity of mankind.

In view of the above, allow me to wish you success in the further development of today's seminar and an enjoyable stay in the Republic of Moldova for the distinguished guests from the Council of Europe.

Ladies and Gentlemen,

With your permission, I will read the message of the President of the Republic of Moldova, Mr. Vladimir Voronin addressed to distinguished participants at the Seminar "State Consolidation and National Identity".

WELCOME MESSAGE

Mr Vladimir VORONIN
The President of the Republic of Moldova

To the participants of the Seminar
"State Consolidation and National Identity"

Dear participants of the seminar,

I send you with a warm and cordial greeting on the occasion of the beginning of this Seminar's work, and I wish you a very fruitful activity.

There is no more pertinent problem for our country than the one to which today's Seminar is devoted. No matter how acute the economic, social, political problems are, a solution can only be found by a responsible attitude towards the future of the Moldovan state is adopted; and if the problem of territorial fragmentation and of inter-ethnic concord is solved through modern methods. The road chosen by the Moldovan state indicates unequivocally that, in spite of the extremes of political life, the Republic of Moldova's main historical heritage remains the multitude of cultures, ethnics and inter-ethnic peace. All the political movements, which tried to oppose this heritage, to destroy this peace, to bring into question the value of this diversity of culture and peoples which were left to us by history, have failed and have been forgotten. We can say, without any exaggeration that this unique heritage represents the factor of state's edification for the Republic of Moldova and that only its amplification would become the lasting resource for our country's democratic development.

Moldova is one of the first east-European countries to follow the path of edification of a multinational democratic state and we understand how complicated such an approach is, especially in the context of the development of national and political identity. Identity is, first of all, an issue of liberty, of national and civic self-determination; it is an issue in which the profoundness of the historical continuity and global process of humanity's cohesion are combined. The mistakes made by the government in this sphere are the easiest to notice, but their consequences are the most difficult to correct. But this is the sphere, in which success offers the opportunity for a stable and durable development of the entire society. This can be seen by the best examples from contemporary history. This is the reason why we underline more and more the actuality of the European integration experience for the cause of multinational Moldovan society integration, and why we compare the federative principles and the values of a united Europe with the mechanisms planned for Moldova's unification.

I hope that today's Seminar, organised in co-operation with the Council of Europe, will serve as an impulse for considering professionally and multilaterally the perspectives of edification of a fully-fledged multinational integrated Moldovan society.

Allow me to wish you success for the Seminar, a creative atmosphere and fruitful discussions.

DISCOURS INTRODUCTIF

M. Gianni BUQUICCHIO
Secrétaire de la Commission de Venise

Mesdames et Messieurs,

C'est avec plaisir que je souhaite la bienvenue à tous les participants du séminaire UniDem sur « La consolidation de l'Etat et l'identité nationale». L'idée d'organiser cette conférence en Moldova a été proposée il y a quelques années. Malheureusement, elle a du être plusieurs fois rapportée pour différentes raisons. Je me réjouis du fait que finalement ce projet ambitieux et d'une grande importance ait pu se réaliser.

C'est un double plaisir pour moi de m'adresser aux participants de cette activité au moment où la République de Moldova assure la Présidence du Comité de Ministres du Conseil de l'Europe. Je voudrais profiter de cette occasion pour remercier les autorités moldaves de nous accueillir à Chisinau et exprimer ma gratitude à la Représentation permanente de la République de Moldova auprès du Conseil de l'Europe pour sa contribution à l'organisation de ce colloque.

Le sujet que nous allons aborder au cours de nos travaux a un intérêt double.

Tout d'abord le thème de «l'Etat-nation». Cette notion a fait l'objet d'une quantité innombrable d'études qui ont examiné ses origines, son évolution et sa transformation au 20e siècle. En nous fondant sur ces écrits, on peut bien soutenir qu'avant qu'un Etat ne mérite le qualificatif d'«Etat», il lui faut avoir développé une forte cohésion interne.

Après la chute du mur de Berlin, la géographie européenne a subi une transformation profonde. Certains de ces nouveaux pays n'ont pas connu une existence en tant qu'Etat indépendant auparavant et faute de cet héritage institutionnel ils se sont lancés dans le labeur de bâtir «l'Etat-nation». Le monde autour n'était pourtant plus le même qu'au 19e ou début du 20e siècle et leur passé historique a laissé des empreintes importantes en créant des réalités bien différentes de celles qui furent à l'origine de l'Etat-nation dans beaucoup des pays de l'Europe occidentale. Beaucoup de nouvelles démocraties comptent parmi leurs citoyens une diversité de groupes ethniques, linguistiques, religieux et culturels. Cela nous amène à regarder l'autre sujet à l'ordre du jour – celui de «l'identité nationale». Comment s'avancer sur le chemin de la création d'un Etat, qui reprend l'idée d'un «Etat-nation» sans heurter la sensibilité de ses co-citoyens qui, tout en désirant contribuer au développement du pays, cherchent à préserver leur identité culturelle et parfois même certaines de leurs institutions traditionnelles. La Commission de Venise a pu constater l'ampleur de cet enjeu à maintes reprises au cours de ses programmes de coopération avec la plupart des nouvelles démocraties européennes, surtout au moment où celles-ci adoptaient leurs nouvelles constitutions.

L'Europe peut être considérée comme le berceau de l'Etat-nation. Sans aucun doute l'Etat-nation a apporté bien des points positifs, mais il a également occasionné de nombreuses souffrances.

Comment bâtir une société qui peut unir les différents groupes toute en préservant leur identité ? Il me semble que notre séminaire peut et doit contribuer à cette réflexion.

La Commission de Venise - Commission européenne pour la démocratie par le droit - attache une importance particulière au thème du présent séminaire : «La consolidation de l'Etat et l'identité nationale». De fait, dans toutes ses activités visant au renforcement et à la stabilisation des structures démocratiques en Europe, cette commission est constamment confrontée à des problèmes, des incohérences et des tensions résultant de la transformation actuelle des Etats.

L'Etat change de nature, les centres de pouvoir se multiplient dans le cadre d'un double phénomène : d'une part le fédéralisme et la décentralisation s'étendent, d'autre part un phénomène plus original encore se manifeste : les Etats s'associent ; ils créent des communautés supranationales, phénomène inconnu du droit constitutionnel, comme du droit international, il y a quelques décennies encore.

Ces deux phénomènes, qui pourraient apparaître contradictoires, sont en réalité complémentaires, car ils vont dans le sens de la diversification des lieux du pouvoir : l'intégration européenne rajoute un pouvoir supranational au-dessus du pouvoir national, elle ne fait pas disparaître celui-ci ; la décentralisation, la régionalisation, voir la fédéralisation, remplacent une structure de pouvoir verticale et unique par divers échelons d'exercice de l'autorité publique. Cela renforce le caractère pluriel de la société, et pas seulement de l'Etat. Ce pluralisme ne résulte que partiellement d'une démarche volontariste ; la facilité toujours plus grande des échanges conduit à la rencontre de personnes, de cultures, de mode de vie qui ne sont pas semblables.

Le monde d'aujourd'hui s'éloigne de plus en plus de l'idée d'une nation homogène pour reconnaître la diversité. Cette diversité est d'abord la diversité des pouvoirs et de leurs compétences, dans un système de «poids et contrepoids» *(checks and balances)* qui prévient la tentation autoritaire et contraint à la coopération plutôt qu'au chacun pour soi ; c'est aussi la diversité des cultures, des traditions ou encore des innovations. L'identité nationale n'a plus rien à voir avec l'identique, avec la reproduction de clones, avec des masses dépersonnalisées. Elle se construit dans la diversité toujours plus grande que je viens de décrire brièvement, et aussi dans la complexité, si l'on aborde la question du point de vue juridique et plus précisément constitutionnel.

En effet, tout comme les Etats s'associent et se dissocient, le droit constitutionnel lui-même s'harmonise d'une part, se diversifie et se complexifie d'autre part. Il s'harmonise, et c'est heureux, de façon à garantir, sur l'ensemble du continent, le respect des principes fondamentaux du patrimoine constitutionnel européen: la démocratie, les droits de l'homme et la prééminence du droit. Il se diversifie par contre dans les manières de garantir ces principes, de façon à permettre à chaque Etat, à chaque nation et à chaque peuple d'adopter les institutions qui correspondent le plus à son génie propre. Il se complexifie – les juristes s'en réjouiront, les autres citoyens peut-être moins – du fait de la multiplication des niveaux de pouvoir. Ce n'est pas la mort de l'Etat, l'Etat est devenu autre, divers mais uni en même temps ; l'unité dans la diversité permet de gérer des conflits qui, sinon, mettraient en danger à

la fois l'unité et la diversité. Au choix dangereux entre l'uniformité totalitaire et l'atomisation se substitue la gestion d'un «vivre ensemble» respectueux de chacun.

Au cours de ce colloque, nous aurons la chance d'accueillir des spécialistes en provenance d'horizons les plus variés. Ils viennent des différentes parties du continent, de cet Est et de cet Ouest autrefois séparés, mais aujourd'hui unis par des valeurs communes, d'Etats traditionnellement centralisés et d'Etats fédéraux, d'Etats-nations classiques et d'Etats multinationaux, d'Etats linguistiquement, confessionnellement, culturellement homogènes et d'Etats plus ou moins hétérogènes ; ils s'insèrent dans des histoires propres, qui expliquent largement les différences constatées sur le plan institutionnel de l'Etat. Cette diversité est un gage du succès de nos réflexions.

En vous remerciant de votre attention, je souhaite à nous tous de fructueux échanges de vues.

MODERN NATION-STATE AND EUROPEAN STANDARDS OF MINORITY RIGHTS

Mr Boriss CILEVICS
Member of the Parliament, Latvia
Member of the Parliamentary Assembly of the Council of Europe

I. Evolution of the concepts of nation and identity

The concept of a nation-state still remains a cornerstone of the modern world order. However, they both undergo gradual but steady transformation. Growing economic co-operation and integration, globalisation, increasing migration - these are only some of the general trends that contribute to the inevitable growth of cultural diversity, particularly in Europe. The role of the traditional actors - states, IGOs, private entities - permanently changes in modern society. As a result, certain concepts and notions need to be re-considered.

I do not claim to offer any academic analysis of these processes, I shall rather consider them from a practitioner's point of view.

The Council of Europe has played the leading role in the development of minority rights standards, and these standards offer a particular legal framework for handling ethno-cultural diversity.

The permanent difficulty that one has to face when dealing with this issue is the lack of uniform interpretation of basic notions. The concept of a nation is probably the most salient example. Some states (Spain, *inter alia*) define themselves as comprising different nations within a single state, thus interpreting a nation as, first and foremost, a cultural, ethnic and linguistic entity. On the other hand, the name of "United Nations" obviously implies an organisation of sovereign states, regardless of their cultural and ethnic homogeneity - thus, a nation is interpreted as being fully synonymous with a state. In June 2003, PACE decided to prepare a report on the use of the concepts of "nation", "people", and "national minority" in constitutional and legislative texts to clarify the situation. However, achieving a uniform interpretation of these concepts looks too ambitious and unrealistic at the moment, and is not on the agenda so far.

In turn, identity is a very broad concept, apparently related to the concept of nation. In what way is it related? That depends on which definition is chosen for the nation.

The concept of ethno-nation, at one time equivalent to political nation, emerged during the nation-building period in Europe in 17th-18th centuries. This concept, indeed, implied a certain degree of religious, linguistic, and cultural unity, necessary for a nation to become a source of sovereign power instead of a monarch ("from peasants to Frenchmen", "we have made Italy - now we'll make Italians", etc).

However, nowadays states are increasingly losing their "ethnic" nature. In the past in Europe, multicultural states were, as a rule, empires that emerged when strong "ethno-nations"

conquered weaker "nations" and annexed "their" territories (or descendants of these empires). Accommodation of cultural diversity without losing territorial integrity of these states could be achieved through territorial arrangements and autonomy. In other words, solutions that more or less met the principles of democracy were sought at the group level. This is where the concept of the "different nations within one state" is rooted. This is why minority rights were often identified as group rights.

Modern trends are fundamentally different. Diversity "descends" to a personal level, and so must do the methods of its accommodation based on multiculturalism. A state consists not of several clearly designated cultural or linguistic communities, but of individuals having a different identity. A nation can no longer be considered as a collection of groups with different cultural characteristics, and seeking a balance between groups (usually with one dominant one) is not sufficient to accommodate diversity. Moreover, each local community is becoming diverse. Even at the level of individuals, cultural diversity emerges: multilingualism and other sorts of multiple identities are becoming widespread.

This is the general context in which the modern concept of minority rights has been developing.

II.   The idea of minority rights

The problem of the rights of national minorities was one of the central issues dealt with by the Council of Europe from its inception. However, particular attention has been paid to this issue since the late 80s, when, after the collapse of the Communist system, ethnic conflicts became the main threat to peace and stability in many regions of Central and Eastern Europe.

In the first half of the 90s, the adoption of two documents – the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages – marked the beginning of a new stage in the development of minority protection. The significance of these basic instruments can hardly be overestimated. In particular, the Framework Convention has become the first ever legally binding instrument on minority rights.

Somewhat paradoxically, the idea of minority protection appeared in early 17th century – i.e. several centuries earlier than the very concept of human rights. However, the rights of then religious minorities were considered as a sort of special privilege granted, as a rule, as a result of pressure by a more powerful neighbouring state aimed at advocating the interests of certain groups dear to these states. As a matter of fact, protection of minorities was determined by the relative military strength of neighbouring states. To a certain degree, this was true even for the system of minority protection under the League of Nations. As a matter of fact, this approach was preserved until the establishment of the UN.

This understanding of minority rights was abused by Hitler, who used the rights of Sudetien-Germans as a pretext to justify his aggression. Thus, the very idea of minority rights was discredited. As a result, no provisions on minority rights were included in the basic human rights instruments adopted after the WW2 under the auspices of the UN.

Slowly and gradually, the new understanding of minority rights was developing. In fact, only the Framework Convention, in its Article 1, clearly declared that "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". This means, *inter alia*, that minority rights can no longer be considered a sort of special privilege bestowed by a state on a certain group as manifestation of this state's "good will". Minority rights, as an integral part of human rights, are universal, and as such must be ensured without any discrimination.

The Framework Convention defined an ultimate goal of minority protection: achieving full and effective equality between persons belonging to a minority and those belonging to the majority. This clause opened the door to the elaboration of synergy between the concept of minority rights and the principle of non-discrimination, and for the first time in history showed that these two sets of instruments were not contradictory but in fact complementary.

The principle of non-discrimination, the cornerstone of the modern system of human rights protection, demands equal treatment. This very principle is sometimes used to deny recognition of minorities (like e.g. in French "republican model"). However, equal treatment ensures equality only in equal situations. Sometimes it is precisely different treatment that is necessary to ensure full and effective equality. The Framework Convention and the modern concept of human rights in general deal exactly with situations of this kind.

Being "a document of principles", the Framework Convention cannot offer clear and detailed prescriptions on how to implement this or that principle enshrined in its provisions. Moreover, it is highly doubtful that, given the extreme diversity of the minority situations in Europe, the imposition of such prescriptions would be productive. The result – i.e. full and effective equality between the persons belonging to a minority and those belonging to the majority – can be achieved through different models and methods. It is a task of the monitoring bodies to examine whether these models and methods, indeed, correspond to the letter and the spirit of the Framework Convention.

Effective monitoring procedure is based on a legal rather than a political approach but, in the meantime, with the political support of the Committee of Ministers, will become the fastest way to arrive at a universal interpretation of the Framework Convention's provisions – while keeping the wide range of possible methods and procedures of implementation corresponding to the particular situations in different Council of Europe member states.

III.   The right to participation: the key to other rights

One area where the universal interpretation of the Framework Convention's provisions must be pursued particularly vigorously is the principle of participation of minorities in decision-making on the issues directly affecting them. Indeed, the ostensibly weak wording of the Convention is very much due to numerous conditions and reservations included in its provisions: "…if those persons so request and where such a request corresponds to a real need…" (Article 10 para. 2), "…when there is a sufficient demand…" (Article 11 para. 3), "…if there is sufficient demand…" (Article 14 para. 2), etc. According to Article 2 of the Convention, these conditions must be applied "in good faith", i.e. not as a pretext for denying minorities' claims but as a necessity to take into account minorities' demands.

Unlike other human rights where the wish of the right-holder is not of crucial importance, and their application must be indeed uniform, minority rights, as a rule, imply a response to practical demand in this or that concrete situation. For example, there is no need to ask a detainee whether he/she does not mind being tortured, or whether he/she insists on having a fair trial – torture is prohibited under any circumstances, and fair trial must be ensured for

everybody. On the other hand, according to Article 3 para. 1 of the Framework Convention, every person belonging to a national minority has "the right freely to choose to be treated or not to be treated as such". Thus, all rights envisaged in the Framework Convention should not be automatically imposed – e.g. the persons belonging to minority must have the right to study in minority language only if they really wish so, otherwise this treatment may qualify as segregation.

It is of crucial importance to ensure that the choice is indeed free, not made under any kind of pressure on the part of government, and that indeed "no disadvantage" results "from this choice" (Article 3 para. 1).

IV.   Minority rights: who is the right-holder?

The scope of application of the Framework Convention remains probably the most controversial issue related to the implementation of this instrument. The Convention itself does not determine the right-holder of the protection envisaged by the Convention, and basically each state party may itself determine which groups are covered by the Convention.

A number of State Parties to the Convention made, upon ratification, declarations stipulating, directly or descriptively, those minorities that would enjoy protection under the Framework Convention. In particular, several countries (Austria, Estonia, Poland, and Switzerland) declared that those persons who are nationals of the corresponding state, and belong to the "traditional" groups which have longstanding ties with the country, should be considered national minorities in the sense of the Framework Convention – basically, in line with the definition included in the PACE Recommendation 1201.

Some other State Parties adopted exhaustive lists of those groups whose members enjoy protection under the Framework Convention: Denmark ("the Framework Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark"); Germany ("National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Serbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship"); Slovenia ("the Government of the Republic of Slovenia… declares that these are the autochthonous Italian and Hungarian National Minorities… The provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia"); and Sweden ("The national minorities in Sweden are Sami, Swedish Finns, Tornedalers, Roma and Jews").

Finally, Liechtenstein, Luxembourg, and Malta declared that "no national minorities in the sense of the Framework Convention exist" on their territory.

In its Recommendation 1492, the Assembly asked Member States "to sign and/or ratify as soon as possible and without reservations and declarations the Framework Convention for the Protection of National Minorities, and ask those which have already ratified it to implement it and to revoke their reservations and declarations". However, no declarations have been revoked so far by any State Party.

In the course of the monitoring and evaluation procedures, the Advisory Committee (AC) and the Committee of Ministers have in a number of cases recommended that the States develop a

more generous and inclusive approach when deciding about the scope of application of the Framework Convention.

For example, in its Resolution on implementation of the Framework Convention by Denmark, the Committee of Ministers concluded, "the personal scope of application of the Framework Convention merits further consideration by the Government of Denmark with those concerned". The Advisory Committee (AC) in its opinion elaborated the same point with more details: "…the Advisory Committee considers that the personal scope of application of the Framework Convention in Denmark, limited to the German minority in Southern Jutland, has not been satisfactorily addressed. In particular, it notes that persons belonging to groups with long historic ties to Denmark such as Far-Oese and Greenlanders appear to have been excluded *a priori* from protection under the Framework Convention. Similarly, despite the historic presence of Roma in Denmark, they appear to have been *a priori* excluded from the protection of the Convention. This approach is not compatible with the Framework Convention. Furthermore, the Advisory Committee considers a limited territorial application, leading to the *a priori* exclusion of persons no longer residing in the traditional area of settlement, not to be compatible with the Framework Convention. The Advisory Committee therefore considers that the Danish Government should, in consultation with those concerned, examine the application of the Framework Convention".

In its opinion on Estonia, the AC took a similar attitude towards the declaration made by this State: "The Advisory Committee considers that, bearing in mind the prevailing situation of minorities in Estonia, the above declaration is restrictive in nature. In particular, the citizenship requirement does not appear suited for the existing situation in Estonia, where a substantial proportion of persons belonging to minorities are persons who arrived in Estonia prior to the re-establishment of independence in 1991 and who do not at present have the citizenship of Estonia… The Advisory Committee notes that in its dialogue with the Government on the implementation of the Framework Convention, the Government agreed to examine also the protection of persons not covered by the said declaration, including non-citizens…With a view to the foregoing, the Advisory Committee is of the opinion that Estonia should re-examine its approach reflected in the declaration in consultation with those concerned and consider the inclusion of additional persons belonging to minorities, in particular non-citizens, in the application of the Framework Convention".

Similarly, in its opinion on Germany, the AC stated: "The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to other groups, including citizens and non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis. It takes the view that the German authorities should consider this issue in consultation with those concerned at some appropriate time in the future". The reference to article-by-article approach is included in a number of other AC opinions.

Moreover, in some cases the AC and the Committee of Ministers pointed to insufficient implementation of the Framework Convention in respect of some groups even when these groups were not explicitly excluded from the Convention's protection. Thus, although Finland ratified the Convention without declarations, the Committee of Ministers in its Resolution stated: "Further consideration should also be given to the implementation of the Framework Convention in respect of the Russian-speaking population, in particular in the fields of education and media".

Thus, the analysis of the ongoing monitoring procedure clearly reveals that both the AC and the Committee of Ministers do not consider that State Parties have an unconditional right to decide which groups within their territories qualify as national minorities in the sense of the Framework Convention. The AC's attitude is clearly reflected in the following points included in a number of issued opinions (*inter alia*, the opinions on Germany and Estonia quoted above): "The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country... Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3".

In this view, it is essential that the text of the Framework Convention itself does not contain such concepts as "traditional", "historical", or "new" minorities. However, some provisions of the Convention contain wording like "in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers..." (e.g. Article 10 para. 2), i.e. mention these two prerequisites as alternatives. The only exception is Article 11 para. 3, where "traditionally" is used in addition to "substantial" ("In areas traditionally inhabited by substantial numbers of persons belonging to a national minority..."). However, in this case this condition is justified, since this paragraph speaks about displaying "traditional local names" and other topographical information in the minority language.

Article 3 of the Framework Convention states: "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such, and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice". However, it remains unclear what individuals are considered as belonging to national minorities, i.e. who is entitled to this choice. The Explanatory Report only says, "this para. does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual's subjective choice is inseparably linked to objective criteria relevant to the person's identity". In the meantime, nothing is said about the nature of these "objective criteria", and about the procedure of and the authority over verification of compliance with these criteria.

V.   Minority rights and (il)legitimate restrictions

Three major problems related to the scope of application of the Framework Convention could be singled out.

First, its coherence with the UN mechanism of minority protection. All State Parties to the Framework Convention are, in the meantime, State Parties to the International Covenant on Civil and Political Rights (ICCPR), and as such are bound by its Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy

their own culture, to profess and practise their own religion, or to use their own language". The scope of applicability of this provision is determined by the UN Human Rights Committee's General Comment No. 23 of 8 April 1994. This comment explicitly denies the possibility to introduce any restrictions on enjoyment of the rights enshrined in Article 27 of ICCPR: "The terms used in Article 27 indicate that the persons designed to be protected are those who belong to a group and who share a common culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected do not need to be citizens of the State Party. In this regard, the obligations deriving from Article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under Article 25. A State party may not, therefore, restrict the rights under Article 27 to its citizens alone… Just as they do not need to be nationals or citizens, they do not need to be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights… The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria".

It would be rather unfortunate if the European standards of minority protection appear to be more restrictive in nature than the universal standards, even more so when, as mentioned above, Article 27 of ICCPR is in any event binding on all State Parties to the Framework Convention.

The second problem is of a rather legalistic nature. The Framework Convention considers minority rights as individual rights which may be enjoyed in community with other individuals belonging to the same group. In the meantime, the definition included in the Assembly Recommendation 1201, is worded in terms of group rights - i.e. a minority is defined as "a group of persons in a State". This makes practical application of this definition problematic. In practice often a part of the persons belonging to a certain minority group has been living in a certain country for centuries, while a substantial number of other members of the same group has migrated to the country relatively recently. For example, more than 40% of ethnic Russians in Latvia have been registered as citizens on the basis of the "restored citizenship" concept, which means that their ancestors lived in Latvia for centuries. Almost 60% of ethnic Russians arrived in Latvia after WW2. In this and a number of similar cases, the question arises whether it is appropriate to deny the protection under the Framework Convention to a number of individuals who fully qualify under the Recommendation 1201's definition, solely on the basis that other members of the same group arrived to the country later?

It is not at all evident that attempts to introduce group rights into international law will be productive for the better protection of minorities. It should be mentioned that the absence of recognised group rights nowadays does not prevent international institutions, notably the European Court of Human Rights, from dealing with different aspects of the problem. The concept of minority rights as individual rights enshrined in the Framework Convention seems to have proven its effectiveness.

Finally, the third, and probably the most important problem, is related to universal nature of fundamental human rights and the principle of non-discrimination. Minority rights, as an integral part of fundamental human rights, must be implemented without any discrimination. In this view, any criteria beyond the citizenship requirement might look dubious. While

citizenship is, indeed, explicitly excluded from the list of prohibited grounds for distinction in a number of international non-discrimination instruments (see e.g. Article 1 para. 2 of the International Convention on the Elimination of All Forms of Racial Discrimination), any additional, apart from citizenship, preconditions for enjoyment of minority rights give rise to legitimate concerns about a possible violation of the principle of equality of citizens.

With regard to the citizenship criteria, an effective approach was suggested by Asbjorn Eide, Chairman of the UN Working Group on Minorities and one of the world's leading experts in the field, in his working paper prepared for the UN Working Group on Minorities. A. Eide examines the minority rights provisions of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities of 1992 on the article-by-article basis, with the aim of analysing where limitation of minority rights of citizens would be discriminatory: "…Many, if not most, human rights apply to everyone, not only citizens, but there are some important rights which can be claimed only by citizens… With regard to minority rights it is difficult to make a general conclusion; a detailed analysis is required".

As a matter of fact, PACE decided to pursue a similar strategy in its Recommendation 1492: "The Assembly recognises that immigrant populations whose members are citizens of the state in which they reside constitute special categories of minorities, and recommends that a specific Council of Europe instrument should be applied to them".

Apparently, one will ultimately have to admit that enjoyment of minority rights of only a political nature (such as participation in political life, voting in national elections, etc.) might be restricted for non-citizens. As to other fundamental rights, they should be stipulated according to the Framework Convention, in accordance with the principle of non-discrimination. In any case, only synergy between various approaches in the field of non-discrimination and preservation of identity can ensure effective response to the major modern challenge of accommodation of growing ethno-cultural diversity.

VI.   Conclusions

To sum up the modern approach to minority rights and its impact on the concept of nation-state:

1.   Minority rights are an integral part of fundamental human rights, and as such must be implemented without any discrimination (i.e. unjustified and arbitrary distinction). Minority rights are not special privileges which a state might bestow to some groups by the state's own choice.

2.   The concept of minority rights is complementary to the fundamental principle of non-discrimination. It is to be applied in situations where different treatment is needed to ensure full and effective equality. Non-discrimination and equal treatment cannot be used as a pretext for non-recognition of minorities and for denial of minority rights

3.   Minority rights are understood as individual rights which may often be enjoyed in community with other individuals. Minority rights are not, in nature, group rights. Accommodation of ethno-cultural diversity through territorial arrangements and autonomy may appear insufficient, multiculturalism must descend to individual level.

4.   Major international instruments offer only basic principles of minority protection that may be implemented differently in different states, according to their particularities and in concrete situations. Compliance of these concrete methods with the letter and spirit of the basic instruments is checked through monitoring procedures carried out by specialised expert bodies, and improved by using constant dialogue, consultations with all parties involved, and taking into account good practices.

5.   The key aspect of the modern understanding of minority rights is the principle of participation of minorities in decision-making on the issues directly affecting them. Numerous conditions and reservations included in the provisions of the Framework Convention must be interpreted in good faith, i.e. not as a pretext for denying minorities' claims but as a necessity to take into account minorities' demands. As a rule, minority rights imply a response to a real demand in concrete situations. The rights envisaged in the Framework Convention should not be automatically imposed, the persons belonging to minorities must have the right to choose whether to be treated differently or equally, according to the letter of the Convention. It is of crucial importance to ensure that the choice is indeed free, not made under government pressure, and that indeed no disadvantage results from this choice.

6.   Although states have a margin of appreciation in respect of determining the persons and groups that will enjoy protection as national minorities within their territories, this right must be exercised in accordance with the general principles of non-discrimination, in consultation with those concerned, and no arbitrary or unjustified distinctions may result from that decision.

MODELS OF A MULTI-ETHNIC STATE:
OPTIONS FOR MOLDOVA

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For many years, political scientists focusing on ethnic groups and ethnic politics have operated on the explicit or implicit premise that ethnicity and ethnic consciousness are pre-modern phenomena characteristic of Third World rather than First World, or Western societies. Such a premise is now generally out of favour; it has been discarded for the persistence or revival of ethnicity in Western political systems. Nevertheless, ethnic consciousness, ethno cultural claims, and ethnic political behavior are still widely considered as dysfunctional to modernisation, industrial development, "nation-building", institutional and socioeconomic pluralism, as well as the promotion of individual liberties. They are also regarded as difficult to combine with other aspects that are commonly identified with a modern, progressive, democratic state.[1]

Nevertheless, it is well known that ethnic consciousness has been maintained, revived, and politically mobilised while, simultaneously, modernisation and democratisation have proceeded.

With very few exceptions, all modern states can be qualified to an extent as multiethnic states. Diversity is not likely to disappear in the modern world. On the contrary, the states become more and more diverse due to the freedom of movement and extensive migration caused by economic disparities.[2]

It is unanimously recognised, at least at the level of political declarations, that ethnic, linguistic and cultural diversity represents a wealth of any state. At the same time, scientific analysis demonstrates that this diversity could create problems, tensions between different ethnic groups, and even conflicts, including violent ones, which could be a threat to democracy itself. This means that for the sake of the stability, further development and prosperity of a multi-ethnic state, effective ways to accommodate ethnic interests to the process of modernisation have to be found. As Donald Horowitz, a well known specialist in the research of ethnic conflicts said, democracy is about inclusion and exclusion, about access to power, about the privileges that go with inclusion and the penalties that accompany exclusion., The problems of inclusion and exclusion do not automatically disappear when new democratic institutions are being adopted and put into operation.[3]

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[1]   William Safran, *Ethnicity and Pluralism: Comparative and Theoretical Perspectives, Canadian Review of Studies in Nationalism, XVIII, 1-2 (1991), p. 1.*

[2]   Daniel Elazar, *Exploring Federalism, Tusealoosa: University of Alabama Press, 1987, p. 248.*

[3]   Donald Horowitz, *Democracy in Divided Societies, in Larry Diamond and Marc F. Plattner, eds., Nationalism, Ethnic Conflict and Democracy, Baltimore and London: Johns Hopkins University Press, 1994, p. 35.*

While with very few exceptions modern states were created as national (ethnic) states, aimed at representing and protecting the ethnic identity of a single ethnic group, and history has witnessed many attempts to bring ethnic and political borders into compliance by different means including the most ugly ones such as mass expulsion, massacres, genocide, and forcible assimilation, those options were unlikely to bring about the desired homogeneity.[4]

The absence of coincidence between the ethnic and political frontiers is illustrated by a number of statistics used by various researchers of ethnicity.[5] Out of 132 states surveyed in 1972, only 12 (9.1%) could be described as essentially homogeneous. In a further 25 states (18.9%) one ethnic group formed more than 90% of the entire population, and in 25 other states the ethnic majority formed from 75% to 89% of population. At the same time, in 31 of the states (23.5%) from 50% to 74% of the population belonged to the ethnic majority, and in 39 cases (29.5% of the states) the main ethnic group represented less than a half of the entire population.

A long time had passed before the political elites realised that viewing a state as the property of a single ethnic group cannot but strengthen ethnic tensions and alienate minority groups. Gradually, national states were compelled to invent a wide range of political and social institutions enabled to formulate consensual "responses" to the diversity "questions". The necessity to develop policies in the field of ethnic relations is inevitable in conditions, when the state and political elites wish to maintain a stable and peaceful society. If so, the state must be seen as equally belonging to all the people who are governed by it, regardless of their nationality.

It would ever be an even more serious mistake to ignore the ways in which states necessarily privilege particular national cultures. This is obvious in decisions regarding the language of schools, courts and government services. Given the centrality of the state to modern life, a group without such language rights will face enormous pressures to assimilate. If national minorities do not wish to assimilate, they must struggle to gain those rights and powers, either through secession or regional autonomy.[6]

Cultural diversity does, of course, present challenges to national integration and social peace. At the same time, the assumption that ethnic diversity brings political instability and the likelihood of violence is a mistaken one. On the contrary, greater ethnic diversity is not associated with greater inter-ethnic conflict. It is the number of ethnic groups and their relationships to power, not diversity *per se*, that strongly affects political stability. This explains the fact that some countries succeed in meeting those challenges while others fail. States do make choices, particularly about political processes, that ease or exacerbate intergroup tensions. Ethnic tensions are in fact the product of political choices. Negative stereotyping, fear of another group, violence – these are the doings of so-called leaders, and can be undone by them as well.[7]

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[4]   *Daniel Elazar, pp. 250-251.*

[5]   *J. Denis Derbyshir & Ian Derbyshir, Political Systems of the World, Oxford, 1996, p. 7.*

[6]   *Will Kimlycka, Misunderstanding nationalism, Dissent, Winter 1995, pp. 135-137 (review).*

[7]   *John R. Bowen, Ethnic Conflict. Challenging the Myths, Current, January 1997, p. 20.*

The mobilisation of ethnic minorities does not need to have extreme political consequences, such as separatism. This is especially the case where governments have made separatism unnecessary by pursuing policies reflecting the recognition of the special claims of their minorities. Mr William Safran formulated the conditions under which members of ethnic minority communities are more likely to identify with the political system and internalise its values: the legitimacy of their specific cultural aspirations is acknowledged and if that acknowledgement is reflected in public policies and institutions. These might include bilingual street signs, public notices, and election ballots; a more broadminded and pluralistic manner of publicising the country's history; affirmative action and/or other approaches to ethnically specific preferment; ethnically balanced slates of candidates for public office; a full acceptance of ethnic interest groups, and perhaps political parties; and the adherence to international conventions concerning the rights of ethnic minorities. The legitimacy of ethno-cultural aspirations might be institutionally expressed in federalism, regionalism, officially sanctioned ethnic advisory councils, and local options with respect to educational institutions or functional regionalisation.[8]

For an ethnic minority "it does not seem quite enough to say that it enjoys the usual political rights and liberties", because, owing to its minority status, its position is inherently unequal.[9]

This imperative was neglected, or, better to say, was not understood by the political elites leading the movements for obtaining independence from the Soviet Union. For them the ethnic diversity and national minorities did not apper to be a serious dilemma.

The movements for independence had as their utmost goal the building of national states – the states, where political nation would comply to the highest possible extent to the cultural nation, and all citizens of these states belong to the titular population, while the state serves exclusively the interests of this population. This situation was perfectly explained by Mr Rogers Brubaker.[10] He states that the new states of Eastern Europe and the former Soviet Union were closely identified with particular ethno-cultural nations. This was the legacy of their prior incarnation as the major ethno-territorial units of nominally federal multinational states, in which they were already defined as the nominally sovereign states of and for the particular ethno-cultural nations whose names they bore. This institutionalised sense of ownership and ethno-national entitlement persisted in the movements for independence. Successor state elites used the new powers they obtained to "nationalise" their states, to make them more fully the politics of and for their core nations.

In almost all the new states the core nation's elites, or at least an important part of them were weakened and underdeveloped as a result of previous discrimination and repression. To compensate for this, the new state was seen as having the right, and even the responsibility, to protect and promote the cultural, economic, demographic and political interests of the core nation.

But, at the same time, almost in all the newly independent states national minorities formed significant segments of the population, and, therefore, their very presence complicated

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[8]   *William Safran, Op.cit., pp. 4-5.*

[9]   *Henry B. Mayo, An introduction to Democratic Theory, New York, NY: Oxford University Press, 1960, pp. 206-207.*

[10]   *Rogers Brubaker, Nationalism Reframed. Nationhood and the National Question in the New Europe, Cambridge University Press, 1997, p. 104.*

formation of national states. In an attempt to eliminate this obstacle, the stimulation of a mass outmigration of minorities together with their squeezing out from socially important positions was implied. These did not have the desired effect, but provoked opposition in different forms and at a different level in different new states.

On the contrary, this leads to an extraordinary polarisation of society. In all the Republics events developed according to a similar scenario, while some local specifics gave a different colour to the process.

The specific in Moldova was the following:

First of all, the resistance of ethnic minorities towards the idea of building national states of the ethnic democracy states or of a democracy, with statutory principles aimed only at the titular majority leaving "outside" ethnic minorities, finally led to the creation of two autonomous units - Transnistria and Gagauzia, resulting in the complete separation of the former and the granting of a special autonomous status to the latter.

The other peculiarity resulted from the existence of the "Romanian factor": the common ethnic and linguistic roots of the Moldovans and Romanians and a tendency demonstrated by some political forces from Moldova to use the independence of Moldova as a step towards the unification of Moldova with Romania.

The first peculiarity was made difficult as the construction of the national state and the introduction of the principles of ethnic democracy, which won, for instance, in the Baltic states, so the implementation of the project of unification with Romania. The second one provoked a division in the titular ethnic group, into those who supported the idea of "Romanianess" and did not see any difference between the Moldovans and the Romanians, and the supporters of the idea of "Moldovianess", who defended the ethnic uniqueness of a separate Moldovan ethnicity as the basis of the sovereign Moldovan state. The irreversibility of the disintegration of the Soviet Union pushed the minorities to support the idea of an independent Moldovan state as the unique and real alternative to joining Romania.

However, these circumstances while diminishing the ethnic tensions did not solve the existing problems in general. The observers maintain that the minorities, in order to protect themselves, felt compelled to put forward some demands of a reactive nature,[11] which could be sorted into two distinctive groups: the right to free access (to power, state apparatus, information, education etc.), and the right to special protection (positive discrimination).[12]

The Moldovan experience with regard to building the Transnistrian Republic and the Gagauz autonomy, expressively demonstrated that for a young state it is much more convenient to accept the demands of minorities and through their implementation to develop the gradual integration of minorities than to take a rigid position in a desire for their expulsion or forcible assimilation.

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[11]   *William Crowther, The Politics of Mobilisation: Nationalism and Reform in Soviet Moldavia, Russian Review, Vol. 50, April 1991, p. 195.*

[12]   *Janus Bugajski, Nations in Turmoil: Conflict and Cooperation in Eastern Europe, Boulder: San-Francisco – Oxford, 1994, p. 25.*

The events of the early 1990s eventually showed as did the experience of the Romanian regime in the interwar years (1918-1940), that the models of expulsion or of forcible assimilation would not achieve success in Moldova. The ethnic problems shall be solved by applying democratic models. At the same time, the democratic approach could contain several models, which could be accepted in different ways both by the ethnic minorities, as well as by the ethnic majority.

The first option is ethnic democracy, in which the ethnic majority benefits from a superior status, while the minorities that are considered less loyal, have fewer rights in their relations with the state. In the 1990s, in particular, in the first half of the decade, Moldova in general terms represented this model: the ethnic minorities enjoyed civil rights, while the state structures were in general mono-ethnic, and access to education in the Russian language was considerably reduced and the minorities were viewed as uninvited guests to Moldova.

This model did not contribute to the harmonisation of ethnic relations, including those related to the resolution of the Transnistrian conflict. The representatives of the majority keeping with the nationalistic position were unsatisfied with the persistent unwillingness of the ethnic minorities to learn the official language accompanied with their demands to receive specific rights. The minorities felt their unequal position; isolation from opportunities for social promotion; foreign situation in society and absence of the attractive stimulus for learning the state language.

The second possible model represents so called "consociational democracy" based on the mutual concessions that could guarantee an equal status and veto rights for all groups of the population. In consociation democracies, such as Belgium, ethnicity is accepted as a principle for the organisation of the state. Individuals are judged on merit and accorded political and civil rights, but ethnic groups are also officially recognised and granted certain rights such as control over education and allocation of public posts. The state is not identified with any of the constituent groups and tries to reconcile the differences between them.[13]

However, this model could be successfully implemented in the conditions where there is an absence of a clear majority.

The third model is the one of a "liberal democracy", in which the ethnic identity of the major population groups becomes an individual issue, and the integration of the state is on-going around some common, non-ethnic, or supra-ethnic symbols and ideals.[14] Or, in a simplier wording, such state is not interested in what language a citizen speaks, but only in how he or she fulfils the law. In this system, integration does not involve the denial of diversity. Rather, a hierarchy of values is established in which everything on the territory of the state derives from the supra-nation, and ethnic particularisms have meaning and legitimacy only within that framework.

A plural society solution is possible because in many modern states there is sufficient inter-elite agreement on system values. Moreover, most ethnic minorities do not have an exclusive approach to their demands; although they wish their culture and languages to be officially

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[13]   Sammy Smooha, *Minority status in an ethnic democracy: the status of the Arab minority in Israel, Ethic and Racial Studies, Vol. 13, No. 3, July 1990.*

[14]   Graham Smith, *The Ethnic Democracy Thesis and the Citizenship Questions in Estonia and Latvia, Nationality Papers, 1994, Vol. 24, No. 2, p. 200.*

recognised, whatever form such recognition may take, they accept the need for a bicultural approach – that is, they accept the functional necessity for a common, trans-ethnic vernacular language and culture, which are those of the majority.

If the political goal of the state is the integration of society, then the most efficient method of achieving this goal might be "liberal democracy" in the form of a political (or civil) nation accompanied by the relevant actions aimed at accomodating the diversity. In this range fits the formation of a trans-national elite enabled to ensure non-violent solution of conflicts, implementation of individual rights and freedoms, development of the mechanisms of co-operation of this elite in a number of issues of a non-ethnic and supra-ethnic character, the openess of the ethnic groups including the ethnic majority, for the new members.[15] In this way, a multi-ethnic nation-state is being formed, in which the nation consists of the citizens regardless of their ethnic origin.

The concept of the civic, or political state does not presuppose any necessary correspondence between the political and the cultural identity of the citizens. The civic state will certainly demand political loyalty from its citizens, but it will not insist on conformity with any particular ethnic culture. Instead of a single homogeneous cultural space, the country will contain a number of co-existing cultures. The result will still be a nation-state, rather than a "multinational" state. Even in those cases when one culture is clearly dominant, minority cultures will be guaranteed continued existence through a network of cultural protection regimes.[16]

Actually, we witnessed a similar attempt undertaken in 1994 when during the Parliamentary elections campaign the Agrarian-Democratic Party and the electoral block "Socialist Unity" used the slogan: "Our state is the state of all its citizens that forms the people of Moldova". The same idea was repeated in the Constitution of the Republic of Moldova adopted by the Parliament in the same year, in which the Agrarian and the Socialist Unity factions made a majority. The Constitution does not contain any references to the ethno-national identity of the state, but uses in a number of places the expression "the people of Moldova" in order to avoid any connection between the state and ethnicity.[17] The first part of Article 10 of the constitution states that "the foundation of the state is represented by the unity of the people of Moldova. The Republic of Moldova is the common homeland of all its citizens". In the same document the people of Moldova is described as "the Moldovans along with the citizens of different ethnic origin".

However the potential included in the Constitution was not implemented. While ethnic relations have greatly improved in recent years while compared to the beginning of the 1990s, the elaboration and application of a Concept of the state policy in this sphere is still pending. Discussions on the necessity to formulate a national idea, which could integrate and consolidate the society are on-going, but it looks like very few understand what the content of this idea could be. At the moment, no consensus exists within the political elite, thereofore within the intellectual one this is the most appropriate model of ethnic policy in Moldova.

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[15]   *William Safran, Non-separatist Policies Regarding Ethnic Minorities: Positive Approaches and Ambiguous Consequences, International Political Science Review, 1994, Vol. 15, No. 1, p. 74.*

[16]   *Pal Kolsto, National Minorities in the Non-Russian Soviet Successor States of the Former Soviet Union, DRU-565-FF November 1993, prepared for The Ford Foundation.*

[17]   *Tamara Caraus, Republic Moldova: identitati false, adevarate sau nationale?, Contrafort, 2002, No. 4-5 (90-91), http://www.contrafort.md/2002/90-91/338.html, pp. 3-4.*

The different groups express different views and support different models. It should be mentioned that the political nation model attracts more and more supporters.[18]

For building this model a number of conditions is required.

First, there are the "raw materials" for social peace that countries possess at the time of independence. Countries in which one group has been exploited by all others start with no scores to settle, while countries with no such clearly dominating group have an initial advantage in building political consensus. The so-called centralised politics, with two or three larger groups that continuously polarise national politics, are less stable than "dispersed" systems, in which many smaller groups are forced to seek out allies to achieve their goals. In Addition if the major ethnic groups share a language or a religion, or if they have a history of working together, exchanging their production skills and cultural traditions, they have a bridge already in place that they can use to build political co-operation.[19] The history of Moldova witnessed this kind of relationship dominating during the centuries. At the same time, there are a number of significant ethnic groups in Moldova (along with the Moldovans, which formed in 1989 64% of population, the Ukrainians (14%), the Russians (13.8%), the Gagauz (2.5%), and the Bulgarians (1.5%), and one should not forget the split within the ethnic majority into those, who share the Moldovan identity and those, who consider themselves Romanians. The latter represents yet another clear minority and adds to the ethnic diversity of the Moldovan society.

Last but not least are the important conditions of the willingness on behalf of the elites to work together, and the economic growth that decreases the inter-group competition.

A gradual creation of a political centre around some non-national goals and increasing political participation of the ethnic minorities demonstrate that Moldova could progress towards this form of real democracy. The model of a political nation requires, *inter alia,* the ability to reach mutual concessions, on behalf of both the majority and the minorities. The former refuses to privilege its application in virtue of a natural knowledge of the state language and of the mono-ethnic character of the state structures, and, similarly, in virtue of its cultural domination at the state level, in favour of the complete egalisation of opportunities for all ethnic groups of the population and their adequate representation in the government; and to enforce the ethnic elements of the state in favour of the civil ones. The minorities, in their turn, refuse to apply positive discrimination in relation to themselves with regards to functioning of languages (including official introduction of a second official language), to education (do not insist on preservation of all education in the Russian language). It is worth mentioning that we have seen some tendencies of voluntary integration of minorities, such as an increase in the number of minority children in Moldovan schools.

The other concession option with regard to the components of the political nation, taking into account the linguistic realities in Moldova and the importance of the language in mantaining ethnic identity could be bilingualism. It cannot be viewed as a concession for the majority only, as the nationalistic opposition will not fail to interpret it as, but a concession for both

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[18] *Н. Визитей. Национальная идея и проблемы гражданской идентичности, Unitatea poporului Republicii Moldova şi problema identităţii etnice, Chişinău: 2000, pp. 25-58; Алексей Тулбуре, Политическая нация – механизм социальной интеграции, Procesele integraţioniste din republica Moldova, Chişinău: 2000, pp. 103-107.*

[19] *John R. Bowen, Op. cit., p. 20.*

parties: the majority agrees to give official status to the such Russian language, while minorities make a committment to learn and use the Moldovan language. This bilingual model would be indispensable in the context of the Transnistrian conflict, due to the fact that very few Transnistrians can really use the Moldovan language for social purposes, especially in its Latin clothes.

The majority shall be interested in the above concessions in the scope of preservation and reintegration of the state, and the minorities, which through concessions could ensure more opportunities than they could obtain with confrontation. Obviously, together with agreeing on some mutual concessions, this system has to have some positive elements, which have a capacity to unite the society. These elements would have been, first of all, the introduction of the culture and history of the ethnic minorities into the official culture and history of the state; the construction of a collective common historic memory; the creation of some state symbols which will reflect the values and ideals of the entire population and the holidays, which will consolidate, but not divide the society. The current situation, when the history of an ethos that does not represent the majority of the population is taught at schools as the history of the Motherland is bizarre. This history course completely excludes the history of ethnic minorities and their positive contribution to the economic and cultural progress of the country. The formulation of the state policy in the ethnic sphere would considerably enlarge the field of possibilities for the final resolution of the Transnistrian conflict. Actually, as the latest research concludes, the creation of a political nation in Transnistria is progressing both at the level of ideology, as well as at the practical level.[20]

The suggested model, possibly, is very similar to the one that was under construction in the USSR in the form of "the Soviet People". The difference, however, is provided by the fact that in modern conditions the new political nation will be built on the basis of democracy and of the Moldovan language (or bi-lingual arrangements).

Of course, the titular majority might not wish to limit itself in favour of minorities. The minorities will respond that they have their own merits that will ensure not just equality for them, but even privileges. Both might not accept the model out of fear of desethnication or assimilation. In other words, a vicious circle would be created. And yet, one should not forget that there will also be possible an attempt of a new nationalistic mobilisation. As Mr K. Popper said, "the ethnic card is the cheapest and the most confident option for a politician who does not have anything else to say in order to attract supporters".[21]

As an argument "in favour" of the political nation model, one can use the phenomena of globalisation and European integration which transforms ethnicity into a less important issue. Further, more the building of a political nation is a very long process and one should not expect the results to appear tomorrow. Besides, it should be borne in mind that any model would differ from other similar experiences because it could be implemented with the specific and unique details, resulting from the situation in the country and limited to the level to which both the majority and the minorities are ready to make mutual concessions.

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[20]   *Fenomen Pridnestrov'a, Tiraspol: RIO PGU, 2000; Skvortsova A. The Transnistrian People: An identity of Its Own? The Moldovan Academic Review, 2002, August, No. 1, http://www.iatp.md/academicreview; Stefan Troebst, "We are Transnistrians!" (Post-)Soviet Identity Management in the Dniester Valley, Ab Imperio, 2003, No. 4; Stela Sultan, Natalia Cojocaru, Memoria colectiva si constructii identitare in Ttransnistria. Chisinau: Institutul de politici publice, 2002, http://www.ipp.md.*

[21]   *Popper K. Otkrytoe obschestvo i ego vragi, Moskva, 2002, c. 357.*

At the beginning of the process of creating a political nation in the Republic of Moldova could be the further consolidation of the Moldovan state that is the common Motherland of all its citizens. In this state all languages, religions, traditions and cultures are respected and tolerated. Such a state takes care of preservation, development and free practicing of all existing ethnic, linguistic, cultural and religious identities and creates conditions for real bilingualism and multilingualism, be it active or passive.

NATIONAL INTERESTS IN MULTI-ETHNIC SOCIETIES

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I.   Introduction

Inter-national and inter-ethnic relations were transformed after the end of the Cold War into one of the most acute political problems in many countries of Central, Eastern and South-Eastern Europe as well as in many newly independent post-Soviet states. These relations were at the origin of bloody international conflicts. Some of them have been transformed into inter-state conflicts, which are still on the international community's agenda. These inter-national and inter-ethnic problems continue to preserve considerable conflict potential and to influence seriously the political situation in different states of this region.

The acuteness of international relations in some of the post-socialist states induces an involvement of international organisations, including the Council of Europe, in their regulation in order to promote the consolidation of the commonly recognised norms of human rights in "problem-states" and on this basis to resolve conflicts emerging from inter-national and inter-ethnic contradictions.

The countries of Central and Eastern Europe, many newly independent states in the post-Soviet space initiated the process of system transformation and consolidation of new public values in their societies. The essence of this process is to overcome the incompatibility of their political, economic, social, humanitarian and cultural systems with those existing in democratic states of Western Europe.

Comparison of their reform-oriented activity with the standards of Western European democratic societies serves, on the one hand, as an important reference-point for the determination of an order of priority and the nature of the on-going transformation, on the other hand, as an objective criterion of its successful or unsuccessful development. In this particular field the Council of Europe is playing quite a constructive and politically important role.

The consolidation of the new humanitarian and other public values demands considerable time and presupposes a cardinal reconstruction of the system of political relations, of the economy, of public psychology, a change of ideological orientation, which took shape during the years of long communist rule, as well as a consolidation of the new humanitarian priorities of development.

Peculiarities of the development of individual states, the social and national-ethnic structure of their societies, religious beliefs and habits of nationalities play an important role for the pace of these reforms. The Council of Europe may improve considerably the efficiency of its activity in the promotion of democratic norms in the humanitarian sphere of life of the newly independent states if it takes these peculiarities into proper consideration.

While attempting to analyse the political mechanisms of "national interests" formation in multi-ethnic societies under conditions of different political regimes the author of this report would like to draw the attention of the participants to the peculiarities of this process in the countries of Central and Eastern Europe as well as in Russia.

II.   "National interests" and political regimes

References to the necessity to defend "national interests" continue to be the universal means of justification of actions or positions of governments, parliamentarians, leaders of political parties, businessmen and public figures. However, due to the lack of convergence of political and economic positions between different protagonists of "national interests", they understand these interests differently as a rule.

Apart from the above-mentioned "natural" reasons for such differences the important role belongs to the lack of a commonly accepted definition of "nation" as well as the absence of understanding of principal differences, if they exist, between nation and ethnic groups, between nation and state.

Under conditions of highly developed forms of democracy and civil society "national interests" must reflect the consolidated spheres of consent between major political forces, parties, groups of social-economic interests, representatives of different national-ethnic groups of a state on the basic problems of its development. "State interests" may coincide with "national interests", if mechanisms for reflection of interests of the overwhelming majority of the population, including the interests of national minorities and ethnic groups, are created and work.

In the former countries of "socialist commonwealth" the monopoly for determination of the nature of "national interests" belonged to the ruling communist parties. They formulated these interests according to their ideological considerations and priorities. Promotion of the communist reconstruction of the world through the development of the "world revolutionary process" was interpreted by them as reflecting the basic national interests of the peoples of these countries. No differences existed between national and state interests in the USSR, in the interpretation of the CPSU.

The system of total dependence of the prosperity and career growth of citizens on their loyalty to the existing regime, established by the ruling communist parties, helped these parties to thrust the official formulations of national and state interests, on the population. Any attempts to question the official formulation of these interests resulted for their authors in dissident positions and total political isolation in society. The real interests of the overwhelming majority of the population and different ethnic minorities could not find an adequate reflection in formulation of national and state interests of socialist countries due to the absence of possibilities to present them democratically at the political level.

Being led by the principle of "proletarian internationalism" ideological "shepherds" of the Soviet communism considered national identity as the relict of the capitalist society, as the manifestation of the remnants of nationalism, which hinder the creation of a new historical community, namely a soviet people.

While fighting against nationalism the communist society did not allow the hopes and attempts of peoples, national minorities and ethnic groups to have a political voice. This is the reason why the rhetoric on "national interests" of the USSR has in reality been empty propaganda talk. As far as the state interests of the Soviet Union are concerned the ideologically and politically motivated determination of their content has been usurped by state and party bureaucracy, under the full control of the ruling communist party. This had nothing to do with the process of the development of society and its nationalities.

It is hardly possible to deny that the formulation of "national interests" is closely linked to a character of political regime and systems of individual states. Their nature is dependent on the level of democratic development of a country, which in reality determines the procedures of their formation.

It is noteworthy that in those countries with long democratic traditions, multiparty political systems and a market economy, national and state interests are quite often also interpreted as identical. In contrast to the realities of the communist states "national" and "state" interests in democratic states have a real nature, which is being formed within the framework of a complicated interaction of varied political and economic forces, organisations of civil society, national and ethnic communities.

Would it be correct to insist that in the former communist states of Central and Eastern Europe as well as in the post-Soviet states the on-going transformation of the system has already resulted in the creation of necessary preconditions for reflection of the will of the majority of the population in the activity of executive and legislative powers? The affirmative answer to this question would be open to dispute.

Even if the political elite at power in these countries does have sincere political will and a thought-out strategy of system transformation it is not possible to implement the new social values into practice in a short period of time. These structures at power are able to speed up political reforms, to deepen economic transformations, to stimulate the process of inculcation of the new values into public consciousness, but it is out of their power to immediately implement the declared ideals into life.

Deep-going social-economic and political reforms are necessary to make this possible. Without them these values are more a slogan than a practical aim. Similar reforms in Western European countries went on for many decades and were the subject of acute political struggle between different political forces. No similar experiences of political reforms in the post-communist states have been accumulated.

A "big jump" policy to speed up the process of political, economic and social development, which have quite a considerable momentum in the countries of Central and Eastern Europe, is doomed to failure. The long- and middle-term character of the process of political, economic and social transformation creates natural limits for any attempts to accelerate artificially the process of social reforms in a given direction.

It is obvious that under the conditions of undeveloped forms of civil society the right to represent and to interpret state interests finds itself in the hands of those social groups and elites, which at that particular moment are in power, i.e. in the hands of state bureaucracy.

Underdevelopment of institutions of civil society, the absence of political parties, representing sustainable interests of emerging social-economic groups, provides state bureaucracy in the countries of Central and Eastern Europe with the opportunity to act in the name of a state and to present its own interests as similar not only to state interests but also to all-national interests.

In this connection the possibility for individual groups of political elites and oligarchs to usurp the state power and under conditions of non-existent democratic control to determine the nature of both state and national interests could be imagined. In these circumstances the references of different state authorities that they act in the national interests cannot be perceived as fully correct.

Since the beginning of the system transformation in many countries of Central and Eastern Europe a large number of political organisations and groupings, claiming to be political parties, has emerged and started to act. But they have still a long way to go to become political parties in reality. There are many political parties, but plural multiparty systems are still in the making.

Until a mechanism of transformation of the will of the population through a system of political parties and representative bodies to the executive state power becomes fully operational, it is hardly correct to talk about the similarity of national and state interests in the multi-ethnic countries of Central and Eastern Europe.

III.   State of law and legal nihilism

The legislative practice of the one party communist society in the former USSR and other socialist countries differed radically from the legislative practice of multiparty Western European democratic societies.

In communist societies the legislation was formed by elected representatives of the only governmental party under the decisive influence of its ideological postulates. In the majority such laws were aimed at creating preconditions for the successful construction of the communist society and to inculcate its principles into public consciousness and political practice.

As a result the legislation of the communist societies could not reflect the interests and aspirations of national minorities. This is the reason why the existing laws were perceived by representatives of national minorities as artificial, conferred from above. Law enforcing authorities, while trying to implement such legislation gave rise to hostility and non-conformism among considerable groups of the population, who did not have any enthusiasm for assisting these authorities in their activity. These were the roots of the psychology and practice of legal nihilism which penetrated all spheres of the communist society, including national and religious minorities.

As a result of such a situation the representatives of these minorities considered exactly their ethnic and religious communities, not as a state but as the main protagonist of their interests. The high level of dependence and attachment of individual members to such communities restricted their social and labour mobility, hindered their perception of themselves as free individuals and as citizens of a country, obliged to follow first and foremost the state legislation rather than the customs of their family or tribe. The family and tribe links

continued to be vital and constituted in practice one of the most important criteria of social relations.

Ideological pluralism emerges in a society with the establishment of different groups of social-economic interests. These groups are being formed within the framework of market reforms in the post-communist countries and constitute the outcome of the social differentiation of society, which accompanies these reforms. The emergence of such groups and the understanding by its members as a communality of their social-economic interests gives birth to the need to establish an organisation for the political lobbying of these interests, namely – a political party with clearcut ideological positions and programmes as well as organisations of civil society sharing these positions and programmes. It can hardly be said that this process in countries of Central, Eastern and South-Eastern Europe as well as in the newly independent post-Soviet states is close to an end.

The incompleteness of the reform process and system transformation in many multi-ethnic states of Central, Eastern and South-Eastern Europe does not allow quite large groups of the population, including ethnic communities, to incite legislative and executive powers to take their basic interests into proper account in practical activity.

It is not fully correct to insist that this situation originates in one or another aspect of governmental policy, in a situation with mass media, in the legal sphere or in other separate factors preventing democratic voting of the population. Of course, these factors do influence the situation. But the main general reason consists in the lack of a system of classical pluralistic democracy, which is still under construction in the countries concerned.

Under the conditions of such a democracy a competition of political parties representing sustainable groups of economic and other interests is accompanied by the establishment of a strict mutual control over the activity of state authorities on different levels as well as over rival political parties.

In a multi-party democratic society the legislative process differs considerably from the practice of the former communist states. Political parties in the capacity of political lobby of certain interest groups are interested in having their representatives in parliaments. The presence of such representatives strengthens the prestige of a legislative body, changes the character of laws adopted by it, creates preconditions for the emergence of a state of law for the formation of governments supported by the parliamentary majority, and responsible not only to a head of a state but also to the political forces representing in a parliament the interests of the major part of the population.

In these representative bodies of legislative powers, in contrast to communist societies, the interests of the different groups of the population are carefully weighed and reflected in a compromise form in accepted laws. The overwhelming majority of the population considers these laws and law-enforcing authorities as serving public interest and is ready not only to follow them but also to assist in implementing such legislation. This conscious support and the interest of the population are the major preconditions for the emergence and maintenance of a state based on the rule of law.

As the instrument for combining different interests in a society, a democratic state with multi-ethnic communities is able to preserve its integrity only in the case when representatives of national minorities and ethnic groups consider this state as a mouthpiece of their common

wealth and have a guaranteed right to preserve their cultural originality and to be represented in its political bodies. According to Mr Urs Altermatt "If a state does respect a cultural diversity there is no need to classify nationalities by ethnical criteria and even to establish new smaller national states."[1] In other words, if the aspirations and hopes of ethnic minorities are reflected in a compromise form in the formulation of national interests there is no reason for inspirations to maintain their ethnic specificity.

IV.   Between a state and a community

After the collapse of the USSR the interests of its national minorities and ethnic communities, which had previously been suppressed, broke away, stated themselves openly, acquired political dimensions and demanded their integration into the common value system of the newly established states. In many cases the renewed nationalism started to threaten the integrity of the new states when these interests were not present in political practice.

As a rule, while talking about inter-national or inter-ethnic relations in a society, one takes as a point of departure some commonly accepted forms of their existence, expressed in a constitutional organisation of a state, in its legislation, social structure, citizenship etc.

In contrast to those states whose population was mainly formed by immigrants (USA, Canada, Australia, New Zealand) the contemporary national states of Western Europe, as Mr Urs Altermatt emphasised, emerged from already existing political communities, which constituted units of free and competent citizens, whose political citizenship was liberated from their cultural and ethnic identity.

The necessity to classify nationalities according to ethnic criteria emerges in those cases when a state is not able to express the common interests of the multi-ethnic community of its population. This is exactly the case in many post-socialist countries.

Such a situation promotes the preservation and conservation of traditional initial ties within national minorities and ethnic communities, namely those inside families, tribes, religious groups, etc., in which they continue to see the reliable and stable ground for their lives. These ethnic communities are closely interconnected, unified by "blood ties", preserving sustainable family-tribe relations and specific forms of public regulations based on customs and habits.

Until now they preserve blood feud, the tradition to take hostages and other forms of public relations within which a person is considered as the property of a family or a tribe, his right to be an independent individual following the existing legislation of a state is denied. In collisions between the legislation of a state and the customs of a family or a tribe the preference is quite often given to customs, because members of such families and tribes consider themselves not to be an integral part of a unified people, but as belonging to its different communities.

As was correctly stated by Mr Armen Geivandov in his article in "Nezavisimaya Gazeta" on 12 March 2003, "in a society, which has not yet overcome family-like and tribe-like organisation, there is no conception of unified legality, the punishment of criminals is considered as a private business of an interested side and public order is perceived as parity

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[1]   The Russian edition of "Das Fanal von Sarajevo. Ethnonationalismus in Europa", p. 120 by Mr Urs Altermatt.

of conflicting interests of communities". As a rule, on territories where parcelling between families and tribes is still kept, as is the case in Afghanistan and the North Caucasus, there is hardly any state regulation of full value.

Communal forms of life organisation, where the main instrument of regulation continues to be either custom or religious tenets, were and still are typical also for those groups of the population which adhere to different religious beliefs (Muslims, old-believers[2] and other similar groups).

While considering eternal life as the chief value, religious thinking considers as the criterion of rights and freedoms of a human being to be his behaviour in life, which leads him towards eternal good and happiness in eternal life. According to Mr. A. B. Polosin, "the limits of rights and freedoms of a personality are determined by the means necessary to achieve happiness in eternal life."[3] This is why the goods of earthly life have, in his opinion, a relative character.

The contradictions between Islam and contemporary liberalism express themselves in the different approaches to the determination of limits for human freedom, to a role of state or society in establishing these limits, and to the right of a state or a society to demand an observance of these limits. As is well known, religious tenets are undivided from the legal and political norms of Islam and the entire life of Muslims in one or another sense is oriented to observe the demands of the Koran.

Reaction to the dominance of western standards in all spheres of public life sharpens. Opinions of western and other civilisations on human rights, models of democracy, relations between sexes and the position of women, on the role of religion and separation of the church from the state are very often diametrically different. Contemporary western civilisation cannot recognise and accept the inequality of men and women or physical punishment because these customs and habits contradict the fundamental principles of European Enlightenment.[4]

The question is whether the customs and habits of such closed national, ethnic or religious communities, on the one hand, and the legislation of contemporary states, on the other, are compatible enough to co-exist peacefully? How can these sharp differences be bridged?

The United States which are rightly proud of their democratic traditions and achievements are being called a "melting–pot" where different customs, habits, styles of living, religious beliefs of representatives of different ethnic groups are "melted". All of them are being transformed into some unified American culture and nation, inside which ethno-cultural differences are smoothed out.

Although there are no political, legal and other obstacles for the integration of other immigrants or the indigenous population into the public, economic, political and cultural life of the USA (Canada, Australia, New Zealand, France, Germany, the United Kingdom and others) full integration does not occur in these countries. Many Indian reservations continue

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[2]   *One of the branches of the orthodox church in Russia.*

[3]   *"Nezavisimaya Gazeta", 5.03.2003.*

[4]   *The Russian edition of "Das Fanal von Sarajevo. Ethnonationalismus in Europa", pp. 126-127 by Mr Urs Altermatt.*

to exist and its members consider that the conditions of life for them in these reservations are more comfortable, than in the outside world.

In many countries the multi-ethnic character of society has been formed by immigrants who, while continuing to keep ties with former co-citizens, appear in society as free citizens of the host state. In these countries the concepts of nation and state are often seen as identical.

In contrast to America, where immigrants mix together and live on different territories, new-comers to Europe are confronted with a population, which is permanently living on its own historical territory and wants to continue to do so. If these newcomers do not want or are unable to be integrated in a new society their ethnic groups tend to be transformed into a new "edition" of closed ethnic communities, which are not always ready to put the legislation of the host country over the interests of their respective communities.

It is more or less clear that such communities, on the one hand, and individual people with human rights and freedoms, on the other, are hardly compatible. They are antagonists, according to Mr Urs Altermatt. If people show activity, community is growing apart and disintegrating. Any attempts and efforts to ensure human rights inside such communities are correctly perceived by their members and leaders as directed against their life style and human values, which are considered as their "national interests" or as their collective human rights.

The possible consequences of political pressure on them in favour of maintaining the ideals and values of society in the developed part of the world are hardly predictable. What would have happened with many tribes in Africa, in the Middle East, in many Asian and Latin American countries, if the internationally accepted norms of human rights had been introduced to them rapidly and decisively? One may try to introduce immediately modern understanding of human rights to Muslim states and families, for example, to demand the equality of men and women. There is no doubt that this could destroy the traditional life order, cause a disintegration of existing communities and even bloodshed. This kind of demand does not always play a constructive and positive role in the development of such states. This does not mean that these demands should be delayed and forgotten. It is more important to diversify these demands and apply them to the specific situation of individual states.

At the same time, different international campaigns to defend the human rights of national, ethnic and religious minorities are quite often used by representatives of the above-mentioned closed communities as justification for their right to avoid the necessity to respect the legislation of a state and to preserve instead their right to follow the customs and habits of their families, tribes, etc. It is quite understandable that contemporary states are not eager to allow this.

One of the ways to resolve the obvious conflicting approaches is to promote the gradual transformation of this traditional social network of patriarchal relations inside closed communities by promoting the industrial, economic, social and cultural development of the territories that these communities are living on. This shall inevitably result in the process of individualisation, increase the social and labour mobility of members of these closed communities and promote an integration of them into broader national communities sharing common interests and values with other peoples of a given state or country.

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There are many objective difficulties in the countries of Central and Eastern Europe in transition in terms of their efforts to introduce the new values of society, to construct multi-party political systems and pluralist democracy and to create a market economy with a social profile.

The formation of national interests in these countries is a highly complicated and contradictory political, economic, social and even spiritual process which has its natural political limits. Ideological campaigns and pressures aimed at stimulating reforms are of great importance but they cannot substitute more efficient assistance to this process which lies in the co-ordination of efforts of states and civil society organisations to resolve the concrete problems of the transformation of these countries.

IDENTITY POLITICS IN MULTI-NATION STATES

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Some countries around the world - a very few - can accurately be called "mono-national". Iceland and Portugal are perhaps the clearest cases in Europe. In these countries, the boundaries of the state more or less correspond with those of the nation, at least in the sense that there are no other "nations within" - i.e., no historic groups living within the territory of the state that view themselves as a distinct nation, and that view some part of the state territory as their national homeland.

Such mono-national states are very rare. Most countries around the word are "multi-national". They contain one or more nations within, and, as a result, typically confront the phenomenon of competing nationalisms, and of competing nation-building projects.

The presence of "nations within" generates a very distinctive and complex form of identity politics. In mono-national states, like Portugal, there is no dispute that the state is the rightful embodiment of the nation's self-determination, and that the state should express and promote the nation's identity and interests. There are of course disagreements about how to understand the nation's identity, and about how to exercise its self-determination. In Portugal, for example, there have been deep divisions between conservatives and reformers about how to characterise the nation. Conservatives have defined the Portuguese nation in terms of Catholicism and ethnic purity, and have supported military dictatorships as a way of protecting the nation from internal or external forces that are seen as threatening the nation. Reformers, by contrast, have defined the Portuguese nation as secular, modern and democratic, and as open to the world. These debates within mono-national states between conservatives and reformers typically focus on a range of familiar controversies: the role of religion in public life; rights of political dissent; equality for women; tolerance for homosexuality; acceptance of refugees and immigrants; participation in international institutions; and so on.

So identity politics in mono-national states can be hotly contested. Indeed, debates between conservatives and reformers within a national group can lead to civil war or revolution (as it did in Portugal). Living in a mono-national state is no guarantee of peace and stability or of harmony.

Identity politics in multination states, however, involve a whole other layer of complexity. In the mono-national case, while conservatives and reformers disagree about the nature of their shared national identity, they at least agree that the state is the appropriate forum for resolving such debates, and that the state should express and protect the national identity (however that comes to be defined). In multination states, by contrast, we not only have disputes within each national group about how to define its national identity; we also have disputes about the relationship between the nation(s) and the state. Which national identities (if any) should the state express and protect?

There is a range of options. The first option is for the state to express the national identity of the dominant national group, while attempting to assimilate other national groups or at least relegating them to the private sphere. This strategy, in effect, involves attempting to turn a multination state into a mono-national state.

Until quite recently, this has been the dominant approach adopted by most Western countries. Even though mono-national states are in fact a rarity, much Western political thought has been premised on the idea that the state should be (or become) a "nation-state", and that there is something "abnormal" about the presence of nations within. Virtually every Western state, with the exception of Switzerland, has at one time or another tried to turn itself into a mono-national state, by assimilating or excluding its nations within.

The adoption of this first strategy has been justified on a number of grounds. Imposing the majority's national identity on national minorities has been said to be necessary for political stability, or because minorities were disloyal, and hence a security threat. Or minorities were said to culturally backward, so that assimilation into the dominant group was in their own interest. In some cases, the state simply denied that such national minorities existed (e.g. Greece's denial that there is a Macedonian minority), or argued that they were really members of the majority group who somehow lost track of their "true" identity (e.g. Bulgaria's claim that the Turkish minority are really Slavs). Or it was argued that the minority's claims to political autonomy and cultural survival were already satisfied by the existence of a kin-state nearby. In many cases, the real justification was simply a desire to strip the minority of its lands and resources, so as to enrich the dominant group. (This was clearly a powerful motive behind the treatment of indigenous peoples in the Americas).

Whatever the official rationale, most Western states have historically attempted to impose the majority's national identity through a variety of nation-building policies. These include adopting citizenship policies that privilege members of the dominant national group, and that make knowledge of the majority language a condition of naturalization; the centralizing of political power to remove local autonomy from minority groups; the adoption of language laws that require all public offices (and all public servants) to work in the majority's language; the creation of national media, symbols, holidays and museums that diffuse the majority's language and culture; the adoption of a national education policy based on the majority's language and culture; compulsory military service (in the majority's language), and so on. All of these policies were intended to encourage or compel minorities to assimilate if they wished to avoid political and economic marginalisation.

This strategy was quite successful in some countries in the 19th-century. France is a paradigm case. Its nation-building policies succeeded in effectively assimilating most of its once-sizeable national minorities, including the Basques, Bretons, Occitans, Catalans, and so on. The Corsicans were the only group in France that successfully resisted assimilation. A similar story could be told about the success of nation-building in nineteenth-century Italy (with the exception of the German-speakers in South Tyrol).

However, this strategy stopped working in the twentieth-century. National minorities have become less willing to accept assimilation, and more capable of resisting it. Some commentators have even argued that no sizeable national minority has been assimilated in the twentieth century. That may be an exaggeration, but it is certainly true that national minorities in the past century have proven remarkably difficult to assimilate. This is true not

just of very large and powerful minority groups, such as the Hungarians in Romania or the Catalans in Spain, but even of much smaller groups, such as many indigenous peoples in the Americas, or indeed the Gagauz in Moldova.

It is an interesting question why the French model of homogenous nation-building has failed in the twentieth century. One factor is that minorities today, compared to the nineteenth-century, are more likely to have an educated leadership and to have a pre-existing institutional infrastructure. They are also more likely to have access to international advocacy networks that can mobilize international public opinion. More generally, the entire international context has changed. No one complained in the nineteenth century when France adopted harshly coercive policies against its minorities (e.g. banning all publications in minority languages). Today, such coercive nation-building policies would disqualify a country from admission to European organizations. In short, states today are more constrained in the tools of nation-building available to them; and minorities have stronger internal resources and external allies to defend themselves.[1]

Whatever the explanation, it is clear that the strategy of assimilationist nation-building is now strongly resisted. Under these circumstances, adopting this strategy is unlikely to generate either stability or security. On the contrary, it generates "reactive nationalisms", in which minorities fight, sometimes violently, to maintain their languages, cultures and self-governing institutions. This may take the form, as in Moldova, of extralegal assertions of substate autonomy or even secession.[2]

Confronted with reactive minority nationalisms, states face a choice of either escalating the conflict or negotiating a settlement that accommodates substate nationalisms. Confronted with this choice, most Western countries in the 20th-century have chosen accommodation, and hence recognition of the fact that they are (and will remain) a multi-nation state.

This then is the second strategy: the state can attempt to give equal public recognition to the identities of all of its nations within, majority and minority. This strategy involves state promotion of multiple national identities.

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[1]   *David Laitin provides a nice example of how our views regarding state coercion have changed over the centuries: "It is said that in Spain during the Inquisition gypsies who were found guilty of speaking their own language had their tongues cut out. With policies of this sort, it is not difficult to understand why it was possible, a few centuries later, to legislate Castilian as the sole official language. But when Emperor Haile Selassie of Ethiopia pressed for policies promoting Amharic, infinitely more benign than those of the Inquisition, speakers of Tigray, Oromo, and Somali claimed that their groups were being oppressed, and the international community was outraged. Nation-building policies available to monarchs in the early modern period are not available to leaders of new states today" (Language Repertoires and State Construction in Africa, Cambridge University Press, Cambridge, 1992, p. xi). Elsewhere, Laitin notes that the linguistic assimilation of national minorities is unlikely to occur after the start of mass literacy (Identity in Formation: The Russian-Speaking Populations in the Near Abroad, Cornell University Press, Ithaca, p. 42).*

[2]   *For an interpretation of Moldova's conflicts as involving reactive minority nationalism generated by fears about assimilationist state nation-building, see J. Chinn and S. Roper, "Ethnic Mobilisation and Reactive Nationalism: The Case of Moldova", Nationalities Papers, Vol. 23/2 (1995), pp. 291-326; and Paula Thompson, "The Gagauz in Moldova and Their Road to Autonomy", in Magda Opalski (ed) Managing Diversity in Plural Societies: Minorities, Migration and Nation-Building in Post-Communist Europe (Forum Eastern Europe, Ottawa, 1998), pp. 128-47. Charles King argues that this "reactive nationalism" model, while appropriate for the Gagauz, is less accurate as an account of the origins of the Transnistria conflict (The Moldovans: Romania, Russia and the Politics of Culture, Hoover Press, Stanford, 2000).*

This strategy is typically institutionalized in some form of what we can call "multination federalism": that is, creating a federal or quasi-federal subunit in which the minority group forms a local majority, and so can exercise meaningful forms of self-government. Moreover, the group's language is typically recognized as an official state language, at least within their federal subunit, and perhaps throughout the country as a whole.[3]

At the beginning of the twentieth-century, only Switzerland and Canada had adopted this combination of territorial autonomy and official language status for substate national groups. Since then, however, virtually all Western democracies that contain sizeable substate nationalist movements have moved in this direction. The list includes the adoption of autonomy for the Swedish-speaking Aland Islands in Finland after the First World War, autonomy for South Tyrol and Puerto Rico after the Second World War, federal autonomy for Catalonia and the Basque Country in Spain in the 1970s, for Flanders in the 1980s, and most recently for Scotland and Wales in the 1990s.

Amongst the Western democracies with a sizeable national minority, only France is an exception to this trend, in its refusal to grant autonomy to its main substate nationalist group in Corsica. However, legislation was recently adopted to accord autonomy to Corsica, and France too is likely to join the bandwagon.

So this second strategy - of recognizing the diversity of pre-existing national identities through some form of multinational federalism - has become the dominant approach today in the Western democracies. It has not, however, been embraced in much of post-Communist Europe. On the contrary, it has strongly been resisted. As Communism collapsed, most countries in the region embarked on majority nation-building programs similar to (and partially modelled on) the 19th-century French model, restricting minority language rights and abolishing minority autonomies.[4]

Predictably, as in the West, this has generated reactive minority nationalisms. However, unlike in the West, some post-Communist countries responded to this reactive nationalism not by accommodation, but by escalating the conflict. The dream of becoming a mono-national state has been so powerful that states have resorted to force, even civil war, rather than accept claims for minority self-government.

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[3]   *It is important to distinguish such "multination" federations from other federal systems where internal subunits are not designed to enable minority self-government, such as the continental United States, Germany, Australia, and Brazil. In these countries, none of the subunits was designed to enable a national minority to exercise self-government over its traditional territory, although that was certainly possible in the American case. Indeed, in the US, internal boundaries were drawn in such a way as to precisely prevent the possibility of a minority-dominated subunit. For more on the difference between multination federalism and other forms of federalism, see my "Minority Nationalism and Multination Federalism", in* Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship *(Oxford University Press, 2001), chap. 5.*

[4]   *Hence the paradox noted by Ray Taras that formerly monolingual states in the West are moving towards greater respect for diversity, whereas formerly multilingual countries in the Soviet Union are "pressing ahead with unilingualism" (Taras, "Nations and Language-Building: Old Theories, Contemporary Cases",* Nationalism and Ethnic Politics, *Vol. 4/3, 1998, p. 79). Post-Communist Russia is the main exception to this generalization, since it has consistently defined itself as a multination federation. For speculation about why multination federalism has been more strongly resisted in post-communist Europe than the West, see my "Western Political Theory and Ethnic Relations in Eastern Europe" in* Can Liberal Pluralism be Exported? *(Oxford University Press, 2001), translated into Romanian in a special issue of* Polis: Revista de Stiinte Politice *Vol. 7/2 (2000), pp. 3-150. The answer, I think, has less to do with ancient ethnic hatreds, and more to do with contemporary security concerns, relating to the unstable regional context and the perceived predatory role of kin-states and regional powers.*

But this escalation has generally failed to achieve its purpose. With the exception of Krajina - where the Croat Army succeeded in expelling the Serbian minority, thereby eliminating the potential for a future autonomy claim - none of the minority nationalist movements in the region have been either defeated or silenced.

As a result, several countries in the region are (reluctantly) moving towards the second strategy - i.e., the accommodation of the `nations within', and acceptance of the reality that they are multination states. This is a slow and painful process (as indeed it has been in the West), moving in fits and starts around the region, with renewed interest in ideas of multilingualism and various forms from minority autonomy. We see this trend from Ukraine through to "The former Yugoslav Republic of Macedonia", including Moldova.

However, this second strategy, while clearly the trend amongst democratic states, has its own difficulties. There are inevitably disagreements about the scope of minority language rights, and about the boundaries of minority autonomies, and about the rights of "internal minorities". In my view, the Western experience shows that these issues of institutional design can be managed democratically.

However, even if we resolve these complex issues of institutional design, there remain unresolved issues about identities within such multination states. One could argue that the second strategy, with its focus on affirming pre-existing national identities, is insufficient on its own as an approach to identity. A multination country that recognizes its distinct national groups will only be stable if it also nurtures the development of a supranational identity that the members of the distinct national groups can all embrace and identify with.

This suggests that the second strategy must be supplemented with a third strategy, in which the state attempts to construct and promote a new supra-national or pan-state identity that transcends the multiplicity of existing national identities. In most cases, this third strategy supplements the second, so that the state both protects a diversity of existing national identities while simultaneously promoting a new supranational identity. In Belgium, for example, the state promotes the identities of its Flemish, Walloon and German national groups, through its distinctive form of multination federalism (strategy 2), while simultaneously promoting a supranational "Belgian" identity that transcends these national divisions (strategy 3). A less successful example is the former Yugoslavia, which both recognized and protected a range of national identities (Serb, Croat, Slovenian, etc), while simultaneously promoting a new supranational "Yugoslav" identity.

In other cases. however, the third strategy actually takes the place of the second strategy; that is, the new supranational identity is intended to ultimately displace or erode pre-existing national identities. This is perhaps clearest in the case of many African and Asian countries after decolonisation. In Mozambique, for example, the FRELIMO movement adopted the slogan "Kill the tribe to build the nation". As Okoh notes, this could have been "the credo of almost all African rules and intellectuals" in the period of decolonization.[5] This slogan was supposed to apply to all "tribes", including the largest, not just to the smaller tribes, and hence was not simply a cover for the dominant group to assimilate minority groups. On the contrary, all groups would be melted into a new state identity. This was reflected, for

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[5]   Peter Okoh, "The Nation-state and ethnopolitical conflict in Nigeria" in Gunther Bachler (ed). _Federalism Against Ethnicity_ (Verlag Ruegger, Zurich, 1997), p. 150.

example, in the fact that many African countries adopted the language of the European colonizers as their official language, rather than any local languages. Dominant groups as much as minority groups were expected to give up their own languages and cultures to help build the new states whose boundaries were arbitrarily drawn up by former colonial powers. In Europe, however, the strategy of promoting a new common supranational identity is typically seen as supplementing, rather than replacing, the affirmation of distinct national identities.

But what is the nature or basis for this new supranational identity to be promoted by the state? This is not an easy question to answer. Indeed, this is one of the key unresolved problems of identity politics in democratic multination states. There is a growing consensus that assimilationist majority nation-building won't work, and that states must accommodate their nations within. There is also a growing consensus that the state must promote a pan-state supranational identity, and that this cannot replace the affirmation of pre-existing national identities. So there is growing consensus on many issues relating to identity politics in multination states. But there is no consensus on the nature or defining characteristics of this supranational identity.

More specifically, there is a common tendency for national minorities to distrust state policies aimed at defining and promoting this supranational identity. Why? One reason, I believe, is that there is a tendency for the third strategy to revert back to the first: that is, there is a tendency for dominant groups to define this new supranational identity in ways that privilege their own particular national identities and interests. From the point of view of minorities, therefore, strategy 3 can sometimes look suspiciously like an updated version of strategy 1 of assimilationist nation-building.

In the former Soviet Union, for example, the state criticized earlier attempts under the tsarist regime to Russify various national groups. So it officially repudiated the first strategy of assimilationist nation-building. It adopted instead the second strategy of recognizing various national identities, through an elaborate scheme of multination federalism. But it also attempted to promote a supranational "Soviet" identity that was supposed to transcend these national divisions. This new Soviet identity was supposed to be impartial between the various national groups, such as the Russians, other Slavic nations, the Baltic nations, the Central Asian Muslim nations, and so on.

In reality, however, this supposedly supranational Soviet identity was often perceived by non-Russian national groups as simply a covert form of Russification - an updated form of the tsarist practice of assimilation. State policies aimed at promoting this new Soviet identity encouraged Russians to move freely throughout the territory of the Soviet Union, and to expect a full set of Russian-language institutions and services wherever they moved. At one point in the 1920s, Russian settlers in Central Asia were defined as a `minority', but after 1933, this idea was rejected, and Russians were not supposed to feel like a minority anywhere in the Soviet Union. In every republic of the Soviet Union, they were told that they could live and work in their own institutions, schools, media and so on. This was described and justified, not as a form of Russian imperialism, but rather as a new Soviet internationalism, according to which Russians had the right to be monolingual throughout the Soviet Union, to travel freely, and to take new jobs anywhere without losing access to Russian schools or

media.[6] Needless to say, no other national group in the former Soviet Union had this privilege of taking their language rights with them as they moved throughout the Soviet Union. Ukrainians who left Ukraine for Russia had no right to Ukrainian language schools. From the point of view of many minorities, therefore, state policies of promoting the new Soviet identity were uncomfortably close to the older policies of Russification that the Soviet Union officially repudiated.

This is not just an idiosyncratic feature of the Soviet experience. We see similar disputes in several Western multination states. In Britain, for example, being "British" is supposed to be a supranational identity that transcends the divisions between the English majority nation and the Welsh, Scottish and Irish Catholic national minorities. Many members of these national minorities, however, view state promotion of "Britishness" as simply a cover for state promotion of Englishness.[7]

There is indeed some evidence for this complaint. Surveys show that most members of the English majority do not distinguish between their national "English" and their supranational "British" identities: they simply project the characteristics of the former onto the latter, and therefore expect that state promotion of the latter will involve state promotion of the former.

So too in Spain. Members of the dominant Castilian group do not distinguish between their national Castilian identity and their allegedly supranational Spanish identity, and assume that state promotion of the latter will involve state promotion of the former. Policies that promote Castilian interests - such as privileging the use of the Castilian language, or centralizing power in Madrid - are defended as strengthening a supranational "Spanish" identity.

Even in Canada, which has a long tradition of defining itself as a bi-national French-English state, there are many subtle and less-subtle ways in which the dominant Anglophone group assumes that promoting "Canadianness" involves promoting their particular identities and interests.[8]

This is a chronic danger in most multination states: the dominant group tends to assume that promoting a supranational pan-state identity will involve promoting their particular national identities.[9] I should emphasize that the problem in many of these cases is not deliberate or wilful deception. For example, the problem in Britain is not that the English majority deliberately promotes ideas of "Britishness" as a rhetorical tool to cover up their real goal of promoting Englishness. On the contrary, the English have little sense of "Englishness", and tend not to identify themselves in this way. They find it more satisfying to simply think of

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[6]   See Laitin, *Identity in Formation*, pp. 69, 93. *This of course entailed that the local nationalities would have to become bilingual in order to interact with this increasing Russian presence. Hence the popular joke amongst the Balts that for the Soviets, someone who spoke two languages was a `nationalist', while people who spoke only one language (Russian) were "internationalist".*

[7]   *For a trivial example, the BBC is said to privilege English sports (e.g., cricket) over Celtic sports (e.g., rugby) in its reporting.*

[8]   *I discuss the various ways that English-Canadian views of the allegedly supranational Canadian identity in fact reflect their own national interests and identities in* Finding Our Way: Rethinking Ethnocultural Relations in Canada *(Oxford University Press, 1998), chap. 10.*

[9]   *For a good discussion of this dynamic, see Philip Resnick, "Majority Nationalities within Multi-National States: The Challenge of Identity", paper prepared for the conference on "Mythologies of Identity and Contexts of Power", organised by the Instituto de Filosofia, Consejo Superior de Investigaciones Científicas, Madrid, 28 October 1998.*

themselves as "British". This makes them feel more progressive or cosmopolitan, as if they have moved beyond the need to identify with a particular narrow ethno-cultural group. So promoting "Britishness" is not, for them, a mere ploy or strategy. They genuinely identify themselves as British, and prefer this to a narrower English self-identity. So too with Castilians in Spain, who prefer to think of themselves as Spanish than as Castilian, or with Anglophones in Canada, who prefer to think of themselves as simply "Canadian" rather than "English-Canadian".

The problem, then, is not that ideas of Britishness or Spanishness are an elaborate hoax invented by members of the dominant group solely to cover up their more fundamental identities as English or Castilian. The problem, rather, is that members of the dominant group simply do not take the time to think about the ways in which a supra-national British or Spanish identity must (if it is to be genuinely supra-national) be distinguished from the particularities of their English/Castilian heritage, and must make room for the legitimate interests of other groups.

Put another way, the problem isn't the conscious manipulation of supranational identities, but precisely the lack of conscious attention to the issue. Members of dominant groups unconsciously assume that anything that strengthens their attachment to the state as a whole should be seen as promoting a supranational identity. Dominant groups assume that enhancing their mobility throughout the country, or enhancing the role of their language, or centralizing power in forums where they form a majority, all qualify as ways of promoting and strengthening a common supranational identity. In reality, of course, these policies are deeply biased in favour of the interests of the dominant group.

I do not think that these problems are insurmountable. Amongst the central cases of multination federalism in the West, I think that Belgium and Switzerland have had more success constructing genuinely common supranational identities, as compared to Britain, Spain or Canada, where the allegedly common supranational identities are still unduly defined by the dominant groups' interests and identities. But in all of these countries, the shape of this supranational identity, and its relation to pre-existing national identities, remains a source of ongoing debate. Several of the other reports prepared for this seminar provide concrete illustrations of how these tensions play out in various European countries.

In summary, then, identity politics in multination states exhibit some fairly common patterns. Older policies of assimilationist majority nation-building are being gradually replaced with newer ideas of the accommodation of the diversity of pre-existing national identities, supplemented with the promotion of new common supranational identities. But movement along this line is neither easy nor inevitable. The declared policy of a state may differ considerably from what it is actually doing on the ground. A country may claim that it is pursuing the second or third option, while in fact engaging in the first. And even good-faith efforts at promoting a new common identity may in fact generate fears of assimilation. Given the complexity of these issues, we should not expect identity politics in multination states to fade away anytime soon.[10]

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[10]   For a good discussion, see Alain Gagnon and James Tully (eds), _Multinational Democracies_ (Cambridge University Press, 2002).

THE STATE IN A POLYETHNIC SOCIETY:
FROM HISTORY OF PERSPECTIVE FOR MOLDOVA

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The years of independence of the Republic of Moldova are a short but difficult period in its history, which is very instructive for its citizens but rather problematic for the global society. Within a dozen years hundreds of thousands of people in our country have suffered dramatic shocks: the disintegration of the great empire, senseless bloodshed and wild hysteria of the parties, ruination of illusions, social apathy. It comes as no surprise, under the conditions of the political disintegration of its territories and the total corruption of the so-called elite, that the image of the Moldovan state remains absolutely unclear. The country will not manage to settle any of its problems as its inhabitants do not perceive themselves as an integrity and Moldova's problems as their common problems. The consolidation of society called **"gaining one's Motherland"** – this is what the current president of Moldova sees as a way out from the long-standing crisis. Vladimir Voronin said: "to gain one's Motherland is to gain equal perspective for all citizens of our country. This is the only way we can mobilise our cultural legacy and the experience of all the people who live in Moldova for the constructive development of our integral state".

Obviously, the Carpathian-Dniester area occupies only a small territory in the Old World, but it has a rich variety of natural resources, this fact determined its attractiveness for many peoples with totally different ways of adapting to the environment. Though for thousands of years the area from the Carpathian ridge to the Dniester's banks became the arena for military rivalry on countless occasions, the winners have never been able to fully exploit the conquered lands. The social face of the region has always been as varied as its nature. The history of statehood development in such an ethnic-cultural environment requires a special study.

To my mind, it is reasonable to divide the history of our state into five periods:

I.　　1359-1538: Independent development of the feudal Moldavian state between the Carpathians and the Dniester and early limitation of its sovereignty;
II.　　1538-1711: The growth of dependence on the Ottoman Empire and gradual degradation of Moldavian state structures;
III.　　1711-1861: Phanariotic rule and the end of Moldavian statehood;
IV.　　1861-1991: The latent existence of ideas of Moldavian state and attempts to regenerate it;
V.　　since 1991: The development of the Republic of Moldova as a new independent state.

I.　　A number of historic turns in the development of the region had major significance for the Moldavian lands in XIII-XVI cc. The country initially had to survive the rule of the Khans of the Golden Horde. It was only in the second half of XIV century, with the gradual liquidation of the Golden Horde's rule, that Moldavia began to manifest itself on the

international arena. A series of military and political actions by the Turks-Ottomans followed, forcing Suceava's rulers to make concessions, which led to the loss of independence in 1538.

If one is to speak about state interaction in that era, one must mention Lithuania, Poland, Hungary, Wallachia, Byzantium, Genoa, Crimean Khanate. Greeks, Italians, Turks, Slavs, Hungarians, Jews and Armenians made important contributions to the country's history. The religious composition of peoples who met on this land is also vared. Besides Christians of several confessions, there were also Muslims, Judaists, and pagans. As regards the economic and cultural facet, the population consisted of settled farmers and livestock breeders, mountain shepherds, nomadic livestock breeders, craftsmen and merchants. Among the mentioned categories there were representatives of different traditions. The particular features of private and state exploitation of the settled rural population overlapped with the preserved communal rules, often characterised by heterogeneous origin. They coexisted with patriarchal and tribal laws of nomads, and slave-owning was rather common. Italians brought early elements of capitalism to Moldavia. The interaction of opposite civilisations reflected in both state and private forms, as well as clashes of different chronological phenomena had a direct impact on the Moldavian model of social evolution, Moldavian feudalism.

To sum up, the historical realities of the region can be described as a phenomenon of the intersection of worlds. It accumulated typical features of state design that were a combination of European and Asian roots. Old ties of Carpathian depressions with Western and North-Western countries enabled the German and the Hungarian colonizers, and Hussites at a later stage, to penetrate into the region. A sort of "Western oases" in the Black Sea region was created by the Italians. Byzantium, however, with other countries in the fold of the Greek Orthodox cultural-historical community, opened more and more to the East. During the studied period, South-Eastern Europe received numerous Asian "injections" from the Horde and the Ottomans.

There is a fierce scientific debate about the ratio of local and foreign components on the early stage of Moldavian history. No historian has yet managed to prove groundless the chronicle's version that tells about a mixture of the Wallachian (Eastern Roman), Ruthenian (Slavic) and Tatar (Turk) elements in the ethnic composition of the medieval Moldavia.

The political and economic consolidation of Moldavia was a complicated process, with alternating periods of unity and disintegration. It was not only internal instability and foreign intrusions that underlay these processes, but also traditions of the local autonomies, often rooted in the pre-state era. Traces of such formations were reflected in the division of the Moldavian lands into the "Upper country", "Lower country" and "Bessarabia" adjacent to the seaside.

In order to reveal the development trends in Moldavian feudalism, it is worth looking at the history of Moldavia from the point of view of the typology of the interaction of private and state principles. It has been established, that the development of local communities, at its earliest stage generated private feudal forms, for the stronger state to become the primary owner of absolute majority of lands in the second half of the XIV century. Later on, by 1457, the area of the land in state ownership had dramatically decreased due to the mass granting of lands. After Stefan cel Mare's reign, the growth of secular ownership on land was held up owing to the policy of *gospodars,* who ran out of state reserves. All this led to a tangle of private and state-corporate feudalism in Moldavia.

The "Eastern despotism" which left life-long benchmarks in the history of Moldavia, was of various origins: the Horde's and the Ottoman. The Ottoman version supposed a three-member structure. The "world of Islam" mastered by the Turks opposed the hostile "world of war", with the "world of peace" which recognised the supremacy of the sultan's power between the former two. As the Ottomans' own resources were scarce, inclusion of new countries among those who "made peace" ensured advantage over the enemies. The dependence of the "world of peace", sometimes treated as vassalage, enabled preparation for full incorporation of some of its parts. Moldavia was gradually involved in the "world of peace". Already in the late XIV century it had to face the Ottoman threat, while the first tribute to the sultan was to be paid in 1456 and precisely "for peace". Seventy years later, the size of the tribute grew five times and reached 10,000 gold coins. Thus, long before the campaign of Suleiman I in 1538, Moldavia was more and more involved in the "world of peace". Moreover, in 1484 the Moldavian ports of European importance – Chilia and Belgorod – were already absorbed by the "world of Islam".

Already, thus, the first period demonstrates typical features of the history of the Moldavian state. It was created on the basis of ethno-culturally heterogeneous regional societies in conditions of exclusively favourable economic and political conjuncture. It is remarkable that the name "Moldavian Land" or "Moldavia" did not initially bear any ethnic colour, but rather reflected, most likely, the position of the new state on the commercial route called "Moldavian". The Slavic language used to play an important role in the development of the Moldavian statehood. It was the language of the state chancellery and the ruling Orthodox church. **Poly-ethnicity, multiculturalism and utter exposure to external factors conditioned the peculiarities of the historical destiny of Moldavia as a political entity**. These social features typical of the Carpathian-Dniester lands were already present in these ancient times and are still relevant today.

II.   Moldavia joining the "world of peace" (1538) was not an unconditional affair, as the anti-Ottoman war showed. It was to flare up three decades later, led by Ioann the Fierce (*cel Cumplit*). Defeat in this war led to further aggravation of Moldavia's dependent position. From then on, the country often faced the threat of being fully absorbed by the "world of Islam". Nevertheless, the resistance of the Moldavians and their close proximity to danger for Turkey's rivals kept the Porta from making the last step. Istanbul preferred to adapt Moldavia's economy and political structure to the needs of the empire, while still maintaining all external symbols of the Moldavian statehood.

In 1541, the tribute paid to the sultan equalled 12,000 gold coins, and six months later it already reached the amount of 60,000 gold coins (the price of 10-12 thousand bulls). Later the burden of the tribute decreased, but the total amount of other fiscal duties payable to the Ottoman state continued to grow. In the late XVI century the factual purchase of the *gospodar*'s throne already required an amount as big as five annual tributes. The Porta was applying additional irregular requisitions, and the Ottoman officials would receive gifts and bribes that acquired almost official status. The total amount of these additional payments could easily exceed the size of the tribute. Besides, the Ottoman Empire gradually established a monopoly on the purchase of Moldavian grain at a fixed low price. Not accidentally, Istanbul considered Moldavia its own "larder".

In the middle XVI century, the Turks demanded that the Moldavian capital be transferred from the fortified Suceava to Iassy, a town located closer to the Ottoman borders and lacking any defence facilities. Almost all fortresses inside the country were to be destroyed. Since the

late XVI century, treason is understood as actions aimed not only against the *gospodar*, but also against the Sultan. In a number of the Sultan's documents, *gospodar* is mentioned only as "one of the beys" of the Empire. The Moldavian rulers had to participate in Turks' campaigns, contributing up to 10,000 warriors.

The growing political dependence from the conquerors was best demonstration in the succession to the Moldavian throne. The sultan's administration started with the approval of candidates and the liquidation of Mushatin's dynasty, and then proceeded to the appointment of the *gospodars*. Moreover, quite often the fight between the candidates to the throne would ressemble an auction. The system of the periodic appointment of the *gospodars* led to the situation when the process of acquiring *gospodar's* power looked similar to the appointment of officers: about 50 *gospodars* alternated on the throne in the XVI-XVII centuries. The second half of the XVII century heard even the top elite speaking about the death of Moldavian statehood. Miron Costin who defended the interests of the boyars' oligarchy, in his chronicle written in the Moldavian language according to the tradition of the era, said: "Oh Moldavia! If the *gospodars* who rule you had all been sensible, you would not have perished so easily. But the *gospodars* who do not know your rules and who are greedy, they are the cause of your death."

III.   The year 1711 in Moldavia marked the establishment of the rule known as the "Phanariotic regime". The throne in Iassy, as was the Porta's will, happened to be in the hands of several rich clans of Greeks, originating from the "Phanar", district of Istanbul. They played leading roles in the *gospodar's* council, which was then called the "divan" in the Ottoman fashion, and even created a sort of ruling dynasty. A special representative of the sultan – *effendi* – would closely monitor the activities of the divan. The Greek language was more and more often used as the official language.

A sharp reduction of sovereignty showed itself in the decreasing independent foreign politics of the *gospodars*. Foreign politics were hampered by the Ottoman garrisons placed in strategically important fortresses in Chilia, Belgorod, Bender, Hotin, as well as by the Tatars, brought to the Black Sea steppes from the East. Dramatic disasters were brought to the citizens by the compulsory billets of the Ottoman-Tatar troops. The thus billeted army would take away physically strong persons to be enslaved, especially women and children.

The harmful impact of foreign rule was still aggravated as **the Ottoman factor threatening to transit from a foreign into an internal one, was long balancing in this transition.** This process led to the utter deformation of all aspects of life in Moldavia: the degradation of statehood, economic fall, deep demographic crisis and dramatic spiritual crisis marked the symptoms of the up-coming catastrophe. But even in these conditions the Moldavian society remained poly-ethnic. Dimitrii Cantemir, who found asylum at the Russian royal court, said in the first quarter of the XVIII century: "We believe that in hardly any other state squeezed between such tight borders as Moldavia, there live so many nationalities. Apart from Moldavians, most of whom came from Maramures, it is inhabited by Greeks, Albanians, Serbs, Bulgarians, Poles, Cossacks, Russians, Hungarians, Germans, Armenians, Jews and fertile Gypsies."

Almost the same ethno-cultural diversity was typical in Moldavia at the dramatic turn of events for its statehood on the XIX century. As early as 1775, the Habsburg Empire annexed Bukovina. In 1812, by agreement with the Ottoman Porta, the Pruth-Dniester lands became a

province of the Russian Empire under the name of "Bessarabia". The *gospodar* was left only with 41% of the territories of historic Moldavia.

With the abolition of the Phanariotic rule (1821), the movement of unionists gained momentum in Moldavia and Wallachia. It was the union of "two peoples" that was talked about, supported by the great states, including Russia. At the same time, the "Romanists" (also called "Latinists") struggled for the language by cleaning it of slavicisms and rejecting the Cyrillic alphabet. It was also the denouncement of the traditions of the Moldavian people.

The revolution of 1848 gave birth to the "principles of transformation of the motherland", which meant the union of the two Danube princedoms. It is natural that the political and social demands became a banner of the most educated and young forces of Wallachia and Moldavia. Meanwhile, the idea of the Romanian republic developed by the emigrant revolutionaries in Europe denied Moldavian statehood as a compromised one by its worshipping of the Ottoman power.

IV.   The foundation of the Romanian state demanded that the separatist pro-Moldavian movement be overcome, on one hand, and the suppression of the ethnic and cultural diversity, on the other hand. It is no secret, that already in 1866, after the abdication of Alexandru Ion Cuza, "the monstrous coalition" just raked with fire a demonstration in Iassy. M. Eminescu wrote about the way the "national matter" was formulated at the time. The absolute majority of the "motherland's reformers" stopped masking themselves in revolutionary clothes and headed the policy of romanisation of the mass population which did not achieve their goal as bearers of the new national idea. Moldovanism was eradicated everywhere in many ways, though ideologists of the united state still argued: whose descendants should the Romanians be – the Romans or the Dacians? The question of attitudes towards unification among various groups of Moldovans, still to be profoundly studied, was silenced due to understandable reasons both in Romania and in Moldova.

However, even on the territory between the Pruth and the Dniester, which made up the Bessarabian government of Russia, ideas of Moldavian statehood were also prohibited. They were not dramatically distorted here, but were just replaced by others. As a result, they were preserved here. It was in Bessarabia where during World War I revolutionary events overwhelmed the country that the Moldavian republic was born. Though its leaders sometimes consciously, sometimes by misunderstanding would mix up Moldavanism and Romanism, which they were soon to regret, it was probably the major tragedy of Sfatul Tarii's (State Council) members.

In the most difficult situation of 1917-1918, the kingdom of Romania did everything of which even the High Porta was not capable. A matter of a few months, the Romanian factor turned from a foreign into an internal one. No surprise, Bucharest was quick to forget the Moldavian republic and turned the new lands into an ordinary province. And at the same time, it used the faceless name "Bessarabia", not at all repudiated as an imperial legacy in this case.

And again, the decisive role here was played by the foreign political factor – Antanta decided to retailor the borders in South-Eastern Europe. After all catastrophes of the World War I, the world saw two new states on the map of Europe: Yugoslavia and the "big Romania" which increased its territory and population almost two fold on account of its neighbours. Arnold Toynbee gives interesting characteristics to the newly geopolitical formations created with

the help of great states. He believed that the **bold political experiment** could be a success or could fail and these **synthetic national formations** could either become organic unions or could fall apart. The Romanian experiment, as it is known, failed during World War II.

At the same time, the Moldavian idea survived in the USSR. Of course, quasi-state formations such as the Moldavian Autonomous Soviet Socialist Republic on the left bank of the Dniester and later the Moldavian Soviet Socialist Republic did not have full rights. They are, however, the birth place of the Republic of Moldova, a modern state recognised by world society.

V.   Since 1991, our country has been painfully looking for its own identity. Independence was unexpected even for those who used to advocate it. A dilemma has emerged: what to do with independence – whether to fly to Bucharest's arms or to earnestly engage in building one's own state? The absence of a consolidated elite created in Moldova an unprecedented "steady instability". The population of the republic was at risk of waking up in a different state one morning. The people received many hints that it is up to "the policy-makers to determine what is a nation, who must be included and who must be excluded from it". What is more important, we understand now that **the definition of a nation largely depends on the state.** The conclusion is obvious: Moldova needs an image of an open, competitive country, which inspires the feeling of pride and comfort with its citizens and which is becoming attractive for foreigners.

Moldova is a place for constant dialogue of the Mediterranean, Central Europe, Asia Minor with the Near East, Eastern Europe and the Great Eurasian steppe. A fruitful interaction of civilisations created here a **unique phenomenon of accelerated cultural development:** nowadays Moldova has become a leader in the most important sphere for the whole world - peaceful co-existence of nations and everyday culture of communication. It has always been Moldova's advantage to choose from among several opportunities what is most suitable for it and to quickly assimilate the world heritage. Therefore, the most suitable model for us is the **model of cultural pluralism.** If the country wants to prosper, different ethnic groups must be regarded by the society as "equally valuable in the general national and cultural complexity". To achieve this purpose is the obvious priority for the internal politics of Moldova.

Talking about our past, I can agree with Augustin Thierry who wrote almost two centuries ago that "it would be ridiculous to assume that the history of a country is the history of just one people, and that the chief merit of a national history … is not to forget anybody, not to sacrifice anybody and for each part of a territory to describe those people and those facts, which are relevant to it". These words are especially typical in modern day Moldova.

Talking about our future, I would like to refer to the postulates of cultural anthropology. This science states that culture equals the degree of development of human freedom. **To achieve stability in Moldova, to give a positive impetus to the Moldovan perspective, what is needed is the common will expressed through referenda rather than on city squares or during emissary visits.** Attitudes of the different political forces to this idea will not only reveal the true friends and enemies of the open society in Moldova. The statement of the people's will will set certain tasks to the state, aimed at the achievement of civil peace and the creation of preconditions for the new Moldavian nation. A nation that gives priority to the prosperity of all the peoples who inhabit this territory rather than to language and origin, and aims at the normal integration of people into the economic, social and political life of the united and sovereign Moldova, an equal member of the international community.

FOREIGN POLICY INTERESTS OF THE MULTINATIONAL STATE: MODERN ORIENTATIONS OF THE REPUBLIC OF MOLDOVA

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The foreign policy of every state is determined by its core national interests. However, the multi-ethnic composition of a country cannot be ignored, because every minority in its own way (cultural, political, economical, geopolitical and other kind of relations) is attracted to its ethnic motherland. Many people argue that the Republic of Moldova should change the course of its foreign policy. This statement presumes the withdrawal of Moldova from the Commonwealth of Independent States and a drastic shift of its orientation towards the West, even integration into the North Atlantic Treaty Organisation on the anti-Russian base.

First of all, while it is proposed to "change the foreign policy course", it should be mentioned that the Moldova's foreign policy is unilaterally orientated towards the Commonwealth of Independent States, however with the coming to power of the Communist Party, this unilateral direction has been increased and Moldova became even more dependent on the Russian Federation. It could be said that this assertion is wrong. Moreover, the reality is totally different: Moldova has been accepted as a fully fledged member of the Stability Pact for South-East Europe; Moldova is the only CIS country accepted into the World Trade Organisation; the international financial institutions have resumed financial assistance to Moldova; there are many diplomatic contacts between Moldovan politicians and officials from Western Europe at the highest level; on 17-20 December 2002, the President of Moldova was officially invited by the President of the United States of America G.W. Bush; and finally, beginning on May 2003 Moldova took over the Presidency of the Council of Europe. There is another essential moment, which proves that Moldovan foreign policy could not have a unilateral orientation towards the East - during 2001-2002, the amount of trade with countries of Western Europe was higher than with countries of the Commonwealth of Independent States.

Therefore, these facts prove that statements concerning the "unilateral orientation of the Communist Government towards East" are false. Yet they confirm the "multilateral orientation of the foreign policy of our Republic." As was stated on many occasions by V. Voronin: "our foreign policy is oriented where our interests be." In this context, there is one strategic task for us - the foreign policy of our country has to ensure the most suitable conditions for its internal social-economic development and the welfare of its population.

We have one strategic direction - integration into Europe through approaching all European countries, but our strategic partner in this direction is the Russian Federation. In this statement there is no internal contradiction, because Russia is also a European power, whose strategic goal is integration into Europe. Furthermore, this is not just a unilateral orientation of Russia towards European institutions, but a strategic course which is beneficial for both parties - the Russian Federation and the European Union - for a closer partnership, even the creation, in the mid-term prospective of the "Big Europe" from the Atlantic to the Pacific

Ocean. The fact that Russia is a strategic partner of the European Union is proved by the basic documents of the EU and many statements by the most important political leaders - J. Chirac, T. Blair, G. Schroeder, J. Attali, J. Delores, J. Solana and even R. Prodi (with his scepticism towards the integration of CIS countries into the European Union in the near future). All this can mean only one thing - our future co-operation with Russia does not mean withdrawal from Europe and European values but approaching Europe and ensuring the independence of the statehood. Furthermore, the Action Plan of the European Union towards Russia mentions the establishment of a free trade area between Russia and the European Union. By creating a single market for free trade with Russia, we will automatically get free access to the European market (obviously, it is possible also without Russia). At the Russia-EU Summit in May 2001, the parties agreed to establish a high-level group for preparing the concept of a single economic market. The technical tasks of the group were agreed at the Summit of October 2001. According to the single European market, there will be a privileged relationship between the European Union and Russia in political, economic and social fields. This will allow Russia and the European Union to get maximum advantages from the present trade co-operation and by the new, deeper and more direct relations, which will emerge following EU enlargement. Taking into account this prospective, a question should be asked: what do we lose by strengthening our co-operation with the Russian Federation? Any rational person will answer in one way - we could only gain, because some important and concrete steps have already been taken towards economic integration of Russia into the European Union.

The second issue, the so-called "proposal to change the direction", is the need to adopt the course of integration into European structures, and firstly into the European Union and NATO. There are two shortcomings in this approach – both moral and intellectual ones. Firstly, as is well known and as was pointed out above, the course towards European integration was declared as a strategic goal by the public officials of our Republic a long time ago and the first important steps have been taken. To deny the efforts of our republic towards European integration is a sign of indecency. Moreover, it is not honest, because under the aegis of European integration is concealed the real wish for the liquidation of the "artificial Moldavian statehood, by joining a genuinely Romanian province of Bessarabia to the Great Romanian motherland." This is the essence, even though not all supporters of "changing the course" have the courage to admit it.

Referring to the intellectual level of "Europeanists" (those who think that "joining Europe" is as simple as taking suitcases and crossing the river), a question could be asked: how could Moldova join the EU and NATO? Has anyone invited us and do so? The "integrationists" know that in order to be accepted into these structures a number of criteria have been set, which we are far from satisfying. Besides, we are a neutral country and joining any military structure is impossible. This is not only stated in the Constitution - this is the will of the overwhelming majority of our citizens without regard to their ethnic belonging. Nobody is even going to speak to us about integration into European structures, until we fulfil a number of conditions: significantly increase our GDP per capita; settle the Transnistrian problem (which is impossible without the mediation of the Russian Federation); conform to European values. The last one seems to be easier and at the same time more difficult. This means that we should bring our legislation into accordance with the European one, which is a relatively easy and quick process. It is more difficult to adopt European humanistic values and follow them in practice, not just declaring them. It is even more difficult to work and organise our lives according to European standards, to be responsible and reliable. This is the biggest challenge of "integration into Europe," this is the way we should build Europe "at home."

The new Moldova should determine what is useful from her neighbours' experience for her revival. The Republic of Moldova is interested in increasing the volume of production of the food processing industry and the development of an economy that offers modern services. It is necessary to choose one or two priority fields, in which our country can compete on the world market and focus on their development. The present stage of Moldovan economic reforms is aimed at institutional consolidation and adopting legislation, which will increase the effectiveness of the market. The Moldovan economy needs investments to change the basic funds and building up the infrastructure. Investments are needed for diversification and modernisation. In this regard, the modernisation of our economic legislation is paramount, and European legislation can serve as the best model.

EU laws contribute to a greater effectiveness of business, and common approaches to the standards would give Moldova access to the single market. The advantages of the harmonisation of the custom legislation are obvious: in this way trade barriers disappear. Application of the rules and discipline of the European Union could ensure a proper functioning of any future free trade area or a common economic area. Harmonisation of the regulations in the field of financial services could help establish a stable Moldavan financial market, which would serve as an impetus for attraction of capital and the stabilisation of investment flow. All these would be the first step for our country's integration into Europe, and economic integration accompanied by normative reforms, would contribute to the economic growth of Moldova.

The third, and the last attribute suggested by the supporters of changing "the course" is how to move further away quickly from Russia or rather, break any ties with her and withdraw from the Commonwealth of Independent States. How do these people imagine a radical shift in foreign policy towards Russia and maintaining with her all the economic ties? To any educated and rational person, it is obvious that we would no longer receive Russian energetic resources on the present privileged conditions and we would lose our position on the Russian market. These will bring many disadvantages for the Moldovan economy that might be followed by the economic collapse and failure of the state, while Russia would not suffer much by breaking the relationship with Moldova. In the following regard, it is not possible to speak about the settlement of the Transnistrian problem. What would happen to the hundreds of thousands of our citizens working in Russia who would be forced to leave the country as a result of the proposed fundamental change of our foreign policy? Not only will they lose their jobs and their families without sources of existence, but also they will join the group of unemployed and criminals. This is the shortest and most effective way for the failure of the statehood and the "long-waited unification with motherland Romania-Mare."

In order to make my arguments stronger on the issue of maintaining and strengthening the relationship with the Russian Federation and other CIS countries, some well-known facts should be recalled. The goal of our politics should be the maximum utilisation of every chance to maintain traditional relations of co-operation and interdependence with our partners from the CIS – naturally, on a mutually advantageous basis. This policy should not be focused on the diminution of relations with the third countries, especially with countries from Central and Western Europe. Such a strategy might be successful, if the CIS countries develop the partnership with the European Union, and, at the same time, take measures to maintain their traditional relations. Only a well co-ordinated policy would give the opportunity to avoid any dividing lines in Europe, the breakdown of political and cultural relations. A different development of events would lead to the decrease of the political,

economical and cultural potential of the CIS countries. Only in Russia and only in 1992, the disintegration accounts for up to 1/3 of the 20 percent reduction of the GDP. Taking into account the might and self sustainability of the Russian economy, it is hardly the worse indicator in the post-Soviet Republics.

There was and still is a high level of interdependence of the former Soviet Republics following the collapse of the Soviet Union: in 1988 interstate trade in the USSR accounted for 21 percent of GDP (while in the EU - 14%); currently Russia, in a prospective isolation from other republics, can ensure the production of 2/3 of the end products, while Azerbaijan - 31%, Kazakhstan - 27%, Ukraine - 15%, and Belarus - only 4%. In this regard, Moldova is not an exception. Ideas for a quick integration of the national economies of the post-Soviet Republics into the world economy; about adequate change of economic ties that have been built for decades between the republics of the former USSR; independent access to the world market - have vanished. Step by step, the advantages and the lack of alternatives for the re-establishment of economic ties within the CIS in the new market form on a mutually advantageous basis, equality and maintenance of the balance of the partner's interests had come up.

There are lots of arguments to support the priority of trade with near neighbours, particularly with CIS countries. First af all, there are already strong relations, and it should be maintained and be given new content, developping according to the principles of the market. Secondly, these relations have been tested and backed up by transport and energetic infrastructure for decades, taking into account the character and the basic directions of economic ties. Thirdly, the market of these countries is not yet selective and products that are not realised on the European market could be produced on the market of the CIS countries. Fourthly, trade transaction with CIS countries can be done without card currency.

Obviously, relations with the East should not diminish our co-operation with other countries, and should not to be an obstacle for the process of European integration and our accession to the common European institutions. Such a prospective is nevertheless a long way off and it is not likely that Moldova will join the European Union before Russia. Yet, our "integrationists" are arguing that in such a way we will break relations with the West and will be rejected. We will answer in the following way: if the West does not break relations with Russia (such a proposal is nearsighted), it will also not break relations with us. There will be investments if we settle the Transnistrian problem and establish democratic and lawful order in society. For them it is "just enough" to establish a normal economic, political and judicial environment. And if investments start flowing into the Moldovan economy, even then the Eastern market will remain the most important one for Moldavian producers. We cannot speak about a foreign policy shift without the most terrible blow on the humanitarian relations of our people with their brother from the East.

In our opinion, Moldova should maintain its multilateral foreign policy, which should lie where her national interests are and this will work for the benefit of the majority of her citizens.

THE SPANISH CONSTITUTIONAL EXPERIENCE: FROM CENTRALISATION TO CO-OPERATIVE FEDERALISM THROUGH DEVOLUTION AND AUTONOMY

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1.   A new territorial organisation of the State. The "Autonomous Communities"

1.1.   Introduction: The "Regional problem" as a Constitutional issue: the 1978 approach.

1.2.   Right to self-government (Article 2 and Title VII of the Spanish Constitution):
–   The "Dispositive principle" as a constitutional criterion for a new territorial distribution of Power (Article 2 CE),
–   The solidarity principle (Article 138.1 CE),
–   The prohibition of territorial, social or economic privileges (Article 138.2).

1.3.   Other constitutional provisions for defining the distribution of territorial power:
–   State intervention clauses for self-government access,
–   State intervention clauses in defining the so-called "competence order",
–   Constitutional recognition for some territorial specialities: "Historical rights", "Foral communities", the special economic and fiscal regime for the Canary Islands Unity and diversity: the so-called "differential factors".

1.4.   Access to self-government procedures (Article 143 or 151, Transitional Provision 2ª CE). Various stages in autonomous procedure and the perfectioning of a new State territorial organisation model:
–   The draft of Autonomous Statutes and their content (Article 147 CE),
–   The position of the Autonomous Statutes within the National legal system.

1.5.   Autonomy for some other territorial entities. Local government, provinces and "cabildos y consejos insulares".

2.   Autonomous Institutional Order

2.1.   Autonomous Communities' Legislative Assembly:
–   Characteristic and denomination,
–   Electoral System,
–   Deputies Statute,
–   Functions.

2.2.   Executive Power:
–   President,

- Government Council.

2.3. Relationship among Executive and Legislative bodies.

2.4. Judicial administration and Tribunals (Supreme Court of Justice of the Autonomous Communities).

2.5. Some other Consultative organs in the Autonomous Communities: (Parliamentary Ombudsman; Court of Audits; Social and Economic Committee).

3. Constitutional Distribution of Compentences

3.1. Constitutional order of competences:
- State exclusive competences (149 CE),
- Autonomous Communities' exclusive competences (148 CE),
- Transferred or delegated competences (150.2),
- Shared competences (150.1).

3.2. Integration within unity in a decentralised State: collaboration, co-operation, co-ordination, control and conflicts management among Communities, as well as State v. Communities:

- Spanish Senate: the participation of the Autonomous Communities,
- Collaboration and co-operation techniques ("Conventions" and "sectorial" conferences),
- Institutional techniques for co-ordination: State guarantees for essential homogeneity over the autonomous exercise of basic autonomous competences.

3.3. Financial regime for Autonomous Communities: Financial autonomy, solidarity and fiscal correspondbility:

- Basque Country and Navarra foral regime,
- Communities with "common fiscal regime",
- Canary Islands special tax regime,
- Ceuta and Melilla.

4. Sources of Law in Comunidates autonomas

4.1. "Autonomous Statute".

4.2. Autonomous Statute Reform procedure.

4.3. Relationship among State Law and Autonomous Community Law:
- "Supletory principle",
- "Prevalence rule",
- Relationship between "basic law" and "developed law",
- Article 150 Spanish Constitution:
  - "Principles and basic acts",

- "Organic act" for transferences and delegation of competences,
- "Harmonising act".

5.   Conclusive remarks:

5.1.   The Spanish Autonomous State as a successful experience.

5.2.   Further developments and prospects ahead.

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"Diversity and Unity" is the topic of this conference, and I would like to introduce and present a short overview on the Spanish experience of combining unity and diversity within a constitutional system that has not called itself "federal", but has turned out to be functionally federal, as I am going to try to show to you throughout my presentation.

First of all, allow me to say a few words about the nature of the Spanish Constitution of 1978. Firstly and foremost, it is a written Constitution: a solemn document that was adopted after a very short period of transition from Franco's death towards the doorstep of the achievement of a pluralistic democracy. The whole operation had to combine three different goals at the same time. The first: a Parliamentary monarchy had to be built on democratic principles: all the powers, organs and the political bodies of the State had to be legitimised by the freely expressed will of the sovereignty of the People; The second: to guarantee fundamental rights and make sure that Constitutional standards for providing effective judicial protection for those fundamental rights were to be based on two pillars, namely the Judiciary and the Constitutional Court, with specific competence for protecting fundamental rights, by means of the so-called "Constitutional complaint" or *recurso de amparo;* and the third: to organise the territorial structure of the State.

This third goal, while being part of the Constitutional framework, would prove to be the most difficult because it had to overcome, precisely, both the long-lasting difficulties of unity and the diversity all along the Spanish history, in their three different expressions. The first one, purely symbolic, the second one, institutional, and the third one, the distribution and allocation of competences and attribution of powers. That is why, most likely, the most useful approach, in order to summarise how the constituted powers worked to deal with this third pillar of constitutional development, would be a procedural one.

The rationale is quite eloquent. The Constitution itself did not give way to a constitutional solution to sort out the distribution of powers. Rather than doing so, it established various procedures, a whole range of procedural techniques, with which it would be possible for the constituted powers to reorganise the whole State concerning its territorial balances.

Let me make it clear, at the outset, that this whole experience has turned out to be an astounding success. A very impressive success. It was started right after the adoption of the Constitution in December 1978, and it would be honest to assess that, even almost 25 years after our Constitution was drafted, the whole process has not come to an end. So, let me please anticipate one of the conclusive remarks of my summarised version of the combination of unity and diversity, by stating that openness is precisely one of the outstanding assets and one of the main features of the Spanish constitutional arrangement of 1978. In fact, the

Spanish constitutional system of distribution, as far as our territorial organisation is concerned, is an open-ended order.

The starting point for this process was set forth in the Preliminary Title of the Constitution. Particularly in Article 2, where it is recognised that Spain is "*a Nation of nations*". More precisely, a nation made up of nationalities and regions, which have a constitutional right to attain a self-government autonomy for the protection of their specific interests. Besides they must enjoy this right to self-government according to the principles of the unity of the Nation and the solidarity among them all. This is a spoken way to recognise that the territorial system of distribution was an open path for the solution of our historical problem: the co-existence, within a common Spain, of various feelings of self-identity, of different cultures, of manifold linguistic communities, and of different institutional and juridical expressions of all of these features of cultural, linguistic and political diversity.

Returning to this <u>procedural path</u>, the process was set in motion in 1979, by means of the adoption of the two starting Autonomous Statutes (territorial Constitutions): those of Catalonia and the Basque Country (1979), soon followed by the Galician (1980) and the Andalucian (1981) Autonomous Statutes, and, thereafter followed by all the rest until there were 17 Autonomous Communities (1982-1983). Later on, there were joined by the institutionalisation of two Autonomous Cities on the northern coast of Africa, namely the historical Spanish cities of Ceuta and Melilla. Therefore, the sum of those is the current Spanish autonomous map, which is at the present the basis of their territorial distribution of power in the "Autonomous Spain".

The early outlook of this institutional arrangement was extremely diverse in all of the aspects mentioned: both institutional and competence. However, according to some sort of <u>Constitutional Convention</u> meaning bipartisan agreements mainly adopted by both the party in power and the main party in opposition also called "*Autonomous Agreements*" - worked in a way to harmonise the institutional and the competence architecture of the 17 Autonomous Communities. Therefore, the conditions for a new constitutional theory around the "*differential facts*" were thereby settled. By that expression, we Spaniards mean those differences constitutionally protected, singularities or specialities. Constitutionally protected features, which have played the role of a constitutional limit or boundary against every claim for complete uniformity of the 17 Autonomous Communities, which are not identical to each other.

In comparative analysis, it is important to note that it was precisely the reason why the word "*federalism*" was carefully avoided in the constitutional wording. Precisely because of the memory of so many conflictual experiences of federalism in the Spanish constitutional past. Nonetheless, comparatively speaking, it is also important to note that the intensity of the devolutionary process has resulted in Spain progressively adopting all the institutional features of a federal system. Namely, it consists of a federal level of government - which, in Spanish constitutional terms is called "the national" - and 17 devolutionary levels, which represent political bodies constituted on what is known as the Autonomous Statute (a territorial Constitution), which performs the role of a federated Constitution within an overall, superior layer of the Constitutional order.

That is also why normativism, by which I mean a legal positive approach, is much less meaningful than empirism. Legal grounds are thus less explanatory than the social, civic or political approach, if we are to explain and understand how the Spanish devolutionary

process has progressed, in theory, and worked, in practice, over the more than twenty years that have passed since the Constitution was adopted.

According to those ordinary comparative standards, it would be wise to assess that the intensity of the decentralisation of powers, of the devolution of powers, have made each and every 17 Spanish Autonomous Communities relevant political actors by which legislative competences are intensively exercised. Accordingly, their 17 autonomous presidents play the role of territorially elected Prime Ministers who have the power to implement, contest, resist or influence the design and execution of the State legislation as a whole.

It would be a fair statement to say that the territorial system of distribution under the Spanish Constitution has performed, happily enough, in such a way as to create the grounds for combining some deeply rooted ambitions to a sub-state national, original level of Government and, at the same time, to satisfy the political aspects of the territorial challenges that played such an important role in the devolutionary pressures that were present over the transition period.

As a matter of fact, most of the difficulties of the prospects waiting for the Spanish Autonomous State had to do with the core-issue of integrating diversity. Those challenges have proved tough, particularly, when you consider that the Spanish constitutional challenge lays not only on combining unity and diversity, but also on respecting to those specific singularities and constitutional specialities, so called "*differential factors*". That is the key to analysing the main difficulties of the consolidation of the Spanish constitutional experience of federalisation, not formally named federation but substantially aimed at a sort of federalising of our current Autonomous State.

Let me introduce the main issues of the current situation of the Spanish Autonomous State. Firstly, we need to talk about the need of an upper chamber to play a relevant role of favouring territorial integration, because the current Senate, only very poorly plays the role of reviewing and providing for a second reading for draft legislation passed by the lower chamber (the Congress). In fact, our Senate now just simply does not fit the constitutional standard of a territorial Chamber. It has thus been something that has been consistently claimed over at least the past 10 years, by opposition parties and political analysts, and therefore hotly debated.

The second subject would be how to strengthen the links of co-operation, to intensify co-operation among the Autonomous Communities themselves, and among the Autonomous Communities and the State as a national or central Government.

An additional issue for discussion should be the following: how to organise the participation of the Autonomous Communities within the European Constitutional process, meaning an active participation of the Autonomous Communities in European construction or the European Union. In so far as some member states of the European Union have a federal structure, the means for the participation of the sub-state levels are provided for as shown by empiric and available evidence. It is thereby obvious that, in Spain, we have still a long way to go.

A fourth issue would be the following: it is important to make sure that the financial balances are carefully observed, and that the Autonomous Communities have sufficient means to provide for their competences. The same goes for municipalities. The real issue is that while

facing those four challenges, the system must wisely combine <u>unity</u> (meaning solidarity and cohesion and equal standard for protecting fundamental rights concerned) with <u>diversity</u> (giving way to singularities, the key features being differential facts as well as linguistic features, cultural features). Historical institutions must be protected, as well as the inherited financial regimes, by the Constitution. As hard as it might seem, this is the true challenge which has to be faced by the development of the Autonomous State.

Now, there comes the time for a Comparative approach. That would imply to highlight, at least, what I would refer as <u>three paradoxes,</u> which are to be taken into account if we are to understand the contemporary Spanish constitutional debate.

The first paradox is the following: the main goal, the main objective of the Spanish Constitutional effort, was to avoid the challenge of recognising some sort of a singular Status, some specific position for those regions or cultural Communities that in the past had proved to enjoy an outstanding will for self-government, mainly Catalonia, Basque Country, and to a lesser extent, Galicia. However, in avoiding the recognition of these particular Statutes, the overall operation consisted of a wide range of procedural arrangements for all territorial entities and all geographic regions of Spain, each one bound to acquire an equal status of Autonomous Community, regardless of its past and regardless of its symbolic condition so far.

What matters is that, in the end, a complete combination of unity and diversity respecting singularities, is still pending, and it affects the symbolic potential of Article 2, where there is a mention of nationalities and regions, whose profound meaning has not to be clarified in all of those 25 years. It was in the procedures that a relevant difference was made between Autonomous Communities that were created according to Article 143 and those created according to Article 151. Nonetheless, the fact is that, institutionally speaking, those Autonomous Communities created according to Article 151 enjoy certain institutional capacities that are not shared by those created under Article 143; mainly, the capacity of reviewing their own Statutes according to a procedure of referendum and that of a singular electoral agenda. Moreover, from a substantial point of view, there is always a debate around the so called *"fiscal balances"*, in view of the fact that the Basque Country and Navarra, as well as the Canary Islands under the EU Law, have been enjoying specific fiscal regimes that they inherited, but are not shared by the rest of the Autonomous Communities.

Another relevant paradox would lie in the fact that the democratic will, as expressed by the citizens of each and every one of the Autonomous Communities, has turned out to be at least as relevant as a differential factor, as history, language, ethnic or cultural singularities that were inherited. That is why Spain has turned out to be, oddly enough, a sort of quasi-federal or federalising system of distribution, although not only it has not called itself *"federal"*, but very carefully avoids the words *"asymmetrical federalism"* in as much as *"asymmetry"* is most commonly understood in the Spanish political discussion as leading to inequalities and imbalances which should be read as somehow incompatible with the constitutional provision that ensures that the State has the duty to provide for an equal standard for the enjoyment of fundamental rights and the assertion of constitutional duties for all Spanish citizens, regardless of their place of birth or their residence (Article 149.1.1 CE).

Although the majority of Spanish constitutional thinkers and constitutional writers are quite certain that the constitutional development in Spain has been spectacular, and despite the fact that the time has come to rearrange and update all those issues in which, as we have

mentioned before, the co-operation, the participation of the Autonomous Communities in Europe, and the local entities' position in the Autonomous State, are to be dealt with, there is no likely perspective, as far as 2003 is concerned, for any kind of Constitutional revision or modification. The reason for that is simple: Spain has too long endured the violent threat of the radical nationalistic terrorist organisation: the Basque separatist ETA.

Hence, let me stress one final point. The impact of violence on the Spanish constitutional process is not to be underestimated. By no means. It affects every single issue, every political matter that plays a role in the understanding, and even more so the managing of Spanish contemporary affairs.

Violence has turned out to be an insurmountable barrier against every Constitutional revision. This particular terrorist mafia, by the name of ETA, is a criminal organisation. It has caused a whole lot of bloodshed over the last 25 years. And yet, it claims to be an organisation pushing forward "some reaccommodation" of the Basque Country, namely a separatist movement, thus pushing for the conversion of the Basque Country (Euskadi) into an independent State to be created and aimed at annexing Navarra and the Basque provinces of Southern France. The very existence of ETA has turned out to be the political, and even socio-psychological explanation for a nation-wide reaction of high pro-conservatism as far as the Constitution is concerned, which has affected the positions taken by the main political parties, as well as the hegemonic political thinking, and the dominant Constitutional theory.

Curiously enough, Spain shares with Japan a high-profile conservatism, as far as constitutional thinking is concerned. Main political parties have long been and are so far extremely negative against any sort of constitutional revision and/or reform. Let me try to explain it in other words: after so many years of civil war, authoritarianism and dictatorship, the consciousness is high of how difficult it was to reach a Constitutional consensus; of how precious the Constitutional balance is that it is a historical treasure; it is so important to preserve it against its foes and enemies; the awareness is so high of violence and terrorism under the cover of a high pro-nationalistic movement pushing forward the separation of the Basque Country against the rest of Spain… that Spain has turned out to be, along with Japan, the only contemporary and pluralistic democratic society in which Constitutional change has been consistently avoided – and, I dare to say, almost banned. Not a single Constitutional amendment has been tried since the first wording of the Constitution was agreed 25 years ago. In the case of Japan there were no changes since 1946. That has been the case of Spain since 1978. Violence and terrorism in the Basque Country have turned out to amount to an effective antidote against any possibility of perfecting the federal arrangements for the Spanish Autonomous State. As long as violence persists, no constitutional change can be undertaken.

This third paradox would imply that as long as violence persists, the very existence of violence has blocked every perspective for constitutional change. In other words: political violence is not pushing forward for constitutional change. On the contrary, it is the other way around: violence is the very factor that is now blocking every possible improvement of the Spanish Constitutional State, and our federal development experience as a whole. Moreover, it is violence which is blocking every possible means for the Basque singularity to find a reaccommodation, according to democratic standards, as long as it is impossible to openly have a discussion on such reaccommodation of the Basque Country given the persistence of violence and the terrorist threat. It is impossible to do it by any other means whatsoever. That

would be, if you will allow me, my sweet and bitter conclusion of this overview on the Spanish federalising process.

THE LEGAL STATUS OF MINORITIES IN HUNGARY

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I.   Introduction: historical legacy

To try to define the concept of statehood and national identity in Hungary (as well as of Hungary) is not an easy job. This concept has evolved a great deal in the last decade: the return of democracy in 1989-1990 provided a proper constitutional climate for the reshaping of legal standards vis-a-vis the relationship between the majority and minorities. The current approach enjoys a historical feed-back to the concept followed during the second half of the XIXth century as well as to Karl Renner's reform ideas about the Austro-Hungarian Monarchy elaborated at the beginning of the XXth century (also known as the "*austro-marxist answer to the national issue*") in scientific literature and takes into consideration lessons from the second half of the XXth century. In order to understand the issue, we should take into consideration the importance of historical, sociological and demographical data, determining profoundly the choice between the eventually possible means of minority-majority issue management.

What are the basic historical data?

One must not forget that the Austro-Hungarian Monarchy (and all previous forms of the Habsburg-empire) was multi-national and multi-cultural as to its composition but not for the loyalty to the ruling dynasty. The traditional obedience in the army and public services guaranteed a definite force of cohesion, contributing in this way to the recognition of national interests in the preservation of a *grosso modo* acceptable status quo in a territory subject to German, Russian and Turkish rivalry. Austria's imperial position was an important factor in the *continental equilibrium*, basic political philosophy of the XIXth century British foreign policy. This special importance disappeared however with the break down of the Turkish empire and the temporary weakening of Russia suffering from bolshevik putches and the coup d'État of November 1917. In the new international context there was no objective need for a multi-national Austrian empire, element of the formerly well functioning equilibrium.

Hungary, as a constituting element of the Austro-Hungarian Monarchy, was multi-cultural and multi-national itself. A basic component of the XVIII-XIXth century nationhood concept was the distinction between "Hungarus" identity and "Magyar" identity. It is very difficult to translate what these notions mean as far as they are used in English (i.e. Hungarian and Magyar) as synonyms. The XIXth century approach used the Latinistic term (Hungarus) more or less as an equivalent of citizenship i.e. a public law link to the citizenship of Hungary, irrespective of linguistic background. This abstract nationhood was composed of the coexistence of several linguistic communities, *inter alia* Magyar, German, Slovak etc., equal in their rights, as stipulated by the 1868 act on nationalities.

In 1868, the parliament of the Kingdom of Hungary adopted a Bill on minorities following the Jacobean philosophy in vogue: "All citizens of the country establish - by virtue of the

constitutional principles - one single nation, the uniform and indivisible Hungarian nation, where each citizen, irrespective of his national belonging, enjoys identical rights."[1] This Bill, which granted the free use of minority languages - also concerning applications to administrative authorities which also had to reply in the language of the application - did not satisfy the minorities. They wanted to be recognised as six nations, on an equal footing. The rejected motion of the deputies of the Romanian and Serbian minorities claimed complete political autonomy in districts framed according to the ethnic principle; as well as cultural autonomy in the whole country and an ethnic quota in the administrative staff.[2]

When the peace treaties of 1919-20 put an end to the Austro-Hungarian Monarchy, Austria was reduced mainly to its German speaking territories (even if the Saint Germain peace treaty contained some protection measures for Croats and Slovenians who remained in Austria) and Hungary also lost two-thirds of its previous territory. The seceding or annexed territories (by neigbouring countries) were populated not only by Slav or Romanian people but also by important Hungarian speaking minorities. Although their international protection was promised in the peace treaty and subsequent ones on behalf of the League of Nations, the real implementation of this guarantee was far from really efficient. It is worth noting, however, that the remaining part of Hungary's territory was also populated by linguistic minorities, mostly alongside the state borders.

In order to be able to characterise Hungary's standpoint concerning minority issues during the XXth century, a distinction should be made between foreign and internal aspects.

As to the Hungarian minorities of the lost territories, the basic approach of the 1920s and 30s can be characterised by the complexity of the application of international conflict settlement mechanisms (of the League of Nations), proposals for concluding bilateral minority protection instruments and a revisionist policy, manifested mostly in the use of revisionist vocabulary. After the end of the 2nd World War, the forced inclusion into the Soviet Empire required the use of the marxist phraseology about proletarian internationalism, the disappearance of boundaries and the qualification of the minority issue as belonging to the domestic affairs of states. The credibility of this vocabulary became less and less in the 1980s and 90s brought the progressive re-establishment of a comprehensive international protection system for national minorities. On the level of European and international diplomacy Hungary is keen to make use of the existing mechanisms which it helped establish. In this way, Hungary is eager to see minority issues definitely under the international protection. This international control seems to be useful in Hungary as well as abroad, in the neighbouring countries.

As to the internal aspects of the minority issue, that is to say the status of the different linguistic minorities living in Hungary during the XXth century, several, partly contradictory approaches can be observed. Attachment, refusal, minority specific positive and negative attitudes alternated before and after the 2nd World War. Folklorism and the acceptance of a *de facto* assimilation (despite the official policy proclaiming as an aim a merely *de jure* integration) were both felt. The Holocaust and then the partial expulsion of the German minority after the 2nd World War or the suspicion against South-Slavs from 1949 to 1953 left wounds in the collective consciousness of people belonging to minorities. It is not possible to

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[1]   *Bill no. XLIV/1868 (Magyar Törvénytár) - Law reports 1896 p. 490.*

[2]   *See the context of Bill no. XLIV/1868 (Magyar Törvénytár) - Law reports 1896 p. 493 (motion Mocsonyi/Miletic, supported by 26 deputies of Romanians and Serbs of Hungary).*

treat in depth all the details of the previous policy which is why only the legacy of the end of the 1980s will be treated in this report. This heritage is truly complex: the use of minority language decreased everywhere and the will to establish a performing network of schools led to the diminution of the number of minority schools in the countryside. The unemployment policy of the communist system offered the Roma minority an array of jobs needing unskilled workers. All these were completed with different "affirmative actions" – such as measures concerning dwelling: the economic collapse of the regime pushed these unskilled workers in the field of the so-called structural unemployment: for them, social emancipation, jobs, adequate schooling of their children are in the first line of demands and interests and not the linguistic issues of the so-called traditional minority policy.

II.   A farewell to the nation-state concept

There are more and more states in Europe which do not organise their public structure according to the nation-state concept but in a different way, by recognising the importance of the equal values and interests of different cultures. Hungary is one of them. In this way, the acknowledgement of mistakes, the return to well established practice, the attention paid to the experiences of other, namely Scandinavian countries have all contributed to the strengthening of the concept where confidence, power sharing and autonomous competences are the crucial elements.

Hungary´s position towards linguistic minorities is based on the consideration that instead of the classic nation-state concept, the principle of subsidiarity should be applied. In this way, minorities can decide the matters which are important for their identity.

Articles, books, colloquies, legislation and constitutional practice in several European states witness today that in the new millennium we see things differently from when it seemed so evident for thinkers and politicians to import Western examples in order to get closer to modernity. However, certain phenomena perceived without doubt in the XIXth century as the result of evolution, have since been questioned. It has become clear that the nation-state has had drawbacks and even victims and nowadays it is expensive to mitigate damages and to promote small languages and cultures. The nation-state has a particular but apparently inherent temptation to uniformity and to cultural and lingustic hegemony. This is why a good number of countries are making efforts to reshape their internal administrative structure according to the principles of decentralisation and subsidiarity.

As we all know well, subsidiarity has a double meaning. Since the Maastricht Treaty it has become evident that there are certain inherent limits of sovereignty-transfer to the supranational level, i.e. when the efficiency of the activity is threatened (e.g. the organisation having acquired the given competencies is unable to use them; the bureaucratic way keeps down the required activity). Subsidiarity, however, also means a constitutional and administrative doctrine in expansion, ready to grant a greater place to local self-government if advantages of fiscality or efficiency justify it. Without doubt, the state has survived this slimming diet and citizens have realized that as a result of the decentralisation a lot of things have become cheaper and simpler.

It is, however, not only a new international fashion of legal and political philosophy which urged the Hungarian political elite to recognise a certain co-decisional as well as some direct competence for the minorities. The Constitution itself stipulates as a basic principle that Hungary is a multi-cultural country. If this is to be not just a high sounding statement but a

living reality, adequate legal instruments should be established in order to guarantee legal protection and promotion thereof.

In addition to provisions putting together international and national law[3] or providing safeguards expressed in terms of the European terminology of human rights[4] or in particular prohibiting discrimination[5], the Constitution enshrines the fundamental principles of effective participation by minorities in public life:

> *§ 68 (1) The national and linguistic minorities in the Republic of Hungary shall share in the people′s power, being constituent elements of the state.*
> *(2) The Republic of Hungary shall accord protection to the national and linguistic minorities, ensuring their collective participation in public life, the cultivation of their culture, the use of their mother tongue, education in their mother tongue and the right to use names in their own language.*
> *(3) The laws of the Republic of Hungary shall guarantee the representation of the national and ethnic minorities living in the national territory.*
> *(4) National and ethnic minorities may set up local and national self-governing bodies.*
> *(5) The enactment of the law on national and ethnic minorities shall require a two thirds majority of votes of members of parliament present.*

The Constitution laid particular stress on the institution of the ombudsman for minorities.[6] Quite plainly, the Constitution can only ensure that the truly fundamental principles and specific conditions are dealt by a separate legislation, notably on the rights of minorities. This law,[7] passed in 1993, associates the concept of individual rights with a collective approach, expressed generally as the manifestation of the concept of "personal autonomy".

In fact the solution prescribed by Hungarian law only partially corresponds to this idea of "personal autonomy": institutions securing it are indeed provided for in the letter of the law, alongside and as if they were above the normal institutions of local self-government, the individual rights of persons belonging to minorities and the collective rights pertaining to these minorities. It is the essential ingredient in a coherent group of instruments. Logically, self-government, present at various levels of society, tends to be linked with collective rights.

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[3]   *Article 7: "The legal system of the Republic of Hungary shall accept the generally recognised rules of international law and shall ensure harmony between obligations under international law and the municipal law."*

[4]   *Article 8(1): "The Republic of Hungary shall recognise fundamental human rights as inviolable and inalienable and it shall be a prime duty of the state to respect and protect those rights."*

   Article 8(2): "In the Republic of Hungary, the rules relating to fundamental rights and duties shall be determined by law, which neverteless cannot restrict the substance of any fundamental right."

[Note: Human rights are set out in Chapter XII - Articles 54-70/K].

[5]   *Article 70/A(1): "The Republic of Hungary shall guarantee for everyone in its territory all human and civil rights without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

[6]   *Article 32/B(2): "The parliamentary ombudsman for the rights of national and ethnic minorities shall have the duty to examine or have examined any irregularities brought to his attention in connection with the rights of national and ethnic minorities and to initiate general or individual measures to remedy them."*

[Note: He is elected by the Parliament. cf. Article 19(3) of the Constitution.]

[7]   *Law no. LXXVII (1993) on the rights of national and ethnic minorities.*

At the same time, as will be explained below, it embodies the applied principle of *subsidiarity*. Even so, in theory, self-government is also conceivable in the framework of the organisation of public administration and not necessarily in the human rights framework. Indeed, it is not alien to human rights - the Hungarian law finds landmarks in European practice, like the ombudsmen and Lapp assemblies of the Scandinavian countries or certain Slovenian institutions. At the same time, Hungarian law is consistent with the undertakings made in international law: the *European Charter for Regional or Minority Languages*, the *Framework-convention for the Protection of National Minorities in Europe* and bilateral treaties which are furthermore based on the individual as well as the collective approach to the protection of minorities and establish bilateral supervision machinery.[8] They constitute the frame of reference supplementing the other stipulations of international law.

Self-government in terms of "personal autonomy" thus finds its technical justification in the geographical and numerical patterns of minorities in Hungary. Looking at the map, we can easily observe the patchwork-like settlement of the minorities.

Linguistic minorities in Hungary

The Act n°LXXVII(1993) on the rights of minorities gives a list on the linguistic minorities, i.e.: German, Croatian, Slovak, Rumanian, Serbian, Slovenian, Gipsy (Roma), Armenian, Bulgarian, Greek, Polish, Ruthenian, Ukrainian. The map shows the main patterns of settlement of the more significant, territorially based languages.

O = German minority
▪ = Croatian minority
✳ = Slovak minority
∷ = Rumanian minority
▫ = Serbian minority
⬚ = Slovenian minority

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[8]   *Hungary-Ukraine: Treaty on good-neighbourly relations and foundation of cooperation (6.12.1991), Declaration on principles of co-operation in the protection of the rights of national minorities (31.5.1991) and Protocol thereto. (31.5.1991);*

Hungary-Slovenia: Treaty on good neighbourly relations (1.12.1992) and Convention on the special rights of the Slovenian minority living in Hungary and of the Hungarian minority living in Slovenia (6.11.1992);

Hungary-Croatia: Convention on the rights of the Croatian minority living in Hungary and of the Hungarian minority living in Croatia (5.4.1995);

Hungary-Slovakia: Treaty on the good neighbourly relations and the co-operation (19.3.1995);

Hungary-Romania: Treaty on understanding, good neighbourly relations and co-operation (16.9.1996).

Another fact worth noting is that census data are often contradictory and sometimes show shifts which cannot be explained according to the classic demographic rules.[9] Hidden identity

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[9]   *a. results of the census of 1980, 1990, and 2001 according to the reply to the question about "nationality":*

- *Germans:11,310 (1980); 30,824 (1990); 62,233 (2001);*

- *Slovaks: 9,101 (1980); 10,459 (1990); 17,692 (2001);*

- *Croatians, Slovenians or Serbians: 18,431 (1980);*

- *Croatians:13,570 (1990); 15,620 (2001);*

- *Serbians 2,905 (1990); 3,816 (2001);*

- *Slovenians or other:1,930 (1990); 3,040 (2001);*

- *Romanians: 8,874 (1980); 10,740 (1990); 7,995 (2001);*

- *Gipsies (Roma): 142,683 (1990); 190,046 (2001);*

- *Poles: 2,962 (2001);*

- *Bulgarians: 1,358 (2001);*

- *Greeks: 2,509 (2001);*

- *Armenians: 620 (2001);*

- *Ukrainians: 5,070 (2001);*

- *Ruthenians (Ruthéno-ukrainiens):1,098(2001);*

        b. results of the census of 1980,1990 and 2001 according to the reply to the question about "mother tongue":

- *Germans: 31,231 (1980); 37,511(1990); 33,792 (2001);*

- *Slovaks: 16,054 (1980); 12,745 (1990); 11,816 (2001);*

- *Croatians, Slovenians or Serbians: 27,052 (1980);*

- *Croatians:17, 757 (1990); 14,345 (2001);*

- *Serbians: 2,593 (1990); 3,388 (2001);*

- *Slovenians or other: 2,627 (1990); 3,187 (2001);*

- *Romanians: 10,141 (1980); 8,730(1990); 8,482 (2001);*

- *Gipsies (Roma): 48,072 (1990); 48,685 (2001);*

- *Poles: 3,788 (1990); 2,962 (2001);*

- *Bulgarians: 1,370 (1990); 1,299 (2001);*

- *Greeks: 1,640 (1990); 1,921 (2001);*

- *Armenians: 37 (1990); 294 (2001);*

- *Ukrainians: 4,885 (2001);*

- *Ruthenians (Ruthéno-ukrainiens):1,113(2001);*

- *Ukrainien or Ruthénians 674 (1990);*

        c. results of the 2001 census of 2001 concerning the newly introduced question on adherence to special national values and cultural traditions:

- *Germans: 88,416(2001);*

- *Slovaks: 26,631(2001);*

- *Croatians: 19,715(2001);*

- *Serbians: 5,279 (2001);*

- *Slovenians or other: 3,442(2001);*

- *Romanians: 9,162(2001);*

- *Gipsies (Roma): 129,259(2001);*

- *Poles: 3,983 (2001);*

- *Bulgarians: 1,693 (2001);*

- *Greeks: 6,140 (2001);*

- *Armenians: 836 (2001);*

- *Ukrainians: 4,779 (2001);*

- *Ruthenians (Ruthéno-ukrainiens):1,292(2001);*

　　d. results of the 2001 census concerning the newly introduced question on the use of special languages in the family or friendly intercourses

- *Germans: 53,040 (2001);*

- *Slovaks: 18,056 (2001);*

- *Croatians: 14,788 (2001);*

- *Serbians: 4,186 (2001);*

- *Slovenians or other: 3,119 (2001);*

- *Romanians: 8,215 (2001);*

- *Gipsies (Roma): 53,323 (2001);*

- *Poles: 2,659 (2001);*

- *Bulgarians: 1,118 (2001);*

- *Greeks: 1,974 (2001);*

- *Armenians: 300 (2001);*

- *Ukrainians: 4,519 (2001);*

- *Ruthenians (Ruthéno-ukrainiens):1,068(2001);*

　　e. Governemental approximation following certain empirical researches in 506 localities, according to the Hooz-method:

- *Germans: min. 95,000*

- *Slovaks: min. 50,000*

- *Croatians, Slovenians et Serbians: min. 38,000*

- *Romanians: min. 10,000*

- *Gipsies: 400-600,000 (global estimation, without empirical researches)*

Because of the dispersed and scarce settlement pattern of the "small minorities", no analoguous empirically based estimation was made concerning Poles, Bulgarians, Greeks, Armenians, Ukrainians, Ruthenians (Ruthéno-ukrainiens);

　　f. Estimations of organisations of minorities (1990): (they are of the same opinion also in 2000)

- *Germans: 200-220,000*

- *Slovaks: 100-110,000*

- *Croatians: 80-90,000;*

- *Serbians: 5,000;*

- *Slovenians: 5,000*

- *Romanians: 25,000*

- *Poles: 10,000*

- *Bulgarians: 3,000*

- *Greeks: 4,0-4,5000*

and double identity are factors which should be taken into consideration. All this explains that not only different organisations representing the given minorities' interests refer to figures much higher than those of the census (which is, of course, easily understandable), but also the government uses estimations being somewhere between the census figures and data proposed by the organisations.

The legal justification of minorities' autonomy is inferred from the aforementioned stipulations of the Constitution and to some extent from the law on local authorities;[10] its political justification stems from the will of the minorities concerned, which conducted the negotiations as a united front: an *ad hoc* representative body made up of the delegations of minority organisations. The fruit of these talks was submitted by the government to the parliament which adopted it almost unanimously. The long drafting procedure (the first draft dates back to 1989-90) can be explained by the fact that minorities considered the proposals based merely on traditional freedom of association as inadequate and that they wanted to complete it with self-governing institutions.

The considerations given to personal autonomy can be explained not only by historical and ideological reasons, but by purely pragmatic ones as well. The actual geographical and numerical patterns of minorities living in Hungary are such that it is impossible to draw any precise line which could be the basis for a truly geographical (territorial) autonomy. Our minorities are everywhere in minority status, they do not form a compact, *in situ* majority position, embracing several neighbouring villages or even smaller towns. A partnership-like institution, competent for minority people living in a patchwork pattern along the whole country, does not need to attribute an overwhelming importance to the precise numerical strength of the given minority.

This way of thinking is very close however to the positions that some scholars took before the 2nd Word War. As László Buza, a famous Hungarian law-professor during the XXth century, considered as the intellectual father of contemporary international lawyers in Hungary, defined autonomy in the 30s, it guarantees "by positive measures the implementation of the specific interests of minorities in the way that state-power should be practised - at least in certain well defined spheres - separately, in favour of the minorities and according to their intentions or with their co-operation or, why not, by themselves."[11] He added that personal autonomy was much more difficult to achieve but also more adequate as it could embrace the totality of the minority population irrespective of its geographical positions.[12]

It should not be forgotten that the Hungarian legal way of thinking is very close to the Austro-German school and it is hardly necessary to explain the reasons for that after so many years of common existence. The impact of this school can also be seen in the wording of the

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- Armenians: 3,5-10,000

- Ukrainians: 2,000

- Ruthenians (Ruthéno-ukrainiens): 6,000

- Gipsies (Roma): 400-600,000

[10]   *Law no. LXV (1990) on local authorities and law no. LXIV on the election of local representatives for local authorities and of mayors.*

[11]   *Buza, László: A kisebbségek jogi helyzete (Legal situation of minorities) Budapest 1930 Magyar Tudományos Akadémia p. 5.*

[12]   *Buza, László: op. cit p. 106.*

Hungarian law on minorities. Under the terms of the law, a national or ethnic minority is a community (*Volksgruppe*) which is in numerical minority in comparision with other inhabitants of the state; which has resided in the territory of the Republic of Hungary for at least a century; and whose members - who are Hungarian citizens - differ in language, culture and tradition. According to this definition, evidently inspired by Mr Capotorti, the following communities are assumed to be traditionally settled in Hungary: German, Armenian, Bulgarian, Croatian, Greek, Polish, Romanian, Ruthenian, Serb, Slovak, Slovenian, Gipsy. Minorities as communities are entitled to establish their own forms of social organisation and autonomy at local and national level. The Parliament elects an ombudsman to supervise and further the effective exercise of the rights of national or ethnic minorities. The ombudsman´s mission is important: mainly certain members of the Roma community ask for his fact finding and good offices in conflict-settlement.

III.   Institutional complex

The law recognises the creation and operation of minorities' self-government in the sense of cultural autonomy as the most important requirement for minorities to assert their rights. It thus enables minorities in the municipalities, towns and districts of the capital to establish their own municipal councils or to bring into being, whether directly or indirectly, self-government bodies with a local or a national remit. Where the minority is unable to form a local minority council, its interests are represented by a local ombudsman (speaker).

Why was such an intricate and highly complex arrangement chosen? The four "manifestations" of autonomy, namely municipal self-government, local self-government, the institution of local spokesman and national self-government differ in their purpose.

Municipal self-government ("municipal minority council" in the law) is in fact another name for local self-government in the European sense of the word. This can be practised in municipalities where most of the electorate belongs to a minority. The geographical distribution of minorities is however such that it would be impossible for a number of municipalities to form a local self-government body since generally speaking this would presuppose that the bulk of their electorate belongs to a national minority which is the case in some of the municipalities even with the largest minorities.

The *local minority self-government* ("local minority council" in the law), however, caters for situations where the linguistic minority constitutes a minority even in the locality; apparently this type of institution could become far more widespread. The law contains generally identical competences regulated in the same paragraphs for both cases.

Local spokesman is a special institution which operates when, despite the rules advocating positive discrimination, it was impossible to elect even a local minority council.

National self-government ("national minority council" in the law) is an elected body whose electors are persons working in self-government bodies of lower rank. Certain minorities may only be able to avail themselves of this national-level of self-government when no local basis exists. In this case, the election is vested in the hands of special *caucus*, composed of electoral representatives designated for this purpose by the scattered communities.

The powers vested in the different forms of self-government are fairly similar and essentially concern the fulfilment of minorities´ educational, cultural and traditional needs. This is where

the two classic expressions of autonomy are apparent: either true self-government or a co-decisional competence, implying a *de facto* veto right. In other areas, the right to consult the local or state governmental administration and the right to present them with initiatives (right of petition) are secured. The quality of the right of initiative is enhanced by the obligation of reply imposed on the body adressed.

Despite the complexity of the provisions, there is no duplication at local level because the three modalities described above are alternative institutions the choice of which depends essentially on two factors: firstly the specificity of the geographical distribution of linguistic minorities and secondly their political activism.

It was therefore expedient for the law to offer an array of instruments presenting a certain logical coherence and applying to the various minorities concerned while taking into account a wide range of numerical differences between them. Subsidiarity, i.e. the devolution of powers, mainly concerning matters of identity, education, schooling, culture and including the relevant budget, (provided essentially by the Fund for National or Ethnic Minorities, but also by the Parliament[13] in cases of special programme) at every level where self-government operates. Electoral legitimacy bolsters the responsibility of the representatives of minorities and at the same time confers the responsibility of choosing between the various forms of organisation to those directly concerned. In this way, it can also provide safeguards against government patronage (clientelism).

The combined municipal and minority elections in 1994-1995, 1998 and 2002 gave the following results:

Minority	Status as of January 1995	Status as of January 1999	Status as of May 2003
Armenian	16	25	31
Bulgarian	4	14	31
Croat	57	74	108
German	162	272	341
Greek	6	18	31
Polish	7	32	51
Roma	477	762	996
Romanian	11	32	44
Ruthenian	1	9	32
Serb	34	34	44
Slovak	51	75	115
Slovenian	6	10	13
Ukranian	-	4	13
Total	*817*	*1361*	*1850*

The experience gained from the seven year existence of this instrument is globally positive. Problems, however, also emerged during the practice: e.g. the very complicated way of the elections was criticised. The liberalism of the rules concerning the eligibility for the representation of minorities can have counter-productive effects or at least disfunctions. As

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[13]   *The Parliament authorised the Committee for Human and Minority Rights and Religious Affairs to pass the decision about the budgetary contribution to special programmes.*

far as the free choice of identity is defined in the current Hungarian legislation as a truly free choice (and not only the freedom of being considered as belonging to a minority against his own will), it often happened that persons running for the posts were not formerly known by the given minority who they belong to. Moreover, as all citisens are entitled to participate with active voting rights in the minority elections (organised at the same time as municipal elections), losing parties sometimes had the feeling that outsiders' votes decided the matter. It may be strange for a foreigner to understand why such an ultraliberal system was chosen mixing general electoral rules with genuine autonomy. Irrespective of the legal debate, this decision had even been suggested *inter alia* by leaders of linguistic minorities and probably the contradictory figures of the census and estimations were responsible for it. Because of these dysfunctions, the next modification of the law on minorities will probably bring about a restriction concerning active and passive voting rights at minority elections. Once again these restrictions are called for and proposed to the government by minority organisations and their leaders (sometimes the same as before!).

A returning problem is the modesty of budget and the difficulty of securing proper control by the State Audit Office (*grosso modo* a Board of Auditors) concerning the use of state-subsidies. There is another (but for the time being only theoretical) problem: how to treat an eventual bad financial year in order to avoid "bankruptcy". The harmonisation of the co-decisional competences should also be improved. It is interesting to see the two different main profiles of the activities: the self-governments of the gipsy (Roma) community would rather focus on social problems, the establishment of special schools with special *curricula*, on the effective social rehabilitation, equality of chances etc. Governments prepared a medium-term plan aiming to improve the Romas´ position in the labour market with educational programmes as well as with certain initiatives to help them to establish small agricultural and industrial enterprises. At the same time, classic linguistic minorities (Germans, Slovaks, Croatians, Romanians, Serbs, etc.) concentrate on linguistic educational and cultural matters, institutions etc.

Despite the above-mentioned reasons and legal guarantees to avoid political clientelism, some leaders of the Roma community have recently accused each other of being the designees of political parties of the right or of the left. The fact that some leaders were put on the national electoral lists of political parties in order to assure the political representation of these minorities in the national assembly was considered by opponents as an undue affiliation to a particular political line. The issue of whether the Roma community should be bound by the same legislation as other minorities was discussed at length at the end of the eighties and the beginning of the nineties. At that time, a political decision was taken to adopt a uniform approach. Apparently, today's political elite has realised that there is the need for a special complementary legislation concerning the Roma population on the basis of the philosophy of social emancipation, fight against poverty, etc. It has been suggested that Roma self-governments should be legally entitled to deal with social issues. Such an enlargement of competences would be welcomed by the National Council of the Roma minority. There are initiatives about the adoption of a special non-discrimination bill including also the so-called horizontal discrimination (i.e. discrimination by private individuals in jobs, service in pubs etc.). Hungary is a signatory state to the Additional Protocol No. 12 to the European convention on Human Rights which means that during the implementation of this international obligation either by a network of legislative acts or by a comprehensive antidiscrimination law, horizontal discrimination should also be persecuted.

An abstract appreciation of the current Hungarian legislation, comparison to the XIXth century philosophy cannot be avoided and it becomes obvious that the same distinction between "citizen of Hungary" and "linguistically Magyar" appears as during the XIXth century. This approach differs greatly from the approach followed by several states which way mostly belongs to the circle of the followers of the out of date nation-state principle. Although more complicated than the simplicity of the nation-state principle, it surely lacks the inherent trap i.e. the assimilation of citizenship with ethnicity despite the existing linguistic or ethnic differences of the population. It cannot be said that a country belonging to the post-nation-state concept is forcibly more generous with its minorities than a correct nation-state abiding to basic international and national minority protection instruments. It is however certainly true, that the legal system of a post-nation-state country is more open to a legislative reform.

Another advantage of this approach is that the distinction between citizenship and ethnicity makes it easier to understand the importance of the special relationship between a kin-State and its kin-minority. The European Commission for Democracy through Law (Venice Commission) gave a comprehensive analysis of the *in abstracto* legality of this relationship and the conformity *in concreto* of its legal techniques chosen with current international legal standards.[14] Even if nation-states also give such assistance to their kin-minorities, they are much more reluctant to do so when a minority living on their territory enjoys the assistance of another country.

Hungary did not protest against such mesures taken unilaterally by Slovakia,[15] Romania,[16] Slovenia[17] and Bulgaria.[18] In conformity with the double identity concept of nationhood, such foreign assistance was considered as a contribution to the realisation of the goals in the promotion of linguistic identity. It was only later that the Hungarian parliament voted a similar act on the preferential treatment of kin-minorities.

Even if there are some differences between these pieces of legislation as to their details, the underlying philosophy is basically the same, as was underlined by the Venice Commission which affirmed that the efforts made by a kin-State in favour of a kin-minority should be recognised as a contribution to the realisation of the aims of the Council of Europe. However, the kin-State should always be careful to observe the relevant rules of international law when exercising such activities.[19]

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[14]   *Report of the Venice Commission on the preferential treatment of national minorities by their kin-state (CDL-INF (2001)19, 21-22 October 2001).*

[15]   *Act on Expatriate Slovaks and changing and complementing some laws no. 70 of 14 February 1997.*

[16]   *Law regarding the support granted to the Romanian communities from all over the world of 15 July 1998.*

[17]   *The Resolution of the Slovenian Parliament on the status and situation of the Slovenian minorities living in neighbouring countries and the duties of the Slovenian State and other bodies in this respect of 27 June 1996.*

[18]   *Law for Bulgarians living outside the Republic of Bulgaria, 11 April 2000.*

[19]   *i. A State may issue acts concerning kin-minorities, who are foreign citizens, in as much as the effects of these acts are to take place within its borders.*

ii. When these acts aim at deploying their effects on kin-minorities being foreign citizens abroad, in fields that are not covered by treaties or international customs allowing the kin-State to assume the consent of the relevant home-states, such consent should be sought prior to the implementation of any measure.

IV.   Conclusions

It is obvious that the contemporary Hungarian approach cannot be considered as a solution to all the difficulties or even less as an example suggested for other states. It is a set of legal instruments with both the advantages and disadvantages, necessary adaptations and reforms. The greatest merit of this piece of legislation is not only the fact that a more or less functioning sytem of institutions setting out the needs and wills of minorities has been created but also the way it was adopted and will be modified; i.e. a constant dialogue between minority institutions and governments, minority and majority.

The present system can hardly be considered as definite. It is *in statu nascendi* where minorities and their organisations learn how to deal with important public law problems, how to express their needs and wishes and how to convince governmental and local partners, how to establish contracts and agreements and how to manage their own institutions. In short, trust, partnership and co-operation are the basic motives underlying the current legal systems. It is also important to underline that the real value of very abstract legal formulas should be examined in the light of day-to-day experiences. Reforms should, however, be carried out with the consensus of the interested parties, namely government, local administration and minorities. International co-operation should be sought and academic legal texts should be disregarded if they do not reflect reality or if they lead to dysfunctions.

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iii. In the implementation of these policies, no quasi-official function may be assigned by a state to non-governmental associations registered in another State without the consent of this State. Any form of certification in situ should be obtained through the consular authorities within the limits of their commonly accepted attributions. The laws or regulations in question should preferably list the exact criteria for falling within their scope of application. Associations could provide information concerning these criteria in the absence of formal supporting documents.

iv. Unilateral measures on the preferential treatment of kin-minorities should not touch upon areas demonstrably pre-empted by bilateral treaties without the express consent or the implicit but unambiguous acceptance of the home-State. In the case of disputes on the implementation or interpretation of bilateral treaties, all the existing procedures for settling the dispute must be used in good faith, and such unilateral measures can only be taken by the kin-State if and after these procedures prove ineffective.

v. An administrative document issued by the kin-State may only certify the entitlement of its bearer to the benefits provided for under the applicable laws and regulations.

vi. Preferential treatment may be granted to persons belonging to kin-minorities in the fields of education and culture, insofar as it pursues the legitimate aim of fostering cultural links and is proportionate to that aim. In these fields, the consent of the home-State can be presumed and kin-States may take unilateral administrative or legislative measures.

vii. Except the consent of the home State, preferential treatment cannot be granted in fields other than education and culture, save in exceptional cases and if it is shown to pursue a legitimate aim and to be proportionate to that aim. Further, when a kin-State takes unilateral measures on the preferential treatment of its kin-minorities in a particular home-State, the latter may presume the consent of the said kin-State to similar measures concerning its citizens.

The above list (from i to vii) is the quasi verbatim recapitulation of the conclusions of the Venice Commission (p. 17), completed with some rules contained on pages 12-13 of the report (second part of vi and of vii.).

LE « MODELE BELGE » EST-IL EXPORTABLE ?

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La Belgique est décidément un pays compliqué qui suscite l'intérêt des observateurs étrangers. Ceux-ci sont généralement fascinés par la structure institutionnelle complexe de ce petit pays de dix millions d'habitants qui s'est transformé depuis 1993 en un État fédéral. On évoque d'ailleurs de plus en plus souvent le « modèle belge ». Son intérêt réside, semble-t-il, dans les enseignements qu'il est possible d'en tirer pour l'organisation de sociétés multiculturelles et multiethniques, notamment dans les régions où les limites géographiques, politiques et linguistiques ne coïncident pas. De nombreuses conférences et séminaires ont déjà été organisés sur le « modèle belge » tant à Jérusalem qu'à Nicosie. Cette fois, c'est en République de Moldova que l'on se livre à l'exercice. Et pourtant, on peut légitimement se demander si ce « modèle » est réellement exportable sous d'autres cieux et dans d'autres contextes, et notamment dans cette « nouvelle Europe » de l'ère post-communiste.

Pour comprendre la Belgique, peuplée de Flamands et de Francophones (Wallons et Bruxellois), il est nécessaire de faire référence au passé.

A l'origine, l'association entre deux peuples de langue et de culture différentes ne pose pas de problème dans ce petit État largement artificiel, d'autant que la majorité des Flamands comme des Wallons sont alors catholiques et souhaitent se distancier des protestants orangistes des Pays-Bas. Lors de l'indépendance, en 1831, la langue française dispose en Belgique d'un véritable monopole en tant que langue officielle. C'est la langue de la bourgeoisie censitaire, des notables qui paient l'impôt. La bourgeoisie est en effet convaincue que seul le français a vocation culturelle, que tout autre idiome (y compris les dialectes wallons) ne peut qu'entraver la réussite intellectuelle et sociale. Il faut dire qu'à l'époque, le français est la langue favorite des classes aisées en Europe, la langue de la politique et de la diplomatie, celle du commerce. Cela ne choque personne. C'est un monde différent dans lequel le peuple n'a pas encore sa place. Le petit peuple s'exprime d'ailleurs dans des dialectes (flamands et wallons) qui varient selon les régions. A Bruxelles, le peuple s'exprime dans un étrange *sabir* que seuls les lecteurs belges d'Hergé, le père de Tintin, peuvent encore comprendre.

Il n'empêche que très tôt le mouvement flamand va s'affirmer par la voix et la plume du clergé proche du peuple et de littérateurs (les « *taalminnaren* ») révoltés par les discriminations dont sont victimes les Flamands. Cette couche intellectuelle nouvelle venue considère que la langue est l'âme du peuple (« *de taal is het ganse volk* ») et donc la condition première et absolue de son émancipation. Il faudra cependant attendre près de quarante ans (1873) pour voir apparaître la première législation sur l'emploi des langues en matière judiciaire (jusque là il était impossible pour un inculpé flamand de se faire juger dans sa langue !). La loi sur l'emploi des langues en matière administrative est votée en 1878 et en 1883, celle sur l'emploi des langues dans l'enseignement. Ce n'est qu'en 1898 qu'une loi établit le principe de l'équivalence sur le plan juridique des textes flamands et français des lois et arrêtés royaux.

Pendant la Première guerre mondiale, l'indignation des milieux culturels flamands est à son comble face à des situations où les fils de familles rurales et ouvrières flamandes, généralement analphabètes, sont commandés par des officiers francophones ne comprenant pas la langue de leurs subordonnés, ce qui provoqua des tragédies. Un mouvement illégal de protestation flamingant (le « *frontbeweging »*) organisa des manifestations de soldats. Son programme ne revendiquait pas seulement la scission de l'armée en régiments flamands et en régiments wallons mais au-delà l'unilinguisme de la Flandre et son autonomie administrative. Ces revendications demeurent toutefois sans écho dans une Belgique où le patriotisme de la majorité s'oppose à la « barbarie teutonne ». Elles reviennent cependant en force après la guerre.

La poussée du nationalisme flamand s'accentue en effet pendant l'entre-deux-guerres (1919-1939). La lutte pour la défense de la langue flamande se focalisera autour de la « flamandisation » de l'Université d'État à Gand, revendication qui sera finalement satisfaite en 1930. En 1932, une nouvelle loi sur l'emploi des langues institue l'unilinguisme en Flandre et en Wallonie et le bilinguisme à Bruxelles où, selon les termes de la loi « nul ne peut exercer une fonction le mettant en rapport avec le public s'il ne connaît les deux langues nationales ». Pour les communes où se trouvent des minorités linguistiques on invente un système de « facilités ». C'est ainsi que les habitants francophones de la périphérie bruxelloise obtiendront le droit d'utiliser leur langue maternelle dans les rapports avec l'administration, droit aujourd'hui remis en cause par les nationalistes flamands les plus radicaux.

La Seconde guerre mondiale n'arrange pas les rapports entre les deux communautés. Certaines composantes du nationalisme flamand (mais aussi des Wallons) choisiront ouvertement la collaboration avec les nazis dans l'espoir d'obtenir l'indépendance de la Flandre (comme les Slovaques ou les Croates en Europe centrale). La défaite de l'Allemagne porte un coup très dur au nationalisme flamand le plus radical. Beaucoup d'activistes qui s'étaient engagés dans la collaboration furent arrêtés et condamnés, certains à mort. La répression de l'incivisme s'opéra dans un climat passionné[1]. Les chiffres montrent qu'il y eut une proportion très semblable, dans chacune des régions du pays, de collaborateurs ayant commis des actes graves. Mais il y eut une différence de climat sensible, sanctionnant en Flandre un plus grand nombre d'actes peut-être moins graves, ce qui entraîna ultérieurement la revendication de l'amnistie, inscrite depuis au nombre des revendications récurrentes du mouvement flamand.

Mouvement flamand et mouvement wallon ne vécurent pas au même rythme les temps de la Libération et de l'après-guerre. En réaction au mouvement flamand qui est né pratiquement en même temps que l'État belge, le mouvement wallon naît quelque soixante ans plus tard, en 1890. A sa naissance il est bien loin d'être représentatif de l'opinion wallonne dans son ensemble. Si le *Catéchisme du Wallon* (1902) du comte Albert du Bois, défend d'emblée la thèse de l'identité française de la Wallonie, Jules Destrée, député socialiste, après avoir déclaré dans sa célèbre « Lettre au Roi » (1912) : « *Vous régnez sur deux peuples. Il y a en Belgique, des Wallons et des Flamands ; il n'y a pas de Belges* », préconise « *une Belgique faite de l'union de deux peuples indépendants et libres, accordés précisément à cause de cette indépendance réciproque* ». Cette « Lettre au Roi » restera une référence majeure du

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[1] *Au total, les condamnations frappèrent 0,64% de la population du pays, soit 0,73% de la population flamande, 0,52% de la population wallonne et 0,56% de la population de la capitale.*

mouvement wallon au cours de son développement ultérieur. Ces deux opinions demeurent aujourd'hui répandues dans l'opinion wallonne. La première sous la forme d'un minuscule mouvement favorable au rattachement de la Wallonie à la France. La seconde parmi les tenants d'un fédéralisme authentique.

Ce rappel historique est indispensable pour comprendre la machinerie institutionnelle en Belgique. Dans une certaine mesure la République de Moldova s'est trouvée pendant des décennies dans la même situation. Faut-il rappeler que le roumain n'avait pas pendant la période soviétique rang de langue officielle du pays. La langue russe a été imposée comme langue de l'administration, de la justice et de l'enseignement supérieur dans un pays où la langue roumaine était dominante. Ce qui explique la lutte pour la reconnaissance officielle du roumain dès la fin des années 1980.

Mais revenons à la Belgique. Au lendemain de la Seconde Guerre mondiale, l'idée du fédéralisme fait des progrès dans l'opinion wallonne, mais les grands affrontements politiques qui dominent alors la vie politique belge (la question royale et la question scolaire, par exemple), s'ils divisent profondément le pays – le rapport de force étant chaque fois différent, en Flandre, d'une part, en Wallonie et à Bruxelles d'autre part –, ont en même temps pour effet de renforcer l'unité des partis nationaux. Les problèmes communautaires connaissent à l'époque une période de latence résultant de la restauration d'institutions unitaires inchangées, résultant aussi de la politique de répression dont certains crurent qu'elle mettrait fin au mouvement flamand. Celui-ci va pourtant reprendre force et vigueur dans les années cinquante. Jusque là toute perspective de changement institutionnel reste problématique.

Tout va changer dans les années 1958-1961 en raison des problèmes politiques (le Pacte scolaire de 1958 qui met fin à la guerre entre les réseaux d'enseignement officiel et catholique et qui de ce fait libère des énergies qui peuvent alors se mobiliser sur d'autres enjeux) et économiques (à partir de 1961 la Flandre va progressivement supplanter la Wallonie, région de vieille industrialisation). Pendant cette période, le mouvement flamand va connaître un nouvel essor. Enfin, la grève générale de l'hiver 1960-1961 dirigée contre un projet gouvernemental d'austérité mettra en avant les mots d'ordre de fédéralisme et de réformes de structure. A partir de là, les oppositions politiques vont fréquemment se cristalliser autour de questions linguistiques et de questions économiques régionales.

Quelques années plus tard, ces oppositions vont provoquer l'éclatement des grands partis nationaux. Les grandes familles politiques traditionnelles qui dominent la vie politique de la Belgique depuis son indépendance, les fameux « piliers »[2], vont se scinder en partis flamands et en partis francophones. Apparaissent également à l'époque des partis régionaux, comme le *Front démocratique des Bruxellois francophones* (FDF), le *Rassemblement wallon* (RW), le *Mouvement populaire wallon* (MPW). La scission linguistique s'étendra à presque toutes les organisations sociales, professionnelles, associatives, éducatives et de recherche, à tel point que l'on évoqua avec inquiétude le « divorce belge ».

La législation linguistique de 1962-1963 négociée par les divers partis consacre pour l'essentiel les principes de la législation de 1932 évoquée plus haut. La frontière linguistique est définitivement fixée en 1963. La capitale du pays, Bruxelles, qui se trouve

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[2]   *Les familles politiques étaient constituées en Belgique par un ensemble d'organisations, politiques, sociales et économiques qui formaient les « piliers » du système politique.*

géographiquement au nord de la frontière linguistique, donc en région flamande, est enfermée dans une sorte de « carcan » constitué par 19 communes pour éviter l'extension de la « tache d'huile » francophone[3]. Cette nouvelle législation consacre également le régime des « facilités » dans six communes périphériques de Bruxelles. Le compromis de 1963 sera générateur de nouvelles insatisfactions.

Ce n'est qu'en 1970 qu'apparaissent, lors de la troisième révision de la Constitution, les notions de « communautés » et de « régions » qui annoncent la grande réforme de l'État belge. Tout cela se produit sur fond de crises (notamment dans la petite région des Fourons rattachée à la province du Limbourg flamand) mais le dialogue communautaire va se poursuivre. La quatrième révision de la Constitution, dix ans plus tard, va tenter de parfaire cette structure fédérale complexe mais ce n'est qu'en 1994 que l'actuelle forme de l'État est arrêtée.

La Constitution du 17 février 1994 signifie clairement dans son article premier que la Belgique n'est pas constituée de citoyens Belges, mais qu'elle « *est un État fédéral qui se compose des communautés et des régions* ». Elle permet aux trois communautés (flamande, francophone et germanophone) et aux trois régions (bruxelloise, flamande et wallonne) de se mouvoir à l'intérieur de structures qui leur sont propres tout en observant, du moins en principe, une loyauté fédérale. Comme le montre cette énumération, il n'y a pas de coïncidence entre ces diverses entités, car l'élément constitutif déterminant de la communauté est la culture et la langue, celui de la région est le territoire. Les Bruxellois qui appartiennent à une seule et même région se répartissent entre les deux grandes communautés, française ou flamande. La communauté germanophone fait partie intégrante de la région wallonne. Les compétences de la communauté couvrent les domaines culturels et éducatifs, celles de la région concernent le territoire et son économie. Mais cette répartition reste cependant théorique. Les Flamands se sont dotés d'un conseil et d'un exécutif, exerçant à la fois les compétences de la communauté et de la région, tandis que du côté wallon, les organes communautaires et régionaux sont séparés. Dans la capitale, Bruxelles, n'existent pas moins de cinq entités, toutes dotées de la personnalité juridique : la région, l'agglomération des dix-neuf communes, la commission communautaire française, la commission communautaire flamande et la commission communautaire commune.

Curieux fédéralisme en l'occurrence. En principe, toute fédération repose sur une constitution qui contient des dispositions précises pour opérer une répartition des compétences législatives entre deux ordres de gouvernements, le gouvernement fédéral ou central et les gouvernements locaux ou fédérés (les provinces canadiennes, les États américains, les cantons suisses, les Länder allemands)[4]. En Belgique, aucune hiérarchie des normes n'est prévue : les décrets émanant des communautés et des régions ont exactement, dans leurs zones de compétence, la même force que les lois fédérales. Il n'existe pas de Cour constitutionnelle, organe essentiel dans les États fédéraux, tout au plus existe-t-il une Cour d'arbitrage pour régler les conflits de compétence. Et que dire de l'article 35 qui stipule curieusement que : « *L'autorité fédérale n'a de compétence que dans les matières que lui attribuent formellement la Constitution et les lois portées en vertu de la Constitution même* ». Autrement dit, le résidu de souveraineté appartient aux communautés et aux régions, non à la fédération belge. Il est vrai que cet article n'est pas d'application immédiate ; il faut

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[3]   *La majorité des habitants de Bruxelles est francophone (85%).*

[4]   *Croisat Maurice, Le fédéralisme dans les démocraties contemporaines, éd. Montchrestien, coll. Clefs/Politique, 3ᵉ éd., Paris, 1999, p. 25.*

préalablement qu'une loi à majorité spéciale en fixe les modalités et, de plus, un nouvel article constitutionnel devra déterminer les compétences exclusives de l'autorité fédérale. La nouvelle machinerie institutionnelle ainsi mise en place fit dire à un responsable politique important qu'un coup d'État était impossible en Belgique parce que plus personne ne savait où était le pouvoir !

Cette fédéralisation de la Belgique n'a pas pour autant apaisé les conflits communautaires. Périodiquement, de nouvelles revendications surgissent entraînant des tensions politiques entre partis flamands et francophones, mais aboutissant à de nouveaux compromis. Une fraction non négligeable de l'élite flamande pense aujourd'hui que la Wallonie constitue une charge de plus en plus lourde pour la Flandre au sein du système fédéral belge qui repose sur la solidarité entre les régions, et qu'en conséquence, la Flandre doit s'affranchir davantage et conquérir plus d'autonomie. D'où la volonté flamande de régionaliser certaines matières qui demeurent fédérales (la sécurité sociale, par exemple). Depuis peu, une conférence intergouvernementale et interparlementaire sur le renouveau institutionnel planche de manière continue sur l'aménagement de l'État fédéral. Le dernier *round* institutionnel porte le nom, officieux, d'accord de la *Saint-Polycarpe* (d'après le calendrier).

Cet accord, négocié durement entre les partis politiques, a été voté à la majorité des deux tiers par le parlement fédéral. Il modifie une fois de plus un certain nombre de règles de fonctionnement de l'espace politique public sans modification préalable de la Constitution. Outre le volet financier destiné notamment à financer la Communauté française (dont dépend l'enseignement et la culture), il prévoit également la régionalisation des lois communale et provinciale. Concrètement, cela signifie par exemple que chacune des régions du pays pourra définir comment est désigné le bourgmestre (le maire) ; si les étrangers non-ressortissants d'un pays membre de l'Union européenne ont le droit de voter ; si les citoyens belges peuvent voter dès l'âge de 16 ans ou encore si le vote doit rester obligatoire. Le résultat, c'est que l'on pourrait avoir à terme des règles différentes entre le Nord et le Sud du pays. Le pays risque ainsi de glisser progressivement vers une forme de *confédéralisme*, qui risquerait d'ouvrir à terme la voie au séparatisme.

Le clivage linguistique et culturel entre Flamands et Francophones domine ainsi les autres clivages (État/Église, public/privé, capital/travail, centre/périphérie) qui ont marqué l'histoire politique de la Belgique. Ces clivages ne se sont pas succédés dans le temps en périodes étanches mais se sont enchevêtrés avec à chaque fois, nous l'avons souligné, des temps forts.

Pour bien comprendre le « modèle belge », il nous faut revenir à la question fondamentale du pluralisme. C'est à partir de 1958, avec la conclusion du Pacte scolaire, que la pratique du pluralisme s'étend, sous diverses formes, à l'ensemble du monde politique et social. Jusqu'à cette date, les partis en présence étaient soit des formations à référence chrétienne explicite (comme le parti social-chrétien), soit des formations anticléricales ne faisant guère appel à l'électorat chrétien (comme le parti socialiste, le parti libéral et le parti communiste). Mais dès 1958, la *Volksunie* (« Union du peuple »), un parti nationaliste flamand qui a aujourd'hui éclaté en deux partis rivaux, abandonne la référence chrétienne dans sa dénomination. Dès 1961, le parti libéral répudie son anticléricalisme traditionnel et le nouveau *Parti pour la Liberté et le Progrès*, dénomination du parti libéral à l'époque, s'ouvre à des éléments chrétiens. En 1964, une formation comme le *Front démocratique des Francophones* (FDF) se crée sur une base d'emblée pluraliste. Le *Rassemblement wallon*, tel qu'il se présente en 1968, a à cette époque une aspiration au pluralisme. D'autres formations qui apparaissent

plus tard (UDRT, ECOLO, AGALEV) se situent d'emblée au-delà de tout cloisonnement philosophique et religieux.

La pratique du pluralisme s'étend d'ailleurs bien au-delà des partis. Des organes de coordination associent par exemple dans les mêmes années les diverses composantes du mouvement flamand, d'une part, du mouvement wallon, d'autre part. Les organisations syndicales de tendance socialiste et social chrétienne mettent en œuvre à divers moments la pratique du « front commun » qui préserve la spécificité de chacun tout en offrant un front uni contre le patronat ou le gouvernement. Autre exemple : la Fédération nationale des classes moyennes, qui recrute essentiellement en milieu catholique, fusionne en 1963 avec l'Union nationale des classes moyennes, qui se situe hors de toute appartenance politique ou confessionnelle.

L'extension de la pratique du pluralisme – et surtout du recours à cette notion – n'est toutefois pas exempte d'ambiguïté, car on désigne tout à la fois ainsi un décloisonnement interne de certaines structures mais aussi une pluralité de structures cloisonnées. La conclusion en 1973 du Pacte culturel en est la meilleure preuve. A l'époque, ce pacte est lié à l'accession des communautés culturelles à une certaine autonomie. On va institutionnaliser dans chacune des communautés des formes de répartition, entre les diverses tendances, des influences et des capacités d'expression. La même préoccupation de pondération va s'imposer dans l'élaboration des statuts des instituts publics de radiodiffusion et de télévision et dans leur application. On passe ainsi progressivement d'un pluralisme limité à un pluralisme extrême.

Cette société dans laquelle se multiplient les expériences et même les formes de pluralisme est aussi une société en évolution sur le plan moral et sur le plan philosophique et religieux. La société devient progressivement plus « permissive » et cette permissivité s'accompagne d'un recul important de la pratique religieuse. Le clivage opposant les laïques et les chrétiens est aujourd'hui nettement moins tranché que dans le passé, mais il se manifeste encore de temps à autre dans la concurrence que se livrent les réseaux d'enseignement, les associations culturelles, les organisations de jeunesse et d'aide aux personnes âgées. Il réapparaît également lorsque des questions éthiques sont débattues (ex. le problème de l'euthanasie, la dépénalisation des drogues douces, etc.). Il est vrai que ces problèmes divisent la plupart des formations politiques.

Le système des partis connaît des évolutions liées aux contextes nouveaux et à l'émergence de nouvelles élites. Bien qu'en relatif déclin, les partis politiques traditionnels continuent d'occuper des positions dominantes. Ainsi, le parti socialiste (PS) rallié au fédéralisme dans les années 1960, historiquement mieux représenté dans la partie wallonne du pays, reste aujourd'hui le premier parti wallon malgré la concurrence des libéraux et des écologistes. Les socialistes ne se distinguent d'ailleurs plus guère des partis centristes. Ils cherchent à moderniser leur doctrine et leur style comme les autres socialistes européens. Ils n'ont d'ailleurs plus de partenaires privilégiés et gouvernent en coalition avec les libéraux, les écologistes ou les sociaux chrétiens aux différents niveaux de pouvoir. Le *Socialistische Partij-A.* (S.p.a. dans son nouveau label qui signifie *Sociaal progressief alternatief*), l'équivalent du PS francophone, cherche à élargir sa base par des positions centristes dans les domaines social et économique, tout en adoptant une attitude assez ferme dans le domaine linguistique.

La famille sociale-chrétienne est tout aussi éclatée. Le *Christelijke Volkspartij* (CVP) longtemps dominant en Flandre n'a pratiquement plus de liens avec son homologue, le Parti social-chrétien (PSC) en Wallonie et à Bruxelles. Ce parti populaire flamand qui s'appelle désormais le *Christen-Demokratisch en Vlaams* (CD&V), dont une aile est franchement flamingante, doit faire face à la concurrence des socialistes et des libéraux flamands qui se disputent la même clientèle électorale, ainsi qu'à celle de l'extrême droite populiste et nationaliste représentée par le *Vlaams Blok* (« le Bloc flamand »). De plus, cette famille politique est divisée entre des tendances centristes, proches des socialistes, et des tendances conservatrices. Le PSC, qui s'est transformé en *Centre démocrate humaniste* (CDH), a aujourd'hui du mal à trouver ses marques sur l'échiquier politique. De nombreux militants l'ont quitté pour créer le MCC (*Mouvement des citoyens pour le changement*) qui s'est rallié à la fédération PRL FDF pour former le PRL FDF MCC, fédération que domine la famille libérale, la troisième grande famille politique en Belgique. Cette fédération s'est récemment transformée en *Mouvement réformateur* (MR). Les libéraux se sont longtemps opposés à toute forme de fédéralisme mais ils furent contraints de s'adapter aux réalités communautaires, du fait des divergences apparues entre les ailes flamande, wallonne et bruxelloise.

Dans les années 1960, à l'époque le *Parti Réformateur Libéral* (PRL), avait rallié un certain nombre de sociaux-chrétiens plus conservateurs dans les domaines économique et social. Sa doctrine a d'ailleurs longtemps oscillé entre un libéralisme dur et un libéralisme plus social. Aujourd'hui, le MR s'est convertit au libéralisme social et se fait le chantre de l'État social actif, une formule très largement partagée par les autres formations démocratiques. Son homologue flamand, le VLD (*Vlaamse Liberale Demokraten*) mène sa propre politique et épouse largement les thèses flamandes visant à plus d'autonomie pour la Flandre.

Ces familles politiques traditionnelles sont, nous l'avons déjà souligné, en concurrence avec les partis écologistes (ECOLO en Wallonie et à Bruxelles, AGALEV en Flandre) qui sont sortis de l'opposition pour entrer dans les exécutifs à différents niveaux de pouvoir (communal, régional et fédéral). Depuis les récentes élections fédérales, les écologistes ne seront plus représentés à ce niveau de pouvoir.

L'émiettement du monde politique résulte à la fois du mode de scrutin proportionnel et du clivage communautaire. Sa restructuration est en cours au Nord comme au Sud sans qu'il soit possible de déterminer avec précision quel sera le paysage politique futur.

Une chose est certaine. La Belgique n'est pas une terre d'affrontement. Les conflits évoqués, à quelques rares exceptions près, n'ont jamais débouché sur des violences incontrôlables. Bien au contraire, le plus souvent c'est la sagesse et l'imagination qui l'emportent sur les passions. Le fameux « compromis à la belge » n'est que la traduction politique de cette volonté largement répandue dans l'opinion. Après tout, l'antique vertu de l'art démocratique n'est-elle pas celle de la modération et de la réforme réfléchie et débattue ? C'est là que réside la composition chimique du « modèle belge ».

Le processus de réformes institutionnelles démontre clairement cette propension au compromis. C'est vrai qu'au départ, il y a eu, de la part de la majorité des décideurs politiques, refus de prendre en compte les revendications fédéralistes ; il y a eu ensuite compromis – mais sans toute la clarté souhaitable – entre partisans de l'unitarisme et fédéralistes, les premiers maintenant toutefois leur opposition au fédéralisme et les fédéralistes flamands et wallons ne partageant pas la même vision ; il y a eu dans la phase

ultérieure ralliement très généralement répandu – mais avec parfois plus de résignation que de conviction – à l'engagement dans la voie du fédéralisme, la différence des approches persistant toutefois ; enfin, il y a aujourd'hui confrontation de thèses fédéralistes et de thèses séparatistes.

Comment interpréter ce processus ? On peut y voir une montée, à la fois irrésistible et irréversible, de revendications autonomistes. L'aboutissement du processus demeure, en tout cas, incertain.

La séparation n'est pas nécessairement une fatalité, d'autres hypothèses doivent être prises en compte : celle de la poursuite du processus en cours, désormais jalonné de compromis négociés sur une toile de fond d'arguments de type séparatiste, celle de l'accentuation des autonomies, des asymétries, voire même des déséquilibres au sein d'un État s'affirmant fédéral.

La question centrale est de savoir si le processus doit être interprété en termes de complexité croissante de l'articulation des niveaux de décision politique ou en terme d'affirmation de nouvelles identités collectives se concevant comme exclusives de toutes autres. Une chose semble certaine : cet empilage et cette imbrication d'institutions apparaissent de plus en plus comme la condition de l'existence de la Belgique.

N'oublions pas que la Belgique est insérée dans un cadre supranational et que cela produit des conséquences : l'Union européenne peut devenir un cadre institutionnel propice à la coexistence – et à la coopération – d'entités politiques différentes sans que s'établisse entre elles le lien de prééminence et de subordination qui fut caractéristique des États nations dans leurs relations avec les pouvoirs locaux.

Le destin de l'État belge est aujourd'hui en débat. Simultanément, le statut du citoyen y est aussi en crise et en débat. Depuis quelques années, on évoque fréquemment le divorce entre la « classe politique » et la « société civile ». Si le vocabulaire n'est pas toujours approprié et la dramatisation parfois excessive, il reste qu'ils s'agit de problèmes réels. Les uns concernent le fonctionnement des institutions politiques. Celles-ci sont devenues trop complexes pour les citoyens ordinaires. Les institutions semblent confisquées, aux yeux du plus grand nombre, par le monde politique. De plus, les disfonctionnements de la justice et de la police à l'occasion de crimes touchant des enfants sont à l'origine d'autres interrogations. Enfin, certaines pratiques liées au financement des partis ont provoqué un malaise dans l'opinion. Des mesures ont été prises, des réformes mises en chantier, une nouvelle « culture politique » annoncée. Tout cela ne suffit pas à dissiper la méfiance. Des initiatives émanant de la « société civile » ont été prises pour créer de nouveaux mouvements et partis sur base de la fameuse « marche blanche » d'octobre 1996 mais elles sont restées marginales ou ont perdu toute visibilité. La majorité des électeurs demeurent largement fidèles aux partis existants. La montée de l'extrême droite nationaliste dans une Flandre plutôt prospère est sans nul doute liée au mécontentement d'une partie de l'opinion, mais elle reflète avant tout, sous une forme excessive, la volonté d'autonomie grandissante.

Le paradoxe de la situation, c'est que les sondages d'opinion montrent que la volonté de maintenir un État belge a le soutien d'une majorité écrasante à Bruxelles, forte en Wallonie et même nette en Flandre. De plus, une majorité de Belges restent attachés à la monarchie. On peut donc se demander s'il n'en serait pas de même face à un phénomène de sécession. Peut-

être la Belgique, berceau du surréalisme, jouit-elle d'une grâce particulière qui peut lui permettre de vivre dans un ordre constitutionnel qui serait source d'éclatement ?

Le « modèle belge » n'est sans doute pas exportable mais il constitue incontestablement une référence. Il est essentiellement fondé, comme on a pu le constater, sur une « culture du compromis ». Malgré les différences culturelles, les divisions politiques, les forces vives du pays s'évertuent à échafauder des compromis parfois difficiles mais qui permettent de maintenir la paix civile.

La Belgique est restée, en fait, selon le politologue Arend Lijphart, une démocratie consociative. Ce concept suggère le cloisonnement de la société en « piliers » qui soutiennent comme dans un temple grec un frontispice, la voûte de l'Etat où intervient le compromis entre les élites des communautés ainsi isolées. Et ce concept sous-entend d'abord et avant tout la vie en commun par le compromis. Le mot consensuel n'est pas utilisé parce que le consensus n'existe justement qu'au sommet, entre les élites politiques.

Il y a une démocratie consociative lorsque le gouvernement est assumé par l'ensemble de l'élite groupée en cartel, afin d'assurer le fonctionnement stable d'une démocratie à la culture politique fragmentée. Pour que ce type de démocratie puisse s'enraciner il faut réunir quatre conditions :

1. que les élites soient capables de conjuguer les intérêts et d'ajuster les demandes divergentes des sous-cultures ;
2. que les élites soient capables de transcender les clivages et de s'allier dans un effort commun avec les élites des sous-cultures rivales ;
3. cette propension dépend à son tour de l'intensité avec laquelle elles peuvent être concernées par le maintien du système, l'amélioration de sa cohésion et de sa stabilité ;
4. que les élites soient finalement conscientes des dangers de la fragmentation politique.

Ces considérations d'ordre théorique ont été vérifiées dans la pratique politique décrite plus haut. Il est bien évident que tout cela suppose une pacification de la vie politique.

Dans les pays d'Europe centrale et orientale, les problèmes de transition à l'économie de marché et à la démocratie libérale ont été complexes. L'absence de culture politique démocratique a pesé lourdement sur le développement politique de certains de ces pays, dont la République de Moldova. Lorsque la démocratie supplante un régime autoritaire ou totalitaire, la gageure est pour les nouveaux gouvernants de faire admettre au peuple nouvellement libéré de l'oppression que l'intérêt général implique le respect du pluralisme et des droits des minorités au sein du pays.

Il importe de respecter les opinions des minorités, au regard de leur importance numérique tout autant que leur statut, qu'il s'agisse de clivages politiques, ethniques, culturels, religieux ou sexuels. Ce respect constitue l'une des deux exigences primordiales de la démocratie puisque, si d'un côté, la majorité gouverne, de l'autre, elle doit respecter les minorités.

Paradoxalement, le retour à la démocratie peut attiser les conflits ethniques ou religieux au lieu de les apaiser. Il est évident que la naissance ou la renaissance de la liberté d'expression et l'émergence d'organisations politiques stimulent la manifestation d'ambitions ou de frustrations longtemps réprimées par l'oppression autoritaire. Il est tout aussi évident qu'il

arrive que des minorités ne fassent pas que saisir l'opportunité démocratique pour exiger que leur souveraineté leur soit rendue. Elles anticipent sur le risque de marginalisation politique qu'elles courent au sein de l'Etat nouvellement créé, pour s'engager dans la voie du séparatisme et de la formation d'un nouvel Etat où chaque minorité devient à son tout majorité. Le concept de démocratie devient alors problématique, du fait de la perte de toute conception commune de la citoyenneté et de toute cohésion minimale.

Les défis sont parfois énormes mais pas insurmontables comme le démontre l'expérience de la plupart des pays d'Europe centrale qui rejoindront dans un an l'Union européenne.

INTEGRATION ET RESPECT DES DIVERSITES :
L'EXEMPLE SUISSE

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I.   Introduction

La Suisse présente des diversités qui sont bien connues. Ce qui l'est moins, c'est la manière dont elle a néanmoins réalisé une identité nationale, au fil des temps et non sans difficulté. En dépit de ses traits extrêmement particuliers, l'expérience suisse peut avoir un certain intérêt pour d'autres pays, non seulement parce qu'elle est très ancienne, mais aussi parce qu'elle est empreinte du pragmatisme, voire de l'empirisme, qui semble être un trait caractéristique de la population.

Historiquement et géographiquement, rien ne prédestinait la Suisse à former un Etat national, à l'image de ses puissants voisins. L'évolution a commencé tôt, mais elle a été très lente. Formée au départ d'un petit noyau de territoires forestiers, l'Ancienne Confédération du XIIIe siècle s'est peu à peu agrandie, par des conquêtes et surtout par des alliances, lesquelles ont permis de former peu à peu un ensemble à peu près cohérent, sinon homogène. Au début du XVIe siècle, quand d'autres Etats nationaux s'étaient déjà fortement cristallisés, voire centralisés, la Suisse avait certes des frontières stables, qui n'ont guère été déplacées par la suite, mais elle se composait encore d'une mosaïque d'entités complètement disparates, unies tout au plus par des traités d'alliances défensives, avant tout dirigées contre les menaces extérieures. Presque trois siècles plus tard, lorsque la Révolution française apporta à la Suisse son premier - et dernier - bouleversement, la nation était encore loin d'être consolidée. Preuve en est les réactions très diverses que les Suisses réservèrent à l'invasion et à l'occupation militaires ainsi qu'à la Constitution unitaire qui leur étaient imposées. Après cinq ans d'un régime qui ne lui convenait pas et qui a causé des troubles inusités dans cette partie de l'Europe, la Suisse redevint une Confédération d'Etats et le resta jusqu'en 1848. C'est à cette dernière date que l'on peut faire remonter la naissance d'un véritable Etat suisse, qui regroupe une nation à proprement parler. Et c'est aussi depuis cette époque que l'on peut analyser les facteurs d'intégration et de diversité qui ont marqué la vie du pays.

II.   Intégration

Désigner les éléments qui conduisent à l'intégration, ou du moins la facilitent, n'est certes pas chose facile. Sans prétendre empiéter sur le domaine des sociologues, on peut observer cependant que les conditions objectives n'étaient - et ne sont toujours pas - favorables à une intégration de la nation suisse. Quatre langues s'y côtoient: l'allemand (75% de la population), le français (20%), l'italien (4%) et le rhéto-romanche (1%). La difficulté du problème linguistique est encore singulièrement aggravée par la présence de très nombreux dialectes, que la grande majorité de la population suisse parle dans la vie courante et qui ne sont pas aisément accessibles à autrui. Les deux grandes religions chrétiennes se partagent à peu près

pour moitié la population autochtone. Entre la plaine et les régions de montagnes, entre les villes et les campagnes, les contrastes sont tout à fait saisissants.

Définir le concept de *nation* ne va pas non plus de soi, puisque la question suscite depuis longtemps des controverses passionnées. Si l'on s'en tenait à des critères objectifs, la nation serait une communauté de race et de langue, de culture et d'histoire, de religion, de moeurs et de civilisation. A cette vision fataliste des choses peut s'opposer une thèse plus subjective, selon laquelle la nation est formée d'éléments de caractère psychique : une parenté d'esprit, de traditions, l'attachement à un passé commun, qu'il s'agisse des échecs ou des victoires, une solidarité nécessaire pour le présent et l'avenir, incarnée dans une communauté d'intérêts, à la fois patriotiques, économiques et politiques. Sans négliger les aspects objectifs, il faut reconnaître la prédominance des éléments subjectifs : la conscience que les êtres humains font partie d'une nation leur donne la volonté d'en défendre l'identité et de préserver l'intérêt général; la nation n'est pas une fatalité historique, mais le fruit de la volonté des êtres humains, dont la cohésion consciente et voulue donne à l'Etat sa permanence et son efficacité.

Des facteurs sociologiques ont sans doute fortement contribué à rapprocher des peuples qui présentent de pareilles variétés. Mais il est naturel au constitutionnaliste de mettre l'accent plutôt sur les institutions qui ont contribué à forger la nation, par de réels efforts de volonté.

1.   La première de ces institutions, qui est aussi la plus célèbre, paraît bien être la **démocratie directe**. L'Assemblée populaire des citoyens était une tradition dans les cantons suisses, au moins depuis le XIIIe siècle. Elle s'est perpétuée tant bien que mal jusqu'à nos jours, non sans connaître un déclin sensible. Il s'y est substitué un système compliqué, mais régulièrement appliqué, de votations populaires, qui amènent le peuple suisse à prendre ensemble les décisions essentielles pour son destin. Le premier de ces scrutins remonte à juin 1802, quand la seconde Constitution helvétique fut soumise à un vote populaire. Depuis 1848, des centaines d'opérations semblables ont eu lieu, et il n'est pas douteux qu'elles ont joué un rôle déterminant dans la formation d'une identité nationale. En effet, ce sont souvent des problèmes très concrets, qui concernent chacun, qui sont discutés dans une même campagne, puis décidés à la majorité. Certes, il arrive que le résultat du scrutin reflète les clivages des langues ou des régions. Cependant, ce phénomène est loin d'être systématique, et la volonté d'une majorité démocratique est plus facile à accepter qu'un ukase venu d'en haut. Il est courant de signaler que la démocratie directe protège les minorités ; toutefois, à la réflexion, il apparaît qu'elle est encore davantage un instrument d'intégration.

2.   L'**unification du droit** et de l'armée a également contribué puissamment à cette évolution. Durant la seconde moitié du XIXe siècle, quand le nouvel Etat suisse devait se renforcer, le slogan des unitaires était : un droit, une armée. La législation uniforme du droit privé s'est faite au tournant du XIXe et du XXe siècle, celle du droit pénal devant attendre un demi-siècle encore. Ces grandes codifications étaient sans doute le reflet d'une nation déjà consciente d'une certaine homogénéité. Mais elles ont aussi et surtout amené les justiciables à considérer qu'ils faisaient partie d'un ensemble soumis au même droit des affaires, de la famille, de la propriété, des délits et des peines.

3.   Quant à l'**armée**, elle a puissamment rassemblé la nation dans un système qui cumule la conscription et le service de milice. D'une part, tout homme de nationalité suisse est astreint au service militaire, en vertu d'une disposition constitutionnelle qui remonte à 1848 et qui a été reprise à l'article 59 de la Constitution fédérale du 18 avril 1999. D'autre part, la loi

oblige depuis cette époque tous les hommes enrôlés de rester à la disposition de l'armée pendant de nombreuses années après leur école de recrue et les astreint à des périodes régulières d'instruction jusqu'à un âge relativement avancé ; cette règle sera assouplie à partir de l'année prochaine, mais elle a été appliquée rigoureusement jusqu'ici, de manière que l'armée suisse comporte un nombre relativement considérable de soldats mobilisables en tout temps, et instruits d'une manière régulière et suivie. Il est inévitable qu'un brassage quasi permanent de la population masculine dans des unités militaires qui ne respectent pas les frontières des langues et des régions conduisent à un sentiment d'appartenance au groupe.

4.   Les facteurs **économiques** ont également joué un rôle décisif dans l'intégration de la Suisse. Alors que la démocratie semi-directe, l'unification du droit et l'unité de l'armée apparaissaient comme des moyens de rassembler des peuples divers, la prospérité matérielle peut sembler comme un but en soi, et elle ne saurait se réaliser sans un minimum d'union. Au milieu du XIXe siècle, cet élément a sans doute été le principal moteur de la création d'un Etat fédéral. Celui-ci a permis de réaliser, au moins partiellement, un marché commun, en supprimant les douanes intérieures et en créant un espace économique homogène, sinon tout à fait unique. La deuxième Constitution fédérale du 29 mai 1874 imposa partout le même régime économique en proclamant le droit fondamental de la liberté du commerce et de l'industrie. Certes, la police du commerce est restée dans les attributions des autorités locales et le demeure encore jusqu'à aujourd'hui. Cependant, peu à peu, un véritable marché unique s'est instauré, ce qui semble être la moindre des choses sur un territoire aussi exigu. Encore a-t-il fallu attendre l'époque contemporaine pour qu'une libre circulation des personnes soit garantie de manière absolue et pour que, par exemple, les diplômes délivrés dans un canton soient reconnus partout comme valables.

5.   Les progrès de l'économie ont à leur tour facilité le développement d'un **Etat social** qui a été conçu par le législateur fédéral comme une oeuvre nationale et qui a donc certainement été un puissant facteur d'intégration. Les multiples assurances sociales contre la maladie, les accidents, l'invalidité, le chômage, la vieillesse, le décès prématuré et la maternité relèvent toutes de l'Etat fédéral et sont financées par lui. L'ensemble de la population a donc le sentiment de bénéficier d'une protection semblable grâce à des fonds mis en commun.

En conclusion de cette première partie de l'exposé, on peut dire que, depuis des siècles, la politique suivie a conduit à l'unification, voire à la centralisation, des principales institutions étatiques et qu'il en est résulté une nation qui ressent fortement la conscience et la volonté de vivre ensemble et de rechercher un destin commun. Cependant, les diversités demeurent et il reste indispensable de corriger les excès de la centralisation, voire de la démocratie, par une protection efficace des minorités.

III.   Le respect des minorités

On sait que les minorités peuvent être protégées de deux manières : soit par des dispositions d'ordre général qui limitent ou dispersent le pouvoir, soit par des mesures spéciales qui visent des groupes en particulier. En raison de son histoire et de ses conceptions plutôt égalitaires, la Suisse a privilégié les instruments généraux, dont les minorités tirent certes des avantages, mais non pas une protection directe et spécifique.

1.   Ainsi, la structure de l'Etat a été aménagée d'une manière décentralisée grâce à un **fédéralisme** inspiré de la Constitution américaine de 1789. Il est vrai qu'avec le temps, les

entités fédérées ont perdu l'essentiel de leur pouvoir législatif et de leur liberté d'action politique. Cependant, si les lois sont, dans leur grande majorité, unifiées, leur exécution est laissée aux cantons qui conservent ainsi une certaine marge d'appréciation dans l'interprétation et la mise en oeuvre des dispositions fédérales. Ce «fédéralisme d'exécution», qui présente d'ailleurs certains inconvénients, a toutefois l'avantage de réaliser un équilibre entre le souci d'uniformité et la souplesse qu'exige le respect des diversités.

2.   Quant aux **autorités fédérales**, elles sont elles-mêmes composées d'une manière qui garantit un partage des pouvoirs entre les diverses parties du pays. Les vingt-six cantons sont représentés, en nombre égal, dans l'une des deux Chambres du Parlement et le Conseil des Etats. Le Gouvernement est un organe collégial formé de sept personnes qui viennent de différentes parties du pays et qui agissent ensemble sur un pied d'égalité. En outre, la démocratie semi-directe joue un rôle protecteur, surtout dans la mesure où les minorités ont le droit de lancer des demandes de référendum et d'initiative ; ces facultés de provoquer un vote leur permet au moins de se faire entendre et de susciter le débat, même si c'est forcément la majorité qui prend la décision finale. Enfin, dans la même perspective, il faut souligner que les élections obéissent généralement au principe de la représentation proportionnelle dont le but est précisément d'éviter qu'une pluralité opprime les minorités.

3.   Ces minorités sont aussi protégées par un catalogue très complet des **droits de l'homme**, que la Constitution du 18 avril 1999 a considérablement étendu. Sans doute l'énumération rappelle-t-elle, dans les grandes lignes, la Convention européenne. Mais elle est, à bien des égards, sensiblement plus large : à une protection explicite contre l'arbitraire et les violations de la bonne foi, la Constitution fédérale ajoute le droit à l'intégrité psychique et physique, la protection des enfants et des jeunes, le droit à l'assistance dans les situations de détresse, la liberté de la radio et de la télévision, la garantie du secret de la rédaction, le droit à un enseignement suffisant et gratuit, la liberté de l'enseignement et de la recherche scientifique, la liberté de l'art, la liberté d'établissement, la garantie de la propriété, la liberté économique et la liberté syndicale, ainsi que les garanties de procédure. Bien entendu, ces droits appartiennent à chacun, mais ils sont surtout utiles aux minorités.

4.   Le traitement de la question des **langues** paraît caractéristique de la façon dont le constituant suisse envisage le respect des diversités. D'un côté, l'article 18 de la Constitution garantit la liberté de la langue. D'un autre côté, l'article 70 précise que les langues officielles de la Confédération sont l'allemand, le français et l'italien, ainsi que le romanche, mais seulement pour les relations de la Confédération avec les personnes de cette langue. Il appartient aux cantons de définir leurs langues officielles. Mais la Constitution fédérale leur enjoint de veiller à la répartition territoriale traditionnelle des langues et de prendre en considération les minorités linguistiques autochtones, cela afin de préserver l'harmonie entre les communautés linguistiques. Les seules mesures spécifiques prises en faveur des deux plus petites minorités, l'italien et le romanche, sont l'encouragement et le soutien aux mesures prises par les cantons concernés pour sauvegarder et promouvoir ces langues.

Abstraction faite de ces dispositions de portée relativement mineure, la Constitution suisse ne contient pas de dispositions spécifiques en faveur de minorités expressément désignées et n'accorde donc à aucune partie du pays de véritables privilèges.

IV.   Conclusion

La Suisse offre l'exemple d'un Etat plurinational qui, au fil des siècles, a trouvé un équilibre entre la cohésion et le respect des diversités. Cependant, cela ne signifie pas que les problèmes seraient résolus une fois pour toutes. Des questions nouvelles apparaissent constamment. Par exemple, il semblerait nécessaire, dans une société multilingue, que les nationaux apprennent et connaissent les diverses langues parlées dans le pays. Tel était le cas dans un passé relativement récent et du moins dans les milieux un peu cultivés. Aujourd'hui, l'apprentissage des autres langues nationales est trop souvent délaissé au profit de l'anglais, si bien que c'est peut-être dans cette langue que les Suisses communiqueront à l'avenir, faute de connaissances suffisantes de leurs langues nationales respectives.

Bien que cela sorte quelque peu du thème traité ici, il n'est guère possible de parler d'intégration et de respect des minorités en Suisse sans évoquer la question des résidents étrangers, qui représentent plus de 20% de la population. Ce problème a de multiples facettes: des religions nouvelles pour la Suisse prennent une importance considérable ; des langues peu familières sont désormais parlées par un grand nombre de personnes, la scolarisation des enfants ne va pas sans difficulté ; des moeurs très différentes se manifestent ici ou là. C'est dire qu'il s'agit de problèmes d'intégration qui sont neufs et qui appellent des solutions novatrices. Jusqu'ici, le droit suisse de la nationalité était très restrictif, la qualité de ressortissant ne s'acquérant guère que par l'hérédité et la naturalisation soumise à des conditions extrêmement strictes. Pour mieux intégrer les allogènes de la deuxième ou de la troisième génération, il est envisagé de leur accorder directement la nationalité suisse. Mais la proposition qui a déjà été rejetée par le constituant populaire à plusieurs reprises, se heurtera peut-être à des réticences.

La difficulté des problèmes d'intégration est illustrée par deux jugements assez récents qu'a rendus le Tribunal fédéral suisse et qui montrent les tensions entre les impératifs politiques et les principes juridiques. Dans le premier cas, il s'agissait d'une jeune fille d'origine turque qui fréquentait l'école dans une localité alémanique ; le programme scolaire l'obligeait à suivre un enseignement de natation ; les parents, opposés à une baignade de leur fille en compagnie de garçons, demandèrent vainement une dispense aux autorités scolaires, mais ils obtinrent gain de cause devant la Cour suprême de la Suisse, les juges estimant que les convictions religieuses des immigrés doivent l'emporter sur les conceptions suisses de l'éducation des enfants ; à la fin de son jugement, le Tribunal fédéral souligne que les étrangers résidents en Suisse ne sont nullement tenus de s'adapter à nos moeurs et qu'en conséquence l'intégration n'est pas, du moins pour eux, un devoir. Dans la seconde affaire, c'était une famille de langue alémanique qui était établie dans une commune francophone ; comme elle entendait que ses enfants fussent élevés et instruits en langue allemande, elle demanda l'autorisation de les envoyer, à ses frais, suivre l'école dans une localité voisine, germanophone ; les autorités administratives du lieu rejetèrent cette requête, mais, une fois encore, un recours au Tribunal fédéral fut couronné de succès ; ici aussi, les juges ont été d'avis que l'intérêt privé au respect de la liberté devait l'emporter sur l'intérêt public à l'intégration.

C'est dire qu'en définitive, les questions qui nous occupent ne sont jamais résolues et continuent de retenir l'attention, dans tous les pays qui ont à la fois les chances et les difficultés de la diversité.

After the fall of the Berlin wall the new democracies of Central and Eastern Europe had to face a number of challenges on their way to democracy. One of the common problems was to build a multi-ethnic State where the interests of different minorities are taken into account without compromising the unity of the country.

The presentations and discussions in the framework of the Chisinau Conference (which was part of the programme of the Moldovan Presidency of the Committee of Ministers of the Council of Europe) focused on the variety of approaches to the multi-ethnic State and on the different challenges that democraticies both new and well-established will have to face in the XXI century. In this context issues such as federalism, autonomy and linguistic diversity were given particular attention.

Après la chute du mur de Berlin, les nouvelles démocraties de l'Europe centrale et orientale ont dû faire face à un certain nombre de défis sur leurs chemins menant à la démocratie. Un des problèmes communs était la construction d'un Etat multi-ethnique où les intérêts des différentes minorités soient pris en compte sans compromettre l'unité du pays.

Les présentations et discussions dans le cadre de la Conférence de Chisinau – qui faisait partie du programme de la Présidence moldave du Comité des Ministres du Conseil de l'Europe – se sont concentrées sur la diversité des approches de l'Etat multi-ethnique et sur les différents défis auxquels les démocraties, qu'elles soient nouvelles ou bien établies, auront à faire face au XXIe siècle. Dans ce contexte, des questions telles que le fédéralisme, l'autonomie et la diversité linguistique ont retenu particulièrement l'attention.