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**Practical aspects of the interdependence between state structure
and the pluri-ethnic character of the state**

Report by

**Mr Thomas MARKERT
Deputy Secretary of the Venice Commission**

1.   The situation in European pluri-ethnic states today

The concept of the modern state is often linked with the notion of the nation state. This was especially true in the 19th century. If we look at the Europe of today, it is however obvious that a large number of countries are not ethnically homogeneous and that it is neither possible nor desirable to make the borders of all European states coincide with the borders between different ethnic groups. In many areas different populations are living together and the drawing of new borders would only create new minorities. Moreover, it is in the interest of peace and stability to maintain existing borders and therefore it is no surprise that the international community is attached to the respect for the territorial integrity of states.

In Western Europe some countries such as France have managed to ensure the functioning of the state on the basis of a civic model without recourse to any ethnic or religious distinctions. Other states, and here Switzerland comes to mind, are structured in a way to accommodate diversity. Several Western European countries have been confronted with serious tensions due to the pluri-ethnic character of the state but in general they have managed to find solutions ending the violence:
  o   Italy has granted autonomy to South Tyrol;
  o   Spain has adopted a democratic constitution with a high degree of regionalisation; moreover the Constitution permits special arrangements with some regions and on this basis regions such as Catalonia and the Basque country enjoy more rights than others;
  o   With respect to Northern Ireland the "Good Friday Agreement" ensuring power-sharing between Protestants and Catholics has largely ended the violence;
  o   In Belgium federalism was introduced, many powers were devolved to Communities and regions and at the Federal level a balance was established between French and Dutch speakers;
  o   It should also be noted that in the United Kingdom the central authorities devolved powers to Scotland and Wales, not as a reaction to a conflict but because this was regarded as the best way forward.

In Central and Eastern Europe it has proved more difficult to solve conflicts in a peaceful way. During the Communist period ethnic tensions were suppressed and they broke out all the more violently when the authorities lost the capacity to control the situation by force. These societies did not have the chance to learn how to settle disagreements through peaceful and democratic means. The dissolution of the Soviet Union and of Yugoslavia was therefore accompanied by violence and sometimes even war, and, once there has been an armed conflict, people on the different sides no longer trust each other and it becomes far more difficult to reach a solution based on compromise and respect for the rights and interests of all sides. Nevertheless, it has been possible to find peaceful solutions for some of the conflicts in former Yugoslavia. By contrast, the conflicts in the former Soviet Union have remained what is often called "frozen conflicts".

One reason for this difference is that in the Balkans the perspective of European integration is far more powerful as an incentive to reach a solution than in the former Soviet Union. The European Union therefore exercises more influence in South Eastern than in Eastern

Europe. However, with the forthcoming accession of Romania and Bulgaria to the EU, the conflict in Transnistria is becoming a conflict in the immediate neighbourhood of the European Union. This seems therefore a very god moment to reflect on the legal tools which have been used to settle other conflicts and to examine to which extent these could be useful as an inspiration for the Republic of Moldova when addressing the issue of Transnistria. I say as an inspiration since all conflicts are different and it is not possible to simple transpose something which has worked well for one conflict to a different situation. Since the Venice Commission has been involved in the various conflicts in former Yugoslavia and the former Soviet Union with the exception of Nagorno Karabakh, we have gained a lot of experience with respect to the various legal tools which can be used to deal with tensions resulting from the pluri-ethnic nature of a state

2.   Possible consequences of pluri-ethnicity for state structure

Three main types of legal solutions exist for such conlicts, which do not exclude each other but can and should be combined:
   o   First of all territorial solutions, not in the sense of altering borders between states but of reforming the territorial organisation of the state concerned;
   o   Secondly, the setting up of institutions to ensure power-sharing at the national level;
   o   And, thirdly, the granting of comprehensive rights to all individuals making them thus identify with the state.

a)   The internal territorial structure of pluri-ethnic states

As regards the first approach, there are different ways of trying to ensure that minorities can have a degree of control over their lives by enabling them to have control of some territory. First of all, strong municipal self-government can be established. An example of this approach is the Ohrid Agreement in "the former Yugoslav Republic of Macedonia". Here it was regarded as too dangerous and possibly opening the door to separatism to set up an Albanian-speaking region. As an alternative, municipal self-government was strengthened and, combined with power-sharing at the national level, this has proved sufficient to end the conflict. The future Kosovo settlement will certainly contain as one of its main elements a strong decentralisation package, giving more powers to all municipalities and even some additional powers to some Kosovo Serb municipalities. Strong municipal self-government can therefore be an important contribution to stability in a pluri-ethnic state. It has however obvious limits: municipalities cannot be given the power to legislate.

This limitation does not apply to what is probably the most traditional approach of dealing with such issues: the granting of autonomy to a region. Autonomy can mean much or little, everything depends on the scope of the autonomy granted. It is therefore a very flexible instrument. To be really meaningful, autonomy has to be constitutionally guaranteed.

Autonomy is particularly well suited for relatively small regions in an otherwise uniform state. If a relatively large region gets autonomy, a problem of representation at the state level becomes pertinent. In the United Kingdom there is a discussion why members of parliament from Scotland can vote in Westminster on UK laws which do not apply to Scotland since,

following devolution, Scotland has its own laws on this matter. On the other hand, it is not feasible to exclude Scottish members of Parliament from such votes since this could affect the majority of the government in parliament and in a parliamentary democracy there cannot very well be a different majority for one category of laws with respect to others. Another problem relevant here in this region is that the label "autonomy" was widely used in the Soviet Union without having real substantial content. It is therefore understandable if a region which promised autonomy does not necessarily trust such an offer.

The alternative to the granting of autonomy to one or more regions is to transform the state as a whole into a federal or regional state. In the case of Moldova this would mean that it would not correspond to a federal or regional approach to have only one entity, Transnistria, and the state level, but the whole territory of the Republic of Moldova would have to be divided into different entities. Moreover, federations of two entities such as Bosnia and Herzegovina do not tend to function well. The better approach would therefore be, if one wanted to have a federal solution, to have several entities on the right bank in addition to Transnistria. If one wishes to deal with the issue of Transnistria only, a solution based on autonomy would be more logical.

One further issue should be taken into account with respect to federalism. Most federal states are symmetric, i.e. all federated entities have the same competencies. But they can also be asymmetric: in Spain- a regional country which functions like a federal country- some regions such as Catalonia have more powers than others.

b)   Power sharing at the national level

As stated before, in the case of conflicts in pluri-ethnic societies territorial solutions tend to be only part of the answer. In addition, the state institutions have to be structured in a way ensuring that the minority or the smaller region has a share of the power at state level. Therefore, first of all, the parliamentary system of government seems better suited to pluri-ethnic societies than a presidential system since power is not concentrated in the hands of a single individual.

Secondly, parliaments in such states tend to be bicameral. This allows to have one chamber based on the principle "one man one vote" and another chamber in which minorities or smaller regions are overrepresented. For example, in Switzerland, in the second chamber all cantons have the same number of votes. An alternative to the second chamber is to have special voting mechanisms in the first chamber for some issues. For example, in Bosnia and Herzegovina there is a vital national interest veto in parliament which enables each of the three constituent peoples to block some legislation. These procedures however tend to be quite problematic since decision-making can become very difficult and cumbersome.

Such procedures do however point to one need: if one wishes to settle a conflict in the framework of a state, this will only be possible if the minority or smaller region gets specific constitutional guarantees that its status will not later be unilaterally changed by the majority. This will mean an article in the Constitution which can only be amended with the consent of

at least some representatives from the minority or smaller region. Or it can also mean international guarantees for the settlement.

Finally, the existence of a Constitutional Court with strong powers will be a necessity in order to guarantee respect for the agreed settlement. In federal countries constitutional courts tend to be important. In Belgium the constitutional court is called "Court of Arbitration" since at the beginning it was conceived as an arbitrator between the different regions and between regions and central state.

c)   Safeguarding human rights and the rule of law for everybody

The third means of addressing tensions, to ensure full respect for the rights and interests of everybody and to undertake government action in favour of minorities, is of particular importance, especially in the long run. Conflicts often arise when the rights of minorities are violated by the majority. If persons belonging to minorities have all rights as citizens and if the state protects their right to their own identity, they have no reason to be dissatisfied.

However, in countries without a tradition of the rule of law, people tend not to trust promises that all their rights will be respected. It is therefore unlikely that it will be possible to settle a conflict without taking in addition some territorial or institutional measures as outlined above. Nevertheless, if one wishes to achieve long-tem stability, this will not be possible without ensuring the rule of law. By joining the Council of Europe the Republic of Moldova has shown its determination to uphold human rights, the rule of law and democracy. It is a long-term task to establish a culture of respect for the rule of law but, once one has achieved this aim, it becomes easier to resolve conflicts through purely legal means.

3.   Conclusions

The purpose of this intervention was not to provide Moldova or any other country with a recipe on how to settle the conflict in Transnistria or any other conflict. Each conflict has its specific aspects and requires a tailor made solution based on negotiations. I am very well aware that the conflict with Transnistria is not an ethnic conflict like the conflicts in the Balkans or in Georgia since the same ethnic groups live on both sides of the river Dnestr, although with different percentages. Nevertheless, it shares common features with the other conflicts.

For all conflicts patient negotiations, trying also to understand the interests and needs of the other side, are the only way if one wishes to achieve a solution. The way forward also tends to be not to start with abstract discussions on whether there should be a federal solution or the granting of autonomy. Usually it is far more useful to discuss practical issues such as the distribution of competencies and the composition of institutions. But also for this purpose it is useful to bear in mind the practical experience with conflict settlement gained in other countries and to consider to which extent solutions found there may be useful for your own problems.