



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 6 February 2002
<cdl\doc\2002\cdl-ju\02-e>

CDL-JU (2002) 2
English only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

Federalism and the regulation of ethnic conflicts

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**Conference on “Legal frameworks to facilitate the settlement
of ethno-political conflicts in Europe”**
(Baku, 11-12 January 2002)

Federalism and the Regulation of Ethnic Conflicts¹

1. Can federalism be considered as helpful to facilitate the regulation of ethnic conflicts? It is not possible to give a simple answer to this question. A yes or no-type of answer would not be sufficient. The question if federal models may be appropriate to facilitate the regulation of ethno-political conflicts should be answered on the basis of concrete historical experiences. It is surely possible to list some positive experiences in this respect. In Spain, Belgium or the United Kingdom federalism can indeed be considered as having facilitated the regulation of ethnonational conflicts. But it is also possible to list numerous examples of failed experiences in federalism. In particular cases, federal models have led to an exacerbation rather than to a reduction of ethno-political tensions. Particularly in the Caucasus, the Soviet experience of federalism failed to prevent violent ethno-national conflicts. The conflicts in the Balkans are likewise an illustration of the thesis that not all kinds of federal experiences may be considered as positive. In the Caucasus and in the Balkans, the process of democratisation in the 1980s did not lead to a refederalisation of the relations between the various political entities and national communities but to secessionist and irredentist claims, which the existing federative structures proved unable to address.

2. But the present experiences in the Caucasus and in the Balkans also testify to the fact that democratisation without a refederalisation of the relations between political entities and national communities is not possible. Despite previous negative experiences, federalism is still considered as a possible way to address secessionist and irredentist claims. The question of political status is addressed by all parties involved in the conflicts in these regions - including the international security organisations - in the language of federalism. The 1995 Dayton agreement is a first example, but we can also mention the previous Minsk group proposal of a common state, a formula that has also been used in the Georgian-Abkhaz negotiations. In these discussions the concept of a common state has either been associated with a federation or with a confederation. This means that the conflicting parties in the Southern Caucasus accepted the language of federalism in their search for a settlement, despite the fact that the idea of federalism cannot be considered in the region as a popular one.

3. A contradiction between the conviction that long term solutions for multi-national coexistence in a single state have to be based on federal mechanisms on the one hand and the fear for the destructive consequences of federalism is not particular to the Caucasus. In Spain and the United Kingdom, the governments who have led the transformation processes from unitary states to federal states have partly for this reason avoided the explicit use of the term 'federation'. They have spoken instead about the creation of autonomies (in Spain) or about devolution (in Britain). The avoidance of the term 'federation' is probably linked to deeply rooted fears. In these two cases, but also in Belgium where the term 'federation' has been included in the 1993 Constitution, the creation of state structures which are federal (Belgium) or quasi-federal (Spain and the United Kingdom) have been accompanied by the fear that they would be used by nationalist movements as a stepping stone to secession. The British media and politicians have been intensively discussing the possibility of the secession of Scotland, and the Belgians the future independence of Flanders.

4. These initial fears – that the creation of autonomies or federated entities would lead to the quick disintegration of the state – did not come true. Scottish independence is not a main issue anymore in the debates on British devolution. The Flemish government is closely co-operating with the federal Belgian government in domestic and foreign affairs. Belgium has held the presidency of the European Union in the second half of 2001. According to the Belgian constitution, the federated entities have important competences that are directly relevant for the European policy of the Belgian federation. The fact that you did not hear about big conflicts in Belgium between the federal government and the federated entities on their respective European policies means that their co-operation in European affairs went quite smoothly. No news is surely good news in this respect.

5. It seems that in all those cases I just mentioned, the new forms of governance had a moderating effect on nationalist claims. In these cases, moderation has been strengthened by shared forms of sovereignty. Autonomy in different fields of government and exclusive fields of jurisdiction for every level of the federal framework has reduced the grounds for nationalist confrontation on an ethnic basis. The authorities on the various levels of federal governance have been facing electoral demands for good governance, for which traditional nationalist discourses were not be as convincing as they were in unitary states grappling with severe ethnic conflicts. For these reasons, federalism seems to work in the three countries mentioned above.

6. But it is surely true that if fears for the disintegrating effects were strong in the initial stage of the creation of federal forms of government in Spain, Belgium and the United Kingdom, it may be considered as natural that they are even stronger in the Caucasus, where the experience with federalism was largely negative. This means that we have to explore the main reasons why federal structures had different outcomes in the Caucasus than in the Western federal multi-national states I just mentioned.

7. One of the main reasons, I think, has to be searched for in the specific hierarchical structure of Soviet federalism. Soviet federalism was based on the principle of national self-determination. This principle requires that the political institutions express the equality of all nations in a multi-national state, independently from their size or political and economic strength. Soviet federalism installed, however, a hierarchy between nations that goes contrary to the principle of national self-determination. Some communities were granted the status of titular nation of formally sovereign Union republics, whereas others had to be satisfied with a lower status – such as the status of titular nation of a non-sovereign Autonomous republic or region – or even with no political or minority status at all. Only titular nations of Union Republics had the formal right to external self-determination - a right which would only be put into practice with the dissolution of the Soviet Union. The inequality between ethnic groups was justified by a number of so-called objective criteria such as the size of the population concerned or their location in the Soviet Union. Large nations, such as the Tatars or the Chechens, which were not located at the external borders of the Soviet Union, could not claim for instance for Union Republic status. Once the Soviet system democratised, the unresolved contradiction between the principle of national self-determination and its implementation led to secessionist and irredentist claims. This means that the Soviet way to regulate the relations between nations and political entities failed to reduce ethnonational tensions and to prevent violent conflicts. It also means that new ways to address the problem of hierarchy in federations have to be designed in the Caucasus.

8. Theories on federalism may be helpful in this respect. According to a generally accepted definition of a federation, each level of government derives its power from the constitution and thus in this particular respect neither level is politically subordinated to the other. Changes in the distribution of constitutional competencies between both levels require the direct or indirect participation of both levels. Participation is, for instance, possible through the requirement of approval by both houses of the federal legislature, with additional approval by a special majority of the legislatures of the federated states. All these procedures are meant to avoid a situation where federalism is identified by one of the nations in a multi-national state with a defence of ethnic stratification, with the absolute supremacy of a single nation over others or with particular ethnic privileges.

9. In the discussion on the future status of Nagorno-Karabakh, this problem has been addressed from the Armenian side with the opposition between 'horizontal' and 'vertical' relations between Nagorno-Karabakh and the centre. This terminology is not a strictly political or legal one – 'horizontal' and 'vertical' are no concepts in constitutional doctrine but terms that are primarily at home in geometry – but this opposition expresses a real problem to be resolved during the negotiations. Comparative federalism is analysing how intergovernmental relations between federal levels or the representation of the federated entities in a Second Chamber may indeed transform traditional hierarchical state structures into more 'horizontal' patterns of interdependency. Such knowledge can be useful in the design of an alternative status for Nagorno-Karabakh.

10. The way in which federal institutions are designed is thus one of the key factors to explain the difference between failure and success. As a second factor explaining the delegitimation of Soviet federalism we may mention the way how the division of powers has then been conceived. According to a widely used definition of federations, power has to be divided between the various levels of government. The federated entities participate in the decision-making process of the federal state. In these multi-tiered forms of government, every level exercises a certain form of autonomy or self-government. Such a division of power was not to be found in the Soviet state. It is true that Soviet federalism was formally based on a conception of dual sovereignty – both the Soviet state and the Union republics were sovereign according to the Constitution – but the various levels of governance were in practice strictly controlled by the Communist Party. Sovereignty was de facto considered to be indivisible. The idea of a Communist Party as a leading party was at odds with the view of federalism as a combination of the principles of self-rule and shared rule. The subordination of the judiciary to the Communist Party made it also impossible to achieve impartial legal mediation and arbitration in ethno-national conflicts.

11. The way in which the Armenian nationalist mobilization for Nagorno-Karabakh started may be seen as a good illustration of this point: the Armenian nationalist movement was unable to use the existing federal structures to push forward its claims for a change of status for this region. It could not appeal to the judiciary either. It then appealed directly for support from the central leadership in Moscow. This means that the Soviet federal structures were not helpful in regulating this conflict. In the discussion on future constitutional frameworks for Azerbaijan and Nagorno-Karabakh, the question of division of power and impartial legal institutions are therefore central in the search for viable federal alternatives.

12. The resolution of these two questions is not easy. With the demise of communism, the new leaderships in the Southern Caucasus have attempted to exercise a monopoly position for the national community they were claiming to represent. This was both the case for the

leaderships of the former Union republics and for the leaderships of the breakaway states. State and law ceased to be understood – as in Soviet times - as serving the needs of the working class, but were then primarily conceived as instruments for national self-determination. This means that in both cases state and law have been primarily understood as serving the needs of particular collective entities. Such an understanding of state and law makes it difficult to build up pluralistic multi-ethnic and multi-national democracies, which respect the principle of distribution of powers among the legislative, executive and judiciary, and which may – once a federal state structure is created - also respect the distribution of powers among various levels of governance.

13. In the search for viable federal alternatives for Azerbaijan and Nagorno-Karabakh, a Bosnian type of constitutional court may be interesting. In this court, a certain number of judges are appointed by the President of the European Court of Human Rights (which is linked to the Council of Europe). This may increase the impartiality of its rulings.

14. There are other comparisons to be made between the federal prospects of the three West European cases mentioned above – Belgium, Spain and the United Kingdom - and the federal prospects for the Southern Caucasus countries. Western ethno-federalism is generally depicted as peaceful, but this is in reality only the case for Belgium. Devolution in Northern Ireland has been linked to an attempt to end a civil war. Also in Spain, the relations of the central government with the Basque Country are deeply affected by the problem of how to end the use of political violence for nationalist purposes. Also in this respect, the Caucasus has something to learn from West European experiences.

15. Contrary to the three cases depicted above, the ethno-national conflicts in the Caucasus region are highly regionalised and internationalised. Foreign powers had some but no decisive influence in the transformation of Spain, Belgium or the United Kingdom from unitary states to federal or quasi-federal states. In the Caucasus, however, the conflict on Nagorno-Karabakh started as an intra-state conflict in a Soviet framework and turned, after the dissolution of the Soviet Union, into an inter-state conflict between Azerbaijan and Armenia. The involvement of the Russian Federation in the conflicts on Abkhazia and South Ossetia can also be mentioned here. Such an involvement of regional or neighbouring powers makes it often more difficult to achieve progress in the negotiations. The high internationalisation of these conflicts makes it, however, also possible to see great potential for conflict resolution on a regional level and for regional integration. It is not possible to conceive a closer integration up to a federal arrangement between Georgia and Abkhazia or between Azerbaijan and Nagorno-Karabakh without achieving qualitative changes in the relationship between Georgia and Russia or between Azerbaijan and Armenia. This thesis may be illustrated with the example of Nagorno-Karabakh.

16. Nagorno-Karabakh is often considered to be de facto independent. This independence is, however, of a special kind. There is no border control in operation along the Lachin corridor from Armenia to Nagorno-Karabakh. Nagorno-Karabakh uses the Armenian currency and its budget is largely covered by Armenia. It has moreover its own state institutions – including a parliament, a president, a judiciary, a criminal code and an army. The governments and parliaments of Armenia and Nagorno-Karabakh have formalised their co-operation. Nagorno-Karabakh should therefore not be considered as de facto reunified with Armenia or as de facto independent. It may with good reason be regarded as a de facto federated state of Armenia. These federal links are not based on a common constitution but on agreements between the two entities.

17. Such specific federal links will not weaken after a peace agreement is reached between Armenia and Azerbaijan, which has to formalize the links between Nagorno-Karabakh and Azerbaijan. According to one possible scenario, Nagorno-Karabakh will exercise self-government within Azerbaijan. This means that the nature of the links between Nagorno-Karabakh and Azerbaijan will necessarily have a federal character, even if the negotiators will probably avoid including terms such as ‘federalism’ or ‘federal’ into the peace agreement. The exercise of self-government will also lead to de facto federal ties with Armenia, even if such ties will not be formalized in the peace agreement. We may speak here about dual federal ties linking Nagorno-Karabakh both to Armenia and to Azerbaijan. Certain competences of the government of Nagorno-Karabakh will have to be exercised in co-ordination with Azerbaijan, whereas others will further be exercised in co-ordination with Armenia. The realisation of such de facto links between Nagorno-Karabakh, Azerbaijan and Armenia may then lead to a dual federal allegiance of this federated state, which will formally remain part of Azerbaijan. Many Nagorno-Karabakh citizens already hold passports issued in Armenia itself, a situation that is to a certain extent similar to Northern Ireland. The provision in the 1998 Good Friday Agreement which explicitly envisages individual citizens of the province acquiring both an Irish and a British passport may one day be included in a peace agreement concerning Nagorno-Karabakh. Nagorno-Karabakh would thus be a very specific case in the history of federalism.

ⁱ This paper is largely based on my publications: *Federalism and Conflict in the Caucasus*, The Royal Institute of International Affairs, London, 2001; ‘Ethno-Federalism and Civic State-Building Policies: Perspectives on the Georgian-Abkhaz Conflict’, *Regional and Federal Studies*, Vol. 11, No 2, Summer 2001, pp. 69-93.