

RESEARCH ARTICLE:*Federalism and national minorities***Gabriel Micu****ABSTRACT**

In many parts of the world, globalisation creates a phenomenon which integrates states into federal-like structures, even if they are not necessarily of the known, classical type, like the European Union, for instance.

The international doctrine and practise also credits federal states with a higher potential for economic growth compared to unitary states.

Starting from the undeniable fact that the economy and politics are closely linked together, some authors are trying to stretch the benefits of the federal system beyond what it can actually offer and argue that federalism may be the solution to other categories of political issues that the unitary states face.

Minority population is one such category. This study aims at showing that the state structure is irrelevant to solving the problems arising from the status of belonging to a national minority.

KEYWORDS: *unitary state, federal state, national minority, decentralisation, regionalisation.*

1. Introduction

Subjects of international law, sovereign and independent states enjoy the freedom of choosing an internal system of government of their own and regulate, without any foreign intervention, their own political, economic, social and cultural lives. Consequently, national authorities are entitled to decide on the type of government that serves the national interest best. The current international community has preserved two main forms of political and administrative state structures, i.e. the unitary state and the federal state¹.

The unitary state is mainly characterised by the centralisation of the administrative power. The government controls all local authorities, irrespective of the layer of decentralisation, and can legitimately intervene in their activities. Unlike unitary states, federal states allow for shared competencies among the central government and the local authorities, while the central power can intervene in the exercise of the competencies given to the component states only within the scope and the means necessarily safeguarded in the federal constitution.

Given all that, it means that federalism primarily depends on the domestic law of each state; it is not a matter of international law but rather one attached to internal legislation, part of its upper tier, always provided for in the text of the fundamental law of a state. As for the type of federative organisation, it exclusively depends on the constitutional law of the states² adopting this form of political and administrative structure and reflects the structure of power and the way power is exerted on the whole sovereign territory of the states concerned.

Some authors admit that federations emerged from the historical developments taking place on certain territories where a *historical* or *territorial identity* was shaped, beyond differences in culture, language or religion. This type of identity³ is deemed to prevail on the evolution of the respective communities, where a specific situation sparked the adoption of a federative solution for a certain territory, given the coexistence of group minorities⁴.

On the other hand, other authors claim that particularly in Western Europe we are witnessing a process of confrontation among states and their regional authorities that would claim the right to establish their own regional parliaments, a situation defined as “a typical state of civil war of the post modern (post-national state) age”⁵. Starting from this interpretation, some authors consider that the resulting situation would generate a pluralism of territories that, through a process of secession, devolution, would turn into subjects of the state, i.e. component states⁶.

Based on this interpretation, rooted in the well-known model launched by Samuel Huntington in his *Clash of Civilizations*, they argue, for instance, that Transylvania would be part of another culture but the other historical Romanian provinces, consequently meaning that it is rightly entitled to choose another future, politically speaking. This thesis, and the whole theory regarding devolution together with it, is however countered with political and legal arguments by authors specialising in matters of human and national minority rights⁷.

¹Dinstein, J. 1993. *The degree of self-rule of minorities in Unitarian and Federal States*, in *Peoples and Minorities in International law*, edited by Brolmann, C., Lefeber, R., Zieck, M. 1993, Leiden, Netherlands: M. Nijhoff Pub., pp.221 ff.

²Diaconu, I. 1999, *Minorities in the third milenium*, Bucharest, Romania: Ed. Romanian Association for Democratic Education, 1999, pp. 237 ff.

³Molnar, G. *The Transylvanian Question*, in *Hungarian Quarterly*, vol. 39, no. 149, 1998, p. 56.

⁴Molnar, G. *The Transylvanian Question*, in *Hungarian Quarterly*, vol. 39, no. 149, 1998, p. 61.

⁵Newhouse, J. *Europe's Rising Regionalism*, in *Foreign Affairs*, vol. 76, no. 1/1997.

⁶*Idem*.

⁷Andreescu, G. From the “Transylvanian problem” to the “European problem”, in *Alterra*, no. 8/1998, pp. 67 ff.

Another interpretation, yet disproved by historical developments, presents the European Union as an edifice inevitably leading to an European constitutional structure based on three tiers, namely, the local states, the national states that would only serve as a formal community framework and the federal super-ordinate state, whose main task would consist in organising the economic life of the union and safeguarding internal security, as well as defending the territory against any outer enemy attacks. Another theory has also claimed that states and the federal-associated forces should be replaced by a federal centre and federal peripheries, architecture deemed decisive in building a new Europe.

Though this idyllic architecture of the European edifice was planned to complete in the first decades of the 21st century, reality has totally disproved such assumptions. The European Union is now counting 28 Member States and it is yet far from becoming a federal state. Failure to ratify the Treaty establishing a Constitution for Europe has shown that European states, through the free will peoples expressed in referenda, stay at the core of the European edifice. Consequently, the Treaty of Lisbon translates into practice this popular signal, emphasising the Union's concern for respecting the Member States' identities and diversity, by pointing out that it does not aim to eliminate or marginalise them. The same treaty does not regulate or even hint at all at any means of unifying the political entities of the component states in a unique political-legal structure.

The Treaty underlines such an approach by setting out concrete ways to increase the role of the national parliaments within the community institutional mechanism, but only as core democratic bodies representing the people of the Member States and not as territorial units making the Union. Consequently, the EU is consistent with its initial objective of respecting the national and regional diversity of its Member States, as well as their cultural diversity, and appreciates that only with everyone's contribution can there a model be created of multicultural coexistence on the European continent.

The Treaty of Lisbon also makes it explicit that the European Union aims at preserving and respecting the Member States' national identity, inherent to their fundamental political and constitutional structures. The same spirit translates in the development of the Charter of Fundamental Rights of the EU that provides for the respect of the people's diversity of language, culture and religion.

In conclusion, the European edifice does not ignore the existence of diversity under all its aspects, neither does it ignore the differences of language, religion and culture, which are key to the existence of national minorities. This does not mean that they are given any role with regard to the future of the Member States, in the organisation of their structure or a place in the Union's further development. Seen in this light, federalisation has never been and will never be a recognised or accepted way to solve the problems arising from ethnicity or those of individuals coming from minority groups.

2.The place of national minorities in the structure of the federal state

The majority of experts in the field of international relationships believe that most of the federal states were born out of the specific historical developments of those particular countries, which, for different reasons did not end up in the foundation of unitary states. Some of the reasons involve the relatively parallel development on rather large geographical areas for several hundreds of years, as it is the case of Australia and the United States of America, for instance. Other states made the very decision to form a federation based on arrangements specific to this type of state organisation, while preserving the entities and

identities concluding the arrangements and safeguarding a wide or narrow field of competencies, such as the case of Switzerland and the USA.

Also, another formula to create a federal state is to conclude a transaction between two founding linguistic and cultural groups, close in numbers, in the absence of which the political and legal entity could not function as one state, a situation apparent in Belgium and Canada. There are other federal states born from the local self-sufficiency and self-rule tradition strongly rooted in medieval times and replicated in modern times, despite some periods of inexistence, such as the situation of Austria and Germany.

In some of the cases the union or the federation was formed around a ruling dynasty, where the component parts of the political-legal state entity kept strong elements of self-rule and were never really unified, such as Australia, Austria and Germany in modern times, whereas in other cases the federal arrangement was sparked by the need to protect the state entities thus grouped together or to keep them independent from neighbouring countries, such as the case of Switzerland and to a certain extent Canada.

What results from the previous facts is that **none of the federal structures was founded to solve minority issues**. Most of the times, the federated states do not correspond to the ethnic distribution of the population. Neither were they founded on such a basis.

In Switzerland, for instance, there are several French-speaking and German-speaking cantons that were never formed based on linguistic or ethnic criteria, but on the territorial criterion. They became parts of a federation later, at different times and under different historical circumstances. Another example is Canada, where there are several individually developing provinces, made of English-speaking population, which never considered their union based on their common language and culture. The states making the USA were formed on the territorial criterion and not the ethnic criterion at all, similar to the German, Austrian and Australian states. The only exception to the rule is the Canadian province of Quebec whose political and legal architecture corresponds to the ethnic and cultural criteria, similar to the communities and the regions in Belgium.

3.The legal relationship among the federal state and its component states

The way competencies are shared among the centre and the states making up a federation is laid down in the federal constitution and special legislation. In most federal structures, constitutive rules explicitly provide for the competencies of the Federation, wide or narrow, and leave it to the making states authorities to put in place the remaining competencies. In some cases, competencies may overlap and they rest both with the federation and the component states, which is known as competing competencies. In other cases, such as Germany, the role of the federal state is limited only to setting out the general legislative principles, whereas the competence to adopt the specific legislation to be enforced lays with the member states.

The rule according to which a federal state is built aims at including in the federal competencies those elements of power that underpin the functioning of such an entity such as, national security, foreign affairs, the defence, the currency and monetary system, border control and immigration, the customs regime, the treatment of trademarks, brands and patents, as well as the systems to measure space and weight, animal welfare and plant protection, the regulation of air and railway transport, the issues related to nuclear energy. Most of the times, the competencies of the federal state include the conclusion of agreements with other countries as well as matters of international trade. There follows that component states are given regulating competencies in fields such as culture, education, health and social welfare, domestic fiscal matters and environmental protection.

Irrespective of how wide or narrow federal competencies in the field of legislation might be, they prevail on those of the component states, whereas in the case of conflicting competing competencies, the federal norm would apply.

Regarding state structures, we can see that both the federal state and the component states have their own legislative, executive and often judiciary bodies. That is why, in most federations, the Upper Legislative Chamber is made up of the representatives of the component states, elected by those states, most often equal in number for each of the federated state. Also, the component state authorities must necessarily adopt the laws passed at the federal level to render them applicable on the territory of their states, thus making it possible to somehow share legislative power by enabling the component states to participate in the exercise of the legislative role of the federal state. There are other situations when the main federal laws must be adopted not only by the federal parliament or the majority of the population, but also by the majority of the component states, as it is the case in Switzerland.

This form of shared legislative competencies entails the existence of some arbitration institutions meant to solve potential conflict, both between the federal state and any of the component states and any two component states.

Globalisation as a phenomenon as well as the major crises that the world economy suffered recently have lead to an emerging general trend to increase the centralisation of federal competencies at the expense of those attributed to the member states. Even if such a trend does not reflect in the corresponding amendments brought to constitutions, it is felt through the demands of the global economy, regulations and the uniform conditions required by the fast movement of goods, capital, values and information, and the ever more visible process of economic integration as well.

Given all that, it means that the way competencies are shared among the federation and the component states, either with regard to the attributes explicitly resting with the federation and the remaining competencies of the state, or with regard to the explicit attributes resting with the member states, **has nothing to do with minority issues and is not founded on cultural or ethnic criteria** either. The same logic applies when we deal with competing competencies, wide or narrow, shared by the federation and the member states, where the latter all hold the same competencies and are related to the federal centre in the same way, irrespective of the linguistic, ethic and cultural identity of the populations that make them up.

State structures, both at the federal level as well as those attached to the component states, are equally **independent from the ethnic or linguistic fabric of the population** living in different regions. This matter concerns legislative, executive and often judiciary bodies as well as the ways in which the component states participate in the exercise of the executive, legislative and judiciary attributes, and the arbitration bodies, too. The competencies of the concerned bodies are the same in all member states, whereas possible differences are insignificant. There are some exceptions, too. There may be significant differences in the USA, for instance, but they **do not link back to the different ethnic origins of the population**.

The centralising trends of the federal structures, which consist in an increase of the central competences at the expense of those resting with the component states, bear no connection to either the ethnic or linguistic structure of the populations living on their territories. *Per a contrario*, the varied ethical mix in the populations of the states making a federation would rather justify a trend to increase local competencies at the expense of the federal ones, a phenomenon that is not present at all in the current context of the global economy developments at least.

On the other hand, it is noteworthy that within federal states, even if there is a local political and administrative life that acts as a catalyst of natural solidarity, we have not seen yet the creation of a provincial identity that would annihilate or render ethical, cultural or linguistic identities less important. Despite that, there have been discussions regarding federalisation as a solution to interethnic disputes, which is deemed at least in theory a way to achieve the legitimate objectives of the peoples or minorities that used to be part of multi-nation empires.

To illustrate, take for example the theory Aurel C. Popovici developed in several of his works about the concept of federalisation, in late 19th century. To avoid any confusion, we need to emphasise that the Romanian scholar, an expert in politics and sociology, had in mind the whole territory subject to the Hungarian Crown, in a context where his theory aimed at sparking the creation of fifteen **national states** placed under the rule of the Austrian Crown. It was deemed the only the solution that could allow for the survival of the population of Romanian extraction, under the circumstances of an offensive legislative and institutional attack against national identity orchestrated from Budapest, aiming at the assimilation of all the nationalities then found within the borders of Austro-Hungarian Empire, including the Romanians from Transylvania.

In spite of that, the solution Popovici put forward was accepted neither by the government in Budapest nor the Romanian political circles in Transylvania, whereas in Austria it had a limited echo.

4.The analysis of specific character identity in the light of relevant international documents

Another approach that was not embraced by the experts in the field of international relations nor was it recognised in the doctrine and practice of the states is federalisation based on another type of identity, namely historical identity. In order to justify or to ground a federalist projection, other aspects have been debated, such as the identities shaped by *ethical attitudes towards work* and the political attitudes associated to it, or a *territory*, which break down to a specific character, after all.

The main general international documents regulating the field of national minorities adopted in the latest decades are the Copenhagen Document on the Human Dimension adopted by the OSCE in 1990, the Declaration on the Rights of Persons Belonging to National Minorities adopted by the UN General Assembly in 1992, the Framework Convention for the Protection of National Minorities adopted by the Council of Europe in 1994. According to those documents, the elements defining the identity of human groups, which distinguish one population from another, are: **ethnicity, culture, language and religion.**

Through their historical experience, unitary and federal states alike are a living proof that coexistence on a territory has not resulted in the annihilation of cultural, linguistic or religious identity. However, there have been some exceptions, such as natural mixing, the mix of cultures, which inevitably caused some of them to become extinct. In other words, here have been indeed situations when some cultures died, either because of a natural process of osmosis or the forced assimilation of some ethnic groups. Consequently, ethnic, linguistic or cultural identity cannot compete against *historical identity*, because that would mean denying all the rights of the minority populations living together with the majority on the same territory. For empires or multi-nation states, that would mean denying the rights of peoples to self-determination.

As for the *attitude towards work*, we may say that such a criterion does not define the identity of a population but it rather represents a social issue, not an ethnic or cultural issue in nature. On the other hand, such an assumption would violate the principle of the freedom of movement and inter-human exchange, having taken place all the time and having generated substantive changes in human behaviour.

Consequently, the so-called *historical identity* or *the identity outlined by the attitude towards work* **can neither compete against nor are more significant than cultural, linguistic and religious identity**. Should we admit the opposite, it would inevitably lead to another organisational framework of the state, including that of the federal states, one that would not reflect the will of the population concerned.

As most of the states in the world show it in practice, such theses are regarded as an attempt to found the phenomenon of identity on insignificant differences among human groups or on pure fabrications and even to attach to it consequences it does not cause, not even there where it operates with true and varied identities. In fact, it is inadequate to use the phrase of territorial identity, because it links a socio-human element, i.e. identity, to another element like territory that is not defined by the features of human groups such as ethnicity, language, religion, but by elements of the landscape.

The international documents adopted on the protection of persons belonging to national minorities, both those of universal and regional outreach, approach the right to an identity of those belonging to a minority group in the context of the institution of the specific rights of the respective persons to preserve and express their culture and traditions, to use their mother tongue and to practise their own religion. Without exception, the documents in the field **do not link the issues of identity and the protection of minority groups as a whole to the state structure**, either unitary or federal, or the status of the units that form them.

On the other hand, history has witnessed the development of other unrealistic theories as well, such as the concept of *personal federalism* that relies on none of the credible arguments found in the international documents regulating the issues associated to national minorities. In order to clarify the notion, *personal federalism* is a concept launched in early 19th century to prevent the numerous nationalities subjects of the Austro-Hungarian Empire from taking action towards its dissolution. The concept is essentially based on uniting people of the same language and culture, irrespective of the place they are found on the territory of a state, in *national corporations*, legal entities of public law order. Such “unifying” entities, placed somewhere in between the state and the individual, were supposed to drive the promotion of the language, culture, religion and the **preservation of historic traditions**. This vision is nowhere to be found in the international documents adopted in the field of minorities, which provide for the protection of the ethnic, linguistic, cultural and religious identity of the minority group members, including the right to free organisation in both international and national associations and organisations, without the hurdle of concepts such as personal federalism or personal autonomy.

5.The relationship between decentralisation, federalism and the right of the persons belonging to national minorities

The international doctrine and practice uses the concept of decentralisation, in its widest sense, to designate all the situations when the central authority and its component units share competencies. However, in its narrow sense, decentralisation is taken for local autonomy, i.e. the limited delegation of competencies conditioned by the control and accountability of central authorities. The guiding principle of decentralisation provides for the equality of

territorial units both in terms of quantity and quality with regards to the competences they are given, wide or narrow, **irrespective of the ethnic structure of their population**. Decentralisation is typical of a democratic system and is used precisely to facilitate the citizens' access to public life, to the adoption of the decisions that concern them.

Considering that, there follows that in the application of the democratic principles, decentralisation equally regards all the citizens of a region, **irrespective of their belonging to an ethnic group**. Only in exceptional situations, did some states accepted or created, for particular reasons, a special regime for one or some of their component territorial units, either by means of international agreements or internal legislation.

As for federalism, it is generally safeguarded in the constitution and it can only be altered through a new constitutional arrangement, a process that involves the component states in the exercise of their federal state executive, legislative and judiciary functions.

As he has already shown, **none of these state structures bears causality to the minority issues**. As decentralised government systems, in the wide sense of the concept, they allow for a more efficient and adequate solution to local problems, offering a more favourable framework, including for the exercise of the rights that are specific to the persons belonging to minority groups, subject to conditions that should not alter the preservation of the minority identities.

The community political-legal edifice is a particular case of decentralisation process, where two parallel trends become apparent, i.e. globalisation and regionalisation⁸. In this context, the community legal culture keeps expanding the principle of subsidiarity, which facilitated a development that favoured regionalism, which however must be taken with a grain of salt. To encourage the local authorities to adopt the most efficient form of self-organisation inevitably leads to gaps in the pace of growth of the regions inside a state, with some of them becoming strong enough to act relatively independently, which in turn leads to the wish of the local authorities to promote their own interests, not only in their relationships with the other regions, but also in their relationships with other countries or regions from other countries.

However, some of these regions find substantive support in the development and consolidation of the European integration, in the community institutions taking over the duty of uniform regulation of various fields, such as national minorities, among others. According to the community legal and institutional framework, regions promote direct economic ties, in fields such as communication or high speed trains, based on geographical proximity, the development and expansion of trade, and cooperation within the production process. The project "the four highways association" is noteworthy in this respect. It contributes to increasing the competencies of the German states as well as the influence of their lobby offices in Brussels, to the development of Catalonian autonomy, it encourages the federalisation movements in the North of Italy and contributes to the growth of the economic power and the political authority of the Rhones-Alpes area around the city of Lyon in France⁹.

It becomes apparent that following centralisation cities and regions in Europe have acquired, will strengthen and even expand their set of responsibilities and that they are playing an increasing role in solving economic, social, educational and cultural problems and others alike. However, irrespective of the level of regional development or the form of organisation, local authorities will never be able to uphold the *social contract* as a whole. Neither will they be able to safeguard social security for all citizens. On the other hand,

⁸J. Newhouse, *op.cit.*,pp. 67ff.

⁹*Ibidem*, pp. 71-80.

neither can the European Union be built on regions only, since the Member States are and will probably still make the basic units in the community edifice long time form now.

The issue of regional independence obviously emerges only in the situation it is required by some regions that explicitly claim they want to play such a role, the richest and best positioned regions in the post industrial age, able to cope with the current economic competition by themselves, with no support from the states they are part of. However, we must emphasise that regionalist movements are mainly driven by economic reasons. It is difficult to imagine that the other regions, which naturally form the majority in the respective state, will agree to such individual developments that will only end up in their isolation from the mechanisms of national solidarity, placing them in an area of economic and respectively political isolation.

Supposing, by a stretch of imagination, that there will be such a local authority that will single-handedly express a political will to expand its area of regional competencies at the expense of central competencies, we would find ourselves in the paradoxical situation where the nation-state would disappear, whereas so far it has been considered to be the highest form of human community political-legal organisation and has gained recognition in the international community as the only instrument able to render justice, to promote effectively tolerance and protect human values¹⁰. On the other hand, the European institutions can only work based on the approval of the states and can only evolve in the direction they agree.

We must not ignore the fact that regionalisation was born as a socio-political reaction both to globalisation and the integration processes, within certain limits nonetheless. First, globalisation and economic integration require consistent solutions taken at the national level, which can only be managed at the state level. Second, however developed or well-intended, regions are not able to solve all problems.

In line with the logic of this section, we can see that **regionalisation bears no connection to the minority issues**, since the principles governing its functioning and development are not connected at all with the protection of the rights or the identity of the persons belonging to minorities. The same logic applies to Euroregions, a concept promoted by the Council of Europe, shaped and developed in the framework of cross-border cooperation.

Even if there may be minorities in an Euroregion nearby the border that perceive cooperation with territorial units in the neighbouring states as an efficient way to protect their interest in the preservation and expression of their ethic, linguistic, cultural or religious identity, the concept of Euroregion is subordinated to the principles guiding the activity of the Council of Europe.

According to the rules developed under the aegis of the Council of Europe, the only entity able to regulate the situation of persons belonging to national minorities is they state they are bound to, legally speaking. Based on this assumption, any wish to regulate things in a regional cross-border approach shall make the object of negotiations among neighbouring states whose administrative subunits form the respective Euroregion. In conclusion, an Euroregion is not entitled to solve the issues concerning minorities, it does not depend on the ethic mix of the neighbouring regions and does not show a tendency towards federalism, it only has to do with regions found in two or more states.

¹⁰*Ibidem*, p. 84.

6. Conclusions

Given all the aspects mentioned before, federalism is rooted in different situations, based on the historical conditions typical of each country where it develops. Seen through the prism of democracy, a federal structure is not necessarily higher than the unitary government system, because decentralisation and the extension of generalised local autonomy can more and more now secure direct participation of the territorial units. We may even think of generalised local autonomy as a form of participative government, a highly effective political-legal instrument to counter the fight for power among the centre and the component states, an instrument that channels competences based on pragmatic criteria, insensitive to politics, aimed at finding the most efficient way to solve problems.

In large federal states, the democratic system has imposed one way or another some form of local autonomy, which leads to the conclusion that federalism does not have too much to offer compared to unitary states. Moreover, we can see that long established federations, with a tradition of tens or even hundreds of years, undergo a process of permanent change, of re-negotiating their legal and institutional framework, of finding a new balance among the central authorities and the member states, as a result of the political, economic and social developments from those countries.

As for the countries in Central and Eastern Europe, we can see that they adopted the unitary state, according to their own specific historical tradition, of course. The democratisation process these countries are undergoing includes finding a solution to the problems associated to national minorities, in the sense that they must create the legal and institutional framework safeguarding the rights of the persons belonging to ethnic minorities. In all these states there is a tendency towards local autonomy, not federalisation.

This is the very goal of the regulations developed by the competent European bodies, which reflect the generally accepted concepts in Europe. The proof lies in the conventions

adopted by the Council of Europe, which encourage the promotion of local autonomy as a way to develop democracy and safeguard the human rights and fundamental freedoms.

Irrespective of the form of state, the identity of national minority members and the identity defining the ethnic features of the majority group alike stays **based on language, culture, religion and excludes from the definition territorial, occupational or any other element of different nature**. On the other hand, the international doctrine and practice in the evolution of federations have shown that, for all its different or unique characteristics, there is nothing in the ethnic, cultural or linguistic identity of the populations living on a territory that can shape or influence in any way the federative structures or trends.

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