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Territorial Organization of the State – Way of Overcoming the Conflict or the Form of National Self-Determination

The conflicts, existing in the society are inhomogeneous according to their origin as well as their course. Negative outcomes, caused by these conflicts, go beyond the boundaries of one country and form part of global politics. Neutralization of the conflicts, existing in the society is a long-term and extremely complex task and their ultimate neutralization is almost impossible. Consequently, all models, created for the purpose of resolution of such conflicts, are directed towards their maximum neutralization. On the basis of consideration of the examples of the number of countries it became clear that federalism may be used as effective way of resolution of the existing conflicts. Federative state is one of the best mechanisms for various minorities to develop their national and cultural originality. Federalism facilitates peaceful resolution of conflicts and, at the same time, preserves unity and territorial integrity of the state. This form of state organization can't be viewed as universal way of resolution of problems. It may play positive role in the process of unification of Georgia and provide the required and significant positive outcomes for the country.

Key words: territorial organization of the state, unitarian state, federalism, confederation, conflicts, ethnic minority, the right of nations to self-determination.

1. Introduction

Regulation of conflicts of different forms, existing in the world, and their maximum neutralization remains the most important problem on almost all stages of development of society, as creation of stable state and its development is impossible without it.

The conflicts, existing in the society, are diverse according to their origin (social, economic, religious, ethnic, etc.) as well as progress. The primary source of such conflicts mainly comes from the past and, regardless the development of society, in most cases, becomes more and more complicated, obtains new scales and depths and creates serious problems in internal or foreign politics of number of countries.

Disintegration of socialist system at the end of the 20th century created new centers of severe conflicts (mostly ethnic and social) all over the world, especially in Russia and Europe.¹ Negative outcomes of these conflicts go beyond the boundaries of one country and become the part of global politics.

Presently different opinions exist in science on conflict assessment, as well as the ways of overcoming them. Even on the example of our country, it's difficult to agree with the view of one

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¹ *Khubua G.*, Federalism, as the Way of Overcoming Ethnic Conflicts, Zhurnali Samartali (" Journal of Law"), №6-7, 1999, 15 (in Georgian).

part of conflict scholars recognizing conflicts, as the means of stimulation of progress and development of society. Social and ethnic conflict, existing in the society, carry such negative impacts for individual groups of people and for the country, that they are in the centre of attention of the whole world and the governments of individual countries, hence, leading politicians and social scientists give special priority to the necessity of their regulation and neutralization.

Neutralization of conflicts of different natures, especially those emerging on ethnic ground, existing in the society, is a long-term and extremely complex task and their final elimination is almost impossible presently. Consequently, following from the existing reality, all models, created for the purpose of regulation of the mentioned conflicts, are directed towards their maximum neutralization.

2. Federalism – the Way of Overcoming Ethnic Conflicts (Confrontation)

One of the recognized ways of overcoming ethnic and social conflicts in global science is determination of the relevant territorial organization of the state. The given section overviews one of the forms of territorial organization, namely, creation of federal state, as one of the ways of overcoming internal conflicts of the country. The mentioned model is more and more often is considered by the leading countries of the world and political scientists as quite fruitful and successful form of resolution of internal conflicts. One of the key criteria for evaluating federal governance system is its efficiency in overcoming the conflict, existing in the society. ²

Different views exist around this issue too. One group of scholars consider federal model the ideal means to overcome the existing confrontations, and others rebut all achievements of the mentioned model in this direction. There are two different – American and German models of federalism, which, with consideration of the modern requirements and the existing reality, are quite close to each other, so it will be more appropriate to analyze the key characteristics of federal governance, as the means of overcoming the differences, existing in the society, which express the main idea and purpose of this model.³

In the opinion of famous German scientist, *Frenkel*, Federal governance model, due to its dynamic nature, has the ability of prompt adaptation to changing situations and, in the case of timely identification of conflict and necessity, allows their peaceful resolution. For this reason, with consideration of the requirements of contemporary society, the above mentioned functions of federalism have presently moved to the front line.⁴

It is recognized, that federal governance model is much efficient, more peaceful and liberal way of resolution of all types of conflicts, including ethnic, unlike centralism, which tries to resolve conflicts radically, from the positions of strong centre. In such case, obviously, the interests of national minorities are violated and they experience strong pressure; besides, it cannot eliminate the reasons, causing the conflict, on the contrary, in some cases it creates new confrontations, facilitates creation of public tension.

² *Khubua G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 152 (in Georgian).

³ *Khubua G.*, Federalism, as the Mean of Overcoming Ethnic Conflicts, *Zhurnali Samartali*, Journal of Law, № 6-7, 1999, 19 (in Georgian).

⁴ *Khubua G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 153 (in Georgian).

Federal model excludes accumulation of powers in any centre. It provides wide opportunities of independent actions to the subjects of federation, taking into account their interests and desires and somehow neutralizing the conflict situation this way; besides, this way of resolution of the mentioned problem excludes the possibility of forced suppression of conflicts and, at the same time, preserves the unity of the state.⁵

The fact, that federal model takes into account – as much as possible – the historical, cultural and religious differences of different regions of the country and becomes the guarantor of preservation and development of these differences in the future.

Consideration of interests of individual regions and development of mechanism for their protection, certainly, reduces the confrontation, existing in the society, facilitates approximation of regions with the centre and with each other. Individual subjects of federation actively participate in political and economic management of the country and in resolution of common national problems; common structures of the centre and regions are established, facilitating regulation of the process, formation and amplification of common interests.

Origination of conflicts, as a rule, is related to the existence of different views and interests of individual subjects or social groups. Different views of small ethnic groups, individual subjects are accepted and shared in centralized state at less extent. This function is better implemented by federative state, granting the right of independent action and wide area of its implementation to the subjects of federation whether they represent the majority or the minority.

The main principle of federative state – “diversity in unity” – greatly helps individual subjects to maintain the united system with consideration of their own interests. Federalism should be able to achieve the unity of the state through incorporating federation subjects and state system. Federal unity shall not be lost in the environment of maximum autonomy and diversity of territorial units; otherwise, federalism will transform into particularism, separatism. At the same time, if the accent is unilaterally shifted only to the unity, unitarism and centralism, notions incompatible with idea of federalism, develop. Consequently, federalism can be viewed as mosaic. It will not be complete if it is not placed in certain boundaries and if it doesn't have certain shape.⁶

On the other hand, regardless all the good, arrangement of the state on federal basis is not an ideal way towards resolution of conflicts once and forever. It should be taken into account that the existence of different centers of power in regions, as well as different interests of the subjects of federation may complicate overcoming of conflict; besides, new differences may emerge between the center and the subjects, nevertheless, confrontation of views between them has positive effect too in the terms of distribution of power, checks and balances.⁷ It shall be mentioned that this model presently operates in many countries of the world. These countries, in many cases, are the states with different systems and resolution of the existing conflicts in each of them shall be carried out with consideration of characteristic peculiarities and not based on general stereotypes or dogmatic schemes.

⁵ *Khubua G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 156 (in Georgian).

⁶ *Khubua G.*, Federalism, as Normative Principle and Political Order, Magazine Overview of Georgian Law, 4th quarter, Tbilisi, 1999, 15 (in Georgian).

⁷ *Khubua G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 158 (in Georgian).

For society in many states, including Georgia, one of the severe problems is the resolution of ethnic conflicts. Origination and development of ethnic conflicts, as a rule, comes from far past and mostly manifest in separatist movements. Last decades of the past century was marked with significant increase of ethnic conflicts. In 1993-1994 about 50 ethnic conflicts were registered in the world. They represent one of the forms – presently quite widely spread – of civil war and their severest result was emergence of thousands of refugees or IDPs, not to mention political tension and lowering of economic potential of individual countries.⁸

It shall be mentioned, that ethnic conflicts don't have homogeneous nature. Their majority is caused by historical reality, besides, their progress, level of tension, area of spreading is different. Consequently, it would be desirable to develop the mechanism of regulation of ethnic conflicts, which would ensure objective assessment and consideration of all the above mentioned aspects, including historical reality.

Majority of present-day political scientists, as we have already mentioned above, see federal governance system as one of the effective models for resolution of ethnic conflicts. From the viewpoint of resolution of ethnic conflicts, it is important to keep in mind the fact, that federalism shall not be seen as petrified, motionless, static legal structure; it is necessary to implement federal principles in political processes and, to build state governance mechanism on federal principles.⁹

One of the famous researchers of the issues of federalism, *Elisar*, introduces notions “federal principle” and “federal division”. In the opinion of the author, the essence of federalism is that, on the one hand, the constituent parts of the state are granted independence and self-governance, and on the other hand, their participation in state governance is ensured. *Elisar* particularly stresses that federalism is such type of connection of small groups with large association, which allows realization of common objectives and, meanwhile, ensures the independence of the part of the whole. Consequently, in *Elisar*'s opinion, federalism is one of the most important ways of resolution of national, ethnic, racial and other conflicts and for bringing positive results.¹⁰

The UN Declaration on the Granting of Independence to Colonial countries and Peoples explains the right to self-determination as follows: all peoples have the right to self-determination, based on which they freely and independently determine their political status, basic directions of their economic, social and cultural development.¹¹

One of the UN resolutions,¹² defining the notion of aggression, maintains that use of force for realization of the right to self-determination, as well as action, directed against the sovereignty, territorial integrity and political independence of the other country, is inadmissible.¹³

⁸ *Khubua G.*, Federalism, as the Mean of Overcoming Ethnic Conflicts, „Zhurnali Samartali“, Journal of Law, №6-7, 1999, 14 (in Georgian).

⁹ *Khubua G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 162.

¹⁰ *Ibid.*, 162-163 (in Georgian).

¹¹ Declaration on the Granting of Independence to Colonial Countries and People, adopted by General Assembly resolution 1514, 1960, <<http://www.un.org/en/decolonization/declaration.shtml>>, [20.11.2015]

¹² Definition of Aggression, United Nations General Assembly Resolution, 3314, 1974, <<http://www1.umn.edu/humanrts/instrtree/GAres3314.html>>, [11.10.2015].

¹³ *Halberstam M.*, Nationalism and the Right to Self-Determination: The Arab-Israel Conflict, Journal of International Law and Politics, N.Y.U. 26, 1993-1994, 574.

In regard to the right to self-determination, opinion is accepted that this is the right, originally enjoyed by the peoples, living in the conditions of colonial regime and which could be used only for overthrow of the relevant colonialist regime. Basically, this right was deemed to be the right of the group of people, living in one certain territory, which would help them to make collective decision on what kind of governance they would like to live under. Presently it is clear, that the right to self-determination is an immune right for all peoples, but nevertheless, it is not necessarily absolute. Clearly, people, living in non-colonial countries, as a rule, do not need it.¹⁴

Although the series of international acts, allegedly, uniformly ensure the realization of the right of self-determination for all nations, the world history has shown, that in reality, its implementation was not desirable and neither expedient for the countries of international community. As an example, we could quote the long-lasting Arab-Israel conflict, which was recognized by international organizations as the desire of Israeli people to implement the right of self-determination. Nevertheless, it should be taken into account, that the right of nations' self-determination has never been real reason, causing the mentioned conflict.

Israel purposefully put the pretext of realization of the right to self-determination behind the existing conflict in order to obtain the support of other states and the UN. In reality, two circumstances were the key reason of the mentioned tension: territory and establishment of non-muslim country in the Near East.¹⁵

The right to self-determination may have different meanings: the right to freedom of people and determination of its international status; the right of the population of the state to determine the form of the government and participate in its activities; the right of the state in regard to territorial integrity and inviolability of its borders, as well as non-interference in its internal affairs; the rights of the state to cultural, economic and social development; the right of national minorities, living in the country or even beyond its borders to have the rights of special social and economic development.¹⁶

According to the Declaration, adopted by the assembly of the UN, it is not necessary to implement the right to self-determination in the form of declaration of the state independence and reconsideration of the state borders. Self-determination can be implemented in the form of self-governance (autonomy) as well. National minority can determine its political status independently without secession and declaration of sovereignty within united state. In this aspect, national self-determination means the opportunity of selection of independent governance form and participation in governmental decision-making.¹⁷

It is clearly proven by the 4th and 5th Republics of France, when this country had long-standing unresolved problem in regard to the status of former colony – New Caledonia. The persons, residing

¹⁴ *Smith R.K.M.*, International Human Rights, Publishing House of Oxford University, New York, 2005, 381 (in Georgian).

¹⁵ *Halberstam M.*, Nationalism and the Right to Self-Determination: The Arab-Israel Conflict, Journal of International Law and Politics, N.Y.U. 26, 1993-1994, 573.

¹⁶ *Smith R.K.M.*, International Human Rights, Publishing House of Oxford University, New York, 2005, 381 (in Georgian).

¹⁷ UN General Assembly Resolution 2625 (XXV), 1970, <<http://www.un-documents.net/a25r2625.htm>>, [09.10.2015].

in the mentioned territory, were demanding withdrawal from the French Republic and formation of independent state. The authorities of the 5th French Republic resolved this problem in 1982-1987 by applying the relevant territorial arrangement. In particular, New Caledonia was granted large powers in social, cultural and economic spheres. Local population, the Kanakas, was given opportunity to preserve and develop their habits and customs, traditions and culture within the single state. As a result, in 1987, during the referendum, conducted in New Caledonia, majority of local population rejected the idea of formation of independent state and confirmed that their rights to self-determination was fully realized in the united state of the French Republic.¹⁸

It is noteworthy that during the world history none of the states has really realized the rights to self-determination of any group within its territory. Notwithstanding the universal recognition of the right to self-determination, neither the United States granted the right to self-determination indigenous people, nor the Great Britain – to the North Ireland.

There are many examples in the world, where different ethnic, national, religious and racial groups live within the territory of one state. In some cases the representatives of the mentioned groups are so assimilated with each other, that it's impossible for them to independently implement the right to self-determination. Otherwise, wide and multiple implementation of the right to self-determination will lead to origination of many small states, which will jeopardize international security and global order¹⁹

And if the ethnic minority has the opportunity of living in political, social and cultural environment, where preservation and development of its social-economic and cultural rights is possible, the right to self-determination may be realized in the form of granting of the status of the subject of federation to the minority. Consequently, optimal concordance of the right to self-determination and sovereignty will be achieved. On the one hand, territorial integrity of the state will be preserved, and, on the other hand, the representatives of ethnic minorities will have the opportunity to protect their interests and rights within the boundaries of the united state.

As we have already mentioned, in many countries of the world (Bosnia and Herzegovina, Kingdom of Belgium, Russian Federation, Ethiopia, Canada, etc.) the model of federative system, as the form of territorial-political organization of the state was successfully used, which facilitated regulation of different types of conflicts, and in some cases – establishment of peace and real implementation of the desired rights of ethnic minorities.

The present state of our country, violated territorial integrity necessarily requires drawing on the experience of other countries and fundamental analysis of the model of territorial arrangement, which enabled regulation of various conflicts in these countries, facilitated peaceful co-existence of different groups in the united state.

Besides, it should be specially mentioned that being maximally adapted to the interests of particular countries, federal organization model was implemented in different forms, though nevertheless, their basic characteristics and principles were preserved. Flexible nature of federal arrangement

¹⁸ *Marrani D.*, Principe of Indivisibility of the French Republic and the People's Right to Self-Determination: The New Caledonia Test, *Journal of Academic Legal Studies*, Vol. 2, 2006, 18-19.

¹⁹ *Halberstam M.*, Nationalism and the Right to Self-Determination: The Arab-Israel Conflict, *Journal of International Law and Politics*, N.Y.U. 26, 1993-1994, 575-576.

even further facilitated its successful implementation and achievement of positive results in the countries with diverse conflicts.

2.1 Bosnia and Herzegovina

Administrative-territorial arrangement form of Bosnia and Herzegovina is not directly determined by the Constitution. P. 3 of the Article 1 of the Constitution rules that Bosnia and Herzegovina consists of two subjects – Bosnia and Herzegovina Federation and Sparska Republic.²⁰ Consequently, active discussions are still ongoing whether Bosnia and Herzegovina represent unitary, regional, federative or confederative state. So, for better understanding of the problems, related to territorial arrangement of Bosnia and Herzegovina, the history of creation of the mentioned state, its territorial-administrative structure and the political environment, existing in the country, should be considered.²¹

Disintegration of Yugoslavia in 1991-1992 was followed by creation of 5 new states: Slovenia, Croatia, Macedonia, Bosnia and Herzegovina and Federative State of Yugoslavia. The latter united the states of Serbia and Montenegro. Primary escalation of conflict in Bosnia and Herzegovina was caused by the Referendum, conducted on February 29, 1991, where 98% of population of Bosnia and Herzegovina voted for the unity and independence of the country. After the Referendum, in April 6, 1992, the Countries of European Community and international organizations recognized Bosnia and Herzegovina, as independent and sovereign state within the borders, existing by that period.²²

Serbs, living in Bosnia and Herzegovina categorically opposed the idea of conducting the Referendum from the very beginning and boycotted it. It was the desire of Serb population either to create independent state or join Federative State of Yugoslavia.²³

It should be taken into account, that due to multi-ethnicity, Bosnia and Herzegovina repeatedly became the subject of unrest and manipulation by various political groups, during which the major political groups facilitated instigation of religious and ethnic confrontation among the peoples in order to obtain the support of certain part of population. Unhealthy political climate and different views on the future of Bosnia and Herzegovina finally led the country to the war, which lasted from April 1991 to September 1995.

During military actions, several state-like formations were created without any legal basis on the territory of Bosnia and Herzegovina. On November 9-10, 1991 Serb population conducted plebiscite and supported creation of independent state of Serbia (further known as Republic of Sparska). During the same period, Croatians created the state of Posavina Croatia and then union of Herzeg-Bosnia-Croatia.²⁴

²⁰ Constitution of Bosnia and Herzegovina, Article 1, <http://www.ohr.int/dpa/?content_id=372>, [10.09.2015].

²¹ *Meskic Z., Pivic N.*, Federalism in Bosnia and Herzegovina, Vienna Journal on International Constitutional Law, Vol. 5, 2011, 597.

²² *Ibid*, 597.

²³ *Oklopic Z.*, The Territorial Challenge: From Constitutional Patriotism to Unencumbered Agonism in Bosnia and Herzegovina, German Law Journal, Vol. 13, № 01, 2012, 33.

²⁴ *Ibid*, 598, Also see *Friedmann F.*, Bosnia and Herzegovina – a Policy on the Brink London, London, 2004, 120.

As the confronting parties had no desire to find solution out of the existing complicated situation, international community several times suggested different ways for resolving problem resolution to the subjects, involved in military actions. Primarily, on March 1, 1994, on the initiative of the United States, Ceasefire Agreement was concluded between Herzeg- Bosnia- Croatia Union and Bosnia and Herzegovina, which is known in international law as Washington Agreement. The purpose of the mentioned agreement was recognition and protection of sovereignty and territorial; integrity of Bosnia and Herzegovina, as federative state, protection and respect of national equality of the population of different groups on the territory of the country and fundamental human rights and freedoms. According to the Agreement, federation must be the form of territorial arrangement of Bosnia and Herzegovina.

The procedure of adoption of the new constitution of the country, competences the governmental authorities of central and federation subjects, structure, procedure of election, important issues related to cessation of military actions and fundamental human rights were defined in the document in details.²⁵

Despite the agreement and, besides, series of activities, military actions didn't stop in Bosnia and Herzegovina. Another Ceasefire Agreement was concluded in the United States, in Dayton, which put an end to the 4-year war between the confronting parties. The mentioned Agreement was concluded among the three dominant national groups, living in the Federative State of Yugoslavia, Croatia and Bosnia and Herzegovina with participation of 5 leading states (the USA, Russian Federation, England, German Federation, French Republic). This Agreement and the annexes thereto were signed on December 14, 1995 in Paris. The Ceasefire Agreement includes 12 Annexes, the most important of which is the Framework Agreement on Ensuring of Peace and Annex 4, which includes the Constitution of Bosnia and Herzegovina and determined organizational-legal form of the state, model of governance, powers, structure and functions of the governmental structures. The purpose of the mentioned Agreement was ensuring of peace, stability and development in Bosnia Herzegovina and in the whole region. The mentioned document obliged the parties to respect each other's sovereignty and equality. Resolution of the existing conflict should happen only in peaceful manner, the parties should restrain from any threat or violence, directed against territorial integrity and political independence of Bosnia and Herzegovina or any of the parties.²⁶

It could be said that Dayton Agreement in that period was the only way out, which triggered the parties to put an end to many-years military actions and confrontation.²⁷

Regarding outstanding importance of Dayton Agreement the US diplomat *Richard Holbrooke* mentioned that the agreement, achieved in Dayton formed the basis for ending the war and formation of multi-ethnic state.²⁸

²⁵ Washington Peace Agreement, 1994, <http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/washagree_03011994.pdf>, [10.10.2015].

²⁶ The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, <http://www.ohr.int/dpa/default.asp?content_id=379>, [05.09.2015].

²⁷ *Meskic Z., Pivic N.*, Federalism in Bosnia and Herzegovina, *Vienna Journal on International Constitutional Law*, Vol. 5, 2011, 602.

²⁸ *Bose S.*, *Bosnia after Dayton, Nationalist Partition and International Intervention*, Oxford University Press, 2002, 52-53.

Immediately upon signing the Agreement, concluded in Dayton, new Constitution of Bosnia and Herzegovina was adopted, according to which Bosnia and Herzegovina, within the boundaries, recognized by international law and international community, represents sovereign and independent state, consisting of two subjects: Federation of Bosnia and Herzegovina and Republic of Sparska.²⁹

Both subjects of Bosnia and Herzegovina – Republic of Sparska and Federation of Bosnia and Herzegovina, from constitutional – legal viewpoint, have the status of federation subjects and non-sovereign states. From territorial-organizational standpoint, Bosnia and Herzegovina, due to the above-mentioned legal status, represent absolutely different phenomenon. In particular, Bosnia and Herzegovina consist of one unitary (Republic of Sparska) and one federative (Federation of Bosnia and Herzegovina) subjects and Brčko district, which is not included in either of the subjects. In its turn, Federation of Bosnia and Herzegovina consists of 10 cantons, administrative borders and ethnic composition of population of which is conditioned by the results of the war.³⁰

In general, the idea of establishment of ethno-cultural justice stimulates countries to form, as decentralized subjects, where the originality of various nations included in it is protected and developed on institutional level. The mentioned result can be achieved in a federative state through establishment of federation subjects, where peaceful and rational co-existence of various national and/or ethnic minorities will be ensured.³¹

It is worth mentioning, that in the first years of enforcement of the Constitution of Bosnia and Herzegovina some scholars considered that the mentioned country did not represent the state of federative arrangement, but confederation, as the subjects had sovereignty and wide powers like independent state.

On the other hand, certain part scholars considered that as Bosnia and Herzegovina was created on the basis on international law and not on the basis of national legislation, it represented the union of states, i.e. confederation. Consequently, it was considered in legal doctrine that Bosnia and Herzegovina was not a united state, but the union of two independent states (Republic of Sparska and Federation of Bosnia and Herzegovina).

Certain time later when central authorities of Bosnia and Herzegovina widened powers in number of spheres at the expense of subjects, Bosnia and Herzegovina was recognized as one federative state, which consisted of 2 subjects and one district, and without which it would not exist as a state. Nevertheless, as, according to the Constitution, the governmental bodies of the subjects of federation are equipped with the competence, inherent to sovereign state, the scholars, working on these issues considered that territorial-organizational form of the mentioned state was “sui generis” (unique, different from all), where subjects had high level of decentralization and several characteristics for independent, sovereign states.³²

²⁹ Constitution of Bosnia and Herzegovina, Article 1, <http://www.ohr.int/dpa/?content_id=372>, [05.08.2015].

³⁰ *Meskic Z., Pivic N.*, Federalism in Bosnia and Herzegovina, Vienna Journal on International Constitutional Law, Vol. 5, 2011, 599.

³¹ *Oklopčić Z.*, The Territorial Challenge: From Constitutional Patriotism to Unencumbered Agonism in Bosnia and Herzegovina, German Law Journal, Vol. 13, № 01, 2012, 34.

³² *Meskic Z., Pivic N.*, Federalism in Bosnia and Herzegovina, Vienna Journal on International Constitutional Law, Vol. 5, 2011, 602-603.

Political scientists, supporting formation of Bosnia and Herzegovina as united federative state consider, that Bosnia and Herzegovina is established on the basis of free will, manifested by peoples of different nations. It is important to understand, that Bosnia and Herzegovina belong no to the representatives of any specific, one nation, but to all its citizens, who participate in the revival of the state at equal level.³³

In general it is considered that Bosnia and Herzegovina is an ethnic federative state, as each subject is formed on the basis of just ethnicity. High level of independence of the subjects is conditioned by the circumstance that Bosnia and Herzegovina is deemed to be the state, uniting 3 etatist nations (Serbs, Croatians and Bosnians). In the given case, specific form of territorial arrangement – federalism- was used as efficient way of cohabitation of different ethnic groups in united state. Ethnic minorities were given the opportunity to fully preserve and implement their social-cultural and political rights, national interests and widely participate in building of united state.³⁴

The form of territorial arrangement of Bosnia and Herzegovina may be considered as the compromise, based on realization of the right to self-determination of Serbs living in Bosnia and the desire of Bosnians (to preserve united Bosnia and Herzegovina). As a result, for preservation and development of their political, social-cultural rights and traditions within the united Bosnia and Herzegovina, Serbs created the subject of federation – Republic of Sparska.³⁵

It is important that establishment of federative state in Bosnia and Herzegovina was the only and necessary way out, which could stimulate the confronting parties to put away the weapon and sit down at negotiation table. Federalism became the weapon, which managed to put an end to military operations. This form of state organization in Bosnia and Herzegovina ensures stability and peace, facilitated progress and development of united state with consideration of interests and rights of Bosnians, Croatians and Serbs.³⁶

It is generally considered that for realization of self-determination rights of different ethnic or national groups it is enough to create federative state and grant wide social-economic and cultural rights to the subjects, with exception of the cases when minority in the united state suffers from extreme, unbearable discrimination. Only in this case, realization of the right to self-determination may be followed by the requirement of formation not as the federation subject, but as independent state.³⁷

In addition, it could be mentioned that for consideration and preservation of interests of all etatist nations, the following conditions are established by the legislation of Bosnia and Herzegovina: Bosnians, Croatians and Serbs are equally represented in legislative, executive and judicial authorities; re-consideration of the Constitution of Bosnia and Herzegovina is admissible only on the basis of agreement, achieved among the etatist nations; the representatives of all the above-

³³ Oklopčić Z., *The Territorial Challenge: From Constitutional Patriotism to Unencumbered Agonism in Bosnia and Herzegovina*, German Law Journal, Vol. 13, № 01, 2012, 40.

³⁴ Meskić Z., Pivić N., *Federalism in Bosnia and Herzegovina*, Vienna Journal on International Constitutional Law, Vol. 5, 2011, 606.

³⁵ Ibid, 33.

³⁶ Meskić Z., Pivić N., *Federalism in Bosnia and Herzegovina*, Vienna Journal on International Constitutional Law, Vol. 5, 2011, 608.

³⁷ Oklopčić Z., *The Territorial Challenge: From Constitutional Patriotism to Unencumbered Agonism in Bosnia and Herzegovina*, German Law Journal, Vol. 13, № 01, 2012, 39.

mentioned nations equally participate in the process of development and implementation of the state policy; the state equally ensures preservation, protection and development of their national, religious, linguistic and social-cultural originality and traditions for Serbs, Croats and Bosnians.³⁸

Consequently, it can be concluded that since conclusion of Dayton Ceasefire Agreement and up to the present, federalism proved to be the successful model of state territorial arrangement, which really ensured peaceful coexistence of Bosnia and Herzegovina, as independent and sovereign state.

2.2. The Kingdom of Belgium

In opposition to the unifying role, federative organization may serve for segmentation of uniform political organism into parts, which shall be protected against final disintegration by federal system. Presently, in many states, such progression of political processes conditions its federalization. Political wisdom implies introduction of certain federal elements in even strictly unitary state.³⁹ The same is required for the interests of unity of the state itself. Neglecting of this principle resulted for Denmark into the loss of Schleswig-Holstein, for Holland – Belgium, for England – American colonies.

Belgium became new example of federalization of unitary state, where organization of the country on federative basis began as early as in 1970 and completed in 1993 by adoption of new Constitution, according to the Article 1 of which Belgium became “federative state, which consists of communities and regions”.⁴⁰

Belgian federalism may be considered as one of the examples of ethnic federalism. Belgium is a multinational state, where about 58% of population lives in Dutch-speaking north, about 32% – in French-speaking area, and about 9.5% – in bilingual capital – Brussels, where French-speaking group form majority of population. Small group of German-speaking Belgians (little more than 0.5%) lives in east Belgium.⁴¹

Change of unitary system in the Kingdom of Belgium was conditioned by acute national issues between the two basic nations, residing in the country – Vallonians and Flamandians. Disagreement between them began on lingual basis and gradually it transformed into acute national confrontation.⁴² Consequently, as a result of long analysis and consideration of different variants, the choice of the people, as well as the government came to federal resolution of national issues.

Territorial re-organization of Belgium was implemented in two stages. Four language-based regions were formed in Belgium in 70-ies: Dutch-speaking, French-speaking, German-speaking and bilingual capital city – Brussels. Language-based region mainly had cultural-social competence.

³⁸ *Meskic Z., Pivic N.*, Federalism in Bosnia and Herzegovina, Vienna Journal on International Constitutional Law, Vol. 5, 2011, 611.

³⁹ *Gogiasvili G.*, Comparative Federalism, Tbilisi, 2000, 209 (in Georgian).

⁴⁰ *Gerven V.*, Federalism in the US and Europe, Viena Online Journal on International Constitutional Law, Vol. 1, 2007, 11-12. Also see *Vos H., Orbie J., Schrijvers A.*, Belgium: Federal Engineering in the Heart of Europe, Eastern Mediterranean University Press, Famagusta, 2008, 7.

⁴¹ *Khubua, G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 322-323 (in Georgian).

⁴² *Gogiasvili G.*, Comparative Federalism, Tbilisi, 2000, 210 (in Georgian).

Since 1970, on the initiative of Vallonians, three regions were formed in Belgium: Flamandian, Vallonian and capital city Brussels.⁴³

Belgium is also divided in three communities: Dutch-speaking, German-speaking and French-speaking. German-speaking community doesn't have its own region in Belgium, as its area of settlement includes Vallonian region. French-speaking community, in its turn, doesn't include all residents of Vallonia, but unifies majority of population of Brussels. Flamandian community includes all residents of Flamand and, besides, Dutch-speaking minority of Brussels.⁴⁴

It shall be considered as the peculiarity of the state reform in Belgium that through federalization, regions were not only granted wide rights, but the process of formation of political will of the central government changed dramatically. By means of this system Belgium somehow mitigated the confrontation between different language groups. The unique nature of Belgian situation is that the French-speaking majority of the population of the country resides in the capital city of Brussels, located Flamandian territory, whereas the Dutch-speaking group makes majority of population throughout the country.⁴⁵

By Federal organization of the state, certain parity between Dutch-speaking and French-speaking groups was formed in Belgium, in Brussels as well as in the whole country. Quite complex reconstruction of territorial division of the Kingdom of Belgium represents synthesis of elements of territorial and personal federalism. Some authors define Belgium, as the only, unique case, where the elements of decentralization, regionalism and even confederalism are unified.⁴⁶ Nevertheless, it should be mentioned that the combination of territorial and personal federalism was one of the most acceptable and favorable methods, which effectively ensured residence of Flamandians and Vallonians in the united state.

From the legal viewpoint, federative nature of subjects included in the composition of the state of Belgium is defined by substantial characteristics: the subjects of federation are granted constitutional autonomy and they determine the issues of their own political organization within the Constitution. The regions of the country have their own legislative and executive authorities with their own powers and finances.⁴⁷ It should also be mentioned that Flamandian region and French-speaking community have common government and parliament. The communities and regions, included in the Kingdom of Belgium, have their own capital, national emblem, flag and anthem. The competences of federal government, regional authorities and communities are defined and delimited by Belgian legislation.⁴⁸

Participation of the subjects of Belgian federation in the process of formation and implementation of common governmental will is ensured by the two-chamber structure of the Parliament of

⁴³ *Vos H., Orbie J., Schrijvers A.*, Belgium: Federal Engineering in the Heart of Europe, Eastern Mediterranean University Press, Famagusta, 2008, 8.

⁴⁴ *Khubua G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 324 (in Georgian).

⁴⁵ *Arend L.*, Conflict and Coexistence in Belgium: the Dynamics of a Culturally Divided Society, Berkeley: Institute of International Studies, University of California, Vol. 46, 1981, 54.

⁴⁶ *Khubua G.*, Federalism, as Normative Principle and Political Order, Tbilisi, 2000, 325 (in Georgian).

⁴⁷ Articles 165, 175 and 176 of the Constitution of Belgium.

⁴⁸ *Gerven V.*, Federalism in the US and Europe, Viena Online Journal on International Constitutional Law, Vol. 1, 2007, 12.

Belgium. The Federal Parliament of Belgium consists of the Chamber of Deputies and Senate. The members of Parliament are divided into Dutch and French language groups, which act in conformity with the interests of the unity of these two groups.⁴⁹ The procedure of formation of the highest legislative body of Belgium provides the opportunity of cooperation of different linguistic groups on federal level, ensuring the guarantee of resolution of all federal issues in Belgium not solely, but on the basis of agreement. The ratification mechanism of international agreements and treaties represents its clear example; according to it an agreement, as a rule, shall be considered and approved in Belgian Federal Parliament, as well as in legislative authorities of the 5 subjects (Flamand, German community, Brussels, Vallonia and French-speaking community).⁵⁰

Belgian Federal model deserves special interest due to the circumstance that through the federal system of governance this country managed to neutralize and resolve problems, following from multi-ethnic and multi-cultural nature of the state. As early as since 1992, quite real prospects of disintegration of Belgium was openly discussed, but re-organization of Belgium as a federal state completely deprived separatist trend of the ground and created successful mechanism for regulation of relation between the nations, as well as for general progress of the country.

2.3. Ethiopia

Severe armed conflicts on ethnic grounds took place in Ethiopia since 1855. Different ethnic groups were demanding to grant the authority of self-determination to them. The mentioned process ended in 1994, when new Constitution of Ethiopia was adopted. By the power of this act, Ethiopia was announced as federative and democratic republic.⁵¹

It should be taken into account, that Ethiopia represents multi-ethnic state, where about 80 ethnic groups live presently. Just the need of avoiding of confrontation among them conditioned creation of 9 subjects and 2 cities of federal importance based on ethnic sign.

It is interesting that the Constitution of Ethiopia grants the right to secession to the subjects of federation, but established complicated procedural norms for its implementation.⁵²

Famous scientists – *Baogang He* and *Tsegaye Regassa*, considering the example of Ethiopia, come to the conclusion that federalism, as the form of territorial-political organization of the state, represents significant positive instrument in the process of resolution of territorial and ethnic conflicts.

Professor Baogang He expresses opinion, that, on the example of Ethiopia, federalism may be deemed as one of the successful means of termination and reduction of conflicts, emerged on ethnic basis.⁵³ This opinion is shared by the Doctor of Law Tsegaye Regassa, who mentioned, that federal-

⁴⁹ Articles 42 and 43 of the Constitution of Belgium.

⁵⁰ *Vos H., Orbie J., Schrijvers A.*, Belgium: Federal Engineering in the Heart of Europe, Eastern Mediterranean University Press, Famagusta, 2008, 13.

⁵¹ Constitution of Ethiopia, Article 1, <http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html>, [15.08.2015].

⁵² Constitution of Ethiopia, Article 39, <http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html>, [20.11.2015].

⁵³ *He B.*, The Federal Solutions to Ethnic Conflicts, Georgetown Journal of International Affairs, Vol. 7, №2, 2006, 29.

ism is considered as the only effective, relevant and legitimate means in the process of resolution of ethnic-national conflicts.⁵⁴

Baogang He mentions additionally, that presently more and more countries strive towards federalism. Mainly the states, where confrontational-separatist movements of ethnic and religious minorities and civil wars occur, actively step out with the demand of organization of the country on federal bases.⁵⁵ *Tsegaye Regassa* formulates interesting opinion in regard to the mentioned issue. In his opinion, federalism represents the means, stimulating peace. The parties to conflict understand that achievement of agreement through the armed confrontation is excessively long process with quite grave results. The main characteristic feature of arrangement of the state on federal basis is that it instigated parties to put down the weapon and make decision in peaceful political-diplomatic way. This very role was performed by federalism in regard to Ethiopia.⁵⁶

It is interesting, that re-integration of Ethiopia, aiming at rising of ethnic and religious awareness among different groups in the state, can only be implemented by means of federalism. The advantage of federalism is based on the principle, according to which implementation of powers in the state is distributed between the central authorities and authorities of the subjects of federation. The mentioned model of territorial arrangement will allow the confronting groups inside the country to develop their originality and social-cultural rights.⁵⁷

Political scientist *Baogang He* formulated interesting on federal system. He writes, that the constitutions of federal countries, established according to this sign (Canada, Belgium, Spain) allow compactly settled ethnic groups to relatively fully implement their rights, including the right to self-determination and presence their ethnic-national originality.⁵⁸

In this regard *Tsegaye Regassa* notes that federative organization of the country helps Ethiopia to protect the rights of ethnic minorities consider their interests, as well as form the local political elite.⁵⁹

Acceptable and worth of sharing is the opinion of the above-mentioned authors that in the state, established on federal bases, the representatives of ethnic minorities will be able to realize themselves much better, than in the countries, having the form of unitary or regional territorial organization.

It is obvious that the similar scientific views, which are based on practical experience and achievements of individual countries, shall be taken into account, especially by the states, where the conflict centers still exist and human rights and freedoms are still violated.

⁵⁴ *Regassa T.*, Learning To Live With Conflicts: Federalism as a Tool of Conflict Management in Ethiopia – An Overview, *Mizan Law Review*, Vol. 4, Issue 1, 2010, 54-55.

⁵⁵ *Baogang He*, The Federal Solutions to Ethnic Conflicts, *Georgetown Journal of International Affairs*, Vol.7, № 2, 2006, 30.

⁵⁶ *Regassa T.*, Learning to Live With Conflicts: Federalism as a Tool of Conflict Management in Ethiopia – An Overview, *Mizan Law Review*, Vol.4, Issue 1, 2010, 75-76.

⁵⁷ *Mehretu A.*, Ethnic Federalism and its Potential to Dismember the Ethiopian State, *Progress in Development Studies*, Vol. 12, Issue 2/3, 2012, 126-127.

⁵⁸ *He B.*, The Federal Solutions to Ethnic Conflicts, *Georgetown Journal of International Affairs*, Vol.7, №2, 2006, 32.

⁵⁹ *Regassa T.*, Learning to Live With Conflicts: Federalism as a Tool of Conflict Management in Ethiopia, An Overview, *Mizan Law Review*, Vol. 4, Issue 1, 2010, 72.

3. Conclusion

As a result of review of the examples of Bosnia and Herzegovina, the Kingdom of Belgium and Ethiopia, several important provisions are formed: federalism, as the form of territorial-political organization of the state, can be used as effective method of resolution of ethnic conflicts. The cited examples have clearly shown that federative state, established on ethnic basis is one of the best mechanisms for ethnic minorities to develop their national and cultural originality much more freely and successfully. This way is somehow neutralizes conflict situations and facilitates their peaceful resolution, meanwhile preserving the unity and territorial integrity of the state.

If ethnic minority has the opportunity to preserve and develop social-economic and cultural values, defining their own identity, the right of the peoples to self-determination may be realized through granting of the status of the subject of federation to the minorities. Consequently, the principles of self-determination of peoples and federalism not only don't conflict, but complement each other; nevertheless, the mentioned form of state organization can't be considered as universal method of ultimate resolution of the above-mentioned problems, even from the viewpoint that introduction of this form of territorial organization has not brought equally positive result to all countries of federative organization.

With consideration of currently existing situation, when jurisdiction of Georgia doesn't cover the whole territory of Georgia, valid steps shall be made towards ensuring of territorial-governmental arrangement of Georgia, which could play significantly positive role in the process of restoration of integrity of the country. For re-integration of the territories of Abkhazia and South Ossetia into Georgian space it is necessary to offer them the status, which would provide best opportunities of safety, preservation of their culture, language and originality to the populations, living in the mentioned territory and real guarantee of their protection. The above-reviewed examples of the countries and the positive results, brought by organization of the states on the basis of federative system gives us the basis to suppose that this form will work in the context of Georgia and bring so necessary and significant positive results.