

## **Federalism vs. devolution**

### **Introduction**

The constitutional reform of the United Kingdom of Great Britain and Northern Ireland implemented by the government of Blair was motivated first of all by the results of the sociological survey from 1995. It showed that 50% of the population of the United Kingdom considered that the old system became outdated but 61% of the interviewees said the electoral system should be proportional. Second, laborites were preoccupied with the idea to remain an active force on the political scene even in the situation when they do not get the parliamentary majority. In order not to admit a new period of hegemony of Thatcherism, laborites thought in case they would get power they should try to keep it. There were necessary three things for this: devolution, the revision of the electoral system and deprivation of the right to vote from lords in the House of Lords who were mostly conservatives.

Thus, having won the parliamentary elections in 1997 Labor government began to implement its program and realize the electoral promises – constitutional reform that had three parts – devolution, introduction of a new electoral system and reform of the House of Lords.

Devolution consisted in the creation of some political institutions in the historical regions of the United Kingdom - Scotland and Wales. Regional political institutions were reestablished in Northern Ireland. Central Government introduced devolution as a remedy for excessive centralization of power so as to make new regional structures of government able to meet the local demands of regions with their historical particularities. The devolution, actually, was a strong decentralization of state power that is characteristic for federal states: large powers were delegated to regional authorities created to exercise state power. The devolution was differently applied in all three regions that is why the new system is very similar to the form of federalism, an asymmetric form, in fact. However, the constitutional reform in the United Kingdom of Great Britain and Northern Ireland seems to have a logical final – the transformation of the state in a federation that is a demand of the Liberal Democratic Party, the third important party and partner of Labor government. The lack of the constitution, that would guarantee the reform effected in 1997, does not let us say about British federation.

Traditional ethnic and religious stratification put before the central authorities a task to search for an optimal formula to architect the new regional structures of government. Thus, majoritarian democracy in Northern Ireland was substituted with consociational. Still, the arrangement for Northern Ireland was different from that of Scotland and Wales. Religious differences were less pronounced in the latter countries where, in comparison with Northern Ireland, it was easier to realize the devolved government. In Northern Ireland on the background of multiple infringements the Assembly and the devolved regional government were suspended four times during 1998 – 2002 and, as a result, the direct government from London was reintroduced.

### **Devolution: Scotland and Wales**

The Scotch and the Welsh were not treated equally in Labor strategy of the devolution of power. In Scotland greater autonomy had more powerful popular support. As the arrangement for Northern Ireland was different in order to reflect certain special circumstances of the province the devolution was conceived as asymmetric from the very beginning.

According to the Act of Scotland from 1998, Scotland got Parliament with a fixed mandate, it was made of 129 members and had prerogatives of primary legislation in a number of local fields. The Executive – prime minister with his/her cabinet, junior ministers and public officials – became responsible to local Legislative. The Scottish parliament got some powers to independently regulate impositions (it could increase or decrease the quota of income tax by 3%); but the gross of money for Scottish parliament had to come from the White Hall's transfers.

On the contrary, Wales got an Assembly made of 60 members. It did not have a power of primary regulation but it had power to debate issues of local interest and the right to diversify secondary legislation (that is delegated). Welsh Assembly did not have independent fiscal prerogatives and, as a result, the government from Cardiff was dependent on financial allocations from the side of central Government in London. At first, the functioning of the Executive was conceived through the intermediary of commissions. Final legislation established a system of responsibility of the cabinet to the Assembly. The separation of powers between the Executive and the Assembly was permanently emphasized while the new system of Welsh was taking roots.

Before two acts came in force (the acts of Scotland and the acts of Wales) the scheme on the devolution were to be approved via two separate referenda. Such a procedural obstacle was not necessary. But it was thought that plebiscites would have advantage to legalize new institutional arrangement creating additional political barrier in the way of annulment of reform in future in case Conservatives would come to power. There emerged an opinion that Gaul devolution scheme (that enjoyed great enthusiasm in comparison with Scottish) should be abrogated if it did not have popular support in future.

First parliamentary elections in Scotland and elections to the Welsh Assembly took place in May, 1999. Both representative bodies were elected according to the rules different from that of Westminster. The system used in Germany and Australia was preferred to the plurality system. The mixed system was used, that is, a voter had two votes – one for a concrete candidate, another for a party list that permits regulating imbalance in the number of votes and the number of places that a party got. As a result, first elections helped a number of small parties to increase their chances.

Table 1. The results of the elections in Scotland and the Country of the Gauls, 1999

	Labor	Conser vatives	Lib eral De moc ratic	National Scottish party / Plaid Cymru	Greens	Ot her
Parliamentary elections in Scotland						
Votes, %	34	15	13	27	4	8
Places, %	43	14	13	27	1	2
Places	56	18	17	35	0	3
Elections to the Assembly of the Country of the Gauls						
Votes, %	36	17	13	31	3	2
Places, %	47	15	10	28	0	0
Places	28	9	6	17	0	0

The absence of a single party that would control majority created a new style of politics. In Scotland laborites and liberal democrats formed a coalition that began the development of the agenda of politics that was different from the agenda of Westminster in a number of key-problems including the payment of university teaching staff, assistance to older people. In Wales Labor party was the only numerous one and besides prevalent majority, at first, a minority labor government worked. After the first quite instable year the prime secretary Alun Michael was replaced by Rhodri Morgan, who allied with liberal democrats.

Both systems of devolution were established on the basis of tensions from the side of Labor as the government in London wanted to exercise control over the results of selection of candidates in both provinces. In Scotland the attempts to manipulate the results of the elections had less pernicious effects than in Wales where Blair's attempts to impose his preference, Alun Michael, in the Gaul Labor party as a prime secretary, failed. Later, in February 2000, Michael was forced to resign after the vote of non-confidence.

#### **Devolution: Northern Ireland**

An issue of devolution in Northern Ireland was much more difficult than in Scotland and Wales. The status of Northern Ireland as a part of the United Kingdom remained controversial but the region was mentioned for severe violence between communities. The region had devolved government between 1921 and 1972, but discriminatory treatment of minority national population from provinces led to disorder extending to terrorism insurgencies. It resulted in the restoration of the direct government from London. Reestablishment of the devolved government as a part of general regulation of the conflict in Northern Ireland was the goal of the

government that succeeded in 1972. Any final agreement proved to be inefficient because of profound divisions between unionist and nationalist communities in defiance of successful cooperation between British government from London and Irish government from Dublin regarding the problem of Northern Ireland.

The elections of Labor government in 1997 brought new opportunities to find a new framework for an agreement. The Belfast Agreement established a new system of devolved institutions with an Assembly and local executive.

As distinct from Scottish and Welsh parliaments, the assembly of Northern Ireland and its local executive had to be organized in a way that would assure representation of both population - unionist and nationalist, but the government should be based on the consent of both communities. As a result, the Assembly consisting of 108 members was elected through proportional suffrage (a system of single transferable vote was used) to guarantee fair representation of all political parties. Executive included representatives of all parties but the key-issues were resolved with the consent of communities from the Assembly. It is explained by the procedure known as **parallel consent** (which means that a majority of both the Members who have designated themselves Nationalists and those who have designated themselves Unionists and a majority of the whole Assembly, must vote in favor) and **weighted consent** (that requires the support of 60% of those present plus 40% from the majority of nationalists and unionists). This quite uncomfortable and complex system was instituted to prevent the use of power by community in disfavor of others. Unfortunately, an emphasis on consent meant a veto of minorities and a possibility to blockade the Assembly and the government. The Belfast Agreement was endorsed through a referendum held in May 1998 that was organized to test real popular support of reached understandings. From 81,1% of those who participated in the elections the prevalent majority (71,1%) voted for the agreement while the rest 29 from 100 were against it. Still, a disequilibrium of enthusiasm appeared in both communities and there was registered larger support from the side of catholic/nationalist population towards the unionist segment of electors. The Assembly of Northern Ireland was elected on 25 June 1999. The result of the elections registered an increased support of two nationalist parties - Social and Democratic Labor Party – SDLP and the party Sinn Fein (SF). The vote of unionists already fragmented was divided between parties that pledged for or against the Agreement.

Table 2. The results of the elections to the Northern Ireland Assembly, 1999.

	UUP	SDL P	DUP	SF	Other
Votes, %	26	22	19	17	17
Places, %	26	22	19	17	17
Places	28	24	20	18	18

### **The impact of devolution**

The emergence of the devolved systems in Scotland, Wales and Northern Ireland created new important political structures and arenas throughout the United Kingdom and introduced new political diversity.

The devolution had also important consequences for the government of the United Kingdom as a whole – it induced to substantial adjustments in Westminster as well as in the White Hall. The devolution of power to Scotland, Wales and Northern Ireland presented new functions for the governors and decision factors. Coordination of government activity between different parts of the United Kingdom became inevitable, more complex, requiring more time investment from the side of central government.

Majoritarian democracy was limited by the constitutional reform of 1997. Although the general electoral reform was promised, Laborites are not in a hurry to implement it on the national level. Besides majority elections (the system of simple plurality) that are used in Parliamentary elections in Westminster there were introduced other modalities of elections in the regions. Thus, additional member system is used in Scotland and Wales, but in Northern Ireland - a single transferable vote that is aimed to assure proportional representation.

The Scottish Parliament consisting of 129 members is elected according to the additional member system when 73 members are elected in single member constituencies with the majority of votes and 56 members are elected from the party lists. The modality of elections was complicated pursuing the goal to diminish the chances of national Scottish Party to get the majority of places. This system increased the risk of the possibility that Laborites would not get the clear majority to govern, the risk nationalist secessionists would rise was even greater. That is why consocial democracy was preferred that assumes government through coalition. The result was quick to appear and after two electoral circles in 1999 and 2003 Laborites were to form coalition governments with their old partners – liberal democrats. In return, the reform reached the goal: nationalists did not remain in opposition they lost a number of places in the last elections. Table 3 illustrates this dynamic in the elections in Scotland.

Table 3. The distribution of places between the parties as a result of elections to the Parliament of Scotland, 2003.

<b>Party</b>	<b>2003</b>	<b>1999</b>	<b>Change (difference)</b>
Laborites	50	56	-6
Conservatives	18	18	0
Liberal Democrats	17	17	0
Greens	7	1	+6
Scottish nationalists	27	35	-8
Scottish socialists	6	1	+5
Independent	4	1	+3

You can see from the table that political formations of the national scale preserved their more or less dominant in the regions positions intact, while local parties remained in the background. We can observe that principle local political

force is the Scottish National Party that is in easy regress. The success of Scottish socialists is due to the fact that Labor Party (reformed by its leader, Tony Blair) renounced its social commitments and as a result a new actor appeared in that doctrinal segment. An increase in the number of independents is explained, first of all, by a great quota of the number of places in single member constituencies that helps independent candidates, second, British electoral legislation stipulates for obligation of the rival to compete as an independent member if s/he does not make part of any party. On the other hand, being a competition among the candidates from a constituency there are chances to get not only those who supported a party but also those who have more attractive electoral offers. For example, independent Jean Turner became a member due to his treatment of the issue of hospital supply.

As for **the Republic of Moldova** we think that the consideration of the ways to find a very efficient formula that would assure softening of separatist appetites of some centrifugal forces in future autonomous regions. In this sense central authorities should find a formula that would guarantee cohesion of political forces so as to encourage national parties and discourage secessionists. The system of parties is dependent on the electoral system; it is a derivative of that system that is why the correlation of power in an eventual federal configuration heavily depends on the electoral solution the system would reach.

Finality of the British constitutional system is the fact that neither delegated nor attributed competence is guaranteed. In the Republic of Moldova the documents that are already under consideration contain delimitation of powers and mechanisms of guarantee. That is why the government in Chisinau should be attentive to the issues that are debated, negotiated and approved. The document Kozak, for example, refers very explicitly to the fields of power of center and federal subjects. Thus, this document stipulates for a list of common competences of Chisinau and Tiraspol that include electoral law. It is a great disadvantage for Chisinau as we could see an issue of electoral system is one of the strategic importance. On the other hand, Proposals and recommendations of mediators, the document signed in Sofia does not enumerates common competence, on the contrary, it delimits the exclusive competences or leaves it to the Constitution and further legislation of the federal state. The competences that were not distributed should be assigned to federal center or federal subjects. In the United Kingdom they are vested in the government in London.

The government from Chisinau is to insist in continuation on the fact that electoral legislation should be in its, if not exclusive at least implicit, competence. It is also important that the system of party, issues referring to the registration of parties, regulation of their activities, etc... be in the competence of federal center. Actually, all constitutional changes, change of rules of the game will force political parties to restructure in order to meet the demands of new reality.

In the United Kingdom political parties gave proper attention to the necessity to adapt to the constitutional reform – devolution and similar reforms throughout the community territory, especially in the countries like Spain, France and Italy. Those reform forced parties to redefine their organizational structures, modalities of selection candidates for public offices, political message aimed at provinces, etc...

Among those three most important political parties of the United Kingdom, only Liberal Democrats had to adapt least of all because they were organized on the federal basis. Conservatives from Scotland least of all felt necessity to detach from the functions of the party in the problems of England and United Kingdom (Westminster) and developed their own identity – Scottish. As for Labor Party general overview of the party reveals the following:

- decentralized components of the party (affiliations of Labor Party) in Scotland and Wales are better skilled in formulation public policy and selection of candidates than the center of that party in London;

- the proposals of candidatures from the side of labor Party for the Parliament of Scotland and the Assembly of Wales has the same meaning from the point of view of career as proposal of candidatures for the Parliament in Westminster. In contrast to other countries, such as Germany or the USA, the career in devolved institutions is not necessarily a jumping-off place to make career in Westminster.

In other words, all parties have already restructured or are in the process of restructuring according to the new social political reality that means their regionalization. It is important to remember that the process is not imposed administratively; the process is a natural evolution.

Even in such conditions two large parties of national scale plus liberals continue to remain the main political actors in Scotland and Wales, while local parties play a secondary role. With the exception of Northern Ireland, the party in power in the government on the central level governs autonomous regions. But even in Northern Ireland there are pro-London forces who govern.

## **Government of the regions and their constitutional competences**

### ***Northern Ireland***

Competences of the Assembly of Northern Ireland are foreseen in the Northern Ireland Act of 1998. The document enumerates so-called *devolved powers* and other powers that are attributed to central Parliament in London are called *reserved powers*. In contrast to Scotland there is a category of power that remain in the competence of Westminster called *retained powers* that can be transferred to the Assembly of Northern Ireland later if security is guaranteed taking into account the successes of regional parliament. The main spheres of responsibilities of the Assembly are: health care, education, local public administration, economic development, art and culture, tourism, transport, sport, archives and statistics, environment, patrimony, agriculture, fishery and forestry. Some of them are administered together with the government of the Republic of Ireland through the intermediary of Ministerial Council of Northern Ireland.

### ***Scotland***

The form in which Scotland Act of 1998 divided the responsibilities was much more generous for the country, than it was anticipated in debates over the devolution and the legislation of 70s. In the Scotland Act powers reserved for

Westminster were enumerated in details; other powers should be given in the responsibility of Scottish Parliament. The powers attributed to Westminster deal with fiscal and monetary policy, external policy, defense policy, social protection and employment of labor force. Thus, responsibilities from almost all fields were given to Edinburgh. Litigations over the legislative competences were classified as “disputes over devolution” that are resolved by the Judicial Committee of the Privy Council. The principle body to solve political disputes between the government of Scotland and the United Kingdom should be the Joint ministerial committee, created to coordinate and integrate politicians in regions and centers. In fact, till present relations between London and Edinburgh did not require the use of this mechanism; it would be important in case when political behavior of the government in London would change – if, for example, conservatives were elected.

The responsibilities of Scottish Parliament called *devolved powers* are similar with the responsibilities of the Assembly of Northern Ireland and there are added: penal legislation, civil legislation, income tax (with a limited right to modify till 3 pence from a pound). *Reserved powers*, that is principle responsibilities reserved for the parliament in London are: constitutional matter of the United Kingdom, external policy, defense, economic, fiscal, monetary policy, corporative legislation, labor legislation, social security, security of transport, and a number of matters including nuclear security, radio and TV ether, lottery, abortions, human fertility and embryology, control over medicines and the guarantee of qualitative medicines, vivisection, etc...

In spite of the fact division of competences within legislative framework is similar to the federal system; Westminster is the body that has sovereignty. (The clauses of fortification proposed by the Convention of Scotland were not implemented). It follows Westminster reserved theoretically power to exercise legislative power in any political field that is or is not reserved for it. Still, London and Edinburgh recognized **Sewel Convention**<sup>1</sup> presupposing that London under normal conditions will not exercise legislative power in the fields that are in the responsibility of the Parliament of Scotland and exercise legislative power only under exceptional circumstances for the whole of the United Kingdom. In those cases Sewel clauses are invoked to justify the extraordinary use of sovereign powers of Westminster. Further, to clarify relations between London and Edinburgh in October 1999 agreements – concordats<sup>2</sup> and official memorandum about understandings were published. Still, the following years of devolution inevitably implied pragmatic approach as both parts followed the way of establishment of intergovernmental efficient relations. The situation became more complex together with the creation in 2003 of the Department for Constitutional Affairs. Scotland

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<sup>1</sup> Convenția Sewel/Moțiunea Sewel – mecanism procedural denumită după Lordul Sewel (ministru al Oficiului de externe), potrivit căreia Parlamentul Scoției poate permite Westminster-ului să intervină în domeniile rezervate parlamentului scoțian. Când devoluția a fost introdusă, a fost recunoscut faptul că Westminster-ul își păstrează suveranitatea, încât teoretic poate legifera chiar și în domeniile devoluționate. Însă esența devoluției a însemnat că Westminster-ul în mod unilateral va folosi rar această posibilitate. Totuși, s-a recunoscut că s-ar putea ivi ocazii când Edinburgul ar dori ca Westminster-ul să legifereze asupra subiectelor devoluționate. În astfel de cazuri procedura moțiunii Sewel va fi aplicată pentru a servi drept mecanism de legitimare a intervenției Westminster-ului.

<sup>2</sup> Acord-concordat este un acord încheiat între Londra și guvernul devoluționat despre modul de exercitare a puterii.

Office and Wales Office got in this newly created Department continuing to report to the Secretaries of State for Scotland and Wales. It is evident that personal relations between Secretaries of State for Scotland and Wales and Scottish ministers were not always simple; the real conflict was avoided long ago.

In practice, the establishment of separate spheres of prerogatives seems to be discredited by the inevitable tendency to overlapped prerogatives while unofficial arrangements between different levels of government seem to have at least some separation of important and formal responsibilities. There is a risk that pragmatic approach of the conflict will be delicate, that is why the Committee on the Constitution supported the declared institutionalization of the mechanism of liaisons and coordination. Still, while Labor party governs in Westminster and forms majority in the coalition of Edinburgh relations might remain harmonious.

### *Wales*

A form of devolution conferred to Wales was much more limited than in Scotland. While in Scotland there was established a Parliament with powers of primary regulation, Wales remained with an Assembly vested with powers of secondary regulation. Moreover, the national Welsh Assembly was established as a corporate body but not one where legislative and executive powers would be separated. Theoretically, the Assembly had power to adopt secondary laws to meet the local needs of Wales and exercise control over Welsh administration. However, in practice those possibilities greatly depended on London. At the same time, the course of events in Wales from 1998 underlines measures under which structures and conferred powers within devolution seem to evolve.

The electoral system used in the elections to the Assembly of Wales like in Scotland is an additional member system. During campaign to the first Assembly the position of Labor party in Wales was seriously affected by London-supported efforts to influence the process. As a result of scandal minority Labor government headed by Alun Michael supported by London fell in January 2000 and it was perceived not as a fissure of devolution but as an end to the attempts of London to control the region. The new Prime Minister, Rhodri Morgan, was much more independent in the ruling of the party and more responsible to the Welsh. Instead of minority government Morgan made partnership with liberal democrats establishing a coalition in October 2000 that assured strong relations with the Assembly.

Formal coalition means, like in Scotland, that Welsh administration was to develop its own agenda of policies that risked coming in conflict with the Whitehall (central government in London). Really, in summer 2002 big confrontation between Cardiff and Whitehall had place because of policies, when Welsh Assembly voted unanimously for following the example of Scotland and namely, the establishment of free social assistance for elderly people. Other conflicts and divergences had as an object the decision of the Assembly to annul obligatory tests for children of 7 years old and the establishment of social hospitals. It might seem surprising but from the demission of Alun Michael relations between Cardiff and the Welsh office were not very warm.

An agreement of coalition between laborites and liberals in Wales was obtained through some commitments among which were those to review the electoral system for local elections. As electoral reform can affect to some extent (the introduction of proportional voting) the positions of Laborites the fear of this thing made put the issue aside several times. A special commission for local problems proposed modifications of the electoral system through reduction of the age of voter to 16 years and transfer from plurality voting to single transferable vote beginning with local elections in 2008. Any recommendation to change to the system of proportional representation on the local level caused many controversies because this system could undermine hegemony of laborites in Wales. The Labor conference of spring, 2002 unanimously adopted a report that rejected any change of the electoral rules on local level. However, Rhodri Morgan was perceived with hostility from the side of his supporters in Assembly.

Even without the change of the form of powers of the National Assembly for Wales, Cardiff learned how to claim power. The exploitation of its possibilities illustrates the way the devolution can be adapted to realities different from those conceived initially.

### *England and English issue*

A problem caused by the form of devolution introduced in 1998 referred to the correctness towards England. An element of this problem was so-called **West Lothian Issue** called after Tam Dalyell – labor parliamentarian who repeatedly paid attention to the abnormal position of Scottish parliamentarians after the devolution. Together with the creation of Scottish Parliament, Dayell remarks, parliamentarians from Scottish constituencies in the Parliament of Westminster did not have to have influence in the fields that affected their constituencies because these issues were transferred to Edinburgh. Neither English parliamentarians had to deal with these fields. But Scottish parliamentarians could influence on the laws that affected England.

West Lothian issue unleashed a larger problem, in particular, what the best way to govern England after the devolution is. Perceived in different ways, Scottish Parliament and Welsh Assembly created a delicate situation when the inhabitants of England were mentioned as those who did not have parliament that would deal only with the English problems the laws of which would be enforced by the Parliament where Scottish and Welsh parliamentarians were overrepresented in comparison with Englishmen. It is not known how much it affected Englishmen but the survey show that they began to realize the problem more and more.

Diverse solutions were offered for the **English Issue**<sup>1</sup>. Some conservatives, like Theresa Groman, stood up for an English Parliament. The procedural commission made of all parties recommended in May 1999 a report called *The procedural consequences of devolution*. According to the report, the laws during the second reading, referring only to England or England and Wales, should be

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<sup>1</sup> Chestiunea engleză – o problemă largă cu privire la dacă devoluția Scoției, Țării Galilor și Irlandei de Nord ar trebui să fie completată cu un corp devoluționat pentru Anglia sau cu o serie de autorități regionale.

examined by committees completely composed of members who come from corresponding region of the United Kingdom. This recommendation was from the very beginning rejected by the Government. The conservative leader of those times, William Hague, on the contrary, supported the idea of procedural reform within the House of Commons to prevent the Scottish and Welsh parliamentarians from voting on English laws. Thus, a survey performed by the conservatives in 2000 (*Strengthening Parliament.*) proposed a procedure according to which the laws could be categorized as referring only and adopted only by English parliamentarians.

Labor government (besides the fact they became aware that the number of Scottish parliamentarians in the Parliament of Westminster will be reduced beginning with 2005) supported the division of England in regions and creation of eligible regional Assemblies. Labor commitment to fortify regional dimension of power in the United Kingdom of Great Britain and Northern Ireland was particularly emphasized when in 1999 it established agencies of regional development and regional chambers throughout the country.

For England, the Government did not plan to impose a uniform system because solicitations of eligible regional authorities considerably differ from one region to another. As a start, the Government decided to create regional agencies for development that had to promote economic development and as well as similar structures in Scotland and Wales.

In 1999 London authorities were created through *Greater London Authority Act* - the mayor of London and the Assembly of London – to reshape the strategic administration of the whole capital. On May 9, 2002 the Government published an act on the regional government (White Paper) that proposed strengthening existing regional institutions in England.

The Regional Assemblies Bill was proposed to the Parliament on November 14, 2002. The bill got royal assent on May 8, 2003.

The act obliges to apply the commitments given in White Paper about regional government and namely to allow every English region to found an elective assembly if it is approved through the referendum. Decisions to create elective authorities will be the first element of primary legislation.

### ***Whitehall and England***

One of the implications of asymmetrical devolution in virtue of which Scotland, Wales and Northern Ireland have different sets of powers is to make central administration of England more complex. Some ministries of Whitehall are efficient only for English ministries (for England) like, for example, the office of the Vice prime minister or the Ministry of Healthcare. Other are only for the whole Kingdom (Treasury or the Ministry of Defense), while others have mixed functions, some ministries are only for England, some – for England and Wales, some for Great Britain, some for the United Kingdom of Great Britain and Northern Ireland. It is not clear whether all ministries adapted to new complexities and, especially, the English regionalism elements of activity of the Whitehall organized from Whitehall down , through all governmental Offices for the Regions, through

Regional Development Agencies or through administrative deconcentrated bodies in the territory on the local or regional level appointed by the government (quango). Inability of some ministries to support the expenses in English regions is a sign of Whitehall failure to foresee the consequences of regionalization.

### ***Parliamentary cooperation***

The Parliament of the United Kingdom and Scotland organized pragmatic legislative cooperation through the regular use of Sewel Convention according to which Westminster can permit legislate in the fields devolved to Scotland. The resolutions of Sewel were used to assure uniformity in certain fields, to respect international and European commitments, and, more pragmatic, to liberalize the legislative agenda of Scotland, to make it more perceptive to the most depressing issues. The convention is applied in the same way to the relations between Westminster and Northern Ireland. It was not used because of frequent suspense of devolution.

Relations between Westminster and the Assembly of Wales are more difficult because of the dependence of devolution in Wales on the legislation of the United Kingdom. Westminster demonstrated lack of consistency in the way it empowered the Assembly. Complexity and ambiguity in the separation of responsibilities nourished the lack of satisfaction in connection with the devolution in Wales. It led to the creation of Richard Committee in 2002 that was to make recommendations for its reformation conferring at least primary regulatory power.

### **General conclusions about the devolution in the United Kingdom of Great Britain**

From the perspective of laborites regional devolution has never been priority. In England, as well as in the rest of the country, priority was given to the reform of public services. Because of historical considerations, the Government accepted the idea that devolution for Scotland and Wales was an undisputed condition of coming back to power, even at the expense of control over the process of reformation. The devolution of English regions is not a necessity of political character from the point of view of the fact that reformation of public services took place mainly after 2001. Together with the experiments in Scotland and Wales the first results appeared. The effect was more than probable: to prevent the ministers from their uncompromising decision not to permit anybody to threaten the process of reform, at least the new generation of English regional politicians.

The devolution provoked a considerable difference for institutions, policies, management processes, especially in Scotland. The Parliament in Scotland manifested approach different from the approaches of England and Wales in terms of two most sensible directions from the political point of view of first Labor government: legalization of the abolition of payments for medical assistance given to elderly people and tuition fees for university students. It is too early to affirm what the impact of those important policies will be. The opinions of ministers from Westminster on these issues are different. Many think the budget of Scotland cannot bear changes of this kind. The effect of the decisions on the British political

body was even more important. In a short time, it determined for ministers to be more reserved regarding the necessity of devolution in England. Still, the long lasting consequences could be more favorable. For the first time from the creation of the state in 1940, the British government cannot deny the lack of alternative elements for sensible policy (and unpopular, in general) in the sphere that deals with the payment for medical assistance and education. Scotland does not share this viewpoint. As time goes by it will be seen whether the costs of the decisions are durable from financial point of view and popular support. If so, if the Parliament of Scotland manages to create a model apt to enjoy economic support and social solidarity, then the political parties from Westminster could bear a heavy price in case they commit a blunder.

There are different opinions about the future of the process of devolution. Every party treats in its own way the effects of the devolution.

Thus, nationalist parties view it as a first step to complete independence that is their final goal. Party Plaid recognizes that the achievement of this goal will take time because Wales has a short history of independence. National Party of Scotland would like it as soon as possible.

Laborites see in the devolution a compromise that is necessary to meet the demands of local autonomy but without granting complete independence. Labor party preserved its commitment to keep the unity of the United Kingdom but sacrificing some devolved powers to the regions without cession of sovereignty.

Conservatives are worried by the fact that devolution might nourish not satisfy demands for larger autonomy. They support a united state and they always were against the idea of devolution.

Liberal Democrats consider devolution as their victory because they pleaded for decentralization of power for a long time. They perceive the federal system as a logical end to the United Kingdom, with a devolved sovereignty.

### **The Republic of Moldova: within devolved regionalism and federalism.**

As it was shown in the United Kingdom of Great Britain and Northern Ireland, constitutional reform initiated in 1997 is still in the course of implementation. The essential characteristic is its gradual application, it means that so-called power devolution is not more than power decentralization. This gradual decentralization is becoming much more profound, and it easily crosses the borders of a simple decentralization which is peculiar to a unitary state, it slides into a new form of state organization, which is a unique and particular form.

To make British model application possible in the Republic of Moldova, it is necessary to take into account certain key moments that made constitutional reform in Great Britain not only opportune but also efficient.

First of all, it is necessary to consider that the reform in this country was not implemented by means of constitution (that the United Kingdom does not even have only under some formal aspect), but by means of other acts (Act of Scotland, Act of Wales, Belfast Agreement), which have a value of certain judicial acts.

Secondly, neither these acts nor the other do not say anything about federal organization of the state. Thus, generally, political actors differently interpret the reform and especially the acts that have implemented it, yet state sovereignty remains unique and is not divided within central and local governments, the acts operate with the term *devolution*, that means to delegate certain responsibilities. The idea of devolution means that state power is unique in its sovereignty virtue, it means that there is a single state entity that has a right to exercise it: central administration, coming from regional state peculiarities and increased tasks of central authorities in a modern state, state power cannot be exercised in a centralized manner. That is why British reform is oriented over power decentralization, namely over a scheme of power exercising, meaning through the competition of more than one states. Devolution was conceived as a delegation of provinces with a lot of prerogatives from the center. At the same time, the center preserved the most important prerogatives, granting provinces competencies of local interest, treating regions in a different manner. That is why, British devolution was conceived, from the very beginning, as asymmetric one. Asymmetry means tasks and competencies distribution in a selective manner. At the same time these competencies even if delegated by the center are not absolute, they could become the subject of disputes of the center and regions.

#### ***General principles of state organization.***

That is why new arrangements for the Republic of Moldova should be based on certain principles, which would have the value of some guiding rules for subsequent reform of constitutional system in the Republic of Moldova. These principles should be general but at the same time essential. As a series of acts between Chisinau, Tiraspol and mediators have been already discussed and signed, that contain certain indispensable principles for subsequent state construction, now it remains just to sum up

Then it is more adequate that these would be contained in a document lacking value of a certain fundamental act, for example in an agreement or act concerning certain mandates delegation, that is a previous adoption act of Fundamental Law.

Therefore, the following principles should form the basis of future state constitution:

1. **The Republic of Moldova is a constitutional state with a republican reform of government where a man and human dignity is the supreme value**, while state priority would be to protect human fundamental rights and liberties. Any political arrangement for state power organization would make not a purpose but a mean to care about its citizens.
2. **Reunited state has in the basis its and people's unity and is the only subject of international law.** State sovereignty resides in its people. Nation is a political concept, that comprises population totality (despite their ethnic, religious, social, geographical or other origin) that have stated permanent political and judicial ties with the state, ties expressed through state citizenry. As a nation cannot be reduced to its components, meaning people that make it up, it is considered as unitary and appears as collective subject, unitary by law. At the same time nation unity presupposes state unity as its political judicial institution, by means of which a nation is personalized and obtains the quality of law subject in its relations with other nations. State unity does not necessarily mean unitary exercising of its functions. On the contrary the las could be exercised through a competition of many state entities adequate to certain pre-established principles and mechanisms: either decentralization, federalism devolution. State unity also involves its territorial integrity, the last is an indispensable condition of the first. Of course, together with state disappearance nation unity can also disappear that once constituted it, this would self determine in another form, and right with that territorial integrity would also disappear. Still, as the states are created for an indefinite period of time, territorial integrity is not put on discussion. That is why in neither state in the world territorial integrity is presumed and consequently territorial secessions are prohibited. British system is built on the same principle, state power was delegated, more precisely some functions and not in the least state territoty, the last remaining inalienable and integral. Therefore, the principle of territorial integrity should be included in state construction. As an exception the idea of territory separation could be admitted only in exceptional cases, for example in the case of state disappearance, but even this case should be considered and decided by the people as the holder of sovereignty.
3. **Being the holder of sovereignty, the nation is the subject of self-determination.** Self-determination takes place in the moment when the nation has decided its destiny in favor of certain state creation. People of the Republic of Moldova achieved their self-determination in 1991. Act regarding nation self-determination – The Declaration of Independence – was judicial basis of the Republic of Moldova state creation on the basis of which fundamental law was adopted. That part of the nation that did not manage to participate in self-determination in 1991- transnistrians- can subscribe to this Act , by signing an Agreement between Chisinau and Tiraspol, an agreement that should become a document of unities and state national integrity completion, and at the same time an act that would generate a reform of political system in the Republic of

Moldova. Approval of this kind of document through referendum, could be considered as a form of self-determination. It is essential that after this completion, the nation would recover its unity, acting wholly as a unique law subject.

4. **Resulting from state unity, in the basis it has a unique area of law.** The state is based on judicial order that is generally obligatory within its territorial frames. This does not contradict judicial diversity in a state. On the contrary within territorial frames of the state there could be certain peculiarities that need diverse approaches and specific judicial regulations. This makes significance of British devolution: a population with certain peculiarities that differs from the majority of state population and has different necessities from the rest of population, certain powers and effective responsibilities for better solutions were delegated to them taking into consideration their peculiarity and local problems. At the same time the unique space of state right is preserved, meaning that state laws remain, but regulations of local character contribute to conform to general judicial orders. Thus, **the constitution of federal state as well as its laws hold supremacy** in the system of law, over the whole territory, **having direct application.**
5. **Large local autonomy is granted to federal subjects,** meaning that certain bodies created by law, having delegated competence, participate in state power realization of central authorities. In the United Kingdom of Great Britain and Northern Ireland there were no certain territorial parts that obtained power delegated from London, but institutions especially created with regional competence. Thus, in future political configuration of the Republic of Moldova, the quality of federal subject should have regional institutions, not the territory, or even the population that lives on that part of territory. By federal subjects of territory, frames of territorial subjects competence should be considered, namely autonomous bodies. This involves impossibility of certain interior state limitations, certain territorial demarcations and consequently inadmissibility to build certain barriers in free circulation of citizens, goods and capital. At the same time, granted autonomy presupposes a responsibility put to the care of subjects, the responsibility that concerns administration of public goods that enter their competence
6. **Resulting from supreme value of human rights and liberties, that result from ethnic, cultural, linguistic, etc., diversity of citizens, the state should ensure political pluralism, by assuring pluralistic democracy.** Political pluralism could be assured through the freedom of association. Even if there are two main political parties in Great Britain, the system does not pretend to be just bi-party. On the contrary, as it was told before, there is third political force on the national scale – Liberal Democratic Party – that is not the last in the political system of the state. Moreover after the reform in 1997, other political formations started to appear on political scene of Britain, especially regional formations. Even national parties were submitted to reformation process, to meet new political demands. Having introduced proportional scrutiny in regional elections, as well as in European elections (for European Parliament), British party system

is submitted to a process of increased transformations in a pluralistic system. Pluralism, thus, is a norm of European community. Resulting from nation sovereignty, it is inhuman to violate human right to association and power exercising, by participating in public life. Only pluralism assures equal chances for citizens to participate in public life, forming associations after certain affinities.

### ***Delimitation of responsibilities between the federal center and the subjects of the federation***

Regarding the possible variants of state structure of the Republic of Moldova viewed through the prism of settlement of Transnistrian conflict it would be more preferable in our opinion to establish a regionalist state with quite large competences in different spheres for regions, the process of devolution in the United Kingdom of Great Britain and Northern Ireland, that has already been analyzed in this work, could serve as an example. Thus, having analyzed the Proposals of mediators from February 13, 2004 and comparing with the British model, the following regions could be established: the Transnistrian region, the region Gagauzia, so-called federal territory made of the rest of the territory of the Republic of Moldova that also could be divided in some regions, that is similar to the processes taking place in the United Kingdom. In this situation the name federal state or regionalist state does not matter depending on how the delimitation of competences will take place between center and regions (in continuation to avoid confusion we will use the term – the subjects of the federation) and on the decision making process in central (federal) bodies. Thus, according to the British model, there is a proposal to create state institutions common for the whole of the Republic of Moldova and federal territory (example of the United Kingdom of Great Britain and England) and establish legislative and executive authorities within the subjects of the federation with different level of autonomy, larger for Transnistrian regions (an example of Scotland within the United Kingdom) and preserve actual competence of Gagauzia (example of Wales within the United Kingdom).

Delimitation of competences between federal center and the subjects of the federation in order to guarantee functional autonomy of the subjects of the federation and protect the general interests of the federation there should be clearly expressed in the Constitution through definition of exclusive competences of federal center and exclusive competences of the subjects of the federation. In order to avoid eventual confrontations common competences, in our opinion, should be limited as much as possible. We also consider that residual competence, the competence in the fields that are not specified in the Constitution, following the example of the United Kingdom, should belong to federal authorities.

We consider that *exclusive competence* of **the federal state** should deal with:

- Adoption and revision of federal Constitution, guarantee of the supremacy of the Constitution and federal legislation;
- Citizenship, migration, the right to asylum;
- State defense and security;

- Defense industry; establishment of the rules referring to the production and trade of weapons and ammunitions;
- Establishment of the frontier regime of the state;
- Determination and promotion of external policy of the state, establishment of diplomatic relations, ratification of international agreements, membership in international intergovernmental organizations, external commerce;
- Proclamation and guarantee of fundamental human rights and liberties including the rights of ethnic minority groups;
- Establishment of the system of federal public authorities;
- Electoral system;
- Administrative territorial organization of the state and determination of the system of local public administration;
- Organization and activity of the institutions to protect the norms of law, including legal profession and notary;
- Civil, penal legislation, civil process, penal process, administrative dispute, labor legislation, land legislation, regulation of intellectual property;
- Establishment of the judicial regime of ownership and use of natural resources, including concessions;
- Establishment of the judicial regime of the financial, bank, currency, fiscal, custom, credit systems, minting coins;
- Adoption of federal budget, establishment of federal impositions and taxes;
- Establishment of the general principles in education, health care and social protection;
- The system of energy, transportation on the federal level, the system of communications;
- Establishment of the judicial regime of the press, radio and television;
- Emergency service;
- Standards, metrology, meteorological service, geodesy, statistics;
- State decorations and honorable titles.

*The British Parliament* preserved its exclusive competence in the following spheres:

- External policy;
- Defense and national security;
- Regulation of the principles in the sphere of macro-economy, industry and energy;
- Money-credit policy;
- Certain issues of internal policy, such as: migration, the use of labor force, social protection; information protection; anti-drug policy, etc...;
- Legislative regulation in the sphere of transportation;
- Sources of mass information (first of all, electronic sources).

We consider that *exclusive competence* of ***the Transnistrian region*** as a subject of federation should deal with:

- Adoption of regional legislation in the sphere established by the Federal Constitution;

- Establishment of regional institutions in accordance with the Constitution and federal legislation;
- Economic development of the region;
- Adoption and exercise of regional budget, establishment of regional impositions and taxes;
- Regional property administration;
- Public order assurance;
- Construction and arrangement of the territory, urbanism and architecture;
- Development of education, science, culture, arts and sports;
- Social assurance, family protection, protection of mothers and children;
- Health care;
- Environmental protection;
- Organization and performance of local referenda;
- Tourism.

Having examined the constitutional practice of the United Kingdom we can remark that *Scotland* benefits from its competences in the following spheres:

- Healthcare;
- Education and staff teaching;
- Local public administration organization;
- Transportation development;
- Urbanism and municipal constructions;
- Partially social protection;
- Economic development;
- Investments;
- Commerce, export;
- Tourism;
- Civil and penal legislation;
- Courts, police, prisons ;
- Fire service;
- Environmental protection;
- Registration of civil acts and archives;
- agriculture, silviculture;
- arts and sports.

Here we should mention that the British Parliament reserved the right to legislate in any sphere, including those given to Scotland authorities.

We are of the opinion that *competences of Gagauzia* as an eventual subject of federation should remain in the actual limits established by the Law on special legal status of Gagauzia (Gagauz-Yeri) nr. 344-XIII from 23.12.1994. We state that the responsibilities given to *Wales* in the United Kingdom are limited by the fields of education, culture, healthcare, sports, without the right of primary legislation.

Vesting the subjects of federation with certain responsibilities in some spheres should not generate in accordance with the right to self-determination that can belong only to the people of the Republic of Moldova and should not allow secessionism. In general, there should be established guarantees not only to assure the autonomy of the subjects of the federation but, first of all, to assure the unity of

the federal state or the right of the people to self-determination as a fundamental principle of international public law. *jus cogens* norm that offer an imperative character and realization of which cannot be conditioned by anything (the loss of sovereignty of the Republic of Moldova, etc...).

### ***Institutional arrangements of the state***

To assure good administration of the whole state, one of the pronounced principles, an issue of paramount importance is the arrangement of government institutions that will exercise efficiently the power of the state. The realization of the tasks to assure viability of the state, its stability, wellbeing and prosperity of the people depends on the way the institutions of state are organized and the way they cooperate while exercising their power.

Proceeding from the premise there is not a universal definition of federal system and coming from the imperative to assure well government of the state, the Republic of Moldova, parties involved in the process, including Mediators, should search for a formula that can be adequate for institutional arrangements in future federation. Created institutional system should be able to meet the needs and interests of all parties. From this point of view, proposals of Mediators should take into consideration realities created during last decades.

Thus, the clear way of government for so-called federal territory, that is the territory of the Republic of Moldova without Transnistria and Gagauzia, does not result from “The Proposals of Mediators”. In its turn, Kozak Memorandum referred clearly, but not very explicitly, to the way of government in the so-called federal territory. Virtually, the federal territory will be directly governed by the federal institutions of the state that is central state institutions would have at the same time competences of the federal subjects that they can exercise over the federal territory. The experts Mediators expressed some fear as to the functionality of this type of administration; it does not represent anything new, unedited on the political map of the world. The British model of devolution is based on the same scheme.

From 1998 three autonomies in the historical regions of the country function: Scotland, Wales and Northern Ireland. Each of these regions has its own, different from others, degree of autonomy offered by the government from London. At the same time, England remained beyond devolution, this region being governed directly by the Whitehall. The established political system was called asymmetric devolution.

Paradoxical, the region England has the largest number of population, it has its own regional bodies of government – 80-90% of the population of the country, but it is not an autonomous regions. The Parliament and government from Westminster as state bodies of the United Kingdom are competent in the issues of regional interest of England, in other words, they have competences inherent to federal subjects in addition to competences of the whole state.

The essence of devolved autonomies in the United Kingdom consists in the fact that, as we have mentioned above, the delegation of responsibilities comes from the center to the regions and not vice versa as it happens in authentic federation. Federal subjects do not serve as a basis for federal center, as in a federation, in other words federal subjects do not create a center above them but vice versa, center is the basis of regional autonomy, it is its creation.

Proceeding from this premise London decided to create in the regions some institutions of government that would solve the problems of the region and govern from behalf of Westminster. Devolved government is an object of delegation; hypothetically, the Government in London can stop delegation ending autonomy and autonomous institutions proceeding from the premise that given work can be taken back.

The Republic of Moldova would not like to take the risk as it results from the discussed documents that the government in Chisinau wishes to guarantee through the Constitution of the country new institutional arrangements.

#### *Legislative power and the law-making process*

Asymmetric model can create, at first sight, difficulties in what refers to the law-making process. An example of the United Kingdom convinces us that these fears are groundless. Irish, Scottish and Welsh deputies in the Parliament in Westminster participate in legislation in the spheres that affect local interests of England (to put it other way, they can intervene in the competences of another federal subject). On the other hand, English parliamentarians do not have a similar possibility to intervene in the competence of autonomous regions. According to the same scheme, Transnistrian or Gagauzian representatives in the Parliament of Moldova can participate in the legislation for the federal territory, but not the other way.

This scheme of work of the British Parliament created a possibility to adopt the laws of England with the support of Scottish or Irish parliamentarians in cases when Englishmen do not have a majority to do that; legislative forum of the United Kingdom can be transformed in a consocial body. This state of affairs does not imply great risks or troubles because chances to realize the situations are small and irrelevant taking into consideration the fact that English parliamentarians have almost 80-90% of places in the Parliament of the United Kingdom. Judging by the relation between the number of population of all three regions of the Republic of Moldova (Transnistria, Gagauzia and the rest of the territory), that is similar to the relation in the united Kingdom we can affirm that Chisinau could apply the same scenario without assuming great risks because parliamentarians from the side of two autonomous regions would have 20% of places in central Parliament.

Anyway, to minimize or avoid the risks two modalities can be used. The first consists in the fact that Transnistrian and Gagauzian parliamentarians can be excluded from voting on laws for the federal territory. The second modality consists in the reduction of the number of Gagauz and Transnistrian representatives in the Parliament of the Republic of Moldova. The decrease in the number of places can be logically justified because the Parliament of the Republic of Moldova would

have, as a result of reform, smaller responsibilities for Transnistria and Gagauzia than for the rest of the territory. Though, in the United Kingdom the number of places reserved for Scotland, for example, beginning with the next elections will be considerably reduced that will correspond with the most possible exact number of population of this region in relation to the population of the whole country. At the same time, reduction in the number of representatives of the regions in the Republic of Moldova would meet resistance from their side and would have slow effects on political stability and unity of the country. That is why it is necessary to look for other solutions, more adequate.

In order to be applied in the Republic of Moldova the British model should be adjusted that results from different realities of two countries. Thus, in the United Kingdom of Great Britain and Northern Ireland representation of regions in Parliament from Westminster by means of parliamentarians is higher than it is necessary. The Parliament in London is bicameral; the second chamber is the House of Lords that represents neither regions nor the people. That is why the House of Commons has a double role: to represent the people of the whole country and of the regions of the country.

For the Republic of Moldova Mediators proposed a bicameral structure of federal parliament. These proposals, in different forms, can be found in the Kozak memorandum and in the Proposals of Mediators from February 13, 2004.

Thus, Kozak memorandum foresees that federal Parliament will be composed of two chambers: Senate and the House of Representatives. The document defined the numerical composition of both houses: 71 deputies and 26 senators. The deputies, the document adds, should be elected by proportional voting in a single constituency, this modality of elections being indicated. National constituency is to strengthen popular unity but proportional voting will guarantee equal chances of all segments in society, proportional democracy being a European value, as we have mentioned above. The Senate, according to the document-case, would not be of representative character because would be summoned by regional legislative forum in concurs with the federal Parliament, the term of office of senators would be imperative. Still, the main criticism for this chapter is unequal and unfair distribution of places among federal subjects and federal territory. Federal territory being the most numerous – about 80% of country's population – would have 50% of places, hypothetically, if we admit the fact that the House of Representative will include representatives of federal subjects. The consequences of such distribution are easy to foretell. They be harmful as representatives of federal subjects will have a strong power of veto over legislative process that can lead to institutional blockade but majority population of the Republic of Moldova will be transformed in minority. The problem gets even more complex if we admit that the senators are representatives of neither people nor localities they come from, they represent the governments. It will transform them in an instrument of pressure over federal authorities from the part of regional authorities.

On the other hand, in Proposals and recommendations of mediators dispositions on the organization of Parliament and law-making process are not explicit they represent general principles adding that elections, structure,

composition, organization and competences of the federal Parliament should be established by the Constitution and federal laws.

Actually, an eventual Agreement signed by the parties should be only the basis of further legislation including the Constitution. The agreement would constitute an act expressing will of the parties to build future state following the general rules and principles of the game.

An idea worth to be retained is the proposal of Mediators that says two chambers of the federal Parliament are to be elected “on the basis of equal, direct secret vote”. This proposal prompts that the better way to support elections to the Senate is popular voting that is direct voting than nomination by regional forum that is indirect from. A directly elected Senate will have more legitimacy and autonomy in decisions and will not be dependent on regional government. Directly elected senators will be able to view national problems from the perspective of the narrow interests of the regions they come from.

Government from Chisinau should also take into consideration the proposal of Mediators that refers to the way of elections of two chambers. Thus, the upper chamber should be elected in constituencies according to administrative territorial criteria. But members of the lower chamber are to be elected “in single member constituencies and/or in a single constituency through proportional elections”. Without at least one concrete variant this proposal opens the Government of Moldova possibilities to maneuver while choosing from so many ways to define its own electoral system proceeding from simple plurality and alternative vote, both use “single member constituency” and on to a series of modalities of proportional elections that use multi-member constituency.

Summarizing the above said we can make some recommendations for the Government of Moldova. As we have already mentioned, the competence referring to the stabilization of electoral system should be claimed by Chisinau as an exclusive competence. This is a strategic competence because the composition of legislative forum in the last instance will depend on the electoral rules but the way, the legislative and decisional process of the country will be organized, will depend on this instance. In general, our recommendation is: electoral and institutional system on regional level is if not similar to those on central level then at least function on the same principles.

It is true that in the United Kingdom of Great Britain and Northern Ireland electoral systems on central and local levels differ but it should be mentioned that this difference was at last agreed with London. All powers of the regions follow the path of devolution from London.

As the bicameral structure of federal Parliament has already been proposed and the proposal seems to be accepted by Chisinau and Tiraspol we can only express satisfaction for this structure of Parliament. Bicameral structure of Parliament will make it efficient from many points of view and will exclude the necessity to search for new complex formula to represent the interests of federal subjects in a single chamber. British model of consocial unicameralism becomes imperfect and useless when parties of negotiations are pro bicameralism.

For bicameralism to become progressive and efficient it should respect certain conditions. First of all, a fair electoral system should be guaranteed that would meet those demands. Then, the structure and composition of Parliament should be defined in such a way as to assure fairness and equilibrium in law making process. And at last, law making process should be subjected to some flexible rules that will exclude an eventual blockade.

Thus, to elect lower chamber (that can be the House of Deputies or the House of Representatives) of federal Parliament proportional elections from party lists are preferable. The elections of deputies are rather to take place in constituency. Namely this combination (proportional elections in a constituency) offers in the conditions of the Republic of Moldova more advantages. First of all, we proceed from the fact that it assures unity of the people, stimulates parties of national scale and disfavors regional parties, especially centrifugal forces. At the same time, it offers chance to all those forces that have sympathy within the electorate. Plus, it is less expensive.

As an alternative, terms of office of a deputy can be disputed in three constituencies that will coincide with three component parts of the Republic of Moldova: Gagauzia, Transnistria, and the federal territory. From the relation of the population of every region to the population of the whole state the number of places will be established that will be disputed in all three constituencies. For example, if the population of Gagauzia makes almost 3% of the population of the country, in this constituency 3% of places will be disputed, but Transnistria would have 16%, as this is what the population of this region comes to, as the first two regions will have about 20% of places in the House of Deputies. This variant matches proportional elections from lists as it minimizes chances of forces hostile to the territorial integrity of the state.

As for the Senate, direct elections are more advantageous. Majoritarian elections in single constituencies are the best way to choose senators. Constituencies can be created after administrative territorial criteria that would permit equal fair distribution of places. In case when administrative territorial units are not approximately equal with the number of population so-called electoral coefficient can be created that would result from the relations between population and the number of senator places. In other words, it will be a figure showing how many people a senator will represent. Basing on this figure, electoral constituencies are created that will not obligatory coincide with administrative territorial units. The principle idea is that the Senate should be assured with a fair representation. Places should be distributed according the following algorithm: 16-17% for Transnistria, 3% - for Gagauzia, but the rest 80% - for federal territory.

An alternative variant to elect the Senate can be proposed. Thus, elections can be indirect: the Supreme Soviet from Tiraspol and Popular Assembly from Comrat delegate a number of reserved representatives, the rest belong to the federal Parliament that is in accordance with the scheme proposed in Kozak memorandum. Only this scheme should be adjusted to the necessity to assure equity. Following the example of the United Kingdom of Great Britain and Northern Ireland we can apply the system „in-out” („entrance - exit”), according to which Transnistrian and

Gagauzian deputies would be stopped to participate, in this case, in the process of delegation of senators from the side of the federal Parliament. It assumes that to be easier identified they have to be elected in territorial constituencies following the above mentioned model.

Indirect elections of the Senate would make it illegitimate that would permit the limitation of its right to veto many issues. For example, the exercise of veto over financial laws could be prohibited motivating that only the House of Deputies represents the people and only this chamber has an exclusive right to establish fiscal burdens. In the United Kingdom, the House of Lords as a noble body without democratic legitimacy does not exercise veto especially in financial laws.

In general, we can admit that Senate can impose veto over the laws passed by the House of Deputies, but only over federal laws. It would be inadmissible for the Senate to block a law foreseen for the federal territory.

In any case, the possibility to override veto should be stipulated. The House of Deputies would override veto through repeated voting with another majority of votes, for example, 2/3 from the number of deputies present at the meeting. This figure should not exceed 4/5. If the federal territory has a comfortable majority (80%) in the House of Deputies that makes 4/5 from the total number of places, federal subjects (autonomous regions) – Transnistria and Gagauzia – will find it impossible to block decisional process and the rest of the state territory will not dominate. On key-issues, in conditions of limit, voting for this or that law becomes a real tests of political maturity of all political forces that will be obliged to establish national consensus as it sometimes happens in the United Kingdom when English parliamentarians are forced to overcome doctrinal differences that separate them to limit the influence of devolved regions.

### *Executive power and local administration*

#### *The President of the Republic of Moldova*

We consider that the President of the Republic of Moldova should be elected by the people of the Republic of Moldova through universal, equal secret freely expressed voting. It is evident that elections of the President of the Republic through universal voting will guarantee undisputed legitimacy. To avoid possible conflicts between two representative authorities Federal Parliament and Federal President will have to be elected for the same term of office and at the same time that usually ends in the election of parliamentary majority and the Federal President that share the same political views. It leads to efficient collaboration of those institutions. The elections of the President of the Republic by both chambers of the federal Parliament is another variant under discussions that can create many difficulties caused by a problem to get qualified majority 2/3, 3/5, etc... necessary to choose the President it can generate a serious political crisis. When the Federal President is elected through universal voting there is also a peril to create instability in case when the candidature of the Federal President will be supported by the majority of citizens who have a right to vote in federal territory but will not be supported by citizens of federal subjects. To avoid this situation the following

solution is possible: together with the elections of the Federal President – election of federal vice-presidents, representatives of federal subjects, that is every nominee for the post of the Federal President will be elected together with nominees for the function of federal vice-presidents from the subjects of federation.

Referring to the competence of the President of the Republic of Moldova we consider that it should be a unifying factor and have only responsibilities to represent the state and guarantee sovereignty of the state, territorial unity, and respect towards the Constitution including delimitation of responsibilities between federal center and subjects of the federation. We do not think that the Federal President should be given the function to determine the main directions of internal and external policy of the state that is foreseen in the Proposals of Mediators from 2004. it deals with the competence of Parliament and reflects the electoral program of political party that got the majority in parliamentary elections.

### *Government*

Proceeding from the proposed model, the Government of the Republic of Moldova will administer public affairs on the whole territory of the state and in the federal territory. Constitutional practice of the United Kingdom demonstrates that it can be realized. Thus, in the United Kingdom some ministers and departments, for example the Department of Healthcare works only for England, Scotland and Northern Ireland have their own ministries of healthcare. Generally, on the federal level a restrained number of ministries can be sufficient. For example, in Switzerland 7 ministries function: internal affairs, external affairs, justice, defense, finances, economy, transport and energy.

Speaking about the way the Federal Government is constituted we consider it correct to nominate the candidate for the function of the prime minister by the Federal President after consultations with parliamentary fractions and expressing vote of confidence not only to the prime-minister but in case with a bicameral Parliament in our opinion it should be given not by the Senate but by the representative chamber to represent the interests of the whole federation.

In the structure of the Government of the Republic of Moldova to assure respect of the interests of federal subjects from office on the basis of post they hold the heads of executive authorities of federal subjects can be included. The current situation is relevant – Başkanul (Governor) of Gagauzia is a member of the office of the Government of the Republic of Moldova. The idea on taking and holding the office of the vice-prime-minister by the representatives of federal subjects, pronounced in Kozak memorandum, can be accepted under the condition that their nomination will be made by the Federal Parliament, not by the authorities of federal subjects.

As for other provisions of Kozak memorandum that deal with proportional representation in the Federal Government and ministries and federal departments of the representatives of federal subjects an important remark should be made: at the process of forming the nominal composition of Government the factor of political affinity of members of Government matters more than the factor of equal territorial representation – it is aimed at the realization of internal and external policy of the

state on the basis of governmental program that got the vote of confidence of the Parliament.

We will also mention the necessity to establish *the Representative of Federal Government* within federal subjects who will have a mission to coordinate activity of the institutions of federal interest within the framework of federal subjects and to supervise the respect towards the Constitution and federal legislation on the territory of federal subjects.

We think the way of establishing executive authorities within the framework of federal subjects could be established through legislation of the federal subjects with respect towards general principles of executive bodies organization.

For example, *the Cabinet of the United Kingdom* is made of prime minister, who holds the function of the First Lord of the Treasury and Minister for the Civil Service, and 21 members that are at the same time members of one of the chambers of British Parliament:

- vice-prim-minister and first secretary of state;
- the Chancellor of Exchequer;
- the secretary of state in constitutional issues (replaced the functions of the High-Lord Chancellor of the United Kingdom, secretary of state for Scotland and secretary of state for Wales);
- secretary of state of internal affairs;
- secretary of state for foreign and Commonwealth affairs;
- speaker of the House of Commons, the president of the council;
- secretary of state for defense;
- secretary of state for commerce and industry;
- secretary of state for environment, alimentation and rural affairs;
- secretary of state for education;
- secretary of state for healthcare;
- secretary of state for labor and pensions;
- secretary of state for transportation;
- secretary of state for culture, mass media and sport;
- secretary of state for international development;
- secretary of state for Northern Ireland;
- secretary head to the Treasury;
- chancellor of the Duchy of Lancaster;
- Lord Chancellor, speaker of the House of Lords;
- Parliamentary secretary of Treasury (Chief Whip);
- Minister without portfolio (the Head of Labor party).

*Scotland government* (Cabinet) beginning with October 2004 is composed of the prime minister who has the high seal of Scotland and 10 ministers nominated by the prime minister from the parliamentarians: minister of enterprise who holds a function of the vice-prime-minister, minister of justice, minister of finances and public services, minister of education and youth, minister of healthcare, minister of environment and rural development, minister of communities, minister of parliamentary affairs, minister of tourism, culture and sport, minister of transportation. Lord-lawyer is a member of the Cabinet.

*Wales Government* (Cabinet of Ministers) is composed of prime minister, elected by the national Assembly of Wales and 8 ministers nominated by the prime minister. Thus, *prime minister* is responsible for the activity of the Cabinet, relations with other units of the United Kingdom, staff and public services. *The minister of finances, local administration and public services* is responsible for budget and control of finances, development of public services and public administration. *The minister of affairs* assures equality and transparency in the activity of the Government. *The minister of social justice and regeneration* guarantees realization of governmental programs on regeneration of disadvantaged communities, programs to fight poverty, locative programs, assurance of public order and collaboration with police services, etc... *Minister of healthcare and social services* is responsible for healthcare and social protection. *Minister of economic development and transportation* is responsible for the industrial policy and business support, transport, energy, tourism, etc... *Minister of education* is responsible for schools, high education, programs for the youth. *Minister of environment and planning* is responsible for environmental protection, planning, agriculture and rural development. *Minister of culture, welsh language and sport* is responsible for arts, libraries, museums, sport, development of welsh language.

#### *Local public authorities*

An extremely complex structure of local and regional administration of the United Kingdom represents a conglomerate of administration with different attributions, responsibilities and competences working in superimposed geographical zones. Besides, structures of local public administration differ in all four units of the United Kingdom: England, Northern Ireland, Scotland and Wales.

The biggest administrative territorial units of the United Kingdom counties, similar to regions. Thus, England is divided in 45 counties, 6 of them have a status "capital", counties are divided in 296 administrative constituencies. The territory of Wales comprises 11 counties and 11 city-counties. In rural localities counties are divided in communes. In Scotland 32 local government areas are established but the territory of Northern Ireland has 6 counties divided in 26 constituencies.

County deals with prognosing some public services, health care, education, house- and road-building, water supply, etc... to implement its competences a county gets subventions from state budget.

Two articles of expenses considered as the most important are education that consumes one third of local collective expenses and dwelling maintenance that takes almost one fifth of total resources. There are four principal financing sources of local collectives: real estate tax (in function of estate value); income tax (professional), giving services; subventions from the side of central government.

Economic and financial banking public services are controlled by public corporations. That is why competences of counties in economic fields are very limited.

Analyzing the evolution of local autonomy in European states we can evidence the following tendencies in the sphere of administrative territorial organization and internal development of local and regional autonomy:

- *Growth of dimensions of administrative territorial units* of territorial and regional collectives. The cause of this tendency indicates that only big enough and powerful enough territorial collectives can be autonomous, have financial force and public patrimony necessary for veritable decisional autonomy in conditions of amplification of material competence area. For example, the number of basic administrative territorial units reduced from 1.400 to 420 in the United Kingdom;

- *Eligibility of local public authorities*. In the United Kingdom, self-administration in administrative territorial units is realized by the councils elected by the people of the unit (with the exception of counties of Northern Ireland, “capital counties” in England and Greater London) for a fixed term of office, usually 3-4 years with annual renewal of one third of the councilors. Councilors work on a voluntary basis keeping salary for a period of sessions. At the same time, mayor is elected by councilors for a 1 year term of office and can be reelected;

- *Widening of the sphere of competences*. You can observe constant strengthening of institutional autonomy (proper administrative authorities) and decisional autonomy. Decentralization is greatly determined by existing judicial traditions. The system of common law, in comparison with continental European, does not support the hierarchy of norms. It partially explains why English system permits greater centralization than French. Local public authorities from England are not simply state institutions located in the United Kingdom. They were formed as institutions having a right to exercise their own functions on the basis of their own judicial norms. The fact that local public authorities in the United Kingdom enforce a lot of laws has a large decentralizing effect. People in charge who organize the execution of laws are accountable to local public authorities while for example in France the prefect and his/her apparatus are under the immediate control of central Government.

At the same time, central public authorities in the British system can influence local public administration through the intermediary of subventions. They also can ask for the enforcement of a law on the basis of decision of a court institution. To assure the supremacy of law, the British Parliament has unlimited legislative attributions and respectively can change the system of local public administration. The Parliament, to a certain extent, used this possibility adopting normative acts in the sphere of local autonomy that lead to some legislative centralization. However, bearing in mind the fact that local public authorities in the United Kingdom have always exercised important functions and had greater autonomy than local authorities in other European states the process of centralization did not influence the system of local public administration too much. On the other hand, local public authorities in the United Kingdom do not have an unlimited status. Generally, in contrast to the subjects of some federations local public authorities always exist by the will of central powers and have only competences that were delegated by the Central Government.

Because there is no written Constitution as a unique fundamental act that would comprise rights and responsibilities of intermediary administration and its

relations with central government these structures will be changing for about 20 years.

As for the administrative territorial organization of the Republic of Moldova in the context of settlement Transnistrian problem, the following solutions are possible:

- Establishment of a period of transition during which the Transnistrian region will keep its actual administrative territorial organization;
- Establishment of a unique administrative territorial organization on the territory of the reintegrated Republic of Moldova;
- Granting the subjects of federation the right to determine administrative territorial organization by themselves.