

Prof. Michael Geistlinger*, LL.D.
Full Professor,
Department of Public International Law,
Faculty of Law, University of Salzburg

ОРИГИНАЛНИ НАУЧНИ ЧЛАНАК

UDK: 341.238(4-672EU:478)

Раџ примљен: 30.06.2015.

Раџ прихваћен: 03.12.2015.

THE EU-NEIGHBOURHOOD POLICY AND THE CASE OF TRANSNISTRIA

Abstract: *The armed conflict in Eastern Ukraine has been triggered by an aggressive EU neighborhood-policy. In the shadows of this policy, another hotspot was opened up by the EU and the Republic of Moldova, having signed an Association Agreement including the Deep and Comprehensive Free Trade Area (AA/DCFTA) established on 27 June 2014. By concluding this agreement, the EU has continued its policy of neglecting conflicts on the territory of the former Soviet Union, avoiding impartiality and taking a stand of supporting EU-friendly governments. Concurrently, the EU kept ignoring the history of these conflicts, the interests of the other party, and risked further collisions with the Russian Federation. Thus, the EU contributed to creating “vulnerable groups”, the most recent example are the people living in Transnistria. Russian-speaking people were ignored by a Rumanian/Moldovan nationalist political movement in 1989, which introduced the Moldovan/Rumanian language in Latin letters as exclusive state language. The proclamation of the Transnistrian (Pridnestrovian) Moldovan Socialist Soviet Republic in 1990 and a short armed conflict consequently ended in intervention of parts of the 14th Soviet Army. From the total number of about 600.000 people living in Transnistria today, about 34 % of the population identify themselves as Moldovans, 28 % as Russians and 26 % as Ukrainians still using the Russian language as official language alongside the Ukrainian and Moldovan language. According to Article 12 of the Constitution of the Transnistrian Moldovan Republic, these people need legal protection in order to have their interests considered when resolving the conflict with the government of the Republic of Moldova, which is supported by the EU.*

Keywords: *Transnistrian conflict, EU–Moldova Association Agreement, EU Eastern neighborhood policy, Transnistrian Moldovan Republic.*

* michael.geistlinger@sbg.ac.at

1. Introduction

In 2003, it seemed that the conflict between the Transnistrian Moldovan Republic and the areas of the former Moldovan Soviet Socialist Republic Moldova situated on the Western side of the river Dniester would be solved peacefully. Dmitriy Kozak, at that time Deputy Head of the presidential administration of Vladimir Putin, had submitted to the conflict parties a plan which was named the Kozak Plan. Officially, the plan has been called "Draft Memorandum on the Settlement of the Transnistrian Problem, by Russia Submitted to the Leaderships of Moldova, Transnistria, the OSCE and the Ukraine."¹ The Plan followed the established OSCE practice, considering Moldova and Transnistria as conflict parties and Russia and the Ukraine as guarantor states. The OSCE, which had opened its mission in Chisinau in 1993 as the CSCE, acted as facilitator. Its head of mission always signed "*in the presence of the OSCE*".

2. The Key Elements of the Kozak Plan

The Kozak Plan intended to create a union state following the model of the Constitution of the Russian Federation. The Russian Constitution creates a federalism which can be called a combination of semantic and asymmetric federalism (Geistlinger, 2014: 71 – 84, 621 – 629; Levtshev, 2012: 217 – 227, who designates Russia a decentralized unitarian state). It is an interesting model for attracting entities that aim at independence but are not able to achieve long lasting independence and, finally, have to agree to build a joint state. A strong center and a skilled balance in the distribution of competences and tasks assist to a flexible and durable consideration of interests and distribution of power.

The Kozak Plan followed the OSCE understanding of considering the Republic of Moldova and Transnistria as parties to the conflict. There are many studies that *ex-post* started to explain the reasons for this conflict.² But there is no doubt

1 There have been published different versions of the plan, either dating from 15 November 2003 (see e.g. a German translation by Malik, 2006: 81 – 97), or arguably from 24 November 2003 (see: the Russian text e.g. retrieved on 22 July 2015, from <http://www.regnum.ru/news/458547.html>). This analysis is based on the Russian text from regnum, which was the version bearing the paraphs of the then Moldovan President Vladimir Voronin and the then Transnistrian President Igor Smirnov. The major difference between both versions lies in the guaranteed provisions.

2 For example, Troebst (2003: 965 – 966) holds that the main reason for the conflict was not ethnically motivated separation but the wish of the regional elites in the urban-industrial centres of Transnistria to protect their possessions and influence. Similarly, Büscher (2004: 161 – 162) calls the Transnistrian movement for autonomy a "*political amalgam consisting of nationalisms of the ethnical major groups of the region, of a traditional Soviet patriotism, of a regional movement, of ideologically motivated driving forces, and of economic and power policy*

that, if the Language Law had not been adopted by the Moldovan Socialist Soviet Republic under the lead of the Popular Front adhering to a pan-Romanian policy on 1 September 1989³ and, thus, before the end of the Soviet Union, a manifest reason for a war on secession would not have been given.⁴

The explosive provisions of the 1989 Language Law were to be found in Articles 1 – 4. Irrespective of the fact that during the Soviet period, the predominant language had been the Russian language and that the Moldovan language had been using the Cyrillic alphabet, Art. 1 of the Language Law of 1989 declared the Moldovan language on the basis of the Latin alphabet as the state language of the Moldovan SSR. As such, the Moldovan language should apply in all spheres of the political, economic, social and cultural life and should function as a language of the interethnic discourse. Art. 2 of the Language Law provided for the use of the Gagauz and the Russian languages as state languages in areas where the majority of the people belonged to the Gagauz nationality. Apart from that exceptional case, the status of the Russian language was downgraded to a language of interethnic discourse together with the Moldovan language (Art. 3 Language Law). Thus, Transnistria was treated even worse than Gagauzia. Article 4 of the Language Law guaranteed the use of the Ukrainian, Russian, Bulgarian, Hebrew, Yiddish, and Cigany (gypsy) languages and the languages of other ethnic groups living on the territory of the Republic, for the realization of national-cultural needs.

The Transnistrians' opposite will and understanding could be deduced from Art. 12 of the Constitution of the Transnistrian Moldovan Republic (PMR) as adopted by referendum on 24 December 1995: The Moldovan, Russian and Ukrainian lan-

motivations of old as well as of new elites." Such evaluations, even if they may not have been intended by the authors, point to a certain tendency in the interests of the Moldovan side to the conflict, because it reduces or neglects any legitimacy of the Transnistrian side to invoke the right to self-determination of peoples. It is interesting that studies which have been written in a timely neighbourhood to the conflict, come to a different conclusion from the authors writing a decade or more later. Thus, Kaufman (1996: 119) certainly has priority against Zofka (2012: 119 – 120). Kaufman calls the conflict an ethnical conflict, which it certainly was at the moment when it took place. The original reason for separation might have been joined by further motives for maintaining and re-enforcing the later de-facto regime. These additional motives, however, cannot overrule the original essence of the conflict (convincing also Chinn, 1994: 309 – 311). Besides, Zofka (pp. 121 – 128) clearly shows the connection between the Language Law, general strike, movement for autonomy and finally open warfare. Simply, the Moldovan side was not even interested in any objectivity: Stăvilă, 2012: 405.

3 No. 3465-XI: "On the functioning of the languages on the territory of the Moldovan Republic". The Russian text can be retrieved from http://base.spininform.ru/show_doc.fwx?rgn=3281 (Retrieved 22 July 2015).

4 As a consequence, the war of spring 1992 (causing at least 600 if not 1500 casualties) has been qualified as war for autonomy or secession. See Malik, 2006: 9 with further references.

guage was assigned the same status as the official language in the PMR on equal ground.⁵ The Moldovan language continued there to use the Cyrillic alphabet.

The Kozak Plan addresses the language issue in Art. 15. It assigns the determination of the status and the procedure for the use of the Moldovan and of the Russian languages to the Constitution of the Federation and to a federal organic law, whereby the Constitution shall implement the following principles:

- the procedure at all bodies of state power and all bodies of the local self-administration shall take place in the Moldovan and the Russian languages;
- everybody has the right to receive official information in the above bodies and by the respective officials according to his/her own choice, either in the Moldovan or in the Russian language;
- alongside the Moldovan and the Russian language, the Constitutions of the Subjects of the Federation can establish other official and/or state languages on the territories of the Subjects of the Federation;
- the Federation recognizes to all citizens living on its territory the right to preserve their mother tongue and to create conditions for their education and development.

One can assume that one element of this compromise which was not explicitly mentioned in the text of the Kozak Plan was the readiness of the Transnistrian side that the Moldovan language would use the Latin alphabet. Given this assumption, the language solution proposed by the Kozak Plan seems to be well-balanced, reasonable and feasible.

This result could have been easily achieved in 1989 and without any war, if the driving political forces in the then Moldovan Socialist Soviet Republic had chosen a less nationalist approach. Thus, the Kozak Plan did not only have to overcome the reason for the conflict but also the fact of the co-existence of two de-facto states on one territory for more than 20 years, even if one of them was not internationally recognized and, thus, considered to be only a de-facto regime and the results of the warfare itself. The Transnistrian de-facto regime had adopted its own Constitution, instituted its own state authorities, had its own currency and its own budget, so that the major issue for the Kozak Plan was how to lead the two states existing de-facto to create one joint state.

This task was particularly difficult because both constitutions had set up centralistic structures. Article 1 para. 1 of the Constitution of the Republic of Moldova of 29 July 1994, as then and currently in force, explicitly designates Mol-

5 See printed version of the Constitution in the three official languages (1996).Tiraspol.

dova as a unitary state.⁶ The Constitution of the PMR does not explicitly do so, and in its initial version it even introduced a two-chamber parliament (Art. 53 old).⁷ However, in Transnistria, there is no federalist background given. Thus, the Kozak Plan provided for a real breakthrough in its Art. 1, obliging both parties to unification, whereby the state structure of the (unified) Republic of Moldova within the borders of the Moldovan SSR as of 1 January 1990 was to be transformed and based on “federal principles”. This transformation should have taken place by joint elaboration of a Constitution of the unified state – the Federal Republic of Moldova. Before its adoption, the Constitution should have been submitted to a referendum of the entire population to be unified (Art. 2).

Art. 3 of the Kozak Plan specified the framework for the new Constitution of the unified Federal Republic of Moldova. The Federal Republic of Moldova was to be a democratic, sovereign and federal state, governed by the rule of law and based on the principles of unity of its territory, of the principles of the state structure, of its defence (for a provisional period), customs, currency and monetary area. The bearer of sovereignty and the only source of power was to be the people (Art. 3.1). The protection of human rights before international instances based on international treaties was to be guaranteed (Art. 3.2). A multi-party system was to be set up on the entire territory (Art. 3.3). All kinds of property were to be assigned the same status and protection throughout the unified Moldova (Art. 3.4). In its final stage, the Federal Republic of Moldova was understood to be a neutral and demilitarised state.⁸ The freedom of movement of persons, goods, services and capital on the whole of its territory was to be guaranteed (Art. 3.6). The priority of the Constitution, federal laws and federal organic laws on the whole territory was to be safeguarded (Art. 3.7). The PMR and the administrative-territorial unit of Gagauzia should achieve the status of Subjects of the Federation, however, with different rights (Art. 3.8). Outside of their territory, all competences of the legislative, executive and judicial powers were to be exercised by the federal President, the federal Parliament, the federal Government, the federal courts and bodies of the local self-administration (Art. 3.9). It was not allowed to change the constitutional status of the territory and

6 The text and an unofficial translation into the English language [Electronic version] can be retrieved from the website of the Moldovan Constitutional Court www.constcourt.md/.../Actele_Curtii/acte_en/MDA_Constitution_EN.pdf (Retrieved 22 July 2015).

7 The current version of chapter III of the Constitution of the PMR calls the PMR a presidential republic (Art. 55 para. 1). See the text of the Constitution [Electronic version] on the official website of the President of the PMR <http://president.gospmr.ru/news/konstituciya-pridnestrovskoy-moldavskoy-respubliki> (Retrieved 23 July 2015). The Supreme Soviet is not split anymore in two chambers (see Art. 67).

8 See Art. 3.5, which provided for transitory rules and guarantees until final achievement of de-militarisation.

borders of the Subjects of the Federation without their approval (Art. 3.10). Art. 3.11 provided for the identity and continuity of the Federal Republic of Moldova as subject of public international law, as currently is the Republic of Moldova. Whereas Articles 3.12 – 3.14 of the Kozak Plan deal with international treaties concluded by the Federal Republic of Moldova and their ratification, Article 3.15 allows the Subjects of the Federation to become members of those international organisations, where subjectivity under public international law is not required. The Subjects of the Federation were intended to maintain international relations and conclude international treaties in the areas of their jurisdiction. Article 3.16 guaranteed them the right to exit from the Federation, but exclusively in case of accession of the Federation to another state and/or in case of full loss of its sovereignty. There is no doubt that this article addressed the debate initiated by the Popular Front in 1989 about Moldova uniting with Romania. The modalities for using this right of exit were laid down in Article 3.17. Last but not least, the Constitution of the Federal Republic of Moldova should differentiate exclusive competences assigned to the Federation, joint competences of the Federation and the Subjects of the Federation and exclusive competences of the Subjects of the Federation (Art. 3.18).

The exclusive competences of the Federation are enumerated in Art. 4 (e.g. Federal property, citizenship). The most important competences were assigned to the joint competence of the Federation and the Subjects of the Federation (e.g. judiciary, state budget, civil law, civil procedural law, election law, etc.; Art. 5). The exclusive competences of the Subjects of the Federation should include other important issues (e.g. family law, local self-administration, housing law, questions of protection of health, etc.). The Subjects of the Federation were to be assigned the general competence for all matters, not enumerated and assigned either to the Federation or to jointly the Federation and Subjects of the Federation, or to the Subjects of the Federation (Art. 6). Further provisions of the Kozak Plan relate to the modalities of how these competences are to be exercised (Art. 7), how the federal budget and the budgets of the Subjects of the Federation are to be established (Art. 8). Articles 10 – 13 regulate the state structure in terms of legislative, executive and judicial powers. Article 13.2 of the Kozak Plan provides for the establishment of a Constitutional Court and Article 3.3 envisages the courts of first and second instance to be established by the Subjects of the Federation.

Article 14 of the Kozak Plan laid down provisions for the transition to the new state structure, including the terms for establishing the new bodies, elections, the federal tax system, the delimitation and eventual transfer of the various kinds of (state) property, the adoption of federal organic laws, the decision-making of the Constitutional Court, and the settlement of currency and monetary issues.

Article 17 supplemented this provision by providing for a joint Constitution Committee whose task should be to elaborate the Constitution of the Federal Republic of Moldova.

3. The Failure of the Kozak Plan in 2003

The Kozak Plan has been heavily criticized because of its approach to the federalisation of Moldova.⁹ Apart from the fact that these critical views cannot be supported by sound arguments based on public international and comparative constitutional law, they include a lot of misunderstandings of federalism and a range of diversified solutions¹⁰ that federalism can offer to conflict parties; moreover, it was neglected that the Kozak Plan had followed the OSCE approach, but moved this approach very much to the advantage of the Moldovan side.¹¹ Yet, the extensive criticism made it clear that many international and non-governmental organisations did not recognize the major OSCE principle at that time: to find the middle ground between the conflict parties. The OSCE could have acquired experience in tracing the path towards the Kozak Plan in the Caucasus, particularly in case of South Ossetia and Georgia¹² which until the warfare of 2008 came close to the case of Transnistria/Moldova. Hundreds of mission visits and individual talks with representatives of all sides helped to build up basic confidence in each other. Joint seminars (e.g. Flensburg/Bjerrremark in 1997, Kiev in 2002), where representatives of all parties involved could explore negotiation tactics, as well as the the flexibility and hard issues in the positions of the other side, created an atmosphere of shadow negotiations which did not end in more than final statements or conclusions by the facilitator,¹³ but they ultimately helped the parties enter a constructive dialogue.

9 See for many others, e.g. Harbo, 2012: 329 – 335.

10 Ms Harbo reported on the views of representatives of international governmental and non-governmental organizations active in Moldova, as well as on the views of the Moldovan civil society, however, she did not hear and carefully review the arguments of constitutional and international lawyer outside Transnistria that were brought forward in favour of a federalist model proposed at the Kiev meeting of 1 – 3 July 2002. At that moment, it was not possible yet to find a common standing of the parties on the federalist ground. Thus, the Russian term “soyuznoe gosudarstvo” (English “union state”) was chosen on expert level in order to keep the conflict parties on track towards a closer discussion of the details of such a “union state”. The term was broad enough for combining the Transnistrian approach (“only a confederation, not a federal state”) and the Moldovan approach (“autonomy at best, a federal state at a maximum”). Therefore, the translation of the term into the German language as “Bundesstaat” (Harbo, 2012: 330) is not correct.

11 The Kozak Plan clearly left the Transnistrian wish for a confederation behind.

12 For the OSCE practice in Georgia at the beginning of the 1990th see Geistlinger, 1996.

13 See Welberts/Geistlinger, 1998: 28 – 32, 35 – 38.

The Kozak Plan fell into a favourable period when three figures, politically close to one another, stood at the top of Moldova, Transnistria and Russia.¹⁴ They saw the chance to achieve joint success. The political establishment in Transnistria knew very well that independence was no realistic option for the future; they also realized that, in case of unification of the PMR with Ukraine, Ukraine would not offer more than the status of autonomy, which – as could be witnessed in 2014 – failed in the meanwhile for Crimea. In case of accession to the Russian Federation, it was presumed that Transnistria was at best to be granted the status of a republic, like Kabardino-Balkariya; on the other hand, no more than the status of a region (“oblast”), like Kaliningrad, would have been the alternative. On the Moldovan side, it was clear that the offer of a territorial autonomy to Transnistria was by far not enough. Thus, a federalization of the country by applying the Russian model of federation was a hard but acceptable solution. It was a good compromise compared to Transnistria’s idea of a confederation, whose future would have been unpredictable. The history of public international law shows few examples where a confederation continued to exist for a long period of time. Russia, holding quite a large army depot in Transnistria since the Soviet times,¹⁵ could have freed itself of a considerable political, economic and social burden. Besides solving the Moldovan-Transnistrian conflict, the implementation of the Kozak Plan would have been a success for the Russian foreign policy but also for the role model function that the Yeltsin Constitution of 1993 could have acquired irrespective of all criticism it had harvested until then.

There is much speculation around why President Voronin, having provisionally signed the Kozak Plan, finally rejected the Plan on 24 November 2003.¹⁶ It certainly did not happen by accident that the EU demonstrated massively increased interest in Moldova as compared to the previous years, in particular, on the occasion of a visit of the EU Commissioner for EU Enlargement Günter Verheugen in December 2003 (Phinnemore, Schmidt-Pfister, 2012: 356). There are rumours that the French President had directly intervened by inviting President Voronin not to sign and offering better perspectives under the EU lead. If one compares the Kozak Plan to the Voronin-Şova Initiative of 17 February 2014 (Harbo, 2012: 333), the crucial issue obviously was the role of the Russian troops.

14 Respectively, Igor Smirnov (followed by Evgeny Shevchuk on 30 December 2011), Vladimir Voronin (Nicolae Timofti has been President of Moldova since 23 March 2012), and Vladimir Putin.

15 The “Operative group of Russian troops”, earlier the 14th Soviet army and parts of the 5th Soviet aircraft army, currently includes approximately 1200 soldiers and estimated 20.000 tons of army material stored at Colbasna. See e.g. Gribincea, 2012: 422 – 429.

16 See e.g. Harbo, 2012: 333, and Stăvilă, 2012: 414.

The respective provisions in the Kozak Plan, translated from Russian, read as follows:

“17. The Parties address the Russian Federation, Ukraine, the OSCE and to the European Union with the proposal of providing political and economic guarantees in order to assure the adherence to the conditions of the unification and territorial integrity of the Federal Republic of Moldova as laid down by the present Memorandum.

For this aim, there may be deployed observers on the territory of the Parties.

The Parties also submit to the Russian Federation, Ukraine and the OSCE the proposal of providing guarantees of such kind that, in case of violation of the conditions for the implementation of the present Memorandum by one of the Parties, the Russian Federation, Ukraine and the OSCE will guarantee the implementation of its provisions in relation to the other Party (including before other international organisations and foreign states), and will also take measures for the re-establishment of the regime of its implementation by all participants to the present Memorandum.

18. The Parties submit the proposal to the Russian Federation to provide security guarantees and conditions for the unification and territorial integrity of the Federal Republic of Moldova as laid down in the present Memorandum. For this purpose, upon prior consent of the Russian Federation, until the call of the referendum on the question of the adoption of the Constitution of the Federation, the Republic of Moldova will sign and ratify an Agreement with the Russian Federation on the deployment of stabilizing peace-making forces of the Russian Federation on the territory of the future Federation for a transitory period, until the full de-militarization of the state, but not longer than until 2020. The number of these forces will not exceed 2000 persons. The forces will not include heavy military equipment and armament. The Agreement will enter into force as soon as the Constitution of the Federation is adopted. In case the conditions as laid down in this article are not to be fulfilled, the present Memorandum shall become invalid.

19. After the entrance into force of the Agreement mentioned in Article 18 of the present Memorandum, it may be joined by the European Union, the OSCE and Ukraine as guarantors upon conditions agreed by the Parties to the Agreement.”

The Voronin-Şova Initiative of 17 February 2004 provided that the Russian army shall stay in Transnistria for a transitory period and, in case of a conflict, only Russian troops shall be allowed to intervene. However, the project did not mention any guarantor-states (Harbo, 2012: 333). It did not receive the necessary support by the Russian Federation; the Treaty of Friendship and Cooperation between Moldova and Transnistria, which was submitted by the Transnistrian President Smirnov to the Moldovan President Voronin in the presence of the Ru-

ssian President Medvedev at a meeting in Moscow on 11 April 2008, was another project which was not put into effect for the same reason¹⁷ (Stăvilă, 2012: 418).

4. The EU and the Transnistrian Conflict

The risk the Moldovan President took on his shoulders by compromising the Russian President in 2003 was compensated for by the EU, taking the position of the Moldovan side from the very beginning, in a similar manner as the EU did in Cyprus to the detriment of the Turkish side, in Georgia to the detriment of the South Ossetian and Abkhazian sides, and in Kosovo to the detriment of the Serbian side. The EU, in close cooperation with the NATO, had to pay the toll for having been allowed by the Moldovan government to enter the scene by breaking one of the fundamental principles of mediation in public international law: to stay at an equal distance to both sides of the conflict. The EU is obviously trying to copy the historic experience from the German unification and supports one side of the conflict in the expectation that the other side will not be capable of withstanding the economic and, in the long run, political pressure thereafter, and in anticipation that it will finally be absorbed by the economically stronger party to the conflict, thus minimizing the political costs of drawing a territory from the former Soviet sphere of influence to the EU/NATO sphere of influence. Such policy does not consider the historic causes of the conflict and the legitimacy of arguments of the weaker party to the former conflict. The only risk (economic, political, but also military) for the EU and eventually the NATO is whether Russia will stay silent and accept without counter-measures whatever the EU and the NATO are putting in place in Moldova.

The one-sided approach of the EU to the disadvantage of Transnistria became clearly visible at the beginning of 2003, when the EU Council adopted the Common Position 2003/139/CSFP of 27 February 2003 concerning restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic.¹⁸ The denomination of Transnistria as "*Transnistrian region*" from the outset underlined the partisan EU approach, openly insulting the Transnistrian side and counteracted the provision number 1 of the Preamble where the EU underlined its commitment to efforts within the OSCE framework to reach a peaceful solution to the conflict in full respect of Moldova's territorial integrity. The OSCE speaks of "*Transdnistria*" and not of the "*Transnistrian region*".¹⁹ To place

17 The Russian text of this project can be retrieved from <http://www.regnum.ru/news/986310.html> (Retrieved on 24 July 2015).

18 EU OJ L 53/60 of 28 February 2003.

19 See e.g. the OSCE Ministerial Statement on the Negotiations on the Transdnestrian Settlement Process in the "5+2" Format. MC.DOC/2/14 of 5 December 2014. [Electronic

“obstructionism” on one conflict party during a negotiation process also implies lack of objectivity and equal distance to the parties.²⁰ The imposition of targeted sanctions, in the form of a travel ban for those members of the Transnistrian leadership who have been identified by the EU to be primarily responsible for the lack of cooperation to promote a political settlement of the conflict by the same Common Position of the EU Council (Arts. 1 – 3 and Annex, which included the then and the present Presidents of Transnistria), simply meant that the EU started its appearance on the scene with extortion against one party to the conflict (Transnistria) in the interests of the other party (Moldova). Further similar measures followed, aimed at increasing the pressure on the Transnistrian side.²¹

These measures followed from the EU neighbourhood concept, which started being developed with the Framework Strategy Paper of 11 March 2003, the European Neighbourhood Policy Strategy Paper of 12 May 2004 and the Paper on Strengthening the European Neighbourhood Policy of 4 December 2006.²² Their implementation pushed the Moldovan–Transnistrian conflict beyond a centuries-old controversy between the Russophiles and the Romanophiles into the midst of an overt rivalry between the EU in line with the NATO on the one side, and the Russian Federation on the other side. One needs to keep in mind that the Moldovan SSR, including Transnistria, was made up of about two-thirds of Non-Slavic Moldovan people, whereas the total number of Russians and Ukrainians amounted to 13% each. On the other hand, in Transnistria, Russians and Ukrainians make two-thirds of the population whereas the Non-Slavic Moldovans make the remaining one-third. Transnistria is very important for the Moldovan economy. About 30 % of the Moldovan industry is situated in Transnistria (Zofka, 2012: 118 – 119; Prohnițchi, 2012: 509 – 513). By the end of the former Soviet Union period, twelve power plants in Transnistria supplied the entire Moldova with energy. Currently, only two blocks are still in use; however, the energy potential of Transnistria – once modernized and re-activated – is of key relevance for the whole of Moldova (Boian, 2012: 388 – 389).

version]. Retrieved 24 July 2015 from <http://www.osce/cio/130386>.

20 Number 2 of the Preamble of the EU Council’s Common Position, EU OJ L 53/60 of 28 February 2003, reads as follows: “*The EU considers the continued obstructionism of the leadership of the Transnistrian region of the Moldovan Republic and its unwillingness to change the status quo to be unacceptable.*”.

21 E.g. Starting from 30 November 2005, the EUBAM-border mission established an indirect Moldovan customs control (through a joint regime including Ukraine under President Yushchenko, Moldova under President Voronin and the EU) on import and export of goods across the Transnistria – Ukraine border, which had not been under the Moldovan control until then. For more details, see Stăvilă, 2012: 414 f.

22 For the sources and further details as to the Caucasus region which has much in common with Moldova – Transnistria, see Geistlinger, 2008: 149 – 150, 154 – 155.

From the outset, the EU neighbourhood concept for Moldova and Transnistria has been neglecting the following historical facts:

The conflict is a heritage of Stalin's nationality and border drawing policy. In no historical phase, except in Soviet times (1941 – 1991), did Transnistria and Moldova belong together;

In the period of the Russian Empire, Bessarabia was initially a region ("oblast") and later a province (gubernium), whereas Transnistria belonged to the gubernia of Podolia and Kher'son. Ethnically, Moldova has been a Moldovan speaking territory at all times. Transnistria, however, has always been a Slavic territory, inhabited by nearly an equal number of Russians and Ukrainians;

A policy of Russification in the Soviet period did not bring a huge change in the ethnic composition of the people but it led to instituting the political system dominated by the Russian-speaking population. The Russian language served as a lingua franca between the Moldovan (Rumanian)-speaking people and the people speaking a Slavic language;²³

The armed conflict between Moldova and Transnistria, which escalated in December 1991 and culminated in spring 1992, was ended by intervention of the 14th Soviet army, ultimately resulting in the conclusion of a bilateral agreement between Russia and Moldova of 21 July 1992 on the principles of solving the Transnistrian conflict. It created an armistice which has been in effect ever since. It is monitored by a Joint Control Commission consisting of representatives of Moldova, Transnistria and the Russian Federation. The status quo has been preserved for the last 23 years. Moldova has no effective statehood on Transnistria; Transnistria is a de-facto regime based on the right to self-determination.²⁴

What the original OSCE approach and the vision of the EU nowadays still have in common is that the international community wants to see the territory of the former Moldovan SSR continued as a single state of Moldova. Otherwise, the entry of the EU on the scene led to a considerable increase of tensions between the conflict parties and, ultimately, the EU and the Russian Federation.²⁵ These ten-

23 For further references and details, see e.g. Cuşco, Şarov, 2012: 38 – 58; Cuşco, 2012: 59 – 68; Mironov, 2012: 69 – 78; Negură, 2012: 78 – 86; Solonari, 2012: 87 – 97; Dumbrava, Caşu, 2012: 98 – 108; Caşu, 2012: 109 – 118.

24 For these events, but with reservation as to his qualification of the conflict, see Zofka, 2012: 119 – 128. Under such historic conditions, proposing an internationalisation of the Russian troops in Transnistria and the EU to exert economic pressure on Russia is politically dangerous wishful thinking (Karniewicz, Petrovická and Wunsch, 2010: 15), which certainly does not lead to a solution of the Transnistrian conflict.

25 For the period until 2010, but from the Moldovan perspective, see e.g. Stăvilă, 2012: 415 – 419, who uses the example of the so-called "Belkovski Plan" to show the risk of the EU

sions were dramatically increased by the signature and provisional application of the new generation of Association Agreements by Ukraine²⁶ and by Moldova²⁷ pushed for by the EU, as well as by the ensuing revolution and warfare in Ukraine, even if the European Neighbourhood Country Progress Report 2014 on the Republic of Moldova praises (for example) the year 2014 as a period of general political stability for Moldova.²⁸ Just like Joint Staff Working Document on the Implementation of the European Neighbourhood Policy - Eastern Partnership Implementation Report of 25 March 2015,²⁹ issued by the European Commission and High Representative of the EU for Foreign Affairs and Security Policy, it includes only a few remarks on conflicts in Moldova. The Country Report mentions that little progress was reached in re-defining the relationship between the Gagauz Autonomous Region and the central authorities; the re-definition of relations was attempted by the Republic of Moldova and meant de-facto reduction of autonomy. Transnistria is referred to by stating that minimal progress was made towards a resolution of the Transnistrian conflict and Moldova was recommended to *“continue to engage pro-actively with the Transnistrian side in view of promoting a mutually acceptable vision for a common future and to enable Transnistria-based economic operators to enjoy the full benefits of the Association Agreement/Deep and Comprehensive Free Trade Area.”*

5. Conclusion: The Transnistrians as a Vulnerable Group

The 2014 Maydan Revolution in Ukraine contributed to aggravating the Transnistrian situation. As long as there was a general political understanding between Ukraine and Russia, the export of goods and the trans-border movement of persons through the border with Ukraine helped to ease the economic and personal situation of the Transnistrian people. Until 2009, 90 % of the entire population held the Transnistrian citizenship, whereas a total of 326.000 Transnistrian citizens concurrently had the Moldovan citizenship. Today, about 170.000 Transnistrian citizens concurrently hold the Russian citizenship (Dumbrava, 2012: 265 – 266). The latter ones fall under access-restrictions to the Ukrainian territory imposed by the new government.³⁰ The Ukraine denounced the agreements

policy, i.e. to have Moldova and Transnistria separated on a permanent basis.

26 EU OJ L 161/3 of 29 May 2014.

27 EU OJ L 260/4 of 30 August 2014.

28 25 March 2015, MEMO/15/4682.

29 SWD(2015) 76 final, p. 2.

30 See e.g. Obrashchenie predstavitel'ey 66 obshchestvennykh organizatsiy k Prezidentu RF Putinu. Retrieved on 25 May 2015 from <http://ria.ru/world/20150525/1066443250.html>; Moldavia i Ukraina perekryvayut voennym iz RF put' v Pridnestrov'e; Minoborony

with Russia concerning the transit of Russian soldiers and military equipment to and from Transnistria but, beyond that, it obviously does not allow the entry of male Russian citizens from Transnistria. Apart from that, the Ukrainian military formations have been concentrated on the border to Transnistria;³¹ they have recently shot at two Transnistrians who wanted to cross the border illegally, one of whom was seriously injured. The Moldovan border control is reported to be hindering travels of Transnistrian officials to Moscow. Thus, as reported on 4 April 2015, six Transnistrian officials were detained upon their arrival to the Chisinau airport on their way back from an official journey to Moscow and their passports were withheld for several hours. Three of them were subjected to an interview by the Moldovan border police, and all of them were released only after a number of phone interventions on governmental level, including the intervention of guarantor governments, had taken place. This event is to be considered as a violation of the arrangements which had been achieved between the conflict parties as to free movement of persons.³² In recent months, for example on 20 April 2015, Moldova repeatedly refused to allow the entry of Russian politologists, TV journalists, Russian media representatives and other Russian citizens on its territory, and their transit to Transnistria because the purpose of their travel was unclear, as the Moldovan side argued.³³ During his last visit to Transnistria, even the Russian Deputy Prime Minister Rogosin had to experience obstructive control of his person and luggage by the Moldovan border control.

The EU policy of indulging the central Moldovan government at the price of jeopardizing all previous OSCE achievements as to the solution of the Transnistrian conflict has eventually engendered a new vulnerable group. The Transnistrian conflict has entered the agenda of a power game between the EU and Russia, ultimately offering to the people of Transnistria (if the EU policy proves efficient) no other alternative than the one provided for the Russian speaking people in

Ukrainy uvidelo ugrozu so storony Pridnestrov'ya. Retrieved on 30 May 2015 from <http://news.rambler.ru/30276.996>.

31 Lauterbach, R. (2015) describes the economic war led by the revolutionized Ukraine and Moldova under the EU/NATO roof together against Transnistria, which is at the same time provocatively directed against Russia. On 7 July 2015, the Moldovan Deputy Prime Minister Victor Osipov showed that he was ready under some conditions to assist in supplying the Russian soldiers in Transnistria. See: *Moldova gotova pomoc' v snabzhenii voennykh Rossii v Pridestrov'e*. [Electronic version]. Retrieved on 7 July 2015 from <http://ria.ru/world/20150707/1118102412.html>.

32 See: *V Kishineve pytalis' doprosit' diplomatov PMR ob ikh vizite v Moskve*. [Electronic version]. Retrieved on 4 April 2015 from <http://lenta.ru>.

33 See: *V Moskve nameknuli Moldavii o posledstviyakh zapretov na v'ezd dlya rossiyan*. [Electronic version]. Retrieved on 21 April 2015 from <http://lenta.ru>.

the Baltic states. The latest attempt of the Moldovan authorities to downgrade the autonomy of Gagauzia certainly reduces the negotiation options for the Transnistrian side. The more the EU relies on the central Moldovan government in the interest of expanding its sphere of influence, the less flexibility it will have to counteract the central Moldovan government's ideas on how to resolve the Transnistrian issue. At best, Transnistria may be granted a weak autonomy, but it seems more realistic that the Transnistrians are most likely to sustain the fate of the Russian speaking people in the Baltic states. Their rights under universal public international law, in particular the rights of ethnic groups under Article 27 of the International Covenant on Civil and Political Rights, were neglected (e.g. in Estonia, Geistlinger, 1995: 120); consequently, the observance of these universal rights was the entry test that the Baltic states had to pass in the process of joining the EU. But, there is also the Russian military in Transnistria, which is hardly unlikely to be victimized by Russia without counter-actions. It seems rather unrealistic that Russia will accept an ever-growing isolation of its troops in Transnistria. A reconsideration of the EU Neighbourhood Policy with special reference to the Moldova – Transnistria situation is urgently needed.

References

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part. In EU OJ L 260/4 of 30 August 2014

Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. In EU OJ L 161/3 of 29 May 2014

Boian, V. (2012), Die Republik Moldau und die Ukraine (1998 – 2010). In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 382 – 389). Leipzig: Leipziger Universitätsverlag

Büscher, K. (2004), Transnationale Beziehungen der Russen in Moldova und der Ukraine. Ethnische Diaspora zwischen Residenz- und Referenzstaat, Frankfurt/Main at al.: Peter Lang

Cașu, I. (2012), Die Republik Moldau 1985 – 1991 – von der Perestrojka zur Unabhängigkeit. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 109 – 118). Leipzig: Leipziger Universitätsverlag

Chinn, J. (1994), The Policy of Language in Moldova [Electronic version], pp. 309–315. Retrieved 22 July 2015, www.gwu.edu/~ieresgwu/assets/docs/demokratizatsiya_archive/02-2

Common Position of the EU Council 2003/139/CSFP of 27 February 2003 concerning restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic. In EU OJ L 53/60 of 28 February 2003

Constitution of the Republic of Moldova of 29 July 1994 [Electronic version]. Retrieved 22 July 2015 from www.constcourt.md/.../Actele_Curtii/acte_en/MDA_Constitution_EN.pdf

Constitution of the PMR [Electronic version]. Retrieved on 23 July 2015 from <http://president.gospmr.ru/news/konstituciya-pridnestrovskoy-moldavskoy-respubliki>

Çuşco, A. (2012), Bessarabien in den Jahren 1917 – 1918. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), *Die Republik Moldau. Republica Moldova. Ein Handbuch* (pp. 59 – 68). Leipzig: Leipziger Universitätsverlag

Çuşco, A., Şarov, I. (2012), Bessarabien im russischen Zarenreich (1812 – 1917). In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), *Die Republik Moldau. Republica Moldova. Ein Handbuch* (pp. 38 – 58). Leipzig: Leipziger Universitätsverlag

Dumbrava, V. (2012), Staatsbürgerschaft. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), *Die Republik Moldau. Republica Moldova. Ein Handbuch* (pp. 258 – 266). Leipzig: Leipziger Universitätsverlag

Dumbrava, V., Caşu, I. (2012), Die Moldauische Sozialistische Sowjetrepublik (1944 – 1991). In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), *Die Republik Moldau. Republica Moldova. Ein Handbuch* (pp. 98 – 108). Leipzig: Leipziger Universitätsverlag

European Commission, High Representative of the EU for Foreign Affairs and Security Policy (eds.), *Joint Staff Working Document on the Implementation of the European Neighbourhood Policy. Eastern Partnership Implementation Report. SWD(2015) 76 final of 25 March 2015*

ENP Country Progress Report 2014 – Republic of Moldova [Electronic version]. Retrieved on 25 July 2015 from http://eeas.europa.eu/enp/documents/progress-reports/index_en.htm

Geistlinger, M. (1995), The Legal Status of Russians in Estonia in the Light of Public International Law. In Geistlinger, M., Kirch, A. (eds.), *Estonia – a new framework for the Estonian majority and the Russian minority* (pp. 93 – 120). Wien: Wilhelm Braumüller Verlag

Geistlinger, M. (1996), Das Selbstbestimmungsrecht der Völker und multiethnische Staaten – praktische Erfahrungen und theoretische Rückschlüsse aus dem Kaukasus. In Reiter, E. (ed.), *Grenzen des Selbstbestimmungsrechts. Die*

Neuordnung Europas und das Selbstbestimmungsrecht der Völker (pp. 269 – 312). Graz et al.: Verlag Styria

Geistlinger, M. (2008), The European Union Acting in the Southern Caucasus – Legal Perspective. In Geistlinger, M., Longo, F., Lordkipanidze G., Nasibli Y. (eds.), Security Identity and the Southern Caucasus. The Role of the EU, the US and Russia (pp. 149 – 167). Graz, Wien: Neuer Wissenschaftlicher Verlag

Geistlinger, M. (2014), Commentary to Articles 5 and 66 Constitution of the Russian Federation. In: Wieser, B. (ed.), Handbuch der russischen Verfassung (pp. 71 – 84, 617 – 630). Wien: Verlag Österreich

Gribincea, M. (2012), Die russische Militärpräsenz – ein historischer Abriss. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 422 – 429). Leipzig: Leipziger Universitätsverlag

Harbo, F. (2012), Der Transnistrienkonflikt und der föderale Gedanke. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 327 – 335). Leipzig: Leipziger Universitätsverlag

Karniewicz, T., Petrovická, M., Wunsch, N. (2010), Policy Paper: The EU and Conflict Resolution in Transnistria. [Electronic version] Retrieved on 26 July 2015 from [tu-dresden.de/.../papers_folder/PolSec_20EU and Transnistria.pdf](http://tu-dresden.de/.../papers_folder/PolSec_20EU_and_Transnistria.pdf)

Kaufman, St. J. (1996), Spiraling to Ethnic War. Elites, Masses, and Moscow in Moldova's Civil War. In International Security 21 (2), pp. 108 – 138

Konstituciya Pridnestrovskoy Moldavskoy Respubliki (1996), Tiraspol

Lauterbach, R. (2015), Ungemütliches Tauwetter. Lange galt der Konflikt als »eingefroren«. Doch jetzt könnte die Ukraine im von der Republik Moldau abgespaltenen Transnistrien die nächste Konfrontation mit Russland suchen. In Die Junge Welt [Electronic version]. Retrieved on 10 July 2015 from <http://www.jungewelt.de/aktuell/pdf/index.php>

Law of 1 September 1989, No. 3465-XI: "On the functioning of the languages on the territory of the Moldovan Republic". Russian text [Electronic version] retrieved from http://base.spinform.ru/show_doc.fwx?rgn=3281 (Retrieved 22 July 2015)

Levtchev, B. (2012), Russland – ein Bundesstaat? Salzburg: Dissertation

Malik, M. (7/2006), Der Konflikt im Dnjestr-Gebiet (Moldova). Wien: Schriftenreihe der Landesverteidigungsakademie. BMLV/LVAk

Mironov, A.-M. (2012), Bessarabien in der Zwischenkriegszeit (1918 – 1940). Das politische Leben. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.),

Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 69 – 78). Leipzig: Leipziger Universitätsverlag

Negură, P. (2012), Die Moldauische Autonome Sozialistische Sowjetrepublik (1924 – 1940). In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 78 – 86). Leipzig: Leipziger Universitätsverlag

OSCE Ministerial Statement on the Negotiations on the Transdniestrian Settlement Process in the “5+2” Format. MC.DOC/2/14 of 5 December 2014. [Electronic version]. Retrieved 24 July 2015 from <http://www.osce/cio/130386>

Phinnemore, D., Schmidt-Pfister, D. (2012), Die Republik Moldau und die Europäische Union. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 349 – 359). Leipzig: Leipziger Universitätsverlag

Proekt “Dogovora o družbe i sotrudnichestve mezhdu Moldaviey i Pridnestrov’em”. [Electronic version]. Retrieved 24 July 2015 from <http://www.regnum.ru/news/986310.html>

Prohnițchi, V. (2012), Wirtschaft in Transnistrien. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 509 – 512). Leipzig: Leipziger Universitätsverlag

Solonari, V. (2012), Die Moldauische Sozialistische Sowjetrepublik während des Zweiten Weltkrieges (1941 – 1945). In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 87 – 97). Leipzig: Leipziger Universitätsverlag

Stăvilă, I. (2012), Initiativen zur Lösung des Transnistrienkonflikts. In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 404 – 422). Leipzig: Leipziger Universitätsverlag

Troebst, St. (2003), Staatlichkeit im Pseudo-Staat. Identitätsmanagement in Transnistrien. Osteuropa. 53 (7), pp. 963 – 983

Welberts, R., Geistlinger, M. (March 1998). Recommendations of the Seminar „From Ethnopolitical Conflict to Inter-Ethnic Accord in Moldova“. In: ECRE (ed.), From Ethnopolitical Conflict to Inter-Ethnic Accord in Moldova (pp. 28 - 32, 35 – 38). Flensburg: ECMI Report #1

Zofka, J. (2012). Die “Transnistrische Moldauische Republik” (PMR). In Bochmann, K., Dumbrava, V., Müller, D., Reinhardt, V. (eds.), Die Republik Moldau. Republica Moldova. Ein Handbuch (pp. 118 – 128). Leipzig: Leipziger Universitätsverlag

Dr Michael Geistlinger,

Редовни професор,

Одсек за међународно јавно право,

Правни факултет, Универзитет у Салцбургу, Аустрија

СУСЕДСКА ПОЛИТИКА ЕВРОПСКЕ УНИЈЕ И СЛУЧАЈ ТРАНСНИСТРИЈЕ

Резиме

Оружани сукоб у Источној Украјини изазван је агресивном суседском политиком Европске уније, која је Украјину довела у ситуацију да бира између два зла. У сенци те политике, Европска унија и Република Молдовија отвориле су још једно спорно питање потписивањем Споразума о придруживању, који обухвата Продубљену и свеобухватну зону слободне трговине (АА/ДЦФТА) установљену 27. Јуна 2014. године. Поједини делови овог Споразума о придруживању почели су се привремено примењивати од 1. септембра 2014. године. Закључивањем овог уговора, Европска унија је на територији бившег Совјетског савеза наставила своју политику занемаривања сукоба, избегавања принципа непристрасности и заузела став којим се подржавају државе и владе наклоњене Европској унији, при чему се занемарује историјски контекст сукоба, интереси сукобљених страна и опасност стварања нових несугласица са Руском Федерацијом.

Тиме је Европска унија допринела стварању осетљивих и угрожених група. Најновији пример су становници Транснистрије, који користе руски као матерњи језик. Увођењем румунског/молдавског језика (и латиничног писма) као јединог језика у службеној употреби, румунски/молдавски националистички покрет је 1989. године потпуно игнорисао права овог дела становништва Молдавије. Након проглашења Транснистријске (придњестровске) Молдавске Социјалистичке Совјетске Републике 1990. године, уследио је кратак оружани сукоб који је окончан оружаном интервенцијом јединица 14. Совијетске Армије. Статистички подаци показују да се од укупног броја становника Транснистрије (око 600.000), од тада, око 34% грађана изјашњавају као Молдавци, 28% као Руси и 26% као Украјинци који још увек користе руски језик као службени језик упоредо са украјинским и молдавским језиком. Према члану 12. Устава Молдавске Републике Транснистрије, овој популацији је неопходно обезбедити правну заштиту како би се њихови интереси узели у обзир приликом решавања сукоба са владом Републике Молдавије, коју подржава Европска Унија.

Кључне речи: Транснистијски сукоб, Европска унија и Споразум о придруживању Републике Молдавије, суседска политика Европске уније за Источну Европу, Транснистријска (придњестровска) Молдавска Република.

