

THE RIGHT TO SELF-DETERMINATION OF PEOPLES THROUGH EXAMPLES OF KOSOVO AND CATALONIA: WHY IS THE SECESSION OF KOSOVO ACCEPTABLE IN MODERN PUBLIC INTERNATIONAL LAW?

Mirza Ljubović

International University of Sarajevo

Abstract

At a time of progressive development of public international law, the internal self-determination of peoples has no alternative, but external self-determination is justified in a situation where, as a result of oppression, dispossession, and collective discrimination, a certain people have full rights to freely determine its political, social, economic, and cultural setting. In the case of Kosovo, the right to “*remedial secession*” based on the right to external self-determination has been achieved. According to many legal scholars, the related right is an exception and could be realized outside the colonial context, in limited circumstances that resemble the colonial paradigm. Modern customary public international law provides a legal basis for the introduction of the concept of the right to “*remedial secession*” and forms an argument that is supported by the “*Great Powers*” and is consistent with international institutional practice provided that the people’s fundamental human rights are threatened. This article aims to explain through the case of Kosovo that the external form of self-determination, which includes secession, is possible only exceptionally in the case of grave violations of human rights and freedoms, war crimes, repression, and systematic oppression, and that the internal self-determination of the peoples is a more acceptable form of realizing this collective human right, which should be realized through broad constitutional and legal reforms in every multi-ethnic state (a certain degree of autonomy or decentralization).

Keywords: modern public international law, self-determination, peoples, remedial secession, human rights

Introduction

The first great multilateral agreement that established the concept of the right to self-determination of the people was the Treaty of Versailles. Then the question arose, does the right to self-determination of the peoples lead to infinitesimal fragmentation and disintegration of states and the emergence of a large number of new national states, which could endanger the existing public international policy in the future? Like any other right, the right to self-determination of the people is possible to abuse.

It is necessary to understand in which aspects the right to self-determination of the people is positive (affirmative), in terms of the protection of collective rights of the peoples, and in which aspects this right is negative, and in the function of disintegration processes, distortions of territorial integrity, sovereignty and political independence of the states, as well as the disintegration of other complex entities under public international law. In this context, we recognize the scientific terms of the internal and external form of the self-determination of the peoples and we answer the question of which the affirmative nature of internal self-determination in relation to the negative aspect of external self-determination, which in modern public international law and in political terms, can also be linked to secession.

Here, it is suggested that the right to self-determination of the people is divided into external (offensive) and internal (defensive) self-determination. How its name suggests this right unquestionably belongs to the people. The aim of this paper should be an affirmation of the internal exercise of the right to self-determination of the peoples and its relationship to the manifestation of its external shape which often leads to the secession of territories and conflicts with the principle of *uti possidetis juris*. The division of this right to external and internal one is determined by the space of exercising the right to self-determination, i.e. whether is it contrary to the principle of *uti possidetis juris* (Cornell Law School - Legal Information Institute, n.d.)

or within the internationally recognized borders of one country (the most common in the matter of a complex multi-ethnic states).

The right to self-determination of the people is stated in a series of international documents, both binding and, in a much larger number, non-binding. Thus, the „*right to self-determination*“ we find in the UN Charter, the UN General Assembly on The Right of Peoples and Nations to Self-determination (1952), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Declaration of General Assembly on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970), the UN Declaration on the Rights of Indigenous Peoples (2007), the Vienna Declaration and Program of Action (1993), et cetera.

The right to self-determination is today applicable as customary law and is recognized in that form by public international law. It is normative, provided in Article 1 of both Covenants on Human Rights (Šarčević, 2022), that the right to self-determination becomes the fundamental principle of modern international law with *erga omnes* effect. It prescribes that: „*all peoples have the right to self-determination on the basis of which they freely choose their political status.*“ Political status (Šarčević, 2022) represents a constitutional status within the meaning of the establishment of the internal arrangement, while the external arrangement represents an international positioning and obtaining recognition.

External self-determination of peoples includes the right of peoples to decide on their international status, i.e. to create their own sovereign and independent state, to unite with an existing sovereign state, or to integrate into an existing sovereign state. (Bursać, 2010, p. 279) This form of self-determination of the peoples is most often the subject of abuse in modern

public international law, which includes secession, and thus the territorial integrity and sovereignty of the existing state are directly violated. Demands for the external self-determination of peoples can be established, thus representing an exception that is rarely, but nevertheless, accepted in modern public international law (the case of Kosovo), and unfounded under the influence of economic, cultural, religious, and ideological reasons, which may indicate the abuse of this right, as in the example of the province of Catalonia in the Kingdom of Spain. However, in the 1960s, this type of external self-determination of the people was not considered as an abuse of right, it was considered the right to be a state in which the people will be liberated from foreign interference and stopped to be under foreign occupation or domination. This issue was particularly relevant at the time of drafting the texts of International Covenants on Human Rights, i.e. at the time of the condemnation of colonialism, and marked the emergence of a much-needed anti-colonial wave in the public international order.

In this paper, it is necessary to say that not every external form of self-determination of the people that seek secession is illegal and a sort of abuse of that right. It is possible if certain conditions are previously met that would justify the realization of such a right or opportunity, which we also call „*remedial secession*“, in the case of denying the right of a part of the people to be represented in state authorities. *Antonio Cassese* continues and believes that this right exists, but that it is an exception to the general rule that the territorial integrity and political independence of states are protected by international law and as such they must be interpreted narrowly and subjected to strict conditions. (Bursać, 2010, p. 299.) *Cassese* continues and lists three conditions that must be met in order to exercise the right to secession: 1. the central authorities of the state must persistently deny the group the right to participate in the government; 2. the group must be subjected to massive and systematic human rights violations, and 3. any possibility of finding a peaceful solution within the existing state

structure must be excluded. (Bursać, 2010, p. 299.) In order for a people to submit a request for self-determination against the territorial integrity of a state, it must prove that there is no rule of law in a particular state, that the government did not result from free democratic elections, that the rights of minorities, as well as human rights and basic freedoms, are not respected and that cultural, linguistic and religious rights are suppressed. (Bursać, 2010, p. 78.) Only when these conditions are met, the right to self-determination of the peoples becomes justified.

The demand for self-determination is increasingly justified if the people are aware of their historical position and identity in their ethnic and cultural areas. That they live in a country that they cannot consider their own and that they are discriminated against by one or more other people (Berković, 2021, p. 43.), and there are no prospects that the situation could be changed or improved in the foreseeable future (realization of autonomy). (Ibler, 1992, p. 61.) The first step in the abuse of the right to self-determination of the peoples is manifested in the desire to achieve international legal subjectivity (external statehood or independent state), even more so if that people enjoy true autonomy, and the members of that people enjoy all human rights and basic freedoms, in a way that they can participate in the work of representative bodies, the government and the judiciary of the state in which they live (Ibler, 1992, p. 61.), as is the case with the people of Catalonia.

The importance of this article is seen in the promotion of the internal form of self-determination of the people and the encouragement of the implementation of constitutional reforms that will ensure a certain degree of participation of the people in the legislative and executive authorities in complex multi-ethnic states. Significant constitutional reforms will ensure a certain degree of autonomy in certain provinces in which people will be able to successfully realize their political, economic, and cultural rights. All

this together will prevent future separatist and secessionist movements, and thus contribute to peace and stability in the world.

A brief historical overview on the development of the right to self-determination of peoples

The entire history of mankind was characterized by colonialism and foreign domination over certain areas, but also the response to them through the realization of the right to self-determination of peoples. The historical development of the right to self-determination of peoples is connected with significant events such as the signing of the „*Pax Romana*“ peace agreement, the Peace of Westphalia in 1648, the Congress of Vienna, the Holy Alliance, the Treaty of Versailles, the independence of the British colonies in 1776 on the North American continent and the French Revolution in 1789. The period of imperialism of the 19th century influenced the development of the collective consciousness of the people about the unsustainability of an order in which the *Great Powers* (Perišić, 2013, p. 762.) will dominate other peoples and their territories. (Veljković et al., 2014, p. 16.) The right to self-determination of the people, which was proclaimed by the bourgeoisie and confirmed by the Resolution of the London International Congress in 1896, after Wilson's Program or the Versailles Program from 1919, which entered in the content of the Atlantic Charter in 1941. Since then, the scientific community has paid the most attention to the issues of the right to self-determination of peoples, as a fundamental human right. (Veljković et al., 2014, p. 12.)

The historical development of the right to self-determination of peoples represents an important segment in explaining the origin and application of this right determined through several stages. The first phase is national-constitutive and is temporally located in the period from the end of the 18th and the beginning of the 19th century, and spatially in North America

and Western Europe, which are characterized by the struggle against foreign domination and the creation of modern European nation-states. (Danspeckgruber & Gardner, n.d.) At that time, the principle of self-determination was the basic political principle of civil revolutions. The second phase is anti-imperial and represents the period after the First World War. (Throntveit, 2011, p. 445.) At the Versailles Conference, the right to self-determination was recognized for the peoples who lived on the territory of the empires that lost the war: the Austro-Hungarian Monarchy and the Ottoman Empire. This period was also characterized by the proclamation of the principle of self-determination through Woodrow Wilson's „*Fourteen Points*.“ (United States Department of State, n.d.)

The third phase in the development of this right is extremely important and we call it the anti-colonial phase, and it took place between the Second World War and the end of the 60s of the 20th century. (Whelan, 1992, p. 25.) In this phase, the former colonies achieved their independence and freedom through peaceful means or by national liberation struggle. The last stage in the development of this right is called anti-communism and includes the period from the fall of the Berlin Wall to the present day. (Iacob et al., 2019, p. 173.) It is most important to explain that modern public international law views the principle of self-determination as a legal principle that grows into the right to self-determination of people. With this phase ends the political character of this principle and begins its legal character with the adoption of the UN Charter, and finally takes shape with the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples, also known as the United Nations General Assembly Resolution 1514 (1960) - *the Anti-Colonial Declaration*, the International Covenants on Human Rights (1966) and the Declaration of General Assembly on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970).

After a brief historical description of the development of the right to self-determination of peoples, in the following text, we will move on to the theoretical and normative definition of the internal and external forms of self-determination of peoples.

The right to external self-determination of peoples

In the Declaration of General Assembly on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970) - *Declaration of Seven Principles*, as written in the scientific article by P. Perišić: „*The right to external self-determination of peoples outside the colonial context and the case of declaring the independence of Kosovo*“, it says that guaranteeing the right to self-determination: „*should not be interpreted as authorizing or foster the people to any action aimed at the total or partial destruction or endangerment of the territorial integrity and political unity of sovereign and independent states, which behave in accordance with the principle of equality and self-determination of peoples, and which have a government that represents the entire people of that territory, without differences in terms of race, religion or color of skin.*“ (Coleman, 2014, p. 24.)

By interpreting this provision, it can be concluded that exercising the right to self-determination through coercion is prohibited if the people of a territory can exercise the right to internal self-determination. (Perišić, 2013, p. 770.) And in cases where state governments carry out repression against a people, limiting their collective human rights and the exercise of their right to internal self-determination, then that people have no choice but to exercise their right in the context of external self-determination, provided that international peace is not threatened and security and this again depends on the factors of redistribution of power in the international community. (Summers, 2004, p. 341.)

Supreme Court of Canada dealt with this issue in detail, which gave a very important advisory opinion on „*Reference re Secession of Quebec*“, to which we will briefly refer here. The Court took the position that the right to self-determination of the people is exhausted by the realization of internal self-determination, that is, by achieving an appropriate level of political, economic, social, and cultural autonomy within the existing state. (Summers, 2004, p. 342.) So, the Court interpreted that the right to external self-determination is realized only if it is a people released from colonial rule when the people are subjected to foreign domination or exploitation, and when a certain people are denied adequate participation in government. (Perišić, 2013, p. 770.) This opinion of the Court should not be interpreted as if the Court gave an exception to the *Declaration of Seven Principles* or as a justification to resort to the external self-determination of the peoples, but it is only applied if separation from the existing state is the only possible solution (the concept of accepting the consensual theory of secession). (Castellino & Gilbert, 2003, p. 156.)

This opinion can also be interpreted extensively and that the right to external self-determination could exist if the violation of human rights is massive and discriminatory towards a certain people and that a people are systematically excluded from political and economic life and when it is denied the right to a minimum level of minority rights or autonomy. (Castellino & Gilbert, 2003, p. 157.) In the papers of some experts in public international law, the opinion that the external self-determination of the peoples, i.e. secession, is the last measure that can be taken only if all other possible solutions have been exhausted, and the state brutally and massively violates the human rights of its citizens or part of its citizens (the concept of advocating „*remedial secession*“). (Gavrilović, 2013, p. 14.)

The right to self-determination of peoples can serve as an example, i.e. secession of East Pakistan (Bangladesh) from Pakistan. We hereby confirm that the right to secession can only have „*peoples who suffer discrimination, waiver of the right to representative government and only if the discriminatory behavior is so pervasive, ramified and systematic that it concretely threatens the survival of such peoples and where there is no strong probability that the discrimination will end.*“ (Castellino & Gilbert, 2003, p. 157.)

Not every discrimination can justify the right to achieve secession, but the „*quality and quantity of discrimination*“ is taken into account, as whether the state is ready to stop the violence, and whether effective legal means are available through domestic institutions. (Gavrilović, 2013, p. 15.) So, in the end, the right to secession can exist if „*a discriminated minority is exposed to the actions of a sovereign state that consist in an obvious and brutal violation of basic human rights, e.g. through killing or indefinite imprisonment without legal protection, the destruction of family ties, expropriation without taking into account the means necessary for life, through special prohibitions directed against a certain religious community or the use of one's own language, and finally through the enforcement of these prohibitions by brutal methods and measures.*“ (Hannum, 1993, p. 11.)

The right to internal self-determination of peoples

The right to self-determination of the people in the post-colonial world is to focus on its internal dimension and the enjoyment of individual human rights. *Malcolm Shaw* states that outside the colonial context, the principle of self-determination of peoples was transformed into issues of human rights within the territory of each state. *McCorquodale* explains the right to self-determination of peoples through international human rights law.

(Hannum, 1993, p. 11.) The right to self-determination of peoples is the cornerstone on which human rights rest, and to the greatest extent the International Covenants on Human Rights are responsible for this, which introduced the right to self-determination of peoples into the discourse of human rights. *Fox* states that the internal right to self-determination is „*manifested through the structures of domestic political institutions*“ which may include „*regimes of minority protection, democratic political process, guarantees of cultural rights and various forms of autonomy.*“

After the decolonization process was completed, emphasis was placed on the internal dimension of the self-determination of peoples in order to reconcile this principle with the principle of territorial integrity of states. (Hannum, 1993, p. 23.) Now solutions are being sought within the existing state borders, while the exception, i.e. the formation of an independent state is possible only in the case of long-term repression and brutal violation of human rights. (Gavrilović, 2013, p. 23.)

The Badinter Arbitration Commission (Malgosia Fitzmaurice, 2019) stated 20 years ago in its *Opinion No. 2* that „*at the current stage of development, public international law does not specify all the consequences of the right to self-determination of peoples.*“ The internal aspect of self-determination is more relevant because it represents the usual way of exercising the right to self-determination of people in modern public international law. (Gavrilović, 2013, p. 26.) In this sense, *Raic* states that the international obligation of the state to act in accordance with the right to self-determination of peoples implies „*the obligation on the part of states to negotiate in good faith with the relevant peoples that fall under their jurisdiction in order to reach an agreement on the necessary level of protection, within the field of application of self-determination, which is justified by the relevant circumstances of the case.*“ (Gavrilović, 2013, p. 26.)

A brief review of secession

The only time the International Court of Justice in the Hague discussed the issue of secession was when the UN General Assembly requested the Court to bring an advisory opinion on the issue of Kosovo's Unilateral Declaration of Independence (UDI) from Serbia on February 17, 2008. The UN General Assembly asked the Court for an answer to the question: „*Is the Unilateral Declaration of Independence adopted by the temporary self-governing institutions of Kosovo in accordance with public international law?*“ On that occasion, the Court said that the declaration was not in contradiction with public international law. However, the Court did not sufficiently explain whether this action of Kosovo can lead to the independence of this province. (Perry & Rehman, 2015, p. 71.)

On the other hand, the Supreme Court of Canada, regarding the admissibility of the province of Quebec for secession, points out that:

„*A state whose government represents all peoples living on its territory, on the basis of equality and without discrimination, and which respects the principle of self-determination within the country itself, deserves that public international law protects the territorial integrity of that state and prohibit any attempt of secession.*“ (Perry & Rehman, 2015, p. 72.)

Secession is a way of losing and acquiring state territory, i.e. „*secession of a part of the state for the purpose of creating a separate state or joining another, already existing state.*“ One thing is certain that the constitutions of all states in the world completely prohibit any form of secession from existing states. On the other hand, modern public international law nowhere explicitly prohibits secession. However, it is evident that the issue of the territorial integrity of states conflicts with the issue of secession, which was highlighted in the 6th Principle of the Declaration of the UN General

Assembly from 1970. As *V. Ibler* emphasizes: „*international law protection of the state and its territorial integrity (protection against secession and separation)*.“

The Case Study of Kosovo

Kosovo was an autonomous province within the Serbia, which was part of the Socialist Federal Republic of Yugoslavia (SFRJ). In 1989, Slobodan Milošević abolished the special autonomy of Kosovo, and during the 1990s, the Kosovar Albanians fought to restore their special autonomy. As a result of these efforts, Serbia launched police and military actions against Kosovo Albanians, committing widespread atrocities and war crimes throughout the region, leading to NATO intervention. On June 10, 1999, the UN Security Council adopted Resolution 1244 of the UN Security Council. That resolution placed Kosovo under the United Nations Interim Administration Mission in Kosovo (UNMIK), the UN transitional administration provided a general framework for resolving Kosovo's political and legal status. Headed by the Special Representative of the Secretary-General, UNMIK began its work on determining the final status of Kosovo, but Serbia and Kosovo could not agree on how to proceed. The UN Special Representative, *Martti Ahtisaari*, brought forward a comprehensive proposal to resolve the status of Kosovo (known as the „*Ahtisaari Plan*“) with the idea that Kosovo should become independent under the supervision of the international community. (Jamar & Vigness, 2010, p. 914.)

After the autonomy of Kosovo was revoked in 1989 (which represented a violation of the right to internal self-determination), international war crimes were committed (Marijan, 2021, p. 67.), especially in the period from 1998-1999 (even NATO intervened by bombing Serbia), and negotiations between Kosovo Albanians and Serbs in Rambouillet failed. (Arbatov & Acheson, 2000, p. 9.) Therefore, undoubtedly, in 1999 the conditions

were met for the legal remedial secession¹ and independence of Kosovo. (Ryngaert & Griffioen, 2009, p. 585.)

It should be admitted that the independence of Kosovo is completely predetermined. (Vidmar, 2009, p. 846.) It is almost impossible that the *ticking clock* will be turned back and that Kosovo will somehow return to a „*parent state*“, even if one can, for now, question the effectiveness of Kosovo as a state (Kosovo is under limited supervision of European rule and law and NATO). On the contrary, the more countries recognize Kosovo (and it should be remembered that recognition is an irreversible legal act), the more statehood Kosovo acquires, the chances of returning to the situation before 1999 are weaker. (Ryngaert & Griffioen, 2009, p. 586.)

On July 22, 2010, the International Court of Justice in the Hague (ICJ) published its advisory opinion regarding the legality of the Unilateral Declaration of Independence of Kosovo. The broader significance of the advisory opinion of the International Court in the Hague that international law was not violated by Kosovo's Unilateral Declaration of Independence in 2008 has a profound importance for the development of modern public international law. The United States and its allies argue that Kosovo's situation is unique and cannot serve as a legal precedent, but other countries facing separatist movements within their borders may have a reason for concern. Regarding the situation in Kosovo, the International Court in the Hague considers: „*the fact that the Kosovo issue has its own political aspect does not deprive it of its character as a legal issue - the Court does not deal with*

1-At the commemoration of the 600th anniversary of the Battle of Kosovo in June 1989, in his speech in Gazimestan, Milošević expressed his desire that Kosovo remains Serbian and announced the possibility of armed conflicts. The international community, which in the 1990s failed in Bosnia and Herzegovina, at the end of the 1990s, she was not overly interested in the background of the conflict, it was important to prevent bloodshed. The United Nations and NATO did not want to repeat Srebrenica in front of their eyes, and Milosevic's regime exceeded every measure. The violence of the Yugoslav police began, and terrible war crimes and ethnic persecution of Kosovars were committed. The committed war crimes were a valid reason for the international community to accept the secession of Kosovo from Serbia, thus fulfilling the conditions for remedial secession.

the political motives behind the request or the political implications that its opinion may have.“ (Jamar & Vigness, 2010, p. 914.)

On February 17, 2008, Kosovo declared independence from Serbia in a statement declaring: „*Kosovo will be an independent and sovereign state.*“ Since this declaration is a very controversial act, the General Assembly, on behalf of Serbia, requested an advisory opinion from the International Court in the Hague regarding the legality of the declaration of Kosovo. On July 22, 2010, the International Court of Justice in the Hague provided an opinion stating that the Declaration of Independence does not violate international law, rejecting Serbian claims that the declaration violated its territorial integrity. The International Court of Justice in the Hague carefully addressed the question of unilateral declarations of independence in the narrower sense but avoided giving an opinion on the more related issue of secession. The influence of thought on the world and the potential interpretations of thought, although highly speculative, are problematic. (Jamar & Vigness, 2010, p. 916.)

Kosovo illustrates a situation similar to that of East Timor, where a minority group fought, seeking self-determination and supported by *Great Powers*, eventually achieving independence from its central government, in this case, Serbia. (Sterio, 2010, p. 165.) Without the help of the *Great Powers*, namely the military intervention of the *Great Powers* through NATO, the Kosovars would not be able to secede from Serbia. Moreover, without the political support of the *Great Powers* and the willingness of the *Great Powers* to recognize Kosovo as a new state, the Kosovars would not have been able to assert their independence from Serbia easily as they did in February 2009. (Sterio, 2010, p. 166.)

Case Study of Catalonia

For centuries, Catalonia was part of the Crown of Aragon, an important Mediterranean empire. Catalonia emerged as a separate and defined territory in the 12th century and became part of Spain in the 15th century with the marriage of King Ferdinand and Isabella of Castile. (Lulić, 2019, p. 79.) Catalonia retained its autonomy, culture, language, and tax system, but its autonomous rule gradually declined over the two centuries that followed. Catalonia, as a state, disappeared in 1716 as a result of its loss in the War for the Spanish Succession. (Lulić, 2019, p. 80.) At the beginning of the 20th century, despite the annexation by the Kingdom of Spain, Catalonia became a territory of highly developed industry, culture, and prosperity. It was independent for a short time in the 1930s before being subjugated by Spanish dictator Francisco Franco. In accordance with the Constitution of Spain from 1931 (Article 11), special autonomous regions were organized within Spain based on areas with „*common history, culture, and economy.*“ With the adoption of the Statute on the Autonomy of Catalonia (1932), the newly formed Catalan „*Generalitat*“ was given administrative responsibilities, although not legislative power. (Lulić, 2019, p. 80.) Franco’s brutal repression of Catalan culture triggered its revival and cemented Catalonia’s separate identity from Spain.

The Spanish Constitution from 1978 and the Statute of Autonomy from 1979 restored democracy in Spain and provided substantial autonomy for Catalonia. (Lulić, 2019, p. 82.) In the Constitution of Spain (1978) in Art. 2. it is stated, inter alia, that the Constitution is based on the unbreakable unity of the Spanish nation, the common and indivisible homeland of all Spaniards, recognizes and guarantees the right to self-government of the nationalities of the regions of which it consists and solidarity among them. According to the Constitution, let’s remind, the Spanish army has the right to protect the territorial integrity of the Kingdom (Article 8). Finally, in

this context, the provision of Art. 472. paragraph 5. of the Criminal Code of Spain, according to which secession (*declarar la independencia de una parte del territorio nacional*) is a criminal offense equated to rebellion. (Lulić, 2019, p. 82.)

Spain is not federally organized, but it is a highly decentralized unitary monarchy. That is why some scholars the Spanish system see as „*devolutionary federalism*.“ In January 2013, the Catalan Parliament adopted the Declaration on Sovereignty and the Right of Catalan People to Decide (*Declaracio de Sobirania i del dret a decidir del poble de Catalunya*), which called for the organization of a referendum announced for 2014. The Constitutional Court of Spain declared Declaration unconstitutional and null and void. Regardless, the Court recognized at the same time that the right of the citizens of Catalonia to decide is in accordance with the Constitution as long as it does not constitute self-determination. The right to self-determination is not recognized in the Constitution.

In April 2014, the Spanish Parliament also rejected the proposal for a referendum on the independence of Catalonia. On June 9, 2017, Catalan President Carlos Puigdemont announces a new independence referendum for October 1. What caught the European and world's attention were the reactions of the central authorities to the referendum. (Lulić, 2019, p. 87.) The Spanish Parliament passed an unprecedented decision allowing the Spanish Government to introduce direct rule over Catalonia. The Constitutional Court played an important role, in defining the jurisdictional boundaries between the State and Catalonia. It could be felt that the Court was constantly suppressing the process based on the main argument: „*lack of competence to hold consultations on issues that belong exclusively to the state*.“ The Court recognized that Spanish constitutional law will allow any affirmative ideas, given that „*no issue is excluded from the area of constitutional reform procedures*.“

Conclusion

The people should first have the right to internal self-determination and only if that right is not respected by the parent state, then the people can resort to the right to external self-determination, i.e. secession. (Sterio, 2010, p. 145.) The Catalan case showed that the international community is more likely to resort the solutions that include internal self-determination, and it makes a deviation from external self-determination, i.e. secession, and supports it only as a last resort if all the necessary conditions for it are met. Another important court document is the Advisory Opinion of the International Court of Justice on the Unilateral Declaration of Independence of Kosovo. In that Opinion, the Court established that the Unilateral Declaration of Independence does not contradict international law because there is no prohibition on the issue of a declaration of independence in modern public international law. (Lulić, 2019, p. 99.) In the case of Kosovo, the aforementioned conditions for the right to external self-determination of peoples have been met, i.e. remedial secession, which is in its content in complete contrast to unilateral secession. According to *Cassese*, in the period from the founding of the United Nations until the end of the Cold War, three groups of people that have the right to self-determination crystallized.

These are a) dependent peoples, b) peoples under racist regimes, and c) peoples under foreign military occupation or annexation. In these cases, it is more or less possible to determine who the peoples are (who have the right to self-determination) and in which procedure (how they can) exercise that right. The Catalan people do not belong to any of these groups of people, but the Kosovar people do. (Lulić, 2019, p. 99.) Oppressed peoples, in theory, have the right to external self-determination, which includes the right to „*remedial secession*“ and independence. (Sterio, 2010, p. 138.) Kosovo is such an example. Unlike Kosovo, the case of Catalonia is an example of abuse of the right to self-determination of the people through

its external form, and if it had been realized, it would have represented an illegal unilateral secession. The right to self-determination of peoples, including secession, has exceptionally begun to be tolerated against the will of the central authorities of the states in the case when the conflicts between the central authorities and secessionists have reached the proportions of major humanitarian disasters (Lulić, 2019, p. 101.) and serious systematic violations of human rights, as it is on an example of Kosovo. In that case, as *Buchanan* previously defined in his theory of remedial secession, secession will only be allowed as a last resort when a group in a certain territory within an existing state is denied basic human rights and freedoms and their survival is threatened. In the examples of the case studies, and especially of Catalonia, we see that they strongly shook and destabilized the EU and that a significant step was taken towards the disintegration of the European political scene, which will eventually affect the whole world.

In the case of Catalonia, *Coppieters* believes that the „*Franco's Map*“ as a justification for secession is a „*fig leaf*“ for social and economic egoism, cultural and national arrogance, and the „*bare ambitions*“ of local politicians. (Lulić, 2019, p. 103.) Since in the case of Catalonia there is no place for the application of „*remedial secession*“, because Spain has been a democratic state since the end of the 70s, *Connolly* proposes the so-called „*consensual secession*“, anything beyond that would represent an abuse of that right. (Lulić, 2019, p. 105.) According to opponents of secession, Catalonia is not a dependent territory or a territory where severe human rights violations occur, unlike Kosovo where it was evident. The internal right to self-determination has been realized and exhausted because they live in a democratic and highly decentralized state. (Lulić, 2019, p. 108.) It is necessary to conclude that the issue of Kosovo should remain a *sui generis case* in modern public international law and the last permissible action in achieving independence in the world, and not a precedent in international legal practice.

Bibliography

- Arbatov, A. G., & Acheson, D. C. (2000). *The Kosovo Crisis: The End of the Post-Cold War Era* (The Kosovo Crisis, pp. 1–20). Atlantic Council. <https://www.jstor.org/stable/resrep03503.5>
- Berković, S. (2021). Pravo naroda na samoodređenje i obveza poštovanja ustavnog poretka: Slučajevi Katalonije i Hrvatske. *Međunarodne Studije*, 21(1), 23–47.
- Bursać, S. (2010). Pravo na samoopredeljenje naroda. *Međunarodni Problemi*, 62(2), 276–313.
- Castellino, J., & Gilbert, J. (2003). Self-determination, indigenous peoples and minorities. *Macquarie LJ*, 3, 155–178.
- Coleman, A. (2014). The Right to Self-Determination: Can It Lapse. *J. Phil. Int'l L.*, 5(1), 6–34.
- Cornell Law School - Legal Information Institute. (n.d.). *Uti Possidetis Juris*. Retrieved April 20, 2023, from https://www.law.cornell.edu/wex/uti_possidetis_juris
- Danspeckgruber, W., & Gardner, A.-M. (n.d.). *Encyclopedia Princetoniensis. Self-Determination*. Retrieved April 22, 2023, from <https://pesd.princeton.edu/node/656>
- Gavrilović, B. (2013). *Istorija prava na samoopredeljenje, (R)evolucija prava na samoopredeljenje*. 1–26.
- Hannum, H. (1993). Rethinking self-determination. *Va. J. Int'l L.*, 34(1), 1–69.
- Iacob, B. C., Mark, J., Spaskovska, L., & Rupperecht, T. (Eds.). (2019). Self-Determination. In *1989: A Global History of Eastern Europe* (pp. 173–218). Cambridge University Press. <https://doi.org/10.1017/9781108576703.005>
- Ibler, V. (1992). Pravo naroda na samoodređenje i zloupotreba tog prava. *Politička Misao: Časopis Za Politologiju*, 29(2), 53–80.
- Jamar, H., & Vigness, M. K. (2010). Applying Kosovo: Looking to Russia, China, Spain and beyond after the International Court of Justice opinion on unilateral declarations of independence. *German Law Journal*, 11(7–8), 913–928.
- Lulić, M. (2019). Fenomen secesionističkih zahtjeva u demokratskim državama: Slučaj Katalonije u usporedbi sa Škotskom. *Pravni vjesnik*, 35(1), Article 1. <https://doi.org/10.25234/pv/7716>

- Malgosia Fitzmaurice. (2019, June). Oxford Public International Law [Encyclopedia entries]. *Arbitration — Recognition*. <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e13>
- Marijan, I. (2021). Kosovo i Abhazija – Pitanje Neovisnosti. *Polemos*, 24(1), 63–79.
- Perišić, P. (2013). Pravo naroda na vanjsko samoodređenje izvan kolonijalnog konteksta i slučaj proglašenja nezavisnosti Kosova. *Zbornik Pravnog Fakulteta Sveučilišta u Rijeci*, 34(2), 761–783.
- Perry, F. V., & Rehman, S. (2015). Secession, the Rule of law and the European Union. *Conn. J. Int'l L.*, 31, 61–91.
- Ryngaert, C., & Griffioen, C. (2009). The relevance of the right to self-determination in the Kosovo matter: In partial response to the Agora papers. *Chinese Journal of International Law*, 8(3), 573–587.
- Šarčević, E. (2022, May 8). *Pravo naroda na samoopredjeljenje sa otcjepljenjem*. <https://edinsarcevic.wordpress.com/2022/05/08/pravo-naroda-na-samoopredjeljenje-sa-otcjepljenjem/>
- Sterio, M. (2010). On the right to external self-determination: Selfistans, secession, and the great powers' rule. *Minn. J. Int'l L.*, 19(1), 137–176.
- Summers, J. (2004). The rhetoric and practice of self-determination: A right of all peoples or political institutions? *Nordic Journal of International Law*, 73(3), 325–363.
- Throntveit, T. (2011). The Fable of the Fourteen Points: Woodrow Wilson and National Self-Determination. *Diplomatic History*, 35(3), 445–481.
- United States Department of State. (n.d.). Office of the Historian. *Wilson's Fourteen Points, 1918*. Retrieved April 22, 2023, from <https://history.state.gov/milestones/1914-1920/fourteen-points>
- Veljković, B., Colarič Jakše, L. M., & Vojinović, B. (2014). Samoopredjeljenje naroda i suverenost država. *SVAROG*, 9, 9–19.
- Vidmar, J. (2009). International Legal Responses to Kosovo's Declaration of Independence. *Vanderbilt Journal of Transnational Law*, 42(3), 779–852.
- Whelan, A. (1992). Self-Determination and Decolonisation: Foundations for the Future. *Irish Studies in International Affairs*, 3(4), 25–51.