

## ETHNICAL MINORITIES AND ISSUE OF CHANGING THE STATE TERRITORY

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### **Abstract:**

*Although, traditionally, the European Union is associated to the uniformity of the rules imposed, such as common market or unique currency, the challenge for European Union consists in finding the balance between the uniformity of economic rules and diversity involved by the multitude of traditions, cultures, ethnic groups living between its borders, diversity to be enriched more pursuant to the accession of candidate states.*

*Therefore, even if through time it was brought in discussion countless times, lately the problem of secession has become more and more emphatic, both in states from the European Union – Spain (Catalonia, Basque Country), Belgium (Flanders) or Great Britain (Scotland) and in other European states, like the cases of Kosovo and Crimea.*

**Keywords:** ethnic minorities, secession, self-determination, Kosovo, Scotland, Crimea.

### **Introduction**

Despite the fact that Scotland rejected, by referendum, the acquirement of independence, and the Constitutional Court of Spain suspended the effects of law and of Catalan decree related to the referendum on the independence of Catalonia called on 9 November 2014, accepting the recourse presented by the Government from Madrid, opposing to such vote, the issue of ethnical minorities, as well as the issue of modifications of state territory is current, captivating the European separatists. Such secessionist movements, who have gained momentum lately and who we meet more often, are underpinning their independence requirements on the right of self-determination of peoples, a principle that is recognized in a series of international fundamental instruments like the UN Charter, the Declaration on Principles of International Law, the Convention on Civil and Political Rights, the Final Act of Helsinki, The African Charter of Human Rights or the CSCE Charter from Paris for a New Europe; moreover, it was reaffirmed by the ICJ in the Namibia, Western Sahara and Eastern Timor cases, when it was confirmed its erga omnes character that allows people to choose their own political statute and to determine their own economic, social and cultural development.

### **Minority in the current context from Europe**

*ETHNICAL MINORITIES AND  
ISSUE OF CHANGING THE STATE TERRITORY*

In the historical evolution of the international law, the issue of minorities started to appear as a distinct field, before complete secularization of social and political life. Moreover, upon the crystallisation of minorities as a group, the first disputes appear – conflict situations and disputes between minorities and majority, within the developing states or between such state entities. This status existed until the incorporation of states, as well as afterwards.

The issue of defining the notion of national minority is controversial and up to present, no unanimously accepted definition was encountered. The expressions related to such definitions are often vague.

The recommendation no. 1134<sup>1</sup> regarding the rights of national minorities, adopted by the Council of Europe Parliamentary Assembly at 1st October 1990, defines the minorities as “distinct or separated groups, well established and defined on the territory of a state, whose members are citizens of that state and have certain religious, linguistic, cultural or other characteristics that separates them from the majority of the population”.

In the meaning of recommendation no. 1177<sup>2</sup> regarding the rights of national minorities, adopted by the Council of Europe Parliamentary Assembly from 5th February 1992, national minorities are “citizens that share specific characteristics of cultural, linguistic and religious order” and who “could wish to get recognized and guaranteed their possibility of expressing this characteristics”. It is specified that “these are the groups that share this characteristic inside the territory of a state, which are named by the international community, after WWI, minorities, without this name to imply any inferiority in any domain”.

Also, within the Report of the CSCE meeting of experts on national minorities affairs, which took place in Geneva on 19th July 1991<sup>3</sup>, it is tried a new approach to define the minorities, underlining that “not all ethnic, linguistic or religious differences necessarily lead to the creation of national minorities”.

A wide definition, maybe the amplest, is provided within a document draft submitted to the Council of Europe in 1993, as Annex to the Recommendation no. 1201 of the Parliamentarian Meeting of Council<sup>4</sup>, respectively the draft of Additional Protocol to the European Convention of Human Rights, concerning the individuals that belong to national minorities: “based on such convention, the expression of national minority designates a group of individuals within a state, who:

- Have the residence on the territory of such state and are its citizens;
- Entertain ancient, solid and durable relations with this state;
- present specific ethnical, cultural, religious or linguistic traits;
- are rather representative, although less numerous than the rest of the population of this state or a region thereof;
- they are animated by the desire to jointly maintain what forms their common identity, mainly their culture, traditions, religion and language”<sup>5</sup>.

Some authors have tried to outline factors that make a distinction between the national and ethnical minority. One has claimed the “affective state”, “the psychological dimension”, “the specific connections”, etc. The essential factors of differentiation would be the historical, political, economic, social, cultural and psychical factors. The totality of such factors would have been materialised in the statehood of some communities and the distinction would be that “the nationalities used to have the possibility to organise a state, using its own governing institutions, whereas the ethnical groups had no such chance or capacity”.

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<sup>1</sup> <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=15168&lang=en>.

<sup>2</sup> <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=15211&lang=en>.

<sup>3</sup> <http://www.osce.org/hcnm/14588?download=true>.

<sup>4</sup> <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=15235&lang=en>.

<sup>5</sup> C. Jura, *Securitatea statelor. Privire specială asupra minorităților*, “C.H. Beck” Publishing House, Bucharest, 2013, pp. 28-29.

We notice that the “majority of ethnical groups are a consequence of emigration from one part of the world to another. Unlike such minorities, the national communities are a consequence of changing the borders and not of emigration or immigration”.

We may make a distinction between the national minorities and ethnical minorities “as there is or not a state different from that where are living the citizens of such minorities and where the individuals of the same national origin constitute a majority. For instance, in Romania, the Hungarians or Germans are national minorities, whereas the gypsies are ethnical minority”<sup>6</sup>.

According to the “Declaration of the rights of individuals belonging to national or ethnical, religious and linguistic minorities”, the main rights to be enjoyed by the individuals belonging to national minorities are: the right to culture, the right to religion, the right to use the mother tongue, the right to effectively participate to the decision process concerning relevant issues for such minority, the right to incorporate own associations, to maintain contacts with the members of the group, with individuals belonging to other minorities, as well as contacts with citizens of other states to which they are connected by national, ethnical, religious or linguistic affiliation<sup>7</sup>.

The rights that national minorities are enjoying are different rights offered to individuals that belong to those minorities and not to ethnic, religious or linguistic groups, considered per se (as such). These rights can be exercised individually, but also in common, but they do not transform in collective rights.

Regarding the minorities’ right of establishing and maintaining free and peaceful relations over frontiers with individuals that are legally based in other states, specifically with those who have in common the cultural, ethnic, linguistic or religious identity or the cultural inheritance, does not concede to other states responsibilities to protect the minority groups from another state.

### **Ethnical diversity of Europe**

In Europe, three kinds of ethnical minorities are encountered:

1. Indigenous populations encountered on the current territory of Europe before being populated by successive migrating stages.

Such a group is the *Sami* or Lappish population from Sweden, Norway and Finland, which lived a much more nomad life in the past, being subsequently forced to settle.

In order to support the maintenance of linguistic inheritance, the Scandinavian states have introduced a range of measures to support the educational system in mother tongue.

Another group would be the *Inuits* occupying a small part of Greenland Island.

2. The immigrants, who are groups that decided to leave their country of origin mainly due to political or economic reasons.

On the territory of European Union, there are two kinds of immigrants: citizens of a member state living in another state on EU territory, who, due to free circulation in the Union are not affected by discrimination or prejudices. An interesting example in this respect is Andorra, where the majority population is formed of immigrants, the majority Spanish citizenships, individuals with Andorran citizenship being in quantum of 18.4%.

The second type of immigrants is represented by groups coming from outside the European Union, either from a continent, mainly from Central and South-East Europe or from outside it:

- Turks and Kurds in Germany, Belgium;
- Algerians, Moroccans, Tunisians in France;
- Albanians, Moroccans, Slovenians, Tunisians in Italy;
- Vietnamese, Chinese, Indians, Pakistanis in Great Britain (mainly immigrants coming from states members of Commonwealth);
- Turks, Indonesians, Moroccans in Netherlands;
- Moroccans Spain etc.

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<sup>6</sup> V. Catana, *Drepturile aparținând minorităților naționale*, Publication of the Institute of Public Policies, Chișinău, 2002, available on (<http://www.ipp.md/lib.php?l=ro&idc=171&year=&page=5>).

<sup>7</sup> C. Jura, *op. cit.*, p. 94.

In most of the cases, such groups, mainly the non-European of Islamic religion, face the prejudices of majority population and discriminatory practices.

Discrimination is manifested by intolerance, abuse, force and a range of restrictive policies.

A special category of immigrants are the refugees. The refugees are involuntary immigrants. They are generally a minority in the country of origin, being persecuted by an oppressive regime due to the affiliation to a certain ethnical, religious, linguistic or political group. The majority of the refugees is encountered in the countries from south Europe and is coming mainly from Africa, Asia Middle East. Recently, thousands of refugees tried to escape from the borders of former Yugoslavia.

The estimated number of refugees in Europe is 2.5 million.

3. The national or historical minorities are groups ethnically different from the majority population, remained on the territory occupied by it by redefinition of borders: Basque in Spain, Hungarians in Romania, Slovakia, Sorbs in Germany, Scots in Great Britain, Germans in Alsace and Lorena (France)<sup>8</sup>.

### **The existence or inexistence of a right to secession in international law**

In the notice related to the secession of Quebec, the Supreme Court of Canada considered: "It is clear that international law has not specifically provided to the components of suzerain states the right to be unilaterally separated from the "parent" state. [...] Considering the absence of a specific authorisation for unilateral secession, those proposing the existence of such right hold the following arguments:

a) the proposal that unilateral secession is not specifically forbidden and which is not forbidden is implicitly allowed; and

b) implicit obligation of states to acknowledge the legitimacy of secession achieved in exercising the well-determined right on international level of a people to self-determination"<sup>9</sup>.

The international law does not include any right to unilateral secession or an express negation of such right, although the negation is implicitly deduced, to a certain extent, from exceptional situations imposed for the secession to be allowed in conformity to the right of people to self-determination, such that the secession is possible in the case of an oppressed or colonial people. However, the international law pays a great importance to territorial integrity of nation states and, in general, leaves to the internal law of the existent state, to which the secessionist entity is still part, the decision related to create or not a new state. Practically, the presumption is that secession is not in conformity to international law, and the conformity situations rely on internal law of such state, or on the right of people to self-determination.

There is no incompatibility between maintaining the territorial integrity of states and the right of a "people" to fully exercise self-determination. Another state with a government completely representing the people or peoples on their territory, on equal bases and without discrimination, and observing the principles of self-determination by internal arrangements, is entitled to protection of territorial integrity in conformity to international law.

The general state of the international law related to the right to self-determination is that this law operates within the general protection awarded to territorial integrity of "parent" state. However, there are certain situations when the right to self-determination of peoples may be "externally" exercised, which, in this context, may be equivalent to secession: the colonial people and those under foreign occupation".

Several authors stated that a secession right would exist in the context of self-determination and in a third circumstance. Although this third circumstance was presented in several manners, the essence of proposal is that, when person is prevented from exercising in a real manner its self-determination, then it has the right, as an ultimate solution, to secession.

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<sup>8</sup> *Politici privind minoritățile etnice în Europa*, Publicities of the Centre of Resources for Ethno-cultural diversity, available on ([http://www.edrc.ro/docs/docs/caietel\\_minEU-RO.pdf](http://www.edrc.ro/docs/docs/caietel_minEU-RO.pdf)).

<sup>9</sup> *Reference re Secession of Quebec*, Supreme Court of Canada, 1998, available on (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do?r=AAAAAQAGcXVIYmVjAAAAAAAE>).

The right to secession appears only in conformity to the principle of self-determination of a people, in conformity to the international law, when „a people” is governed as part of a colonial empire; when a “person” is subject of foreign occupation, domination or exploitation; and, possibly, when a “person” is denied the real exercise of the right to self-determination within the state to which it belongs.

Practically, in order to apply secession, as exception to create states, two conditions have to be met:

- firstly, the population for a certain part of such state is subject to some serious breaches of human rights or other forms of oppression, on national level and, thus, it is denied the right to self-determination with the rest of the population of such state; and
- secondly, in such situation, there is no other valid option to settle the issues appeared within such state.

These two conditions are cumulative. However, the analysis of the second condition is necessary only if the first is met.

It is obvious that these circumstances do not apply in the case of minorities, because only the peoples have the right of self-determination. The application of this principle to the national minorities would be extremely dangerous, because this can easily lead to numerous disputes<sup>10</sup>.

The difference between minorities and peoples, the sole beneficiaries of self-determination, is made by the territorial factor, which represents an essential element in the process of forming of peoples; the degree of political organization, which is reduced in the case of minorities; the dynamic of the group, which is a distinctive one – in the case of the people, its aspiration for individual existence is essential for its defining and becoming as such; in the case of minorities, the principal aim is to maintain the cultural, linguistic and religious identity within the existent political organization<sup>11</sup>.

Therefore, we consider that unilateral secession may be regarded as being legal when: it's regarding peoples from territories which are subject to decolonization; it's allowed by the national legislation of the parent state in question; the secessionists are a people; their parent state has violated flagrantly their human rights; there are no other remedies in international or national law, if these conditions are fulfilled.

### **Kosovo: unique case or precedent of unilateral secession?**

Kosovo is a majority Moslem province, but pro-occidental and weakly developed from an economic perspective. The region represented the centre of Serbian Empire until the middle of XIV century, and the Serbians consider Kosovo the cradle of their civilisation.

During the five centuries of ottoman occupation (after the Battle from Kosovo - Mierlei Field - from 1389, the Serbians were defeated, which represented the start of a new era for the region, that passed under the control of Ottoman Empire), the ethnical profile of province has changed. The Albanians, most of them Moslem, have become the majority.

In 1946, the province of Kosovo was integrated in the Yugoslavian Federation of the communist Iosif Broz Tito. According to the Yugoslavian Constitution from 1974, the status of the Kosovo region was of an autonomous province<sup>12</sup>, and in 1989 that status was abolished by Slobodan Milosevic, the former president of Yugoslavia. After the Albanese ethnics from the province have reacted violently towards the withdrawal of the autonomy, Milosevic has sent, in 1990, the Yugoslavian Army in Kosovo and has dissolved the province's parliament. In September 1990, the Albanese ethnics from Kosovo have organized a referendum through which

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<sup>10</sup> C. Jura, *op.cit.*, p. 55.

<sup>11</sup> Irina Niță, *Conflicte etnice și soluții teritoriale. Studiu de caz: Declarația de Independență a Kosovo*, Romanian Journal of International Law, no. 6, “C.H. Beck” Publishing House, Bucharest, 2008, pp. 3-4.

<sup>12</sup> *Cazul Kosovo: Trecut și Viitor*, Academic Journal, Edition 6, Centre of information and documentation on NATO from Moldova, Chișinău, 2008, p.5, available on ([http://nato.md/uploads/Analize%20si%20comentarii/Jurnal%20Academic/JA\\_nr\\_6.pdf](http://nato.md/uploads/Analize%20si%20comentarii/Jurnal%20Academic/JA_nr_6.pdf)).

*ETHNICAL MINORITIES AND  
ISSUE OF CHANGING THE STATE TERRITORY*

they decided the secession from Serbia and Yugoslavia. Evidently, the results of such a referendum could not be recognized.

Faced with the firm attitude of Yugoslavian authorities (formed, beginning with 1992 from Serbia and Montenegro), the Albanese ethnics have organized a guerilla movement, attacking mostly the Serbian police forces. The tension has grown and the Serbian authorities have reacted again very harsh, forcing the Albanese inhabitants of the province to leave their homes. Albania has contributed to this situation because it has supplied the Albanese ethnic from the province with weapons. At the end of the summer of 1998, the problem of the Albanese ethnics from Kosovo, who named themselves Kosovars, has already become a humanitarian affair which draws the attention of the international community and the application of the provisions of the UN Charter and of the international law.

At the end of 1998 the Serbian authorities have launched an offensive against the Liberation Army of Kosovo (a paramilitary formation of the ethnics), which determined the implication of the international community through the means of Rambouillet talks from 1999, talks that lead to no definite solution. In March 1999, NATO launched a series of aerial bombardments over Serbia, bombardments that had had the effect they hoped, because the Serbian forces retreated from the province in 1999.

The province has been divided in sectors patrolled by the British, American, French, German, Italian and later Russian forces that formed the peacekeeping force named KFOR<sup>13</sup>. The Albanese refugees have begun to return in the province, and Kosovo was placed under the temporary administration of the UN, named UNMIK<sup>14</sup>.

The tensions between Albanese ethnics and Serbians have remained high, despite the pacifying efforts from UNMIK. The 2002 elections from the province have led to the establishing of some self-governing organism under the supervision of UNMIK.

On 14th October 2003, the Serbian and Kosovar leaders meet in Vienna for the first discussions after the ending of the conflict from 1998 -1999.

In December, UN establishes a set of standards which Kosovo has to meet so that the negotiations regarding the determination of the final status could be launched in 2005.

In March 2004 are taking place the worst confrontations since the ending of the conflict in 1998 – 1999, following that in June 2004 the Council of Europe would adopt a partnership with Serbia and Montenegro that would include Kosovo. In October, President Rugova is reelected after his democratic league wins the general elections, elections that were boycotted by the Serbians from Kosovo.

In October 2005, the ambassador Kai Eide recommends in his report that the discussions regarding Kosovo should continue.

Afterward, the Secretary General of the UN Kofi Annan names Martti Ahtissari as a special representative for the coordination of the political process regarding the future of Kosovo province. In the same month, The Council on general matters of the EU, approves the appointment of Stefan Lehne as representative of EU in the matter concerning the Kosovo province. The European Commission publishes its first report regarding Kosovo under the Resolution 1244 of the UN.

In February 2006 begin the discussions regarding the status of Kosovo under the auspices of the special representative of the UN, Martti Ahtissari.

In July 2006, in Vienna, are taking place the discussions at presidential level regarding the future of the Kosovo province, and in August, same year, the Government of Kosovo adopts a plan of action regarding the European Partnership.

On 17th February 2008, the Parliament of Kosovo has adopted a proclamation which declared Kosovo an independent and sovereign state. Also, it is affirmed the intention to respect the process stipulated in the Ahtissari Plan.

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<sup>13</sup> <http://www.aco.nato.int/kfor.aspx>.

<sup>14</sup> <http://www.unmikonline.org/pages/default.aspx>.

On 8 October 2008, the General Meeting of United Nations voted in favour of the proposal of Serbia concerning the application for a consulting notice of International Court of Justice related to the conformity to the international law of the declaration of independence of Kosovo. 77 states voted in favour of the resolution, and 6 against (Albania, Marshall Islands, Micronesia, Nauru, Palau, and United States of America). 74 states refrained and 35 refused to participate to the vote. Romania voted in favour of the resolution, with the other states members of EU which do not acknowledge the independence of Kosovo (Cyprus, Greece, Slovakia and Spain; the other members refrained). By its notice, the International Court of Justice was going to answer the question: “is the unilateral declaration of independence of provisional institutions of self-governing from Kosovo in conformity to the international law?”

In 2010, along with the consultative opinion, the ICJ concluded that the adoption of the declaration of independence from 17th February 2008, has not violated the international general law, the resolution of the Security Council 1244 (1999) or the Constitutional Frame. Therefore, the adoption of this declaration has not violated any rule of international law.

The issue acquired a new dynamics in July 2010, with the consulting notice of the International Court of Justice which decided that the unilateral declaration of independence does not contravene the norms of international law. Thus, until 13 august 2014, 108 states within ONU acknowledged the independence of Kosovo, becoming member state of IMF and World Bank.

The Occident that supported from the beginning the independence of Kosovo labelled this case as *sui generis*, and we adopt as well this opinion.

Actually, Kosovo represents something completely special, combining a range of special characteristics not held by any other secessionist region in the world:

- Kosovo was under ONU international administration for around 8 years;
- Kosovo possessed during the Constitution period 1974-1989 competences and traits equivalent to those of other federal republics from Yugoslavia; consequently it has the same right as Croatia or Macedonia to substantiate the statehood;
- the independence of Kosovo is supported on several levels by EU and NATO, except for few states from its structure;
- the act of independence of Kosovo was not declared null by the Council of Security of ONU, although some permanent members of it qualified it as illegal (Russia, China);
- there is no other solution, other than the one of independence, considering that the population of the Kosovo province is formed, over 90%, from Albanese ethnics;
- the Kosovar Albanese have become the victims of war crimes, of genocide and of a humanitarian crisis, a fact that was condemned by the international community;

In other words, the international doctrine enables the creation of new state entities when we talk about a humanitarian catastrophe which threatens the international peace and stability.

### **The Secession of Crimea**

On the 6th May 2014, the Parliament of Crimea has adopted the Resolution no. 17-2-6/14 which provided that on 16th March 2014 a referendum regarding the secession of Crimea will take place. Programmed at 10 days from the day the resolution was issued, the referendum was characterized by a complete lack of transparency in what regards the lists of participants, of local electoral commissions and the lack of impartial international observers. Moreover, the initiative wasn't offering to the electors the option of status quo, letting them with only two possibilities – to join the Russian Federation as a federal subject or to go back to the 1992 Crimean Constitution and to be an integrant part of Ukraine. According to reports, 96.7% of the Crimean citizens have elected to join Russia, thus taking place a unilateral secession. Subsequently, the region declared its independence and asked the Kremlin to join Russia. The referendum was recognized only by some states that have close relations with Russia, some of them even UN members (15 of them), like Armenia, Kazakhstan, Kirgizstan, Afghanistan, North Korea,

*ETHNICAL MINORITIES AND  
ISSUE OF CHANGING THE STATE TERRITORY*

Venezuela, Uganda, Nicaragua etc., but also by non-UN states like Abkhazia, South Ossetia and Nagorno-Karabakh.

In our opinion, we consider that the secession of Crimea is illegal, because the constitutional frame of Ukraine does not allow secession. In general, all political systems insist upon the legality of the secession through constitutional means. According to the Ukrainian Constitution, “the Autonomous Republic of Crimea is an integrated part of Ukraine and all the problems delegated to its authorities are resolved in the reference frame determined by de Constitution of Ukraine”, and any “alteration of the territory of Ukraine shall be resolved by a Ukrainian referendum”, not by a territorial one.

Another reason for which we consider illegal the secession of Crimea is that the secessionists (the Russian population of Crimea) cannot be regarded as a “people”. As it follows from the Quebec case, a “people” will be governed as a “part of a colonial empire”, will be the “subject of foreign subjugation, of exploitation and domination”, “will be denied any right to self-determination in the frame of the state which it belongs”.

And finally, we consider that there is no proof that the rights of the Russian population of Crimea were subject to a violation of human rights from the Government of Ukraine, which would allow us to be in the situation of Kosovo. The High Commissioner for National Minorities of OSCE has not found any proof of violations of the rights of the Russian speaker population during his visit in Kiev and in Crimea. Therefore, all the claims that the Russian-speaking population is submitted to violence and oppression are groundless.

**Situation in Scotland**

On 18th September 2014 took place the referendum for the independence of Scotland. The Scottish citizens were asked if they want their country to become independent, leaving the United Kingdom.

The issue of independence was raised in 2007 by the leader of The Scottish National Party (SNP) Alex Salmond. In that year, the SNP won the greatest number of votes, and Salmond was named Prime-Minister of Scotland. Although, he could not keep his promise, his party having won only 47 mandates, when they needed 65 for majority.

This problem was to be reopen in 2011, when SNP had the majority in the Holyrood Parliament with 69 mandates out of 129 after the elections, and the plans to organize a referendum for the independence of Scotland were announced by Salmond in May 2011.

After the insistences of Alex Salmond regarding the organization of a referendum on Scotland’s independence, the British prime-minister, David Cameron, finally agrees and so, on 15th October 2012, the British and Scottish Governments sign the Edinburgh Agreement on the terms of the independence referendum, which will take place in the Fall of 2014.

On 21st March 2013, during a session of the Scottish Parliament, Alex Salmond announced the date for the referendum – 18th September 2014; the electors would have to answer to the question “Should Scotland be an independent state?”, and the project of independence, forwarded on 21st March, passed in the Scottish Parliament on the 14th November 2014 and received the Royal Notice on 17th December 2013, following that on 24th March 2016 Scotland to be declared officially independent in the case the result of the referendum would be for an independent Scotland.

At the end of the most intense political campaigns ever experienced by Great Britain, the dream of the first Scottish Prime Minister, Alex Salmond, was shattered with the decision of over 55.3% per cent of Scots to be part of the United Kingdom. 2.001.926 (55.3%) Scots voted in favour of maintaining the Kingdom, whereas 1.617.989 (44.7%) voters supported the independence. For victory, 1.852.828 votes were necessary. The referendum from Scotland may be deemed a lesson of democracy given by the politicians of Great Britain to the entire world. 86.4% of the electorate participated to vote, despite the fact that they had to register in advance on voting lists.



The Scottish referendum shows us that the solution of the secession is possible with the abidance of the constitutional frame. Without the approval of Great Britain, Scotland could not secede and could not become an independent state, recognized by the international community. This referendum was possible because the Great Britain has a flexible constitutional frame, which allows it to adopt constitutional laws without modifying a written text of the Constitution, a thing that is impossible in other states of Europe, which have a rigid constitutional frame.

### Conclusions:

In extreme cases of massive violations of human rights, unilateral secession, although usually not admitted in international case-law and practice, may be accepted, as was the case in Kosovo. With the recognition of Kosovo's independence, we practically witness the formation of customary law on unilateral secession in certain extreme cases. Even so, we must emphasize that this rule does not operate in favor of minorities. No regulation views the national minorities as possessing the right to self-determination. The Crimean secession is illegal and the referendum on Scottish independence was possible only with the consent of Great Britain.

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- <http://www.osce.org/hcnm/14588?download=true>;
- <http://www.unmikonline.org/pages/default.aspx>.