**On the law of state unity and secession as the right of an exceptional case.**

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**Abstract.** *In the article, based on a review of the practice of attempts to exercise the right of secession in modern states, the author's views on the connection between the methods of ensuring the right of peoples to self-determination and the preservation of state unity with the decentralization of the territorial organization of the "mother state", close to the signs of a federal structure, are expressed; on the differences between treaty and constitutional federations regarding the issue of secession.*
**Keywords:** *state unity, sovereignty, secession, national and cultural identity, constitutional identity, the right of peoples to self-determination, human rights.*

One of the most discussed topics of state studies in the modern world is the issues of the law of state unity - as the main indicator (main feature) of state sovereignty and the right of secession (which is understood as the question of the secession of some part of the state from this state). Initially, the relevant problems were related to the federal state structure and concerned a single case - the American practice associated with the attempt by six southern states in 1861 to secede from the United States, which caused a civil war, but the unity of the Federation was preserved[1]. However, after the Second World War, a new history of secession began, when its discussion arose as a collective right of the people. So, the authors: Soili Nisten-Haarala, professor of international law and comparative law at the University of Lapland (Finland) and Dmitry Furman (professor, Institute of Europe of the Russian Academy of Sciences), characterizing the history of the practice of the people's right to self-determination up to separation (secession), even distinguish stages of development the right to secession, highlighting such varieties as: the right of peoples conquered by Nazi Germany; the right of colonial peoples, as the abstract right of peoples to liberation from national oppression without the consent of the state from which

[1] See about this: Buchanan A. Secession: The Right to Secession, Human Rights and the Territorial Integrity of the State. URL: http://old.sakharov-center.ru/publications/sec/004.html (appeal date: 17.07.2021).

separation occurs, as a human right that is not a matter of exclusively internal discretion of the state[2]. At the same time, according to these authors: "the assertion of the right to self-determination should be qualified as its" victory "over the principle of sovereignty."[3] The statement is clearly relative. Moreover, the authors themselves referring to two UN Conventions of 1966: (the Convention on Civil and Political Rights and the Convention on Economic, Social and Cultural Rights) and the Declaration on Friendly and Good Neighborly Relations adopted in 1970 by consensus (UN General Assembly Resolution 2625, XXV )", Which "speaks of the right to self-determination of all peoples, without limiting it by the colonial peoples "and that" the same principle is confirmed by the decisions of the International Court of Justice for Namibia and Western Sahara", nevertheless it is rightly noted that: "from here to the real application of this declared principle to non-colonial peoples - almost as far as it was from the proclamation of the legal equality of all people during the creation of the United States to the real provision of the rights of black Americans"[4].

The new history of the realization of the people's right to self-determination is associated with the post-war period, and applies not only to federations, but also to unitary states. Thus, the widespread practice of secession arose in the wake of the collapse of the colonial system (based on the Declaration of Decolonization, 1960). Since the 90s of the XX, the practice of secession has been associated with the crisis of the world socialist system: in particular, with the collapse of such federal states as the USSR, SFRY and CCSR. Instead of the disintegrated USSR, 15 new states arose - the former Soviet republics of the USSR, between which separate territorial disputes arose, since the internal borders in the Union were not clear, had an administrative rather than a political nature; the phenomenon of the so-called "unrecognized republics" arose (Abkhazia, South Ossetia, Nagorno-Karabakh - in the past autonomous republics that were part of the former Soviet republics of the USSR). In 1980, 1995 and 2014, three referendums were held in the French-speaking province of Quebec, a subject of Federal Canada, the last of which was successful, but the legal position of the Supreme Court of Canada prevailed on the possibility of the people exercising their right to national self-determination within the framework of the existing nation state.

The modern practice of attempts to exercise the right of secession also takes place in a number of unitary states of Europe, where, especially in connection with the colossal migration flows of refugees from the countries of the Middle East, Asia and Africa that began in 2015-2018, separatist sentiments intensified and referendums were held in the territories of compactly

[2] Soili Nisten-Haarala, Dmitry Furman. The right to secession/ Old. old.sakharov-center.ru P.8,9
[3] Soili Nisten-Haarala, Dmitry Furman Indicated article P. 8
[4] Soili Nisten-Haarala, Dmitry Furman Indicated article P.3

residing ethnic groups. minorities on independence (secession from the "parent" state): in Spain (referendum in Catalonia for secession from Spain in 2014, where 90% of those who came to the referendum voted, which amounted to 42% of all voters in Catalonia, there are similar sentiments in the Basque Country - another autonomy of Spain); in Great Britain (independence referendum in Scotland, 2014, in which, however, 55.3% of voters voted against). The media noted the possible activation of separatist movements and organizations in other European states: in France - in Corsica and Brittany, in Italy - the "League of the North", and some others.[5] At the same time, the only case when the separation from the state of its part in Europe was called for by most European countries and the United States was the separation of Kosovo from Serbia, carried out with the help of weapons, which is argued by the fact that there was an acute ethnic conflict between the Albanians and Serbs, supported by "foreign force" (Serbia).[6] The processes of secession in modern times have even affected such a Mega-federal entity as the European Union: June 23, 2016. a referendum was held on Britain's membership in the European Union. 51, 89% of Britons voted for Brexit, slightly less against: 48, 11.

All the events described above, on the one hand, confirm the relevance of international law as the law of states, international guarantees of state sovereignty and the salvation of the world "from wars and chaos"[7], on the other hand, the principles of the priority of human rights actualize discussions on the development of international legal and constitutional legal the foundations of ensuring state unity in situations where there are problems in the relationship of the national state with the demands of domestic opposition movements, either with another state, or with the international community as a whole, regarding the realization by the people constituting the national minority of this state of their right to national self-determination - since in In all these cases, we are talking not only about the collective rights of peoples, but also about guarantees (protection) of the fundamental subjective rights of a person belonging to this ethnic minority.

Prof. And Buchanan is that: "Separation is an extreme form of self-determination. There can be many different forms and degrees of group autonomy within a state... the international community should reduce the attractiveness of secession by: a) providing more effective protection of minority rights and b) encouraging the development of various kinds of intra-state autonomy and ensuring that both parties respect autonomy agreements... secessions, as the most extreme means against the most serious injustices, should be isolated as special, exceptional

[5] Timofeev V. Referendum in Catalonia could provoke Scotland, the Basque Country and Corsica https://kp.ua/
[6] Timofeev V. Indicated article.
[7] Soili Nisten-Haarala, Dmitry Furman Indicated article P.7- 8

cases, and at the same time the spread of intrastate autonomies of the most varied kinds, depending on the characteristics of different specific situations, should be encouraged"[8].

Actually, along this path - the creation of intrastate autonomies of various kinds - are modern processes of modification of unitary forms of government in European countries, such as: Spain, Italy, France, partly - Portugal; outside Europe - China, which is a state "with autonomous units, possessing such a degree of autonomy, which is actually possible only in a federal state, but with the official extension of the unitary form of the territorial structure characteristic of the rest of the state to these units, and the proclamation of the prospect of integration of all parts to a unitary state"[9]. In analytical studies, they are characterized as states with a new form of organization of territories, which in some features approach the subjects of a federal state and stand out in a special kind of form of political-territorial structure, called: regionalized (regionalist) states, states of autonomies, or "quasi-unitary states" (in in the latter case, we are talking about China). As Professor V.V. Maklakov: "The Council of Europe is in every possible way encouraging" the idea of developing regionalism." According to him: “Within the framework of the European Union, the European Parliament in 1988 adopted the Charter on Regionalization, which defined regions as units with historical, geographical, cultural, etc. kinship; in these regions, the population is recognized as having the right to form territorial units in various forms, for example, in the form of a region, a national association or a constituent entity of the Federation. Federalism in this context is seen as a possible form of regionalization."[10] This approach presupposes the use of the possibilities of the constitutional law of the respective national state, in which the problem of relations between the authorities and national minorities has arisen. A hint regarding the subject of constitutional and legal regulation is provided by the study of secession as a right of exceptional cases - on the basis of a comparative analysis of the demands of separatist movements. European practice shows that among a number of reasons in connection with which the question of secession is raised: a) the lack of economic benefits of the stay of the corresponding territory (a subject of the federation, or Megafederation; or autonomy as part of a unitary state) - overstated budgetary obligations of these territories as the most economically developed to the federal (central) government; b) expansion of the bureaucratic apparatus of the central (federal) government, which is turning into a barrier to business development; c) the desire of compactly living national minorities to preserve the signs of their

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[8] Buchanan A. Secession: The right to secession, human rights and the territorial integrity of the state. P. 2

[9] Andreeva G.N. Constitutional law of foreign countries. Textbook. M.: Eximo Publishing House, 2005. P. 524

[10] Maklakov V.V. Constitutional law of foreign countries. A common part. Textbook. M. Wolters Kluwer. 2006. P 808-809; Chirkin V.E. Constitutional law of foreign countries. M. 1997. P. 176; Andreeva G.N. Work order. P. 521-527

national and cultural identity (national traditions, customs, preservation and development of the national language); social problems, increased cost of living.

We would single out two types of constitutional instruments, on the basis of the introduction of which into the subject of constitutional regulation, it would be possible to "remove" the tension in relations between the nation state and ethnic minorities regarding the exercise of the right to self-determination: cultural identity; b) introducing into the relationship between the central government and the regions (autonomies) to a certain extent the elements of delimiting the legislative subjects of jurisdiction and powers, i.e. vesting autonomies with separate legislative powers.

The issue of including in the subject of constitutional regulation of signs of national and cultural identity is associated with scientific ideas about the relationship between the concepts of "national identity" and "constitutional identity" Some experts oppose their combination. So, E. Lukyanova, in connection with the analysis of the law of the European Union, comes to the conclusion that: "the combination of identities (national and constitutional) is at least controversial, and at most erroneous." The author argues this by the fact that: "The constitutional justice bodies of the EU member states" recognizing, in general, the priority of the EU law over national legislation, tried to establish its conditions and limits, reserving the right in exceptional cases and under certain circumstances to consider the issue of non-application EU acts in national legal order. It was convenient to do it under the guise of protecting national and/or constitutional identity ...". According to Lukyanova: "artificially created constitutional identity" is a manifestation of "defensive judicial constitutionalism", the term "constitutional identity" masks the “dispute about sovereignty".[11] It is difficult to agree with the reasoning of the distinguished author that the first step has been taken towards the creation of a kind of "universal constitution", that a "new common constitutional identity" is being born, that there is a "tendency to internationalize constitutional law". Brexit refutes this.

To ensure state unity in the face of the threat of secession, in federal and unitary states through the use (modification) of such tools of the federal form of state structure as the delimitation of the subjects of jurisdiction and powers between the central government and the authorities of its territories: for example, through the introduction of a sphere of joint jurisdiction of two levels of government , depending on the specific alignment of political forces, to ensure the development of cooperative or dualistic principles in the relationship between the central government and regional authorities, autonomies in a unitary state (or subjects of a federal state.)

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[11] Lukyanova E Identity and transformation of modern law // Comparative constitutional review. 2020.№3 (136). P 130-

In connection with the assessment of the federal structure of the state in the context of the analysis of the law of secession as a right of an exceptional case, in addition to the above, we note the importance of classifying federations into contractual (i.e., created on the basis of a treaty between independent states) and constitutional (i.e., proclaimed as federal in connection with the adoption (or amendments) of the Constitution of the state.) As rightly noted in the scientific literature: "Depending on the specified difference in these federations, controversial issues will be resolved in different ways: assignment of powers to the federation or subjects, issues of secession, etc."[12] In this regard, in relation to the practice of Russia, we note that Russia is a constitutional Federation, which provides explanations for the critical appeals of foreign scientists regarding Russian practice.

The federal structure of Russia was first proclaimed in two constitutional acts: the Declaration of the Rights of the Working and Exploited People (of January 25 (12), 1918) and in the first Soviet Russian Constitution (July 10, 1918), which confirmed the principles of federalism declared in the Declaration rights of the working and exploited people, included this document in its text as Section I of the Constitution. The Declaration and the Constitution declared that: "The Soviet Russian Republic is established on the basis of a free union of free nations as a federation of Soviet national republics" (clause I.2; IV of the Declaration). In addition to the republics, the Constitution of 1918 also mentioned this type of subjects of the Russian Federation as autonomous regional unions. It is interesting to note that on the date of Russia's declaration by the Federation, the circle of its subjects was not determined, only in connection with the constitutional provision on the federal structure in Russia (since 1918), autonomous regions and autonomous republics began to be created: the Crimean ASSR was created, formed mainly on the site regional Tauride republic (in Tsarist Russia - it was called the Tauride province). In 1921, the Gorsk and Dagestan Autonomous Republics, the Adyghe and Karachay-Cherkess Autonomous Regions were created. In the 1920s-1930s the multinational Gorsk ASSR was reorganized, on its basis the Kabardino-Balkarian, North Ossetian, Chechen-Ingush autonomous regions were created, which, with the adoption of the next Constitution of the RSFSR - 1936, received higher statuses - autonomous republics[13].

In conclusion, we note that the development of the modern science of secession is based on the theory of the so-called remedial secession as part of the science of modern international law. The theory of remedial secession is based on the idea that the right to secede from one state arises only in the presence of systematic and gross violations of human rights against a national

[12] Andreeva G.N. Ind. Works. P.507

[13] See about this: Hovsepyan Zh.I. Lectures on the constitutions of Russia. Rostov-on-Don. "Phoenix" Publishing House. 2016. P 51- 55

minority or a certain people by the government of the parent state or by a part of its population whose actions are justified by the government[14].

New aspects in the development of the theory of remedial secession are created by judicial practice. So, of interest is the legal position formulated by the Supreme Court of Canada after the winning referendum on the separation of French-speaking Quebec from Canada, which, according to experts, is a landmark "regarding the legality, according to both Canadian and international law." This decision deserves its recognition as a judicial precedent at the level of an international legal source. According to the decision of the Court: the exercise of the right to secession "must be sufficiently limited to prevent threats to the territorial integrity of the existing state" and (let's pay attention to this reservation!) its territory on the basis of equality and without discrimination and respects the principles of self-determination in its internal structure". Only a state that adheres to these principles of building relationships with its people "has the right to protection in accordance with international law" to protect against threats to its territorial integrity (the content of the decision of the Supreme Court of Canada is reproduced on the basis of text from Internet sources, supplemented by my interpretation).

Taking into account modern scientific ideas about the possibilities of ensuring the right of state unity and secession as the right of exceptional cases, the implementation of the Minsk Agreements on Ukraine ("the Set of Measures for the Implementation of the Minsk Agreements" and "Declaration in Support of the Set of Measures for the Implementation of the Minsk Agreements", dated February 12, 2015). The relevance of their implementation is due to the fact that these documents provide: first, "an immediate and comprehensive ceasefire," the withdrawal of heavy weapons, and other measures aimed at protecting fundamental rights; secondly, there are provisions aimed at strengthening the state sovereignty of Ukraine: clause 9 of the Package of Measures provides for the restoration of "full control over the state border by the Government of Ukraine in the entire conflict zone..." and so on.

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[14] See: Aleksanyan S.R. On the question of the theory of remedial secession in modern international law // International legal issues of territory