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THE RIGHT OF PEOPLES TO SELF-DETERMINATION TO SECESSION: CONSTITUTIONAL AND INTERNATIONAL ASPECTS

Abstract
The subject matter of the essay—the phenomenon of secession of a part of state territory—is analysed from two aspects: the constitutional and the international one. We tried to explain the legal nature, normative solutions and consequences of secession, and to prove three hypotheses. The first hypothesis is that initiating the procedure for secession depends on certain factors such as ethnic conflicts, religion, and the distribution of political power in the world. The second hypothesis is that the success of secession depends on the constellation of the political and military power in a state. The third hypothesis is that international law still recognises the final status, although sometimes secession violates the constitutional norms of the predecessor state. In legal theory, secession is one form of exercising the right to self-determination. There is no rule in international law that allows for or prohibits secession. International law lacks precise standards on how to exercise the right to self-determination. From 1918 on there have been decisions that invoke the right of peoples to self-determination, but no legal norms in international law prescribe in what cases and how this right can be exercised. In this essay, we also talked about the dilemma of whether secession of certain territories is a precedent or whether that particular secession can create a custom.

Keywords
Self-determination, Secession, Offensive right, Defensive right, Kosovo

Introduction

Right of peoples to self-determination is universal political principle and a rule of positive (substantive) international public law. There is a lack of procedural rights that would regulate the process of implementing the right of people to self-determination. This fact is causing political and legal obstacles. In further text we will discuss the right of people to self-determination and right of states on territorial unity. Besides, international documents we will discuss this problem from the Constitutional law perspective, taking in account constitutions of contemporary countries.

1. The Character and the Concept of the Right to Self-determination

Self-determination is the right of people to decide their own destiny in the constitutional and international legal order. Definitions of the right of people to self-

determination are rare, but some authors' articles have a section which discusses the definition or the content of the right of peoples to self-determination.[1] Self-determination is a core principle of international law which arose from customary international law.[2] It is also recognised as a general principle of law, and is laid down in many international documents. The purpose of this right developed in the twentieth century. In early 1990s, international support for the right of people to self-determination was on the rise, and successful secessionist movements began occurring during the two World Wars in countries which had gone through the process of decolonization in the 1960s. There are two aspects to the right of people to self-determination: the internal (defensive) and the external (offensive) aspect. As is the case with other rights, this right can also be abused. A particular abuse of the right to self-determination occurs when political forces, possibly the states, located outside of the specific area, use it and, at the same time, encourage and support the requests for self-determination to achieve their own agenda.[3]

2. Legal Basis

One of the aims of the United Nations is self-determination of peoples. The principle of self-determination is mentioned only twice in the Charter, both times in the context of developing "friendly relations among nations".[4] It promotes world peace. In the process of drafting and adopting the Charter of the United Nations, the USSR insisted on the obligation of accepting equality and self-determination of people in a single universal agreement—the Charter of UN—so this was incorporated in the Charter.[5]

[1] Shaw, M. *International law*, 2003., p. 230; Henkin, L. (ed.), *The International Bill of Rights*, 1981.; Diaconu, I., *Minorities in International Law*, Romanian Journal of International Affairs, 3-4, 2001., pp. 171.

[2] This right was first proclaimed as a political concept during the First World War. It was mentioned by president Woodrow Wilson as a combination of the idea of self-determination with the principle of the international state. During the Second World War, it was incorporated in the Atlantic Charter of 14 August 1941 as an obligation of the USA and the United Kingdom of Great Britain and Northern Ireland to respect the right of peoples to choose the form of rule under which they want to live. Cassese, A. *Self-determination of peoples: a legal reappraisal* 1995, p. 38. Broader: Thürer, D., *Self-determination*, Encyclopedia of Public International Law, 8, 1985, p. 364-374. Wilson did not follow his own doctrine in practice, but he did modify it to the disadvantage of those who opposed the war by not giving autonomy to different peoples. In the process of splitting up the Austrian-Hungarian monarchy, the winners of the First World War did not have to be exclusively guided by the criteria of self-determination.

[3] Ibler, V., *Pravo naroda na samoodređenje i zloupotreba tog prava*, Politička misao, 2/XXIX, 1992., pp. 77.

[4] Art. 1(2) of the UN Charter; Art. 55 of the UN Charter.

[5] Kirgis, F. L., *The degrees of self-determination in the United Nations era*, American Journal of International Law, 88, 1994., pp. 304.

However, the wording in the Charter does not define the legal quality of the right to self-determination. It has the nature of an aim the world organisation will work on achieving. It was state practice alone which gave legal nature to the principle of self-determination.

The process of decolonization has a strong meaning for the right to self-determination. During the struggle for decolonisation, the peoples concerned referred to Resolution 1514 (XV) of the UN General Assembly (Declaration on the Granting of Independence to Colonial countries and Peoples) of 14 December 1960. The Declaration talks about the explicit right of all peoples to self-determination. Similarly, Resolution 1803 (XVII) of 14 December 1962 (Permanent Sovereignty over Natural Resources) contains a list of limited rights of peoples concerning the economic aspect of self-determination.

Codification of the right of peoples to self-determination came later on. Both the Pact on Political and Civil Rights and the Pact on Economic, Social and Cultural Rights promote this right.[6] Ten years after the adoption of the UN Charter, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations ("Friendly Declaration")[7] clarified the meaning of self-determination. "Friendly declaration" reflects customary international law, and it is the most authoritative statement on the meaning of self-determination. Finally, the right of peoples to self-determination in relation to the economic aspect is emphasised in Resolution 3281 (XXIX) adopted on 12 December 1974 (the Charter of Economic Rights and Duties). The right of peoples to self-determination became powerful with regional political agreements. It is important to mention the Concluding acts of the Conference of European Security and Cooperation held in Helsinki on 1 August 1975[8] and the African Charter on Human and Peoples' Rights from 27 June 1981.[9]

3. The subject of the Right to Self-determination

Self-determination is a collective right. All peoples have the right to self-determination. It exists as customary law in international community[10] and is affirmed

[6] Art. 1 of the International Covenant on Civil and Political Rights 1966, 999 UNTS 171.; art. 1 of the International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3.

[7] G.A. Res. 2625, 24 October 1970.

[8] Para. VIII of first package.

[9] Art. 20(3) of the African Charter on Human an Peoples Rights.

[10] Kiss, A., *The People's Right to Self-Determination*, Human Rights Law Journal, 7, 1986., pp. 165 and further, pp. 170. and further; Murswiek, D. *Die Problematik eines Rechts auf Sezession – neu betrachtet*, Archiv des Völkerrecht, 31, 1993, pp. 307 and further; Oeter, S., *Selbstbestimmungsrecht im Wandel, Überlegungen zur Debatte um Selbstbestimmung, Sezessionsrecht und 'vorzeitige' Anerkennung*, Die *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 52, 1992, pp. 741-780.

in the practice of several international organisations[11] and international forums.[12] It is applicable *erga omnes*,[13] i.e. peoples are the subject of the right. The two international pacts mentioned in the previous chapter stipulate that all peoples have the right to self-determination based on which they can freely decide on their political status. "Political status", on the one hand, means constitutional status in the sense of establishing an internal organisation and, on the other hand, means external status in the sense of international positioning and receiving the recognition.[14]

There are two different views about the content of the term "peoples". Eastern-European/cultural-biological view equates "nation" with "peoples".[15] Western/state-national view, dominant in communication throughout the world, views "peoples" as an entity comprised of individuals who share the same ethnic, biological, cultural, linguistic and other features.[16] According to this view, the term "nation" is defined as the legal link between the state and the population of the state which is manifested in state symbols such as citizenship, passport, identification card, etc. This can be explained by the fact that, throughout history, the "Eastern" collectives did not have their own state. The geopolitical line separating these two confronting views is the Rhine River. In support of the fact that this state-national view is dominant in the international community we can point to the official name of the most powerful international organisation—the United Nations. Although it has the form of a community of languages and cultures, it also comprises states, and its name is not the "United Peoples" but the "United Nations".

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[11] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian* Territory, Advisory Opinion, 9 July 2004, ICJ Reports (2004). Also: *Legal Consequences for the States of the Continued Presence of South Africa and Namibia (South West Africa) notwithstanding Security Council Resolution 276* (1970), Advisory Opinion, 21 June 1971, ICJ Reports (1970) p. 31; *West Sahara*, Advisory Opinion, 16 October 1975, ICJ Reports (1975), p. 31 and *Military and Paramilitary Activities in and against Nicaragua*, 27 June 1986, ICJ Reports (1986), p. 14 and further.

[12] *Case Concerning East Timor (Portugal v. Australia), judgement* of 30 June 1995, available online at http://www.icj-cij.org/docket/index.php?sum=430&p1=3&p2=3&case=84&p3=5 (accessed 14 June 2018).

[13] With entering into force of both Covenants of human rights (1976) right of peoples to self-determination became essential principle of contemporary international law with character *erga omnes*.

[14] Thürer, D., *Das Selbstbestimmungsrecht der Völker, mit einem Exkurs zur jurafrage, 1976*., p. 111.

[15] Regarding the problem of the definition of "the nation" concerning self-determination from the Yugoslav perspective *see*: Koskenniemi, K., *National Self-Determination Today: Problems of Legal Theory and Practice*, International and Comparative Law Quarterly 43/2, 1994, pp. 260.

[16] Buchheim, H., *Das Prinzip „Nation" und der neuzeitliche Verfasungsstaat*, Zeitschrift für Politik, 1995., p. 61. and futher.

4. Forms of Exercising the Right to Self-determination

People who want to exercise their right to self-determination must prove that they objectively exist as people. However, the existing state borders have to remain the same.[17] These two principles are, in that context, always in collision. In this case, balance has to be made. It can be interpreted as follows: nothing remains from the latter principle and the former principle remains in force.

There are two forms of exercising the right to self-determination: defensive and offensive. The *defensive* form of exercising the right to self-determination means that it is exercised without touching upon the territorial integrity. When particular people exercise their defensive right to self-determination, they are practically guaranteed to live according to the rules which apply to minorities. They have the status of a national minority or territorial autonomy. The *offensive* form of self-determination can be legally allowed only if it is not possible to exercise the right to self-determination in a defensive way. With this form, changes to the existing territory are always made so as to carry out the will of the particular people to form their own state. People who want to secede have to do so through offensive self-determination.

5. Conditions for Offensive Self-determination

There are five elements which must all be applied if people want to exercise their right to offensive self-determination:

1. People in the ethnic sense, people who think of themselves as a people.[18]
2. Circled territory on which these people are a dominant majority.
3. Dominated authority over the whole territory.[19]
4. Traditional area of life of these people, authentic ownership,[20] which cannot be the result of depopulation or colonization.

[17] Opinion Nos. 2 of the Badinter Arbitration Committee on the process of dissolution and the criteria for discontinuance of ex-SFRY stipulate: 'The right to self-determination must not involve changes to the existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise'.

[18] *See*: Art. 1(a) of Opinion Nos. 1 of the Badinter Arbitration Committee. Also *see*: Opinion Nos. 4 of the Badinter Arbitration Committee of 11 January 1992. Basically, what the Badinter Committee said was that people who want to fulfil the right to self-determination first have to have the status of a national minority (*see*: Opinion Nos. 2 and Opinion Nos. 5. This Committee also found that no ethnic people have the right to change state borders. In the case of former Yugoslavia, federal units had the right to secede. The Committee also found that ethnic heterogeneity is not essential, and that citizens are the basis of legitimacy.

[19] Murswiek, D., *Die Problematik eines Rechts auf Sezession – neu betrachtet*, Archiv des Völkerrechts, 31, 1993, pp. 328.

[20] Heintze, H. J., *Völker im Völkerrecht*, in: Ipsen, K., V*ölkerrecht*, 1999, pp. 341.

5. Unbearable discrimination.[21]

A typical example of people who effectively used their offensive right to self-determination are Albanians in Kosovo. Albanians, the majority people in Kosovo, were discriminated for years.[22] They were victims of the apartheid; they were excluded from the Kosovo and Yugoslavia authorities.[23] In our opinion, in the dissolution process of the Socialist Federal Republic of Yugoslavia Slovenia seceded first and then the rest of Yugoslavia dissolved.[24] We find that the reason for this lies in the relationship between the defensive self-determination and the new con-federal social agreement which Slovenes advocated and which has not been made.

6. View on Current Issues

In 2010, the International Court of Justice decided that general international law was not violated with the adoption of the Declaration of Independence of Kosovo,[25] which

[21] Murswiek, D., *Die Problematik eines Rechts auf Sezession – neu betrachtet*, Archiv des Völkerrechts, 31, 1993, pp. 328.

[22] Charney, J. I., *Self-Determination: Chechnya, Kosovo and East Timor*, Vanderbilt Journal of Transnational Law, 34, 2001, pp. 458; Epps, V., *Self-Determination after Kosovo and East Timor*, ILSA Journal of International and Comparative Law (1999-2000), 6, pp. 451; Muharremi, R., *Kosovo's Declaration of Independence: Self-Determination and Sovereignty Revisited*, Review of Central and East European Law, 33, 2008, pp. 417, pp. 418.

[23] *See:* Agani, F., *Nation, National Minority and Self-Determination*, in: Janjić, D. – Maliqi, S. eds, Conflict or Dialogue: Serbian-Albanian Relations and the Integration of the Balkans, 1994.; Ahmeti, S., *Forms of Apartheid in Kosovo*, in: Janjić, D. – Maliqi, S. eds, Conflict or Dialogue: Serbian-Albanian Relations and the Integration of the Balkans, 1994.; *Yugoslavia: Ethnic Albanians – Victims of Torture and Ill-Treatment by Police*. New York: Amnesty International, 1992.

[24] The formation of new countries on the territory of former Yugoslavia and USSR was not exclusively understood as secession, but mostly as an act of dissolution of a common state. Arguments for the dissolution in: Murswiek, D., *Die Problematik eines Rechts auf Sezession – neu betrachtet*, Archiv des Völkerrechts, 31, 1993, pp. 315. Arguments for the dissolution in the case of Czechoslovakia and Bosnia and Herzegovina in: Klein, E., *Die Internationalen und Supranationalen Organisationen*, V*ölkerrecht*, 2001, pp. 296, and for the several secessions in the case of USSR, pp. 297. Arguments for secession, or continued/prolonged secession in, for example: Epping, V., *Internationale Organizationen*, in: Ipsen, K., V*ölkerrecht*, 1999, pp. 397. On the difficulties of performing a secession as a form of resolution of a conflict in former Yugoslavia *see*: Radan, P. *Secessionist Self-Determination: The Cases of Slovenia and Croatia*, Australian Journal of International Affairs, 48, 1994, pp. 183.

[25] The Court gave its advisory opinion on 22 July 2010 declaring that "the adoption of the Declaration of Independence of 17 February 2008 did not violate general international law because international law contains no 'prohibition on declarations of independence'", available online at: http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf (accessed 14 June 2018).

the Kosovo Parliament adopted in 2008,[26] even though this Declaration contradicted Resolution 1244 (1999) of the United Nations Security Council[27] and the Constitution of Serbia.[28] The interpretation of the Court was that the authors of the Declaration, who named themselves the "representatives of Kosovo", were not bound by those two documents. This was a unique case; this was the first time that this international forum decided on the right of a people to self-determination and secession. Did International Court of Justice make a precedent or a custom?

The key element for adopting such an opinion was a letter which Serbia submitted to the International Court of Justice. In the letter, Serbia claimed that one-sided secession of Kosovo was against the law (which was also against the international law). Serbia was supposed to write which rules of international law were broken, but it failed to do so. Then the Court made a decision in which, instead of focusing on the general principles of international law, it focused a little too much on Resolution 1244. From the point of view of international law, a new state is created against the law only if it broke *ius cogens* (obligatory norms of international law) in the cases in which it used violence, regardless of whether it was genocide or ethnic cleansing (which was the case in Turkey and Northern Cyprus) or apartheid. Everything else is a matter of facts. Creation and dissolution of states is not a legal question, but the result of the "status in the field". From the legal point of view, the question would be harder to answer if it were asked in a different way, for example: "Does a one-sided declaration of independence violate the system and norms of the Charter of the United Nations?" However, when Serbia inquired whether international law was violated by the Declaration of Independence of Kosovo, it *a priori* lost the lawsuit. Also, it was very naive of Serbia to rely on Resolution 1244 because all of the UN Security Council resolutions are decisions of a political body, and a political body does not make decisions of a legal nature except when Chapter 7 of the UN Charter, which treats the threats to peace and acts of aggression, is in question.

[26] The Kosovo Assembly adopted the Kosovo Declaration of Independence on 17 February 2008.

[27] SC Res. 1244 (1999), 10 June 1999.

[28] In history, there have been preambles of constitutions whose main goal, through constitutional norms, was to put a stop to an open or a "burning" political issue of the utmost importance for the country, the bearer of the constitution, and thus to exclude the possibility of having different solutions as they would be sanctioned/considered as violations of the Constitution. Serbian Constitution of 2006 says in the preamble that the Autonomous Province of Kosovo and Metohija is an "integral part of Serbia's territory" in which it has a "substantial autonomy" and that this position is followed by "a constitutional obligation on the part of all state bodies to represent and protect state interests in Kosovo and Metohija with regard to all internal and foreign political relations". At the time of the adoption of the Constitution, resolving the final status of Kosovo before the UN was a current issue. Thus, the Serbian Constitution ruled out any decision in favour of the independence of Kosovo.

The International Court of Justice took into account this opinion concerning Resolution 1244, but it did not take into account the general principles of international law. One-sided legal acts cannot be the source of international law, and the Declaration of Independence of Kosovo is a one-sided act; thus, such acts cannot create law because that is in contradiction with the essence of international law which is made only by agreement between two parties and not by one-sided acts. This is a formal legal question, not a fact of Kosovo existing as a state. In its decision, the International Court of Justice invoked Resolution 1244 saying that the Resolution does not forbid secession.[29] But, if the law does not forbid something, that does not mean that it allows it. In our opinion, the most important reason for admitting the legal meaning of a one-sided declaration of secession is the fact that Serbian military attacked Kosovo in 1998 and 1999. Serbia invoked Resolution 1244 and the Court then tried to see if this resolution forbids the declaration of independence of Kosovo or not. In the end, the Court just interpreted Resolution 1244 and said that it does not forbid declarations of independence.

In the case of self-determination, international law lacks in not having a precise norm on how to exercise the right to self-determination. The right is only mentioned in the Charter of the United Nations. Secession is only one of the forms of exercising the right to self-determination. From the formal-legal point of view, Kosovo is the second secessionist (in our opinion) entity in former Yugoslavia. All other states, except Slovenia, exercised the right to self-determination during the dissolution of Yugoslavia. Kosovo is a secession case. But there is no norm in international law which allows or forbids secession. This is an enormous legal gap in international law. From 1918 on, there were numerous decisions which invoked the right of peoples to self-determination, but none of them stipulates in which cases and how this right can be exercised. The International Court of Justice focused on Resolution 1244 which is a political document. The Court actually did not do anything else except admit the final status of Kosovo, i.e. the political position of the entity named Kosovo. The Court froze the status of Kosovo without making changes to international public law; it simply quoted a single fact and implicitly said that this case is not a precedent which can be applied to other cases.

But, regardless of the fact that the Court viewed the Kosovo case as unique, it still remains a precedent. Precedent is created based on facts and every ruling of the International Court of Justice is a precedent. It is not a custom. A custom is made by repetition. A one-sided declaration of the members of the Kosovo Parliament was an

[29] Resolution 1244 neither promotes nor prevents the secession of Kosovo. *See*: Borgen, C. J., *Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition*, American Society of International Law Insight, 12(2), 2008, available online at: https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and (accessed 14 June 2018).

offer to the international community to recognise Kosovo as a state. Kosovo declared that it is a sovereign and independent state and 69 states recognised it as a sovereign state.[30] By doing so, they simply consolidated Kosovo's statehood and its international legal status. In our opinion, not that many states would have recognised Kosovo[31] had Kosovo committed ethnic cleansing. In comparison, the Republic of Srpska committed ethnic cleansing in Srebrenica, Bosnia and Herzegovina. Although, 200.000 Serbs fled Kosovo and went to Serbia in 1999, there was no genocide there, unlike in Srebrenica in 1995.

Albanians in Kosovo had the defensive right to self-determination because they already had a territorial autonomy in Serbia, but after all of the five elements of the offensive right to self-determination were in place, Albanians decided to exercise that right. The International Court of Justice gave a lot of international legitimacy to Kosovo (state legitimacy can also be achieved through internal organisation of the state and the moves it makes in international relations) and paved the road for Kosovo to be recognised as a sovereign state by a number of states and to consolidate its international status.

Could this be a way for similar political-territorial forms in the contemporary world to seek independence and recognition? At first glance, the Crimea case is similar. Difference is that the annexation of Crimea was not precipitated by loss of life and caused almost no loss of life; human rights of Albanians in Kosovo were violated and patterns of human rights abuses did not exist in Crimea. Russia illegally occupied the Crimea. The annexation of the Crimea cannot be legal without the consent of Ukraine. Still, in international law the prevalent view is that, legally, the Crimea is a part of Ukraine.[32] The only way for Ukraine to get Crimea back under the Ukraine authority is to try to win a lawsuit against Russia before the International Court of Justice. This

[30] Montevideo Convention on the Rights and Duties, which was adopted on 26 December 1933 and became effective on 26 December 1934, stipulated the legal criteria of statehood which must be applied in order to determine whether Kosovo is a state or not. In the case of Kosovo, these criteria are still questionable. *Independence* is much more questionable than the *effective government* (but, in our opinion, it is still a dependent state, because international organisations have a substantial power in Kosovo's public administration system).

[31] As of 17 February 2018, 117 countries recognised the Republic of Kosovo (of which of two have been withdrawn).

[32] Chapter (X) of the Ukrainian Constitution is dedicated to the status of the Autonomous Republic of Crimea, which, according to this provision, is an inseparable constituent part of Ukraine. This political-territorial unit is a matter of dispute between Russia and Ukraine. Russia recognised Crimea as a part of Russia. However, the Russian Constitution does not regulate Crimea (it entered the legal and the political system of Russia by the Treaty on the Adoption of the Republic of Crimea to Russia, which was signed by the Russian, Crimean, and Sevastopolian leaders).

could happen if Ukraine filed a lawsuit against Russia before the Court, and Russia decided to be a party in the proceeding.

There is an example of a people who exercised their defensive right to self-determination: the Serbs in Bosnia and Herzegovina. They formed a federal unit, the "entity" of the Republic of Srpska in 1995. That year, the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace) came into force. It was the beginning of a legal existence of the Republic of Srpska.[33] At the time, the Republic of Srpska was *de facto* a regime with different names and sizes of the area under the authority of the regime. Furthermore, the Constitutional Court of Bosnia and Herzegovina ruled that all constituent peoples (Bosniaks, Serbs and Croats) are constituent on the whole territory of Bosnia and Herzegovina.[34] Consequently, the constitutions of both entities, the Republic of Srpska and the Federation of Bosnia and Herzegovina, were changed; thus entities are not a constitutional property of one people, but a constitutional property of all the constituent peoples. So according to its constitution, the Republic of Srpska is now the entity of the Bosniak, Serb and Croat people, not just of the Serb people, which was the case prior to the decision of Constitutional Court of Bosnia and Herzegovina. This is another fact which makes the process of secession of the Republic of Srpska from Bosnia and Herzegovina even more difficult than was previously the case.

The same is with *de facto* states—South Ossetia, Abkhazia, Nagorno-Karabakh. Although it is pointless to force Abkhazians, Ossetians or Armenians to live in Georgia or Azerbaijan,[35] the defensive right to self-determination of these peoples has already been exercised and there is no need to exercise the offensive right to self-determination at the moment. Georgia and Azerbaijan do not have an effective tool to obtain legal sovereignty over the claimed territories. Serbia's legal authority over Kosovo is questionable. Bosnia and Herzegovina does have sovereignty over the Republic of Srpska, although the Republic of Srpska often does not enforce the law of Bosnia and Herzegovina (not even the decisions of the Constitutional Court of Bosnia and Herzegovina), even though it bears criminal liability for not enforcing it. It appears

[33] In January 1992, the Serbs in Bosnia and Herzegovina declared the "Republic of the Serb People", but nobody recognised it. The same happened with the "Independent Republic of Srpska Krajina" in Croatia.

[34] Constitutional Court of Bosnia and Herzegovina No. U 5/98 ("Decision on the Constituency of Peoples") in which the Constitutional Court of Bosnia and Herzegovina evaluated the consistency of the Constitution of the Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina with the Constitution of Bosnia and Herzegovina. Four partial decisions were made in 2000, and many articles of entity constitutions were found unconstitutional.

[35] Harzl, B. C., *Conflicting Perceptions: Russia, the West and Kosovo*, Review of Central and East European Law, 33, 2008, pp. 515.

that Abkhazians and Ossetians do not believe Georgians when they tell them they will protect them, so a federal state cannot be formed there.

Conclusion

Status of people as a subject of offensive right to self-determination is unchangeable in relation to practice, so political units could not call on right to self-determination although people organized in state-legal forms will make reasons for secession easier. Some of people in contemporary World have already realised their right to self-determination and therefore could not call on secession. On examples in this paper we proved three hypothesis from the abstract of the paper.

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