

HOSTED BY



ELSEVIER

Contents lists available at ScienceDirect

International Comparative Jurisprudence

journal homepage: www.elsevier.com/locate/icj

The relevance of remedial secession in the post-Soviet “frozen conflicts”



Lina Laurinavičiūtė*, Laurynas Biekša

Mykolas Romeris University, Ateities 20, LT-08303 Vilnius, Lithuania

ARTICLE INFO

Available online 19 October 2015

Keywords:

South Ossetia
Abkhazia
Transdnistria
Nagorno-Karabakh
Crimea
Self-determination
Secession
Remedial secession
The right to remedial secession
Frozen conflicts

ABSTRACT

The article introduces a set of remedial conditions that might justify unilateral secession under international public law and examines whether remedial secession might be applied in the post-Soviet “frozen conflicts”: South Ossetia, Abkhazia, Nagorno-Karabakh, Transdnistria and Crimea. The article concludes that the remedial right to secession has no relevance in the “frozen conflicts” in post-Soviet region and neither of the entities cannot justify their independence on remedial secession. However, all the cases confirm the existence of the right and its conditions. Moreover, the situations of the “frozen conflicts” in the post-Soviet region add clarity to the procedural criterion for the exercise of the negotiations. Negotiations in good faith are possible merely if the conflicting parties are not influenced by the third states, which violate international law. The cases of South Ossetia, Abkhazia, Nagorno-Karabakh, Transdnistria and Crimea reveal that the right to remedial secession simply is not relevant in the cases which are related to the unlawful use of force or other egregious violations of the norms of international law. Remedial secession cannot be exercised in the cases, created in serious breach of international law norms.

© 2015 Mykolas Romeris University. Production and hosting by Elsevier B.V. All right reserved. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

1. Introduction

The secession attempts of Kosovo, South Ossetia¹ and Abkhazia in 2008 put the questions of state sovereignty and self-determination at the top of the international agenda and triggered debates among academics on the applicability of the right to self-determination, including the right to secession (Tancredi, 2008; Müllerson, 2009; Slomanson, 2009; Borgen, 2009–2010). Self-determination and secession constitute the core issues of international public law (hereinafter referred to as ‘international law’). Peoples and groups in many parts of the world assert the right to self-determination and even secession, which conflicts with the respective states’ sovereignty and territorial integrity (Walter and Ungern-Sternberg, 2014, p. 1). All the above-mentioned cases – Kosovo, South Ossetia and Abkhazia – represent a possible clash of self-determination and territorial integrity. Yet, it is argued that the right of states to territorial integrity might not be absolute and unqualified, as “the development of international human rights law has in many respects limited the concept of state

* Corresponding author. Tel.: +370 52714669.

E-mail address: LinaLaurinaviciute@gmail.com (L. Laurinavičiūtė).

¹ The official Georgian name of South Ossetia is Tskhinvali.

Peer review under responsibility of Mykolas Romeris University.

<http://dx.doi.org/10.1016/j.icj.2015.10.008>

2351-6674/© 2015 Mykolas Romeris University. Production and hosting by Elsevier B.V. All right reserved. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

sovereignty” (Vidmar, 2010, p. 38). This value-oriented approach introduces the idea of the remedial secession – a set of conditions that might justify the secession of a subgroup from its parent state as a “remedy of last resort”.

The doctrine of remedial secession was invoked by many states that recognised Kosovo (Bolton, 2013, p. 109). Similarly, the Russian Federation adopted the language of remedial secession to justify its recognition of South Ossetia and Abkhazia after the end of the Russia-Georgia war.² To date, South Ossetia and Abkhazia *de jure* remain a part of Georgia, though Georgia does not have any effective control over these self-proclaimed republics. South Ossetia, Abkhazia, as well as Transdniestria in Moldova³ and Nagorno-Karabakh in Azerbaijan⁴ are considered as “frozen conflicts” in the post-Soviet region.

From the perspective of political science, the conflicts are labelled as “frozen conflicts” which signifies that although the military hostilities have stopped, the solutions to the roots of these conflicts have not been found (Walter, 2014, p. 295). The term “frozen conflict” means a stalemate, which may occur due to military, political, economic or other factors (Walter, 2014, p. 295). From the perspective of international law, “frozen conflicts” indicate competing sovereignty claims over a particular territory and a possible clash of different international law norms, in which a subgroup refers to the right of self-determination of peoples, whereas the parent state urges on respect for the territorial integrity of states. Therefore, as in the cases of South Ossetia and Abkhazia, Transdniestria and Nagorno-Karabakh also claim that they are not only entitled to self-determination, but to secession, and they base their claim on charges of discrimination and massive human rights violations committed by their parent states (Walter and Ungern-Sternberg, 2014, p. 2), which form the basis of the right to remedial secession.

The legal aspects of self-determination and secession have been propelled to new heights in international politics by the 2014 Ukrainian crisis (Walter, 2014, p. 295). On March 16th of 2014, a referendum was held, in which Crimea voted in favour of joining the Russian Federation (Crimea exit poll: About 93% back Russia union, 2014;). The international community underscored the referendum as having no validity and violating the sovereignty and territorial integrity of Ukraine.⁵ Despite the international condemnation and warnings (Crimea crisis: foreign leaders condemn ‘Russia’s destabilising actions’ as 93% vote in referendum for secession, 2014; Ukraine crisis: ‘Illegal’ Crimean referendum condemned, 2014; The Brussels G7 Summit Declaration, 2014, p. 8), the Russian Federation recognised the independence of Crimea (Декларация о независимости Автономной Республики Крым и г.Севастополя, 2014) and, following the results of the referendum, a treaty of the accession of Crimea to the Russian Federation was signed (President Putin signs treaty to bring Crimea into Russia, 2014). While justifying its actions, Russia, as well as in the cases of South Ossetia and Abkhazia, referred to self-determination and Kosovo’s example.

The Crimean crisis, considered as a new “frozen conflict” in the post-Soviet region (“A Strong NATO in a Changed World” Speech by NATO Secretary General Anders Fogh Rasmussen at the “Brussels Forum”, 2014), heightened concerns about the unresolved conflicts, as they are all potentially explosive and dangerous. The illegal referendum and the subsequent annexation of Crimea by the Russian Federation also revealed the importance of the proper understanding and application of the right to self-determination, including remedial secession. If misapplied or distorted, self-determination might threaten international peace and security, and lead to the fragmentation of states. In this regard, H. F. E. Whitlam aptly noted that “[i]deas might be used as weapons... as a weapon ‘self-determination’ should be handled with care” (Summers, 2007, p. 9). Therefore, this article introduces a set of remedial conditions that might justify unilateral secession. A particular amount of attention is paid to the Kosovo case, which is referred to as a precedent for the secessionist claims. The article also examines whether remedial secession might be applied in the post-Soviet “frozen conflicts”. The applicability of the remedial right to secession in the mentioned conflicts might also reveal or rebut the existence of the right, as well as its conditions.

2. The right to remedial secession and its conditions

State and judicial practice supports the existence of the right to remedial secession and reveals a set of conditions that have to be met prior the exercise of the right. Remedial secession was supported by some of the judicial bodies (Katangese Peoples’ Congress v. Zaire, 1994; Loizidou v. Turkey, 1996). Perhaps the most prominent and cited judicial decision, which dealt with the unilateral secession of a part of the population, was adopted by the Supreme Court of Canada.⁶ The Canadian Supreme Court was asked to issue a decision whether Quebec had the right to secede from Canada and if so, under what circumstances. In its decision, adopted in 1998, the Court summarised its findings, indicating that international law “at best” generates the right to external self-

² An armed conflict took place in August 2008 between Georgia on one side, and the Russian Federation and the separatist South and Abkhazia on the other. The conflict is also known as the Russia-Georgia, the 2008 South Ossetia war, the Five-Day war and the August war.

³ The latter is also known as Transnistria and Trans-Dniestr. After the proclamation of independence, Transdniestria purported to create Pridnestrovian Moldovan Republic (also known as Pridnestrovie).

⁴ In Russian, “Nagorno” means “mountainous”, whereas the word “Karabakh” is a Turkish-Persian fusion, most often translated as “black garden”. Armenians name the region “Artsakh”, while Azerbaijanis refer to it as “Yukhari Karabakh” (“Upper Karabakh”). The region is also sometimes spelled as Nagorno-Karabagh, Nagorny-Karabakh or Nagorny-Karabgh. The authors have chosen the spelling “Nagorno-Karabakh”, because it is used by the Organisation for Security and Co-operation in Europe and in the international documents related to Nagorno-Karabakh. The choice does not endorse any position.

⁵ General Assembly Resolution 68/262 supported the sovereignty and territorial integrity of Ukraine and underscored the referendum as having no validity (GA Resolution 68/262, 2014).

⁶ Some academics, while discussing remedial secession, merely refer to the decision of the Supreme Court of Canada. For instance, Vidmar, 2010, p. 39; The Lecture ‘Remedial Secession in South Caucasus’ by Professor W. Slomanson, 2012.

Download English Version:

<https://daneshyari.com/en/article/1097801>

Download Persian Version:

<https://daneshyari.com/article/1097801>

[Daneshyari.com](https://daneshyari.com)