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Validity of applying the principle of self-determination of peoples by separatist entities in Ukraine

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The process of modern social development is determined by two dialectically opposite tendencies: centripetal, expressed in worldwide integration and globalization, and centrifugal, manifested in regional localization, one of the forms of which is the phenomenon of separatism – the desire of regions within states to separate, to acquire greater political independence, sovereignty up to territorial separation or joining another state. The purpose of this paper was to analyse the theoretical issues of national self-determination and the principle of equality of peoples in its relationship with separatism. The study used a set of methods and techniques of scientific cognition. The principal ones included the dialectical method, comparative legal method, formal legal method, and method of logical analysis. The paper analyses the possibility of reference to the principle of self-determination of peoples by separatist entities in Ukraine as a justification for their activities. The minimum necessary criteria of legal grounds for self-determination are considered, including the presence of an effective connection of the subject of

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self-determination with a certain territory; the presence of the subject itself, i.e., the people (ethnos), which claims self-determination; and recognition by the international community of such a potential subject as the bearer of the right to self-determination. As for the connection with the territory, the doctrine of international law and practice recognizes the right to cultural and national self-determination in a certain territory for any ethnic group. This right is limited to the common interests of the entire people of the state, which lies in the unconditional preservation of the inviolability and integrity of its territory. As for the presence of the subject of self-determination itself, the people recognize the historical community of people that has developed in a certain territory and has stable features of language, culture, and mentality, as well as the awareness of their unity and difference from others through conscious self-name. At the same time, diasporas and migrants must obey the laws of the country of residence on the right of citizenship or the right of permanent residence. As for the recognition of the subject of self-determination by the international community, they recognize those who are under colonial rule, occupation by a foreign state, or who are subject to a policy of racism. Consequently, international law does not protect separatist movements whose goal is secession if they do not meet these criteria. This means that separatist entities in Ukraine are not entitled to secession, and by their methods of activity they are terrorist organizations. The practical value of the materials and conclusions presented in this paper lies in their further use in further developments aimed at the analysis and study of the self-determination of peoples through separatism, in the law-making sphere, and the sphere of law enforcement related to ensuring the rights and freedoms of citizens

Keywords: people, international recognition, right to self-determination, secession, territory

Introduction

Considering the theoretical foundations and international legal practice of the relationship between the principles of territorial integrity of states and the self-determination of peoples, it is necessary to analyse the possibility and validity of the application of the principle of self-determination of peoples by separatist entities in Ukraine. Do they meet at least the minimum necessary criteria for the existence of a legal basis for self-determination in the general international legal context?

The author of this study believes that such mandatory criteria are the presence

of an effective connection of a potential subject of self-determination with a certain territory regarding which self-determination can be carried out; the presence of the subject itself, i.e., the people (ethnos, not the population), which potentially claims self-determination; and recognition by the international community of such a potential subject as the bearer of the right to self-determination. Therefore, this study will consider the compliance of the "Republic of Crimea", "Donetsk People's Republic" and "Luhansk People's Republic" with these criteria.

Results and Discussion

Territory criterion

Observance of the principles of equality and self-determination of peoples in conjunction with the principle of territorial integrity of states is one of the urgent issues of modern international law, although international law makes provision for various forms of external self-determination, such as unification, accession, or division of states [1]. In the doctrine of international law and the practices of states, the provision that in case of the disintegration of one state and the emergence of new ones on its territory, the latter inherit this territory within the limits established by the treaty and extend their state sovereignty to it [2] has long been strengthened.

Consequently, in matters of disposing of its territory, the state is limited by the interests of the people, who have the exclusive right to make a final decision. Any ethnic group living on the territory of a state is entitled to cultural and national self-determination (development), limited, however, by the common interests of the entire people of the relevant state. No national (ethnic) self-determination is entitled to negate such a common interest as the unconditional preservation of the inviolability and integrity of the territory of the state [3].

According to B.M. Klymenko, historicity as a factor in the formation of a territory belonging to a self-determined people also requires a careful and dialectical approach, since in the historical process, many peoples changed the places of their settlements, moved, merged with other peoples, formed new and stable economic, social, and other ties. Historicity implies a long process, which, in isolation from other factors, can

distort the real state of affairs and serve as grounds for unjustified territorial claims [4].

When implementing the principle of self-determination of peoples, it is necessary to remember that all the fundamental principles of international law are interrelated, and its implementation should not harm the territorial integrity of states. However, in a particular situation, it is sometimes quite difficult to achieve a harmonious combination of these principles, and if it is not possible to find solutions to these issues based on international law, then it is necessary to search for effective political means to reach a compromise, showing good will and tolerance towards each other [5].

People (ethnos) criterion

In this connection, the issue of the existence of “the people of Crimea”, “the people of certain districts of Donetsk region” and “the people of certain districts of Luhansk region” as bearers of the right of peoples to self-determination, bearers of sovereignty and sources of state power, on whose behalf, respectively, the resolution of the Verkhovna Rada of the Autonomous Republic of Crimea “On the independence of Crimea”, “Declaration on the sovereignty of the Donetsk People’s Republic” and “Declaration on the proclamation of independence and state sovereignty of the Luhansk People’s Republic” were adopted, and the appropriateness of definitions of “the people of Crimea”, “people of Donetsk region” and “people of Luhansk region” from the standpoint of constitutional and international law [6; 7; 8].

The resolution of the Verkhovna Rada of the Autonomous Republic of Crimea “On the

independence of Crimea” states that “the Verkhovna Rada of the Autonomous Republic of Crimea, proceeding from the direct expression of the will of the peoples of Crimea [...] decides to declare Crimea an independent sovereign state – the Republic of Crimea, in which the city of Sevastopol has a special status”. In the “Act on the Proclamation of State Independence of the Donetsk People’s Republic” it is declared that “based on the will of the people of the Donetsk region [...] the Regional Council of the Donetsk region declares the creation of a sovereign state – the Donetsk People’s Republic” [9]. In addition, in the “Declaration on the Proclamation of Independence and State Sovereignty of the Luhansk People’s Republic” it is noted that “the Luhansk Regional Council, expressing the will of the people, [...] declares the state sovereignty of the Luhansk People’s Republic”.

Similarly, in the “Constitution of the Republic of Crimea” and in the “Constitution of the Donetsk People’s Republic” and in the “Temporary Fundamental Law (Constitution) of the Luhansk People’s Republic” there is no definition of the term “people”, but it is only declared that: “The source of power in the Republic of Crimea is its people, who are part of the multinational people of the russian federation” or “The source of power in the Donetsk (Luhansk) People’s Republic is its people” [10; 11; 12]. Moreover, it is necessary to pay attention to the fact that in all three “constitutions” the same wording is contained as a carbon copy, under the same numbers of paragraphs and in the same articles, which leaves no doubt about the single (russian) authorship of all documents.

As stated in Paragraph 1 of the Declaration on the sovereignty of the Donetsk

People’s Republic: “citizens of all nationalities of the Donetsk People’s Republic constitute its people, who are the bearer of sovereignty and the source of State Power” [7]. A similar norm is contained in the “Declaration on the sovereignty of the Luhansk People’s Republic”: “Citizens of the Republic of all nationalities constitute the people of the Luhansk People’s Republic”. But the founding acts of the “Republic of Crimea” do not even mention who constitutes the “multinational people of Crimea”.

Thus, from the documents cited above, it becomes evident that the “people of Crimea”, “the people of Donetsk region” and “the people of Luhansk region” as a whole emerge exclusively based on a single criterion – territorial, as a set of people living on the territory of an administrative-territorial unit of Ukraine.

Thus, recognizing the right to self-determination of the population of any administrative-territorial unit, we come to an absurd situation: if such a right belongs to the population of an oblast (autonomous republic), diverse in its ethnic and national composition, why does it not belong to the population of a district, cities, villages, etc.? At the same time, the question arises whether the population of a particular district, city, village, or street can consider itself a people with the right to self-determination? Consequently, the population of each village can declare a republic within its territory. If so, the process of sovereignization can be endless. Therefore, I.I. Lukashuk fairly notes that “the right to self-determination belongs to the people, the nation, i.e., a fairly large and integral community. Ethnic, religious, linguistic minorities are entitled to cultural autonomy, to respect for their interests within

the framework of a democratic state" [13]. It is in this sense that it is meaningless to talk about the people of a certain region.

In turn, in the science of constitutional law, the term "people" is defined as a totality of citizens of the entire state, and the definition of "population" is used for local self-government issues.

According to the definition of Wikipedia, "nation" (Greek – *ἔθνος* (ethnos)) is a historical community of people that has formed on a certain territory and has stable features of language, culture, and mentality, as well as an awareness of its unity and difference from others through conscious self-naming [14]. The latter is usually recorded in the ethnonym, as the self-name of the people. A historically formed ethnos acts as a social organism that reproduces itself mainly through ethnically homogeneous marriages and the transmission of language, traditions, etc. to new generations. For a more sustainable existence, the ethnic group strives to create its socio-territorial organization (state), and ethnic groups, especially in modern conditions, to their autonomous associations, consolidating their rights in legislation. In world practice, diasporas and migrants are subject to the laws of the country of residence in the national states based on the right of citizenship or the right of permanent residence.

Therefore, even in this sense, it is incorrect to discuss the "people of Crimea", "people of Donetsk region" and "people of Luhansk region", and from a scientific standpoint, it is impossible.

In turn, the study of the recognition by the international community of the right to self-determination by the people necessitates an answer to the question whether the

"people of Crimea", "the people of Donetsk region" and "the people of Luhansk region" bear the right to self-determination according to international law?

In relation to the right of peoples to self-determination, the terms "people" and "nation" are used in international law. M.V. Ostroukhov believes that the right to self-determination is inherent in ethnic communities (peoples) [1].

The famous English international lawyer, President of the International Court of Justice of the United Nations in 2006-2009, Rosalyn Higgins, raising the question of who exactly is entitled to self-determination, notes the following: "The emphasis in all relevant documents, as well as in state practice (under which I refer to statements, declarations, adopted positions) on the importance of territorial integrity means that "peoples" should be understood in the sense of all the peoples of a given territory. Admittedly, all members of certain minority groups are part of the peoples of this territory. In this sense, they are also, as individuals, holders of the right to self-determination. But minorities as such have no right to self-determination. This means, in essence, that they are not entitled to secession, independence, or association with similar groups in other states" [15]. Evidently, Professor Higgins believes that the people of the entire population of a given state are entitled to self-determination, while the national minority living on the territory of this state are not entitled in the same way.

Similarly, Ukrainian international lawyer, judge of the European Court of Human Rights in 1998-2008, V.H. Butkevich, regarding the possibility of self-determination of

national minorities, emphasizes that “modern international law does not automatically link the rights of national minorities with the right to self-determination” [16].

Criterion of recognition by the international community

Furthermore, according to the russian scientist V.L. Tolstykh, the peoples who are entitled to receive help from the international community in achieving self-determination are: “Firstly, peoples under colonial rule; secondly, peoples living in the territory occupied by a foreign state; thirdly, peoples in respect of whom the state in whose territory they live conducts a policy of racism” [17]. And the scientist further states that “international law does not protect separatist movements whose purpose is secession, if they do not meet the above-mentioned characteristics” [17].

Thus, the recognition of the right of a certain nation to self-determination is not declarative, but constitutive, i.e., it creates a new subject in the field of international law.

As for the problem of separatism in Ukraine, this means that the population of certain districts of the Donetsk and Luhansk regions (as well as the Autonomous Republic of Crimea) is not considered by the UN as having the right to self-determination, is not recognized by the international community as a subject of international law, and, accordingly, is not entitled to such self-determination [18, 19]. Considering the above, the population of the Autonomous Republic of Crimea and certain dis-

tricts of the Donetsk and Luhansk regions, a priori not being separate peoples, not having a historical effective connection with the respective territory, have no right to support from the international community in terms of assistance in achieving self-determination through the fact that it: is not a people in the sense of the right of peoples to self-determination; is not entitled to self-determination regarding a particular historical territory; and not recognized by the international community as a people with the right to self-determination, which, in fact, the international community demonstrated by rejecting the possibility of recognizing the “Republic of Crimea”, “DPR”, and “LPR”.

Furthermore, It is interesting that the “DPR” and “LPR” try to create the appearance of pseudo-state activities, hold “referendums” and “elections”, take part in negotiations with representatives of Ukraine, russia, the OSCE, and even sign protocols. But are groups like the “DPR” and “LPR” capable of performing any obligations under international law? And do they want it?

It is doubtful that these questions can be answered positively. When a non-state actor starts a struggle with a state, ideology, or system (capitalist, Western, etc.), it opposes itself to them and, accordingly, does not want to share their values and methods.

As for the “DPR” and “LPR”, they will not be able to apply international law for another reason: they cannot be recognized as states (even the russian federation, which provides them with political, military,

informational, and other support, does not recognize them as states), and considering this, they cannot enter into any official international relations and, therefore, to be subjects of international law, bearers of international rights and obligations. These and similar entities are consciously incapable of being equal in sovereignty to states, and therefore, to strengthen the stability of the interstate system, the so-called declarative theory of state recognition must be rejected, so that the separatists, who make claims for state independence with the use of force, and their sponsors a priori had no chance or hope of success.

To ensure its effectiveness, international law must be a conservative, rigid, regulatory system. It should be clear to the new “players” claiming statehood that they are obliged to accept the current rules established by the recognized states, and not try to “dilute” these rules with their own internationally illegal behaviour [20]. International law at the beginning of the 21st century is predominantly positive law arising from the agreement of the will of states and the behaviour of a separate subject of international law (a state or, even more so, a non-state entity), which contradicts the agreed will of states expressed in the another applicable norm of international law, should be considered as a violation of this norm [21].

Thus, according to international practice, the “Republic of Crimea”, “DPR” and “LPR” fall under the concept of separatism, which is based on “the aspiration of the population of this or that territory, of these or

that separate ethnic communities that do not have a common recognition of the right to self-determination, to separation from the state, and the very process of separation or secession is done with a bet on full autonomous existence or joining another state” [1].

Conclusions

Thus, the content of the principle of equality and self-determination of peoples and the principle of territorial integrity regarding the declaration of “independent states” in Crimea and the East of Ukraine based on the principle of self-determination of peoples, suggests as follows:

➤ firstly, the principle of equality and self-determination of peoples was implemented by the people of Ukraine through the creation of a sovereign state, and the protection of the territorial integrity of Ukraine is a continuation and security of its observance;

➤ secondly, an encroachment on the territorial integrity of Ukraine is also an encroachment on the right of the people of Ukraine to self-determination;

➤ thirdly, the “Republic of Crimea”, “DPR”, and “LPR” are proclaimed in violation of the principles of equality and self-determination of peoples and the principle of territorial integrity and cannot be recognized by the international community;

➤ fourthly, the “Republic of Crimea”, “DPR”, and “LPR” are by their very nature separatist entities without signs of statehood, and by their methods of activity they are terrorist organizations.

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Питання обґрунтованості застосування принципу самовизначення народів сепаратистськими утвореннями в Україні

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Анотація

Процес сучасного суспільного розвитку визначається двома діалектично протилежними тенденціями: доцентровими, що виражаються в загальносвітовій інтеграції і глобалізації, і відцентровими, що виявляються в регіональній локалізації, однією з форм якої є феномен сепаратизму - прагнення регіонів у складі держав до відокремлення, набуття більшої політичної самостійності, суверенітету аж до територіального відділення або приєднання до іншої держави. Мета статті полягає в проведенні аналізу теоретичних проблеми національного самовизначення та принципу рівноправності народів у його взаємозв'язку з сепаратизмом. У дослідженні було використано сукупність методів і прийомів наукового пізнання. Основні з-поміж них: діалектичний метод, порівняльно-правовий метод, формально-юридичний метод та метод логічного аналізу. У статті наданий аналіз можливості посилення сепаратистськими утвореннями в Україні на принцип самовизначення народів, як обґрунтування своєї діяльності. Розглянуті мінімально необхідні критерії правових підстав для самовизначення, серед яких: наявність ефективного зв'язку суб'єкта

самовизначення із певною територією; наявність самого суб'єкту тобто народу (етносу), який претендує на самовизначення; і визнання міжнародним співтовариством такого потенційного суб'єкта носієм права на самовизначення. Щодо зв'язку з територією в доктрині міжнародного права і практиці за будь-яким етносом визнається право на культурно-національне самовизначення на певній території. Це право обмежується загальними інтересами всього народу держави, який полягає в безумовному збереженні недоторканності й цілісності її території. Щодо наявності самого суб'єкта самовизначення, то народом визнається історична спільність людей, яка склалася на певній території та володіє стабільними особливостями мови, культури і психічного складу (ментальність), а також усвідомленням своєї єдності і відмінності від інших через свідому самоназву. Водночас діаспори та мігранти мають підпорядковуватися законам країни проживання на праві громадянства чи праві постійного проживання. Щодо визнання суб'єкта самовизначення міжнародним співтовариством, то ними визнаються ті, що перебувають під колоніальним пануванням, окупацією іноземною державою чи щодо яких проводиться політика расизму. Отже, міжнародне право не захищає сепаратистські рухи, метою яких є сецесія, якщо вони не відповідають цим ознакам. Це означає, що сепаратистські утворення в Україні не мають права на сецесію, а за методами діяльності є терористичними організаціями. Практична цінність матеріалів та висновків полягає в подальшому використанні їх у подальших розробках, спрямованих на аналіз та вивчення самовизначення народів шляхом сепаратизму, у правотворчій сфері та сфері правозастосування, пов'язаній із забезпеченням прав, свобод громадян

Ключові слова: народ, міжнародне визнання, право на самовизначення, сецесія, територія
