

Legal Principles of Opposition to Separatism in the Modern State

Правові засади протидії сепаратизму у сучасній державі

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Abstract

The objective of this article is to determine the factors that contribute to separatism in different countries of the world, as well as to find those means (forms and methods) of counteraction that would lead to an effective and preferably painless solution to such problems. The subject matter of the analysis in this article is social relations that are associated with counteracting the tendencies of separatism in the modern world, as well as the legal basis of such opposition. The following methods of scientific cognition were used while writing the article: systematic approach, logical, semantic, documentary, comparative and legal method. The urgent nature of the research problem has been noted, since the problem of the emergence of separatist movements is quite real for every country in the world. The definitions of the terms of "opposition to separatism" and "legal basis of opposition to separatism" have been offered. Suggestions in regard to overcome this negative phenomenon in a particular state have been provided. Factors that are the "catalysts" of separatism tendencies have been distinguished and stated in details. The historically recorded separatist movements and methods of overcoming them have been analyzed. The authors have made the conclusion about the individual causes and manifestations of separatism in a particular state. It has been proved that the existence of individual features

Анотація

Мета даної статті полягає у визначенні чинників, які сприяють сепаратизму в різних державах світу, а також пошуку тих засобів (форм та методів) протидії, які б призвели до ефективного та, бажано, безболісного вирішення подібних проблем. Предметом аналізу стали суспільні відносини, що пов'язані з протидією тенденціям сепаратизму в сучасному світі, а також правові засади такої протидії. Під час написання статті використано наступні методи наукового пізнання: системного підходу, логічний, семантичний, документального та порівняльно-правовий метод. Наголошено на актуальності досліджуваної теми, адже проблема виникнення сепаратистських рухів є цілком реальною для кожної країни світу. Запропоновані визначення понять «протидія сепаратизму» та «правові засади протидії сепаратизму». Надано пропозиції щодо подолання цього негативного явища в окремо взятій державі. Виокремлено та деталізовано чинники, які є «каталізаторами» тенденцій сепаратизму. Проаналізовано історично зафіксовані сепаратистські течії та методи їх подолання. Зроблено висновок про індивідуальні причини та прояви сепаратизму в окремо взятій державі. Доведено, що наявність індивідуальних особливостей, пов'язаних із сепаратизмом, значною мірою ускладнює

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associated with separatism, complicates to a large extent the creation of unique methods to combat this socio-political phenomenon. The authors have emphasized on the urgent need to improve the regulatory base of Ukraine on combating and preventing separatism, in particular, to develop and implement effective preventive, punitive and restorative mechanisms.

Key words: separatism, separatist movement, opposition to separatism, non-violent struggle, separatist movements, individual traits, legal provision, enrichment of political culture.

Introduction

World experience demonstrates that separatism as a phenomenon has deep historical roots, which is related to the existence of contradictions between the historical traditions of the interaction of states on the principles of state sovereignty and inviolability of borders on the one hand, and the principle of the right of nations to self-determination, established in the practice of international relations providing the possibility to form independent states. Such a contradiction is often a consequence of the domination of the principle of national self-determination over the interests of national security of states comprising territories with ethnic enclaves (Dromov, 2016).

The tendencies of separatist movements in different corners of the world are currently quite dynamic. Considering the rapidity and heterogeneity of the processes associated with the manifestation of different variations of separatism in different countries, it is worth acknowledging the complexity of counteracting these phenomena. We can distinguish as the main problem in this area, the situation with effective implementation of those norms into the legislation that would have an effective impact on the settlement of problems that arise in the field of protecting the state sovereignty of the country.

Theoretical framework

Due to the fact that the relevance of the issues discussed in this article is and remains extremely high, it is possible to summarize methods and forms of counteracting separatism at different historical stages of the development of social relations.

створення єдиних методів боротьби з цим соціально-політичним явищем. Наголошено на нагальній необхідності вдосконалення в Україні нормативно-правової бази з питань протидії та запобігання сепаратизму, зокрема розробити та запровадити ефективні превентивні, каральні й відновлювальні механізми.

Ключові слова: сепаратизм, сепаратистський рух, протидія сепаратизму, ненасильницька боротьба, сепаратистські течії, індивідуальні ознаки, правове забезпечення, збагачення політичної культури.

Besides, the current generation of young scholars, as well as ordinary people who are interested in the relevant problems of the formation, functioning and elimination of various separatist movements, can use the latest scientific works of scholars on this topic. Among the scientific works of the past and present are the most outstanding works of: Baturhareieva V. (2014), Danchenko K. (2015), Divak V. (2010), Dromov S. (2016), Karpets A. (2017), Kopotun I. (2017), Kosilova O. (2017), Kresina I. (2014), Reznikova O. (2016), Rubashchenko M. (2017), Vitman K. (2014), Vitrova D. (2016) and other scholars and politicians.

However, as Kosilova (2017) noted: «separatism as an ideological, socio-political, ethnic movement is one of the most acute threats to the national and political security of the country, which has particular relevance in the XXI century due to geopolitical changes in the world and the redistribution of spheres of influence between the new hyper powers. The problem of separatism is one of the most difficult, since it is directly related to the existence of states, changing their borders and the formation of new states. The separatism, in the current context, poses a direct threat to Ukraine's national security in connection with the hybrid war being waged by the Russian Federation on the Southeast fighting line».

Methodology

The methodological basis includes a set of general and specific methods of scientific cognition. The systematic approach as a general scientific method has allowed to define the problematic issues related to the legal principles of combating separatism as a negative

phenomenon in Ukraine and European countries. The logical and semantic methods within this study provided an opportunity to consider the essence of the concept of “separatism”. The method of documentary analysis was used to formulate propositions and recommendations for improving the legal principles of countering and preventing separatism in Ukraine. Comparison of the legislative provisions on combating and preventing separatism in Ukraine and other European countries was made using the comparative and legal method.

Results and discussion

Since the end of February 2014, the Russian Federation has been unlawfully engaged in unprovoked military aggression against Ukraine, the illegal occupation and annexation of the Autonomous Republic of Crimea and Sevastopol City, the organization of armed separatism on the territory of Ukraine. According to O. Karpets (2017), the reasons for the emergence of separatism in the East of Ukraine also include a social-class component that is intentionally silenced. A large number of the population of the uncontrolled part of the Donbass, at least at the beginning of the conflict, believed that it was opposed to the prevailing social injustice in Ukraine, against political and property inequality, finally against the exploitative class, for a just, non-exploitative, human society, which, in their opinion, should be established in “Novorossia”.

The international community has expressed its broad solidarity in defense of Ukraine’s sovereignty and territorial integrity, in particular through the adoption of the Resolution on Territorial Integrity of Ukraine on March 27, 2014 by the United Nations General Assembly. On 9 April, the Parliamentary Assembly of the Council of Europe also adopted the Resolution “Development of the latest events in Ukraine. Threat to the Functioning of Democratic Institutions”, which upheld Ukraine’s sovereignty and territorial integrity and condemned Russia’s actions. Russia’s actions are subject under the features of aggression as approved by the United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974 “Aggression’s Definition”. The international community has condemned Russia’s military aggression, in particular in Resolutions of the Parliamentary Assembly of the Council of Europe of 9 April 2014 and the OSCE Parliamentary Assembly of 1 July 2014. The Russian Federation has also unilaterally violated the norms and principles of international

law, the Treaty of Friendship, Partnership between Ukraine and the Russian Federation of 1997 and the Memorandum of Security Guarantees in connection with Ukraine’s accession to the Nuclear Non-Proliferation Treaty dated from December 5, 1994.

Thus, I. Kopotun and A. Misyura (2017, p. 167) rightly emphasized, about important element of ensuring the peaceful development of Ukraine, which is the settlement of the conflict in the Donbass, the return of temporarily uncontrolled territories to the legal field of Ukraine. For the formation and implementation of effective state policy in this field, it is important to understand the essence of the problem, which influences on the definition of the most effective mechanisms for its settlement.

The term of “separatism” comes from the Latin word “separatus”, which means separation; separate (Encyclopedic Dictionary, pp. 610 – 611). From the beginning of the XX century, separatism began to be regarded as exclusively “... a political movement aimed at achieving autonomy or political independence for a part of the state” (Brockhaus, Efron 1902, p. 1180). Separatism, in modern encyclopedic literature, is defined as “the desire of political forces to secede from another country, the movement of national minorities to secede and create their own state or establish autonomous self-government” (Encyclopedic Dictionary, 2010, p. 639). At the same time, despite the ancient history of the origin of this concept, the legislation of Ukraine does not contain legislative definition of the concept of “currently separatism”, which to some extent complicates the formation and implementation of state policy in the sphere of counteracting this socially dangerous phenomenon. However, lawmakers have made some attempts in this area of state activity. For example, the draft Law of Ukraine “On Counteracting and Preventing Separatism and Overcoming the Consequences of Separatist Activities on the Territory of Ukraine” (Reg. No. 0945 dated from November 27, 2014) offered the following legislative definition of the concept of separatism: “Activities aimed at separating part of the territory of Ukraine from ethnic, linguistic, religious motives for the creation of a new state, endowed with political autonomy or broad autonomy” (Draft Law of Ukraine, 2014). In our view, such an interpretation is worth noting because it reveals the essence of the concept.

The Article 1 of the 2001 Shanghai Convention (where Ukraine is not a party) considers separatism as the act aimed at violating the

territorial integrity of a state, including the separation from its territory or the disintegration of a state committed by violent means, as well as the planning and preparation of such an act, aiding or abetting it.

Therefore, it is necessary to define the concept of “separatism” at the legislative level, precisely in terms of political activity (as it was done at the time of the decisions of the Potsdam Conference on Nazism of 1945), which would imply constitutional responsibility for separatism. Accordingly, separatism will imply a political responsibility (along with criminal and administrative) that is political in nature, since it is constitutional relations that relate to such social phenomena as the people, the state, the power and politics.

Recently, the concept of “separatism” has been increasingly used in domestic criminal and legal studies, as evidenced by a number of publications (10, 11, 12). Besides, as noted by M. A. Rubashchenko (2017, pp. 88-89), this concept is quite actively used in court practice. Thus, one can find the following wording in the introductory and descriptive parts of many sentences placed in the Unified State Register of Judgments, used by the court: “calls for assistance to separatists”, “propagation of separatist ideology”, “propaganda material of separatist content”, “separatist appeals”. Judgments also indicate that pre-trial investigation agencies often use this notion when motivating the prosecution and in the process of proving, especially in cases involving crimes against the national security of Ukraine. This is also evident in some of the findings of experts, such as linguists, who study a particular text for calls.

We would like to note that M. A. Rubashchenko (2017, pp. 99-100) finds it inappropriate and dangerous to use the word “separatism”, in terms of respect for human rights, in the text of the criminal law (introducing it as a criminal and legal term). The researcher confirms this conclusion with the following arguments: 1) separatism has an ambiguous interpretation both in its content and in its scope; 2) its definition is absent not only in regulatory acts of Ukraine, but also in universal international treaties; 3) this term is practically not found in the criminal legislation of foreign countries; 4) it is inadmissible to identify (equate) separatism in a narrow sense with an encroachment on the territorial integrity and inviolability of Ukraine (the Art. 110 of the Criminal Code), and in a broad sense – both with

this crime and with acts committed for the purpose of violent change or overthrow of the constitutional system; seizure of state power, because according to the laws of logic, a concept which by its volume denotes a broad class of phenomena (actions) cannot be equated with concepts that form only its part (individual actions); 5) a long-established terminology (territorial integrity, inviolability of the state, constitutional system, right to self-determination, etc.) has long been established both in criminal law and in other branches of law (in particular, in international and constitutional), different combinations of which are the same or otherwise denote the phenomenon that is called separatism in political science and some other areas.

Based on the logical and scientifically validated statement that ensuring the proper security of the sovereignty and territorial integrity of the state is one of the main factors for its long-standing and successful functioning, it is worth considering in details the factors that threaten the sovereignty of the country. In general, analyzing the possible dangers to the continued existence of an independent and sovereign country, it can be noted that there are two major common threats.

The threat of the first type can be considered armed or any other aggression against an independent and sovereign state by another foreign state. This threat has recently included many different methods, techniques and means of encroaching on the sovereignty of the state by causing it comprehensive harm. Such measures vary in size, openness and motivation, and are directly dependent on the ability of the victim country of this foreign aggression to successfully defend itself (On National Security of Ukraine, 2018).

In other words, in some cases where the aggressor country is significantly stronger in military and economic terms than the country against which it uses that aggression, it is usually the normal seizure of the weaker country’s territorial and economic resources by partial or full occupation. It is through these methods empires of the past emerged and expanded throughout the history of humanity. Until recently, the complete occupation of the territory of a neighboring state, the establishment of its own direct management there, and the subsequent transformation of a sovereign state into its own province – all this was considered as the most effective mean of aggression and almost the only form of manifestation of foreign aggression.

However, it should be noted that as a result of the development of social relations, as well as the impact on them by modern economic and political realities, the current methods and means of encroaching on the sovereignty of the independent country have been substantially modified. Nowadays, the method of open armed aggression against a sovereign state and the occupation (especially in the long term) of its territories is absolutely optional and more complex from a political and economic point of view. Since such a method, in modern international relations, is likely to lead to the isolation of a state that has illegally applied its armed forces to another state. In turn, it should be emphasized that the use of the means of isolating it from active interconnections with the outside world in modern times of powerful globalization, along with its personal or sectoral sanctions, is an extremely painful blow to the aggressor's economy (Kresina, 2014). That is, in the vast majority of cases, an open violation of international law through the use of weapons against a sovereign state, and even more the occupation of such a state, is a rather unattractive and frankly negative case for the aggressor itself. In addition to the possibility of a violating country being subject to sanctions by the world community, which can destroy or severely undermine its economy and thereby the ability to effectively use military means in the future, military and political unions and associations are being hampered to aggressive plans of some states in today's world.

The most famous and powerful association of independent countries is the North Atlantic Treaty Organization (NATO). This international intergovernmental organization, commonly referred to as the North Atlantic Alliance, is a prime example of a strong alliance whose members profess and uphold common human values. The well-known Article 5 of the NATO Treaty clearly states that other members of the alliance in case of armed aggression against a non-NATO member country by a non-NATO organization are bound to regard it as an attack on the entire alliance, i.e. on each member without any exception (Divak, 2010).

Hence, in such a case, a state that has invaded the sovereignty and territorial integrity of at least one NATO member state will have to fight all twenty-nine member states of the organization. And considering the fact that this Alliance includes the most advanced and powerful countries in military terms, such as the United States, France and the United Kingdom, we can confidently state that no state in the world is and

will not be able to overcome such Alliance. It should also be added that such a significant strength of the Alliance is often used by its small and weak members. For example, being a member of the North Atlantic Treaty Organization allows them to spend a fairly small amount of money on defense, keeping a small army, and not buying unnecessary weapons.

Besides armed aggression by other states that can use the dissemination of misinformation in the media and social networks, as well as bribery of representatives of the state-political elite of the country of aggression, there is the second type of threat to the sovereignty and territorial integrity of an independent state. Namely, it is about the emergence and further functioning of various separatist movements in the country, the main purpose of which is to encroach on the territorial integrity of the state, mostly through the withdrawal from the state of certain administrative territorial units or their parts and the formation in their place of new, independent state entities.

It should be emphasized that separatist movements can arise both independently, i.e. without external influence, and artificially created with the active assistance of a foreign aggressor state, which prefers to exert pressure on a sovereign country in this way, causing it damage in various spheres of life. A striking example of the latter, that is, an "artificial" type of separatist organization, is the so-called "LNR and DNR" – terrorist armed groups, the basis of which are actually the military personnel of the Russian Federation. The leaders of these gangs of bandits form themselves as representatives of the "Donbass people" who want to "quit Bandera Ukraine and unite with Russia", though they are nothing more than ordinary criminals, a kind of puppets in the hands of the modern Kremlin regime.

Supporting the above statements about terrorists in the East of Ukraine, a large amount of evidence and testimony was provided, both from Ukraine and from many foreign countries. A variety of journalistic and investigative materials, which contained a large number of documentary, as well as photo, video and audio confirmations of the criminal activity of terrorists of LNR and DPR, as well as their direct, close and subordinated relationship with the top leadership of the Russian Federation were published for the past few years by such reputable agencies and human rights organizations as the Joint Investigation Team

(JIT), Bellingcat, Human Rights Watch and Transparency International.

But it should be emphasized that along with artificially organized separatist organizations, which are actually guided by the government of a foreign state, there are also separatist movements in the world that arose from the natural self-organization of persons pursuing a common goal into a certain organized group, or a self-organized group with violent or non-violent methods of achieving their goals. The purpose of the emergence and continued existence of such separatist movements is the element that distinguishes separatist organizations from other associations of citizens, unions and political parties operating within a country (Presidential Decree, September 24, 2015).

The main component of the purpose of an organization, which is classified as separatist one, as well as its main purpose, is in one way or another the separation of a certain territory from the composition of a sovereign state by violent or non-violent means. In addition to this major purpose, during the day-to-day existence of a separatist movement, there may be some groups in the separatist movements that are capable of being engaged in criminal activity and have profits from this activity, in order to secure the proper financing of their activities. Such types of profitable activities and, as a rule, illegal ones, include: armed attacks on commercial cargo; extortion; robbery; kidnapping in order to obtain cash ransom; assassins; blackmailing ordinary citizens; public servants and persons endowed with certain powers, etc.

However, it is a well-known and confirmed fact that the most profitable and, at the same time, dangerous types of criminal activity of such groups are illegal trafficking in weapons, as well as the production and sale of illicit drugs. Although these activities bring the greatest profit to the performers in comparison to others, at the same time they are very dangerous for the further functioning of such a group, because of the considerable amount of damage caused to a large number of persons and the state, as well as the blatant unlawfulness of these activities. In some cases, too much emphasis and forces of a separatist organization to commit crimes and make money can ultimately transform a powerful and non-violent separatist movement into a regular gang of thieves, which in turn may lead to the rapid elimination of such a group.

In fact, the separatist movements that arose naturally and profess only methods of non-violent political rather than armed struggle are natural. A typical example of such a situation is the huge separatist movement for the independence of Catalonia from Spain in the number and self-government of its participants. Although the various protest actions of this movement are different in size and scope, they have always been peaceful and non-violent. Another example of mass and peaceful separatist organizations is the movement for the separation of Scotland or Northern Ireland from Great Britain and their transformation into independent states (Decree of the President of Ukraine, May 26, 2015).

In order to determine the most effective methods and techniques of fighting militants, ways to reduce the duration of the conflict, factors contributing to the establishment of a more strong and lasting peace but ending its acute phase, the US Analytical Research Center RAND Corporation commissioned by the US Government accomplished a number of research in 2010-2014 in regard to the conflicts of this kind in 26 countries that had begun and somehow ended in the 30-year period from 1978 to 2010. Subsequently, another 41 conflicts were researched and the analysis of all such events occurring after World War II and to the present day, in 61 countries.

It should be noted that in order to more effectively counteract separatism on the territory of Ukraine, the legislator provided criminal liability for committing this negative phenomenon. Thus, the current Criminal Code of Ukraine establishes criminal liability for socially dangerous acts that contain features of separatism. In particular, it is applied to the following crimes:

- 1) the Article 109 of the Criminal Code of Ukraine – actions aimed at forcibly changing or overthrowing the constitutional system or seizing state power;
- 2) the Article 110 of the Criminal Code of Ukraine – encroachment on the territorial integrity and inviolability of Ukraine;
- 3) the Article 110-2 of the Criminal Code of Ukraine – financing actions taken for the purpose of forcible changing or overthrowing the constitutional system or seizing state power, changing the borders of the territory or the state border of Ukraine.

In general, there are two main methods of counteracting separatism in the country: non-

violent and violent (violent or repressive). Non-violent methods may include political and economic measures. Violent methods may include, in particular, the following measures: arrest and bringing to criminal liability for separatism or promotion of separatist activities; increased criminal liability; isolation of crisis areas, first of all with the purpose of complication or impossibility of receiving logistical assistance by the militants, application of regimes of military or emergency status in separate areas or in the whole state, etc. (Reznikova, 2016). According to K. M. Vitman (2014, p. 25), the power mechanisms of the fight against separatism are criticized in the world for their undemocracy, human rights violations – they are accompanied by human casualties and destruction. However, it is precisely these mechanisms that have been recognized by the Ukrainian authorities as non-alternative because the separatization of the Donbass became irreversible. Unlike the secession of other regions, such as Zakarpattia, the initiators of the secession as announced their intention to withdraw from Ukraine, as they refused the dialogue and began to defend their quasi-state using the weapons. Besides, no frozen ethno-political conflict in the post-Soviet space, accompanied by secession of the territories of independent states, has so far failed to be resolved by peaceful means. Prydnestrovia, Nahirnyi Karabakh, Abkhaziia, Pivdenna Osetiia are officially considered to be the territories of Moldova, Azerbaijan and Georgia respectively, while they are de facto unrecognized states. The presence of such disputed territories, and ethno-political conflicts with neighboring states, significantly hinder the development of these post-Soviet countries.

Conclusions

Taking into account the mentioned above, we can make the following general conclusions and recommendations.

First, the main criterion for whether a particular separatist movement will be developed peacefully and without violence, or turn into a longstanding bloody conflict, is the level of democracy and the true rule of law in the country where such separatist tendencies are observed. Accordingly, the more democratic principles are professed by a particular state to meet the socio-political and economic needs of its citizens, the more humane the various socio-political groups of this country will interact with each other.

Secondly, the use of violent methods of combating separatism should be considered by the government as measures of last resort, the implementation of which must be fully motivated and implemented in accordance with the law. In order to counteract separatism in Ukraine, control of state authorities over the border should be restored. This will block the channels of material, financial, personnel support of the fighters, disrupt their command and control systems. Effective intelligence services and capable armed forces are a significant factor in counteracting separatism. Also, success in combating separatism largely depends on the effectiveness of preventive measures aimed at preventing the formation of separatist armed groups and the ability of the state to build adequate national and external policies.

Thirdly, Ukraine needs to improve its regulatory base for the fight against separatism. In particular, it is advisable to develop and implement effective preventive, punitive and restorative mechanisms to counteract and prevent separatism and related phenomena more clearly and in details.

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