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SEPARATISM IN THE UNITED EUROPE: OLD PROBLEM WITH A NEW FACE

The focus of this article is the research of the questions, related to the development of separatism in Europe. The prerequisites for the development of the separatist movement within the European integration are analysed, as well as the forms of its realization. The EU's role in settling the separatist conflicts of the member states is explained. The author is proving the conclusion that in future, within the United Europe, the demands for self-determination will be reviewed by the European Union's institutions more and more often. Those events will be happening on the background of the mounting tensions between the EU, its member states and their regions.

Keywords: separatism; regionalism; European Union; european integration; membership in the organization.

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Сепаратизм в объединенной Европе: старая проблема с новым лицом

Исследуются вопросы, связанные с развитием сепаратизма в Европейском Союзе. Проанализированы предпосылки развития сепаратизма в условиях европейской интеграции, а также формы его реализации. Раскрыта роль ЕС в разрешении сепаратистских конфликтов государств-членов ЕС. Обосновывается вывод о том, что в перспективе в объединенной Европе требования о самоопределении будут все чаще рассматриваться через институты Европейского Союза в рамках усиливающегося напряжения между ЕС, его государствами-членами и регионами государств-членов.

Ключевые слова: сепаратизм; регионализм; Европейский Союз; европейская интеграция; членство в организации.

Theme formulation and topic relevance. From Scotland to Flemish region and further to Catalonia: separatism tendencies in the contemporary European Union is not a vexatious exception but a certain tendency that gradually gains momentum. On the one hand, europeans clearly understand the rationality of the “united we stand” slogan since only the United Europe is able to be heard by the USA, Russia and China as well as dignifiedly respond to the modern global challenges. However, on the other hand, we observe the tendency of separatism aspiration, desires to convert the European Union from international organization into the Europe of

regions. As a result, the process of the United Europe construction on the federalist principles essentially complicates the regionalism and separatism tendencies.

In numerous EU member states' regions, we may observe not only the development of an elemental street protest movement but also the purposeful activity of the regional elite which results in the interdependency referendums. Here come the following questions: "Why do the EU member states in general, built on the democratic legal system principles, are developing and successfully elaborating separatism? What will be the legal consequences of this tendency for the European countries and the Union in general? What will be the European Union's role in it?" This article is dedicated to the aforementioned questions' as well as the number of other issues' analysis.

Analysis of the latest researches and publications. The issue of separatism in Europe in foreign literature was raised numerously, however mostly it was studied by politologists, historians and economists as a wider issue – the European regionalism [1-6]. Though, in the Ukrainian legal studies a modern complex research of problems and consequences of separatism for the EU state members is still absent. As a result, the purpose of this article is the analysis of questions' complex connected with, on the one hand, studies of the EU separatism nature and, on the other hand, analysis of the European Union membership acquirement by the states which are tending to secede.

Presentment of the principle matters. The predominant state-centric paradigm of international law is a hindrance to the formal acceptance of the realities of an international system in which sovereignty is increasingly dispersed both within and beyond state borders [7, p. 170]. Given the continued primacy of statehood in the international system, however, it is unlikely that international law will undergo a fundamental shift in its approaches to statehood, self-determination, or secession anytime in the near future [8, p. 101].

Oddly enough, the separatism development is, to certain extent, affected by the globalization and regional integration processes, which may play an integrative as well as a destructive role. Globalisation and integration facilitate a closer interaction of the states and the out-of-state actors, their unification into transnational and global networks, which are built on various channels of interdependence (trade, politics, security, environment and socio-cultural connections etc.) [9]. EU multi-level governance has provided less national economic dependence, and more political freedom to regional entities thus, potentially impacting the confidence of independence-minded regions [10, p. 10-11]. On the other side, globalisation may favor the fragmentation of the established political and social orders, allowing for regional and transnational movements to set tasks, the implementation of which bears a threat to sovereignty and territorial unity of the states. Countries no longer have the monopoly of mediating the relationship of their regions to the global market and to international regimes. The increased mobility of capital and the rise of transnational corporations have eroded the ability of states to control their own spatial economies [11].

Separatist movements in the modern world are directionally heterogeneous: if the ones are striving for autonomy in terms of the national borders, the others are bravely aiming at secession and establishment of a new independent state. According to the statistics from the year of 1990, more than 30 new countries were created and the separatist movements are not going to cease expanding on that number [12]. It should be noted that the dissolution of ex-socialist federations (USSR, ČSSR, SFRY) was viewed as a quite natural and positive phenomenon owing to the infringement of fundamental human rights of its citizens. Development of the separatist movements in former USSR republics is regarded as an artificial process initiated and supported by Russia. [12]. However, the rapid growth of separatist movements in the Western European countries, functioning on established democratic and legal principles, has surprised the European politicians and experts. Seth Jolly points out that deeper integration of the EU has caused a rise in regionalist parties' participation in national elections; subnational regionalist parties are rising in importance, and can present a potentially significant political threat to national leaders [15]. Consequently, the regard to separatism in Europe has changed in the world in general and in Europe particularly, the so-called separatist wars, aimed at secession.

Nevertheless, the elaboration of separatism in the United Europe looks paradoxical only at the first sight. The European Union is usually viewed as a "post-sovereign" political and legal system. [8, p. 100], which, in case of a successful integrational process development, could have been a successful model for the integrational "core" formation in South and Latin America, Asia and CIS. [16, p. 35]. Regional politics based on solidarity and subsidiarity principles implementation by the European Union might have vanished the separatism issue in the United Europe as it is since the regions have acquired the ability to legally enter the international level (within EU) in different spheres of social life alongside with the national government [17, c. 60; 18]. Despite that, the separatist movements are still developing and destabilizing not only the state members but the European Union in general.

What favors the development of separatism in the EU? First of all, it's the separatist movements striving to preserve and elaborate their identity according to the article 3 of Treaty on European Union, stating: «It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced» [20]. The identity of separatist movements is usually based on common history, culture, language, religion and social unity. Taking into account these identities and disputes with the member states' governments, the separatists are successfully using communication technologies and transnational networks to organize political actions as well as to attract the support of diasporic communities and foreign sympathetic individuals. The role of identity in terms of separatist movements' development is portrayed in the example of the Basque Country and Catalonia in Spain, for which the memories of repressions and violation of cultural and lingual rights (as is known, the Spanish government has blocked the recognition of Catalonias as nation and giving preference to Catalan language in the region) is an important factor in the separatist climate vitality maintenance.

Therewith, it should be noted that cultural and lingual identity is not always used by the separatist movements in their campaign. Thus, even though Scotland has a different cultural and lingual identity from the rest of Great Britain, contemporary Scottish separatists are not making use of this factor. Moreover, they emphasize that in case of secession from the United Kingdom, Scotland will retain close cultural connections with England: English language will remain the official language as well as the British Pound will be the official currency of Independent Scotland. Analysing the issue of the separatist tendencies' amplification in the EU, the economic factor of this process must be definitely taken into consideration. Wealthier regions (Catalonia, Scotland, Padania and Flanders) believe that they contribute a lot to the central budget, but they do not get enough capital investment. Additionally, wealthier regions are usually dissatisfied with their representation in the national government, along with having too little control over its own resources. Thus, Catalonia is one of the wealthiest regions in Spain, however its taxes are collected and allocated by the Spanish government. As a result, funds returned back to Catalonia are significantly lower than the taxes collected by Madrid. From each Euro paid by the Catalan resident as a Spanish budget tax, only 57 Cents are being returned back to Catalonia. As a consequence, the Catalan government is forced to approach to the Spanish government in order to receive loans to pay off its debts [21]. To deal with the Catalan debt, the Spanish government forces the regional authority to conduct ferocious and unpopular activities. It is indicative that the Spanish government has not resorted to measures which could facilitate the improvement of the Catalan situation after getting help from the European Union itself. It is clear that such policy of Madrid in terms of Catalonia is one of the reasons why Catalonia is striving for secession. The economic separatism is also developing in Belgium and Italy.

For the government of a state which faces a regional entity secession it is not economically beneficial if the region becomes an EU member itself. With the introduction of a new member state would come the need to reallocate EU funds. With the admittance into the EU of an independent Catalonia, a portion of the funds presently allotted to Spain logically would have to be reallocated to the Catalonia. Budgetary decisions require the approval of the Council, the institution representing national interests. Spanish opposition to a reduction in its allocated funds would likely be strong. Under the terms of the Luxembourg Compromise, when an issue before the Council relates to «very important interests» of a member state, that state is entitled to a right of veto. Were Spain to veto a decision to reallocate a portion of its funds to the Catalonia, the EU would have to look for alternative means of financing Catalonia membership. This would present a financial burden for all EU member states [22, p. 343].

Ironically, a certain impulse, if not direct but at least a side one, is given to the separatist tendencies by the European Union¹, though not all of the researchers agree

¹ Keating argues, «globalization and European integration have encouraged the re-emergence of nationalism within established states»—a notion that connects directly with city-regions» [23, p. 1]. Khanna has noted, «[the entire European Union is thus a reminder that local independence

on that conclusion. [25; 26, p. 2, 7–8]. It is overly simplistic to conclude that the EU encourages or discourages separatism or that it makes secession easier or more difficult. Nonetheless, European integration «affect[s] how the parties to a [separatist] conflict perceive their own interests and identities» [8, p. 78–79].

Introduction of the EU regional policy, fixation of the subsidiarity principle and creation of the regional Committee has facilitated further decentralization of the federative (Austria, Belgium), regional (Spain, Great Britain) and unitary state governance. The delegation of authority from central administrative agencies to the lower levels is giving a bigger autonomy to the subregions, therefore, an ability to implement their own interests which are not always identical with the national ones. On the other hand, particularly in conditions of the economic crisis, the national governments are not always capable of national and regional tasks realization. As long as the regional communities and their elite are dissatisfied with incapability of the central authority to ensure their needs, they start to demonstrate a proclivity towards autonomy or even independency acquirement

Under the aforementioned conditions, an intercourse with the EU institutions becomes more attractive for the regional entities aiming for independency. However, it should be mentioned that the separatist regions have not always positively referred to the integration process. At first, the nationalists have regarded integration as a sovereignty transfer over Scotland or Catalonia from London or Madrid to Brussels. The situation has changed by the 1980s, when Scottish and Flemish nationalists are becoming supporters of the European integration and «independency in Europe».

As is known, small states in the EU are able to have a bigger influence in the European issues' resolution as well as a better access to receiving financial support. The point is that after the creation of the EU in which the common market is functioning, the size of a state (the size of national market) ceases to play a significant role. Within the European Union small states are capable of being similarly successful. This implies that once a country becomes part of the EU, due to many economic benefits, the importance of national market size is diminished. This can boost the confidence of regionalist parties in national elections by lowering the opportunity cost of secession [9, p. 166]. Hooghe & Marks also contend that «The single European market reduces the economic penalty imposed by regional political

movements are not the antithesis of lofty post-national globalism but rather the essential path toward it» [24, p. 78]. Similar estimation of the situation is provided by A. Pantovic: «Counterintuitively, EU's supranational integration, involves national disintegration meaning regions are acquiring more power at a subnational level. EU's subnational regional actors have acquired a more important role, and they have gained in authority and in the ability to influence decision-making at a national and supranational level. Since the establishment of the EU, there has been a rise in transnational associations and bureaucracies dealing exclusively with regional demands, thus leading to an increase in budget and funds being given to regional governments. These funds provide subnational governments with more self-reliance, and belief that its economic, cultural and political growth depends on the EU rather than on the national governments. This implies that the EU facilitates separatism through a direct channel, by offering money to the regions». And further: «The EU facilitates separatism through a direct channel (offering money to the regions) and an indirect channel (lowering the opportunity cost of secession)» [10].

autonomy because regional norms continue to have access to the European market» [10, p. 16]. The advantage larger states used diminishes due to the EU's regional financial assistance, monetary policy, foreign policy, and free trade. This indicates, that smaller regional entities are being encouraged by the EU to seek more autonomy, thus causing a rise in regional confidence and a possible increase in separatist claims [10, p. 16; 15, p. 4].

The European regional entities are using the EU to create transnational networks through it. Regions, separatist in particular, are creating offices within the EU institutions to gain connections with the Union's officials as well as the transnational organizations, for instance, European Free Alliance, which has become a political party with a representation in the European Parliament in 2004. Besides, the separatist regional entities are taking part in transnational political networks such as Conference of European Regions and Cities.

Christopher K. believes that the EU should consider expanding the formal opportunities for sub-state regions to participate in EU policymaking. For example, the EU could elevate the Committee of the Regions to what amounts to a branch of government, on par with the Commission, Council, and Parliament. It could also require (rather than simply condone) the participation of regional ministers in EU policymaking that touches on areas of regional competency. Strengthening the role of the regions at the supranational level would be consistent with the important role that regions already play within many EU member states [8, p. 102]. However, today such proposals are regarded as radical, which is why they will be unlikely apprehended by the EU member states.

It should be taken into consideration that an automatic provision of the EU membership to separatist regional entities will ruin the balance of the EU institutional mechanism. There will be a need in representation reconsideration of each state member in the EU institutions. (art. 14–17 the Treaty on European Union), change of the qualified vote majority calculation order (art. 16 the Treaty on European Union) and budgetary as well as structural funds access reallocation. In the Scottish and Catalan cases, then, secession would result in the creation of new states without breaking the continuity of the predecessor states. Still, the diminished British and Spanish states would face a reduction of their representation in EU bodies, which would require amendments to EU treaties even before the issue of membership for the new Scottish and Catalan states was addressed [8, p. 89]. Obviously, such situation does not meet interests of the European Union member states as a whole.

Consider one more point: in virtue of the EU and NATO membership small states have a lot less problems with their own security provision in comparison to bigger states outside the abovementioned organizations [10, p. 16]. In case of a particular regional entity secession from the EU member state, it can be asserted with certainty that in order to meet the USA and EU geopolitical interests, NATO will continue providing the separatist regions with military protection long before they are to acquire membership in the Alliance.

This raises a question: “if one or another regional entity (for example, Catalonia, Scotland or the Flemish region) of the EU member state will secede from the accordant state, what will be the consequences of such move?” The Treaty of Lisbon regulates only the situation when a member state desires to leave the EU. The Treaty of Lisbon tells us nothing regarding the membership of a country that was established by seceding a member state, which certainly is the EU member states’ concern [27]. However, it is believed, that the consequences for such region will be thoroughly understandable: a newly created state will not be the EU member neither *de facto* nor *de jure*. In case when it expresses a wish to acquire the EU membership, the state would have to pass all stages of the correspondent procedure – in terms of this requirement the European institutions demonstrate a sufficiently clear position.

Separatists usually affirm the fact that their regional entites may preserve the EU membership right after the negotiations concerning secession. [28]. They believe that the right for secession is based on provisions of the p.2 Treaty on European Union where the main democratic values and the supremacy of law in the EU are outlined. [20]. Furthermore, as an argument the following statement is being expressed: taking into account that many separatist regions are politically and economically significant, their exclusion from the EU will create problems in the EU functioning and integrational process development.

However, that is a flase statement. The truth is that the pathway of becoming a EU member will be complicated, first of all, by the subjective factors and depend on the way the regional entity has “separated” with the “mother” state. It must be remembered that the accession to the EU requires consent of all member states, therefore, the membership acquirement by ex regions – newly established independent states – may be blocked by the old ones. Some members of the EU, including Spain, have refused to recognize the independence of Kosovo in order not to create a precedent for the separatist regional entities on their territories. On the eve of the referendum in Scotland, Spain has warned the local separatists that Edinburgh would need no less than 8 years for the EU membership negotiations [29].

The most optimal way of the regional entity secession from the “mother” state composition is a civilized and legal one¹. A legal and civilized way to secede from the United Kingdom was chosen by Scotland. In 2012 London and Edinburgh have reached agreement on Scotland Independence referendum holding. [30]. Opposition of the majority of participants has temporarily removed the question on the Scottish secession from the agenda. However, the victory of Brexit supporters at the 2016 referendum has made the Scotts to negotiate the issue of the 2nd referendum holding regarding the Independence of Scotland and its membership in the European Union. If the aforementioned referendum will be conducted and the question concerning the

¹ «Consistent with the Canadian Supreme Court’s advisory opinion on Quebec [30, p. 133–135], states faced with separatist movements should consider allowing for referendums to gauge support for separation. There is no reason why the democratic principles that guided the Canadian Supreme Court’s framework for negotiated secession should not apply with equal force in democracies like Spain, the United Kingdom, and Belgium» [8, p. 101].

secession will receive support, Scottish compliance with the constitutional procedure of secession will ensure acceptable position of London that will not drastically discourage its pathway towards the EU membership. Though, it does not mean that the intention of Scotland to enter the European Union will be supported by all member states. Primarily, it applies to those countries, which contain separatist regional entities in their state composition. That is a path Belgium may take in case of its dissolution¹.

Another situation is when a region is implementing the secession in an uncivilized way². In this instance, entry of a newly created state will be most likely blocked up by the “mother” state. The blocking of entry of such countries may be implemented by the other EU member states having separatist movements on their territory. Thus, Belgium facing the Flemish separatism issue, will unlikely support the secession of Scotland and its entry into the EU. In that regard, it is possible to recollect the situation of Kosovo unrecognition by Spain, Greece and Cyprus.

The situation with the EU member state exit bears one more nuance. In the event of Scotland and Catalonia secession from the United Kingdom and Spain composition, the mentioned regions are forming a new state that has to enter the EU on general grounds. A slightly different situation takes place with the Flemish region. Flanders comprises the majority of Belgium’s territory and population and controls the lion’s share of its economic wealth, and it would thus be the most obvious candidate to inherit Belgium’s legal personality. That is, Flanders almost completely meet the requirements appointed by Michael P. Scharf [32, p. 67], that are considered in determining of the question regarding which part of the predecessor state will inherit its legal personality in case of dismemberment. To allow this outcome, however, the Flemish secession may be transformed into a situation where Flanders had, in effect, kicked Wallonia out of the Belgian state. The future of the Belgian state would undoubtedly be addressed as part of the negotiations leading to Flemish secession. The «velvet divorce» option that dissolved Czechoslovakia and created separate Czech and Slovak states in 1993 would have been preferred. The critical complication, however—which had no corollary in the Czechoslovak case—is Brussels. Both Flanders and Wallonia consider Brussels their capital [8, p. 89–90; 33; 34; 35].

The European Union, as a rule, remains neutral concerning the internal problems of the member states according to p. 2 art. 4 Treaty on European Union which points out that «The Union shall respect the equality of Member States before the

¹ The basis for such conclusion provides Belgium with experience of transferring from unitary to federal governmental system. In this case, the dissolution of Belgium will resemble the dissolution of Czechoslovakia, when both constituent entities have agreed on secession as a consequence of which neither Czech Republic nor Slovakia have ratified the legal person of Czechoslovakia in international organizations. It can be predicted that the Brussels’ status would face complications, since it is not only the kingdom’s capital but the headquarter of the EU itself.

² Susanna Mancini, estimating such course of events’ scenario, indicates: «demonizing secession, turning it into a constitutional taboo, often adds fuel to secessionist claims. On the other hand, if secession is constructed as one among the many rights and options offered to a state’s subnational groups, chances are that it will lose much of its appeal» [31, p. 482].

Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security» (the last sentence was included upon the request of Spain) [20]. This, in particular, means that each member state is capable of state governance self-determination, therefore Belgium, Austria, Germany are federal states as well as Great Britain and Spain are regional states whereas most of the EU member states are unitary.

At the current stage of integration, institutions of the Union demonstrate dedication to the idea of territorial integrity of the member states. Thus, EU Commission President Romano Prodi stated in April of 2004 that a newly independent region would, by the fact of its independence, become a third country with respect to the Union and the treaties would, from the day of its independence, not apply anymore on its territory¹. Prodi also says that such a newly independent region would have to apply to become a member of the Union, under the normal process of adopting new members. The answer is a particular blow to nationalist parties in regions such as Scotland and Wales who have built their strategy of independence from Westminster on membership of the European Union [37].

Regarding the Catalan referendum held in October 2017 official representative of the European Commission Margaritis Schinas has declared that, firstly, the situation in Spain is the internal affair of Spain, which has to be resolved in accordance to Spanish law and order, secondly, according to the Constitution of Spain the voting was illicit, thirdly, if the referendum was held according to the Constitution of Spain, Catalonia should have exited the European Union, and, fourthly, parties of the conflict must pass from confrontation to a civilized dialogue in order to resolve the conflict [38].

With respect to succession, the European Commission abides by norms and principles of international law. In regard to this issue Christopher K. Connolly points out: «New states typically do not succeed to (i.e., automatically inherit) the international treaty obligations of their former parent states, especially with regard to treaties governing membership in international organizations. Instead, international organizations usually require new states to accede to (i.e., separately obtain) membership. Although secession from an EU member state would be without precedent and the EU's governing treaties are silent as to how such a situation should be handled, there are both legal and political reasons why it might adhere to the general requirement of accession» [8, p. 85].

Along with that, it should be borne in mind the EU is not a classic international organization but a political and legal formation functioning, for the most part, on

¹ Analogical position was taken by the Head of the European Commission Josif Manuel Durro Barroso, during a September 2012 interview with the BBC and again in a December 2012 letter to the House of Lords, European Commission president Josif Manuel Barroso opined that a new state created by secession from an EU member state would have to apply for membership on its own, following the EU's standard application procedure [36].

the federalist principles. Introduction of EU citizenship institution accordingly creates certain complications (which are usually not indicated neither by politicians nor researchers) in terms of the membership acquirement by regional entities seceding from EU member states. Residents of the separatist regions are EU citizens, therefore, are capable of requiring accession which would involve stripping them of citizenship pending readmission. This factor gives rise to doubts concerning what choice the European Union will make: abidance to the norms of treaties or achievement of the political compromise? And if the European Union is to chose the latter, what will be the compromise and what will be the way of forcing the member states to work it out?

Conclusion. The analysis provides an occasion to agree that under the contemporary circumstances the European Union will play a leading role in determining the results of Flemish, Scottish, and Catalan nationalist claims. The right to self-determination as currently understood in international law provides little in the way of guidance for addressing separatist claims in Europe's stateless nations. In Europe self-determination claims will increasingly be dealt with through the institutions of the European Union, as part of the ongoing push and pull among the EU, its member states, and sub-state regions [8, p. 105].

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Сепаратизм в об'єднаній Європі: стара проблема з новим обличчям

Досліджено питання, пов'язані з розвитком сепаратизму в Європейському Союзі. Наголошено, що розвитку сепаратизму певною мірою сприяють процеси глобалізації та регіональної інтеграції, які можуть відігравати як інтегративну, так і деструктивну роль. Проаналізовано передумови розвитку сепаратизму в умовах європейської інтеграції, а також форми його реалізації. Реалізація Європейським Союзом регіональної політики, що заснована на принципах солідарності і субсидіарності, не знімає проблему сепаратизму в об'єднаній Європі як такої. Значною мірою це обумовлено тим, що в сучасних умовах культурно-мовна ідентичність не завжди використовується сепаратистськими рухами в їх боротьбі. Дедалі більшого значення набувають економічні чинники цього процесу.

Сепаратизм в ЄС має й іншу особливість. Вона пов'язана з питанням членства в Європейському Союзі сепаратистських регіонів держав-членів у разі їх виходу з «материнської» держави. Зазначено, що у випадку позаправового механізму виходу зі складу держави прагнення сепаратистських регіонів набути членство в ЄС зіткнеться насамперед зі спротивом тих держав-членів, які мають у своєму складі подібні регіони. Інститути ЄС сьогодні також стоять на позиції не визнання права регіонів держав-членів автоматично набути членства в Євросоюзі у разі виходу зі складу «материнської держави».

Обґрунтовано висновок, відповідно до якого в перспективі в об'єднаній Європі вимоги щодо самовизначення регіонів будуть все частіше розглядатися через інститути Європейського Союзу в умовах посилення напруги між ЄС, його державами-членами та регіонами держав-членів.

Ключові слова: сепаратизм; регіоналізм; Європейський Союз; європейська інтеграція; членство в організації.

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