Self-determination within the state – Referendum in Scotland

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1. ABSTRACT

The main goal of this paper is to analyze the concept of self determination and also explain the historical, political and economic factors that have influenced self-determination ideas to arise in Scotland and that lead to the referendum. I will also analyze the outcome of the referendum in Scotland and its impact on not only British, but also the international community.

Research question of this paper is:

1. Do Scots have the right to self-determination?

By answering to the above question I will prove my hypothesis: that Scots have the right to self-determination.

2. INTRODUCTION

Scotland is one of the 4 (four) territorial units of the United Kingdom, comprising of England, Wales, Scotland and Northern Ireland. It poses a certain degree of autonomy with its own Parliament and Government that was formatted under the law of Scotland, which was adopted in 1998 in the UK Parliament.

The Parliament in Scotland has started with work on July 1, 1999. Scotland’s interests are represented by the Secretary of State for Scotland in the office of the UK government in London. In the UK Parliament Scotland has 59 members of the lower house and it also has a special fixed parliamentary body – Scotland’s big board. Scotland also has an independent judiciary. The legal system of Scotland is continental, based on the Roman law. In other parts of the UK legal system is precedence or common law.

Scotland has its own local government, its education system, an independent church, bank and its currency - Scottish pound. Scottish pound is not an independent currency, but it represents a form of the British pound, which is used in Scotland. Scotland achieved the highest degree of autonomy within the United Kingdom. At the moment the Scottish National Party is on the power, with the first minister Alexs Salmondom. One of the pre-election promises to the public from the First Minister of Scotland was organizing a referendum on full independence of Scotland and its secession from the United Kingdom. After negotiations with the government of the UK about the organization and formulation of the referendum question, the two governments signed the Edinburgh Agreement. This Agreement gave jurisdiction to the Scottish Parliament to schedule a referendum. Proposed Law represents a legal step to legally maintain referendum. Proposal for organizing referendum was submitted to the Scottish Parliament in spring 2013.
3. CONCEPT OF SELF – DETERMINATION

Self – determination can be defined as a legal right of people to decide their own destiny in the international order.¹

Self-determination represents one of the principles of international law that is originating from the customary international law. It is also recognized as a general principle of law.

We can observe concept of self-determination from two aspects:

1) “Internal self-determination is the right of the people of a state to govern them without outside interference.”², and

2) “External self-determination is the right of people to determine their own political status and to be free of alien domination, including formation of their own independent state.”³

There are a great number of international treaties that are defining self-determination.

The UN Charter is mentioning the concept of self – determination in the Article 1 Par. 2 of the Charter that states:

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace;“⁴

The UN International Covenant on Civil and Political Rights and the UN International Covenant on Economic, Social and Cultural Rights are codifying the concept of self – determination. Both of these documents expand the Article 1 Part 2 of the UN Charter into more detailed statements. The first articles of both of these documents are identical:

¹ (Law.cornell.edu)
² (Pesd.princeton.edu)
³(Pesd.princeton.edu)
⁴ (Electricscotland.com)
“Article 1

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.  

The concept of self-determination was also reaffirmed during the Conference on Security and Cooperation in Europe that was held in Vienna in January 1989:

"[The participating states] confirm that, by virtue of the principle of equal rights and self determination of peoples, and in conformity with the relevant provisions of the [Helsinki] Final Act, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic and cultural development. (Questions Relating to Security in Europe, No. 4)”

International law is clear regarding the concept of self-determination.

The recognition of the new state represents a willingness of the international community to accept a new state into the international community. According to the constitutive theory state or government does not exist in international law until it is not recognized. According to declarative theory the recognition has no legal effects. The existence of a state or government is a matter of pure fact and recognition represents the admission of the facts. There is no universal rule in the international law that prohibits to a group of people to overthrow the government of their country and to create a new state if they are strong enough to do so. In these cases existence of the state

5(Electricscotland.com)
6(Electricscotland.com)
or government is a matter of the fact and the question of recognition or non – recognition usually doesn’t have legal effect. Prevailing opinion today is that the recognition is declarative and that it doesn’t create a state, as it is mentioned in the Montevideo Convention from 1933, regarding the rights and duties of the state. The political existence of the state is not dependent on recognition and state has the right to defend its integrity and sovereignty. Recognition from the other state does not create an obligation to establish full diplomatic relations or other forms of cooperation. This remains in the domain of political discretion.

4. HISTORICAL BACKGROUND TO THE REFERENDUM IN SCOTLAND

The first written evidence of the existence of the Scottish Parliament comes from 1235. The Parliament of Scotland originates from the King's great council. The council has advised the king in the fields of politics and law. Scotland was kingdom in the period from 1018 until 1707, when it was united with the Kingdom of England.

In the 1707 The Act of Union was brought, which represents a legal basis for the unification of the Kingdom of Scotland and the Kingdom of England. With acceptance of this Act, the Kingdom of Great Britain was created. To this Union in 1801 Ireland acceded.

During the referendum in 1997 citizens of Scotland expressed their will to establish the Scottish Parliament. The first session of the Scottish Parliament was held on May 12, 1999. The Law of Scotland, which was brought by the UK Parliament, established the Parliament of Scotland. With this Law, the UK Parliament transmitted part of its jurisdiction in the area of adoption of primary laws and financial competence in the field of tax tariffs to the Parliament of Scotland. The Article 5 of the Law of Scotland regulates which areas are under the jurisdiction of the UK Parliament. All areas that are not expressly mentioned in this article are automatically transferred to the Parliament of Scotland. The Parliament of Scotland can adopt laws which have legal force on the territory of Scotland and which are in line with the EU law and the European Convention on Human Rights. The Article 29 of the Law of Scotland gives the right to the UK Parliament to remove from its legal order all of the laws that are adopted past the restrictions mentioned above.

Competence of the Scottish Parliament cannot interfere with the competence of the UK Parliament. With State Council Order Queen can give to the Parliament of Scotland different jurisdiction to those mentioned in the Articles 4 and 5 of the Law of Scotland.

The Parliament of Scotland has an institution that is called the Committee on European and External Relations. This institution considers all matters related to the EU, but Scottish ministers don’t have the authority to decide on negotiations with the EU. The jobs in the EU are reserved for the Parliament of UK. The Ministers from Scotland are participating in sessions of Council of Ministers of the European Union with the permission of the Secretary of State. The Ministers of
Scotland cooperate with Ministers of UK through its office in Brussels. The office of the Scottish government in the EU represents connection of the Scottish government with the institutions of the EU and representatives of the UK, that are representing interests of Scotland in the EU. The Ministers of Scotland are reporting on the work of government in the area of the EU policy. The UK has 73 members in the European Parliament and 6 of them represent Scotland. The members of the Scottish Parliament can be elected to the European Parliament. The European Parliament also has its representatives in Edinburgh and it works closely with the Committee on European and External Relations.

Besides its legislative functions, the Scottish Parliament is electing the First Minister and it is supervising the work of government. The election of the First Minister and other Ministers is regulated in the Articles 47 and 49 of the Law of Scotland. The Parliament within 14 days of elections suggests some of its members for the First Minister. The First Minister is formally appointed by the Queen. The Parliament also elects other Ministers, but they are appointed by the First Minister. The Queen formally appoints and dismisses Ministers. The Queen’s Attorney-General for Scotland don’t have to be members of the Parliament, but for their appointment it is necessary to have approval from the Parliament. The Cabinet represents the executive body of the government and it has collective responsibility.

The Parliament has plenary sessions and committee sessions. The Parliament of Scotland has a total of 129 members. The number of parliamentary seats is distributed among the parties in accordance to the number of votes that they received. The members of the Scottish Parliament are also members of the UK Parliament. The last elections for the Scottish Parliament were in 2011 and the following elections are planned for May 5, 2016. The Parliament elects the Chairman of the Parliament among its members. The Chairman of the Parliament plans its work and represents it both in the country and abroad. The Chairman of the Parliament has two deputies that are elected by a secret ballot. The Chairman of the Parliament and his deputies must be politically neutral during parliamentary sessions.

A referendum on Scotland’s independence is the third in a row, the first was held in 1979 and was aimed at transferring part of the power from the Parliament of the UK to the Parliament of Scotland, the second was held in 1997 and it passed with two-thirds of majority vote and from then on the Scottish Government is in charge of the tax policy and Scotland got its own parliament and government. The competences of the Scottish government are local issues, while the strategic issues such as foreign policy and defense financing are within the jurisdiction of the UK government. The circumstance that made it possible to raise the issue of the referendum is the victory of the Scottish National Party in the elections in 2011. Since then the newly elected government of Scotland has started creating conditions for talks with the UK government regarding implementation of a referendum on independence. Scotland proposed to the UK to vote on secession from the UK during the referendum in 1979. Only tiny majority voted yes for secession from the UK, so this referendum didn’t make desired changes, because 40% of the total electoral body had to vote yes for succession for a referendum to be successful.
During conservative governments of Margaret Thatcher and John Major further constitutional reforms were not proposed. After the Labor Party came to power in 1997, Scotland held a second referendum on secession from the UK. The majority of the elected body voted yes for the establishment of the Scottish Parliament and for the Parliament to have the right to evaluate the tax base for income tax.

The UK Parliament passed the Law on Scotland in 1998, when the Scottish Parliament was formatted. The first parliamentary elections were held on May 6, 1999.

The Scottish National Party during the elections in 2007 promised to organize a referendum in 2010. After these elections, Scottish National Party became the largest political party in the Scottish Parliament, the legislative body that was formed in 1999 to address the issues that the Parliament of the UK transferred to the Scottish Parliament.

During the August 2007 the government of Scotland initiated a public debate on initiating a referendum on secession from the UK. During this period also initiative was started to draft the Law on referendum. After the public debate was finished in 2009, White Book was published with the proposal of the Law on referendum. White Book provided, 4 (four) possible outcomes of the referendum.

Those 4 (four) possible outcomes are:

1) Secession in accordance with the conclusions of the Calman Commission (partial secession) – that would mean fiscal reform, gaining additional powers, defining special tax rates, the introduction of the taxes at the discretion of the Scottish Parliament;

2) Full Secession – that would mean the responsibility of the Scottish Parliament for all the laws on duties and taxes in Scotland, with the exception of matters of defense, foreign affairs, currency and financial policies which would remain under the jurisdiction of the UK government;

3) Total independence - that would mean that Scotland would follow the example of other independent and sovereign states;

4) Without change.

The government of Scotland published the draft of the Law on referendum for the public debate. This document was named the Future of Scotland. The public was informed that in the time frame between February 25, 2010 and April 30, 2010 they can submit its proposals regarding this Law.
But at this time the Scottish government failed to gain support from the opposing Parties in the Parliament, so it decided to withdraw the proposal of the Law on Referendum.

During the elections in 2011 Scottish National Party won the elections with an absolute majority of seats in the Scottish Parliament. This gave the Scottish National Party the necessary mandate to organize a referendum on independence of Scotland.

From January to October 2012 negotiations between the UK and Scottish governments were ongoing regarding the transfer of legislative powers to the Scottish Parliament to organize a referendum. During these negotiations, they accepted general framework for the referendum and the authority for organizing the referendum has been appointed. On June 27, 2013 the Law on the right to vote in a referendum on independence of Scotland was passed. The Scottish government on November 26, 2013 issued a document titled the Future of Scotland, which represents views of the government of the independence of Scotland.

Political leaders in Scotland who initiated the referendum campaign were convinced that an independent Scotland could continue to remain a member of the EU. They were planning to start negotiations with the EU and to leave alliance with the UK on March 2016. The main arguments that they used during the campaign was that people of Scotland will live better as an independent state. That independence of Scotland is important for young people and that it will provide more jobs and better life opportunities.

Those in favor of Scotland staying in the UK were using arguments that Scotland will have more influence in the world economy staying in the UK thanks to the major alliances like the EU and NATO, that the UK is a member. Staying in the UK also means more jobs, the continued use of the British pound, the strong financial tradition of partnership that dates back more than 300 years. Independence of Scotland would also influence movement through the UK. In the case of independence of Scotland between two countries borders would be put, passport control would be introduced maybe even visa regime would be established. The question if independent Scotland would stay being a member of the EU and NATO is very questionable.

From the aspect of the international community the idea of Scotland becoming independent was not welcomed. Independence of Scotland would serve as negative example and would inspire other movements for independence around the world.

For independent Scotland to enter the EU, all Members States of the EU would need to approve this application. According to the statement of the Spanish Prime Minister - Mariano Rajoy, Spain would deny its approval to Scotland joining the EU, because this example would inspire Catalan fighters in Spain.
5. POLITICAL AND ECONOMIC FACTORS THAT HAVE INFLUENCED THE REFERENDUM IN SCOTLAND

The plan for the independence of Scotland was presented in Glasgow in the White Book, which clearly defined the direction in which an independent Scotland would be going. Scotland represents European, democratic country that is a part of a member state of the EU. The UK that is rapidly moving away from the EU. The UK government undermines human rights and international law. It is showing the EU in the wrong light. These actions are contrary to the interests of Scotland who wants to stay in the EU. Scotland is one of the oldest nations in the whole of Europe, and its independent history is longer than the history of being a part of the UK. The geographical position of the Scotland is in the middle of the North Atlantic and is strategically very significant. Scotland has a long coastline with deposits of oil and gas and lots of fish. These resources are making Scotland strategically important for NATO and it will try to stay in the NATO.

Scotland holds 80% of oil and gas reserves of the UK and 20% percent in the EU, so it is very important for the EU as well. The main argument of the nationalists from Scotland is that their country will be better if they had control over revenues from oil reserves rather than shared them with the UK. Alex Salmond announced that it will establish a state national wealth fund, in accordance to the Norwegian model. Alex Salmond says that there are 24 billion barrels of oil reserves in the North Sea, which are worth 1.5 trillion pounds.

Member States of the EU, in principle, do not favor the trend of fragmentation, the increasing number of smaller countries, which are paying less and enjoy virtually equal rights. The government of Scotland claims that under Article 48 of the Treaty of the EU it can negotiate to remain a member of the EU while not formally separated from the UK.

Scotland would retain the British crown. The unity of the crown is different from the unity of the Parliament. Some countries like Canada, Australia and New Zealand kept the unity of the crown. Queen Elizabeth II would remain to be Queen of Scotland. Scotland would also keep the British pound. The Prime Minister of Scotland Alex Salmond said that Edinburgh has an equal right to the pound as London. He threatened that Scotland won’t take its percentage of the UK national debt, if London refuses to allow Scotland to keep the pound. Scotland is also asking for 90% of the revenue of oil and gas from the North Sea. Great Britain would have to relocate nuclear missiles from Scotland, while Scotland would after independence join NATO and the EU.

However, the official position of London is that such future of Scotland that was presented in White Book it can’t be possible. According to the Edinburg Agreement, which made possible organizing of the referendum, if Scotland would vote yes for independence, it could declare this independence only after negotiations with London. This would involve a series of complex
issues, from the organization of government, immigration to the question of Scotland in the EU and NATO.

The Foreign Minister of the UK William Hague said to the parliament of Scotland that leaving the UK and accession into the EU of an independent Scotland would not go so easy and quickly. For this there is no precedence. It still did not happen that the area within the EU Member State separates and keeps membership in the EU. The UK government claims that Scotland on the basis of Article 49 of the Treaty of the EU will have to reapply for membership in the EU. London and all three main political parties in the UK: Conservatives, the Liberal Democrats and Labor Party are against sharing the currency with Scotland. The plan of Scotland to become the member of the EU as independent country was also criticized by the European Commission's President Jose Manuel Barroso. According to his opinion the idea of Scotland would be difficult, if not impossible to implement and pointed out that for Scotland to join the EU all members states of the EU would have to agree on that.

6. OUTCOME OF THE REFERENDUM IN SCOTLAND

The Referendum Law of Independence was adopted in the Scottish Parliament on November 14, 2013. The Queen Elizabeth II gave the royal acceptance of that Law on December 17, 2013. The UK declared that the Scottish Parliament doesn’t have the right to unilaterally adopt decision on secession from the UK, because the constitution is reserved to the UK Parliament only. The government of Scotland rejected these claims that the Scottish Parliament has no authority.

In the end the Agreement of Edinburg was signed that temporarily authorized the Scottish Parliament to organize a referendum that will ask questions about the independence of Scotland, and the queen confirmed this with her signature.

The main issues that were discussed during the referendum campaign were regarding the economic strength of Scotland, defense, future relations with the rest of the United Kingdom and membership in international organizations, especially in the EU and NATO.

The main supporters of Scottish independence were: the ruling Scottish National Party, Scottish Green and Scottish Socialist Party, acting under the slogan yes Scotland.

The main supporters of Scotland remaining in the UK were: Scottish Labor Party and Scottish liberal Democrats, acting under the slogan: Better together. In accordance with the draft of 2010 and the provisions of the Law on referendum, the right to vote in the referendum on the independence of Scotland had: British citizens residing in Scotland, the citizens of the other 52 members of the Commonwealth residing in Scotland, citizens of other EU Member States residing in Scotland, members of the House of Lords with residence in Scotland, staff serving in
the British armed forces or the government, and who are registered as voters in Scotland. Before a referendum was scheduled there were discussion does the Scottish Parliament has a legal ability to organize a referendum on the independence of Scotland. In accordance with the UK legal system the Scottish Parliament has no right to unilaterally secede from the UK, because the constitution issues are reserved for the Parliament of the UK. According to the Edinburgh Agreement, the British electoral Commission was responsible for the supervision of the referendum, with the exception of the vote count, announcement of the results and approval of the cash funds. Formulation of the referendum question was left to the Scottish Parliament. The text of the questions was proposed by the Scottish government.

The UK government announced if the majority of voters declares independence for Scotland, it will become an independent state after the negotiating process with the UK. If the majority of voters vote against independence, Scotland will remain part of the UK.

Election Commission has prepared an informative poster which confirmed that the UK and the Scottish government agreement on these issues.

On the day of September 18, 2014, when the referendum was organized in Scotland the referendum question was: Should Scotland become an independent country? YES or NO?

The result of referendum was that 55% voted to stay in the UK and 45% voted for independence.

After the results of the referendum the question that is being asked is why the majority of people in Scotland voted NO? Do they think that is better to stay within great and political power and that it can provide better living conditions for them.

The outcome of the Scottish referendum is sending a negative message to the people that are fighting for self-determination in other parts of the world. This referendum was held in democratic and peaceful conditions for both sides.

If Scotland became independent it would most probably have fallen into the budget deficit, and revenues from oil and gas from the North Sea would not be enough to cover most of the costs of dissolution with the UK.

There are many reasons for YES and NO to independence of Scotland.

If Scots voted for independence they would become independent only on March 24, 2016. This would leave them 18 months of negotiations with London. The main issues they would discus are: question of currency, nuclear weapons of the UK, etc.

Majority of Scots would vote YES for independence if it would mean higher living standards.

The Government of Scotland is for establishing a relationship with the EU on the basis of full membership in the EU with a few exceptions, such as the exemption from the obligation to accept the euro.
Independent Scotland would have to apply for membership in the EU in order to get the candidate status and it would need to have the consent from all members of the EU.

Another reason against independent Scotland is the situation today in the world. An independent Scotland would weaken the UK as one of the world powers and it would threaten stability of the West. The world doesn’t need another crisis right now, having in mind the situation in Syria, Iraq and Ukraine.

7. CONCLUSION

In my paper I have answered the research question and showed that Scots have the right to self – determination. Right of the people of Scotland to decide their own future represents one of the basic principles of international law.

International law guarantees to the people of Scotland that they are free to decide about the form of government they want.

The Scots had the right to decide about their independence and about the government they want with a referendum.

The outcome of referendum was in the hands of the Scottish people. They had the opportunity to decide the fate of Scotland, and thus fate of the UK.

The outcome of the referendum was that 55% percent of Scots chose to remain in the UK. With the vote to stay in the Union which is more than 307 years old, they brought relief to millions of British, as well as British allies in the EU and other countries that feared the UK will break apart.

If Scotland decided to become independent, the EU would be faced with many issues. Independence of Scotland would influence other independence movements in Europe like in Spain, Belgium, and etc.

The main goal of the EU is integration and Scotland by leaving the UK would do exactly the opposite.

With Scottish independence the UK would lose 32% of its territory. It would cause deep instability in the UK and maybe inspire others, such as Northern Ireland and Wales to ask for independence too.

With saying no to independence Scotland remained being a part of the UK and with that avoided issues of currency, security, alliance with the EU and NATO, etc.
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