



The principle of self-determination and Kosovo Albanians

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Abstract

Self-determination is the right of a people to decide on its political destiny and is expressed. Any people who do not receive proper treatment within a state, when their rights are violated, can seek self-determination and self-government. Initially, the right to self-determination was proclaimed most clearly and accurately by the President of the United States of America, Woodrow Wilson.

Not only at the London Conference in 1913, but also during the Versailles Conference 1918-1920, Albanians did not benefit from the principle of self-determination. During World War II, the Allies made the principle of self-determination part of the Atlantic Charter (August 14, 1941). The clearest and most meaningful expression for Albanians, both from a legal and a historical point of view, was the Bujan Conference. This Conference, gathered the representatives of the Albanian people, where with their free will, they expressed and self-determined, the historical-ethnic, but also democratic rights, which belonged to the Albanians.

After World War II, with the development of a new international system, the right to self-determination takes on a wider dimension. According to Article 1 of the Charter of the United Nations, in addition to defining the right to self-determination of an international character. The right to self-determination is also enshrined in the United Nations Declaration on the Countries and Peoples Colonized in 1960, as well as the United Nations Protocols on Civil, Political and Economic, Cultural and Social Rights in 1966.

The so-called Assembly of Prizren and its Resolution but especially the Yugoslav Constitution of 1946 are clear evidence that show that the right of self-determination was not exercised by Albanians. The autonomy of Kosovo would go towards complete legal and political annihilation with the Constitution of the Socialist Federal Republic of Yugoslavia of 1963. The Constitution of 1974 was an approach that gave the greatest possible autonomy to the republics, but this time also to the autonomous provinces of Kosovo and Vojvodina. Helsinki Final Act of 1975 also recognizes the observance of the principle of equality and self-determination of peoples.

According to the case law of the International Court of Justice, the right to self-determination is a free expression of the will of the people, and that every ethnic group, not only within colonial states, but also within non-colonial (ie federal, unitary) states, has rights to express their will for self-determination.

Keywords: self-determination, international court of justice, ethnic group, atlantic charter, 14-point program of wilson, bujan conference, charter of the united nations, right of a people

Introduction

The right to self-determination and the Kosovo Albanians during the years 1912-1945.

Self-determination is a principle, and a very important right, that has found support in several international acts, national, but also in world practice. Any people who do not receive proper treatment within a state, when their rights are violated, can seek self-determination and self-government. According to Michael Ignatieff, "Self-determination is a right that belongs to the people. It does not belong to the states. It is universal and not divisible,..."(Michael Ignatieff, 2000: 184)^[15]. "Self-determination is the right of a people to decide on its political destiny and is expressed... through the desire to form a state" (Joseph S. Nye, JR David A. Welch, 2014: 361,363)^[8]. The people have the right to object if they are not given the rights they deserve. John Locke states that "popull a people who, contrary to every right, are treated worse and worse, will not let the opportunity to escape from misery escape..." (Jea-Jacques Chevallier, Ives Guchet, 2006: 112)^[7].

The Albanians in 1912, presented a memorandum to Sir Edward Gray, where they explained, among other things:

"To place under foreign domination, territories where the Albanian population is in the majority means to sow the eternal seed of disorder and unrest" (Edith P. Stickney 1926; Mal Berisha, 1997: 49.)^[2] Albanians wanted their state because "the state is the only way to protect the identity of a people" (Michael Ignatieff, 2000: 169)^[15]. Why was the annexation of Kosovo in 1913, 1918, 1945, 1989 not based on international law? Why was self-determination a and is a legitimate right of Kosovo? What is the international legal basis for the self-determination of Kosovo Albanians? After the declaration of independence of Albania in 1912, and during the Balkan wars in 1912-1913, Serbia would enter the territories of Kosovo not on the basis of international law, but by occupying them. The London Conference in 1912-1913, acted not according to the principle of self-determination, but according to the interests of the Great Powers, and the demands of the Balkan states.

This conference in 1913: "gave the Balkan allies large areas of territories inhabited by Albanians, regardless of their ethnic composition" (Miranda Vickers, 2004: 111)^[14]. Some of the Great Powers justified that this decision was taken in the service of security and peace in Europe, even

though they acknowledged that the historical rights of Albanians had been violated.

Initially, the right to self-determination was proclaimed most clearly and accurately by the President of the United States of America, Woodrow Wilson. Wilson announced his 14-point program, which included the principle of self-determination. According to him, the territory should be given to the people who belonged to it, and not to divide the territories according to the interests of the Great Powers. Wilson said: "National goals must be respected. "Self-determination is not just a general phrase... Peoples and provinces should not be given one power at a time, and another... Any change of state territory must be carried out in the interest and for the good of the people..." (Winston S. Churchill, 2006: 252) ^[21].

Not only at the London Conference in 1913, but also during the Versailles Conference 1919-1920, Albanians did not benefit from the principle of self-determination. The Serbo-Croatian-Slovenian Kingdom, in 1918, made Kosovo part of it, without asking the Albanians. The London and Versailles conferences recognized the invasions of the Balkan states on Albanian territories, and not the principle of self-determination, and historical rights. Did the Albanians manage to express their right to self-determination in the Yugoslav Federation? "Self-determination, as a general right of all peoples, is deeply democratic.... In order for the right to self-determination to be realized, it presupposes the free and secure expression of the will of the respective people" (Fehmi Agani, 1994: 21) ^[5]. Josip Broz Tito, in 1937, stated that the most important goal was: "popull every people has the right to self-determination until secession... The issue of Kosovo and Metohija... will be easily resolved to the satisfaction of all... will be decided by the people themselves" (See more Xhelal Gjeçovi, 1998: 57) ^[22].

As we will see below, the principle of self-determination has not only been addressed by international case law, but is accepted as one of the most important principles for the rights of peoples, where its importance as a just tool has increasingly increased. solutions to many issues between peoples and states. "The principle of self-determination has been recognized and sanctioned by a series of international legal acts. It is mentioned as such especially by the Atlantic Charter of August 1941 and, subsequently, by the Resolution of the United Nations General Assembly of 1960 on the granting of independence to the colonial territories and peoples, the decision of the International Court of Justice (ICJ) 1995, on the East Timor trial, in which the Court held that the right to self-determination 'is one of the fundamental principles of modern international law' (Portugal v. Austria, International Court of Justice, 90; Ksenofon Krisafi, 2014: 246-247) ^[12].

During World War II, the Allies made the principle of self-determination part of the Atlantic Charter (August 14, 1941). This Charter, among other things, stated that "ohet the right of all peoples to choose the form of government they want is respected; that (the Allies) want to see -se- self-government will be returned to all those who have been taken away by force" (Sami Repishti, 1998: 154) ^[20]. Even in the conferences undertaken by the Allies during World War II, sovereign equality, freedom and self-determination were essential principles that every people should enjoy, and no one should violate, as had happened during World War II. World. The Moscow Conference, held on 19-30

November 1943, obliged: "... the establishment as soon as possible of a general international organization based on sovereign equality for all peace-loving peoples" (Sami Repishti, 1998: 154) ^[20]. At the Tehran Conference in December 1943, it was stated that: "pop all the peoples of the world will live free, their lives free and untouched by tyranny as they wish, as their conscience tells you" (New York, TIMES, December 7, 1443; Sami Repishti, 1998: 155-156) ^[20]. During the Second World War, the ground was prepared not only by the allies, but also by the Albanians, to achieve the rights based on the self-determination of the peoples, as a fundamental right, which had support not only in national and international acts, but even in the very consciousness of peoples, and the values of humanity.

The clearest and most meaningful expression for Albanians, both from a legal and a historical point of view, was the Bujan Conference. This Conference, gathered the representatives of the Albanian people, where with their free will, they expressed and self-determined, the historical-ethnic, but also democratic rights, which belonged to the Albanians. "The right of the Albanian people in Kosovo to self-determination until secession, sanctioned in the Resolution of the Bujan Conference, is an expression of the principle according to which peoples and nations enjoy the right to secession and the creation of an independent state" (Rustem Gjata, 1998: 24) ^[19]. According to this Resolution: "Kosovo and the Dukagjini Plain is a province inhabited mostly by the Albanian people, shqiptar the Albanian people of Kosovo and the Dukagjini Plain to join Albania... -and- have the opportunity to decide on their own destiny with the right of self-determination until detachment..." (Jusuf Bajraktari, 1998: 127) ^[9]. Based on international principles and acts, the Albanian people fulfilled the right and obligation they had to create the Albanian national state, because the Albanians as a nation, had the right like all other nations, to create their own united national state.

The Kosovo Albanians combined the Albanian issue and the resolution of the crisis in Kosovo with the anti-fascist war, as a human and national task, in support of democratic values, in the joint defensive fight against aggression. It should be noted that in Yugoslavia and beyond: "... the principle of self-determination and secession of the peoples... would be realized through the joint armed struggle against the Nazis... and the establishment of a new social system in these countries" (Izber Hoti, 2014: 105) ^[6]. "During the Second World War, Albanians joined the anti-fascist war only with the promise of national liberation and the realization of the right to self-determination. They guaranteed their original will through the Bujan Resolution, which guaranteed Kosovo the right to self-determination. "However, this original will was suppressed and in 1945 Kosovo was annexed to Serbia within the Federal Yugoslavia" (Arsim Bajrami, 2003: 73) ^[1]. From what we saw above, the conclusion is reached that the allies and the Yugoslav state recognized the principle of self-determination for the peoples. The Albanians were promised by the Yugoslavs that they would be given the opportunity after the war, to express their will, but as it is known, after the end of the Second World War, the will of the Kosovo Albanians was not respected in the Assembly of Prizren in 1945, because they were not allowed to freely express their will, as had happened before at the Bujan Conference.

Evolution of the right to self-determination according to international and regional acts, international jurisprudence and the case of Kosovo in the years 1945-2010.

After World War II, with the development of a new international system, the right to self-determination takes on a wider dimension. According to Article 1 of the Charter of the United Nations, in addition to defining the right to self-determination of an international character, it also defines the United Nations mission to "develop friendly relations between nations, based on respect for the principles of equal rights and self-determination of peoples and to take other adequate measures to strengthen universal peace"(Arsim Bajrami, 2003: 71) ^[1]. In the Universal Declaration of Human Rights in 1948 self-determination does not appear as a right and as a principle, although Article 21 of it sets out some rights that were later identified with self-determination without labeling it. The right to self-determination is also enshrined in the United Nations Declaration on the Countries and Peoples Colonized in 1960, as well as the United Nations Conventions (Protocols) on Civil, Political and Economic, Cultural and Social Rights in 1966. Full of the right to self-determination "we find in the International Convention-Protocols-on Economic, Social and Cultural Rights as well as in the International Covenant on Civil and Political Rights (December 1966): 1.All peoples have the right to self-determination. "On the basis of this right, they determine their political status and freely pursue their economic, social and cultural development" (Fehmi Agani, 1994: 18) ^[5]

In 1970, the United Nations General Assembly adopted the Declaration on the Principles of International Law on Friendly Relations and Cooperation of States, which, in the service of peaceful coexistence between states, established, inter alia: "equality and self-determination of peoples, -and-respect for rights and freedoms" (Radovan Vukadinović, 2006: 267-269) ^[18]. In accordance with this Declaration, "every state has a duty to refrain from any action by force which deprives peoples. Of their right to self-determination, liberty and independence..." (Martin Dixon, 2011: 424) ^[14]. The right of peoples to self-determination would serve not only those peoples who proclaimed this right, but also contemporary international law itself, as a means of solution for justice, peace, security, freedom, democracy, and understanding between peoples. This document highlights the fact that for the first time some growing acceptance was recognized, regarding the extension of self-determination beyond the colonial areas.

The so-called Assembly of Prizren and its Resolution but especially the Yugoslav Constitution of 1946 are clear evidence that show that the right of self-determination was not exercised by Albanians, while the 1946 Constitution recognized the right of self-determination only to the nations of Yugoslavia, Albanians were considered a national minority.

In the Constitutional Law of the Republic of Serbia adopted on January 17, 1953, the rights of autonomous units were defined within the limits of the rights of the Republic of Serbia. This Constitutional Law would bring essential changes in the autonomy of Kosovo "from the category of the Federation to gradually transform into the category of the republic" (Kurtesh Saliu, 1984: 44) ^[13].

The autonomy of Kosovo would go towards complete legal and political annihilation with the Constitution of the

Socialist Federal Republic of Yugoslavia of 1963. "In the field of constitutional self-determination, the Constitution of 1963, compared to the constitutional documents of 1946 and 1953 did not change many basic premises regarding secession: the dominant concept remained class self-determination and not the national / or republican one" (Enver Hasani, 2010: 46) ^[4].

On December 26, 1968, the adoption of amendments VII-XIX to the Constitution of the Federal Republic of Yugoslavia was announced, and on January 29, 1969, the adoption of amendments IV-VIII to the Constitution of the Socialist Republic of Serbia was announced. While the Assembly of Kosovo, on February 24, 1969, approved the Constitutional Law of the Socialist Autonomous Province of Kosovo, which made significant changes to the Provincial Statute of 1963. The Assembly of Kosovo could now issue fair provincial laws which it did not recognize Constitution of 1963.

Albanians demanded that the principle of equality of nations and nationalities be fully reflected in the new amendments to the Constitution of the Socialist Republic of Serbia and in the Constitutional Law of Kosovo. Some special articles guaranteed Albanians, Serbs, Montenegrins, Turks, etc., the right to equal development and free expression of national features, language, culture, flag, literature, and national symbols.

The Federal Constitution of 1974 recognized the autonomous provinces as well as the financial autonomy of the republics (Article 269). Also in this constitution was defined the degree of autonomy of the Socialist Autonomous Province of Kosovo in the field of relations with the outside world. "The Constitution of 1974 was an approach that gave the greatest possible autonomy to the republics, but this time also to the autonomous provinces of Kosovo and Vojvodina. Although this type of bureaucratic decentralization allowed the Yugoslav republics (but not the autonomous provinces of Kosovo and Vojvodina) to be defined as 'states' belonging to one nation (certain nations), it did not confer any right of secession. The right to self-determination itself was mentioned only in the introduction of the constitution... so it did not recognize the right to self-determination in its operating part. "In relation to self-determination, this constitution provides a legal framework, envisioning republics and autonomous provinces as semi-independent actors whose relations with the Yugoslav Federation were based on co-operation and agreements" (Enver Hasani, 2010: 146-158) ^[4].

The Helsinki Final Act of 1975 also recognizes the observance of the principle of equality and self-determination of peoples, always acting in accordance with international law and the principles and purposes of the United Nations Charter. States that have signed the Helsinki Final Act must respect the right to self-determination and emphasize the importance of eliminating any violation of this principle.

"The Helsinki Final Act, following the spirit of the 1966 human rights pacts, gave us a definition of self-determination, which undermined the new foundations of international relations" (Enver Hasani, 2010: 87) ^[4].

The right to self-determination for a people is also listed in the London Conference 'Declaration of Principles (V) (August 1992). -The latter expresses-... the non-recognition of the advantages achieved by force, or by means of the act performed (fait accompli)" (Gazmend Zajmi, 1997: 160,

162) ^[10]. In 1993, "the Vienna Declaration recognizing ethnic self-determination was adopted" (See more: Enver Hasani, 2000: 72) ^[3]. The Vienna Declaration shows that states with the end of the Cold War had to face the fact of considering ethnic demands for self-determination

What did the European Community Arbitration Commission for Yugoslavia, which was appointed in the early 1990s, say to discuss the break-up of Yugoslavia, whether the units of the Yugoslav Federation had the right to declare independence, and did it recognize the right to self-determination?! The Commission "has brought the innovation that the right to self-determination now exists not only for the colonial peoples, but also for the peoples of a territory, which are part of an existing federal state..." (Ksenofon Krisafi, 2014: 246-247) ^[12].

The Commission also "on the one hand acknowledged that the former territories of the federal states... enjoyed the right to self-determination..., but rejected the idea that ethnic groups and minorities as such enjoyed the right to self-determination" (Martin Dixon, 2011: 175-176) ^[14].

According to the case law of the International Court of Justice, the right to self-determination is a free expression of the will of the people, and that every ethnic group, not only within colonial states, but also within non-colonial (ie federal, unitary) states, has rights to express their will for self-determination. "The fundamental issue here is that 'self-determination requires a free and genuine expression of the people' (see more Martin Dixon 2011: 232) ^[14].

Martin Dixon states that: "... the principle of self-determination came out in response... for a people under the rule of another state to enjoy this right... any particular ethnic group, whether part of a colonial, federal or structural state, has the right to self-determination "(see more Martin Dixon, 2011: 232) ^[14].

The right to self-determination has been exercised by many peoples, during the twentieth century, whether these colonial or non-colonial countries, they have declared independence and created their own state, or have made mergers or divisions between different states. "In the second half of the twentieth century, new states were united, divided or created, such as: Tanzania from the unification of Tanganyika with Zanzibar in 1964, Pakistan and Bangladesh, from the partition of Pakistan in 1971,... the creation of the Republic of Yemen in 1990 between North and South Yemen, the break-up of the former Soviet Union and Yugoslavia in the early 1990s, the partition of Eritrea from Ethiopia in 1993, the break-up of former Czechoslovakia, and the secession of Sudan from South Sudan by referendum in 2011, and yes this year it was declared an independent state, etc" (Ksenofon Krisafi, 2014: 247-250) ^[11].

The International Court of Justice has ruled that the right to self-determination provided by the United Nations, should be exercised as a right, removing any obstacles. According to the court: "all states, respecting the United Nations statute and international law, must take care that any obstacle... to the exercise. Of the right to self-determination be removed" (see more Martin Dixon, 2011: 234) ^[14].

The exercise of the right to self-determination is clearly expressed in the case of East Timor, which was established as a state of the free will of the people, with the assistance of the UN, and on the basis of acts of international law, which regulate the right to self-determination. "The successful move towards independence of the people of East

Timor in 2000 following the exercise of their right to self-determination in an internationally observed referendum is a living example" (Martin Dixon, 2011: 235) ^[14].

Until the period given in the opinion of the International Court of Justice (22.07.2010), there was a thesis denying the right to self-determination and independence for a people, relying on: "imin illegal, unmotivated and even cruel denial of the right of a people to live free and independent, to organize its own life and future according to national desire, abilities and values ". (Ksenofon Krisafi, 2014: 188) ^[11].

Conclusion

Any people who do not receive proper treatment within a state, when their rights are violated, can seek self-determination and self-government. After the declaration of independence of Albania in 1912, and during the Balkan wars in 1912-1913, Serbia would enter the territories of Kosovo not on the basis of international law, but by occupying them. The London Conference in 1912-1913, acted not according to the principle of self-determination, but according to the interests of the Great Powers, and the demands of the Balkan states. The London and Versailles conferences recognized the invasions of the Balkan states on Albanian territories, and not the principle of self-determination, and historical rights. During the Second World War, the Kosovo Albanians combined the Albanian issue and the resolution of the crisis in Kosovo with the anti-fascist war, as a human and national task, in support of democratic values, in the joint defensive fight against aggression. After World War II, with the development of a new international system, the right to self-determination takes on a wider dimension.

The Yugoslav Constitution of 1946 are clear evidence that show that the right of self-determination was not exercised by Albanians, while the 1946 Constitution recognized the right of self-determination only to the nations of Yugoslavia, Albanians were considered a national minority. In the Constitutional Law of the Republic of Serbia adopted on January 17, 1953, the rights of autonomous units were defined within the limits of the rights of the Republic of Serbia. The autonomy of Kosovo would go towards complete legal and political annihilation with the Constitution of the Socialist Federal Republic of Yugoslavia of 1963. The Federal Constitution of 1974 recognized the autonomous provinces as well as the financial autonomy of the republics. According to the case law of the International Court of Justice, the right to self-determination is a free expression of the will of the people, and that every ethnic group, not only within colonial states, but also within non-colonial (ie federal, unitary) states, has rights to express their will for self-determination.

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