



MODERN VISION OF THE HISTORICAL EXPERIENCE OF SECESSION LEGAL REGISTRATION: CASES OF NORWAY AND FINLAND

Yuriy V. Ginzburg^{1*}

¹ *Department of Financial and Business Law of Kursk State University; Federal Center for Educational Legislation, RUSSIA.*

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ABSTRACT

This article attempts to learn from the past through an evaluation of the successful cases of territory separation and their legal mechanisms from the point of view of modern law. To achieve the aim, we are going to describe the process of annexing the territories to the states, analyze the registration of the annexation and then depict the secession itself and make a conclusion about the possibility of using the historical experience by modern countries.

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1 INTRODUCTION

The problem of secession consisting of the desire of some territories to separate from the mother country and proclaim its independence has become usual for many states in the modern world. According to F.A. Popov, there are about 200 centers of secessionism in different world's parts [18]. Depending on the state such processes vary in their intensity level. There are examples of demonstrations, high-profile trials, terrorist acts, and even civil wars in some countries whereas in others, the matter is limited by calls of individual politicians and discussions. Despite the attempts of solving the separation question through the use of force, a peaceful way is still a common trend while settling secession conflicts in the modern world [13]. It is provided by the development of international law and work of international organizations whose key principle is a peaceful settling of conflicts. While carrying the secession out the main part is played by the legal mechanisms of both preventing and implementing secession.

In the paper, we are going to analyze the legal mechanisms of successful secession implementation and the attempts to counteract it in two Scandinavian countries – Norway and Finland. The countries were chosen for several reasons. Firstly, Scandinavian countries are included

in the number of states with a high standard of living. These are the countries of Northern Europe that are often called examples of a successful social and economical policy that is closely connected to the organization of power, political and legal culture.

Secondly, the countries have a similar historic way; they are united both geographically and culturally. Both the countries became parts of the states from which they separated later as a result of the Napoleonic Wars. Thirdly, both of these countries gained their independence more than a hundred years ago, which makes it possible for a modern researcher to analyze the legal design of secessions more objectively. Thus, the analysis of independence gaining of the two countries will allow not only to follow the features of the historical path of each of these states but also to identify common features for the implementation of peaceful secession.

2 HISTORY, WAR, ALLIES, FOREIGN POLICY, AND INDEPENDENCY

Norway separated from Sweden in 1905 and Finland separated from Russia in 1917. To describe the process of secession, it is necessary to refer to the source and understand the way the territories were included in other states. Both countries were annexed as a result of the Napoleonic Wars. According to the results of the Treaties of Tilsit, Russia became a French ally and unleashed the war with Sweden. It resulted in annexing Finland to the Russian Empire. But a few years later, the foreign policy situation changed. The former Napoleonic general Bernadotte came to power in Sweden and Russia began to prepare for war with France. Another anti-French coalition was made and former rivals became allies. On the 5th of April 1812, an alliance agreement was concluded between Russia and Sweden whose condition was the accession of Norway to Sweden in exchange for lost Finland. At that moment Norway was formally a sovereign state but in fact, it was subordinate to Denmark by means of a real union. According to the results of the Kiel Treaty of 1814, Norway moved to Sweden. “The whole Kingdom of Norway and all its residents, cities, ports, fortresses, villages and islands on all the coasts of this Kingdom ... will belong in all the property and sovereignty to His Majesty the King of Sweden and will form a kingdom united with the kingdom of Sweden” [17]. From the analysis of the Kiel Treaty, the Danish monarch treated the territory of Norway as his property and could dispose of it at his discretion including transferring it to the power of another state.

Norway and Finland were annexed through the use of force but turned out to be in different positions. Norway had its own statehood despite the fact that it was not actually an independent state for several centuries. After signing the Kiel Treaty the Norwegians decided to take advantage of the situation and convened the Constituent Assembly that adopted the Constitution on May 16, 1814. The adoption of the Norwegian Constitution rejected the union with Denmark and resulted in ignoring the Kiel accords. It was secession that led the country to become completely independent. The Constitution of Norway of 1814 is a unique phenomenon in the history of constitutionalism. Today it is the second (after the US Constitution) oldest working constitution in the world and the first in Europe. The text of it was made at a crucial moment for constitutional law. On the one hand, the experience in framing constitutions had already been gained and on the other hand, the victory of the anti-French coalition led to the restoration and strengthening of monarchies in Europe that was reflected in many European constitutions of that time. Popular sovereignty, separation of powers, and human rights found their place in the Norwegian Constitution. The executive power belonged to the king (art. 3), the legislative one belonged to the people in the person of the National Assembly (art. 49), and the highest court was organized as the Supreme Court (art. 89) [23]. Popular sovereignty is

of particular importance for our study. Its ideas were borrowed from the French Constitution of 1791 and the US Constitution. The principle of popular sovereignty means that power (legislative, executive, and judicial) belongs to the people who grant it to the relevant authorities. The restoration of monarchies after Napoleon's defeat led to the fact that the principle of popular sovereignty was replaced by a contractual principle in Europe. After 1814 many European constitutions were seen as an act of the monarch that is his agreement with the people. In the latter case, sovereignty was divided between the king and the people. Popular sovereignty was not textually marked in the Norwegian Constitution. However, the very form of adoption of the Constitution (by the Constituent Assembly) and further discussions allow us to draw such a conclusion. The practical importance of the principle of popular sovereignty influenced the monarch's ability to mend the constitution including vetoing constitutional amendments. In Norwegian political practice, this question was solved in 1884 when the king was denied the right to veto constitutional amendments during the judicial constitutional review. The key argument was popular sovereignty providing the legislative and executive authorities with only granted powers [7].

2.1 FINLAND UNDER RUSSIA'S RULE AND MANAGEMENT

After declaring Norway's independence in 1814, Sweden began military actions that resulted in Norwegian joining it by means of a real union headed by the King of Sweden [14]. The union's registration began after signing the Convention of Moss on the 14th of August in 1814. According to it, the military actions ceased, the Norwegian King Christine Frederick abdicated the throne and Sweden adopted the Norwegian Constitution taking into account its future amendments. The main one accepted by the Storting (Norwegian Parliament) was the Swedish King was simultaneously the King of Norway [27]. This is the way the real union between Sweden and Norway was registered. Carl Johan was planning to make a union at first and later to limit Norway's independence. But during his tenure and further on the Storting objected to King's interference into the inner affairs of the country. Moreover, it managed to dissolve the post of a governor and the executive power was headed by the major minister [5].

Finland was annexed to Russia in similar historical conditions. As the results of the Russian-Swedish war of 1808-1809, Russia took Finnish territories that belonged to Sweden. Without waiting for the end of the war Alexander I produced a manifest on Finland's annexation on March 20, 1809. "This country, subjugated by Our arms, We are now joining forever to the Russian Empire" [25]. As a result of military actions, the Treaty of Hamina was signed. Its 4th Article proclaimed: "His Majesty King of Sweden both for himself and the successors of his throne and the Kingdom of Sweden refuses irrevocably and permanently in favor of His Majesty the Emperor of All Russia and the successors of His throne and the Russian Empire all his rights and claims to the provinces below signified, conquered by His Imperial Majesty in the present war from Sweden ... These provinces with all residents, cities, ports, fortresses, villages, and islands as well as their belongings, advantages, rights, and benefits will be the property and sovereign possession of the Russian Empire and they are annexed to it forever" [24].

In 1809 a legislative body was convened (in the Russian historiography referred to as the Seim). At its opening, Emperor Alexander I spoke and promised to keep the constitution and laws in vigor [4]. The constitution is not always a formal legal act having the highest force. In modern constitutional law, it also means the basis of the political, economic, and legal life of the state highlighting written and unwritten constitutions. For understanding and evaluating the promises

about keeping the constitution for Finland, it is impossible to proceed from the modern understanding of the constitution. It is known that notions have different temporal layers the meaning of which is valid for different periods [12]. For this reason, the promise to save the constitution must be interpreted from the idea that Alexander I himself had. We agree with D.V. Timofeev that for Alexander I the constitution was such a form of relationship with the society (in this case with the Finnish people) in which the effectiveness of governance increased without limiting the powers of the monarch [26].

Increasing effectiveness is understood as a special management order established in the Grand Duchy of Finland different from the current system in the Russian Empire. The executive power was realized by the Government Council renamed into the Imperial Finnish Senate later. The formal head of the Senate was the governor-general; however, this position was largely nominal throughout the XIX century. This post was combined with other state duties for a long time and the governor-general himself was in St. Petersburg periodically visiting Helsingfors (A.A. Zakraevsky combined both the post of the governor-general and Minister of home affairs and A.S. Menshikov ruled the Admiralty [16]). The Senate was bicameral being both the highest judicial and executive branch [8]. The Seim was to be the legislative authority; however, it began to work only in 1863 after the reforms of Alexander II. The Committee on Finnish Affairs was created in St. Petersburg and the post of Minister State Secretary was established for a direct report to the emperor. Finland had autonomous customs (customs tariff and customs border), banking, tax, and monetary systems; the official language was Swedish and later Finnish [3]. This management order can be called “saving the constitution” but not keeping the Swedish laws of the XVIII century in vigor. In the terminology of the constitutional law, it is possible to say Alexander I octroyed (granted) the constitution to Finland.

Having described the way the territories were annexed to the state, we shall pass over to the secession itself. The registration of the “separation” is connected with the way the area turned out to be a part of the state.

2.2 SEPARATION OF NORWAY FROM SWEDEN

The separation of Norway from Sweden was a natural process that had been ripening since 1814 [19]. In the spring of 1905, the Norwegian Storting passed a new consular law but the Swedish monarch vetoed it. According to established rules, any orders of the Swedish King in Norway required countersigning by the Norwegian prime minister including a veto on the law [10]. However, in response to the veto, the entire government resigned that was not accepted by the King. The Storting regarded this refusal as a failure to perform legal duty and quitting of the union [1]. It was framed by the adoption of the declaration of independence by the Norwegian parliament on June 7, 1905. “Since all the members of the cabinet have resigned their positions; since His Majesty the King has declared his inability to obtain for the country a new government; and since the constitutional monarchy has ceased to exist, the Storting hereby authorizes the cabinet that resigned today to exercise the powers held by the King in accordance with the Constitution of Norway and relevant laws – with the amendments necessitated by the dissolution of the union with Sweden under one King, resulting from the fact that the King no longer functions as a Norwegian King” [22]. According to the Storting decision, the powers of the king were transferred to the Norwegian government. It was the beginning of the separation between Norway and Sweden. The negotiations between the two countries began.

2.3 THE INDEPENDENCE OF NORWAY

Sweden was looking for ways to prevent secession. During the negotiations in Norway, a referendum about proclaiming Norwegian independence was initiated and its results demonstrated that the population completely supported Norwegian authorities: 386 thousand people voted for independence, 184 were against. The negotiations between countries were about to fail. The sides were preparing for possible military opposition [21]. In this situation, Denmark, France, and Russia reported the necessity of peaceful settling this question. It resulted in signing the Karlstad Treaty about quitting the union in October 1905. On 26 October, this agreement was approved by the Swedish parliament and the King abdicated the Norwegian throne. Russia was the first state to admit the independence of Norway on 29 October 1905.

The question about the form of future government became one of the problems of independent Norway. It is worth mentioning that another referendum was held in Norway in November where this issue was decided. Most voted to preserve the monarchy. The son of the Danish King Karl who received the name Haakon VII at the coronation was invited to the Norwegian throne. The preservation of the monarchy helped to strengthen the international authority of the Norwegian state not only in relation to its closest neighbor Denmark but also with Great Britain since the wife of the Danish prince Karl was the English princess Maud.

Norway finally gained international recognition after signing the Treaty respecting the Independence and Territorial Integrity of Norway (signed at Christiania) by Russia, Germany, Great Britain, and France in 1907.

The main reason for Norway's separation was its rapid economic development in the XIX and early XX centuries leading to the national regulation of foreign economic policy. But the success of separation can be explained by international support thanks to the choice of the government form provided dynastic ties with the closest neighbors.

The example of Norway is of interest in terms of the constitutional regulation of separation. As a rule, if the territory is successfully separated from the mother state then sovereignty is formalized by the adoption of the constitution. In Norway, the Constitution, adopted in 1814, remains in force. But despite the fact the independence condition was in the Constitution from the very beginning, in fact, the country became completely independent only one hundred years later. The Norwegian Constitution is not only a legal act but thanks to its rich history it turned into a national symbol [9].

Finland peacefully coexisted as a part of the Russian Empire unlike other annexed territories [6]. This can be explained by several factors. Before joining Russia, Finland was not a sovereign state. According to researchers in the Finnish language, there was not even a term denoting a state at the beginning of the XIX century [15]. In addition to it, Russia did not take any active steps to intervene in the internal affairs of Finland. However, the situation changed when Alexander III became the Emperor and tried to unify the system of public administration in the country. Many issues were removed from the Seim and submitted to the State Council, governor-generals ceased to be nominal figures.

The activity of N.I. Bobrikov as the governor-general of the Grand Duchy of Finland deserves special attention. During his short tenure, he made a lot of efforts to implement the imperial manifesto of February 3, 1899, according to which legal acts on general imperial issues (army, monetary system, customs, and state language) were adopted without taking into account the opinions of the Seim and Senate. This led to the policy of russification of Finland and caused N.I. Bobrikov's murder

by Finnish nationalists [2].

2.4 THE INDEPENDENCE OF FINLAND

Finnish secession from the Russian Empire was on the agenda in 1917 after Nikolai II abdicated from the throne. The Russian Emperor was also the Grand Duke of Finland owning the supreme power in Finland. The Emperor's personality was used to connect Finland to Russia. After the Emperor was deprived of power and accordingly lost the status of the Grand Duke, the question arose of who owned the supreme power in Finland. The Provisional Government considered this power to be transferred to it together with the right that the monarch used to have until the convocation of the Constituent Assembly. To support this view reference was made to the administrative law of France and transfer of power after the abdication of the king. Russian representatives tried to delay the final solution of the Finnish question until the convening of the Constituent Assembly. In their turn assessing the political and military situation, Finnish diplomats proposed to solve this issue in a different way and conclude a state agreement according to which Finland was recognized as an independent state in an indissoluble union with Russia [20].

During the spring and autumn of 1917, diplomatic negotiations about the status of Finland were held between the representatives of the country and the Provisional Government. Due to political and military problems, Russian authorities had to make concessions not to lose Finland completely. At that time Finland was also shaken by political crises. On 18 July, the Seim was dissolved and new elections were called. On 20 October, the Seim was newly convened. But on 25 October, the October Revolution took place in Russia already. The Bolsheviks who came to power had repeatedly argued for the right of the nations forming the Russian Empire for free separation and independence [20].

After the adoption of the Declaration of Rights of Peoples on the 14th of November, the Finnish Seim assumed the supreme power and formed the government [20]. On the 23rd of November, the Finnish Senate filed a declaration of independence with the people of Finland. The text of the document repeatedly emphasizes the necessity to recognize the independence of Finland both on the part of the Russian people and the international community "... to achieve international recognition of the state independence of our country". It is noteworthy that the appeal to the international community on the recognition of independence occurred a day earlier on the 22nd of November. European states, primarily Germany, refused to recognize the independence of Finland before Russia did it. Preparatory negotiations with the Bolshevik government began and a special role in them was played by the Finnish Social Democratic Labor Party.

On 16 December 1917, the Chairman of the Government of Finland addressed the Council of People's Commissars "with a request for recognition of Finland's independence whose proclaiming was the duty of the Seim and the Government to Finnish people" [20]. On the 18th of December, the Council of People's Commissars issued a decree recognizing the state independence of the Republic of Finland (The decree on state independence of Finland. Russia and Finland, 176p).

3 HISTORICAL EXPERIENCE

Historical experience shows that the registration of secessions is determined by different factors in many respects. The most important are legal relations between the separating territory and the state and the level of legal culture. Before annexing Sweden, Norway had its own statehood and constitution. Both accession and secession from Sweden were formalized by constitutional

amendments. The rest of the acts adopted on the issue of secession in Norway were of a preparatory or secondary nature. Finland actually did not have its own statehood at the time of accession to the Russian Empire. The Finnish state and all its attributes matured as a part of the Russian Empire. For this reason, only the Finnish government's declaration of independence was not enough and international recognition, primarily from Russia, was necessary.

4 CONCLUSION

From the review of two countries' ways of proclaiming independence, it is possible to state that both Norway and Finland had the same result: they became sovereign states that received recognition of the international community. For both the territories the same factors stimulated onto the “secession way” can be distinguished. These factors are

- separate territory included in another state through the military force,
- predominantly monoethnic population of these territories, the absence of inner contradictions,
- the absence of a distinct economic dependence on a mother state, and
- a favorable international environment when it became possible to implement plans for the declaration of independence.

Both the states' way of gaining independence was also similar and it consisted of fighting not on the battlefields but in the offices and at the negotiation tables. The turbulent XX century demonstrated the possibility of a relatively peaceful secession of territories.

Historical experience has been observed. The peaceful separation of Norway from Sweden proceeded because of gradual defending independence with legal ways during the XIX century. Secession became an objective process of constitutional development in both Norway and Sweden. The Finnish experience can be considered peaceful conditionally as twenty years later the Soviet-Finnish war followed. The peaceful nature of the secession is determined not by the objective reasons but by the inability of Russia to oppose the separation of territories in the conditions of world war and revolutions.

The analysis of gaining independence by the two countries demonstrates the possibility of a peaceful secession in case of the gradual implementation of constitutional reforms.

5 AVAILABILITY OF DATA AND MATERIAL

Information regarding this study is available by contacting the corresponding author.

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Yuri Ginzburg is an Associate Professor of the Department of Financial and Business Law at Kursk State University, a research associate at the Federal center for educational legislation. He holds a Ph.D. in law. His sphere of scientific interest includes issues of constitutional law and financing activities of the state.
