

ZOLTÁN KOVÁCS

The international consequences of the independence of Kosovo

Abstract

Kosovo in 2008 has unilaterally declared its independence. This act is not in conjunction with other cases of establishing independence in Eastern-Europe, therefore the question rises, whether it can be used as a precedent by other minority groups seeking independence. However, Kosovo's case is special, so there is no real chance for such event.

Absztrakt

Koszovó 2008-ban egyoldalúan kikiáltotta függetlenségét. Ez nincs összhangban a Kelet-Európában korábban tapasztalt függetlenségi nyilatkozatokkal, ezért adódik a kérdés, precedensként szolgálhat-e az eset más, függetlenségre törekvő etnikai csoportoknak? Koszovó helyzete egyedí, nem valószínű egy ilyen hivatkozás elfogadása.

As a final part of the split-up of the Socialist Federal Republic of Yugoslavia (SFRY), Kosovo unilaterally declared its independence on 17th February 2008. In order to defend its territorial integrity, Serbia asked the International Court of Justice (ICJ) in The Hague, for its advisory opinion, whether this act was in line with the international law? According to the Court, the declaration of independence does not violate international law¹.

The status of Kosovo however, does not fit into the disintegration of the old federal states of Eastern Europe, such as the SFRY. One of the corner stones of peace in Europe after WWII is the principle of the stability of borders. The SFRY was a federal state, and all member republics have constitutional rights to secede. Thus, the secession of federal republics was enabled by internal law and did not violate international law. Kosovo's status was different. Being an autonomous province of Serbia Kosovo enjoyed numerous aspects of self-determination between 1974 and 1989, but the leaders of Yugoslavia specifically did not elevate the province to a republic – although its size and the number of inhabitants would justify such move –, because they were afraid of the secessionist drive of Kosovar Albanians.

¹ Source: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&code=kos&case=141&k=21> Download time: 08.09.2014.

HADTUDOMÁNYI SZEMLE

2014. VII. évfolyam 3. szám

The independence of Kosovo, up to the closure of this article² was recognised by 99 UN members, including the US, most EU member states and all Kosovo's neighbours, except Serbia. Beside Serbia, Russia, China; Cyprus, Greece, Romania, Slovakia and Spain from the EU – altogether 38 UN members disagree with the unilateral declaration of independence³. The disagreement in all cases is derived from the fear, that one or more minority groups living in the specific state would use the example of Kosovo as a blueprint to start a successful independence movement.

The aim of this article is to find out the international consequences of Kosovo's independence, and to establish if it is possible for other independence movements to successfully run through the same course?

DIFFERENT POSITIONS ABOUT THE DECLARATION OF INDEPENDENCE

Serbia strictly out rules the independence of Kosovo⁴ and considers Kosovo as its own province. After the declaration of independence, Belgrade took measures in order to force its sovereignty over Kosovo. As a part of this effort, Serbia asked the ICJ, for its advisory opinion, whether the unilateral declaration of independence is in line with the international law?⁵

According to Kosovo, bilateral talks with Serbia prior to the declaration created sufficient foundation for Kosovo to lawfully declare its independence.

Moscow and Beijing supports Belgrade as long-time allies, but in reality, the reason for their decision – just like with the EU members opposing the independence – is the fact, that in their respective states are national minority groups, which might use Kosovo's example for the realisation of their own independence efforts.

The USA and most leading EU member states recognised the independence of Kosovo directly after its declaration. Their decision was most likely motivated by the rational, that peaceful reintegration of the province into Serbia is not feasible; therefore the independence of Kosovo is the only logical solution, aiming at strengthening security and stability on the Balkans and in Europe.

Countries which are not directly involved in the crises do not consider this issue as relevant to their position and do not take any standpoint. This applies for those states outside Europe, that have stated an opinion, but it was formed by an interested power (like the US pro, or Spain con).

² 8-th September, 2014.

³ Source: <http://www.kosovothanksyou.com> Download time: 08.09.2014.

⁴ The Serbian Parliament: Decision on the annulment of the illegitimate acts of the provisional institutions of self-government in Kosovo and Metohija on their declaration of unilateral independence (2008) <http://www.mfa.gov.rs/Facts/annulment.html> Download time: 08.09.2014.

⁵ After Serbia's proposal, the UN General Assembly asked the IJC in October 2008.

HADTUDOMÁNYI SZEMLE

2014. VII. évfolyam 3. szám

THE DECISION OF THE INTERNATIONAL COURT

The ICJ made its decision on 22th July 2010, according to which the declaration of independence does not violate international law. The justification was that the international law does not restrict the declaration of independence. The recognition of Kosovo's independence is a decision of individual countries. It is important to underline, that this ruling does not mean that the secession was legal and justified. This was also an advisory opinion therefore did not oblige the UN, or any of the participants to any actions, and did not solve the dispute between Serbia and Kosovo. According to some assessments however, other separatist movements might use this ruling in favour of their declaration of independence.

REACTIONS

Serbia confidently initiated the legal procedure, because the Serbian leadership estimated, the court, based on the presented evidence will rule in favour of Serbia, or as a worst case scenario will make an ambiguous decision, which Serbia would be able to use to strengthen its position. The Serbian leadership hoped for a peaceful compromise that would not serve as a harmful precedent for separatist movements around the world. Thus, the decision was unexpected for the Serbian leaders, and triggered a sharp protest in Belgrade. The decision was so unfavourable for Serbia, that after its publication an extraordinary session of parliament was called, and for a while, the very stability of the government was in question. After the session Belgrade confirmed that it would further not recognise the independence of Kosovo, and voiced its concerns about similar cases erupting worldwide, as a consequence of this decision.

Despite the fact that the decision is not legally binding, Serbia's possibilities became restricted. Belgrade's foreign political goal is to join the EU. Although it is not a declared condition for Serbia in order to join the EU to recognise Kosovo, but the accession process will most likely not come to an end until Serbia will settle all open questions with its neighbours, including Kosovo. The recent agreement, which was signed by the prime ministers of Serbia and Kosovo on 19th April 2013, was a significant milestone in that process, and a major success for Kosovo. Although Serbian president Tomislav Nikolic stated that he cannot and will not recognise the independence of Kosovo, and under the Lisbon treaty, Kosovo will never become a member of the EU⁶, many analysts even in Serbia assessed that this was the first step for Serbia on the way to recognition.

The Kosovar leadership welcomed the – for them – extremely favourable decision. Kosovo's position became comfortable; it only had to wait Serbia to initiate talks. However, Kosovo's long term goal is to expand its recognition and join international organisations,

⁶ Nikolic's statement to BHT1 TV

http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=04&dd=25&nav_category=11&nav_id=70859

3 Download time: 08.09.2014.

HADTUDOMÁNYI SZEMLE

2014. VII. évfolyam 3. szám

most importantly NATO and the EU.⁷ Bearing in mind this aim, the Kosovar leadership continues with legislation accordingly.

As the main global power, the US has been supporting Kosovo in its fight for independence. It was well indicated, when vice president Joe Biden informed Serb president Boris Tadic that the US resolutely continues to support the independence of Kosovo.⁸ After the decision the US called the EU for unity, while Serbia and Kosovo for a dialogue. Washington suggested to Belgrade that it is in its best interest to reach an agreement with Kosovo, and join the EU.

The EU, as player seeking to become an independent world power used this opportunity to voice its opinion through its high representative Cathrine Ashton for the first time. Ashton also called for a dialogue between Serbia and Kosovo, and with unusual frankness, underlined that at the end of the day both countries seek EU-accession, which requires the settling of their differences.

EU member states opposing Kosovo's independence have their own minority problems, but were cautious not to draw any parallel between their cases and that of Kosovo. On the contrary, for example in an interview Spanish foreign minister Maria Teresa Fernandez De la Vega stated that it is unrealistic to compare Spain with the Balkans.⁹

Russia and China voiced their concern about the decision and called it an illegal attempt to legitimate the violation of territorial integrity and sovereignty of Serbia, thus the violation of the international law.

THE CONSEQUENCES OF THE DECISION

The unilateral declaration of Kosovo's independence and the corresponding decision of the ICJ triggered spirited debates, whether the act might serve as a precedent for other crisis regions, or ethnic minorities, and if it might encourage separatist groups to unilaterally declare the independence of their land.

The first effects of the secession of the province have shown in the vicinity of Kosovo well before the declaration of independence. After the deployment of KFOR the environment became secure for the Albanians in Kosovo, their leaders immediately started to "export" the idea of liberation war to the neighbouring Albanian inhabited areas. The method remained the same. By way of terrorist attacks they compel the state authorities of the territory in question to react with the use of extensive force. As a consequence of the emerging humanitarian catastrophe an international intervention can be initiated, which causes the state to lose its sovereignty over the area.

⁷ The foreign policy of the Republic of Kosovo <http://www.mfa-ks.net> Download time: 08.09.2014.

⁸ Readout of Vice President Biden's Call to President Boris Tadic of Serbia 22th July 2010. <http://www.whitehouse.gov/the-press-office/readout-vice-president-bidens-call-president-boris-tadic-serbia> Download time: 08.09.2014.

⁹ Spain will not recognise Kosovo independence <http://www.eubusiness.com> Download time: 08.09.2014.

HADTUDOMÁNYI SZEMLE

2014. VII. évfolyam 3. szám

Using this pattern, in 2000 fights erupted in the neighbouring Presevo-valley, in Serbia that spread to West-Macedonia in 2001. The attempt failed in both areas. In Serbia, local security forces, with the support of KFOR successfully handled the situation, while in Macedonia, the efforts of local security forces was directly supported by a NATO force. By 2002, the situation has stabilised in both areas, and the ethnic Albanian minority started a slow re-integration process.

In a wider scope, within the EU, there are differences in judging if the Kosovo case can serve as a precedent. Due to its rich and troublesome history, different levels of national set-off can be noted in a number of EU member states. Only mentioning the most obvious: the Flemish-Walloon opposition in Belgium, the Turkish-Greek set-off in Cyprus and Greece, South Tirol in Italy, the problem of Northern Ireland in the UK, the Russian question in Estonia, the Hungarian population in Romania and Slovakia, the Bask situation in Spain. The governments of these states assess the risks arising with the independence of Kosovo differently, which is indicated by their approach.

Belgium, Italy and the UK all recognised the independence of Kosovo which most probably indicates, that the leaders of these countries do not consider the spreading of the Kosovo precedent as a realistic concern.

Cyprus, Greece, Romania, Slovakia and Spain so far have not recognised the independence of Kosovo, presumably because they are concerned about the worsening of inter-ethnic relations in their country, or fear that their minorities might demand more, than what is acceptable.

Time that has passed since the declaration of Kosovo's independence proved that these fears are baseless. No European country experienced the strengthening of secessionism, and the possibility of eruption of an armed conflict is negligible.

Looking farther, in a great number of countries are present ethnic minorities, which for a shorter or longer period have been striving for some kind of independence. Among great powers such are Russia and China, and we also have to mention the Kurdish minority, which is scattered through five different countries. It is a fact, that so far no secessionist group was able to use Kosovo as an example in its pursuit for independence. A good example is the Kurdish situation, who, during and after the second Gulf War tried to use the turbulent situation and get the support of the US in an establishment of an independent Kurdistan. This however, was not in line with the interest of the US and that of its allies, so the Kurds were not successful.

There are only two examples supporting the theory, which are also special. Although all interested parties deny any connection to the Kosovo case, it is difficult not to see the connection to South-Osetia and Abkhazia that declared their independence a mere 6 month after Kosovo. It is important to state that neither act would have been successful without a

HADTUDOMÁNYI SZEMLE

2014. VII. évfolyam 3. szám

massive support from Russia. A good indication is that their independence, beside Russia, is recognised by only some of its not quite substantial allies¹⁰.

Even this short and incomplete list demonstrates that there are a great number of ethnic conflicts in Europe and in the world in which the participants could cite Kosovo as a precedent, but in itself it most likely newer will be sufficient. Foreign spokesperson of the US Philip J. Crowley was frank to phrase this, stating that the decision was exclusively for Kosovo and cannot be used in other cases¹¹.

Separatist leaders of other sensitive areas are most probably aware of the fact that despite any similarities with the situation of Kosovo, they only can be successful, if the support of one or more locally interested great power is secured. The basis of the support or rejection of an area is normally political and not legal; therefore the risk connected to the Kosovo precedent is minimal. Generally it can be stated that the declaration of Kosovo's independence have not changed the process of the emergence of states, and further strengthening of secessionist movements claiming the Kosovo issue is unlikely.

Kulcsszavak: Balkán, Koszovó, etnikai konfliktus, függetlenség, nemzetközi jog, precedens, ICJ, nagyhatalmi politika

Keywords: Balkans, Kosovo, ethnic conflict, independence, international law, precedent, ICJ, great powers policy.

LITERATURE

- 1) Alexandros Mallias (2010): Kosovo after the Hague. In: ELIAMEP Thesis, 6/2010. Hellenic foundation for european & foreign policy
- 2) UNSCR 1244 (1999)
- 3) International Court of Justice (2010): Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion) - Advisory Opinion of 22 July 2010
- 5) International Crisis Group (2010): Kosovo and Serbia After the ICJ Opinion. International Relations and Security Network.
- 6) Military Technical Agreement 1999

¹⁰ In case of Abkhazia Nauru, Nicaragua, Tuvalu, Vanuatu, Venezuela, South-Osetia, Nagorno-Karabakh and Transdnestria, In South-Osetia's case Nauru, Nicaragua, Tuvalu és Venezuela, Abkhazia, Nagorno-Karabakh and Transdnestria.

¹¹ Fears of global separatism after UN court rules Kosovo's independence declaration <http://www.foxnews.com/world/2010/07/23/fears-global-separatism-court-rules-kosovos-independence-declaration-legal/> Dowload time: 08.09.2014.

HADTUDOMÁNYI SZEMLE

2014. VII. évfolyam 3. szám

- 7) Kosovo and Serbia after the ICJ opinion. Europe Report N°206 - 26 August 2010.
- 8) United States Institute of Peace Peace Briefs 55 (2010)