

Secession and EU Membership

Is an EU member state secessionist territory automatically within EU after archiving its independence or have to reapply for membership?

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Abstract

One of the political goals of the EU in broad is the absorption of all European continent state in a sort of United States of Europe. Nowadays the EU counts 28 states and the perspective of enlargement is not stopped by the current economic crisis. The current situation after the just completed pro-EU revolution in Ukraine and the implementation of strong economic link with former USSR Transcaucasian Republics (Georgia, Armenia and Azerbaijan) may suggest the final number of state in the EU. Many people believe that the United States of Europe puzzle is nearly full defined ... but a new kind of EU enlargement may change the situation.

This paper will focus only in one question. "Is an EU Member state secessionist territory automatically in the EU after archiving its Independence or have to reapply?"

To answer to this question I will analyses the possible past experiences in secessionist territory getting membership in international organization like UN. The Vienna Convention on Succession of States in Respect of Treaties is a good material to use in case of succession but the fact that is not in force and not signed by the greatest part of EU member state make it only advisory and not binding.

Keywords: Succession of States; European Law; Secession

Abbreviations

CIU	Convergence and Union (<i>Convergencia i Unio</i>)
EC	European Commission
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Agreement
ERC	Republican Left of Catalonia (<i>Esquerra Republicana de Catalunya</i>)
EU	European Union
FRY	Federal Republic of Yugoslavia

MEP	Member of European Parliament
SFRY	Socialist Federal Republic of Yugoslavia
SNP	Scottish National Party (<i>Partaidh Naiseanta na h-Alba</i>)
UK	United Kingdom (of Great Britain and Northern Ireland)
USSR	Union of Socialist Soviet Republic
UN	United Nations
US/USA	United States of America

Introduction

One of the political goals of the EU in broad is the absorption of all European continent state in a sort of United States of Europe.¹ Nowadays the EU counts 28 states and the perspective of enlargement is not stopped by the current economic crisis. The current situation after the just completed pro-EU revolution in Ukraine and the implementation of strong economic link with former USSR Transcaucasian Republics (Georgia, Armenia and Azerbaijan) may suggest the final number of state in the EU.² Many people believe that the United States of Europe puzzle is nearly full defined ... but a new kind of EU enlargement may change the situation.

Some scholar have used in the last years terms like “Enlargement from within” considering the possible Balkanization of big and small EU member state.³ The list of currently acting secessionist territory in EU member states is really long but only some of them have the possibility to secede in a near future. The most probable are Scotland in the UK and Catalonia in Spain but without excluding Greenland the as a Member state (Denmark) territory have decided not to be treated as part of EU.⁴ According to scholars this cases present many difficulties considering that an independent Scotland may bring an end to the UK or Catalan State may revitalize other secessionist sentiments in Spain (like Galician and Basque).⁵

This paper will focus only in one question. “Is an EU Member state secessionist territory automatically in the EU after archiving its Independence or have to really?” To answer to this question I will analyses the possible past experiences in secessionist territory getting membership in international organization like UN. The Vienna Convention

¹ Michael Josef Rüschemschmidt “Constitution of the United States of Europe - A Concept or Blueprint – A suggestion of a political deepening of the European integration”

² EU Strategy for the South Caucasus at:
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0193>

³ Economic and Social Research Council Devolution and Constitutional Change research programme at:
<http://www.devolution.ac.uk/>

⁴ European law mentioning Greenland Treaty at:
http://eur-lex.europa.eu/en/droit_communaire/droit_communaire.htm

⁵ Sorens, Jason, *Secessionism: Identity, Interest, and Strategy*

on Succession of States in Respect of Treaties is a good material to use in case of succession but the fact that is not in force and not signed by the greatest part of EU member state make it only advisory and not binding.⁶

Scotland independence and EU Membership

The issue of EU membership is a central question in the Scottish independence movement. Considering the SNP manifesto since the begin of Scottish independence movement the membership in EU have been took as for granted. In documents like Jim Sillar's "*Independence in Europe*" and the 1997 pamphlet of the SNP "*The Legal Basis of Independence in Europe*" is clear the opinion that succession from UK will not consist in the Expulsion from EU.⁷ The most important argument in favor of this opinion is the Greenland case. Greenland as a territory of Denmark was automatically a territory of EEC but fishing disputes send to the decision of Greenland by referendum to be considered part of Denmark but not of EEC and refusing it membership.⁸

Sillar's understand that the case of Greenland and the EEC was considerably different from the case of Scotland and the EU but he pointed three elements that can be considered important⁹:

- The Commission recognize Greenland right to self-determinate.
- The Commission expressed regret that a part of the Community decides to leave, this considering the EEC objective to retain members.
- Greenland leave EEC only after negotiation occurred within the treaty

All the above specific of Greenland case leave us to understand that an independent Scotland will be considered automatically as a part of EU.

A strong argument in favor of automatic EU membership is the fact that Scotland inhabitant are European citizen with full right and the expulsion of an independent Scotland from EU will deprive this EU citizens by their legal right.¹⁰

The case of Scotland consists in an additional difficulty. Differently from Greenland, Scotland is a constituent part of the UK. The Act of Union of 1707 considers England and Scotland as constituent members of UK and a secession of Scotland will lead to the Devolution of the UK. The Act of Union of 1707 will need to be modify if Scotland secede by the difficulty increase if we consider that the Act of Union is a fundamental

⁶ Vienna Convention on Succession of States in respect of Treaties at: http://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf

⁷ Hassan, Gerry (2011). *Radical Scotland: Arguments for Self-Determination*

⁸ A new deal for Greenland and the EU? By EFC at: <http://fpc.org.uk/articles/345>

⁹ Jim Sillars Scotland: The case for optimism

¹⁰ Maas, Willem (2007). *Creating European Citizens*. Lanham: Rowman & Littlefield.

law and can't be modified by Act of Parliament.¹¹ This, however, is not applied in practice considering that after the creation of Irish Free state in 1922, the United Kingdom of Great Britain and Northern Ireland automatically succeed the United Kingdom of Great Britain and Ireland. This practice can be questioned if we consider the Act of Union of 1707 as the fundament of UK and that the Act of Union of 1800 was only an addition to it.¹²

An interesting vision of future negotiation between Scotland e UK have been given by the Scottish government spokesman¹³:

“Immediately following a YES vote in autumn 2014, Scotland will still be part of the UK. Negotiation will then take place on the transfer of powers from Westminster to the Scottish Parliament along with negotiation on the specific terms of an independent Scotland's continued membership of the European Union. Ministers have always been clear that these negotiations will be needed ... but the crucial point is they will take place from within the EU”

The most important concern of the EU and the greatest advantage of Scotland in retaining its EU membership is the European citizenship the Scottish inhabitant and their right to enjoy this right. In this light will be impossible for the EU to strip this fundamental European and Democratic right from its own citizen that have enjoyed it for more than 40 years.¹⁴ It is seen not only as legally impossible but also antidemocratic that a person be deprived by its EU-citizenship and all right this status give and for this reason the Commission is considering the idea of negotiation with Scotland for a worm transit from its status as UK constituency to an Independent state with special relation (and advantages) with EU. In this idea Scotland will cese to be part of UK but its citizen will continue enjoy EU citizenship for all the period of negotiation that may end will Scottish full adhesion in the EU.¹⁵

Catalonia independence and EU Membership

The case of Catalonia is quiet different from the case of Scotland. First of all we have to mention that the issue of independence in Catalonia is relatively new and the argumentations in favor of direct EU membership have been discussed only in the last years.¹⁶ The second great difference is the fact that Catalonia desire for independence

¹¹ Articles of the Treaty of Union. Scotch and English parliaments Act.

¹² Ward, Alan J. *The Irish Constitutional Tradition: Responsible Government and Modern Ireland 1782–1992*

¹³ Scotland Government webpage: <http://www.scotland.gov.uk/Publications/2013/11/9348/15>

¹⁴ Wiener, Antje (1998). *'European' Citizenship Practice: Building Institutions of a Non-State*. Boulder

¹⁵ European Commission. "Right of Union citizens and their family members to move and reside freely within the territory of the Member States" at: http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/l33152_en.htm

¹⁶ Castro, Elizabeth, ed. (2013). *What's up with Catalonia?*

is not supported and not accepted by the Spanish Government that have declared not to recognize the referendum that they will hold.¹⁷

The Kingdom of Spain, like the UK, passed over a period of devolution that culminated with the creation of the different Autonomous Community's. The goal of the Catalan nationalist with the archiving of autonomy, developed in a full scale independence request. Differently from Scotland, Catalonia is only one of the many Spanish Autonomous Community (regions) and has no special or constituent status but regarding this the Catalan authority advocate the consideration of Catalonia as a successor of the Crown of Aragon making in this way Catalonia a founder of Spain with Castilia.¹⁸

The EU institutions haven't debated the question of Catalonia of Scotland but the singular individuals have in many time give arguments against their automatic membership and some of them contested the legality of a referendum for secession.¹⁹ The Catalan authorities focus their idea of automatic EU membership after independence and legality of secession in the TEU. The Article 2 of the TEU consist in the respect of fundamental right and other core value that can be understand as an obligation for EU to respect the outcome of an internal political process (the referendum in this case) which is in accordance with this core value. Combination of Article 2 with Article 48 is considered by Catalan Authority as the key of success in EU membership.²⁰

Continued Membership as a Legal Argument

Is the Continued Membership a Legal Argument? Many think yes. The concept of state succession in a dynamic component of international law and its application has been wide in this century.

Recently the ICJ have give a judgment on Kosovo case considering "... secession is neither legal nor illegal in international law, but a legally neutral act".²¹ Considering this and in accordance with Article 2 of TEU and fundamental right we can conclude that the EU member state can't stop a region to self-determinate and the EU can't go ageing its Treaties not recognizing their decision.²²

¹⁷ Declaration of sovereignty and of the right to decide of the Catalan nation

¹⁸ Alland, Alexander. *Catalunya, One Nation, Two States: An Ethnographic Study of Nonviolent Resistance to Assimilation*

¹⁹ Guibernau, Mònica. *Catalan Nationalism: Francoism, transition and democracy*

²⁰ The Treaty on European Union at: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>

²¹ "Accordance with international law of the unilateral declaration of independence in respect of Kosovo" at: <http://www.icj-cij.org/docket/files/141/15987.pdf>

²² The Treaty on European Union

The different cases can be seen as contradictory. In 1947 the UN General Assembly Legal Committee regarding the Pakistan-Indian split stated that the original state retains UN membership and the new one must reapply. The difficulty stays in deciding who the successor state is. Practices give us an idea on how this issue has been resolved in different cases. In general the successor state have been recognized the one that have the legal ability to claim and enforce the right that the predecessor state had.²³

With the dissolution of USSR in 1991 Russian Federation ask to succeed in the permanent seat of the UN Security Council. The UN decided that considering that Russia control more then 50% of the USSR territory and population have the right to claim succession in the UN Security Council permanent seat.²⁴

The same logic have been used when in 1992 the FRY (composed by Serbia and Montenegro) ask to succeed SFRY membership in the UN. In this case the decision was to reapply considering that FRY is composed only by 2 of the original 6 components of SFRY and control only 40% of the territory and 45% of the population.²⁵

In the case of the dissolution of Czechoslovakia the UN will have maintain the same logic and give to Czech Republic the succession in UN membership and asking Slovakia to reapply, this considering that Czech Republic control more then 50% of territory, population and wealth of the parent state. In this case the issue was resolved diversely by reapplying both the counties.²⁶

An important document on state succession is the Vienna Convention on State Succession in Respect of the Treaties but with limited application considering its low signatory members.²⁷

Conclusion

In my conclusion the secessionist region of EU member state will have to reapply for membership but with a different procedure created by Article 48 of the TEU. Is true that this new states can't inherit their parent country membership in the EU by state succession according to the cases we have discussed and according also to the Vienna Convention on State Succession in Respect of the Treaties but the right of their citizen to hold the EU citizenship will give a great advantage. The legal and political obligation of EU regarding its citizen will not end by the secession of a member region. Like the discussed case of Scotland and Catalonia, but also the less famous case of French,

²³ Thomas R. G. C., 'Nations, States, and Secession: Lessons from the Former Yugoslavia'

²⁴ Bühler, Konrad G. (2001). *State Succession and Membership in International Organizations*

²⁵ Rogel, Carole (2004). *The Breakup of Yugoslavia and Its Aftermath*

²⁶ Innes, Abby (2001), *Czechoslovakia: The Short Goodbye*

²⁷ "Vienna Convention on succession of States in respect of treaties". United Nations Treaty Series

Danish and Dutch oversee territory, every citizen of a EU member state have the right to enjoy its EU citizenship and this right can't be deprived and is not in the intention of the Commission.

In a more pragmatic and political point of view I consider that the EU in general and the Commission in special have as goal the increase of member state and the integration of all Europe in the EU. A normal adhesion process will be impossible for the secessionist territory considering a normal enmity with the parent state government. In our cases the UK and Spain government have in any case tried to make clear to Scotland and Catalonia that their membership may be blocked for years. Many point the Spanish government refusal to recognize Kosovo as a clear message to Catalan Movements that advocate independence and not a further devolution.

The case of Scotland can be considered the most difficult case of this kind regarding its founder status in the UK and the debate it crate. The resolution of the Scottish case we will have a response to similar possible cases' like Wallonia and Flanders in Belgium.

In consistence with what sad before I support the idea that after a YES vote in Scotland a EU-Scotland negotiation will begin like in the case of Greenland leave and will organize a calm transaction of the new state in the EU with reduced procedures created by Article 48 of the TEU.

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