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CORSICAN SEPARATISM IN THE FACE OF SOCIO-LEGAL CHALLENGES. ANALYSIS OF THE PROBLEM ON THE BASIS OF FRENCH, INTERNATIONAL AND EUROPEAN LAW

Abstract

The paper relates to the separatist tendencies in Corsica. Following the victory of separatists in the local elections in 2017 and 2021, this issue remains one of the most current problems regarding the territorial situation in France. Firstly, the historical background showing the distinctiveness of the indigenous inhabitants of the island is analysed. Subsequently, the main problem is presented in the legal context. The basis for the analysis is the national (French), international and regional (EU) law. The attention is also focused on how the regulations are implemented in practice, particularly regarding their recognition. Although the right to self-determination does not seem to involve the right to secession due to the lack of outright effect of international law, the greater autonomy is not only possible but also desirable. The aim of the paper is to present different aspects of Corsican separateness, to examine the legal framework, and to assess the chances of Corsicans for changing their future.

KEYWORDS

Corsica, separatism, self-determination, secession, territorial integrity, France

SŁOWA KLUCZOWE

Korsyka, separatyzm, samostanowienie, secesja, integralność terytorialna, Francja

1. INTRODUCTION

One of the most prevalent issues concerning the political situation of France is the problem of growing separatist moods in Corsica. ‘In 1982, the creation of a region with a special status initiated a process of legal and political differentiation on the island. This process has accelerated since 2015, with the accession to regional power of the nationalists, i.e. a political movement that fundamentally questions the place of Corsica within the French Republic, and part of which has long used or supported clandestine violence.’¹ The nationalist coalition took the vast majority of seats in the local parliament after the local elections in December 2017. Four years later ‘Corsican nationalism reached a level of support unique in Europe for such a movement’ by gathering almost 68% of the votes.² Thus, the situation in the region provokes many questions, including the legal status of the island or its chances for independence. To properly assess it, one should consider this problem in the legal context, as well as in terms of socio-political challenges. This will help to estimate the chances for increasing autonomy or the possibility of separation of the island. The paper is divided into four major parts. The first concerns the historical basis of the Corsican separatism, the second presents the situation of Corsica under French law, including its administrative status and constitutional principles. The third part focuses on the legal and international, and European context, whereas the fourth one presents social and political reasons for Corsicans’ aspirations for independence.

2. THE HISTORICAL BACKGROUND TO SEPARATIST ASPIRATIONS

Corsica is the fourth largest island in the Mediterranean Sea (after Sicily, Sardinia and Cyprus). It lies north of the Italian island of Sardinia and south of

¹ A. Fazi, *Territorial Elections in Corsica, 20–27 June 2021*, BLUE January 2022, Vol. 2(1), <https://geopolitique.eu/en/articles/territorial-elections-in-corsica-20-27-june-2021/> (accessed 17.04.2023).

² *Ibid.*

the Ligurian Sea. Its area is 8,778 km² and it is inhabited by more than 351,000 people.³ The name 'Corsica' probably comes from the Phoenicians who called it *chorsi-lesista* referring to the coniferous forest of the island. The timber from there was needed to build ships. Then, the Romans borrowed the name from the Phoenicians, propagated it and gave it a new form – Corsica.⁴

The beginnings of Corsicans' separatist struggles should be sought in ancient times. The indigenous people are called the Corsicans (*corsi*), whereas their ethnic ancestors were the Iberian and Ligurian tribes.⁵ Later on, the island was under Greek and Carthaginian rule. In the third century BC the island was taken over by the Romans, which resulted in a progressive Romanization which contributed to the spread of Catholicism and had a significant influence on shaping the identity of the local population.⁶ After the fall of the Roman Empire, the island was conquered by Germanic, Byzantine and Frankish peoples. That period was crucial for the formation of the early Corsican identity.⁷

In the middle of the ninth century Corsica was occupied by the Arabs until the eleventh century when they were displaced by the Pope who handed over the island to archbishops of Pisa.⁸ From that day on, Italian influences started to contribute to the formation of the local identity. It is noteworthy that many Romanesque temples, which are now important tourist attractions, were built at that time. The Pope's decision led to an intensified conflict between Genoa, which claimed the right to the island, and Pisans supported by the head of the Church. The situation resulted in the Battle of Meloria (1284) won by the fleet of the Republic of Genoa.⁹ Consequently, Genoa governed the island for almost 500 years. It is worth mentioning that in 1450 Genoa ceded the administration of the island to its main bank, the Bank of Saint George.¹⁰ Nevertheless, it was during their reign (1377) that the first uprising was organized.¹¹ This shows that combative traditions among the indigenous people of Corsica have a long history. There was one longer break during that period when France took control over Corsica (1553–1559). However, Genoa regained the rule after the Peace of Cateau-Cambrésis (1559).¹²

³ P. Arrighi, *Histoire de la Corse*, Paris 1969, p. 7; *Estimation de la population au 1^{er} janvier 2023. Séries par région, département, sexe et âge de 1975 à 2023*, Insee, <https://www.insee.fr/fr/statistiques/1893198> (accessed 17.04.2023).

⁴ G. Krzyżanowski, *Korsyka – geneza i anatomia dążeń separatystycznych*, <http://www.psz.pl/127-unia-europejska/grzegorz-krzyzanowski-korsyka-geneza-i-anatomia-dazen-separatystycznych> (accessed 31.10.2020).

⁵ *Ibid.*

⁶ *Nowa encyklopedia powszechna PWN*, Vol. 3, Warszawa 2003, p. 502.

⁷ G. Krzyżanowski, *Korsyka*, *op. cit.*

⁸ *Nowa encyklopedia powszechna PWN*, 2003, *op. cit.*

⁹ P. Antonetti, *Histoire de la Corse*, Paris 1973, p. 143.

¹⁰ L.V. Bertarelli, *Sardegna e Corsica*, Milano 1929, p. 45.

¹¹ *Nowa encyklopedia powszechna PWN*, 2003, *op. cit.*

¹² P. Antonetti, 1973, *op. cit.*, pp. 216–228.

After 170 years the riots started, which led to Corsica's independence. Their causes were multiple and diverse, but the main reason was the imposition of new taxes.¹³ The key moment in the Corsican history was the appearance of Pascal Paoli – the second most famous Corsican besides Napoleon. Once he took over the leadership (1755), the inhabitants of the island considered him the right man in the right place,¹⁴ and the same year the title of the 'General of the Nation' was conferred on him. He was not even 30 years old at the time but already imbued with the egalitarian political philosophy of Charles Montesquieu and Jean-Jacques Rousseau. His target was to expel the Genoese and the French. He also wanted to establish permanent, autonomous and democratic rule on the island.¹⁵ The uprising came to an end in the same year and the Corsican Republic was created. Paoli became the head of the state, which was the world's first modern democratic republic existing from 1755 to 1769. For some, it was 'the best model that hath ever existed in the democratical form'.¹⁶ Paoli managed to create a unique state in the contemporary political reality. It had an army consisting of two regiments and a navy with about twenty pirates, called the navy of Paoli.¹⁷ Under his leadership, the National Assembly, which was convened in 1755, developed and passed a constitution, which was more democratic than any other in Europe.¹⁸ Nevertheless, there are the opinions (Fernand Etti) that this system was not so democratic as it seemed to be.¹⁹

First of all, the aim of the newly created legal system was the liquidation of the vendetta law that had been in force for centuries and allowed the aggrieved to exact bloody revenge on the perpetrator.²⁰ The constitution also guaranteed numerous civil liberties or self-governance. The ideas contained therein belonged to the most humanitarian in the contemporary world. In general, it regulated many areas: from traditional competences of the given powers, through the national defence to the cultural or religious issues.²¹ In addition, a liberal legal code was introduced and the process of establishing schools and a university began.²² The

¹³ F. Pomponi, *Émeutes populaires en Corse: aux origines de l'insurrection contre la domination génoise (décembre 1729–juillet 1731)*, 'Annales du Midi: revue archéologique, historique et philologique de la France méridionale' 1972, Vol. 84(107), pp. 151–181.

¹⁴ P. Antonetti, 1973, *op. cit.*, p. 347.

¹⁵ D. Abram, *Korsyka. GR20 i inne trasy piesze na wybrzeżu i w głębi wyspy: Ajaccio, Bastia, Calvi, Corte i Porto-Vecchio*, Warszawa 2010, p. 57.

¹⁶ J. Boswell, *An Account of Corsica. The Journal of a Tour to that Island, and Memoirs of Pascal Paoli*, London 1768, p. 161.

¹⁷ M. Vergé-Franceschi, *Pascal Paoli, un Corse des Lumières*, 'Cahiers de la Méditerranée' 2006, Vol. 72.

¹⁸ *Pasquale Paoli*, Britannica, <https://www.britannica.com/biography/Pasquale-Paoli> (accessed 31.10.2020).

¹⁹ P. Antonetti, 1973, *op. cit.*, p. 351.

²⁰ *Pasquale Paoli*, Britannica, *op. cit.*

²¹ P. Antonetti, 1973, *op. cit.*, pp. 349–364.

²² B. Rudnicki, *Podróże marzeń. Korsyka*, Warszawa 2007, pp. 47–48.

structural solutions of the Corsican Republic were so disruptive that in 2015 Gilles Simeoni's government, after winning the elections, swore an oath on a book dating from that period.²³

Nonetheless, years of independence quickly passed because in 1768 Genoa, by virtue of the Treaty of Versailles, sold the rights to the island to the King of France, Louis XV. 'French troops subsequently invaded the island in overwhelming numbers'.²⁴ The guerrilla war led by the Corsicans ended with their defeat at the Battle of Ponte Novu in 1769. This ended the Corsican Republic and sealed the French rule on the island. Since then, Corsica has been one of the French regions. There were only two exceptions. The first was the period between 1794 and 1796 when the island was under the rule of the British fleet. It was an independent kingdom then. After the Corsicans joined the French for a short time, Great Britain withdrew its troops and the French regained their sovereignty over the island. The other case was when the Italians and Germans occupied Corsica between 1942 and 1943.

During the French reign most of the talented Corsicans succumbed to French influences and many of them joined the French army. One such person was the most famous Corsican, Napoleon Bonaparte. It is mainly to him and his generals that the suppression of rebellions and the introduction of military dictatorship in Corsica at the beginning of the nineteenth century are attributed. Nevertheless, it was also Napoleon who in 1811 introduced tax reliefs for selling different products which exist to the present day.²⁵ His rebellious youth was primarily due to the fact that his father took part in the uprisings at Paoli's side. The successes he achieved in domestic and foreign politics made the Corsicans understand better the imperial administration, which tended to the centralization of the country.²⁶

The following years saw the abandonment of the idea of independence in favour of the development as part of France.²⁷ Many Corsica's residents worked then in the French administration. The change in attitude towards metropolitan France caused demographic problems. Mass emigration contributed to the decline of the island's population by almost half over half a century.²⁸ The main reasons why the Corsicans left were the possibility of a better life, new jobs and a greater chance for personal and professional promotion.

Decades later when a large number of people came to terms with the lack of autonomy, the French decided to take advantage of the Corsican bellicose character in World War I. More than one of every six Corsican citizens was then under

²³ P. Jendroszczyk, *Korsyka: Autonomia i ksenofobia*, 'Rzeczpospolita' 2015, Vol. 301, p. A10.

²⁴ *Corsica*, Britannica, <https://www.britannica.com/place/Corsica> (accessed 05.10.2020).

²⁵ J. Bielecki, *Korsyka idzie w ślad Katalonii*, 'Rzeczpospolita' 2017, Vol. 282, p. A10.

²⁶ K. Tyszką-Drozdowski, *Wyspa rokoszu*, 'Rzeczpospolita' 2018, Vol. 119, p. 34.

²⁷ D. Abram, 2010, *op. cit.*, p. 59.

²⁸ *Ibid.*

arms.²⁹ Their willingness to fight without using modern weapons was not sufficient to fight enemies, which caused numerous losses among Corsicans. After the end of World War I, the emigration continued to grow and those young people who stayed on the island often joined the demiworld (French: *milieu*).³⁰ In 1940 all the problems the inhabitants faced were without significance due to the ongoing World War II. Corsica, as a strategic area for the troops of every state, had to defend itself against both Italy and Germany.³¹ That time resulted in cooperation between the French government and Corsicans, who, being disciplined and respectful of the authorities, waited for orders.³² After the withdrawal of the Third Reich troops, in 1943 the island became the first liberated department of France.³³

Another issue, which is key to understanding the present day moods, is decolonization. Due to the loss of the Algerian colony by France in 1962, more than a million *pieds noirs*³⁴ were forced to leave Algeria. The French government sent some of them to work on the eastern Corsican plain, providing them with 75% of land originally intended for the Corsicans who, after the valorization of agricultural land, allegedly were to have the pre-emption right to land. In addition, the authorities decided to evict many Corsican families living there for several generations.³⁵ The decision caused great tensions on the island. For the Corsicans, the presence of the newcomers was an example of colonial injustice. It also contributed to the decrease in the percentage of residents who spoke Corsican (see more in section 3.2.1.). The end of the war in Algeria also meant that France could no longer conduct nuclear research there. In that situation the president decided to move the nuclear weapons test sites near Calvi, on the west coast of Corsica.³⁶

All those decisions of the French authorities contributed to the radicalization of the Corsicans' views. At the beginning of the 1970s, two underground organizations of a nationalist character were formed: the Corsican Peasant Liberation Front (FPLC – *Fronte Paisanu Corsu di Liberazione*) and the Paolin's Justice

²⁹ L. Meriwether, *The War Diary of a Diplomat*, New York 1919, p. 56.

³⁰ D. Abram, 2010, *op. cit.*, pp. 60–61.

³¹ *Ibid.*, p. 61.

³² M. Choury, *Tous bandits d'honneur! Résistance et libération de la Corse (juin 1940–octobre 1943)*, Paris 1956, p. 17.

³³ *The Liberation of Corsica 1943*, <https://dlockyer.wordpress.com/2015/05/08/liberation-of-corsica-1943/> (accessed 31.10.2020).

³⁴ The term refers primarily to people from Europe who were born in Algeria during the French rule in the years 1830–1966. More broadly, it may refer to other people from abroad, both Christian and Jewish, from all parts of the Mediterranean whose families also emigrated in the nineteenth and twentieth centuries to French Algeria, the French protectorate in Morocco or the French protectorate in Tunisia, where many of them lived for several generations but escaped or were expelled after the end of the French rule in North Africa in 1956–1962.

³⁵ *From Independence in Algeria to the Corsican Nationalist Movement*, <https://dlockyer.wordpress.com/2016/05/24/from-independence-in-algeria-to-the-corsican-nationalist-movement/> (accessed 31.10.2020).

³⁶ *Ibid.*

(GP – *Ghjustizia Paolina*). However, they played a minor role in the Corsican separatist movement because it was the Corsican Regionalist Action (ARC – *Action Régionaliste Corse*) that led the way.³⁷ The event which directly contributed to the further radicalization was the attack and occupation of a vineyard in Aléria. The newcomers engaged in blatant large-scale fraud by adding sugar to wine, which, consequently, resulted in an increase in alcohol concentration.³⁸ It was unacceptable for Corsicans because wine production was an important element of their tradition and culture. After that incident, the ARC was dissolved and replaced by two new organizations: the Association of Corsican Patriots (APC – *Associo di Patrioti Corsi*) and the Union of the Corsican People (UPC – *Unione diu Populu Corsu*).³⁹ Eventually, the most popular organisation – the Corsican National Liberation Front (FLNC – *Fronte di Liberazione Naziunale di a Corsica*) – was founded on 5 May 1976. Its first declarations concerned the increase of the island's autonomy. Later, the FLNC members began to make terrorist attacks. 'Over the next 40 years, the rebels blew up banks, cars, military vehicles, railway tracks, government buildings, made shotguns with grenade launchers and attacked police stations and military facilities, banks and charged "revolutionary tax from entrepreneurs"'.⁴⁰ Despite the large number of annual attacks, these actions were not aimed at killing opponents.⁴¹ Furthermore, all demands were formulated in the Corsican language in order to emphasize separateness.

Summing up, one must state that for many centuries, from antiquity to modern times, the Corsicans were constantly threatened by more developed peoples, tribes, or states. It is due to the fact that the island was an attractive place for many invaders because of the sea routes crossing.⁴² 'Since the late 18th century, nationalists have seen the feeling of belonging to a Corsican nation in a legal and historical context as a pervasive sense of identity.'⁴³ History shows that it is difficult to suppress their desire for independence and a sense of individuality, though the island has been in the hands of various communities, rulers or even commercial organizations, such as the Bank of Saint George.

The geographical location is of significance since Corsica is situated several kilometres from Italian Sardinia and much farther from France. The closer proximity of the island to Italy and historical links with the Republic of Genoa indicate rather stronger cultural links with Italy. One of the examples confirming this

³⁷ P. Poggioli, *Corse, l'adieu aux armes*, 'Le Monde diplomatique' October 2014, Vol. 10, p. 12.

³⁸ B. Rudnicki, 2007, *op. cit.*, p. 54.

³⁹ *Ibid.*

⁴⁰ T. Skowronek, *Separatyści z wyspy Napoleona*, 'Przegląd' 2018, Vol. 3, p. 28.

⁴¹ L. De Winter, H. Tursan, *Regionalist Parties in Western Europe*, New York 2003, p. 186.

⁴² D. Abram, 2010, *op. cit.*, p. 49.

⁴³ T. Dominici, *Corsica*, (in:) M. Sanjaume-Calvet, D. Turp (eds), *The Emergence of a Democratic Right to Self-Determination in Europe*, 2016, https://ideasforeurope.eu/wp-content/uploads/2018/03/Coppieters_5282_selfdetermination_final.pdf (accessed 31.10.2020), p. 102.

view is the origin of the Corsu language, which is considered a dialect of one of the languages that was in use in the territory of present-day Italy (see more in section 3.2.1.). Indeed, the Constitution of the Corsican Republic was written in that language and the Corsican law for many years was drawn up in Italian, even after the takeover of the island by France. Also cultural contacts with Italy are still maintained, a number of Corsicans still study there, and even many Italian revolutionaries have found shelter on the island after failures.⁴⁴ Despite these relationships and Italy's attempts to win sympathy, e.g. by funding scholarships for talented Corsicans, which endured long after the Genoese domination had come to an end,⁴⁵ for many years Corsica has been a part of France.

The whole turbulent history confirms that many differences, notably cultural ones, have developed, a number of which are now the cause of considerable distance from France and demands of greater autonomy. In order to appease current and potential conflicts, one should introduce fair legal solutions which would be a compromise but within the legal framework. Nevertheless, the Corsican issue has already been the subject of legal changes that led to, e.g. the evolution of its status or passing provisions which granted new rights to the Corsicans.

3. CORSICA IN THE LIGHT OF FRENCH LAW

3.1. ADMINISTRATIVE STATUS OF CORSICA

The French Republic is a unitary state and there is some plausibility that such structure is more conducive to separatist tendencies than it would be possible in a federal state with usually greater autonomy. The affiliation of Corsica to France means that one must consider the legal status of the island with regard to French regulations. Analysing administrative issues during Corsica's subservience to the French Republic, it is worth distinguishing three periods. In 1793 the island consisted of two departments.⁴⁶ Then, in 1811, there was one and since 1975 it has again been divided into two, becoming this way the twenty-second region of France. In 2016 the number of regions decreased from 22 to 13, but Corsica has remained one of them. However, it is the range of rights and liberties which arouses controversy. The status and degree of the island's autonomy is affected by numerous laws.

⁴⁴ N. Mari, *Langue corse: 90% des Corses sont pour le bilinguisme*, Corse Net Infos, 2013, https://www.corsenetinfos.corsica/Langue-corse-90-des-Corses-sont-pour-le-bilinguisme_a2678.html (accessed 31.10.2020).

⁴⁵ D. Carrington, *Granite Island: A Portrait of Corsica*, London 2008.

⁴⁶ F. Pomponi, *En Corse sous la Révolution: le temps du Governo Separato (juin 1793–juin 1794)*, 'Cahiers de la Méditerranée' 1994, Vol. 48, pp. 149–165.

The most important normative act is the Constitution of the French Republic.⁴⁷ Nevertheless, the increasing radicalization of the Corsicans caused, i.a. by the establishment of the FLNC, prevailed on France to regulate the Corsican issue at the statutory level. Some of the first manifestations were two acts adopted in 1982⁴⁸ which defined the special status of the Corsican region and determined its competences. The Corsican Assembly was then established. Later on, the Act establishing the territorial community of Corsica (1991)⁴⁹ and the Act concerning Corsica (2002)⁵⁰ were passed. Although the latter did not change the status of Corsica, it extended its competencies.⁵¹ All these laws were subject to a comprehensive assessment by the Constitutional Council in terms of compliance with the Constitution of the French Republic. Michel Bernard, President of the honorary section of the Council of State, pointed out that two basic conclusions are drawn from the Council decisions.⁵² The first is that Corsica has a specific status. The other is that Corsica is an integral part of the French Republic. Both closely follow the French Constitution and have been included in the Council's decisions.

A special status at that time meant the status of a territorial community defined as 'specific' (*spécifique*). Nevertheless, since the beginning of 2018, by virtue of the Act of 2015,⁵³ the 'Corsican Territorial Community' was converted into the 'Community of Corsica', becoming a unique territorial community in place of the existing administrative unit and departments of South Corsica and Upper Corsica. An overview of the history of legal regulations regarding Corsica will allow showing the evolution of the related line of case law and the status of the island.

⁴⁷ Constitution of 4 October 1958, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constitution_anglais.pdf (accessed 31.10.2020).

⁴⁸ Act of 2 March 1982 on the special status of the region of Corsica and its administrative organization: Loi n° 82-214 du 2 mars 1982 portant statut particulier de la région de Corse: organisation administrative, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000704430/> (accessed 31.10.2020); Act of 30 July 1982 on the special status of the region of Corsica and its competences: Loi n° 82-659 du 30 juillet 1982 portant statut particulier de la région de Corse: compétences, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000880223/> (accessed 31.10.2020).

⁴⁹ Act of 13 May 1991 on the status of the territorial community of Corsica: Loi n° 91-428 du 13 mai 1991 portant statut de la collectivité territoriale de Corse, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000536085/> (accessed 31.10.2020).

⁵⁰ Act of 22 January 2002: Loi n° 2002-92 du 22 janvier 2002 relative à la Corse, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000409466/> (accessed 31.10.2020).

⁵¹ *Quel est le statut de la Corse?* <https://www.vie-publique.fr/fiches/20150-le-statut-de-la-corse> (accessed 31.10.2020).

⁵² M. Bernard, *Les statuts de la Corse*, 'Cahiers du Conseil constitutionnel' May 2002, No. 12, <https://www.conseil-constitutionnel.fr/nouveaux-cahiers-du-conseil-constitutionnel/les-statuts-de-la-corse> (accessed 31.10.2020).

⁵³ Act of 7 August 2015 on the new territorial organization of the Republic: Loi n° 2015-991 du 7 août 2015 portant nouvelle organisation territoriale de la République, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000030985460/> (accessed 31.10.2020).

At first, one should draw attention to Article 72 of the French Constitution which regulates the issue of territorial communities. The Constitutional Council in its decision 82-138 DC⁵⁴ stated that this provision allowed the creation of not only overseas territorial communities but also such which cover only one unit. Such cases were not new to French law because separate laws for Paris and Mayotte had been passed.⁵⁵ Therefore, it confirmed the special legal status of Corsica. In a subsequent decision 91-290 DC,⁵⁶ the Council added that the fact of mentioning only overseas territories in Articles 74 and 76 of the Constitution did not prevent the legislator from establishing a new category of territorial community and from giving it a special status and administrative structure, what happened by virtue of the 1991 Act. Nevertheless, there is a significant difference between Corsica's status and the status of overseas territories. As the Council recognized, the legislator may, in the case of the overseas territories, refrain (albeit to a limited extent) from division of powers between the law and the regulation, whereas in the case of Corsica that is not possible.⁵⁷

The status of a special territorial community carries many implications. In every such unit one must guarantee the principle of free administration (decision 91-290 DC). It means that the Corsican Assembly, elected in direct elections, should have and has the right to regulate the matters of its territorial community by virtue of the above-mentioned act. This is an example of some kind of autonomy in the operation of local administrative bodies. It also shows the change in the attitude of the authorities in Paris to the decentralization of power. However, as the Constitutional Council emphasized, this principle cannot cause the collision between the territorial community status and the prerogatives of the state, mainly of the government. This distinction is a contentious issue, but it is crucial because it would allow defining a limit to the autonomy of such a territory.

In order to properly assess it, one must determine the relation between Articles 72 and 21 of the Constitution. The former stipulates that territorial communities have power to make regulations in matters coming within their jurisdiction. The latter underlines the fact that generally the Prime Minister shall have power to make regulations. Firstly, as the Constitutional Council pointed out, it is pos-

⁵⁴ Decision of 25 February 1982 concerning the Act on the special status of the region of Corsica: Décision 82-138 DC – 25 février 1982 – Loi portant statut particulier de la région de Corse, https://www.legifrance.gouv.fr/affichJuriConst.do;jsessionid=BA554DBEF31C5C267415014857D09AAAF.tpdjo06v_2?idTexte=CONTEXT000017667346 (accessed 31.10.2020).

⁵⁵ M. Bernard, 2002, *op. cit.*

⁵⁶ Decision of 9 May 1991 concerning the Act on the status of the territorial community of Corsica: Décision 91-290 DC – 09 mai 1991 – Loi portant statut de la collectivité territoriale de Corse, <https://www.legifrance.gouv.fr/affichJuriConst.do?idTexte=CONTEXT000017667837> (accessed 31.10.2020).

⁵⁷ M. Bernard, 2002, *op. cit.*

sible for the local authorities to implement the law (decision 88-248 DC),⁵⁸ but there are restrictions. The implementation of public freedoms is forbidden due to the fact that it could cause simultaneous application of different rules throughout the Republic, but also regulations must be made within the framework of competences devolved on a community by law and cannot infringe Prime Minister's powers under Article 21 of the Constitution (decision 2001-454 DC)^{59, 60} The latter issue was considered earlier by the Council when it acknowledged that the exercise of rights by the communities cannot lead to the infringement of the prerogatives of the state (decision 91-290 DC). Secondly, the lawmaker was allowed to provide territorial communities with certain methods of applying the law (decision 2001-454 DC). Thirdly, the Council emphasized the fact that the law has to specify precisely the scope, methods of implementation and bodies responsible for making regulations in the community (decision 2001-454 DC).⁶¹

Until the establishment of the Lyon Metropolitan Area in 2014,⁶² Corsica was the only territorial community with a special status within the meaning of Article 72(1) of the Constitution in metropolitan France.⁶³ However, the status of the island changed with the beginning of 2018, by virtue of the Act on the new territorial organization of the Republic, which was mentioned above. The 'Community of Corsica' is no longer a territorial community with a special status like the Lyon Metropolitan Area, but it has become a unique territorial community, which exercises the powers devolved both on the region and the department. The same status was granted to Mayotte in 2011,⁶⁴ as well as to French Guiana and Martinique in 2015⁶⁵. It is noteworthy that from the beginning of 2021 another unique territorial community was created: the European Collectivity of Alsace.

⁵⁸ Decision of 17 January 1989 concerning the Amendment to the Act no. 86-1067 of 30 September 1986 on freedom of communication: *Décision 88-248 DC – 17 janvier 1989 – Loi modifiant la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication*, <https://www.conseil-constitutionnel.fr/decision/1989/88248DC.htm> (accessed 31.10.2020).

⁵⁹ Decision of 17 January 2002 regarding the Act concerning Corsica: *Décision n° 2001-454 DC – 17 janvier 2002 – Loi relative à la Corse*, <https://www.conseil-constitutionnel.fr/decision/2002/2001454DC.htm> (accessed 31.10.2020).

⁶⁰ M. Bernard, 2002, *op. cit.*

⁶¹ *Ibid.*

⁶² Under the Act of 27 January 2014 on the modernization of territorial public action and the affirmation of metropolises: *Loi n° 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles*, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028526298/> (accessed 31.10.2020).

⁶³ *Quel est le statut de la Corse? op. cit.*

⁶⁴ Under the Act of 7 December 2010 concerning the Department of Mayotte: *Loi n° 2010-1487 du 7 décembre 2010 relative au Département de Mayotte*, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000023174577> (accessed 31.10.2020).

⁶⁵ Under the Act of 27 July 2011 concerning the territorial communities of French Guiana and Martinique: *Loi n° 2011-884 du 27 juillet 2011 relative aux collectivités territoriales de Guyane et de Martinique*, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000024403725> (accessed 31.10.2020).

One should also mention that a similar change could have been made for Corsica in 2003 when the referendum took place. Nonetheless, 51% voted against with the difference of 2,238 votes between for and against.⁶⁶ It was possible then to replace two administrative departments and one regional council and 'elect a new, unified assembly with some limited powers to raise and spend taxes'.⁶⁷ It was an example of readiness of the government to give more autonomy to Corsicans, but many inhabitants feared that 'a Yes vote would be seen as a victory for violent nationalists who have waged a bombing and shooting campaign for independence from France since the 1970s'.⁶⁸ This shows that decisions not always depend on central powers; sometimes, citizens can take matters into their own hands.

The current status involves many new regulations, e.g. new procedures for supervising the legality of acts passed by the Corsican authorities, competencies of the Corsican authorities, rights and obligations of the three former communities, extension of the powers of the chairman of the 11-member Corsican Executive Council. Besides, in connection with the newly created administrative unit, the Act authorized the government, pursuant to Article 38 of the Constitution, to issue three ordinances in November 2016. The first was to supplement and specify budgetary, financial and tax regulations for Corsica,⁶⁹ the second laid down various institutional measures regarding the Corsican community,⁷⁰ while the third one was aimed at regulating electoral law on the island.⁷¹ These regulations and the 2015 Act are, for sure, a big step towards greater autonomy and satisfying the Corsicans' demands. Moreover, on 4 April 2018, the Prime Minister of the French Republic presented a draft which provided for an additional provision or paragraph to the Constitution that would allow the specificity of the island to be adapted to the law of the French Republic.⁷²

⁶⁶ *Consultation des électeurs de Corse 2003*, <https://www.interieur.gouv.fr/Elections/Les-resultats/Locales/Consultation-des-electeurs-de-Corse-2003> (accessed 31.10.2020).

⁶⁷ C. Wyatt, *Corsica Seeks Stake in Future*, BBC, 5 July 2003, <http://news.bbc.co.uk/2/hi/europe/3046162.stm> (accessed 05.10.2020).

⁶⁸ *Ibid.*

⁶⁹ Ordonnance n° 2016-1561 du 21 novembre 2016 complétant et précisant les règles budgétaires, financières, fiscales et comptables applicables à la collectivité de Corse, <https://www.legifrance.gouv.fr/eli/ordonnance/2016/11/21/2016-1561/jo/texte> (accessed 31.10.2020).

⁷⁰ Ordonnance n° 2016-1562 du 21 novembre 2016 portant diverses mesures institutionnelles relatives à la collectivité de Corse, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORF-TEXT000033440998&categorieLien=id> (accessed 31.10.2020).

⁷¹ Ordonnance n° 2016-1563 du 21 novembre 2016 portant diverses mesures électorales applicables en Corse, <https://www.legifrance.gouv.fr/eli/ordonnance/2016/11/21/INTA1623375R/jo/texte> (accessed 31.10.2020).

⁷² *Discours de M. Edouard Philippe, Premier Ministre: Réforme des institutions*, 4 April 2018, Hôtel de Matignon, https://www.gouvernement.fr/sites/default/files/document/document/2018/04/discours_de_m._edouard_philippe_premier_ministre_-_reforme_des_institutions_-_mercredi_4_avril_2018.pdf (accessed 31.10.2020).

All of this demonstrates that there is good will on the part of the government to acknowledge some of the Corsicans' demands, provided those are compatible with the French law and its principles. These changes prove the opinion of Michel Verpeaux that the recognition of the constitutional dimension of territorial communities has profoundly modified their perception in France. They ceased to be regarded as secondary administrative communities, situated below the state.⁷³

3.2. THE STATUS OF CORSICA IN LIGHT OF CONSTITUTIONAL PRINCIPLES

Two significant principles, which are complementary, are: the principle of the indivisibility of the Republic and the principle of equality of citizens.⁷⁴ Both of them are regulated in Article 1 of the French Constitution. One of the obvious conclusions that can be drawn from the literal wording of the first principle, is that any attempt at separating any part of the territory of France would be recognized as an infringement of the Constitution, both by the French legal authorities and the majority of the French people. The other principle is not so evident. The bone of contention in the Corsican issue was Article 1 of the 1991 Act, which stipulates that the French Republic guarantees the Corsican nation – as part of the French nation – the right to preserve its cultural identity and defend its specific economic and social interests. It is noteworthy that the law was adopted by the Parliament, despite the negative opinion of the Council of State.⁷⁵ The doubts were dispelled by the Constitutional Council which recognized that the mention of the Corsican nation as a part of the French nation is contrary to both of these principles because the Constitution considers only the French nation, regardless of origin, race or religion (decision 91-290 DC). Considering such provisions like Article 1 of the 1991 Act, one must admit that their passing is very risky as it touches on the most sensitive topic connected with the identity of the indigenous people, what can lead to long-lasting political consequences. In a subsequent decision, the Council added that the term 'French nation' had a constitutional value and excluded the possibility of recognising collective rights of any community, regardless of origin, culture or worldview (decision 99-412 DC).⁷⁶ Afterwards, the

⁷³ M. Verpeaux, *Le droit constitutionnel des collectivités territoriales, avant-propos*, 'Cahiers du Conseil constitutionnel' 2002, No. 12, <https://www.conseil-constitutionnel.fr/nouveaux-cahiers-du-conseil-constitutionnel/le-droit-constitutionnel-des-collectivites-territoriales-avant-propos> (accessed 31.10.2020).

⁷⁴ M. Bernard, 2002, *op. cit.*

⁷⁵ Conseil d'État, 7ème–2ème chambres réunies, 25/10/2017, no. 403335, <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000035911903/> (accessed 31.10.2020).

⁷⁶ Décision 99-412 DC – 15 juin 1999 – Charte européenne des langues régionales ou minoritaires, <https://www.legifrance.gouv.fr/affichJuriConst.do?oldAction=rechJuriConst&idTexte=-CONTEXT000017667958&fastReqId=1605355888&fastPos=1> (accessed 31.10.2020).

Council directly excluded the possibility of national sovereignty of any section of the nation (decision 2001-454 DC).

It is worth drawing attention to the way in which such decisions are justified by the Constitutional Council. To underpin its judgment, it referred to the preamble of the Constitution of 1958, the Declaration of Human and Citizens' Rights of 1789, and constitutional texts which over the years used only the term 'the French people' (decision 91-290 DC).⁷⁷ It was also noticed by legal scholars and commentators. Verpeaux emphasises that the Constitutional Council indirectly referred to the constitutional continuity through constitutional customs and historical background.⁷⁸

The way of justifying the decision is strictly connected with interpretation which plays a key role during the analysis of legal norms. Constitutional provisions relating to territorial communities are extremely brief, but at the same time they can have a lot of meaning, and consequently, they are open to interpretation.⁷⁹ That is why, by dint of the judges' efforts who interpret and develop legal norms, the constitutional foundations evolve without changing.⁸⁰ The same is true for, e.g. Article 1 of the French Constitution. Therefore, the principles of the indivisibility of the Republic and equality of citizens *prima facie* seem to be unequivocal. However, the above analysis shows that interpretation made by the Council has led to many crucial findings which in certain aspects delimit autonomy. The line of case law in relation to the way these principles are construed is rather well-established because the essence – univocal rejection of any sovereignty or distinguishing any community – remains the same. However, something new is always added and norms are developed. One of the examples was the statement of reasons in the above-mentioned decision, where the Council cited historical regulations, which significantly contributed to the uniform understanding of the given norm; after all, it seems unlikely that any court could judge differently, breaking the historical continuity.

3.2.1. SEPARATE LANGUAGE

Another issue concerning constitutional principles is recognition of a language which is spoken by the minority in France. It is one of the crucial features of a given group of people which emphasises its alterity. Almost 80% of inhabitants of Corsica speak their own, Corsican language.⁸¹ Nevertheless, bilingualism

⁷⁷ M. Bernard, 2002, *op. cit.*

⁷⁸ M. Verpeaux, *L'unité et la diversité dans la République*, 'Les Nouveaux Cahiers du Conseil constitutionnel' 2014, Vol. 42(1), pp. 7–16.

⁷⁹ M. Verpeaux, 2002, *op. cit.*

⁸⁰ *Ibid.*

⁸¹ M. Strzałkowski, *Korsyka: Protesty nacjonalistów przed wizytą Emmanuela Macrona*, EURACTIV.pl, 5 February 2018, <https://www.euractiv.pl/section/polityka-regionalna/news/korsyka-protesty-nacjonalistow-wizyta-emmanuela-macrona/> (accessed 31.10.2020).

is often emphasized since 90% of the population want to speak French and Corsican in the future, while only 7% choose only French and 3% point to Corsican. The vast majority (86%) show a strong interest in their language.⁸²

Until the mid-nineteenth century *lingua corsa* was an official language of Corsica.⁸³ It is closely related with Tuscan as these two languages are even considered to be the two variants of the same language.⁸⁴ It obviously stems from close historical links with the Apennine Peninsula, especially with Pisa and Genoa. After the takeover of the island by France, the influence of Italian was diminishing, but it still existed in spite of attempts to limit it (e.g. by quashing judgments written in Italian or by replacing Italian newspapers with the French ones), which is proven by the fact that sermons in Italian were preached on the island until 1938.⁸⁵ By dint of the historical background of Corsican, one can observe a certain process. At first, its origin is rather similar to the continental Italian dialects: a slow evolution from popular Latin which led in the ninth century to the development of a new language. During the medieval period the languages of Tuscany, North Sardinia, and Corsica were seen as a linguistic whole. However, in the nineteenth century the Corsican language began to carry weight with more and more texts written in Corsican (articles in newspapers, lyrics).⁸⁶ In the meantime, French replaced Italian, also as the language of administration and justice, and it was spoken by urban elites and middle classes.⁸⁷ It also resulted from the fact that since 1820, 'Italian was banned from public administration and, progressively, from education'.⁸⁸ This proves that the significance of the native language increases in the time of danger or uncertainty. During 500 years of Genoese rule over Corsica, there was a relative stability in terms of affiliation, whereas the eighteenth and nineteenth centuries were quite turbulent, forcing the Corsicans to fight for independence or autonomy. This contributed to the development of identity of the indigenous people who could express their distinctiveness by means of their language. These roots justify the opinions that linguistic aspirations are

⁸² N. Mari, *Langue corse*, *op. cit.*

⁸³ E. Biernacka, *11 Native Languages that are Disappearing in France*, 31 October 2016, <https://theculturetrip.com/europe/france/articles/11-dying-languages-in-france/> (accessed 05.10.2020).

⁸⁴ J.-M. Arrighi, *Langue corse: situation et débats*, 'Ethnologie française' 2008, Vol. 38(3), pp. 507–516.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ B. Spolsky, *Language Policy in French Colonies and after Independence*, 'Current Issues in Language Planning' 2018, Vol. 19(3), pp. 231–315, at p. 237.

⁸⁸ M. A. Farinelli, *Managing the Island Territory: A Historical Perspective on Sub-state Nationalism in Corsica and Sardinia*, 'Small States & Territories' 2020, Vol. 3(1), pp. 137–152, at p. 141.

unlikely to die on this island, as their own language is one of the strongest ‘weapons’ in fighting for more rights.⁸⁹

In 1992 the French language was introduced into the Constitution as the only official language.⁹⁰ Nonetheless, it did not prevent Corsican from further development, which has been fostered since the end of World War II, e.g. by establishing the Academy ‘for the defence of the Corsican dialect and traditions’ in 1953.⁹¹ This provision concerns not only Corsican, but also other local languages since France is the most linguistically varied country in Western Europe, with 51% of the population speaking another language in addition to French.⁹² Passing such provisions is always risky because it fuels potential conflicts and may lead to further radicalization and rise of separatist demands. That is why, an outrage was inevitable as identity issues seem to be flashpoints. The situation may have changed several years later when the European Charter for Regional or Minority Languages was adopted. It has granted, e.g. the right to use a regional language both in private and public life. However, in the aforementioned decision, the Constitutional Council stated that it infringed Article 2 of the Constitution which provides that the language of the Republic is French (decision 99-412 DC).

Apart from parents, the biggest role in language learning is played by school. One of the most efficient ways to teach the society a given language is to introduce it to the school curriculum. In the nineteenth century it was French which was taught in Corsican schools. In 1829 the schools were divided roughly in half between French and Italian facilities, whereas in 1881 a decree stated that French would be the only language in use in school. After World War II, it was the Corsicans who wanted for their language to be taught in secondary education as a second language, which would be compulsory on the island and optional outside the island. What is more, in 1964 the National Union of Corsican Students in Paris called for teaching the Corsican language and history since the primary school. Subsequently, pursuant to the 1982 Act which granted the right of initiative to the Corsican Assembly, in 1983 this body adopted a law about bilingualism and compulsory teaching of Corsican. Although it was rejected by the Prime Minister, it made the goals of Corsicans clear.⁹³

The turning point was the 1991 Act which enabled the Corsican Assembly to adopt the plan for teaching the Corsican language and culture, simultaneously

⁸⁹ *In Corsica, a Language Breeds Controversy*, <https://www.dw.com/en/in-corsica-a-language-breeds-controversy/a-19524436> (accessed 31.10.2020).

⁹⁰ See the constitutional law of 25 June 1992: Loi constitutionnelle n° 92-554 du 25 juin 1992 ajoutant à la Constitution un titre: ‘Des Communautés européennes et de l’Union européenne’, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000723466/> (accessed 31.10.2010).

⁹¹ J.-M. Arrighi, 2008, *op. cit.*

⁹² G. Radford, *French Language Law: The Attempted Ruination of France’s Linguistic Diversity*, Trinity College Law Review Online, <https://trinitycollegelawreview.org/french-language-law-the-attempted-ruination-of-frances-linguistic-diversity/> (accessed 31.10.2020).

⁹³ J.-M. Arrighi, 2008, *op. cit.*

including this teaching in the school curriculum. The Constitutional Council ruled that such a solution was not contrary to the principle of equality because teaching of the subject is not mandatory and is not intended to deprive any pupils of the rights and obligations applicable to all entities providing public education or associated with it (decision 91-290 DC). What is more, ten years later the 2001 Act provided that the Corsican language would be taught in Corsican pre-primary and primary classes during normal school hours. The Council upheld this provision consistent with the Constitution with the proviso that the teaching should be optional and (once again) not deprive any pupils of their rights and obligations (decision 2004-454 DC). A need to clarify this matter might stem from, i.a. the fact that in 1988 the proposal of teaching Corsican appeared as an obligation for school and since 1999 all fifth and sixth grade classes, as well as primary education, had to include Corsican in their curricula.⁹⁴ The Constitutional Council's position may be supported by the wording of Article 2 of the French Constitution, which suggests that using a language other than French cannot be imposed on students of public schools.

Consequently, since 1991 the Corsican Assembly had been voting on devising a plan for teaching Corsican, which would later be a subject of agreement with the state. In 1999 it provided for teaching Corsican at all levels of education, however, in 2006 it led to balance bilingualism, what would be a first step towards multilingualism.⁹⁵ Data from 2018 show that although 98% of pupils learn Corsican in primary schools, only 59% continue this optional subject in middle schools, and only 22% do so in secondary schools.⁹⁶ The percentage of bilingual nurseries and primary schools is much lower and totals approximately 31%.⁹⁷ As for the time which is devoted to teaching Corsican, all pupils until the sixth class learn it three hours per week during which the language and regional culture is taught.⁹⁸

The constitutional principles play an enormous role in determining the current and future status of Corsica. The hierarchy of legal acts results in the necessary consistency of every lower-level legal act with the Constitution. Due to the fact that constitutional norms are often general and vague, it is the Constitutional Council which shapes them, delimiting the rights and obligations. In the case of

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Quels sont les résultats de l'enseignement du Corse?* France 3 Corse ViaStella, <https://france3-regions.francetvinfo.fr/corse/quels-sont-resultats-enseignement-du-corse-1399519.html> (accessed 31.10.2020).

⁹⁷ *Langue corse: trois écoles maternelles en mode immersif à la rentrée 2018*, France 3 Corse ViaStella, <https://france3-regions.francetvinfo.fr/corse/langue-corse-trois-ecoles-maternelles-mode-immersif-rentree-2018-1446553.html> (accessed 31.10.2020).

⁹⁸ N. Azlag, *Quelle place pour les langues régionales à l'école*, VNI, 5 February 2020, <https://www.vousnousils.fr/2020/02/05/quelle-place-pour-les-langues-regionales-a-lecole-628758> (accessed 31.10.2020).

Corsica, the case law became, with each subsequent decision, more and more precise, but *de facto* it has not changed and remained coherent.⁹⁹ Maintaining a similar line of case law underpins the principle of legal security. Thus, citizens know the lines of interpretation and may expect a particular approach. Furthermore, separatists and groups of people aiming at greater autonomy may be aware of a certain reaction from the state. There is no doubt that in relation to Corsica new local acts may still be expected. The latest change of the status of the island gives it greater autonomy and, in fact, may lead to further amendments. However, none of the provisions can be in breach of the law, notably the Constitution as its principles are understood in a definite way.

4. THE CORSICAN CASE AND INTERNATIONAL AND EUROPEAN LAW

Considering the problem of Corsica, one can notice many phenomena typical for other separatist movements in the international context. That is why, it is necessary to analyse this issue, taking into account international and European law. This will help draw general conclusions on legitimacy of the Corsican claims and provide a broader perspective on the problem under study.

4.1. SELF-DETERMINATION

'Self-determination has been one of the most important driving forces in the new international community. It has set in motion a restructuring and redefinition of the world community's basic "rules of the game".'¹⁰⁰ The right to self-determination arouses controversies because it is understood differently depending on the entity which relies on this principle. The states prefer a narrow understanding whereas minorities contend that it allows them to separate from a given state.¹⁰¹ However, it cannot be applicable to every community which aims at independence or self-government.¹⁰² This is because of the uncertainty of the legal status of this principle and difficulties in determining authorized entities.¹⁰³ Self-determination

⁹⁹ M. Bernard, 2002, *op. cit.*

¹⁰⁰ A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge 1995, p. 1.

¹⁰¹ K. Czubocha, *Separatyzm etniczny w dobie praw człowieka – nowe wyzwanie dla państwa narodowego i społeczności międzynarodowej*, Toruń 2012a, p. 154.

¹⁰² J. Crawford, *The Criteria for Statehood in International Law*, 'British Yearbook of International Law' 1976, Vol. 48(1), pp. 93–182.

¹⁰³ M. Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations*, The Hague/Boston/London 1982, p. 110.

is sometimes perceived as a concept which is 'both boldly radical and deeply subversive'.¹⁰⁴ Robert Lansing even claims that it is 'loaded with dynamite'.¹⁰⁵

The principle of self-determination appeared in the international law as a legally binding principle after World War II when it was decided to replace the protection of the rights of national minorities with a universal system of human rights as there was a reluctance to treat minorities as an ethnic group.¹⁰⁶ The right to self-determination has been laid down in many international acts. First of all, Article 1 of the Charter of the United Nations stipulates that one of the purposes of the UN is 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'.¹⁰⁷ One can already see that placing of such provision at the beginning of the Charter testifies to the importance of the principle of self-determination in the international legal order. Also Article 55 provides that relations among nations are to be 'based on respect for the principle of equal rights and self-determination of peoples'.¹⁰⁸ However, the term 'self-determination' has not been clearly defined in the UN Charter. Perhaps this is deliberate because this way there is certain freedom of interpretation. Additionally, self-determination is repeated, i.a. in Article 1 of the International Covenant on Economic, Social and Cultural Rights, which stipulates that '[a]ll 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',¹⁰⁹ or in the Vienna Convention on the Law of Treaties¹¹⁰.

There are also examples of soft law which point out self-determination. For instance, the Declaration on the Granting of Independence to Colonial Countries and Peoples contains the same paragraph as the International Covenant mentioned above.¹¹¹ It concerns the issue of colonialism and recognizes the right to independence of colonial peoples, which has significantly contributed (mainly in Africa) to the process of decolonization. The principle is also repeated in other resolutions of the UN General Assembly of 1960 and 1970 (No. 1541 and

¹⁰⁴ A. Cassese, 1995, *op. cit.*

¹⁰⁵ R. Lansing, *The Peace Negotiations: A Personal Narrative*, Boston/New York 1921, p. 97.

¹⁰⁶ K. Czubocho, *Pojęcie państwa i procesy państwowotwórcze we współczesnym prawie międzynarodowym*, Toruń 2012b, p. 109.

¹⁰⁷ Charter of the United Nations, signed in San Francisco on 26 June 1945, as amended, <https://www.un.org/en/charter-united-nations/> (accessed 31.10.2020).

¹⁰⁸ *Ibid.*

¹⁰⁹ International Covenant on Economic, Social and Cultural Rights, United Nations GA Resolution 2200A (XXI) adopted on 16 December 1966, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed 31.10.2020).

¹¹⁰ Vienna Convention on the Law of Treaties, done on 23 May 1969, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 31.10.2020).

¹¹¹ Declaration on the Granting of Independence to Colonial Countries and Peoples, United Nations GA Resolution 1514 (XV) adopted on 14 December 1960, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx> (accessed 31.10.2020).

No. 2625, respectively). The first specifies the concept of the right to self-determination of nations, stressing the possibility of free choice of political status through the creation of a state, joining another country or others, whereas the other one forbids any forced activity against other states that would infringe the right to self-determination.

The right to self-determination has two aspects: external and internal.¹¹² The first one relates to the decolonization period¹¹³ to which the above resolutions refer and means ‘the right of a group which considered itself a nation to form a State of its own’. The latter is perceived as ‘the right to choose the form of government and to determine the policy it meant to pursue’¹¹⁴ or ‘a right to democratic governance applicable to peoples within states’¹¹⁵. The Declaration on the Rights of Indigenous Peoples of 2007 provides in Article 31 that ‘[i]ndigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.’¹¹⁶ That provision was adopted by 143 states within the UN. This shows what is the way of understanding of self-determination among majority of states in the world. There is no mention of independence so the internal aspect prevails.

An interesting model was adopted by the Gibraltar authorities.¹¹⁷ The preamble of the Gibraltar Constitution Order (2006) provides that the constitution ‘gives the people of Gibraltar that degree of self-government which is compatible with British sovereignty of Gibraltar and with the fact that the United Kingdom remains fully responsible for Gibraltar’s external relations’.¹¹⁸ That means that

¹¹² R. Andrzejczak, *Uzasadnienie prawa narodów do samostanowienia. Prawa człowieka podstawą prawa narodów do samostanowienia*, Lublin 2002, p. 144.

¹¹³ J. F. Engers, *From Sacred Trust to Self-Determination*, ‘Netherlands International Law Review’ 1977, Vol. 24(1–2), pp. 85–91.

¹¹⁴ J. Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations*, Leiden/Boston 2007, p. 188.

¹¹⁵ K. Senaratne, *Internal Self-Determination in International Law: A Critical Third-World Perspective*, ‘Asian Journal of International Law’ 2013, Vol. 3(2), pp. 305–339.

¹¹⁶ United Nations Declaration on the Rights of Indigenous Peoples, United Nations GA Resolution A/RES/61/295, adopted on 13 September 2007, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf> (accessed 31.10.2020).

¹¹⁷ S. J. Lincoln, *The Legal Status of Gibraltar: Whose Rock is it Anyway?* ‘Fordham International Law Journal’ 1994, Vol. 18(1), pp. 285–330.

¹¹⁸ Gibraltar Constitution Order 2006, HM Government of Gibraltar, <https://www.gibraltar-laws.gov.gi/papers/gibraltar-constitution-order-2006-6> (accessed 31.10.2020).

self-determination can be as far-reaching as it does not violate the sovereignty of a state which rules.

4.2. SECESSION

The problem of secession is not clearly regulated in international law. Multi-lateral international agreements ignore this issue as the international community has the negative attitude towards it. This seems to be obvious because if it was regulated, certain rights could be granted to secessionists and that would potentially facilitate secession, what might be in contrast with the interests of states.¹¹⁹ Elimination of the right to secession means that the territorial integrity is more important than the claims of peoples.¹²⁰ Secession is most often demanded by ethnic groups that do not agree with a form of self-determination that only implies equality or autonomy. That is why, it is crucial to consider the legality of secession in terms of international law.

Secession may be an internal problem of a given state as well as an international one. All rests on the entities concerned. If another state is involved in any way in activities which aim at secession of an ethnic group from a given state, the territorial integrity of the latter may be threatened. If so, international law would be applicable. One of the examples might be the speech of President Charles de Gaulle given in Canada in 1967 which the Prime Minister of Canada considered an interference in the internal affairs of the state.¹²¹ It is because he ended his speech with the slogan, ‘Vive le Québec libre!’ (Long live free Quebec!).¹²² On the other hand, if the only entities involved in secessionist activity are the groups acting against the home state, then it is an internal issue (national jurisdiction) of a particular state.¹²³ In such a situation secession is an irrelevant act in light of international law.¹²⁴ It may also be recognised consistent with the international law but such a view is not largely shared. According to that opinion, secession can be considered an internal conflict, rebellion or revolution, and, consequently,

¹¹⁹ K. Czubocha, 2012a, *op. cit.*, pp. 148–150.

¹²⁰ R. Emerson, *Self-Determination*, ‘American Journal of International Law’ 1971, Vol. 65(3), p. 465.

¹²¹ J. Tyranowski, *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*, Warszawa/Poznań 1990, p. 227.

¹²² A. Bellemare, *Charles de Gaulle’s Infamous ‘Vive le Québec libre’ Speech Feted, 50 Years on*, CBC News, 24 July 2017, <https://www.cbc.ca/news/canada/montreal/charles-de-gaulle-speech-50th-anniversary-1.4218130> (accessed 31.10.2020).

¹²³ J. Tyranowski, 1990, *op. cit.*, p. 243; *Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question*, League of Nations Official Journal, October 2020, <https://www.ilsa.org/Jessup/Jessup10/basicmats/aaland1.pdf> (accessed 31.10.2020).

¹²⁴ J. Crawford, *The Creation of States in International Law*, Oxford 1979, p. 268.

a civil war which is not prohibited in international law.¹²⁵ Anyway, there is no doubt that in the vast majority of cases an internal issue is present.

Therefore, secessionists in Corsica cannot seek the grounds for their demands in international law as it does not adjudicate this issue in an unequivocal way and rather treats it as falling outside the scope of the international legal order. Moreover, the lack of involvement of third states means that one should return to the French law and seek solutions there. The legal commentary adds that the right to self-determination within the meaning of its external aspect may be exercised only by the whole population living in the territory of a state or colony as ethnic minority groups are not empowered as groups in international law, i.a. because there is no definition of an ethnic minority in international law.¹²⁶ This would mean that independent Corsica might exist only if the population of France would vote 'for' it. Secession is also rejected due to the claim that the rights of indigenous peoples are guaranteed by the prohibition of racial discrimination.¹²⁷

The possible effects of the separation of Corsica could be significant. The island is the third poorest region in France, not taking into account the overseas territories, and the eighth including them. The poverty rate affects about 20% of the population, which is the highest result out of thirteen regions of France and the unemployment rate is around 10%. Hypothetically, if Corsica became a member of the European Union, its GDP would be between Slovenia and the Czech Republic.¹²⁸ However, this calculation is illusory because the benefits that it would obtain from other countries would be much smaller than it gets at present, being a part of France. Another issue are the subsidies that France allocates to Corsica. Annually, it is approximately 5 billion dollars.¹²⁹ Owing to financial aid the economic growth is not that bad. In the case of secession, it would be difficult for Corsica to maintain such financial results. Choosing the secession, all the consequences should be taken into account.

¹²⁵ K. Czubocha, 2012a, *op. cit.*, pp. 151–152.

¹²⁶ K. Czubocha, 2012b, *op. cit.*, p. 119.

¹²⁷ M. Perkowski, *Samostanowienie narodów w prawie międzynarodowym*, Warszawa 2001, p. 63.

¹²⁸ M. Damgé, *La Corse a-t-elle les moyens économiques d'accéder un jour à l'indépendance?* 'Le Monde', 15 March 2018, https://www.lemonde.fr/les-decodeurs/article/2018/03/15/la-corse-a-t-elle-les-moyens-economiques-d-acceder-un-jour-a-l-independance_5271331_4355770.html (accessed 31.10.2020).

¹²⁹ *Francja: Macron na Korsyce odrzuca żądania nacjonalistów*, 'Dziennik Gazeta Prawna', 7 February 2018, <https://www.gazetaprawna.pl/artykuly/1102958,macron-na-korsyce-odrzucania-nacjonalistow.html> (accessed 31.10.2020).

4.3. INTERNATIONAL ORGANISATIONS AND INSTITUTIONS ON THE PROBLEM OF SELF-DETERMINATION

4.3.1. THE INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION OF 22 JULY 2010 ON KOSOVO'S DECLARATION OF INDEPENDENCE

At the beginning it is necessary to describe the status of Kosovo prior to the declaration of independence as these circumstances are important for assessing the legality of both the secession and the declaration.¹³⁰ The Resolution No. 1244, issued by the UN Security Council, established a temporary international territorial administration in Kosovo (UNMIK – United Nations Interim Administration Mission in Kosovo) on 10 June 1999. Its aim was to rebuild effective power capable of fulfilling basic functions towards society.¹³¹ One may enumerate, e.g. the maintenance of law and order, conducting of elections, performing administrative functions, and, most importantly, gradually delegation of these competences to the institutions of the self-government of Kosovo. The resolution stated that the final status of Kosovo was to be worked out in the future by an agreement, nevertheless after the unsuccessful negotiations, the Parliament in Pristina announced on 17 February 2008 the declaration of independence of Kosovo.¹³² However, it was only a political statement, lacking any legal force. The declaration of independence as a certain actual state remains legally neutral, but it changes as a result of recognition or non-recognition by other states (see comments in section 4.5.).¹³³

Subsequently, the UN General Assembly requested the International Court of Justice (ICJ) to issue an advisory opinion on the legality of this declaration in terms of its consistency with the Resolution No. 1244 and international law. After examining the practice of states over the years, the ICJ stated that the resolution did not prohibit unilateral declarations of independence in international law, which does not mean that there is such a right.¹³⁴ Thus, it ruled, by a decision of ten to four, that the mere declaration of independence could not be contrary to international law. Nevertheless, it can be so because of 'use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)'.¹³⁵ Illegal declarations were issued by, e.g.

¹³⁰ A. Szpak, *Secesja państwa w świetle prawa międzynarodowego (na przykładzie Kosowa i Krymu)*, 'Państwo i Prawo' 2014, Vol. (69)12, p. 38.

¹³¹ I. Topa, *Międzynarodowa administracja terytorialna. Prawo – praktyka – dylematy*, Poznań 2012, pp. 49–50.

¹³² A. Szpak, 2014, *op. cit.*, p. 38.

¹³³ R. Kwiecień, *Głos do opinii doradczej Międzynarodowego Trybunału Sprawiedliwości z 22.07.2010 r. w sprawie zgodności z prawem międzynarodowym jednostronnej deklaracji niepodległości Kosowa*, 'Kwartalnik Prawa Publicznego' 2010, No. 3, p. 220.

¹³⁴ A. Szpak, 2014, *op. cit.*, pp. 44–45.

¹³⁵ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. Advisory Opinion of 22 July 2010*, International Court of Justice, <https://icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> (accessed 31.10.2020).

Southern Rhodesia, the South African Homelands, or Northern Cyprus as they were backed by 'foreign military forces, or issued in pursuance of racial discrimination'.¹³⁶ Moreover, the Court pointed out that it was not the Kosovo Assembly that announced the declaration, but the representatives of the Kosovo people outside the legal regime. As it was argued, the authors had not issued this act within the confines of the international territorial administration, but outside it, pleading failure of negotiations.

Although the Kosovo case is unique due to the international territorial administration established there, the key fact is that the Court did not explicitly assess the legality of the right to secession but only the declaration. Thus, it did not take the opportunity and did not comment on the right to secession or its absence. It did not address the arguments of both supporters and opponents of Kosovo's independence. The former pointed to the uniqueness of this country resulting from historical conditions and established self-governance, while the latter denied this view, underlining the ethnic unification of the conflicted nations. Although advisory opinions are not binding, their meaning and content are universal. That one leaves wide scope for interpretation for any entities in terms of international law, due to the lack of an explicit position of the Court.

4.3.2. RESOLUTIONS OF THE UN GENERAL ASSEMBLY AND THE ADVISORY OPINION ON WESTERN SAHARA

Western Sahara is a territory in North-West Africa which was colonized by Spain in the late nineteenth century, thus becoming one of the Spanish colonies. During the decolonization period, in 1963, it was entered by the UN on the list of areas not governed independently within the meaning of Article 73 of the Charter of the United Nations, where it is currently included.¹³⁷ Although its legal status is specific, some general conclusions may be drawn from the resolutions of the UN General Assembly and the ICJ advisory opinion. The UN Resolution 2711 (XXV) of 1970 granted Western Sahara the right to self-determination which was later confirmed by the ICJ in its advisory opinion on Western Sahara in 1975.¹³⁸ The Court then quoted another Resolution 1514 (XV) of 1960 which provides, in particular, that all nations have the right to self-determination which gives them the possibility of choosing a political status according to their own will. In the advisory opinion, it was emphasised that the right requires a free and

¹³⁶ J. Vidmar, *Secession and the Limits of Democratic Decision-Making*, (in:) J. Jordana, M. Keating, A. Marx, J. Wouters (eds), *Changing Borders in Europe: Exploring the Dynamics of Integration, Differentiation and Self-Determination in the European Union*, Padstow 2019, p. 208.

¹³⁷ H. Corell, *Western Sahara – Status and Resources*, <http://www.derechos.org/peace/ws/doc/corell4.html> (accessed 31.10.2020).

¹³⁸ *Advisory Opinion of 16 October 1975 on Western Sahara*, International Court of Justice, <https://www.icj-cij.org/public/files/case-related/61/061-19751016-ADV-01-00-EN.pdf> (accessed 31.10.2020).

genuine expression of the will of the peoples concerned. In addition, it was indicated that in the entrusted and dependent territories, and in all other territories that had not yet gained independence, urgent steps should be taken to transfer all rights to peoples without any conditions or reservations. The UN General Assembly also quoted one of the fundamental principles of the United Nations which stipulates that all states should strictly follow the letter and spirit of the provisions of the UN Charter and rely on the principles of respect for the sovereign rights of all nations and their territorial integrity. Moreover, in another Resolution 34/37 of 1979 the UN General Assembly emphasized the inalienable right of the people of Western Sahara to self-determination and independence.

The mere reference to self-determination does not set the framework of that term, but the multiple mentions confirm that it is or then was an important principle of international law. The resolutions and the advisory opinion set out some guidelines how it can be understood. Therefore, self-determination may be perceived as the possibility of choosing a political status, which is a consequence of the right of peoples to free and genuine expression of their will. Nevertheless, one should remember that those documents were issued during the decolonization period or shortly after it and may not address the latest separatist movements of the ethnic minorities which were not under colonial rule. It is because of the fact that the general understanding of that right 'had been formulated as an entitlement to statehood for the benefit of populations whose territories had been colonized without any consideration of non-colonial cases.'¹³⁹ Anyway, such an interpretation of that right will be satisfactory neither for states nor for secessionists because it does not even differentiate between external and internal aspect of self-determination.

4.4. EUROPEAN PERSPECTIVE

4.4.1. CJEU JUDGMENT OF 10 DECEMBER 2015 (T-512/12)¹⁴⁰

Although the case that was brought before the Court of Justice of the European Union (General Court) concerns the problem of applying a contract concluded by the European Union with the Kingdom of Morocco to the territory of Western Sahara, there are some views which indicate the importance of the right to self-determination for the European case law. The European Union was involved in this case making a Treaty in 1996 between the European Communi-

¹³⁹ J. Almqvist, *EU and the Recognition of States*, (in:) J. Jordana, M. Keating, A. Marx, J. Wouters (eds), *Changing Borders in Europe: Exploring the Dynamics of Integration, Differentiation and Self-Determination in the European Union*, Padstow 2019, p. 130.

¹⁴⁰ Judgment of the Court of Justice of the European Union (CJEU), General Court, in *Front Polisario v Council of the European Union*, Case T-512/12, https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2016.068.01.0026.01.ENG (accessed 31.10.2020).

ties and their Member States, on one hand, and the Kingdom of Morocco on the other. In 2012, the Council on behalf of the European Union approved, in the form of an Exchange of Letters, an agreement on reciprocal liberalization measures in certain economic aspects, on amendments to the Association Agreement with Morocco, and on the replacement of Protocols 1, 2 and 3 and their annexes.¹⁴¹ In 2012 the Polisario Front, i.e. the national liberation movement from Western Sahara, brought action for annulment the Council's decision. Despite many allegations from the Polisario Front, the Court agreed only with one which concerned the lack of protection of fundamental rights of the population of Western Sahara. '[T]he right to self-determination is a human right and not taking this aspect of the situation of Western Sahara into account by the Council of the EU resulted in the annulment of the Council decision approving the international agreement between the European Union and the Kingdom of Morocco.'¹⁴² The Court recognized in paragraph 227 that the protection of fundamental rights of the population of Western Sahara, especially the protection of the right to self-determination, is of particular significance and it is a matter for the Council to examine before approving the agreement. Such a decision proves that the right to self-determination is not only important politically, but it may have legal implications.

The Court did not define the right to self-determination, especially it did not state anything about the right to secession. Moreover, one should remember that the case of Western Sahara cannot be applied directly to European separatisms because Morocco is not a member of the European Union. Consequently, the meaning of this right is still uncertain in relation to European ethnic minorities. However, it can be noticed that the principle of self-determination alone is important for the Court.

4.4.2. SECESSION WITHIN THE EU

The potential effect of a unilateral secession from a state that is a member of the European Union would be the automatic exit of a newly created state from that organisation. It stems from the fact that 'the rump state continues its international personality, while the seceded entity becomes a new person in interna-

¹⁴¹ Council Decision of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, 2012/497/EU (OJ L 241 07.09.2012, p. 2), <https://op.europa.eu/en/publication-detail/-/publication/d441055e-f8dc-11e1-8e28-01aa75ed71a1/language-en> (accessed 31.10.2020).

¹⁴² K. Kowalik-Bańczyk, *Terytorialny zakres unieważnienia decyzji zatwierdzającej umowę międzynarodową zawartą przez Unię Europejską – glosa do wyroku Sądu (UE) z 10.12.2015 r. w sprawie T-512/12 Front Polisario przeciwko Radzie Unii Europejskiej*, 'Europejski Przegląd Sądowy' 2016, No. 6, p. 30.

tional law'.¹⁴³ Hypothetically, if the Scottish independence referendum in 2014 had resulted in independence, the UK would have been considered the continuator of the UK for all international purposes, including the EU membership whereas independent Scotland would have become a new state.¹⁴⁴ Such a state does not automatically become an EU member state and, consequently, there is no automatic accession to the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and the entire European Union legal system.¹⁴⁵ Pursuant to the current law (Article 49 of the TEU), the accession of a new state to the EU requires unanimity so each member state can veto any such application. Hence, a political agreement seems to be indispensable. Another solution is to adopt amendments to the Treaty pursuant to Article 48 of the TEU, which would result in the division of one member state into two member states, and therefore the new state would stay in the EU rather than join it, but this also requires unanimity as it must be ratified by all member states.¹⁴⁶

4.5. INTERNATIONAL RECOGNITION

Irrespective of the activity of the international institutions or courts, the subjectivity of the state and its ability to participate in international relations are mainly determined by means of international recognition. Although it does not create a new legal situation and is not a condition of statehood, it plays a key role from a practical point of view. It is not a constitutive act, either.¹⁴⁷ Nonetheless, it is the recognition by the international community that determines the ultimate success of the unilateral secession. Such a conclusion can be drawn from paragraph 155 of a judgment of the Supreme Court of Canada regarding the legality of a unilateral secession of Quebec from Canada under Canadian and international law.¹⁴⁸ Recognition is much more instrumental, while a claim for independence is unilateral than where it follows from a domestic settlement, e.g. the Scottish referendum for independence in 2014.¹⁴⁹

¹⁴³ J. Vidmar, 2019, *op. cit.*, p. 210.

¹⁴⁴ A. Boyle, J. Crawford, *Opinion: Referendum on the Independence of Scotland – International Law Aspects*, 10 December 2012, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79408/Annex_A.pdf (accessed 31.10.2020).

¹⁴⁵ J. Vidmar, 2019, *op. cit.*, p. 210.

¹⁴⁶ *Ibid*, p. 211.

¹⁴⁷ M. Dixon, R. McCorquodale, S. Williams, *Cases and Materials in International Law*, Oxford 2011, p. 158.

¹⁴⁸ *Reference Re Secession of Quebec*, 25506, [1998] 2 SCR 217, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do> (accessed 31.10.2020).

¹⁴⁹ J. Vidmar, 2019, *op. cit.*, p. 212.

Despite the separatists' activity, support for separatist aspirations in Western Europe is rather limited.¹⁵⁰ However, this does not concern only Western states. The attitude of the international community towards secession can be illustrated by the fact that since 1945 there has never been a situation in which a secessionist state has been admitted to the United Nations without prior recognition by its former home state.¹⁵¹ In relation to Corsica, one should remember that France is one of the five permanent members of the UN Security Council, which affects its strong position in the world, and therefore it would be difficult for this island to find allies. It often happens that in order to protect the *status quo*, the international community agrees to marginalize the voices of separatists on political grounds. In the post-World War II era, only Bangladesh and Kosovo have received a significant number of recognitions on the basis of a unilateral claim.¹⁵²

Due to the fact that Corsica is a part of the EU, the European context must be considered when it comes to recognition. 'European policymaking in this area came to be governed by pragmatic considerations with a focus on a peace and security concerns.'¹⁵³ Nevertheless, it seems that such a conciliatory position may involve separatist movements outside the EU because of lack of willingness of revolution inside the organisation. The President of the European Council, Donald Tusk, said in relation to the Catalan declaration of independence on 27 October 2017 that for the EU the Spanish government would remain its only interlocutor.¹⁵⁴ This shows that any separatist group which would act against the national law of a member state would be condemned at the European level. The analysis of the French law, under which secession is impossible, shows that also the Corsican secession, if not based on any political agreement between the rump state and the new one, could be disapproved of. Any other solution would pose a threat to the peace and stability within the EU and would lead to further fragmentation of the organisation after Brexit.¹⁵⁵

There is an opinion that 'acting in a specific international space, striving to play a leading role on the continent, the European Union is unable to work out a formula that would allow reconciliation of independence aspirations with the need to guarantee the sovereign rights of states.'¹⁵⁶ In the case of the recognition of Kosovo, the EU member states split and the lack of a common decision meant that it was not the EU institutions but the national parliaments that were to regulate their relations with Kosovo. The lack of agreement on this issue might be con-

¹⁵⁰ K. Czubocha, 2012b, *op. cit.*, p. 170.

¹⁵¹ J. Crawford, *The Creation*, 1979, *op. cit.*, p. 390.

¹⁵² J. Crawford, *The Creation of States in International Law*, Oxford 2006, p. 393.

¹⁵³ J. Almqvist, 2019, *op. cit.*, p. 130.

¹⁵⁴ *Ibid*, p. 137.

¹⁵⁵ *Ibid*, p. 138.

¹⁵⁶ A. Potyrała, *Unia Europejska wobec nowych tworów państwowych (Casus Kosowa, Abchazji i Osetii Południowej)*, 'Środkowoeuropejskie Studia Polityczne' 2010, No. 1, p. 15.

nected with the threat for some states where there are separatist tendencies, e.g. Spain, the United Kingdom or France. Such actions undermine the prestige and international position of the European Union and cause doubts related to its effectiveness in regulating such important matters as the right of nations to self-determination. Hence, there is still much to discuss regarding ethnic minorities and their rights at the European level. If the EU wants to have primacy, it should take a risk and try to regulate difficult issues which have not been addressed within other legal systems.

4.6. FINAL REMARKS ON THE INTERNATIONAL CONTEXT

The above analysis shows that for key international organizations the right to self-determination does matter. However, international law is generally reluctant to explicitly determine the scope of that right, especially the right to secession or its lack. This right played the greatest role during the decolonization period when it remained one of the fundamental rights that should be guaranteed to the most possible degree to a nation under colonial rule. The development and progress on many grounds have proved, however, that there is a strong need to redefine or specify those popular terms. Frequent reference to those principles by courts and institutions or placing them in significant documents of a universal character are no more sufficient. Otherwise, uncertainty predominates.

Due to the fact that the ICJ did not seize the occasion and decide the legality of the unilateral secession of Kosovo, seeking unequivocal legal grounds for the declaration of independence in international law is in vain. Hence, the secession-seeking party should focus on national law, international recognition and political consensus with the state which rules. The Supreme Court of Canada noted that a mere wish of independence cannot be ignored in a democratic state. It creates a duty on both sides to negotiate future relations, what does not have to lead to independence but may result in a new domestic status and greater autonomy and self-government.¹⁵⁷

5. PRESENT SOCIO-POLITICAL REALITY IN CORSICA

The social and political tendencies of Corsicans indicate that they are not entirely satisfied with their current status. The result of the recent local elections speak in favour of independence. In 2017, when 'Corsican voters were to elect

¹⁵⁷ J. Vidmar, 2019, *op. cit.*, pp. 203–213.

for the first time an assembly with considerably enlarged powers',¹⁵⁸ the nationalist coalition For Corsica (We make Corsica and Free Corsica) achieved a decisive victory (56.5%). In the local parliament it gained 41 out of 63 seats.¹⁵⁹ Such a strong mandate certainly creates a good position to start negotiations between the island and the continent, but Jean-Guy Talamoni – the first national leader of Corsica since the eighteenth century¹⁶⁰ – was already seeking support in the European Union by visiting European capitals.¹⁶¹ What is more, his pro-independence tone and nationalist narrative are well illustrated by the fact that he called France 'a friendly state'.¹⁶² It seems, however, that such statements are only a propagandist communication because in the matter of independence, as Talamoni pointed out, the residents themselves would decide about their political affiliation.¹⁶³ It seems that they, on the whole, do not support complete severance because financial aid from France has influenced the quality of life on the island, e.g. through better infrastructure. In 2021, after the coalition broke up, Gilles Simeoni's party We make Corsica won, by a very small margin, the absolute majority in seats in the Corsican Assembly.¹⁶⁴ However, one has to agree with André Fazi who claims that in order to respond favourably to nationalist demands a broad regional consensus is needed.¹⁶⁵

An important event which additionally changed the mood among both the French authorities and, above all, the residents of the island was the laying down of weapons in 2014 by the terrorist organization, FLNC, which had been ruining the Corsican estates of the French from other parts of the country for forty years.¹⁶⁶ It was neither the result of any spectacular success of that organization nor was it caused by the separatists' demands. The FLNC leaders claimed that their goals were already being discussed at the parliamentary level and among

¹⁵⁸ A. Fazi, 2022, *op. cit.*

¹⁵⁹ *Second tour de l'élection des conseillers à l'Assemblée de Corse – Résultats*, <https://www.interieur.gouv.fr/fr/Archives/Archives-elections/Election-de-l-Assemblee-de-Corse-des-3-et-10-decembre-2017/Second-tour-de-l-election-des-conseillers-a-l-Assemblee-de-Corse-Resultats> (accessed 31.10.2020).

¹⁶⁰ P. Jendroszczyk, 2015, *op. cit.*, p. A10.

¹⁶¹ K. Stańko, *Macron pod presją nacjonalistów*, 'Dziennik Gazeta Prawna', 12 February 2018, Vol. 30, p. A15.

¹⁶² M. de Boni, *Selon Jean-Guy Talamoni, la France est 'un pays ami' de la Corse*, 'Le Figaro', 18 January 2018, <https://www.lefigaro.fr/politique/le-scan/citations/2016/01/18/25002-20160118ARTFIG00082-selon-jean-guy-talamoni-la-france-est-un-pays-ami-de-la-corse.php> (accessed 31.10.2020).

¹⁶³ E. Galiero, *Corse: Talamoni livre la recette du succès nationaliste*, 'Le Figaro', 5 February 2018, <https://www.lefigaro.fr/politique/le-scan/2018/02/05/25001-20180205ARTFIG00197-corse-talamoni-livre-la-recette-du-succes-nationaliste.php> (accessed 31.10.2020).

¹⁶⁴ A. Fazi, 2022, *op. cit.*

¹⁶⁵ *Ibid.*

¹⁶⁶ Ch. Lambroschini, *Corsica's Separatist Retreat*, 'The New York Times', 4 August 2014, <https://www.nytimes.com/2014/08/05/opinion/corsicas-separatist-retreat.html> (accessed 31.10.2020).

all the parties. This reduced interest in the organization activities.¹⁶⁷ Nevertheless, the dissolution of the FLNC did not control emotions because nationality has become an important problem. The growing number of Arabs in Corsica is causing growing reluctance and fear of attacks by newcomers.¹⁶⁸ At the end of 2015, several hundred demonstrating Corsicans attacked a mosque, shouting xenophobic and racist slogans. Many religious items, such as the Koran, were then destroyed.¹⁶⁹ Moreover, the unemployment rate, which reached 9.9% at the end of 2012 and grew up to 10.6% by 2017,¹⁷⁰ also affects public sentiment.

Analysing the attitude of France, one can see a certain liberalization of the position on integrity. Firstly, it has already allowed the independence referendum to be held in a dependent territory of New Caledonia. By virtue of the Nouméa Accord of 1998, the inhabitants were allowed to hold up to three referenda. The first in 2018 and, if it would not result in independence, then two more were to be organized in 2020 and 2022.¹⁷¹ All of them maintained the *status quo*, but the mere decision to conduct the vote demonstrates the openness of the government.¹⁷² Of course, it must be remembered that New Caledonia is a dependent territory and Corsica is a region. At the beginning of 2018, after the visit of the French President to Corsica, hopes for greater autonomy were shattered. President Emmanuel Macron was open to just one postulate regarding the inclusion of Corsica in the French Constitution, which was done on 28 February 2018. The remainder, such as greater economic support or a change in the tax system will be subject of negotiations. Other demands regarding: amnesty for prisoners from the National Liberation Front of Corsica, introduction of a resident status for people living on the island for at least five years, privileges for Corsicans in acquisition

¹⁶⁷ P. Poggioli, 2014, *op. cit.*, p. 12.

¹⁶⁸ L. Nordstrom, *A Look at the Roots of Recent Unrest in Corsica*, France24, 2015, <https://www.france24.com/en/20151229-france-corsica-tensions-protests-far-right-anti-arab-protests-sectarian> (accessed 31.10.2020).

¹⁶⁹ *Ajaccio: des manifestants saccagent une salle de prière musulmane*, Europe1, 2015, <https://www.europe1.fr/faits-divers/ajaccio-des-manifestants-saccagent-une-salle-de-priere-musulmane-2641267> (accessed 31.10.2020).

¹⁷⁰ O. Alek, *Corsican Nationalist Movements Autonomy of the French Island in Question*, 'International Journal of Latest Research in Humanities and Social Science' 2018, Vol. 1(8), pp. 36–40, at p. 36.

¹⁷¹ A. Bariéty, *Nouvelle-Calédonie: 5 questions sur le référendum*, 'Le Figaro', 4 October 2018, <https://www.lefigaro.fr/politique/2018/10/04/01002-20181004ARTFIG00028-nouvelle-caledonie-5-questions-sur-le-referendum-du-4-novembre.php> (accessed 31.10.2020); *New Caledonia Referendum: Call to Reject 'Colonising Power' France*, 'The Guardian', 17 July 2018, <https://www.theguardian.com/world/2018/jul/17/new-caledonia-referendum-call-to-reject-colonising-power-france> (accessed 31.10.2020).

¹⁷² *Nouvelle-Calédonie: les résultats du référendum du 4 octobre 2020*, <https://www.vie-publique.fr/en-bref/274808-nouvelle-caledonie-resultats-du-referendum-du-4-octobre-2020> (accessed 31.10.2020); *Référendum en Nouvelle-Calédonie: le vote du 4 novembre 2018*, <https://www.vie-publique.fr/en-bref/20032-referendum-en-nouvelle-caledonie-vote-du-4-novembre-2018> (accessed 31.10.2020).

of land, independent management by Corsicans of prisons located on the island, or their own language and flag were decisively rejected.¹⁷³ The issue of Corsica is still the acid test. Interestingly, Corsica was the only location where the extreme right candidate triumphed over the current president in the second round of the presidential elections in 2017.

The issue which has recently affected separatist moods is the COVID-19 pandemic. 'The coronavirus has restored a sense of identity and separation that independence fighters have long sought.'¹⁷⁴ The local authorities would like to have the autonomy in managing the health crisis. It could allow them to develop their own treatment programme or decide on school openings. The head of the local government called for an independent scientific council and for making the island a 'pilot territory' in using a controversial malaria drug to treat the infection.¹⁷⁵ Crises generally might be used to articulate demands in an outright manner and put blame on the entities against which one fights. They are also an opportunity to present own solutions. On the other hand, the society is likely to remain united in the face of danger, which empowers the central authorities. The actual effects will be seen some time in the future.

6. CONCLUSIONS

First of all, it must be said that undoubtedly Corsica differs from the other parts of France. The analysis of the historical background proves that the past of the island was tumultuous and non-homogeneous. Due to multiple entities which ruled over Corsica, the sense of separateness, which is noticeable nowadays, has developed among the residents of the island. The historical and cultural disparities are a good basis for pressing demands, but it is not sufficient. Every postulate must be compliant with the law, both French, international and European. The legislation and case law set a certain legal framework within which one must operate in order to successfully achieve the goals. The principles are not always

¹⁷³ G. Vaillant, *Pourquoi la visite d'Emmanuel Macron en Corse s'annonce compliquée*, 'Le Journal du Dimanche', 3 April 2019, <https://www.lejdd.fr/Politique/pourquoi-la-visite-demmanuel-macron-en-corse-sannonce-compliquee-3885794> (accessed 31.10.2020); *França: Macron na Korsyce odrzuca żądania nacjonalistów*, *op. cit.*; M. Strzałkowski, *Emmanuel Macron odrzucił główne żądania nacjonalistów z Korsyki*, *Wyborcza.pl*, 8 February 2018, <https://wyborcza.pl/7,75399,22999750,emmanuel-macron-odrzuca-glowne-zadania-nacjonalistow-z-korsyki.html> (accessed 31.10.2020).

¹⁷⁴ L. Bryant, *In Corsica, COVID-19 Fuels Nationalist Demands for Greater Autonomy*, *VOA*, 7 May 2020, <https://www.voanews.com/covid-19-pandemic/corsica-covid-19-fuels-nationalist-demands-greater-autonomy> (accessed 31.10.2020).

¹⁷⁵ *Ibid.*

precise, but, more importantly, they are a significant reference point for societies aspiring to greater autonomy or separation.

Due to the ambiguity of supranational concepts in relation to self-determination, the biggest attention is paid to the national provisions, in the discussed case particularly to the French Constitution. Its current wording does not permit independence, but there are the acts in the French legal system which regulate the legal situation of Corsica and grant some rights to the residents of the island. The constitutional foundations provide the opportunity to increase the autonomy, but much depends on a political will of present and future authorities of both sides. What is important, the central government does not deny it that Corsica is a distinct territory, what is a positive sign. Nowadays, there are many both social and political challenges, however, the only way for Corsicans to have their, even those controversial, demands satisfied is to negotiate and cooperate. Such talks are not easy, which may be summarized in the statement that in such relations '[t]he conciliatory tone easily gives way to bitterness, the outstretched hand quickly folds into a clenched fist'.¹⁷⁶ The present local authorities must make a profit and loss account because it seems that both in economic and political terms secession from France would cause many problems that neither France nor Europe would like to face. Practice teaches that much depends on international recognition, but the basic principles of law must be respected in every case. Otherwise, the recognition seems to be improbable. It should be remembered that the most important is equal treatment and mutual respect, but equality must not cross the limits set by national, international and, in the case of Corsica, European law.

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¹⁷⁶ K. Tyszk-Drozdowski, 2018, *op. cit.*, p. 33.

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