

## **International legal aspects of the referendum in Iraqi Kurdistan**

A referendum in Iraqi Kurdistan held on the 25<sup>th</sup> September, escapes any definitive evaluation. It has succeeded despite the protests of the governments in Baghdad and in neighboring states, despite appeals for its cancellation sounded by many members of the international community. Both, firm position, shown by the leadership of the Kurdish Regional Government (KRG), and the results of the plebiscite itself reflected the desire of the Iraqi Kurds to independent determination of their own destiny. This fact cannot be easily dismissed.

On the other hand, from the start the referendum didn't impose any obligations on the KRG leaders regarding further steps, it means the referendum was more likely to demonstrate political will than to create legal basis for practical action. This fact was confirmed by their original plan to hold general elections in Iraqi Kurdistan on "the wave" of a referendum about 6 weeks after the vote. This plan was abandoned because the event organized by Erbill led to consequences, which seemed to be unexpected there. Iraqi Kurds lost part of their controlled territories, including those which had been seized by them as a result of fierce fighting against DAISH armed groups. Deep political crisis came to KRG. External environment for maintenance and development of Kurdish autonomy in Iraq has been noticeably aggravated, at least at present stage. On the 24<sup>th</sup> of October the KRG decided to freeze the results of its recent referendum.

International law considers three types of referenda on independence. The first type is associated with the decolonization process and cannot be applied to Iraqi Kurdistan. It has always been a part of states covering its territory, and not an overseas territory of any metropolis. The second type of referenda is characterized by the consensus between the central government and a province of the same state which claims sovereignty, on the need to find out the will of

the people. The actions of KRG authorities seem not to correspond to this type of action due to the uncompromising position of Baghdad. Finally, in international practice there are cases of unilaterally held referenda. That is, what happened in Iraqi Kurdistan.

It is hardly to say, that unilateral referenda have no legal consequences. A lot depends on approach of authoritative members of the international community. So, in the early 90-ies such referenda took place in the republics of the former Yugoslavia, contrary to the provisions of the Federal Constitution. However, the European Union recognized the independence of the newly formed States. Then political expediency outweighed existing international legal norms, first in the eyes of Europeans, and later in the United States. In the case of Iraqi Kurdistan, this has not happened, although it is possible that the leadership in Erbil hoped secretly on such a scenario.

International law recognizes two types of self-determination –“internal” and “external”. “Internal” self-determination is reduced to the choice of forms of association and collaboration with other peoples in one state. “External” self-determination is regarded as more destructive form of expression of the will of the people to their authentic life. To justify this act of self-determination legal experts often promote the concept of “remedial secession”. According to their reasoning, if the parent state manifests itself to be completely unable to represent the interests of the any peoples inhabiting it, they get the right to exercise "external" self-determination. However, no one denies the supremacy of the right to "internal" self-determination and the forced nature of the "external" self-determination as an extreme measure.

One could argue about how successful the modern Iraqi state is representing interests of its Kurdish population. Each side put forward strong arguments. The Kurds are talking about the failure of Baghdad to honor and fulfill the provisions of the current Constitution, including on the rights of national

minorities and on distribution of budget revenues. In response, the Central government says the Kurds have all the rights in Iraq, including a considerable quota of seats in national Parliament, the post of President of the country and a number of other important positions. They have their own autonomy, where they speak their native language and develop their authentic culture. Moreover, as it is stressed in Bagdad, Kurds maintain external economic relations and seem to misuse them.

Mutual claims of this kind are better to be resolved at the table of negotiations and not in international courts and, without doubt, not on the battlefield. The possibilities for compromise seem not to be exhausted, if the parties are prepared to draw right conclusions from the events of recent months and to avoid temptation of obtaining unilateral advantages. They should be encouraged by the fact that “the divorce with scandal and breaking porcelain” will result in sensitive losses for both sides and will sow the seeds of future conflicts between them.

The legal situation around Iraqi Kurdistan has greatly been aggravated by the fact that the referendum was held not only in three Northern Iraqi provinces controlled by the KRG, but also in the disputed territories. Voting there was seen in Bagdad as evidence of the intention of Kurdish leadership to create a fait accompli and to attach the relevant areas to their future sovereign state. That is, what, according to some experts, has provoked the use of force by the Iraqi Federal government in Kirkuk and several other places.

In order to justify the decision to organize voting in disputed areas, the authorities in Erbil referred to the failure of Bagdad to comply with the article 140 of the Iraqi Constitution, which obliges the central government to hold there a referendum before the end of the year 2007. However, the authors of the Constitution did not mean the sovereignty or separation from Iraq as the goal of

this plebiscite. The date of event was not mentioned as a final date, and missing deadline was not meant as a reason for secession.

It is also difficult to justify the independence referendum in the disputed areas of Iraq with reference to international law. Old Latin principle *juti possidetis juris* is generally recognized by experts in this area. It was used in the period of decolonization and it meant that when declaring independence, the former colonial possessions retained their administrative boundaries, which were transformed into state borders. Since that time this principle has been applied to establish the geographical limits of self-determining territorial units.

In any case, the leadership of the KRG and the central government of Iraq seem to have to negotiate on the future of Kirkuk and other areas with uncertain status without regard to the fact who controls those areas now. The preservation of the actual situation without mutual consent of the interested parties would play the role of a “time bomb” for the situation around these areas and in the region. It is not excluded that another referendum should be organized to solve the problem, but first it is important to define clearly who is eligible to participate in the voting taking into account demographic confusion after several migration waves.

Russia is sometimes criticized that it did not call for the abolition of the referendum in Iraqi Kurdistan and did not condemn such decision of the authorities in Erbil. Meanwhile deep motives and diverse aspects of the Russian position should be taken into account. In particular, many people forget that our country was one of the originators of the modern concept of self-determination and made a significant contribution to its development in the period of decolonization and after the end of the “cold war”. In fact, Russia acted as one of the founders and stockholders of the institute for international protection of the will of the people to self-organizing their lives. Thousands of activists of

famous Kurdish Republic of Mahabad found refuge in our country after its defeat in 1946, including Mustafa Barzani, one of its leaders.

That is why one cannot be surprised that national aspirations of Kurds are respected and their right to self-determination is recognized in Moscow. However, Russia has consistently supported the sovereignty, unity and territorial integrity of Iraq and other states in the Middle East, and strongly recommends that all the consequences of final decisions are to be calculated carefully, including political, geopolitical, demographic, economic implications. The need for this is dictated by the cross-border nature of Kurdish problem and by its importance for the crises management in the region. Finally, Russia proceeds from the fact that aspirations of Kurdish people should be implemented within the existing norms of international law.