

*xenophobia.*

*It is concluded that the United Nations High Commissioner for Refugees in Ukraine is one of the main humanitarian actors in the field of protection. It is noted that significant changes in the Ukrainian legal framework indicate an improvement in the functioning of the national protection system and are in line with international law.*

**Key words:** *migration policy, international protection, citizenship, statelessness, refugee, stateless person, stateless person, Office of the United Nations High Commissioner for Refugees, readmission, repatriation.*

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### **INFLUENCE OF BREXIT ON SCOTLAND'S ASPIRATION FOR INDEPENDENCE**

*It is proved that Brexit has political and socio-economic implications for UK development. It is grounded that one of the consequences of Brexit may be a further fragmentation within the UK itself. London experiences many contradictions in relations with Scotland, Wales and Northern Ireland nowadays. In Scotland, after the referendum on the independence of the autonomous region, in which 55% of Scots opposed the secession from the UK in 2014, the movement for independence has strengthened its position. Part of the rise in such sentiment in Scottish society is due to concerns over Brexit. In 2021 the unity of the UK's autonomous regions may be threatened by the strengthening of nationalist sentiments in Scotland, as well as in Northern Ireland and Wales. The Scots do not want to lose the economic benefits of a duty-free customs regime with the EU and historic ties with Europe. Leaving the EU common market will be a devastating blow to investment and employment in Scotland. A break with London will also be costly, as Scotland's economy has close ties with the UK.*

**Key words:** *Brexit, Scotland, UK, EU, referendum, UK legislation, independence.*

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Brexit has proven to be an unprecedented global event. Britain's withdrawal from the European Union calls into question not only the future of the EU, but even the existence of the United Kingdom itself, in view of the fact that within the country there are centuries-old differences and contradictions between the constituent members of the UK, which have escalated significantly after Brexit. This problem is especially evident in the relations of London with Scotland, which voted against Brexit, but seeks to realize its own national self-determination through a referendum. Therefore, a further fragmentation within the UK itself may be one of the consequences of Brexit. Nowadays London experiences many contradictions in relations with Scotland, Wales and Northern Ireland.

In this context, the example of Great Britain and Scotland, as an integral part of the United Kingdom, is of double interest to study and can serve as a very useful model for any nation that wants to exercise its right to self-determination. In this regard, contemporary international law contains a detailed and fully formed principle that empowers peoples with the right to exercise self-

determination, the implementation of which is carried out using a two-stage mechanism, first at the internal level, and if such implementation is impossible – at the external level.

Brexit has strained London's relations with Scotland and Northern Ireland. Even as part of the election campaign, Scottish nationalists, adhering to firm pro-European positions, did not rule out a second plebiscite on the independence of the region in the event of Britain leaving the EU (Simos, 2016). In turn, the Prime Minister of the Republic of Ireland E. Kenny expressed concern that the very raising of the question of a possible withdrawal of the United Kingdom from the European integration project would harm the peace process in Northern Ireland (Watt, 2016).

The majority of voters in Scotland and Northern Ireland spoke in favour of the UK staying within the EU, that led to further exacerbation of separatist tendencies in these regions. Just two days after the citizens' expression of will, Scottish Nationalist Party (SNP) leader N. Sturgeon said: “We are ready to act decisively for the unity of Scotland and its progress... the second referendum on independence is undoubtedly an option that should be on the table and, in fact, is already on the table” (Paxman, 2016). In turn, one of the leaders of the Catholic nationalist party Sinn Fein, assessing the results of the plebiscite, noted: “The British government now has no democratic mandate to represent the North (Northern Ireland) in any negotiations with the EU, and I believe that the vote on the issue about the border is a democratic imperative” (Boland, 2016). It is obvious that such sentiments have been put forward as priority issues on the political agenda, relations between the centre and the regions have become even more confusing given the fact that in Wales the majority of citizens voted for the Kingdom's exit from the EU (Ковалёв, 2016).

The UK's exit from the EU poses an existential threat to the UK. In the opinion of many English legal scholars, such secession could cause a number of serious conflicts between the administrative autonomies that make up the United Kingdom. Thus, the First Minister of Scotland, referring to the results of the vote of Scottish voters in the referendum, said that “the people of Scotland see their future within the framework of the European Union” (Boland, 2016.). Therefore, the likelihood of a second referendum on the independence of Scotland increases significantly. If citizens of Scotland or Northern Ireland vote to remain in the European Union, they will have to become independent from the United Kingdom. It is still difficult to predict how events will develop. The disintegration of the United Kingdom will not happen today, but the likelihood of such a development of events is quite high (Грачева, 2016).

It should be noted that legal incidents are not limited to Article 50 of the Treaty on European Union (TEU). EU law is applied by the UK in accordance with the Devolution Acts in Scotland, Wales and Northern Ireland. For example, in sect. 29 (2) (d) of the Scotland Act of 1998 it is provided that acts of the Scottish Parliament that are incompatible with EU law are “illegal”. Therefore, while the UK Parliament may repeal the European Communities Act, it will not end the application of EU law in other UK states, but each state will also need to amend its legislation accordingly. The procedure for introducing such amendments is very difficult, and their implementation could lead to a constitutional crisis. It should also be noted that, although the British Parliament has the right to amend the legislative acts of other states within the United Kingdom, the British government has repeatedly stated that it does not intend to pass laws in a decentralized manner. For example, the Sewell Convention requires its legislative consent to apply the laws of Scotland. This Convention provides for a mechanism to resolve the transfer of powers and is referred to in the Memorandum of Understanding between the UK Government and the Scottish Government. Thus, the UK's initiative to secede from the European Union may have consequences that are quite serious for the entire United Kingdom (Грачева, 2016).

Therefore, today we can confidently state that the unity of the autonomous regions of Great Britain in 2021 may be under threat due to the strengthening of nationalist sentiments in Scotland, Northern Ireland and even Wales against the background of the coronavirus pandemic and Brexit. It should be noted that dissatisfaction with the status quo is also growing in England, which is forced to finance other autonomous parts of the United Kingdom. The existing political and constitutional agreements between the four parts that make up the United Kingdom are a constant source of pain for any British leader. At the same time, the economic crisis associated with the spread of the coronavirus and the political crisis caused by Brexit have further complicated the already complicated situation in the UK (CNN, 2021).

In particular, in Scotland, after the referendum on the independence of the autonomous region, in which 55% of Scots opposed the secession from the UK in 2014, the independence movement strengthened its position. Part of the rise in such sentiment in Scottish society is due to concerns over Brexit. So, when B. Johnson nevertheless managed to agree on a trade and security agreement with the EU after nine months of negotiations, the First Minister of Scotland N. Sturgeon noted on her Twitter page that “there is no such agreement that will ever compensate what does Brexit takes from us”. Moreover, 2021 prepares new challenges for B. Johnson. One of the most dangerous is the Scottish parliamentary elections, which will take place in May 2021. At the same time, the Scottish National Party has occupied a leading position in national politics since the 2014 referendum. In case if the Scottish National Party wins the elections in May 2021 with the idea of independence at the heart of its campaign, B. Johnson will have two options. First, the Prime Minister may continue to ignore calls for another referendum. Secondly, the UK Prime Minister can try to fight with the party. However, neither one nor the other option can be attractive for B. Johnson. Thus, 2021 will be difficult for all four autonomous parts of the UK, as well as for the Prime Minister. If B. Johnson fails to convince the people of the country of the success of Brexit, and the head of state continues to turn the public of Scotland, Northern Ireland and Wales against himself, more and more voters will inevitably seek to leave the United Kingdom (CNN, 2021).

More than half of Scots are in favour of leaving the UK and returning to the EU, according to the latest polls. Scottish First Minister N. Sturgeon made an important statement in this regard. In a recent interview with the German newspaper *Die Welt* and other European media, N. Sturgeon said that she would definitely hold a second referendum on Scottish independence, possibly as early as in 2021. She expressed confidence that the majority of Scots would be in favour of seceding from the United Kingdom. According to N. Sturgeon, after gaining independence, Scotland will immediately apply for re-accession to the European Union and will be accepted as soon as possible. Thus, her country will return to its “home of origin”, where it has already been for over 40 years (Независимость Шотландии ключ к распаду Великобритании, 2020).

In the years since M. Thatcher the Scots traditionally dislike British conservatives, but B. Johnson surpassed his predecessors, as he became the embodiment of British arrogance and indifference to the regions of the United Kingdom. In 2020, B. Johnson said that “the expanded autonomy granted to Scotland 21 years ago was a historical mistake. He was referring to the restoration of the Scottish Parliament in 1999 within the framework of expanding regional powers, or “devolution” (Независимость Шотландии ключ к распаду Великобритании, 2020).

The Scots do not want to lose the economic benefits of the duty-free customs regime with the EU, and historical ties with the old continent are also important. Leaving the EU common market will be a devastating blow to investment and employment in Scotland. A break with London will also be costly, as Scotland's economy is closely tied to the UK. In this regard, we recall that Scotland was incorporated into Great Britain in 1707 – after persistent wars for independence that

lasted for more than four hundred years – starting in 1296. In the event of the withdrawal of Scotland, the United Kingdom will lose a third of its territory and 8% of its population (about 5,5 millions of people). However, economically and geostrategically, the UK will lose more, including 9.2% of GDP and 96% of hydrocarbons, primarily oil and gas fields in the North Sea. The United Kingdom will lose 19 universities, fishing fleets, whiskey producers and naval bases. The withdrawal of Scotland would jeopardize the integrity of the entire Kingdom, as it would provide a corresponding example for Northern Ireland and Wales. If independence is declared, Scotland will be separated from England by a border, which will create a completely new situation for the Scots. According to many analysts, little Scotland will benefit from membership in the European Union, since it will have much more rights than the United Kingdom (Добров, 2020).

Consequently, the results of the voting in Scotland and Northern Ireland clearly demonstrated the desire of the population of these regions to remain in the EU. In the case of Scotland, a second independence referendum is possible. The Irish problem appears to be even more complex and controversial. The United Kingdom and Ireland are united by a common travel area, and if the UK leaves the EU, then, in theory, the border between the countries should be restored, which will negatively affect the peace process in Northern Ireland. In turn, the Sinn Fein party has already demanded to unite parts of Ireland into a single state. With the exit of Great Britain from the EU, the problem of Gibraltar, which Spain claims, and whose residents have also demonstrated their unwillingness to leave the EU and restore a full-fledged land border, will also be aggravated (Бабынина, 2016).

Every year the number of peoples claiming the right to self-determination is increasing. Among the peoples that have been fighting for their independence for a long time are – the Scots, Basques, Catalans, Kurds, as well as other numerous peoples that in one way or another strive for their self-determination. These peoples face a lot of problems on the way to realizing the right to determine their own destiny. In addition to the obvious reluctance of states, which include such peoples, to allow the increasing autonomy of peoples within the state or even the violence of the integrity of their territory, the main problem is the lack of proper practice in the implementation of the right to self-determination within the framework of existing international and national law in a peaceful manner. In this context, the example of Great Britain, as well as Scotland, is of increased interest for study and can serve as a useful model for any people who want to exercise their right to self-determination (Чилингарян, 2018).

Therefore, the experience of Great Britain in the context of the creation of territorial autonomy is especially important. It should be noted that this type of autonomy can only be realized where a particular group lives within a geographically defined territory (for example, the island of Corsica in France, Scotland in Great Britain, the Aland Islands in Finland, the Faroe Islands in Denmark). At the same time, the change in the status of an autonomous entity should be carried out only in accordance with the will of the people living on its territory. A distinctive feature of the political form of territorial autonomy is the presence of representative bodies of legislative power. This type of territorial autonomy includes Scotland and Northern Ireland in Great Britain, the Aland Islands in Finland, etc. (Алексанян, 2018).

The doctrine distinguishes another type of autonomy: national-territorial autonomy, which is one of the most effective ways to resolve the national issue in a multinational state. Usually on the territory of the national-territorial autonomy, in addition to the state language, the language of the national minority is also used. Scotland is a prime example of the realization of the domestic right to self-determination.

According to the Act of Union 1707, England and Scotland created a single state – Great Britain. This act united the parliaments of the two countries, established the foundations of the state structure of Great Britain. This document (with additions and amendments) is still legally binding. Scotland Act 1998 expanded the powers of Scotland: established its own parliament, government, delegated a number of administrative powers in the financial sphere (Scotland Act, 1998). However, despite the granting of broad powers and the status of autonomy within the UK, Scotland expressed a desire to bring the issue of the independence of the region to a referendum. On September 18, 2014, a referendum was held in Scotland, which was agreed with the British government on the issue of secession and the creation of its independent state, but the majority of residents (55.5%) opposed independence (Scottish Independence Referendum Act, 2013).

The experience of Great Britain shows that representative democracy and the protection of individual human rights are not sufficient conditions for the peaceful resolution of disputes regarding sovereignty and the exercise of the right to self-determination; they require more flexible legal approaches to resolve them. One of the advantages of autonomy is its potential for the peaceful resolution of such situations. In addition, granting an ethnic group territorial autonomy prevents the strengthening of separatist movements and a possible violation of the territorial integrity of the state. Despite all the advantages of realizing the right to self-determination through the creation of autonomy, not all states agree to this. The timing of granting autonomy to an ethnic group may even worsen the situation and cause new conflicts. Autonomy does not always meet the expectations of the group concerned, and further claims of secession may arise. There is a danger that granting autonomy to a certain region will be only the first step towards realizing its further aspirations for independence (Алексанян, 2018).

So, at the beginning of the XXI century the Scottish people have made significant progress in realizing their right to self-determination. In addition to the right to be directly involved in the management of their natural resources, the Scots were able to freely pursue their economic, social and cultural development. Moreover, the Scots even managed to change their political status, defining themselves as an autonomous people within the existing state and acquiring a significant number of tools and institutions for the further implementation of their self-determination. It can be stated that by the beginning of the XXI century the Scottish people's right to self-determination was exercised internally and, most importantly, almost bloodlessly. At the same time, opponents of independence, both in Scotland and throughout the rest of the United Kingdom, actively promoted their position. The British authorities even put forward a proposal to significantly expand the autonomy of Scotland, provided that it remains part of the existing state (Чилингарян, 2018).

However, this fact should not in any way affect the understanding of the main thing: the people of Scotland were given the right to determine their own destiny, and they made their choice. The essence of the principle of self-determination of peoples is not in the compulsory acquisition of independence or joining a new state. Its essence lies in the very possibility of choice, and the choice is not only political, but also economic, social and cultural one. And the example of Scotland is so unique and meaningful to study.

Of course, in the period from the 17th to the 20th centuries, during the birth and formation of international law, the struggle for autonomy in Scotland has not always been peaceful. However, this long and stubborn struggle over time has formed the legal order according to which the right to self-determination of the Scots is now fully realized. And this is taking place in full accordance with the two-stage model for the implementation of this right. Moreover, the realization of the right to self-determination of the Scottish people continues to this day. After another fateful referendum in Great Britain, it was decided to leave the European Union. At the same time, as noted, in

Scotland, the majority of the population voted against such an initiative. This led to another wave of movements for the independence of Scotland, led by the new leader of the Scottish National Party, N. Sturgeon. At the moment, there is an agreement between the current governments of the UK and Scotland to resolve this issue after the completion of Brexit procedures. It is impossible to predict what the result will be. The only thing one can be sure is that the right of the people of Scotland to self-determination will be realized, and at the same time implemented within the framework and in accordance with the current national legislation of Great Britain and international law (Чилингарян, 2018).

Consequently, contemporary international law contains a thoroughly developed and fully formed principle that gives peoples the right to exercise self-determination, the implementation of which, as it was noted before is carried out using a two-stage mechanism, first at the internal level, and if such implementation is impossible, at the external level. Great Britain has proved the possibility of realizing the right of the people to self-determination by changing their political status. However, it is very difficult to define what constitutes national self-determination, since it is practically impossible to deduce general rules of use from it. In almost every case of the proclamation of the right to national self-determination, opposing demands are put forward, and the same idea is used in different ways. This can be seen in the example of conflict situations between Great Britain, Scotland and Northern Ireland.

The development of institutions of participatory, referendum democracy will directly involve the citizens of Ukraine in state building and governance. The right to exercise self-determination is guaranteed by international law. The referendum is the most democratic way of demonstrating the will of the people, the peaceful implementation of the principle of self-determination, as evidenced by the referendums in Great Britain on Brexit and Scotland on its independence from London. Worldwide practice often proves that referendums on secession caused disputes and conflicts due to the absence of highly developed institutions or the interference of more influential participants in international relations.

Great Britain, as a contemporary democratic state, protects its national minorities and contributes to the development of their culture. Therefore, the experience of Great Britain is important in the context of creating territorial autonomy, where a specific group lives within a geographically defined territory, for example Scotland in Great Britain, while changing the status of an autonomous entity should be carried out only in accordance with the will of the people living in its territory. A distinctive feature of the political form of territorial autonomy is the presence of representative legislative bodies, as in Scotland and Northern Ireland. The experience of Great Britain confirms that national-territorial autonomy is one of the most effective ways of solving the national question in a multinational state. Usually, in addition to the state language, the language of the national minority is also used on the territory of the national-territorial autonomy. Scotland is a prime example of the realization of the domestic right to self-determination.

Therefore, the experience of Great Britain shows that representative democracy and the protection of individual human rights are not sufficient conditions for the peaceful resolution of disputes regarding sovereignty and the exercise of the right to self-determination; they require more flexible legal approaches to resolve them. One of the advantages of autonomy is its potential for the peaceful resolution of such situations. In addition, granting an ethnic group territorial autonomy prevents the strengthening of separatist movements and a possible violation of the territorial integrity of a state. However, there is a danger that granting autonomy to a particular region will be only the first step towards realizing its further aspirations for independence. A remarkable fact is that despite the special place and privileges within the EU, concessions and preferences for the

UK from the EU did not stop Brexit. In turn, already having an autonomous status, the Scottish government still continues to fight for its independence.

Consequently, an important outcome of Brexit is that other autonomous administrative-political parts of Great Britain were against it and are trying to hold their own referendums on secession from the UK. Scotland already has experience of such a referendum and after Brexit is trying to hold a new referendum on secession from the UK. Among all the autonomous parts of Great Britain, the Scots express the greatest dissatisfaction with the actions of Prime Minister B. Johnson. The rise in anti-British sentiment was particularly amplified by the failed policies in the fight against the coronavirus pandemic and the failed Brexit negotiations with the EU. B. Johnson's government reacted too late and acted slowly, as a result of which the epidemic became rampant. The withdrawal of Scotland would jeopardize the integrity of the entire Kingdom, as it would provide a corresponding example for Northern Ireland and Wales.

Thus, we arrived to the conclusion that the ideal option for realizing the right to self-determination is the example of Great Britain and Scotland. Great Britain has experience in Brexit, and a part of Great Britain – Scotland, also has experience in realizing the right to national state self-determination, which is a unique and unprecedented situation. An interesting fact is that, already having an autonomous status, the Scottish government was still fighting for its independence. The example of Great Britain, that defended and realized its right to self-determination within the EU, and in turn, the example of the constituent parts of Great Britain – Scotland and Northern Ireland, which within the country defend their rights to realize their own self-determination creates an unprecedented situation and is of increased interest for study and can serve a useful model for any people who want to exercise their right to self-determination.

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### **ВПЛИВ БРЕКЗІТУ НА ПРАГНЕННЯ ШОТЛАНДІЇ ДО НЕЗАЛЕЖНОСТІ**

*Доведено, що Брекзит має політичні та соціально-економічні наслідки для розвитку Великобританії. Обґрунтовано, що одним із наслідків Брекзиту може стати подальша фрагментація в межах самої Великобританії. У Лондона на сьогодні існує чимало протиріч*

у відносинах з Шотландією, Уельсом та Північною Ірландією. В Шотландії після референдуму з питання про незалежність автономного регіону, на якому в 2014 р. 55% шотландців висловилися проти виходу зі складу королівства, рух за незалежність зміцнив позиції. Частково зміцнення подібних настроїв в шотландському суспільстві викликано побоюваннями, пов'язаними з Брекзітом. Єдність автономних регіонів Великобританії у 2021 р. може опинитися під загрозою через зміцнення націоналістичних настроїв в Шотландії, а також Північної Ірландії та навіть Уельсі на тлі пандемії коронавірусу і Брекзиту.

Після проведення референдуму щодо Брекзиту, а також в середині самої Великобританії – в Шотландії за її незалежність, пряме волевиявлення народу при вирішенні найважливіших питань конституційного характеру як на регіональному, так і на загальнонаціональному рівні, вже не розглядається як якась екстраординарна подія, фактично ставши нормою.

Обґрунтовано, що Шотландія прагне від'єднання від Великобританії та реінтеграції з ЄС, оскільки шотландці не хочуть втрачати економічні вигоди від безмитного митного режиму з ЄС, важливу роль відіграють також історичні зв'язки зі старим континентом. Вихід із загального ринку ЄС стане нищівним ударом по інвестиціях і ринку зайнятості в Шотландії. Розрив з Лондоном також обійдеться дорого, адже економіка Шотландії пов'язана тісними узами з Великобританією. На переконання більшості шотландців, зростання антибританських настроїв особливо посилилось у зв'язку з тим, що Лондон не зміг впоратися з пандемією коронавірусу. Уряд Б. Джонсона відреагував занадто пізно і діяв повільно, в результаті чого епідемія набула загрозливих масштабів. Поведінка та дії Б. Джонсона під час епідемії і переговорів по Брекзіту викликали невдоволення шотландців.

**Ключові слова:** Брекзит, Шотландія, Великобританія, ЄС, референдум, законодавство Великобританії, незалежність.

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**А. В. Трофименко**

### **КОЛАБОРАЦІОНІЗМ В УКРАЇНІ В УМОВАХ РОСІЙСЬКОЇ АГРЕСІЇ: ПРОБЛЕМА ПРАВОВОГО ВИЗНАЧЕННЯ**

Стаття присвячена проблемі правового визначення колабораціонізму в Україні в умовах російської агресії. Автор розглянув основні концептуальні підходи до визначення поняття «колабораціонізм», акцентувавши на необхідності відділення свідомої корисливої співпраці з ворогом від вимушеної. Встановлено визначення колабораціонізму в українському законодавстві, зокрема його ототожнення з державною зрадою. Досліджено процес пошуку шляхів законодавчого оформлення та криміналізації колабораціонізму через