

General comparative overview of constitutional acts of the Republic of Kosovo over the years

Prof. Ass. Dr. Kadri Kryeziu

Vice Rector and Professor at the University of Prizren "Ukshin HOTI" Kosovo

Abstract

The declaration of Kosovo Independence and afterwards the adoption of the Constitution were preceded by a multiyear process of persistent political endeavours in order to affirm the right of the Kosovo people for self-determination. Drafting of the constitution was one of the important and long-term tasks in building the state; it is a will of the past generations, for the creation of a new political-legal order, establishment of new government institutions. Its drafting was a product of joint cooperation and will of the Kosovo institutions, experts and politicians and the international institutions and experts. It is known that the idea of drafting the Constitution of Kosovo has been longstanding. However, its implementation process is characterized by specific ways imposed by actual international and local circumstances. The request of the Kosovo citizens and institutions for independence should by all means be sublimated by a constitutional-normative act, as an instrument for making the society functional in all areas of life, such as social, institutional, political, economic, security, etc. The experts of constitutional law and the Kosovo political profiles, along with the international experts, in compliance with the principles proclaimed by the international acts and in accordance with historical, political, economic and social features, commenced drafting the draft constitution of the Republic of Kosovo as a sovereign and independent country.

Keywords: Constitution, Kosovo, history, state, sovereignty.

Introduction

A legal comparative analysis of constitutions has been studied in the ancient times, by eminent personalities of world history such as Cicero, Machiavelli, Tocqueville, Montesquieu, etc. The constitutional law, in its entirety and the comparative in particular, is a relatively new discipline in the world of jurisprudence in the Albanian speaking countries (Puto, 2011, 9). All scholars are of the opinion that the establishment of the modern science of comparative constitutional law begins with great French scholars such as Eduard Lambert and Raymond Salej, who refer to an international convention on comparative law in Paris in 1900. The developments of this convention laid the foundation of comparative study and various legal systems and for development of a new science such as that of comparative law (Puto, 2011, 13). The constitutional laws of different countries vary and are thus compared as such, but they are also compared to the constitutional texts of those countries that have

reasonable objectives of reciprocity, due to the fact that they absorb and deliver as much information as possible, reciprocally with regard to various legal and constitutional systems, then they increase an understanding about the rest of the world, and establish knowledge about other constitutional systems, and as a result, one understands its best constitutional system, in this context they can also improve their legal and constitutional system (Vicki, Jakson & Tushnet, 2006, 141). Constitutional law experts and the Kosovo political profiles, along with the international experts, in compliance with the principles proclaimed to the international acts and in accordance with historical, political, economic and social features, commenced drafting the draft constitution of the Republic of Kosovo as a sovereign and independent country.

Origin of the State Constitution of the Republic of Kosovo

Kosovo, during its historic-political development, there have been challenges with dictatorial powers and policies, changing its regimes without changing their content, in its substance discriminatory and contempting to the majority population of Kosovo. The history of constitutional normative acts, later on also the constitution, has a special and historic background. Kosovo was under the socialist constitutional jurisdiction of the Federal Republic of Yugoslavia from 1945 until 1999 (Historia e popullitshqiptar, 2008, 341), in the ultimate liberation of Kosovo from the Serbian dictatorship. The constitutional position of Kosovo has gone through 5 stages: period from 1946-1953; period from 1953-1963; period from 1963-1968; period from 1968-1971 and the latest period from 1971-1974 (bajrami, 1998, 21). With regard to the establishment, respectively the formal-legal constitution of the autonomy of Kosovo, the origin and the decision on specific designation of the autonomy of Kosovo, were the orientation of the Communist Party of Yugoslavia (CPY) on the Autonomous Status of Kosovo already in 1937, when the Province Committee of CPY was established, which was confirmed in the CPY Fifth Conference of 1940 (Saliu, 1998, 14).

On 31.12.1943, in the liberated territory, in Bujani village of Malësia e Gjakovës, the Foundation Conference of KKNÇ started its plenary activity, which continued on 1 and 2.1.1944. The Resolution of Bujani Conference was an act of constitutive powers and it therefore presents the basic document of political self-determination of Kosovo Albanians (Stavileci, 1995, 39). The formal legal constitution of the Kosovo Autonomy is considered as one of the moments when the Presidency of People's Assembly of Serbia, on 2 September 1945, adopted the Law (Decision) on the Establishment and Organization of the Autonomous Province of Kosovo and Metohi (Stavileci, 1995, 29).

Kosovo was annexed by Serbia on 10 July 1945, and afterwards the status was defined and sanctioned as an Autonomous Province by the RFY Constitution dated 1946, by the constitutive document of federalization, which was meanwhile in the framework of the constitutional structure of Serbia (Stavileci, 1995, 31).

Organization and function of the province body, during this period, were determined by the statute of ACKM dated 1948, as the first general normative act. Kosovo adopted its second statute in 1953, following the adoption of the Constitution Law of the PFRY

dated 1953. Upon adoption of the SFRY Constitution dated 1963, Kosovo issued its third and last statute of 1963.

There were endeavours of the majority of Albanian population to achieve their legitimate rights so that at least they were equal to other peoples of Yugoslavia. The pressure and sacrifice of Albanian citizens, resulted in the demonstrations of 1968, organized by the students of the University of Pristina, with the request of Kosovo accomplishing the level of republic, as an equal unit to the other republics of Yugoslavia, which resulted in adopting the Constitutional Law of the Socialist Autonomous Province of Kosovo, on 24.2.1969. Following the constitutional amendments of 1968, the constitutional amendments of 1971, having attained the autonomy of Kosovo as a special constitutive unit of the Socialist Federal Republic of Yugoslavia and the Socialist Republic of Serbia, Kosovo was provided a new constitutional position in the Yugoslav Federation and in the Socialist Republic of Serbia. With the constitutional amendments of 1971 and the constitution adopted by the Kosovo Assembly in 1974, its autonomy was further expanded (Lalaj, 2000, 205).

Constitution of the Socialist Autonomous Province of Kosovo of 1974

With the Constitution of the Socialist Autonomous Province of Kosovo from 1974, begins the flow of establishing the constitutional foundation of the power and the adoption of this act, as the highest level legal and political document of Kosovo.

The Constitution of the Socialist Province of Kosovo was the first spark of bringing the light of Kosovo constitutionalism. Referring to the decision on promulgation of the Constitution of the Socialist Autonomous Province of Kosovo by the Assembly of the Socialist Autonomous Province of Kosovo, in the joint meeting of all chambers on 27 February 1974,¹ it was further stated: "*Pursuant to Article 85, paragraph 1, lit 1, Article 96, paragraph 1, lit 1 and Article 127, paragraph 4, of the Constitutional Law on the Socialist Autonomous Province of Kosovo, in the joint meeting of all chambers, on 27 February 1974, the Constitution of the Socialist Autonomous Province of Kosovo is hereby adopted*".

The Constitution of 1974 was structured as usual into two parts: the preamble and the normative part. The preamble of that constitution looks like the preamble of the countries of the communist block and it therefore conveys the communist spirit, referring to workers and villagers, socialist and social relations, relations based on self-governance and national equalities, furthermore, the Constitution of the Province further strengthened the constitutional system, on the unique socialist self-governance basis, because these were some of the objectives for the adoption of this Constitution. The Constitution of the Socialist Autonomous Province of Kosovo of 1974 consisted of fundamental principles, general provisions, state regulation, and bodies of the Socialist Autonomous Province of Kosovo. The fourth part comprised of the amendment to the Constitution of the Socialist Autonomous Province of Kosovo and the fifth, respectively the fifth part consisted of the transitional provisions, which were concluded by Article 402.

If one analyses the way of adoption, that is to say by the legitimate Assembly of

¹Official Gazette of the SAPK, No 4 dated 27 February 1974.

Kosovo, the human rights and freedoms, the rights and freedoms of nations and nationalities in Kosovo, it provides the impression that it is a constitution consisting of all attributions of a democratic constitution, emphasised firmly in its preamble and in the fundamental principles of this constitution. In this regard, it can be said that it was a quite advanced constitution, especially in the aspect of human rights and freedoms, as well as it contains the framework of a constitution with state elements. In particular, at first sight it was considered as a constitution of democratic premises, but in fact it was centralized, especially with elements of Kosovo citizenship, which were transferred to the Serbian Constitution and to the Federal one including the whole territorial integrity and the sovereignty of the Kosovo people.

It is worth mentioning that during this entire period of time, the citizens were not satisfied with this constitution, because the national, ethnical and cultural rights determined by the constitution did not adequately apply in everyday life. This situation further continued until 1980s, wherein a huge wave of national raise burst on 11.3.1981, when the students of the Pristina University organized influential demonstrations with the firm request that Kosovo attains the status of the republic, whereby the fundamental request of students was that of the amendment of the constitution, that should have occurred institutionally by treating equally and respecting the rights of the population of a majority of 90% of Albanians living in the territory of Kosovo as the other people of the SFRY.

Constitutional Amendments of 1989

The loss of the constitutional position of Kosovo Denigration institutionally by those who factually brought this constitution and which did not fulfil the elementary and national rights of the Albanian people, commenced in 1989, following the approval of constitutional amendments of the Constitution of the Socialist Republic of Serbia of 1974 and the adoption of the Constitution of Serbia in 1990, and adoption of a range of other anti-constitutional laws, which eliminated some state attributions from Kosovo and putting it under a full control in institutional-, and constitutional aspects. Along with the national resistance, the constitutional resistance proceeded. As a consequence, there is the establishment of the Constitution of the Republic of Kosovo, adopted by the Albanian members of the Assembly of the Socialist Autonomous Province of Kosovo in Kaçanik.

The Kaçanik Constitution of 1990

In 1990, the delegates of the Kosovo Assembly, who were mandated by Serbia, became conscious and did not accept those flagrant and violent amendments of the Serbian power and as a reaction they were gathered in front of the Kosovo Assembly and declared the Constitutional Statement on 2 July 1990 stating Kosovo as an independent and equal unit within the Yugoslavian Federation, as an equal entity in the federation or confederation. On 7.9.1990, the members of the Kosovo Assembly declared and adopted publically the Constitution of the Republic of Kosovo in Kaçanik, known in jargon as the Kaçanik Constitution, by which the legal-constitutional position of Kosovo was advanced from

the autonomous unit in Federation into an independent republic within the Yugoslavia Community.

Following the commencement of disintegration of Yugoslav Federation, the Albanian people in the overall people's referendum held on 26 and 30 September 1991, in a plebiscitary way declared Kosovo as a sovereign and independent state. In compliance with this political declaration of the Albanian population, the Assembly of Kosovo, already in exile, on 18 October 1991, adopted the Resolution for Kosovo as a sovereign and independent state. This constitution designs Kosovo as a republic equal to the other republics of Yugoslavia. This constitution contains the preamble, the normative part, general provisions and final provisions.

The preamble was drafted in a positive wording and tone, by not glorifying the history of the Albanian history in Kosovo, although it only emphasised that the Albanian Nation in Kosovo, was established pursuant to the principles of democracy and equality and based on the right of self-determination up to secession, guaranteeing full rights of humans and citizens.

The normative part includes a dozen of articles, in which are included: General Provisions; Economic and Social Order; Human and Citizen Rights, Freedoms and Obligations; Bodies of the Republic; Amendment of the Constitution; Transitional Provisions and Final Provisions.² The implementation of this constitution was impossible, despite the efforts made by joining political parties, announcement of Referendum for independence, intentions to functionalise the Assembly of the Republic of Kosovo and the functioning of the Government and other state mechanisms. In a non-constitutional situation, it is discussed about the adoption of a new constitution; in a state of non-legal situation (Statovci, 1999, 326). Serbia with its violent apparatus did not allow in anyway the entry into force of the functioning of the Constitution of the Republic of Kosovo. The international community became conscious of the necessity for intervention, referring to the general progressive norms and of the international law, often on the grounds of strengthened interpretations, due to the ingrained classic character of the sovereignty principle, intervened in the interest of peoples who suffered from the wild totalitarian regimes. Following the war, coordinated by the great powers from the airstrike and conducted by the Kosovo Liberation Army on the ground, dramatic changes took place, not only in terms of life but also in terms of the constitution.

The constitutional position of Kosovo changed radically, after the alteration of political and military circumstances, wherein the Kosovo Liberation Army, along with the NATO forces liberated Kosovo from the Serbian violence, from its repressive military-, and police system.

The Constitutional Framework for Provisional Self-Government of Kosovo of 15.5.2001

The Constitutional Framework is preceded by the Resolution 1244, by which the Security Council of the UNO in 2001 put Kosovo under the international civil

²*Constitution of the Republic of Kosovo*, adopted on 7 September 1990, in Kaçanik.

administration (Bajrami, 2010, 381). The International Administration of Kosovo determined by the Resolution 1244 is of a provisional character and aims the establishment of proper democratic conditions for resolution of the final status of Kosovo.³

The Constitutional Framework was structured approximately as a real pragmatic constitution, which consisted of the Preamble, Basic Provisions, General Provisions and Final Provisions. The preamble contains the text of the Special Representative of the Secretary General (SRSG), emphasising the grounds of competences provided by the Resolution 1244 dated 10 June 1999, of the Security Council of the United Nations, recalling that the Resolution 1244 of the Security Council of the United Nations foresees building and developing of a meaningful self-governance in Kosovo.

This preamble is focused on the future of Kosovo in order to live in peace and in harmony with national minorities and gradually acknowledging Kosovo's historical, legal and constitutional development, and taking into consideration the legitimate aspirations of the people of Kosovo to live in freedom, in peace, and in friendly relations with other people in the region, we can conclude that the preamble had a progressive spirit oriented towards the democratic future of Kosovo.

With regard to Basic Provisions, there are described the building of Provisional Self-Government Institutions of Kosovo (PSGK), such as: the Assembly, the President of Kosovo, the Governments, and the Courts. In the second chapter, there are provided the principles that should be complied with by the Provisional Self-Government Institutions; afterwards, the third chapter provides for the human rights and the fourth chapter describes the rights of communities and of their members. The fifth chapter provides the responsibilities of the Provisional Self-Government Institutions, the sixth chapter describe the law and order in Kosovo; the seventh chapter describes the competences of the Kosovo Protection Corps.⁴

The eighth chapter provides the reserved competence and responsibilities of the SRSG.⁵The ninth chapter, point 1 of this chapter, provides the competences of the Kosovo Assembly,⁶ point 2 of the same chapter provides the competences of the President of Kosovo,⁷ whereas point 3 provides the competences of the Government of Kosovo.⁸

In point 4, it is described the Judicial System of Kosovo.⁹ Chapter 10 provides the competences and obligations of the Ombudsperson, then chapter 11 describes the independent bodies and offices.¹⁰ Chapter 12 provides the competences of the SRSG. Chapter 13 provides the competences of KFOR and in the end the chapter 14 provides the transitional provisions.¹¹ The Constitutional Framework of Kosovo,¹² as a normative

³It should be stated that on 17 February 2018, Kosovo declared its independence, whereas on 15 June 2008, the Constitution of the Republic of Kosovo entered into force, and the UNMIK started the reconfiguration of its presence in the country.

⁴*The Constitutional Framework of Provisional Self-Government in Kosovo*, 15 May 2001, p 16.

⁵*Ibid*, p. 17.

⁶*Ibid*, p. 19.

⁷*Ibid*, p. 26.

⁸*Ibid*, p. 27.

⁹*Ibid*, p. 29.

¹⁰*Ibid*, p. 31.

¹¹*Ibid*, p. 32.

¹²*Ibid*.

act, has a substantial structure of the function of social-state organization as was Kosovo during that period, with mixed powers, with reserved competences by the international factor.

The negative sides of this framework are that the grounds for its adoption were that of Resolution 1244 of the Security Council, which was unfavourable for the people of Kosovo with regard to determination of political status of Kosovo, because in its Annex it is indicated that Kosovo shall have a substantial autonomy in the framework of Yugoslavian Federation, that corresponds to the national interests of the Albanian people in Kosovo.

Furthermore, any basic law of the state should be passed and adopted by the legitimate institutions of the local people or by direct expression of the will of the people through a referendum, the huge pressure by international mechanisms so that it should not be called the Constitution of Kosovo, prejudging that Kosovo is not a state and cannot become a state and that Kosovo shall be regulated by a law, by which is regulated the political and the social life of an autonomous unit, etc. Following many objections, especially in regards to the name, a compromise is reached neither calling it a constitution nor a law, but the Constitutional Framework for Provisional Self-Government in Kosovo.¹³

Constitution of the Republic of Kosovo

When discussing about the constitutional developments of the Republic of Kosovo, without forgetting also the legal tradition Kosovo had, including also the Constitution of 1974,¹⁴ as the first constitution of Kosovo, then as a Socialist Province, in the framework of the Socialist Federal Republic of Yugoslavia and far more advanced with the Constitution of Kaçanik,¹⁵ wherein none of these were seen as copies having radical distinctions.

The Constitution of the Republic of Kosovo¹⁶ is qualified from its specifications determined from the developing domestic and international social-political processes. The Constitution of the Republic of Kosovo articulates the will of the people, towards a sovereign and independent state, it aspires and even creates a good basis for constitutional values, respectively to the constitutional rights in Kosovo, which are undivided by life reality, moreover of the objective and subjective conditions of such reality. The constitutional law of Kosovo is not only what is written in the Constitution, but what people and citizens feel for their position, that is to say their rights, freedoms and obligations for their implementation. The data of 17.2.2008 undoubtedly presents the most important period on the issue of constitutionality and consolidation of Kosovo state institutions.¹⁷ The occurrence of great events, especially in the institutional and

¹³Ibid.

¹⁴Noel Malcolm, *Kosovaa Brief History*, Prishtina, 1998, p. 336.

¹⁵The Constitution of KaçanikKK No 2/90 Kaçanik, 7 September 1990

¹⁶The Constitution of the Republic of Kosovo is signed by the President of the Republic of Kosovo in the National Library of Kosovo, Prishtina, on 08 April 2008, which entered into force on 15 June 2008.

¹⁷ 17 February 2008 – Kosovo declared itself as a sovereign and independent state, in the extraordinary meeting of Kosovo Assembly. The Declaration of Independence was an Act of the Kosovo Assembly as a Provisional Self-Government Institution, which was approved unanimously by all present members of the Assembly. The Declaration of Independence was read by the Prime Minister of Kosovo, Mr HashimThaqi.

constitutional field, make this as one of the most significant periods in the historical-constitutional aspect of Kosovo, in relation to some South East European constitutions. The Constitution of the Republic of Kosovo, as a state building document, guarantees the fundamental human rights and freedoms, with special importance on fundamental human rights and freedoms of the minority community, who live and cohabit in the independent Kosovo.¹⁸ The constitutional- legal position constantly underwent changes based on the flow of political events after the end of war.

Conclusions

The advancement of Kosovo position over the years and the adoption of the constitution of 1974 can be referred as an overall contribution of citizens and law professors of Kosovo, as a result of resistance and students' demonstrations of the University of Pristina in 1968, wherein the main request were allowing the national flag and advancing the then province status into a higher constitutional level. It is worth mentioning that again the citizens were not satisfied with that constitution, because the national, ethnic and cultural rights determined by the constitution were not adequately applied in everyday life.

Despite respecting the constitutional norms, the Serbian-Yugoslavian regime started diminishing the constitutional position of Kosovo in an unconstitutional way, a range of anti-constitutional acts and actions took place, by which the Serbian power, as of 1981, suppressed the student's demonstrations in Pristina for improving the economic, political and constitutional life, wherein one of the fundamental slogans was "Republic, Constitution, either peacefully or through war" until 23.3.1989, which diminished any real and false attribution of territorial and political individuality of Kosovo, as a constituent entity of the Socialist Federal Republic of Yugoslavia. Serbia through the entire military and police state mechanisms made violent changes to the constitution, trying to cease violently legitimate requirements of the Kosovo people by eliminating any constitutive element.

All of these actions resulted in vanishing illusions of the autonomist leadership devoted for cohabitation with Serbia and Yugoslavia. Kosovo *de facto* and *de jure* underwent a political, military-police regime, by repealing the political subjectivity and degrading the character of Kosovo. This was conducted by the Serbian dictator Slobodan Milosevic, having abused with the principle of the state sovereignty, meanwhile also committing crimes against humanity. Each legal and political act that was adopted for Kosovo after the Second World War was not in favour of the majority of the Albanian majority, until the ultimate liberation and adoption of legal normative acts along with the internationals, and the latest one was a further consolidation of our national and citizen consciousness and identity. Kosovo, after the terrific and unequal war against the Serbian dictatorial state, created the opportunity for the citizens to have a hierarchy of power, a political, institutional, judicial and economic development. Drafting of the Constitution and its adoption was a life and historical necessity, because until April 2008, Kosovo was the only last country liberated from the Serbian national-

¹⁸The Constitution of the Republic of Kosovo 15 June 2008, Chapter III, Rights of Communities and their Members, p. 18.

communist regime that did not have its own entire constitution.

References

- Bajrami, A. (1998). *E drejta kushtetuese II*, Pristina.
- Bajrami, A. (2010). *Parlamentarizmi*, Pristina.
- Lalaj, A. (2000). *Kosova rruga e gjatë drejt vetëvendosjes*, Tiranë.
- Podvorica, A. (2015). *International Administration of Kosovo as a Driving Factor In Appearance Of Trafficking In Human Beings*, *Mediterranean Journal of Social Sciences*, Rome – Italy, 2015, Volume 6.
- Puto, E. (2011). *E drejta kushtetuese e krahasuar*. Tiranë.
- Statovci, E. *Të drejtat, liritë e njeriut dhe skllavërimi*, Pristina.
- Stavileci, E. (1995). *Çështja shqiptare në udhëkryqin e zgjidhjeve paqësore*, Pristina.
- Saliu, K. (1984). *Lindja, zhvillimi, pozita dhe aspektet e autonomitetit të Krahinës Socialiste Autonome të Kosovës në Jugosllavi në socialiste*, Pristina.
- Korniza Kushtetuese për Vetëqeverisje të Përkohshme në Kosovë*, 15 maj 2001.
- Kushtetuta e Republikës së Kosovës* 15 qershor 2008.
- Kushtetuta e Kacanikut KK nr. 2/90 Kaçanik*, 7 shtator 1990.
- Kushtetuta e Krahinës Socialiste Autonome të Kosovës*, Pristina.
- Malcolm, N. (1998). *Kosova një histori e shkurtër*, Prishtinë. Pristina.