

The Constitution of the Republic of Turkey versus the Constitution of the Republic of Kosovo as historical state-building acts

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Abstract

To treat in a comparative aspect the Constitution of Kosovo and Turkey, both in the historical dimension and the institutional creation, is a challenge.

The motivation came from the Turks of Albanian origin, to decompose and analyse the acts of these two countries, one the youngest in Europe and the other the oldest.

Keywords: Constitution, amendments, Kosovo, Turkey.

Introduction

Traditionally, Ottoman history is divided into four periods: the first period includes two and a half centuries of the reign of the first ten sultans (1300-1566), which culminated with the golden age during the reign of Suleiman I (1520-1566); the second period lasted approximately two hundred years, until the beginning of the reign of Selim III, in 1789; the third period, which begins with the reign of Selim III and ends with the Young Turk revolution (1908), was the period of reform efforts, most recently was the period of Young Turk rule, which included World War I and ended with the dissolution of the empire and the creation of modern Turkey (Glenny, 2000, p. 126).

This democratic constitutionalism did not include the future Turkish republic. The same thing happened with Kosovo, which after the Second World War until 1974, had no constitution at all, but functioned through several statutes that did not even close meet the fundamental, political and civil demands and rights of Kosovo and its people. Turkey, as a country with an ancient tradition of constitutionalism, began the transition to competitive democratic politics in 1946 (Sugar, 2007, p. 26). Turkey has experienced three military coups, each accompanied by a new Constitution, or revision of the Constitution. The first military intervention 1960-1961 gave life to the Constitution of the Second Republic of Turkey, then in 1961-1980 was the second military intervention, while during 1971-1973, the army forced the National Assembly to approve the anti-liberal constitutional amendments and the third military intervention in 1980-1983 brought the constitution of the Third Turkish Republic. Realistically, if viewed from the historical angle of constitutionalism, the beginning of the construction of the constitutional state dates back to 1876, the so-called Tanzimat Constitution, which was repealed in 1878 and amended in 1908, while in 1921, as the second constitution adopted. The third consecutive constitution of Turkey as a secular state, since 1924, was that of 1961, the fourth Constitution after the military intervention 1980 military coup, where the generals prepare a new Constitution, and as a new Constitution, and the fifth in a row, is the 1982 Constitution. Atatürk's political legacy stems from four agendas: the rise of nationalism, the promotion of

secularism, the removal of the military from politics, and the building of a one-party state. The transition of Turkish politics from a one-party system took place thanks to external pressures, in the context of the concerns of the democratic world (Franklin, D. & Baun, J., fv. 138-141).

As part of the treatment of this paper is the Constitution of the Republic of Turkey, of 9 November 1982, not as a whole, but some of its provisions, which make it distinct from the Constitution of the Republic of Kosovo of 2008.

The fundamental differences of these two constitutions, apart from the historical one, are both in form and in their content. Regarding the historical aspect of the existence of the constitutions of these two countries, the differences are very big. But, let's stop at the preamble of the Constitution of Turkey, of 1982, which is the fifth constitution of 1980, built by the military regime, where then the preamble was changed. Its amendment was made in 1995, which changed 20 Articles, including its preamble, and then the changes took place or the revision was made in 2001 and the constitutional reform, as a precondition for eventual membership in the European Union, on 10 May 2007. If we look at the Constitution of the Republic of Turkey, we will see that it differs radically from the preamble of the Constitution of Kosovo. The Turkish Constitution includes the specific references of Ataturk, as the founder of the Republic, his concepts of nationalism and national interests, the historical and moral values of the Turkish nation, etc (Georges, 1991, p. 239). At a time when there was a great threat of a divisive and destructive civil war, unprecedented in the Republican period, a threat to the integrity of the "eternal" Turkish nation and the very existence of the "holy" Turkish state, the Turkish Armed Forces, which is an integral part of the Turkish nation, responded to the nation's call and launched the operation on 12 September 1980. This constitution, which came to life after the operation of 12 September 1980 and was prepared by the Constituent Assembly, the legitimate representative of the Turkish nation, was finalized by decision of the National Security Council and was adopted, approved and entered into force directly by the Turkish nation (Feroz, 2000).

It embodies the concept of nationalism and the principles and reforms put forward by the founder of the Turkish Republic, the immortal leader and incomparable Turkish hero, Kemal Ataturk. The absolute supremacy of the national will and the full sovereignty of the Turkish nation, so that no one and no institution vested with power to exercise this sovereignty on behalf of the nation, exceeds the limits of the concept of liberal democracy and the rules laid down by this constitution, as well as the principle of separation of powers, which does not imply hierarchical dependence of state bodies (Montesquieu, 2000). This constitution refers only to the exercise of clearly defined authority entrusted to state bodies and which is strictly limited to the civilized division of functions and in cooperation that this division makes necessary, while supremacy belongs only to the constitution and the law. The principle that no idea or opinion that is contrary to the Turkish national interests and the indivisibility of the Turkish state and its territory, as well as with Turkish historical values and ideals embodied in nationalism, principles, reforms and the modernization mission undertaken by Ataturk, will find no protection and because, as the purge of secularization loves it, there will be absolutely no mixture of sacred religious perceptions, in the affairs of state and in politics. The right of every Turkish citizen,

from birth, to exercise the fundamental rights and freedoms enshrined in this Constitution, to exercise them within the requirements of the concepts of equality and social justice, in order to live a dignified life, developing material and spiritual well-being within the framework of national culture, civilization and legal system. Constitutional orders are gradually built and transformed. At any given moment we may notice a dominant set of institutions and principles, some remnants of the previous regime and some indications of what may be the institutions and principles that can enliven the subsequent ones. Other changes to the Turkish Constitution took place on 17 October 2001, and constitutional reforms (Publication of the Albanian Helsinki Committee, 1998, fv. 401-402). On 17 October 2001, the preamble to the Constitution of the Republic of Turkey was amended, which explicitly states: "In line with the concept of nationalism and the reforms and principles introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivalled hero, this Constitution, which affirms the eternal existence of the Turkish nation and motherland and the indivisible unity of the Turkish state, embodies the determination to safeguard the everlasting existence, prosperity and material and spiritual well-being of the Republic of Turkey, and to attain the standards of contemporary civilization as an honourable member with equal rights of the family of world nations (Tushnet, 2007). The understanding of the absolute supremacy of the will of the nation and of the fact that sovereignty is vested fully and unconditionally in the Turkish nation and that no individual or body empowered to exercise this sovereignty in the name of the nation shall deviate from liberal democracy and the legal system instituted according to its requirements. The principle of the separation of powers, which does not imply an order of precedence among the organs of state, but refers solely to the exercising of certain state powers and discharging of duties which are limited to cooperation and division of functions, and which accepts the supremacy of the Constitution and the law. The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics; the acknowledgement that it is the birth right of every Turkish citizen to lead an honourable life and to develop his or her material and spiritual assets under the aegis of national culture, civilization and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution in conformity with the requirements of equality and social justice. The recognition that all Turkish citizens are united in national honour and pride, in national joy and grief, in their rights and duties regarding national existence, in blessings and in burdens, and in every manifestation of national life, and that they have the right to demand a peaceful life based on absolute respect for one another's rights and freedoms, mutual love and fellowship and the desire for and belief in "Peace at home, peace in the world". This Constitution, which is to be embraced with the ideas, beliefs, and resolutions it embodies below should be interpreted and implemented accordingly, thus commanding respect for, and absolute loyalty to, its letter and spirit. It is entrusted by the Turkish nation to the patriotism and nationalism of its democracy-loving sons and daughters. If we compare the preamble of the

Constitution of the Republic of Kosovo, we can see essential and substantial differences. The preamble of the Constitution of Kosovo starts as follows: "We, the people of Kosovo, determined to build a future of Kosovo as a free, democratic and peace-loving country that will be a homeland to all of its citizens; Committed to the creation of a state of free citizens that will guarantee the rights of every citizen, civil freedoms and equality of all citizens before the law; Committed to the state of Kosovo as a state of economic wellbeing and social prosperity; Convinced that the state of Kosovo will contribute to the stability of the region and entire Europe by creating relations of good neighbourliness and cooperation with all neighbouring countries; Convinced that the state of Kosovo will be a dignified member of the family of peace-loving states in the world (The Constitution of the Republic of Turkey, 1982). With the intention of having the state of Kosovo fully participating in the processes of Euro-Atlantic integration; In a solemn manner, we approve the Constitution of the Republic of Kosovo". If you look at the tone and writing of both of these preambles, we can see that in Turkey the tone and language are very harsh, especially in the protection and preservation of the nation, while in the constitution of Kosovo, the tone and language are very positive and comprehensive. The other difference is, in the volume of these preambles. The preamble of the Constitution of the Republic of Kosovo is short, concise and very significant, and prosperous, whereas in the preamble of the Turkish Constitution, we notice a more voluminous preamble, in terms of structure and content, we notice a pronounced and forced nationalism of the Turkish nation and not very prosperous European. There are also fundamental differences in the basic provisions, and in this context, we would have separated (Article 3) of the two constitutions. In the Constitution of Turkey, Article 3, paragraph, states: "The Turkish state, with its territory and nation, is an indivisible entity", whereas Article 3 of the Constitution of the Republic of Kosovo, paragraph 1 states: "The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions. Here we notice the differences that the constitution of Kosovo strongly emphasizes the citizen and his rights, the communities living there, as a multi-ethnic society, whereas the Turkish constitution emphasizes only the nation and the language of its own nation, without emphasizing at all the other people living there, which does not correspond to European trends, for giving the deserved place to civil society. The Constitution of Turkey is characterized by provisions, which cannot be changed at all and which are decisively enumerated in Article 4. Preamble of the Constitution of the Republic of Kosovo, 2008 (Constitution of the Republic of Kosovo, 2008).

The provision of Article 1 of the Turkish constitution cannot be changed and defines the form of government of the state as a Republic. The provision of Article 2 defines the special characteristics of the Republic, which cannot be changed, and the provisions of Article 3, which deal with the Turkish state, the nation, the Turkish language, its anthem, cannot be changed, nor can any amendment be proposed for them. Legislative power, according to the Turkish constitution, is exercised and composed by the Grand National Assembly of Turkey, sanctioned by Article 75, which is composed of 400 MPs elected by the nation by universal suffrage. Article 76 is also characteristic, which, among other things, sanctions the criteria of citizens

to be elected as MPs, starting from their age, profession and responsibility towards state and public bodies, this Article states that every Turk who has reached the age of 30 is eligible to be an MP, except for persons who have not completed their primary education, who have been deprived of legal capacity, who have failed to perform compulsory military service, those who have been convicted for dishonourable offences such as embezzlement, corruption, bribery, theft, fraud, forgery, breach of trust, etc., shall not be elected as MPs, even if they have been pardoned and also other categories such as institution holders, judges, prosecutors, military, etc. shall not be elected. The MP loses the membership, among other things, if he/she changes the party to join another party and if he/she has not left his party he/she cannot be nominated as a candidate in the next elections by the central bodies of any party that existed at the time of his departure.

In this prism, if a comparative analysis is made of the Articles that are sanctioned in the Constitution of Kosovo for the body that exercises legal power, it turns out that there are essential differences in the structure of the legislative body of the two countries (Publication of the Albanian Helsinki Committee, 1998, fv. 404-410).

Essential difference in the criteria for electing a citizen as a representative of the people. The Constitution of the Republic of Kosovo has sanctioned this according to Article 63, which explicitly states that "The Assembly is the legislative institution of the Republic of Kosovo directly elected by the people". According to Article 64 of the Constitution of Kosovo, the Assembly has 120 MPs, which is a much smaller number than the National Assembly of Turkey, where normally such a large composition of members of the Turkish parliament derives even with greater powers and with more permanent and ad hoc committees elected by the bodies of the Assembly. Also, the Constitution of Kosovo, based on Article 71, paragraph 1, determines the age of the citizen of Kosovo for the active and passive right to vote, where, among other things, it is specified that every citizen of the Republic of Kosovo, who is 18 years or older and meets the legal criteria, is eligible to become a candidate for the Assembly. Obstacles to being an MP are sanctioned in Article 73, paragraph 1, of the Constitution of Kosovo, which states that "the following cannot be candidates or be elected as MPs without prior resignation from their duty as a judge, prosecutor, military, police, customs officer, member of the Intelligence Agency, diplomatic representative, chairperson and member of the Central Election Commission.

Conclusions

Based on the scientific review of the Constitution of the Republic of Kosovo and that of Turkey, we can conclude that efforts made for presentation and comparison in basic points of the basis on which these two documents lie, imposes the need to synthesize the comparative line between them. Concluding the above-mentioned reviews, there is no need to repeat the fundamental and principled differences between the provisions of these two constitutional texts. As seen from the traditional historical and experiential aspect, there is a significant distance between the centuries-old state of Turkey and the youngest state created in Europe, Kosovo.

Regarding the preambles and the content of these two constitutions, if it were not for the constitutional changes in Turkey, the Constitution of the Republic of Turkey, compared to the Constitution of the new Republic of Kosovo, would emerge as a very

archaic constitution, which does not correspond with its aim and future as a state in Europe. Until now, amendments to the Turkish Constitution have been designed to recover perceived institutional shortcomings, without confronting the apparent contradictions in upholding the basic principles of constitutionalism. We have a completely different approach to the Constitution of Kosovo regarding its vision and future because, while it was being drafted, many constitutions from an extensive catalogue of world, European and regional constitutions have been consulted, not denying the legitimacy of the supranational, while in the Constitution of Turkey has emerged the totalitarian belief of the Kemalists, which is the basis of Turkish constitutionalism, denying the legitimacy of particularist or subnational identities, embracing the version of popularization that is anti-liberal and does not tolerate differences, and opposes secular aspirations.

The accommodation of the multi-ethnic society in the Constitution of the Republic of Kosovo, with separate chapters and articles was not a preference of the constitution of Turkey. In Turkey, this inherent disharmony in the national faith must be examined and addressed, as well as populism and nationalism must be harmonized with respect and tolerance for pluralism and ethnic diversity. This has already happened in the state of Kosovo even by guaranteeing by constitution and law for the rights of minorities, respectively the constitutional affirmation of the Turkish minority, from the protection of their fundamental, national, cultural and hereditary rights, with the preservation of identity, with the guarantee of their constitutional protection of toponyms, participates in all state institutions, both local and central, in a proportionate manner, based on the power of free voting, plus the guaranteed and reserved seats in all state powers of Kosovo. *But, apparently with the amendment of the constitution in 1996 and 2001*, the Turkish people are firmly crowned with the idea of democratic constitutionalism and governments elected by the people. Thus, the problem that Turkey is facing is neither the lack of civic culture nor the lack of commitment to democratic constitutionalism, but in fact finding the feasible formula of pluralist representation and citizenship.

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