



## Unitary State in the Constitution of the Republic of Kosovo

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**Abstract:** Referring to the Constitution of the Republic of Kosovo in 2008 it appears that the Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible. By this definition constitutional state that Kosovo is a unique state that in constitutional terms regarding state regulation domed Kosovo is a simple - unique and indivisible. Such a situation exists constitutional, but the definition actually entered unitary elements of federalism or state composed of elements which may violate state unique and can affect the future in redefining constitutional state. In the development of constitutionalism in the world, perhaps the Republic of Kosovo could serve as a model of a new regulatory theory of a “new unitary” with elements of federalism in terms of the internal, ie a part of the territory. In this respect the case of the Republic of Kosovo have two characteristics that impose the existence of “new unitary”, first, complete northern Kosovo which to a great extent has special status with “Ahtisaari’s package” and secondly, judicial system which will be organized differently and will not be unique judicial system as determined by the current constitution.

**Keywords:** State; unique; indivisible; the constitution of the Republic of Kosovo; territory

### 1. Introduction

Trends in the development of state-building processes after the end of the Cold War are being developed in terms of the creation of factual circumstances and a state-wide adjudication to stand in the face of the ban on occupations and conquests and the establishment of civic will in the first place. The creation of the state of Kosovo is preceded by many important factors, both historical and political, but decisive was the will of the people to have an independent and sovereign state.

In the context of the creation of the state of Kosovo, with the support of the international community was also defined the form of state regulation. By the

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Constitution of 2008, the Republic of Kosovo is determined to be a unitary state - a simple state. The factual circumstances created are imposing a form of practical regulation of a complex unitary state. This is especially noticed with the factual situation created in the north of the country and the international community's proposals for an opportunity to organize the north of the state, somewhat under the sovereignty of Kosovo, but with a wider form of competencies.

This tendency is also noted in the Brussels talks mediated by the European Union, where the judicial system of the Republic of Kosovo, even though the law on courts and the Constitution is a unique judicial system, is being imposed to have another organizational form for the northern part. The very existence of the branch of the Court of Appeals for the municipalities of northern Kosovo implies the expansion of an extended system, which goes beyond the principle of being a unique judicial system.

Along with the already unpopular judicial system, the existence of municipalities with the Serbian shunmatic population is another element that the unitary state of Kosovo gives the form of a complex unitary state. In this respect, the elements of an organized state with an extended self-government degree are being imposed on a national minority within the state.

## **2. Structure of State Regulation in the Republic of Kosovo**

Starting from the understanding that the state is an organization, then it turns out that the state is organized. The state regardless of its space, geographic position and population number also has the form of state regulation or state regulation, as well as the theory and legal science. Each state has its own organized power, through which the state carries out its functions. Territory, the state is one of the key elements, which often determines the state of being, or the existence of the state. The state territory is not immutable, but still exists as the territory of the state. In the past there has been a well-known case of the Mongolian people where the borders had constantly changed but the territory had always existed, whether it was any short period of time (Omari, 2004).

If we analyze in essence the organization of the unitary state - the simple state, such as the Republic of Kosovo, organized according to the Constitution of 2008, it turns out that in the simple state the lower parts of the state organization have less rights compared to the organizational parts in the composite state.

This goes even more so because in the simple state the organizational parts, although they may have competences and autonomous rights, they can not carry elements of citizenship, as is the case with the member states in the composite state (Ismaili, 2011). Such a difference is precisely reflected in the organizational parts of the composite state, which share autonomy in relation to the central institutions.

In essence, a unitary state, is that state within which there are no other state formations, where there is a single system of state bodies. Unit states are Kosovo, Albania, Macedonia, Serbia, Greece, Bulgaria, Italy, France. In Albania, for example, there is a head of state, there is a Council of Ministers, a minister for certain areas of political-economic activity (Omari, 2004). This is also the case with other unitary states.

The Republic of Kosovo, according to the Constitution of 2008, is defined as a unitary state and in Article 1, paragraph 1, it is defined as “the Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state”. In the context of the circumstances of the creation of states it emerges that the state is unitary, but it can be a unitary state - simple and complex unitary state.

In terms of the existence of a simple unitary state, the state has these characteristics: 1. Central - all state power is centered on one or more central organs; 2. Centralized - non-central bodies exercise state-run functions fully dependent on central organs; 3. Decentralized - Non-governmental bodies exercise a number of state-run jobs, in relation to central bodies. Whereas, the unique complex state has these characteristics: 1. Regional - composed of politically and territorially decentralized bodies, which have considerable political power; 2. Federation - a federal state in which there is no right to abolish and recycle (Hasani & Cukallovic, 2013). In the unitary state in the Republic of Kosovo, there are two elements of a unique state - the single state - the simple state and the unique state - the only complex state.

Virtually we find the two elements of the unique state. If we analyze the Ahtisaari project, known as “Ahtisaari’s Package”, it emerges that, part of the territory of the state of Kosovo, there will be another organization from a part of the other state territory, foreseeing the establishment of new municipalities and a form the other of the organization of the north of the state, as well as the possession of more extensive competencies for the municipality of northern Mitrovica. Regarding the degree of autonomy and self-organization of municipalities in Kosovo, it is determined that “Kosovo will consist of municipalities which will enjoy a high degree of local self-government and which encourage and ensure the active participation of all citizens

in democratic life.”<sup>1</sup> This empowers the existence of the combined element of the simple state and the unique complex state.

Looking at the broader aspect of the regulation of states around the world, most states in the world have a unitary adjustment system, but there are some that have combined the unitary form of state regulation. Most countries (more than 90 percent) have a unitary system under which the rule of law system lies with the central government. The central government can create or abolish regional or local governments. These local or regional governments can only exercise those competences and responsibilities given to them by the central government. In France, England, Chile, Egypt, and many other countries with a unitary system, the central government is strong and regional or local jurisdictions are weaker (Bowman & Kearney, 2011). In this regard, we have the unitary state of a simple state unit form with a centralization characteristic, where powers are exercised by the central government.

In the context of the Italian example it emerges that, before the unitary state was accepted, they united seven Italian states into a state that implied that the nation was unique, then constructed a unitary state model that could result in a higher stability of unitary state. This process is preceded by the creation of certain circumstances, such as weak state infrastructure, poor regional conditions, and post-conflict 1859 (Ziblatt, 2008). In the Italian model of the unique state, the concept of regionalization is also accepted.

In the model of the unitary state of the Republic of Kosovo, in the constitutional aspect we do not encounter the concept of regionalization, while in practice we have applied such a pattern.<sup>2</sup> Referring to the constitutional regulation of Kosovo regarding the form of state regulation, we have a unitary state, but in practice the unitary state is confronted with the model of a unitary state that is communed with the two elements of centralization and decentralization, where in some cases we have enhanced competencies for the municipalities, especially those with a Serb majority, while in some respects we have a unitary state with centralized powers for the central government. So we have a state with a unitary unit element combined.

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<sup>1</sup> Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007, Annex I, Constitutional Provisions, Article 8.

<sup>2</sup> In the everyday and political language expressed in the media as in public events, we frequently encounter the use of the expression of the region of Anamorava, Dukagjini, Llapi, Drenica, etc. We also apply the regional term for hospitals as for the police.

### 3. Unitary State - Constitutional and Comparative Aspects

States that have unitary state regulation and their constitutions regulate such form of state regulation. In the typical unitary state, practice and constitutional theory recognizes the existence of only one constitution, a state sovereignty, a legislation, unity of statehood and a state organization (Saliu, 2004). In the practice of the unitary state, we encounter the form of centralization and the form of decentralization, where the form of decentralization usually comes to unitary states that are territorially larger.

There is a formal difference between the unitary state and the state, which is also seen in the constitutions of these states. The formal distinction of the key element is the separation of power between central governments and regional units. While, in the unitary state, we have the characteristic feature where the spheres of politics are under the control of the central government, as well as the decision-making of local or regional authorities should be under the control of the central government (Shively, 2010). While this form is not the case in federal states - the state of affiliation.

Although most states in the world have the form of regulation as unitary states, there are still differences and features that make the “unitary” element distinct from country to country. In the constitutional and state regulation it seems that the constitution of some states that defines the unitary element of the state is an essential distinction. The Constitution of the Republic of Kosovo stipulates that “The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state” (Constitution of the Republic of Kosovo, 2008), as well as the Constitution of the Republic of Albania expressly stipulates that, “The Republic of Albania is a unitary and indivisible state” (Constitution of the Republic of Albania, 1998).

A wider model of unitary state regulation faces Italian and Spanish state regulation. The Spanish Constitution stipulates that “the Constitution is based on the insoluble unity of the Spanish nation, the common and inseparable homeland of all the Spaniards, it recognizes and guarantees the autonomy of the nationalities and the regions that make up it, as well as the solidarity between all these” (the Constitution of Spain, 1978). Whereas, in terms of territorial organization, according to the constitutional order of the Spanish state, “the Spanish state is organized on a territorial basis in the autonomous municipalities, provinces and communities. All these institutions have autonomy in the administration of their interests.” The Spanish case is different from that of Kosovo, it is unmatched, practically, politically and geographically. It can not be a model for orientation in the territorial

organization of the Republic of Kosovo. From this form of organization of the Spanish state, we observe the form of a unitary state with better competencies for certain regions, so there is little influence of the central government in the policies of the regions.

The form of a unitary state in the Italian state defined by the constitution, states the unitary state of Italy in the form that “the Republic, one and indivisible, recognizes and develops local autonomy, carries out state-dependent services, broader administrative decentralization adopts the principles and methods of its legislation with the requirements of autonomy and decentralization” (Constitution of the Republic of Italy, 1946). Meanwhile, the concept of regionalization is faced with the constitutional regulation of the Italian unitary state, which states that “Republika is divided into regions, provinces and communes”. And in the midst of this division, according to the spirit of the Italian Constitution, some regions, Sicily, Sardinia, Trentino - Alto Adige, Friuli - Venezia Giulia and Val d’Aostes, are recognized special forms and conditions of autonomy, according to special statutes adopted by constitutional laws”.

The unitary regulation of the Spanish State and the Italian state does not show any substantial difference, but the two models of the unitary state have a greater distinction with the regulation of the unified state of the Republic of Kosovo. The difference is noteworthy in some features, such as the number of population, the size of the territory, the constitutionally regulated regionalization, and the highest degree of decentralization.

The combined form of the unitary state of the Republic of Kosovo, which both constitution and law recognizes a higher degree of self-government, and on the other hand, have many centralized powers for the central government, making the combined element of the unitary state of existence combined with decentralization and centralization. In the Constitution of the Republic of Kosovo, the concept of regionalism - regionalization, as this concept is known, in the constitution of Italy and Spain is not recognized, whereas, in practice, there is a tendency to exist of this concept. While the political development trends and the actual existence of the situation in the Republic of Kosovo are sending an impetus of accepting the concept of regionalization - even in the constitution and Kosovo to take the shape of a unitary state with regions which have extended consensus the degree of self-governing autonomy and the more pronounced decentralization, this is especially noticed in the north of Kosovo.

Even in the context of the creation of the European Union-European Union, the will of the citizens of the member states has come to an end, and the union is moving towards a voluntary road, no imposition or “force” is being applied, the union of states, into a community of nations called the European Union. A community of states with expressed will and the existence of a vertical link between national states and the European Union, but this in no way turned into a complex shopping between sovereign states (Menon & Schain, 2006). For the form of state regulation the sovereign - people.

When compared to the organization of German federalism and the unitary form of the Spanish state applying extensional regionalism and anime from American federalism, a more specific model is applied. By contrast, German federalism, which is based on a union of federal and regional powers in public policy-making (joint decision-making), the Spanish autonomous state, is oriented to the American model of dual federalism, which emphasizes the division of central powers - state and regional levels. The sectoral division of competences, asymmetric bicameralism, and the few constitutional provisions for intergovernmental cooperation and vertical integration reflect an attempt to give both levels of government, a certain level of political and institutional autonomy, to ensure the cultural pluralism of Spain (Borzel, 2002).

#### **4. Organization of the Unitary State in the Republic of Kosovo**

The state, we know it as an organization, the largest organization in society and organization with the highest level of organization. The principle of the separation of powers is one of the fundamental principles for the democratization of state power. Regarding the organization of state power, in relation to the form of state regulation, whether a unitary state or a constituent state, the organization of state power differs.

If we analyze the factual situation and the development of Kosovo-Serbia political talks, with the mediation of the European Union and with the support of the US and according to the 19 April 2013 agreement, Kosovo will be a kind of unitary state, with a little organization more specific, when it comes to the institutionalized life of the Serbian minority.

By analyzing the points of agreement reached and the circumstances created it emerges that if the Association of Serbian Majority Municipalities is being implemented, which is expected to include all Serb majority municipalities in

Kosovo, then the state will have a larger scale of the self-government of municipalities, especially those with Serb majority.

The political agreement reached on April 19, 2013, in Brussels, includes a point on the judicial system of the Republic of Kosovo. Referring to point 10 of the agreement that speaks of the justice system<sup>1</sup>, the Appeals Court, with its headquarters in Pristina, will form a panel of Serbian judges to deal with all municipalities with a Serb majority (Brussels Agreement, 2013). While, it is another point of agreement that also has to do with the judicial system, concretely with the courts in the northern municipalities of Kosovo. The agreement in point 11 stipulates that, “An Appellate Court unit, consisting of administrative staff and judges, will be located in northern Mitrovica” (Mitrovicë/Mitrovica District Court). Each panel of the above division will be composed of a majority of Kosovo judges. The relevant judges will decide depending on the nature of the case they are involved in. “It is noted that there is a different form of organization of the judicial system than is provided by the Constitution and the law on courts in the Republic of Kosovo”.

In the organizational and functional aspect of the judicial system in the Republic of Kosovo there is also a constitutional basis for the unique functioning of the judicial system in Kosovo. The Constitution defines this function as “judicial power, is unique, independent, fair, apolitical and impartial and provides equal access to the courts” (Constitution of the Republic of Kosovo, 2008). According to the EU-mediated political solution, the judicial system of the Republic of Kosovo is practically not unique. Whereas, law no. 03/L-199 on the Courts regarding the Basic Court in Mitrovica states that “The Mitrovica Basic Court based in Mitrovica is established for the territory of the Municipality of Mitrovica South and Mitrovica North, Leposavic, Zubin Potok, Zvecan, Skenderaj and Vushtrri.” (Law No. 03/L-199 on Courts, Article 9, paragraph 2.7). Even this legal arrangement does not foresee a situation as to what is defined in point 11 of the Brussels Agreement of 19 April 2013. Whereas, the law on courts also defines the establishment of the Court of Appeal, stating that “the Court of Appeal is founded as a court of second instance, with territorial jurisdiction throughout the Republic of Kosovo” (Law No. 03/L-199 on Courts, Article 9, paragraph 2.7). No law in the law provides that the Court of Appeal may have any panel or branch in any other municipality of the Republic of Kosovo.

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<sup>1</sup> The “justice system” in the theoretical - scientific sense implies something other than what is meant in the 10th point of the 19 April 2013 agreement between Kosovo and Serbia, with the mediation of the EU. The word is about the judicial system of the Republic of Kosovo.



## 5. Conclusion

The unitary state in the Republic of Kosovo, with the trends of recent developments, but also the EU requirement, is taking the form of a unitary state of a model combined with elements of the unitary state - simple state and unitary state - state complex unitary. According to the factual situation already created after the declaration of Kosovo's independence on February 17, 2008, the unitary state has begun to take the form of a state with elements of a unitary state that so far does not recognize the practice of the form of state regulation and the model of the unitary states we know so far.

This model resembles the unitary Spanish and Italian model, but rather anonymous with the form of a complex unitary state, while the elements of creating a more functional functioning of some state institutions such as the courts and a form of local self-government, with a larger scale, especially for Serb-majority municipalities.

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\*\*\* Law no. 03 / L-199 on Courts.

\*\*\* Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007, Annex I, Constitutional Provisions, Article 8.

\*\*\* The 19 April 2013 agreement, reached in Brussels, between Kosovo and Serbia, with EU mediation.