

Legal and Constitutional Aspects of Kosovo until the Dissolution of the Former Yugoslavia

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Abstract: Being one of the constituent units of the former Socialist Federal Republic of Yugoslavia, the constitutional legal position of the Republic of Kosovo has evolved at various stages of the political and legal development of the Federation. This paper analyzes the legal and constitutional position of Kosovo in the former Yugoslavia, namely up to 1989. The analysis includes some legal source documents of the 1990s, which paved the way for the establishment of the state of Kosovo, such as The Constitutional Declaration of 2 July 1990, the adoption of the Constitution of the Republic of Kosovo on 7 September 1990 and the 1991 referendum on independence. These legal acts preceded the war for independence and establishment of the state of Kosovo on 17.02.2008. The subject of this study is the legal and constitutional position of Kosovo in the former Yugoslavia, as well as the legal acts adopted by the parallel organs of Kosovo in the 1990s. In the elaboration of the paper we have used the historical method which has helped us to analyze the main events that have taken place for the time that the paper has dealt with. The main method used to elaborate this paper is the legal method. This method has allowed us to interpret the legal and constitutional norms that regulate Kosovo's status in the former Yugoslavia.

Keywords: Socialist Federal Republic of Yugoslavia; Kosovo; Constitution; The Constitutional Declaration

1. Introduction

The former Socialist Federal Republic of Yugoslavia, which was created after World War II in 1945, ceased to exist in the early 1990's in the twentieth century. Perceived as a perfect creature, it never fulfilled its purpose. Made up of five

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republics and two autonomous provinces with a socialist system oriented to the Non-Incumbent Organization, experienced its ups and downs. Based on the artificial concept of Unity-Brotherhood built by communist leader Josip Broz, known as Tito, in the 1990s of the twentieth century became part of world agendas due to bloody wars. After the death of the mighty leader Tito, the nationalist tendencies and the struggle for domination by the greatest nations, especially the Serbian nation came to the fore. The biggest victim of these clashes and attempts to dominate was Bosnia and Herzegovina first and then Kosovo. Kosovo, which was largely populated by the Albanian people, was unjustly included in the Socialist federation of Yugoslavia, contrary to the expressed will of the people for union with Albania. This will was not taken into account and Kosovo was annexed by Serbia in 1945. The constitutional legal position of Kosovo in the former Yugoslavia can be divided into two major phases: the first phase from 1945 to 1974 and the adoption of the Constitution from 1974 to 22 March 1989. During the first phase, Kosovo had discriminatory status in relations with the republics but also in relation to the province of Vojvodina. This discriminating stance stems from the fact that Kosovo was annexed by force from Yugoslavia, respectively from Serbia. Kosovo's legal position improved significantly after the adoption of the 1974 Constitution, as it gained the status of the Autonomous Province with equal rights with other constituent units.

Coming to power in Serbia the nationalist Slobodan Milosevic created a new situation in Yugoslavia. His nationalist tendencies first appeared in Kosovo at a grand gathering where he explicitly voiced ambitions for the control of not only Kosovo, but all of Yugoslavia. Under his patronage in Yugoslavia during the 1990s, four wars took place, the result of which produced the dissolution of Socialist Yugoslavia. The genocide of the Muslim civilian population in the Srebrenica town of Bosnia and Herzegovina in 1995, the massacres and ethnic cleansing of Albanians during 1998-1999 were the worst acts in Europe after the Second World War. To stop Milosevic's criminal activities, the NATO pact was forced to attack, first the Serbian military targets in Bosnia in 1995 and to attack Yugoslavia in the air in 1999. The NATO pact's attack on Serbia constitutes a unique case where human values and human rights show priority over absolute sovereignty and territorial integrity of states.

The paper presents historical and legal facts about the constitutional status of Kosovo from 1945 until the dissolution of the Socialist Yugoslavia.

2. Constitutional Position of Kosovo in the Period 1945-1974

After World War II, Kosovo with the First Constitution of the Federal People's Republic of Yugoslavia, adopted on January 31, 1946, was defined as an autonomous territorial-administrative unit within Serbia called "Autonomous Region of Kosovo and Metohija (QMCA)". Kosovo did not even have the status of the province that Vojvodina had. This was the violent union of Kosovo with Serbia. Kosovo gained some kind of constitution in 1946, while the majority of Albanians gained official minority status. (Mjeku, <http://plisi.org/shtetligj/gjitha-kushtetutat-kosoves/>)

The constitutional-juridical position of Kosovo in the first period of constitutional development of the former Yugoslavia has been defined with three main acts. The Kosovo Statute of 1948 was the first general normative act of Kosovo, which has expressed a form of its independence in the organizational sphere, to the extent permitted by the then centralist system. More important issues have been elaborated in the statute, from the domain of the rights and duties of the province, its organization, the scope of the provincial bodies, the organization of the local government, etc.

As the highest organs of Kosovo, during this period were the People's Council, the provincial executive council and the provincial administration bodies. During this period, Kosovo did not enjoy independence in the judicial sphere. District Courts have been established in the territory of Kosovo as second instance courts, and no Supreme Court has been established as the highest court instance. In the first phase of the constitutional development of Kosovo (1946-1953), two lines of constitutional-legal discrimination were manifested. Firstly, in relation to the constitutional-juridical position of the federal units and, secondly, in relation to the constitutional-juridical position of the autonomous province of Vojvodina, which was guaranteed a more advanced status than Kosovo. Amendments to the constitutional act of Yugoslavia of 1953, regarding the constitutional-juridical position of the autonomous units, were mainly organizational rather than essential. The SFRY Constitution of 1963 further hummed the status of autonomous units, expressly defined as a "republic category", which in fact transformed them into a

“colony of Serbia”. This was the lowest constitutional-juridical level of the autonomous provinces, although in this period the status of Kosovo and that of Vojvodina was equalized. (Stavileci, 2012)

By the Constitution of April 7, 1963, the Federal People's Republic of Yugoslavia is transformed into the Socialist Federal Republic of Yugoslavia, while Kosovo is proclaimed the Autonomous Province. In the same year is approved the Statute of the Autonomous Province of Kosovo and Metohija. This statute did not bring any special novelty regarding the constitutional legal position of Kosovo. The rights and duties of Kosovo, unlike the Constitution of the RPFJ of the year of 1946, are now defined by the 1963 Serbian Constitution of Serbia.

The determining of Kosovo's rights and duties with the RS Constitution of Serbia (rather than the federal one) was the result of the process of transforming autonomous units into “republican categories”. By this they lost the attribute as a constitutive element of federalism, which was guaranteed by the 1946 Constitution of the RPF. The rights and duties of Kosovo were now not treated as source authorizations, which guaranteed the federal constitution, but as a whole of authorizations, which Serbia has transferred to it. (Bajrami, 2012, p. 40)

Along with the democratization of social relations in the former Yugoslavia, due to the processes of the most profound political processes opened in 1966, first in the political leadership of the former Yugoslavia, and then wider in the sphere of international relations, created the conditions for more adequate treatment of autonomous units in the political system of the former Yugoslavia. In the context of these new political processes, serious political disturbances of the Serbian hegemonic character were observed, to the detriment of the Albanian people in the former Yugoslavia. Also in this year, Kosovo's political public scene appeared and articulated the demand for the status of Republic of Kosovo, a request that, through the positions of the Communist Party, under the dominant Serbian influence, was rejected as punishable. The refusal of this reasonable request of the Albanian people of Kosovo was one of the main causes that prompted the organization of student demonstrations in 1968, where it was sought to advance the constitutional position of Kosovo and grant republic status to Kosovo.

The constitutional amendments of 1967 announced the strengthening of the constitutional - juridical position of the republics and autonomous provinces, particularly in the relations in the Federation. With the subsequent changes (1971)

there was no longer any field of law in which they could not derive their own laws. These were, as expressed by Gazmend Zajmi, “the insights of the constitutional individuality of Kosovo and of the Albanian people within the multi-ethnicity of the Federation”. Those changes, in fact, warned the 1974 Constitution that undoubtedly marked the highest degree of independence of Kosovo, despite its hybrid position, because Kosovo was, in addition to being “within Yugoslavia”, and “within the framework of a federal unit, “but not” an integral part of it”. Kosovo, according to any constitutional document of 1974, was not “an integral part of Serbia under the sovereignty of this federal unit”. That was the reason why Serbia expressed opposition to the constitutional solutions of 1974, because it claimed to “clamp” within its two autonomous provinces. With amendments to its constitution in 1989, the constitutional-judicial position of autonomous provinces, including Kosovo’s autonomy, was undermined. In a non-constitutional way, Kosovo was taken over by competencies and given to Serbia’s state organs. With this blow “the supremacy of the Republic of Serbia in the Federation increased in the face of other federal units”. Serbian ambitions to “dominate Yugoslavia” were the starting point of the constitutional crisis in the then Yugoslavia. (Stavileci, 2012)

The constitutional acts of 1968 changed in essence the character of independence of Kosovo, as opposed to its position, sanctioned by the 1953 Constitutional Law of the SFRY and the constitution of the SFR in 1963. The main change was in restoring the “constitutive” attribute, according to which Kosovo (as well as Vojvodina) is again designated as constitutive part of the federal structure of the former Yugoslavia.

3. The Position of Kosovo under the 1974 Constitution

Extradition of the former SFRY Constitution in 1974 continued the process of advancing the position of the Kosovo constitution in the framework of Yugoslav federalism. Kosovo with the provisions of this Constitution was defined as autonomous territorial political unit and as constitutive element of federalism.

The constitutional legal position of Kosovo, according to the Constitution of the former SFRY of 1974, in many spheres was similar (but not entirely equal) to the position of the socialist republics. Although the provisions of this Constitution do not expressly define this, it can be said that Kosovo under this constitution was an

independent federal unit and constitutive element, which is important to emphasize that precisely this position sanctioned by this constitution, Kosovo (as well as other federal units) gives the right to its own new constitutional status-status after the breakup of the SFRY.

The Constitution of the SFRY of 1974, as well as the SAPK Constitution of 1974, define Kosovo as follows:

1. Independent territorial political units; and
2. Constitutive element of Yugoslav federalism.

Kosovo has had a vast and almost identical identity with what the Socialist republics of the former Yugoslavia enjoyed. Like other federal units, Kosovo has its own constitution, which has independently defined the bases of the political, economic and social system, its internal organization, as well as its relations with the Federation of the Socialist Republic of Serbia.

Kosovo in the constitutional sphere has been a partner equal to other federal units in the procedure of issuing and amending the federal constitution, including the right to vote. This means that without the consent of the Kosovo Assembly no changes could be made to the constitution of the SFRY. In the legislative sphere, Kosovo has been a sovereign and source of legislative regulation of all social relations that have been of interest to employees and citizens, namely to the nations and nationalities living in Kosovo. The Constitution defined a similar state structure of Kosovo with that of other federal units of the former Yugoslavia. As the main body of Kosovo under the 1974 constitution, was the Assembly of Kosovo, the Executive Council of the Kosovo Assembly, the Presidency of Kosovo, the Supreme Court of Kosovo, the Public Prosecutor's Office, the Constitutional Court of Kosovo, and the People's Bank of Kosovo etc.

According to this constitution, Kosovo has had its own territorial boundaries, having the quality of state borders. As such, this territory is inseparable and cannot be the subject of ever-divided divisions and territorial fragmentation. For the change of the borders of Kosovo it was possible to establish only the legitimate people and bodies of Kosovo: The territory of Kosovo in the geographical aspect represents a compact territorial entity in which over 90% of the population is comprised of Albanians as a compact and ethnic people.

Kosovo's justice in the judicial sphere has been complete. The judiciary in all instances, from the municipal court to the Supreme Court, was in Kosovo's jurisdiction. The supreme court of Kosovo has presented the last judicial instance where different civil, criminal, economic, administrative, etc. cases have been solved. Apart from the courts, Kosovo has also had other jurisprudence bodies: Public Prosecutor's Office, Public Advocacy, Social Ombudsman, etc.

The appropriateness in the area of the protection of constitutionality and legality has been expressed in the existence of the constitutional court as an independent body for the protection of constitutionality and legality. The constitutional court in Kosovo first appeared in 1969, while the 1974 constitution of the constitutional court of Kosovo was similar to the position of the Constitutional Courts of the Socialist Republics of the former Yugoslavia. The Constitutional Court of Kosovo has set itself an instance as the last court, so its decisions were merit and final. (Bajrami, 2012, p. 45)

That Kosovo was not part of Serbia, prof. Esat Stavileci emphasizes these historical and legal data:

- Kosovo was not part of the sovereign and independent state of Serbia with the international legal entities admitted to the Berlin Congress 1878;
- Kosovo was not part of the second convention of AVNOJ (1943);
- Kosovo was not in the composition of Serbia during its constitution as a federal unit in the antifascist council of popular liberation (1944);
- Kosovo was not part of Serbia in the structure of the constitutional assembly of Yugoslavia on the occasion of the proclamation of the Federal People's Republic of Yugoslavia;
- Kosovo was not involved in sovereign and independent Serbia, but within the "federal Serbia under the federal Yugoslavia".