



The Implications of the European Integration Process of Kosovo's Constitutional Order

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Abstract: In this article I have analyzed and studied on what are the implications of the European integration process of Kosovo's constitutional order and how much of institutional order Kosovo has, also how much of the effects of the European integration process has used. I've made a brief analysis of the establishment of the constitutional order of Kosovo in the former federal state of Yugoslavia and establishment of Kosovo under international administration. However an analyze and more detailed study I've made on the first report of contracting between Kosovo and EU, Stabilization and Association Agreement which will be implemented in Kosovo through the National Program for the Implementation of the Stabilization and Association Agreement that was approved by the Government on 16 December 2015 and by the Assembly on 10 March 2016. The other aspect of the study and analysis in this article is the study of acts to protect the territorial integrity of Kosovo, which are: 12244/99 resolution of the UN Security Council, Constitutional Framework for Provisional Self-Government in Kosovo, 16 May 2001, Declaration of Independence, 17 February 2008 and the Constitution of the Republic of Kosovo, 09 April 2008.

Keywords: European Integration Process; Stabilization and Association; Constitutional Order; Progress Report

1. Introduction

Firstly, Kosovo has had the status of the Autonomous Province including the period "since the promulgation of the Constitution of 1963 up to the extraction of the constitutional amendments in 1968, a concrete constitutional foundation – law of autonomous provinces was the Constitution of the Socialist Republic of Serbia" (Djordjevic, 1972). Whereas with further developments under the former federal state of Yugoslavia, the Autonomous Province of Kosovo has had an upgrade in its status,

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a status which was earned by the Constitution of 1974,¹ a Constitution that defined Yugoslavia as “a federal state with units that make up six republics and two autonomous provinces” (Saliu, 2004). Advancement of Kosovo has been an autonomous extension of competencies, which until then were regulated by its status, however from 1974 these were regulated with its Constitution.

Constitutional advancement of the Socialist Autonomous Province of Kosovo since 1974 meant that “Provinces are a developed form of politico-territorial autonomy and “sui generis” territorial units in the meaning of a constitutive part and generally of a structured and the functioning of the federation, in which both qualities affect each other”. (Zajmi, 2004)

Constitutional Amendments of 1988-89 make Kosovo to lose the status of an Autonomous Province and with the unconstitutional actions of Serbia, and such purpose was achievable. All these unconstitutional developments are made with Serbian requests on the basis that Yugoslavia is losing its federal status, and from this it results that “The constitutional amendments of 1988, beside other things it contained solutions to the benefits of such claims, despite of the rejections of the representatives of Slovenia, Croatia and Kosovo”. (Saliu, 2004) This process resulted with the suppression of Kosovo’s autonomy in 1989.

Such constitutional changes on unconstitutional procedures have been supported by an opinion of the Constitutional Court of Yugoslavia that Yugoslavia could exist as a federation even if only two members are remained, but such claim had no legal basis, because “under Article 2 of the Constitution, Yugoslavia is composed of eight constituent parts with individual constitutional nomination of each of them and not of two parts”. (Zajmi, 2004) To be made a move as such, firstly Article 2 of Constitution must be changed, that article, which was never changed.

Another period of establishing Kosovo’s constitutional order is the one after 1999 with the liberation of Kosovo from Serbia, where Kosovo has a new status under the international UN administration (1244 UN Resolution, 1999). After the start of the international administration and the establishment of provisional institutions of self-government in Kosovo until the final determination of Kosovo’s status, as a basic for the creation of the constitutional and legal order is the extraction of the Constitutional Framework for Provisional Self-Governing in Kosovo (UNMIK,

¹ Socialist Federal Republic of Yugoslavia under the Constitution of 1974 consisted of six republics: Croatia, Slovenia, Serbia, Macedonia, Montenegro, Bosnia and Herzegovina and two autonomous provinces, Kosovo and Vojvodina.

2001). This act has been the foundation of the creation of central institutions of the government and the issuing of laws by the Kosovo's Assembly, acts that made the constitutional and legal order up to the final determination of Kosovo status.

Kosovo, since its liberation and establishment administration under UN has had a relation with the EU, a relation that may be divided in two periods, first period started from the liberation in 1999 to 2008 when it declared the independence and the second period started from the Independence Day until today. In comparison with the other countries in the region, specifically with the Western Balkans, Kosovo and EU have special relations and the integration process is taking place and will take place in a very special manner, having in mind that the international subjectivity of Kosovo is still not recognized from five member states of EU. (Zahiti, 2013) In this aspect, knowing the recommendations of progress report of the European Commission that are published annually for Kosovo shows that there is continuous demand in the fulfillment of political criteria, economic, human rights and other sectors that Kosovo must improve, in order to continue the European Integration process until its full finalization (Progress report on Kosovo, 2009-2016).

2. The Impact of the European Integration Process on Kosovo's Constitutional Order

First actions taken towards the establishment of constitutional order in compliance with Acquis of the EU are from the first period of legislating by the Assembly of Kosovo (2002), where the Rules of Procedure of the Government and Parliament as provisional institutions of Self-Government (2001-2008) predicted that "laws have to be harmonized with the EU Acquis" (Rules of work for the Assembly and Government, 2001). From this period starts the establishment of constitutional order in Kosovo in the context of the European Integration process, but that does not provide any formal obligation for Kosovo because Kosovo never had any agreement with the EU to have an obligation to harmonize the legislation with the EU Acquis, but this has been done voluntarily and unilaterally to express and give willingness for European Integration process.

The creation of constitutional and legal order in Kosovo after the independence has continued similarly by being created in accordance with the requirements of the European Integration process harmonizing with all laws of EU Acquis and in this matter Kosovo has carried out a preliminary obligation because it is determined for the European Integration process. Regarding the basic for the harmonization of

legislation, this has been defined in the working regulation of the Government of Kosovo when draft laws are initiated determining expressively that “makes the initial compatibility with the *Acquis-Communautaire*” (Working regulation of the Government, 2011), while the working regulation of the Assembly of Kosovo on the harmonization of the legislation explicitly shows that the draft presented to the Assembly shall contain “the statement of bringing together and harmonizing with the EU legislation and with the comparative table of acts that it refers to” (Rules of work of Kosovo’s Assembly, 2010). This is the initial basis before Kosovo has contractual relation regarding the harmonization of legislation with the EU law.

The concrete action that marks the first formal contractual relation between Kosovo and EU is to achieve the Stabilization and Association Agreement. The signing of the SAA between Kosovo and EU took place on 27 October 2015 and its approval is made by the Government of Kosovo on 30 October 2015, its ratification by the Assembly of Kosovo was made on 02 November 2015 with the approval of the law nr. 05/L-069 on the ratification of the SAA between Kosovo on one hand and the European Union and the European Atomic Energy Community on the other hand (SAA, 2016).

Kosovo’s institutions have taken action immediately for the matter on starting the implementations of SAA after its ratification by the Assembly, immediately has also been approved by the National Program for the implementation of SAA, which document was approved by the Government on 16 December 2015 and by the Assembly on 10 March 2016. (Government’s decision, 2015; Assembly’s decision, 2016) Government and the Assembly of Kosovo through this program will take all necessary actions to implement the SAA and now also formally will meet its obligations in the European Integration process.

Knowing the importance of the SAA, through which there will be established an Association between Kosovo and the EU, which will offer to Kosovo:

- Support for strengthening democracy and the rule of law;
- Support for political, economic and institutional stabilization, of the region as well;
- Appropriate framework for political dialogue that will enable the development of close political relations between the parties;

- Support for the development of economic and international cooperation, if the objective circumstances allow, as well through the approximation of legislation of the Republic of Kosovo with the EU;
- Support for completing the transition to a functioning market economy;
- Support in promoting genuine economic relations and gradual development of the common market between our country and the EU;
- Support in strengthening regional cooperation in all areas covered by the SAA.¹

Out of all these options results that there will be direct implications on the constitutional and legal system of Kosovo, particularly in some areas that SAA foresees concerning the approximation of Kosovo's legislation with EU legislation that results that "Kosovo takes over to align the existing legislation and future legislation gradually with the EU legislation; Approximation starts from getting into effect the agreement and gradually extends to all elements of EU legislation within a period of ten years; In the first phase the importance is given to the approximation of EU basic legislation for the internal market areas, trade aspects and areas of freedom, security and justice".²

Regarding possible changes on constitutional provisions related to the European Integration process, in principle Kosovo does not need to make constitutional changes because given to the current practices of countries that have gone through the process of the European Integration, mainly the constitutional amendments were on the issue of state sovereignty transfer in International and EU institutions. Kosovo has determined this by its constitution, but not specifically for the transfer of sovereignty to the EU, where its is expressively outlined that "The Republic of Kosovo, on the basis of ratified international agreements, for certain issues can pass state powers to international organizations". (Constitution of Kosovo, 2008)

In the integration of the Republic of Kosovo may be followed the same practice by completing the Constitution of the Republic of Kosovo with the provisions related to the European Integration process or with a separate chapter in the Constitution for regulating basic relations between Kosovo and EU.³ This solution may be done in

¹ See <http://www.mei-ks.net/repository/docs/>.

² See <http://www.mei-ks.net/repository/docs/>.

³ The best example of such practice of constitutional provisions is the Constitution of Slovak Republic that has to do with the European Integration process and specifically in relation with EU institutions

the period of time within ten years until SAA is being implemented and then it will be enabled the existence of a constitutional basic in accordance with the provisions for Kosovo's sovereignty and the transfer of sovereignty to international institutions and organizations that currently are regulated by the Constitution (Kosovo's Constitution, 2008). A solution as such enables a direct existence in the constitutional order of the Republic of Kosovo in relation to EU law.

3. The Progress Report of the European Commission for Kosovo

The building of relations between Kosovo and EU goes through some stages, which marks a more unique relation, compared to other states of the southeast Europe, relations that are influenced by many factors, but especially from the political factor which wasn't determined and Kosovo's international subjectivity. (Zahiti, 2013) In terms of fulfilling the Copenhagen criteria when dealing with the political criteria, there is still much to be done practically what is a standardized within the constitutional and legal order because there are many deficiencies. Also in terms of fulfilling the economic criteria, it has a practical nature, because Kosovo cannot confront competition in the market as a result of lack of capacity, while also fulfilling the legal requirements remains an ongoing challenge because there are many shortcomings in the relevant laws and particularly in implementation of laws (Zahiti, 2013).

From the developing relations of Kosovo and EU and Kosovo's progress towards fulfilling the Copenhagen criteria, especially the political and economic criteria, European Commission annually publishes progress reports on Kosovo in areas including three criteria's: political, economic and legal. From this monitoring that EU makes for the development of relations with Kosovo and the progress that Kosovo makes annually, there are improvements over the years. Referring to the progress report for 2015 and comparing it with the progress report of 2009 it appears that there is progress in the development of democracy and economic development (The progress report, 2009; 2015).

Under the progress report for 2015 for the development of democracy where the estimated improvement shows that "Kosovo has continued consolidating the functioning of its democratic institutions. After the elections of June 2014, is formed

which is one of constitution with most provisions of the integration process and in a very inclusive and detailed manner.

a new parliament and a new government took office in December. The assembly approved successfully the constitutional amendments and laws necessary for the establishment of Specialized Chambers and the Special Prosecutor's Office to investigate international crimes that were committed during the conflict in 1999 and thereafter" (The progress report, 2015). While comparing it with the progress report for Kosovo on 2009, it is the same issue of the political criteria that was mainly referred to the assessment of Constitution where it said that "The constitution of Kosovo is in accordance with EU standards which require stability of institutions guaranteeing democracy, rule of law, human rights and respect and protection of minorities" (The progress report, 2009).

In the framework of the political criteria of a special importance is the reform of public administration. Comparing the period from 2009 to 2015 there have been positive results, but much remains to be done. In the progress report for 2009 regarding the public administration used to be said that "the review of tasks and responsibilities within the public administration (a functional review) has been completed and most of the recommendations have been implemented. Special reviews have been made for the Ministry of Public Services, Ministry of Local Government, Ministry of Internal Affairs and the Kosovo Land Registry. Six working groups have been established to monitor the administration's reform process. They report to the inter-ministerial committee led by Deputy Prime Minister". (The progress report 2009) Whereas on the same matter, in the progress report of 2015 of the public administration it stated that "Kosovo has reached a level of preparation in public administration reform. A good progress was made in developing a comprehensive strategic framework for public administration reform (RAP) and for improving the legislation. For the first time, the public administration reform received the support and commitment of the highest political level. Knowing Kosovo's ambitious agenda for reform, strong political commitment is essential and continuous on ensuring the implementation of reforms" (The progress report, 2015).

4. The Transfer of Sovereignty According to Kosovo's Constitution

The Republic of Kosovo aims for membership in international organizations, especially in the EU, these aims are also stated in the Declaration of Independence where it is stated that "for cultural reasons, geography and history, we believe our future is in the European family. Therefore, we declare our intention to take all steps necessary to facilitate full membership in the EU as soon as possible and to

implement the needed reforms for European and Euro-Atlantic integration". (Declaration of Independence, 2008)

Kosovo's constitution for the issue of the transfer of sovereignty to international organization has arranged to explicitly define that "The Republic of Kosovo, on the basis of ratified international agreements; for certain issue can pass state powers to international organizations" (Kosovo's Constitution, 2008). Such determination is generalized and abstract, but despite that the term "certain issues" can be understood in the future membership in the EU, NATO and other organizations where Kosovo should transfer state powers precisely on certain issue could apply the same provision without causing constitutional amendments. Whereas on how it will be transferred certain state competences to international organizations determines that "if a membership agreement ratified by the Republic of Kosovo to participate in an international organization explicitly contemplates the direct applicability of the norms of this organization, law that ratifies agreement must be adopted by a vote of two-thirds (2/3) of all deputies of the Assembly, and those norms have superiority over the laws of the Republic of Kosovo" (Kosovo's Constitution, 2008).

Compared on how Republic of Albania has arranged its membership, the Constitution in general provisions refers only as mandatory to the right of the international law determining that "The Republic of Albania applies international law that binding upon it". (Albania's Constitution, 1998) However on transferring state powers to international organizations, the Constitution regulates this matter in the head where it refers to international agreements by explicitly defining that "The Republic of Albania, on the basis of international agreements, delegates to international organizations state powers for specific issues" (Albania's Constitution, 1998). The context of the text of this provision is the same as the context of the text of the provision of Kosovo's Constitution referring to the same issue, the transfer of State powers to international organizations, the only distinguish is the terminology, in Kosovo's Constitution is "exceeding authority", while Albania's constitution is "delegated powers" on certain issues. Another common thing is "certain issues" which can be interpreted in terms of transfer of powers to EU and NATO.

Even the Serbian Constitution refers to the international laws right in general and particularly treaties when dealing with international organizations, when determining "the Foreign policy of the Republic of Serbia shall be based on the principles and rules of international law that are generally recognized" (Serbia's Constitution, 2006). While indirectly referring to membership in international organizations, defining only the rules of international law and the ratification of

treaties, are part of the legal system of Serbia and are applied directly, which also expressly determines that “the general rules that are approved in international law and ratified international treaties should be an integral part of the legal system in the Republic of Serbia and applied directly” (Serbia’s Constitution, 2006). Comparing with the constitutional definition of Kosovo and Albania there is a difference in the manner of adjustment in terms of membership in international organizations, where the term “transfer of state power”, namely the transfer of sovereignty to international organizations doesn’t apply.

Central European states, in their constitutions there is a totally different way applied in terms of membership in international organizations. The model of Republic of Slovakia is one of the more concrete models in terms of membership in international organizations, name the EU. The Constitution of Slovak Republic (2001) about the accession of the Slovak Republic in the EU has regulated this issue by explicitly defining that, “the Slovak Republic, through an international treaty which has been ratified and promulgated in the manner prescribed by law, or under such treaty, to transfer some part for the exercise of its powers to the European Communities and the EU. Legally binding acts of the European Community and the EU will take precedence over the laws of the Slovak Republic. The transposition of legally binding acts that require implementation shall be accomplished through a law or a regulation of the Government under Article 120, paragraph 2”. (Constitution of Slovakia, 2001)

Such a constitutional arrangement in a detailed manner regarding the EU membership doesn’t occur in the constitutional arrangements of other European countries associated with the European integration process.

Even the Czech Republic practice in terms of the transfer of sovereignty of the Czech state or membership to international organizations is a separate model but in comparison with the Republic of Slovakia shows that there are some similarities in terms of preparation and changes to EU membership, but the main difference is that the Constitution of Czech Republic is addressed in detail in “international organizations”, while the other difference is that the constitutional amendments required a more complex procedure, which requires approval by both chambers of parliament (Albi, 2005).

Regarding the model of the constitutional order that is according to the constitution of the Czech Republic in terms of membership, respectively the Czech state participation in international organizations which is different comparing to the

Slovakian model, is done through the Amendment of Article 10 of the constitution to explicitly define that, "Certain powers of Czech Republic authorities may be transferred through a treaty for an international organization or institution" (Constitution of Czech Republic, 2002). By this it is understood that there is a general referral to international organizations which is like the constitutional order model of Kosovo, Albania and Serbia. The membership for contract requires the consent of the Czech Parliament and approval by referendum, stating that "The ratification of the treaty under paragraph 1 requires the consent of Parliament, but even if the constitutional act provides that ratification, it requires the approval obtained in a referendum" (Constitution of Czech, 2002). That is why in the context of these constitutional changes has made that the euro-skepticism has been greatly increased in the Czech Republic which has reflected in parliamentary political forces and opposition at the time of accession of the Czech Republic into EU, which has made it to reflect also on the regulation membership on joining constitutional state transfer of powers on international organizations, namely the EU.

5. Conclusion

In 1999 when decided to put Kosovo under international administration, begins the establishment of constitutional order and the inclusion of some principles of the European integration process. Initially, by harmonizing the legislation with the EU Acquis which has begun to be adopted since 2001. As I have analyzed in this article, a closer relations between Kosovo and EU date back to the period of the liberation of Kosovo in 1999. These relations have become more dynamic and closer, especially after the declaration of independence in 2008.

European integration process and the effects of this process are directly involved in establishing the basis of the constitutional order. Firstly in the basic principles of Kosovo's Constitution in 2008 and then the effects of the European integration process are also reflected by progress reports of the European Commission annually and the recommendations of these reports have given positive results, by completing the constitutional order by new legislation and additional rules, by completing several criteria that have led to the contractual agreement between Kosovo and the EU - the Stabilization and Association Agreement.

Signing of the SAA between Kosovo and the EU represents the first contractual relationship and the beginning of the implications of the European integration process in the Kosovo's constitutional order. This has been visible, since we are

already a year after reaching the agreement and the start of its implementation. By the very fact that the Assembly and the Government of Kosovo has built the implementation mechanisms of this agreement, we also have the first effects of it, where we will have the new legislative program, which will also fulfill the constitutional order of Kosovo, but will be also connected directly with the European integration process. The contractual relation between Kosovo and EU had made it more specific also the position of EU without specifying in relation to the status of Kosovo, as still five EU member states have not recognized the independence of Kosovo. But this has not at all prevented the EU to offer Kosovo's the contractual relationship in a new form of Stabilization and Association Agreement.

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