
PROF. LUAN OMARI (Tirana)

THE PROCLAMATION OF THE REPUBLIC OF KOSOVA AND ITS CONSTITUTION

The proclamation of the Republic of Kosova on July 2, 1990 was followed by the adoption of its Constitution by Kosova's Assembly.

The adoption of the Constitution was an event of manifold importance. First of all, it was a clear testimony to the fact that the proclamation of the Republic was not simply a declarative and separate act, like lightning in a blue sky, but an act of major political and juridical consequences, expressed on one side in the intensification of peaceful efforts on the internal and international plane to affirm Kosova's independence, and on the other in preparing the necessary legal framework to give shape to these endeavours.

The fact that despite the difficult conditions created by the Serbian savage occupation the innumerable daily disturbances coming along, the Assembly of Kosova and the leaders of the Albanian national movement in this territory devoted special attention to the elaboration of the legal framework, particularly to the drafting of the Constitution, which provides the basis and sine qua non condition to set up not only an independent state in general, but a democratic state ruled by law sustained by the people's will that does credit to them.

Besides, we must add that apart from the extraordinary circumstances in which this constitution was drafted and adopted, its text fully responds to the standard of contemporary constitutions as to the content and form. This indicates the marked development of the Albanian political and juridical thinking in Kosova as an expression of the general intellectual values of the Albanian people of this territory.

The Constitution of the Republic of Kosova has an introduction and nine chapters.

It is worth mentioning the fact that the short introduction underscores that the issuing of the Constitution has its roots in the century-long progressive, freedom loving and democratic tradition, in the liberation struggles and the antifascist war. Alongside this, it makes evident also the goals for the future, amongst others the creation of a democratic state ruled by law on juridical and social bases, which ensure and realize the national rights, human civil rights and liberties social justice, solidarity, welfare, individual and social progress and full human dignity.

As the introduction itself underscores the proclamation of Independence of July 2, 1990, an expression of the right for self-determination down to secession stands in the foundations of this important juridical act.

The general provisions of the first chapter determine first of all that the Republic of Kosova is a democratic state of the Albanian nation and of the members of other nations and national minorities; of the Serbs, Moslems, Montenegrins, Croats, Turks, Romanians and others living in Kosova.

The economic and social order (the provisions of which make up the second chapter) respond to the new historic conditions, created after the failure of the socialist

experiment, which in Kosova, like elsewhere in former Yugoslavia, assumed the form of self-managing socialism. At present, following the changes that have occurred, the Constitution ensures the free market economy, freedom of enterprise and union, independence of economic subjects in the market, as well as the free private initiative, providing each one the opportunity to ensure through his work, the necessary means of existence.

Declaring equality of all forms of ownership at the same time foresees that economic activity cannot be conducted in opposition to public interest or to the detriment of security, freedom, equality and the human dignity of others. Alongside this, the state is dutybound to urge and realize economic, social and cultural growth. Natural assets and goods in common use are public and state property. But this is not absolute, because the law might determine the conditions of usufruct in natural assets and public property. Besides, citizens are guaranteed the right to ownership over agricultural land.

Human and civil rights, liberties and duties, treated in detail in the third chapter, fully respond to international standards foreseen in respective juridical acts, naturally with changes in formulations that do not affect the essence of these liberties and rights. Worth mentioning is the fact that besides foreseeing the compulsion of elementary education, which lasts 8 years at least, Kosova's Constitution has correctly solved the problem of providing education free of charge. It is expressed in the formulation of the third paragraph of the article 67 which says that, "in the schools financed by public revenues, schooling is free of charge". Of interest is the fact that this Constitution guarantees the right of shelter to foreign citizens and persons without citizenship who are pursued due to their commitment to democratic viewpoints and movements, social and national liberation, human liberties and rights or the liberty of scientific and artistic creativity.

The question of liberties and rights of other nations and national minorities has found the necessary solution in the Constitution. This is of special importance taking into consideration the existence of minorities in Kosova's territory as well as the fact that the Albanian nation with its bitter experience, is interested in living in harmony with the others, guaranteeing them those rights and liberties, which it itself has been deprived of.

Article 75 first guarantee the liberty of expressing national origin, alongside with the liberty of expressing the national culture and the use of the language and its writing; secondly, citizens are not obliged to voice their national origin; thirdly, any propaganda or implementation of national inequality, as well as the sowing of national, racial or religious hatred and intolerance, negation of history and culture and of other national values is declared anti-constitutional and condemned.

Besides, the question of minorities is treated in another article, article 68. It foresees that from the elementary schools to the faculties, conditions are secured to take lessons in the mother tongue, respectfully in the Albanian, Serbo-Croatian and Turkish languages, in compliance with the law. Even for the Romanians in the regions where they live and depending on the conditions, elementary schooling is guaranteed in the Romanian language.

national minorities the right to use their symbols, according to conditions and manners arranged by law

The 5th chapter of the Constitution speaks of the territorial organization elaborating the duties of the basic units of this organisation, which are the communes and towns, whereas the 8th chapter is devoted to the organization and duty of the central organs of the Republic, concretely the Republic's Assembly, the president of the Republic, the government, courts and public prosecutors, the People's Bank and the Constitutional Court.

The Republic of Kosova was conceived as a parliamentary Republic. Although this has not been expressly said, it follows from the entity of provisions included in the 8th chapter. The Assembly of the Republic (the parliament) composed of a chamber of 130 deputies has vast duties, including the election and dismissal of the head of the government and ministers, the chairman and members of the Constitutional Court, the Supreme Court and other courts, and the republican public attorney and other attorneys. It controls the activity of the government and other organs.

The Assembly is defined as the organ of the legislative power. The government, every deputy and at least 20 000 citizens have the right or election, enjoy the right to propose laws. Another peculiarity of the Constitution of the Republic of Kosova is that it foresees the issuance of laws by decree only, by the chairman of the Assembly or in his absence by the vice-chairman.

Another feature, as compared to the constitutions of other countries of liberal, parliamentary and presidential democracy, is the fact this constitution determines the responsibility of the deputy to the electors of the respective election constituency and the possibility of the electors to revoke the deputy. In this way the existence of the so-called imperative mandate is sanctioned, recognised only in the former socialist states and not accepted by the western democracies. The constitutions of the latter foresee the representation mandate, on the basis of which the deputy is considered not a representative of his electoral constituency, but of the whole electoral body, therefore of the whole nation, and he cannot be revoked, except in cases when he commits a grave penalty, foreseen by the Constitution.

The initial text of the Constitution of the Republic of Kosova foresaw the existence of the Presidency of the Republic as collective chairman of the state, composed of the president and six members elected by the people. With a later amendment on May 2, 1992 the presidency was lifted, foreseeing only the existence of the president of the Republic as an individual organ. The manner of electing the president and his duties are those defined for the presidency. In this way, they gave up a way of organization mainly recognized in the majority of the former socialist states and accepted the one which is in force in all the countries of classical liberal democracy and which has justified itself, in spite of the fact that theoretically the existence of a collective head of state might have positive aspects.

As said above, the president of the Republic does not have legislative initiative, but he might approve decrees of legal power in case of war, in case of direct peril of war, if it is not possible to convene the Assembly. Through these decrees the president might abrogate some of the provisions of the constitution that have to do with the rights of citizens and the organization of some state organs, but he should submit them to the Assembly for approval as soon as it convenes.

The president has vast responsibilities mainly in the defence and foreign policy fields. Besides, he proposes to the Assembly the candidate for the head of government, the candidates for chairman and judges of the Constitutional Court, and he does some typical duties for the heads of states, such as pardon, awarding of decorations etc, etc.

As put above, the Republic of Kosova, in essence, is a parliamentary republic, judging from the responsibilities that respectively the parliament and the president of the Republic enjoy. The direct election of the president by the electoral body does not renege this character. There have been cases when at the head of parliamentary republic there were people elected by the people. Such was the German Republic, actually the Austrian Republic, after the World War I.

As the organ or executive power, the government proposes and puts into effect the policy of the Republic. The definition of this policy is effectuated by the Assembly, something, which according to our opinion, is only a trace of the concept of the Assembly's omnipotence. Such a thing is not encountered in the majority of liberal constitutions, which have entrusted the government with the right to determine governmental policy. Undoubtedly the parliament exerts control on the activity of the government. According to Kosova's Constitution, the government enacts decree-laws, alongside decisions and other provisions to apply the laws.

The articles devoted to the courts and attorney's office comprising many general principles and numerous detailed problems regarding the organization and functioning of these organs, are adjusted by common laws.

The competence of the Constitutional Court of Kosova have been elaborated on in detail. In various countries the control of constitutionalism may be done in two ways: through an extended control entrusted to all judges, beginning first of all, with the supreme court or through the creation of a special organ, the Constitutional Court. But as a rule the control of acts is left to the ordinary courts. Different from this practice, the Constitutional Court of Kosova decide on the concordance with the constitution not only of the laws, but also of other provisions and acts, even of the statutes on the communes and the cities. Besides this, it decides also on the compatibility of the other provisions and acts of local character with the law and other republican provisions. The Constitutional Court has the competence to decide whether the statutes of political parties and various associations are or are not in compliance with the Constitution and law. It decides also on banning their activity. In case there are conflicts of responsibility between the tribunals and other state organs, they are resolved by the Constitutional Court. Finally, it decides also on the responsibility of the President of the Republic of Kosova and resolves contestable questions on the elections, provided they do not fall under the responsibility of the courts and other state organs.

It is not possible to explain in detail all the aspects of a constitution in the framework of a paper, this is why we were limited to only making evident some of the main issues. But I think even though, it was sufficient to underscore the importance of this document of immense national values and of a profoundly democratic content.