

Avdullah Robaj - Veton Robaj

Historical Development of the Judiciary in Kosovo¹

SOMMARIO: 1. Introduction - 2. Courts and trial during the Ottoman Empire - 3. Customary Law - 4. Judiciary after World War I - 5. Development of the judiciary after World War II - 6. The principle of separation of powers in judicial law - 7. Conclusion - 8. Bibliography.

ABSTRACT: In this research, the authors are guided by the scientific goal to present in the most objective and comprehensive way the historical development of the judiciary in Kosovo, from the period of the Ottoman Empire until today. The topic research is based on the legal-historical approach of determining the origin, creation and development of the judiciary in Kosovo, during a long historical period, namely from the Ottoman Empire to the present day. In order to compile the research paper, various scientific and professional sources, including university texts, scientific papers and articles, analyses, constitutional and legislative acts related to the judiciary and trial have been used. The research was conducted with various scientific methods, which are typical for scientific research of social sciences.

KEYWORDS: Judiciary, Court, Sharia Law, Customary Law, Judicial Power.

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1. *Introduction*

The idea of court and trial appear together with the idea of law, whereas the first forms of court and trial appear together with the first legal rules. Those rules were established gradually, over long historical periods, as a necessity associated with the first forms of community and society. In addition to the need to strengthen the common functions of life and the interest in solving various conflicts, the development of society, during an extremely long historical period, included the development of a series of rules, behaviour as part of rituals and customs. The court is a public institution that is created and exists to administer justice, to guarantee freedom, to ensure the well-being of citizens, to maintain the rule of order and justice, to provide equal protection to all citizens, regardless of ethnic, racial, religious, cultural, gender, political beliefs and any other differences, which is considered a state body that exercises legal functions with a judicial character.

In various historical periods, the position of the courts has also been different. In this sense, Kosovo judiciary has been an integral part of the historical and political developments that Kosovo has gone through. After the conquest of the Balkans by the Ottoman Empire, Kosovo was part of the political and legal organization of the Empire. During this historical period, the judiciary was based on the Islamic component, namely Sharia law. Also, during feudalism in the territory of Kosovo, Albanian customary law was born and developed, as an unwritten popular law, transmitted from generation to generation by oral tradition that served to regulate legal relations over the centuries. Albanian customary law was based on the Canon of Lekë Dukagjini. After the Second World War, the judicial system of Kosovo (types, organization and jurisdiction of the courts) was part of the legal and political organization of the former Yugoslavia until its dissolution, namely until the placement of Kosovo under the international administration of the UN, according to Resolution 1244, of 10th of June 1999. The international administration of Kosovo lasted until the 17th of February 2008, when Kosovo was declared independent and sovereign.

Based on the principle of separation of state powers, the judicial power in the Republic of Kosovo is exercised by the courts and is unique, independent, fair, apolitical and impartial and ensures equal access to the courts. Courts established by law conduct trials in accordance with the Constitution of the Republic of Kosovo and the laws in force. Judges, while exercising their functions and making decisions, are independent, impartial, unaffected in any way by any

physical or legal person, including public bodies. Justice requires that everyone has the right to a public and objective trial by a competent, independent and impartial court that shall exercise its function in accordance with positive law and on the basis of material evidence. The judicial system of any country is a reflection not only of its political system, the organization of government, the position of the individual and respect for freedoms and rights, and other fundamental values, but also of the social and cultural conditions in a country. The judicial system in all its aspects (institutional, organizational, competences, etc.), is the foundation of the state and law system, it is the legal and political order of a country. The principle of the state of law, namely the rule of law, is undoubtedly one of the most important and essential principles for any democratic state and society. Its most complete realization in everyday life is the best guarantee for the development of democracy and for the recognition and implementation of the fundamental rights and freedoms of citizens.

2. Courts and trial during the Ottoman Empire

The conquest of the Balkans by the Ottomans started with the commencement of the reign of Murat I and ended with the death of Mehmet II, in 1481². Kosovo was under the rule of the Ottoman Empire from 1389 to 1912, and therefore also under its political and legal organization. Unlike the European feudal states of the time, in the Ottoman Empire there was a developed and centralized state judicial system. The legal heritage of Byzantium and Persia and some Customs of the Balkan nations had a great influence on Ottoman law. This influence on the development of public law among the Ottomans stems from the fact that Byzantium and Persia were millennial empires, with a developed state apparatus³.

The fundamental principle of Islamic rule was that “Allah/God is the one who gives power to people, and man (the ruler) is the one who must rule with justice and implement the provisions of God’s book - the Qur’an.”⁴ Islamic law developed through four legal schools: Shafi’ite, Hanbali, Maliki and Hanafi.⁵ The Islamic component had a great influence in the Ottoman legal tradition, although it can be said that the Ottomans identified with Sharia law, especially

¹ G. Castellan, *History of the Balkans (Histori e Ballkanit)*, Tirana, 1991, p.63.

² H. Inalcik, *Interior Arrangement of the Ottoman Empire (Unutrašnje uređenje Osmanskog Carstva)*, Sarajevo 2005, pp. 155-157.

³ F. Rahman, *The Spirit of Islam (Duh Islama)*, Belgrade 1983, p. 125.

⁴ *History of the Ottoman State (Historija Osmanske Države)*, Sarajevo 2005, pp. 147-150.

among Muslims of Hanafi legal origin.⁶ This particularly refers to the development of public law, which did not develop in the first centuries of the Empire, because early Islamic society did not need to develop this branch of law. The fundamental sources of Islamic law, including the Hanafi school of law, are: the Qur'an, the practice of the Sunnah of Muhammad, Ijma-Consensus of the jurists, and Qiyas-Analogy⁷ Sharia law was the foundation of Ottoman law. According to the form of government, the Ottoman Empire was an absolutist, hereditary monarchy with the Sultan at the head of the state. The Sultan was officially the supreme executor and protector of God's justice on earth⁸.

The foundation of the Ottoman judicial system was composed of the Kadis and their deputies, the Naibs, who performed the judicial function in Kadiluks and were appointed from the ranks of people who had completed religious and legal schools, and were well versed in Sharia law⁹. Kadis were judges with general jurisdiction within Kadiluk, which was an administrative-judicial territory. The supreme land and military judges were the Kadiaskers. From the 15th century, there were two kadiaskeres: for Anatolia and Rumelia, who appointed the Kadis and Naibs on behalf of the Sultan and acted as appellate courts. The supreme judicial authority was held by the Sultan¹⁰.

State courts acted only in cases of serious criminal offenses, defined by the Sharia or by order of the Sultan, while in relation to all other cases of criminal offenses and civil and other disputes, they were under the jurisdiction of the Kadis. The criminal procedure, for violent actions against the state or the army, was initiated by Kadi himself according to his official duties (hence the maxim: Kadi sues, Kadi judges). The court in the procedure had a neutral role as an arbitrator between the two parties. The trial took place before a Kadi, who was a professional judge. Regarding the role of the Kadi, who had great powers to create the law by analogy, and almost completely, arbitrarily made decisions, there is the opinion that in the procedure, he exercised several functions, such as: investigator, judge, prosecutor, defender, as well as executor of the sentence¹¹. Throughout the period of Ottoman rule, special rules and institutes

⁵ *Ibid.*

⁶ M. Begović, *Sources of Turkish law from the 14th to the 19th century (Izvori turskog prava od XIV do XIX vijeka)*, Sarajevo 1966, p. 67.

⁷ *Ibid.*

⁸ A. Kasumović-Gadžo, *Mulla in the Bosnian Eyalet (Mulla u Bosanskom ejaletu)*, Sarajevo 2008, pp. 6-7.

⁹ *History of the Ottoman State (Historija Osmanske Države)*, Sarajevo 2005, pp. 147-150.

¹⁰ *Ibid.*

were implemented for courts and national courts. The religious division of society was also reflected in the implementation of the law. Thus, for Muslims, the basic criminal-legal system was based on the Sharia, while for Christians, customary law was applied, except, of course, for the most serious crimes which were tried by the state courts.

The Ottoman Empire continuously made efforts to reform the justice system, in certain periods of time. One such step was the one for the reform of the justice system, according to the Decree on the Reforms of the Vilayets in Rumelia, of 1896, in which it was determined that: “The Justice Reform Commission will study and determine the procedure, which must reduce the formalities, which operate against dragging out civil court disputes and criminal proceedings, and in determining the sentence”. In fact, the Ottoman Empire failed to regulate the situation in criminal justice until the end of its existence. Towards the end of its existence, the Ottoman Empire tried to establish itself as a European state, with a modern penal-legal system. However, its destruction made the reforms initiated in justice to be noted as legal-political actions of the time.

3. *Customary Law*

Regarding the rules of an unorganized society, a society that is not sufficiently differentiated, the customs and rules of morality are taken as a measure which regulates social relations in its own consciousness.¹² Customary rules are slowly created by passing down from generation to generation certain behaviours, which the mass considers good, and their long repetition imposes the binding necessity that they as such be respected.¹³

The history of customary law and medieval courts provides numerous arguments in support of the thesis that the concepts of court and trial should not be strictly applied by the state. Throughout the Middle Ages, and even deep into the modern era, of the development of law and the institutions of its implementation (deep into the 19th century, even at the beginning of the 20th century), the duality between state trial and the administration of justice, according to customary law, was emphasized.

The concepts “court” and “judge” have deep historical roots among different peoples, because we find those expressions even today with the same

¹¹ O. Ismaili, *Introduction to Law (Fillet e së drejtës)*, Prishtina 2015, fq. 38; A. Anastasi, *History of Institutions (Historia e Institucioneve)*, Tirana 2002, p. 84.

¹² *Ibid.*

meaning in their modern languages. In the smaller communities, or villages, the various matters were decided in the general meeting, which was presided over by the “elders”, while, in the larger communities, justice was administered by a selected court of the elders who were respected and wise members from the community.

The character of collective trial stems from the very nature of customary law, as a set of generally accepted rules, therefore their application had to assume collective discussion and decision-making, through which those rules were confirmed or changed. In other words, the old customary rules can only be kept alive by a general agreement on their application. In this system of customary law, the creation of a tribal oligarchy and the taking over of the function of the court, as a permanent office, by the elders of the family, the princes of the villages and other heads of the tribes did not change the reality much. In this sense, Albanian customary law was born and developed, as an unwritten popular law, transmitted from generation to generation by oral tradition that served to regulate legal relations over the centuries in our country¹⁴. Albanian customary law is very ancient and constitutes one of the oldest legal systems in Europe. The English traveller and researcher Miss Edith Durham, a prominent Albanianologist, said that the Laws and canons attributed to Leka clearly appear to be earlier than the 15th century.

Albanian customary law has its ancient origins in pre-state tribal society. After the birth of the state, customary law and state law coexisted as two separate legal systems. Thus, historical, literary and archival sources testify to the existence of a well-developed law in the territory of Kosovo during the Skanderbeg period, which recognized and applied some of the main criminal and civil law institutes. In its creation was used the well-known way of sanctioning from the Roman-Byzantine feudal law of the late period, which was applied in the Albanian territories before Skanderbeg. This law suited the level of development of the country in the 15th century. In addition to the sanctioning of this law, the central government represented by Skanderbeg, from time to time, made the necessary supplements and amendments in accordance with the concrete conditions and the needs of the liberation war against the Ottomans¹⁵. After the Ottoman occupation, customary law was renewed, as the local population needed to survive, to preserve their freedom, language, and customs.

The Canon of Lekë Dukagjini, or also known as the Canon of Lekë or the

¹³ *History of the State and Law in Albania (Historia e Shtetit dhe e së Drejtës në Shqipëri)*, Tirana 2001, p. 229.

¹⁴ A. Luarasi, *Albanian State and Law in the era of Skanderbeg (Shteti dhe e drejta shqiptare në epokën e Skenderbeut)*, Tirana 1998, pp. 201-213.

Canon of the Mountains, is one of the variants of Albanian customary law, transmitted orally, which was initially codified and published in Turkish by the Ottoman administration, in the first half of the 19th century, when it was trying to stop the blood feud, then it was compiled by the Catholic clergy who served in the Albanian regions at the turn of the 19th-20th centuries¹⁶. The canon contains 12 books, 24 chapters, 199 articles and 1263 paragraphs. Each chapter, as they can be called in contemporary legal language, deals with a matter that can be classified from private law to family law and up to criminal and civil law¹⁷. The legal norms compiled in the Canon of Lekë Dukagjini have a dual character: they reflect the social relations of the gender order, the equality between people, the differentiated economic-social relations, the inequality of women and men, etc.¹⁸. The canon applied equally to all highlanders, regardless of religious belief. It expresses the originality of the customary law of Albanians and shares a common source with other canons. It is a historical monument of popular culture in general and legal culture in particular. Likewise, it is a collection of different customs and norms, which belong to almost all areas of people's life and economic and social activity. At the same time, it also represents a testimony of the path that Albanians have taken during the process of historical development. The canon is full of old customs, created at different stages of economic and social development. There are customs that were created in the classless society, in the period of the hunting economy, as well as customs of other stages. It can be seen from the canon that the main characteristic of society was patriarchy and tribal order.

The feudalization of social-economic relations, developed especially after the 11th century, would have had a great impact on the transformation of the concepts of court and trial. The adoption of more legal rules that would have a public character, and the concentration of the judicial function, was in the hands of the feudal lords where the feudal lords were already performing the judicial function as a prerogative of the state. However, for a long time, civil disputes and lighter criminal offenses were judged by the people's courts, respectively elected courts. The customary legal rules for proceeding before the people's courts, that is the elected courts, had a general character and were applied to any kind of dispute between people (non-fulfilment of an agreement, compensation for damages, criminal offense, etc.).

The judgment was rendered after the presentation of the evidence and was communicated, as a rule, orally, immediately after the end of the evidentiary

¹⁵ *Canon of Lekë Dukagjini (Kanuni i Lekë Dukagjinit)*, Tirana 2015.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

procedure. When trial was held by a panel court, its decision was preceded by the judge's consultation with the members of the council (village elders, heads of family cooperatives, etc.). The judgment was immediately final and enforceable, because there was no appeal or other legal remedies. Great faith in the infallibility of the court contributed to the acceptance of the decision (sentence). The acquittal decision was not final, because the medieval customary criminal law system did not recognize the institution of "res judicata". This meant that new criminal proceedings could be initiated against the defendant, who was declared innocent, for the same offense at any time. In the beginning, the execution of the imposed sentence was left to the plaintiff, but over time, when there were objections from the sentenced defendant to pay the fine or to compensate the damage, etc., the execution function was taken over by the courts.

4. *Judiciary after World War I*

Historically, Kosovo has been part of foreign invasions, and therefore also part of the political and legal organization of the invaders. Thus, after the Balkan wars of 1912-1913, the territory of Kosovo was under the rule of Serbia, then during World War I under the rule of Austria-Hungary, while after World War I it was under the composition of the Kingdom of Serbs, Croats, and Slovenes, created in 1918.

The juridical-political system of the Kingdom of Serbs, Croats, and Slovenes was based on the Constitution of 1921, respectively 1931, which provided for the constitutional Monarchy with judicial power, as a separate power, even though it was controlled by the King. The judicial system during this period was organized at three levels: 1. Court of First Instance, 2. Court of Appeals, 3. Court of Cassation. This situation existed until the beginning of World War II.

During this period, Kosovo Albanians were deeply discriminated against by the Constitution of 1921 and 1931, as they were treated as second-class citizens and did not enjoy the right to elect judges. Therefore, rightly according to historians, this historical period is considered the darkest for the Albanian inhabitants of Kosovo.

5. *The development of the judiciary after World War II*

Based on the fact that the courts are an integral part of the political history of mankind, they, as a historical phenomenon of the society, have followed the political constitution of the society and the development of the state and power,

serving as a support of the system of state power. In this sense, the justice system of Kosovo was an inseparable part of the historical and political developments that Kosovo went through.

After the Second World War, Kosovo was part of the Yugoslav Federation until its dissolution in 1990-1991. Based on historical and social events, the development of Kosovo judicial system (types, organization and jurisdiction of courts), whose function is related to the function of the administration of justice and judicial protection, after World War II, went through several *historical periods*:

5.1. *Period from 1945 to 1990*

The constitutional and legal position of Kosovo, in the first period of the constitutional development of the former Yugoslavia, is defined by three main acts: the Constitution of the Federal People's Republic of Yugoslavia (FPRY) of 31st January 1946, the Constitution of the People's Republic of Serbia, of January 1947 and the Statute of the Autonomous Province of Kosovo and Metohija, of 23rd May 1948¹⁹. According to the Constitution of the FPRY of 1946, Kosovo was defined as an autonomous province and as a constituent element of federalism, which was simultaneously within the framework of the constitutional structure of Serbia. The Kosovo Statute of 1948 was the first general normative act of Kosovo, after the Second World War, which expressed a form of its independence in the organizational sphere. In this period, Kosovo still did not have an autonomous justice system, but was within the justice system of Serbia.

After the promulgation of the Constitutional Law of the FPRY in 1953, the Constitutional Law of Serbia of 1953, the constitutional-legal position of Kosovo changed significantly. Unlike the previous period, when the constitutional-legal position of Kosovo was defined by the federal Constitution, now the rights and duties of Kosovo were exclusively defined by the Constitutional Law of the People's Republic of Serbia²⁰.

With the adoption of the 1963 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) and the 1963 constitutions of the Socialist Republics, Kosovo promulgated its third and final statute in 1963. This statute did not bring any particular innovation to Kosovo and advancement in its

¹⁸ A. Robaj, *Parliamentary Democracy and the Rule of Law in the Republic of Albania (Demokracia parlamentare dhe shteti i së drejtës në Republikën e Shqipërisë)*, Prishtina 2007, pp. 41-48.

¹⁹ A. Bajrami, *Independence of Kosovo in the normative sphere during the period 1943-1994 (Mëvetësia e Kosovës në sferën normative gjatë periudhës 1943-1994)*, Prishtina 1996, p. 254.

constitutional-legal position. The promulgation of the Constitution of the former SFRY in 1974 continued the process of advancing the constitutional position of Kosovo in the framework of Yugoslav federalism. Kosovo, with the provisions of the Constitution of the SFRY of 1974, was defined as an autonomous political-territorial unit and as a constitutive element of federalism²¹.

The constitutional-legal position of Kosovo, according to the Constitution of the former SFRY of 1974, in many spheres was similar to the position of the socialist republics. In 1974, Kosovo promulgated its first Constitution, as its highest juridical-political act. According to the Constitution of Kosovo of 1974, Kosovo was defined as a separate political-territorial unit and as a constitutive element of Yugoslav federalism²². According to the Constitution of Kosovo of 1974, Kosovo had its own territorial borders, which had the capacity of state borders. The constitutional-legal position of Kosovo, with its Constitution of 1974, gave Kosovo state attributes, where for the first time Kosovo established the autonomous system of justice within its social power. Thus, in this period of time, the judicial power of Kosovo was completely autonomous from the judicial power of Serbia and the Yugoslav federation. Based on such constitutional concept, Kosovo laws on regular courts were adopted, with which the judicial system consisted of: courts of general jurisdiction (Municipal Court, District Court, and Supreme Court of Kosovo) and specialized courts: regional (commercial courts, joint labour courts)²³. However, it should be noted that procedural laws (Criminal Procedure Law, Contested Procedure Law) remained under the legislative jurisdiction of the federation.

5.2. *Period from 26th June 1990 to 10th June 1999*

The year 1990 was the year when Serbia, with the promulgation of its Constitution and the promulgation of a number of other anti-constitutional laws, made the constitutional and political deinstitutionalization of Kosovo, the stripping of its state attributes and put it under the full control of the Serbian government. Serbia's decision on the application of extraordinary measures in Kosovo of 26th June 1990 represents the most obvious unconstitutional action and at the same time the classic occupation of Kosovo by Serbia²⁴.

²⁰ Constitution of the SFRY of 1974, Articles 2 and 4. <https://www.worldstatesmen.org/Yugoslavia-Constitution1974.pdf>

²¹ Constitution of the Socialist Autonomous Province of Kosovo of 1974, Article 1.

²² Law on Regular Courts of the Socialist Autonomous Province of Kosovo, 1978.

²³ A. Robaj, *Parliamentary Democracy and the Rule of Law in the Republic of Albania (Demokracia parlamentare dhe shteti i së drejtës në Republikën e Shqipërisë)*, Prishtina 2007, pp. 41-48.

In this period, Serbia exercised absolute power over Kosovo, and consequently also the judicial power, which, in addition to being unconstitutional and against the will of the people of Kosovo, was also discriminatory on ethnic grounds, since this power was exercised only by members of the Serbian nationality.

5.3 *Period from 10th June 1999 to 17th February 2008*

After the end of the 1998-1999 war, the UN Security Council on 10th June 1999 approved Resolution 1244, which formally placed Kosovo under the administration of the United Nations called UNMIK. The international administration in Kosovo, defined by the Resolution²⁵, was of a temporary nature and aimed at creating suitable democratic conditions for resolving the final status of Kosovo. This model of international administration is the first model of the UN, on such a large scale, and it represents the specific model due to the fact that, in addition to the establishment of international civil and military administration, it was also combined with a local self-government and a democratic and institutional process, which would enable the political and status resolution of Kosovo²⁶.

UNMIK immediately began the organization and operation of the judicial system, inheriting the organizational structure of the judiciary of the first period, namely before the 26th June 1990. During this period, judges and prosecutors were appointed by the Special Representative of the UN Secretary General (SRSG). The mandate of judges and prosecutors was limited and extended by UNMIK Regulations, as the highest legal act during that period.

5.4. *Period from 17th February 2008 to present*

On the 17th February 2008, Kosovo was declared independent, while on the 9th April 2008, it promulgated its Constitution, which entered into force on the 15th June 2008. Thus, Kosovo began its journey by building its own identity as an entity of international law and as an entity on its own, with an autonomous legal and political order. So, the Republic of Kosovo is an independent,

²⁴ UN Resolution 1244, 10 June 1999. <https://md.rks-gov.net/desk/inc/media/F6BADB4F-6CD7-42F2-9E54-9D01B98A778E.pdf>

²⁵ A. Robaj, *Parliamentary Democracy and the Rule of Law in the Republic of Albania (Demokracia parlamentare dhe shteti i së drejtës në Republikën e Shqipërisë)*, Prishtina, 2007, pp. 41-48; A. Bajrami, "Parliamentary Democracy (Demokracia parlamentare)", Prishtina 2005, p. 53.

sovereign, democratic, unique and indivisible state. The Republic of Kosovo is a state of its citizens, which exercises its authority based on respect for the rights and freedoms of its citizens and all individuals within its borders²⁷.

From the point of view of the governance system, Kosovo applied the model of a parliamentary republic, based on the principle of the separation of three powers and control and balance between them. The Assembly exercises the legislative power, the Government the executive power, while the judicial power is considered independent and is exercised by the courts.²⁸ The Constitution in Chapter VII defines the justice system, which provides: the general principles of the judicial system, the organization and jurisdiction of the courts, the appointment and removal of judges, the mandate and reappointment, incompatibility with the function of the judge, the immunity of judges, Kosovo Judicial Council, State Prosecutor, Kosovo Prosecutorial Council, Advocacy²⁹.

According to the constitutional concept of Kosovo, laws of Kosovo were adopted for regular courts, with which the judicial system consists of courts of general jurisdiction (Basic Courts, Court of Appeals and Supreme Court of Kosovo)³⁰. The Law on Courts provides for a number of new solutions, which implement international standards for an independent and impartial court, and fair procedure. Also, the prosecutorial system, like the judicial system, was built according to the constitutional concept, on three levels: State Prosecutor - Office of the Chief State Prosecutor; Appeal Prosecution; Basic Prosecutions³¹.

Advocacy is also an inseparable part of the justice system, which according to the Constitution is categorized as an independent profession, which provides professional services³². Advocacy is a free and independent profession that deals with providing legal assistance to natural and legal persons for the protection of their freedoms, rights and interests in accordance with the legal order.³³

²⁶ Constitution of the Republic of Kosovo, 2008, Article 1. https://gjk-ks.org/wp-content/uploads/2021/11/gjkk_kushtetuta_e_republikes_se_kosoves_ang.pdf

²⁷ *Ibid.*, Article 4.

²⁸ *Ibid.*, Articles, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111.

²⁹ Law on Courts of the Republic of Kosovo, 2018, Article 8. <https://md.rks-gov.net/desk/inc/media/F6BADB4F-6CD7-42F2-9E54-9D01B98A778E.pdf>

³⁰ Law on State Prosecutor, 2023, Article 13. <http://old.kuvendikosoves.org/common/docs/ligjet/2010-225-eng.pdf>

³¹ Constitution of the Republic of Kosovo, 2008, Article 111. https://gjk-ks.org/wp-content/uploads/2021/11/gjkk_kushtetuta_e_republikes_se_kosoves_ang.pdf

³² Law on the Bar, 2013, Article 3. [https://www.oak-ks.org/assets/cms/uploads/files/aplikacione/Ligji_per_avokatine-\(Anglisht\)_164184_427315.pdf](https://www.oak-ks.org/assets/cms/uploads/files/aplikacione/Ligji_per_avokatine-(Anglisht)_164184_427315.pdf)

6. *The principle of separation of powers in judicial law*

Kosovo model of separation of power is a pure parliamentary model³⁴. The Assembly exercises legislative power; The President represents the unity of the people, as well as being a legitimate representative of the country inside and outside and guarantor of the democratic functioning of the institutions of the Republic of Kosovo, in accordance with the Constitution. The government is responsible for the implementation of laws and state policies and is subject to parliamentary control. Whereas, the judicial power is unique, independent and exercised by the courts.

The Constitution of Kosovo has declared the principle of separation of powers as a fundamental principle of the constitutional order of the Republic of Kosovo, and contains several provisions that regulate the relationship between the judiciary and other powers. The Constitution sufficiently considers the need for the existence of a consciousness and advanced democratic relations, which are prerequisites for the realization of the principle of separation of powers. Because of this, there are such essential safeguards that will ensure the independence of the judiciary in real circumstances. Therefore, from the point of view of the independent position of the judiciary in the system of separation of powers, it is extremely important to establish normal relations of operation, limitation and balance of powers. For this very reason, the general principles of the rule of law, today occupy a special place and are expressly fixed in the constitutions and contemporary democratic legislation.

So-called Western democracies have long created a rich and valuable experience in this regard. However, this phenomenon has also been noticed as a priority, especially in recent years after the important political changes that took place in the countries of Central and Eastern Europe. In the constitutions and legislation adopted by them, special care has been taken to ensure that the principles of the rule of law occupy their rightful place in the entire state and social system³⁵.

With the Constitution of 2008, which should be evaluated as fully in accordance with European democratic standards, the way is opened in the Republic of Kosovo for the further democratization of society and the strengthening of the rule of law. Legality means the rule of law as a negation of arbitrariness, as a state in which all those who establish power or exercise other public functions

³³ Constitution of the Republic of Kosovo, 2008, Article 4. https://gjk-ks.org/wp-content/uploads/2021/11/gjkk_kushtetuta_e_republikes_se_kosoves_ang.pdf

³⁴ A. Robaj, *Parliamentary Democracy and the Rule of Law in the Republic of Albania (Demokracia parlamentare dhe shteti i së drejtës në Republikën e Shqipërisë)*, Prishtina 2007, pp. 169-173; G. Campbell, *The road to Kosovo*, Prishtina 2000, p. 125.

and authorizations are held accountable, as well as their every action outside the law, every arbitrary and uncontrolled action is sanctioned³⁶. It can be said that this Constitution responds to the requirements of the contemporary science of constitutional law, regardless of the special remarks that can be made about any of its wording. In the construction of the rule of law and parliamentary democracy, Kosovo has used the experience of other parliamentary countries, experience which has been materialized in the constitutional provisions and in the form of governance.

In conclusion, it should be noted that the Republic of Kosovo has made concrete efforts and steps to sanction the aforementioned principles and other principles of the rule of law, which constitute the essence of democracy³⁷. In this regard, Kosovo must continue its efforts to create a true rule of law. Based on the principles of the theory of legal and political thought for the main characteristics of the rule of law, then we must say that the Republic of Kosovo has fully included the principles and characteristics of the rule of law. This is actually best seen in the introduction to the Constitution, respectively, this is best illustrated by the preamble and the constitutional provisions where “The independence of the state and the integrity of its territory, the human dignity, rights and freedoms, social justice, constitutional order, pluralism, the rights of communities and their members, religious coexistence, as well as the civic-citizen element instead of the national element are the basis of this state, which has the duty to respect and protect”³⁸. According to the Constitution, “Kosovo is a democratic Republic based on the principle of separation of powers and control and balance between them, as defined by this Constitution”³⁹. So, the principle of separation of powers, of mutual control and balancing of different authorities, must inevitably be applied to the judiciary, both in the part of the function of implementing justice, giving fair judgments, and in the protection of fundamental human rights and freedoms. The limitation of power also means the responsibility for exceeding the limits of the authority of the judiciary.

³⁵ K. Saliu, *Constitutional Law (E drejta Kushtetuese)*, Prishtina 2004, p. 95.

³⁶ A. Robaj, *Parliamentary Democracy and the Rule of Law in the Republic of Albania (Demokracia parlamentare dhe shteti i së drejtës në Republikën e Shqipërisë)*, Prishtina 2007, pp. 169-173; A. Capussela, *Statebuilding in Kosovo: Democracy, Corruption and the EU in the Balkans (Shtetndërtimi në Kosovë: demokracia, korrupsioni dhe BE-ja në Ballkan)*, Prishtina 2015, p. 35.

³⁷ Constitution of the Republic of Kosovo, Articles 1, 2 and 3. https://gjk-ks.org/wp-content/uploads/2021/11/gjkk_kushtetuta_e_republikes_se_kosoves_ang.pdf

³⁸ *Ibid.*, Article 4, par. 1.

7. *Conclusion*

Based on the fact that the courts are an integral part of the political history of mankind, they, as a historical phenomenon of the society, have followed the political constitution of the society and the development of the state and power, serving as a support of the system of state power. In this sense, Kosovo judiciary has been an integral part of the historical and political developments that Kosovo has gone through. In different historical periods, the position of the courts has also been different. Kosovo has historically endured many invasions and as a result was under the political and legal organization of the invaders. In Kosovo, during the pre-Ottoman Middle Ages, advanced forms of political and legal organization were created, in accordance with the level of general economic and social development of the country.

After the conquest of the Balkans by the Ottoman Empire, Kosovo was part of the political and legal organization of the Empire. Unlike the European feudal states of the time, in the Ottoman Empire there was a developed and centralized state judicial system. The Islamic component in the Ottoman legal tradition had a great influence, although it can be said that the Ottomans identified with Sharia law. Throughout the period of Ottoman rule, special rules and institutes were implemented for courts and national courts. The religious division of society was also reflected in the implementation of the law. Thus, for Muslims, the basic criminal-legal system was based on Sharia, while for Christians, customary law was applied, except, of course, for the most serious crimes for which they were tried by state courts. However, during the Ottoman Empire in the smaller communities, or villages, the various matters were decided in the general meeting, which was presided over by the “elders”, while, in the larger communities, justice was administered by a selected court of the elders who were respected and wise members from the community. In this sense, Albanian customary law was born and developed, as an unwritten popular law, transmitted from generation to generation by oral tradition that served to regulate legal relations over the centuries. Albanian customary law is very ancient and constitutes one of the oldest legal systems in Europe. The Canon of Lekë Dukagjini, or also known as the Canon of Lekë or the Canon of the Mountains, is one of the variants of Albanian customary law, transmitted orally, which was initially codified and published in Turkish by the Ottoman administration, in the first half of the 19th century, when it was trying to stop the blood feud, then it was compiled by the Catholic clergy who served in the Albanian regions at the turn of the 19th-20th centuries.

Seen historically, after the Second World War, the development of Kosovo judicial system (types, organization and jurisdiction of courts), whose function

is related to the function of administration of justice and judicial protection, went through several historical periods. On the 17th February 2008, Kosovo was declared independent, while on the 9th April 2008, it promulgated its Constitution, which entered into force on the 15th June 2008. Thus, Kosovo began its journey by building its own identity as an entity of international law and as an entity on its own, with an autonomous legal and political order. In the sense of building the state of law and parliamentary democracy, Kosovo has also used the experience of other parliamentary countries, experience which has been materialized in the constitutional provisions and in the form of government. In conclusion, it should be noted that the Republic of Kosovo has made concrete efforts and steps to sanction the principles of the rule of law, which constitute the essence of democracy.

8. Bibliography

- Anastasi, A., *History of Institutions (Historia e Institucioneve)*, Tirana 2002.
- Begović, M., *Sources of Turkish law from the 14th to the 19th century (Izvori turskog prava od XIV do XIX vijeka)*, Sarajevo 1966.
- Bajrami, A., *Independence of Kosovo in the normative sphere during the period 1943-1994 (Mëvetësia e Kosovës në sferën normative gjatë periudhës 1943-1994)*, Prishtina 1996.
- Bajrami, A., *Parliamentary Democracy (Demokracia Parlamentare)*, Prishtina 2005.
- Castellan, G., *History of the Balkans (Histori e Ballkanit)*, Tirana 1991.
- Capussela, A., *Statebuilding in Kosovo: Democracy, Corruption and the EU in the Balkans (Shtetndërtimi në Kosovë: demokracia, korrupsioni dhe BE-ja në Ballkan)*, Prishtina 2015.
- Campbell, G., *The road to Kosovo*, Prishtina 2000.
- *History of the Ottoman State (Historija Osmanske Države)*, Sarajevo 2005.
- *History of the State and Law in Albania (Historia e shtetit dhe e së drejtës në Shqipëri)*, Luarasi, Tirana 2001
- Inalcik, H., *Interior Arrangement of the Ottoman Empire (Unutrašnje uredenje Osmanskog Carstva)*, Sarajevo 2005.
- Ismaili, O., *Introduction to Law (Fillet e së drejtës)*, Prishtina 2014.
- Rahman, F., *The Spirit of Islam (Duh Islama)*, Belgrade, 1983.
- Kasumović-Gadžo, A. *Mulla in the Bosnian Eyalet (Mulla u Bosanskom ejaletu)*, Sarajevo 2008.

- *Canon of Lekë Dukagjini (Kanuni i Lekë Dukagjinit)*, Tirana 2015.
- Luarasi, A., *Albanian State and Law in the Era of Skanderbeg (Shteti dhe e drejta shqiptare në epokën e Skenderbeut)*, Tirana 1998.
- Robaj, A., *Parliamentary Democracy and the Rule of Law in the Republic of Albania (Demokracia parlamentare dhe shteti i së drejtës në Republikën e Shqipërisë)*, Prishtina 2007.
- Saliu, K., *Constitutional Law (E drejta Kushtetuese)*, Prishtina 2004.

9. *Legal Acts*

- Constitution of the Socialist Federal Republic of Yugoslavia, 1974. <https://www.worldstatesmen.org/Yugoslavia-Constitution1974.pdf>
- Constitution of the Socialist Autonomous Province of Kosovo, 1974.
- Constitution of the Republic of Kosovo, 2008. https://gjk-ks.org/wp-content/uploads/2021/11/gjkk_kushtetuta_e_republikes_se_kosoves_ang.pdf
- Law on Regular Courts of the Socialist Autonomous Province of Kosovo, 1978.
- Law on Courts of the Republic of Kosovo, 2018. <https://md.rks-gov.net/desk/inc/media/F6BADB4F-6CD7-42F2-9E54-9D01B98A778E.pdf>
- Law on State Prosecutor, 2023. <http://old.kuvendikosoves.org/common/docs/ligjet/2010-225-eng.pdf>
- Law on the Bar, 2013. [https://www.oak-ks.org/assets/cms/uploads/files/aplikacione/Ligji_per_avokatine-\(Anglisht\)_164184_427315.pdf](https://www.oak-ks.org/assets/cms/uploads/files/aplikacione/Ligji_per_avokatine-(Anglisht)_164184_427315.pdf)
- UN Resolution 1244, 10 June 1999. <https://unmik.unmissions.org/united-nations-resolution-1244>