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CONSTITUTIONAL CHANGES AND THE ABOLITION OF AUTONOMY

The constitutional changes put through in Yugoslavia, or specifically Serbia, struck at Kosova in various ways, of which it appears to me that three were the most serious and decisive for the removal of Kosova's autonomy:

First, the authority of the state in all its forms (legislative, executive, administrative, and judicial) and at both local and provincial levels was overthrown and handed over to Serbia.

Second, the most vigorous sections of the economy were destroyed on the pretence of transferring their ownership.

Third, social sectors of special importance, such as health, education, science, culture, and public information, were destroyed with the aim of stripping them of their Albanian national character.

The truncation of autonomy was announced in the text of the Proposal of the SFRY Presidium for Constitutional Changes of 11 February 1987, in which the autonomous provinces did not figure, supposedly in order to ensure "the most rational enactment of the constitutional changes", just as they did not figure in the context of the basic principles defining Yugoslavia. The aim of changing the balance within the federation thus clearly emerged on the surface, with the establishment of the community of the republics on one hand, and the reduction to nothing of the position of the autonomous provinces as constitutive elements of the federation. No convincing arguments were offered on this occasion. Nevertheless, it was reported that these changes were based on "political disobedience in Kosova".

Thus, the text of the SFRY Presidium's proposal for the constitutional changes failed to take into account that the status of the autonomous provinces could not and must not be considered outside the total constitutional context of federalism in Yugoslavia, and such a thing would override the historical and political documents that specifically recognized the political, juridical, and territorial integrity of Kosova. The autonomous provinces together with the republics constituted a federal whole, in line with the reasons for the creation of the federation. The autonomous units were born at the same time as Yugoslavia was formed as a federal state, for the same reasons and purposes as the federation itself. They were born as an indivisible element of federalism of building the federation, of which they were defined as constitutive parts. These indisputable facts should have served as a basis for the constitutional changes in Yugoslavia.

Meanwhile, the proposal of the Presidium of the Socialist Republic (SR) of Serbia for the proclamation of the constitution stressed that the composition of the republic included two autonomous provinces, Vojvodina and Kosova, "as entities for the exercise of territorial autonomy within the limits of their fields of activity determined by the Republican Constitution". This paved the way for the subordination of the authorities of the autonomous provinces to those of the republic. This proposal further

advanced the aim of suspending the authorities of Kosova and denied not only the status of the autonomous province as a constitutive element of the federation, but even the essence of its territorial and political autonomy, the proposal of the Presidium of the SR of Serbia also contested the title of the Province of Kosova and, without any reason or political and historical support, employed the controversial and anticonstitutional title "Kosovo and Metohija". It was also proposed that the province's highest legal charter should be a statute, which, it was said, would "come into force on the basis of the agreement of the People's Assembly of Serbia".

These threefold blows were heralded even before the constitutional changes by the so-called Yugoslav Program of measures to be taken in Kosova¹. The program had specific aims including the organized return of Serbs and Montenegrins to Kosova from all parts of Yugoslavia, the annulment of sales of real estate from Serbs and Montenegrins to Albanians, and the provision of federal funds and financial concessions for job creation in areas inhabited by Serbs and Montenegrins.

Studying carefully this program, we underline its main points as follows:

1. The preference shown to Serbs and Montenegrins in Kosova in all areas of life, of course at the expense of the ethnic Albanians.
2. The change in the ethnic structure of Kosova, where the Albanians constitute 90 percent of the population.
3. The recolonization of Kosova.
4. The restriction of the Albanian birthrate, etc.

The implementation of this program involved the reexamination and amendment of all the legislation of Kosova.

There followed an extension to the laws and decisions of the Assembly of Serbia, which determined the rights and duties stemming from the Yugoslav Program and a timetable for their enforcement. Meanwhile, initiatives were undertaken for constitutional changes in Yugoslavia, specifically in Serbia, in which the main aim of the Serbo-Slav regime became clear: the liquidation of the autonomy of the Albanians in Kosova.

The abolition of the autonomy of Kosova in fact began with the amendments to the Constitution of the SR of Serbia on 28 March 1989, through the change in the balance between Serbia and the autonomous provinces.

This severely truncated Kosova's autonomy. It was a centralist constitutional and juridical settlement that seriously threatened Kosova's constitutional position.

The approval of the amendments to the Constitution of Serbia required that the Kosova Assembly should approve a restriction of its own powers, i.e. should vote against itself. The Serbian regime in Kosova therefore exerted various forms of pressure against the Assembly and its delegates both before and during the session. The Kosova Assembly's approval of the amendments to the Constitution of Serbia had to be carried out under a state of emergency in Kosova that implied not only the increased presence of security forces, but the threat and use of force. However, despite the pressure on the delegates, the distortion of the voting procedure, and the participation of unauthorized persons in the Kosova Assembly session of 23 March 1989, a quorum of delegates was not present at the meeting, and the required two-thirds majority was not gained, even following a recount of the "aye" votes. Moreover, the Kosova Assembly, by approving the Declaration on Kosova as an independent entity equal to other units in

the Yugoslav federation or confederation on 2 July 1990, annulled the decision of 23 March 1989 "agreeing" to the amendments to the Constitution of Serbia.

Serbia's anticonstitutional and illegal measures destroyed the constitutional framework of Yugoslavia and suspended Kosova's political and legal status as one of Yugoslavia's eight federal units.

The Serbian regime has undertaken a range of measures in Kosova, from which we single out the following:

1. The subordination of provincial to republican authorities in the state administration. (See: Law on the Constitutional Changes and the Law on the State Administration, "Official Gazette of the SR of Serbia", No.24/90).

2. The reduction of the position and responsibilities of the Executive Council of the Assembly of the Socialist Autonomous Province (SAP) of Kosova, putting it in a subordinate position. (See: Law on Changes and Additions to the Law on the Executive Council of the Assembly of the SR of Serbia, "Official Gazette of the SR of Serbia, No.26/90).

3. The assumption of the responsibilities of the administration, the judiciary, and self-management bodies. (See: Law on the Measures of Republican Bodies Under Special Circumstances, "Official Gazette of the SR of Serbia", No.30/90).

4. The overthrow of the authority of the state by suspending the state bodies of the SAP of Kosova (See: Law on the Authorities of the Executive Council and the Assembly of the SAP of Kosova, "Official Gazette of the SR of Serbia", No. 33/90).

5. The suspension of the legally elected bodies of the communal authorities (See: Decision of the Enforcement of Special Measures in the SAP of Kosova, "Official Gazette of the Republic of Serbia", No.33/90).

6. The grant of unlimited powers to management bodies, directors, and officials, giving them the opportunity to dismiss Albanian workers from their jobs en masse on the basis of their political convictions. (See: Law on Labor Relations Under Special Circumstances, "Official Gazette of the SR of Serbia", No.40/90).

We may now single out several of the anticonstitutional laws and measures of Serbia and their implications for Kosova².

With the law on the measures of republican authorities under circumstances, the legal state authorities were robbed of their responsibilities in an unconstitutional fashion. These responsibilities were then handed over to the Serbian authorities. This law, which has no constitutional basis, denied Kosova's constitutional position. This law also denied the right of the federation to enforce measures under special circumstances. This law therefore represents a multiple violation of constitutionality and legality. The consequences of the measures of the republican authorities on the basis of this anticonstitutional law are serious and devastating for the economy, health, education, culture, academic life, and the media in Kosova.

With the law suspending the work of the Kosova Executive Council and the Kosova Assembly, Kosova in fact lost its existence as a sociopolitical entity and was deprived of a state authority. This law unconstitutionally destroyed the constitutional order laid down in the Constitution of Yugoslavia, especially by:

- a) suspending of the legal state organs laid down in the Constitution of Kosova and elected by the people and their legitimate representatives; and

- b) casting in doubt the legitimacy of the work and voting of the sessions of

the Yugoslav Assembly because of the suspension of the electoral base of the delegates from Kosova to the Yugoslav Assembly.

The forced suspension of the proceedings of an undissolved assembly for an indefinite period under an unconstitutional law, as in the case of the Kosova Assembly, is legal and political non-sense. The existence and operation of the Kosova Assembly were based on its own constitution, which was also defined and guaranteed by the Constitution of Yugoslavia. On this basis, the Kosova Assembly and its work were structurally part of the institutional mechanisms and work of the former Yugoslav Federation.

Following the law on labor relations under special circumstances, which was enforced only against the members of one nationality and as such represented an act of national discrimination, more than 120 000 Albanian workers were dismissed from their jobs, thus jeopardizing the material and social livelihoods of themselves and their families³.

The Albanian workers were dismissed from their jobs mainly because of their political convictions. In fact, the Albanian workers were dismissed because they did not accept the enforced measures with which the authorities of the state, the economy, and the social sector were destroyed.

Serbia's unconstitutional behavior was crowned with the promulgation of the Constitution of the Republic of Serbia on 27 September 1990, an act that was in deep contradiction of the Constitution of Yugoslavia of 1974 and its principles. With this step, Kosova lost its constitutional autonomy and its own legislation, because this constitution did not anticipate that Kosova would have its own Constitution or produce its own laws.

The majority population in Kosova did not express any view of this juridical act of Serbia. The Albanians ignored it, because in the meantime, on 7 September 1990, their legitimate representatives had promulgated the Constitution of the Republic of Kosova.

From the time when the Serbian authorities undertook anticonstitutional and illegal measures in Kosova, the province was denied its existence as a constitutional part of the former Yugoslav Federation, a position defined and guaranteed by the 1974 Yugoslav Constitution in the following main ways:

1. Kosova was a constituent part of the Yugoslav Federation. (See: Articles One and Two of the 1974 Yugoslav Constitution).

2. Kosova had its own territory and borders, which could not be changed without its agreement. (Article Five).

3. Kosova had its Presidium as the organ representing the autonomous province and exercising its rights and duties prescribed by the Constitution. (Article 147).

4. The organs of the administration of Kosova had rights and duties identical to those of the federal organs of the administration of the Yugoslav republics. (Article 150).

5. As one of the eight federal units, Kosova acted out the interests of the Federation, a) with the equal participation of the republics and autonomous provinces in the federal organs and in the determination and implementation of federal policy, and b) on the basis of the decisions and agreement of the republics and autonomous provinces. (Article 244, Paragraph Two).

6. The equality of peoples and nationalities was prescribed by the Constitution. (Article 245).

7. The Kosova People's Bank was the institution of the single monetary system that enforced the common policy of the issue of money, laid down by the Yugoslav Assembly. (Article 260, Paragraph 1).

8. Kosova cooperated with the republics in the sphere of tax policy. (Article 265, Paragraph 1).

9. Kosova cooperated with the authorities of other states in international organizations within the framework of the foreign policy laid down by Yugoslavia and by international treaties. (Article 271, Paragraph 2).

10. Kosova, together with the republics, participated in the enforcement of the laws, other dispositions, and general acts of the Federation. (Article 273, Paragraphs One and Two).

11. Kosova was represented in the Chamber of the Republics and Provinces of the Yugoslav Assembly. (Article 284, Paragraph Three).

12. Kosova, and specifically its Assembly, gave its agreement over issues within the competencies of the Chamber of Republics and Provinces. (Article 286, Paragraph Two).

13. Kosova was represented in the federal Chamber of the Yugoslav Assembly. (Article 291, Paragraph One).

14. Kosova, like the Yugoslav republics, had the right to propose laws and other legal acts within the competence of the Chamber of Republics and Provinces. (Article 298).

15. Kosova was represented by its own representative in the Presidium of Yugoslavia.

16. Kosova was represented on the Federal Executive Council. (Article 348, Paragraph One).

17. Kosova was represented in the Yugoslav Federal Court. (Article 370, Paragraph Two).

18. Kosova was represented in the Constitutional Court of Yugoslavia. (Article 381, Paragraph One).

19. The Kosova Assembly and other provincial bodies had the right to initiate procedures to assess issues of constitutionality and legality by the Constitutional Court of Yugoslavia. (Article 398, 399, and 401, Paragraph One).

A tense situation prevails in Kosova. The Albanians of Kosova are subject to intolerable national and social discrimination on the part of the Republic of Serbia because of their ethnic allegiance.

1. The Albanians are subject to arbitrary arrest without reason; their lives are threatened, and they are sentenced for much longer terms than Serbs and Montenegrins, political prisoners are tortured and detained illegally in prison, or are obliged to emigrate.

2. The Albanians are subject to persecution over issues of freedom of thought and expression (as in the persecution and imprisonment of delegates of the Kosova Assembly, the persecution and imprisonment of journalists, activists, and other intellectuals).

3. The Albanians are subject to national and social discrimination at work

(as in the mass dismissals of Albanian workers).

4. The Albanians are subject to persecution at the hands of the Serbian police. Almost one third of the Albanians of Kosova have passed through the hands of the police.

5. The Albanians are subject to discrimination in education and in other social spheres such as health, culture, science, and the media.

The Serbian state, with its anticonstitutional laws and measures, are perpetrating political, national, social, economic, and cultural discrimination against the Albanians, violating fundamental human rights and freedoms defined and guaranteed in international documents, especially:

a) The Universal Declaration of Human Rights (Articles 8, 9, 23, 25, and 26).

b) The Universal Declaration of Economic, Social, and Cultural Rights (Articles 7, 8-a, 8-d, and 13).

c) The International Pact on Political and Civil Rights (Articles 22, Paragraphs 1 and 27).

d) The Conventions of the International Labor Organization.

Conclusion

However unproductive it may be to talk of a state that no longer exists and its Constitution that has no more juridical value, some conclusions are inescapable.

First, the constitutional changes in Yugoslavia, specifically in Serbia, in principle liquidated Kosova's autonomy.

Second, the anticonstitutional laws and measures of the Serbian state in Kosova destroyed the entire authority of the state, and devastated the economy and society.

Third, under the anticonstitutional measures of Yugoslavia, specifically Serbia, the Albanians were marginalized into a nonconstitutional, nonlegal, and nonparliamentary group.

We have not analyzed here all the anticonstitutional and illegal acts and measures by which Yugoslavia, specifically Serbia, totally overthrew the autonomy of Kosova⁴. We have merely singled out some of them in order to show the methods by which this was done.

Of course, it is not the place here to enter into the political stand of the Albanians, who by means of a referendum in September 1991 declared themselves in favor of a sovereign and independent state.

1. Approved by the SFRY Assembly on 17 January 1990.

2. Treated more broadly in: Dr. Esat Stavileci, *Kosova dhe shqiptarët - ndërmjet kërcënimeve të brendshme dhe premtimeve të jashtme*, published by the Kosova Independent Lawyers Association, Prishtina, 1991.

3. Treated more broadly in: Dr. Esat Stavileci, *Largimi nga puna i punëtorëve shqiptarë - akt i diskriminimit nacional e social*, published by the magazine "Përparimi" and the Kosova Independent Lawyers Association, Prishtina, 1991.

4. See the author's contribution to *Rrënim i autonomisë së Kosovës*, published by the Kosova Independent Lawyers Association, Prishtina, 1992.