

UNITARY STATE IN KOSOVO: CONSTITUTIONAL CHALLENGE AND RISK OF FRAGMENTATION BY THE ASSOCIATION OF SERB-MAJORITY MUNICIPALITIES

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Abstract:

This article analyses the concept of the unitary state in the European context, with a particular focus on the case of Kosovo under the 2008 Constitution. Initially, the unitary model is treated as a governance structure that guarantees territorial integrity and institutional clarity, drawing on examples from France and the United Kingdom. The article explores how Kosovo has adopted this model, balancing it with an advanced level of decentralization to address ethnic diversity and political challenges.

In the second part, the implications of the creation of the Association of Serb-Majority Municipalities, are discussed and how this proposed structure threatens the unitary character of the Kosovo state. Analyzing comparative examples from Bosnia and Herzegovina, Belgium, Italy, Croatia and Spain, the article highlights the risks of autonomous structures that can lead to institutional fragmentation and political polarization. The article concludes by emphasizing that a cautious approach to decentralization, supported by the rule of law and a commitment to state integrity, is needed to preserve the unitary state of Kosovo.

The methodology used in this article is based on the normative-constitutional analysis of the provisions of the Constitution of Kosovo and relevant legal acts, combined with a comparative approach through the study of models of unitary states in Europe. The article builds the argumentation through the analysis of the content of constitutional and legal documents, as well as through the critical interpretation of relevant jurisprudence and doctrine, in order to assess the risk that the Association of Serb-Majority Municipalities may pose to the unitary character of the state of Kosovo.

Keywords: Unitary State, Constitution of Kosovo, Association, Decentralization, Territorial Integrity, Territorial Autonomy, Constitutional Jurisprudence, Non-Majority Communities.

Introduction

This article addresses the issue of the unitary state in the context of the constitutional order of the Republic of Kosovo, with a particular focus on the risks posed by the establishment of the Association of Serb-Majority Municipalities to the unity and territorial integrity of the state. Unlike existing studies that usually analyze Kosovo through post-war state-building processes or community rights, this article contributes by shedding light on the normative aspect of the concept of the unitary state and the challenges that come to this concept from within the constitutional system. Through a comparative approach and analysis of relevant jurisprudence, the article positions itself as a critical addition to the constitutional literature, offering a new perspective in the face of fragmenting tendencies in ethnically diverse states. This approach helps to more clearly understand the constitutional limits of decentralization in unitary states and enriches the academic debate on governance models in sensitive political and legal contexts.

Meaning and Main Characteristics of the Unitary State

A unitary state is defined as a single political and legal entity, where governmental power and legislative authorities are concentrated in a single center.³ Unlike federal states, which have a vertical division of powers between central and regional governments, unitary states exhibit a more limited division of power. Most of them apply decentralization as a mechanism to delegate

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³ Stephen Tierney, *Constitutional Law and National Pluralism* (Oxford: Oxford University Press, 2004), 15.

administrative and governmental powers to local or regional units, without compromising the unitary character of the state.

For example, France, as a classical unitary state, has implemented a centralized system for centuries, but decentralization reforms since the 1980s have facilitated the transfer of powers to local authorities, while preserving state unity.⁴ Another case is the United Kingdom, which, although considered a unitary state, has implemented devolution for Scotland, Wales and Northern Ireland, creating limited self-government structures.⁵

Unitary State Models in Europe

Unitary states in Europe vary in their degree of centralization and decentralization. Taking some models as examples, considerable differences can be identified:

France: A classic model of a centralized unitary state.

France has historically followed a strong tradition of centralization, with Paris being given the role of the absolute center of power. However, decentralization reforms in 1982 and 2003 have empowered municipalities and regions, allowing them to make administrative decisions in certain areas, without creating full political autonomy.⁶

The United Kingdom: A Model of Devolution

The United Kingdom Exhibits a Unique Form of Devolution,⁷ where regions such as Scotland and Wales have received limited legislative powers, but sovereignty remains with the UK Parliament. This model is an example of diversity within a unique unitary structure⁸.

Italy: Unitary State with Special Autonomy for Some Regions

Italy is a unitary state that has implemented a division of powers for autonomous regions such as Sicily and Trentino-Alto Adige, which have a special status for historical and cultural reasons. These examples show that European unitary states can adapt in different ways to demands for decentralization, while at the same time preserving the unitary character of the state structure.

The Unitary State of Kosovo under the 2008 Constitution

The 2008 Constitution of the Republic of Kosovo clearly defines Kosovo as a unitary state, consolidating central power on the basis of the principles of sovereignty and territorial integrity. Article 1 of the Constitution of Kosovo states that "*The Republic of Kosovo is an independent, sovereign, democratic, unitary and indivisible state*"⁹.

⁴B. Guy Peters, *The Politics of Bureaucracy: An Introduction to Comparative Public Administration*, Routledge, 2021.

⁵Vernon Bogdanor, *Devolution in the United Kingdom*, Oxford University Press, 1999.

⁶Robert Elgie, *Politics in the Republic of France*, Palgrave Macmillan, 2013.

⁷Alan Trench, *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007).

⁸Colin Turpin dhe Adam Tomkins, *British Government and the Constitution: Text and Materials*, Cambridge University Press, 2011.

⁹Constitution of the Republic of Kosovo, article 1, paragraph 1.

Centralization and Decentralization in Kosovo

Kosovo has implemented a unique model of decentralization, which is the result of the international negotiation process and the Ahtisaari Agreement. This model aims to empower municipalities, especially those with a Serb majority, to ensure the integration of non-majority communities into state structures.

Decentralization in Kosovo includes:

Broad competencies for municipalities, including the management of education, health, and local police.

Limited autonomy in matters related to culture and religious heritage for Serb-majority municipalities¹⁰.

However, decentralization does not violate the unitary character of the state, as the main powers, including foreign policy and defense, remain under the control of central institutions.

The Role of the Constitution in Preserving the Unitary Character

The Constitution of Kosovo is designed to preserve the unity and territorial integrity of the country. Article 123 states that "*Competencies that are not specifically delegated to municipalities by the Constitution or the law remain under the authority of central institutions.*"¹¹

Furthermore, the Constitutional Court of Kosovo plays an important role in overseeing the respect of the constitutional order and ensuring that decentralization does not deviate from the principles of a unitary state.

Limitations and Challenges for the Kosovo Model

Although the Kosovo model is based on clear principles of a unitary state, it faces several challenges:

1. Relations with Serbia and the political influence of Serb communities in the north.
2. Implementation of decentralization in practice, with some municipalities refusing to cooperate with central authorities.
3. Issues related to the functionality of the Association of Serb-Majority Municipalities, which is seen as a challenge to the unitary character of the state¹².

The following graph shows the municipalities with a Serb majority population in the Republic of Kosovo.¹³

¹⁰Albert Krasniqi, *Decentralization and Local Governance in Kosovo: Challenges and Prospects*, KIPRED, 2013.

¹¹Constitution of the Republic of Kosovo, Article 123.

¹²Ahtisaari Plan, *Comprehensive Proposal for the Kosovo Status Settlement*, 2007.

¹³Żornaczuk, T. (2016, July 20). *Serb community in Kosovo – post-war challenges and current trends*. OSW – Centre for Eastern Studies. https://www.osw.waw.pl/sites/default/files/commentary_214.pdf

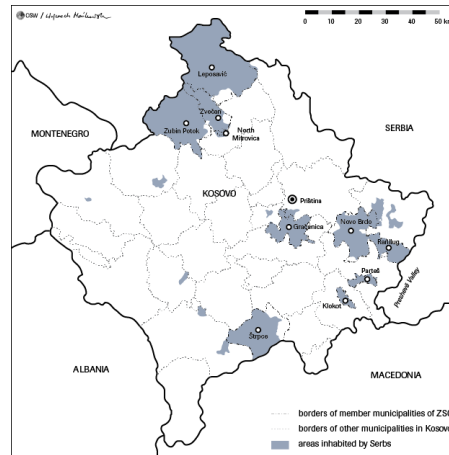


Figure 1. Municipalities with a Serb majority population in the Republic of Kosovo.

Why the Association Undermines the Unitary State of Kosovo

In the context of Kosovo, the creation of the Association would:

1. Weaken the center of power – The expanded powers of the Association would create an institutional parallelism that would weaken the authority of central institutions.
2. Risk territorial integrity – Such a structure could serve as a basis for separatist aspirations, especially considering the strong political and financial ties of the Serb-majority municipalities to Serbia.
3. Set a dangerous precedent – The Association would serve as an example for similar demands from other ethnic groups or regions, undermining the unitary character of the state.

Comparing Kosovo to other unitary state models

In comparison to France and the United Kingdom, Kosovo exhibits a higher level of decentralization for specific historical and political reasons. Unlike France, where decentralization is an internal administrative process, in Kosovo it has been imposed by international factors and as part of peace agreements. At the same time, Kosovo resembles the United Kingdom in devolution of powers to non-majority communities, although with fundamental differences regarding sovereignty.

A unique feature of Kosovo is the involvement of international mechanisms in the supervision of the constitutional order, which is not found in other unitary state models in Europe.

Constitutional Risks of Association

The Constitution of Kosovo defines the country as a unitary and indivisible state, not allowing any form of regional or political autonomy that could challenge sovereignty and territorial integrity. Article 1 of the Constitution states that "*The Republic of Kosovo is a unitary and*

*indivisible state*¹⁴. The creation of the Association with expanded powers would create a level of autonomy that contradicts these constitutional principles.

Expanded Competencies of the Association

If the Association were given competencies over education, health, economic development, and especially over local police, this could lead to the creation of a “*second unit of government*” within the unitary state of Kosovo. This scenario is contrary to Article 123 of the Constitution, which stipulates that competencies not specifically delegated to municipalities remain under the authority of central institutions.¹⁵

The Constitutional Court of Kosovo, in its 2015 judgment on the Brussels Agreement, stressed that several elements of the agreement on the Association are contrary to the Constitution, including the idea of “*executive competencies*” for this structure.¹⁶

Comparative Examples from European Countries

Belgium: The Dangers of Extreme Federalization

An example that illustrates the dangers of decentralizing powers in a state that has unitary origins is Belgium. This country has moved from a unitary state to a federal state with broad powers for regions and communities. Although this model was intended to address ethnic and linguistic divisions, it has exacerbated polarization and created a fragmented political system, where regional governments have often blocked central decision-making.¹⁷ The creation of an association with broad powers in Kosovo could create a similar situation, where the functioning of the central state becomes almost impossible.

Bosnia and Herzegovina: The Dayton Model and the Impact of Autonomous Structures

The case of Bosnia and Herzegovina is another parallel example that shows the dangers of separate structures within a state. Republika Srpska, as an autonomous entity, has often challenged the authority of the central government and threatened the territorial division of the state. The Bosnian experience shows that structures with pronounced autonomy can increase interethnic tensions and undermine the functioning of the unitary state.¹⁸ The creation of the Association in Kosovo, in the proposed form, could result in a similar situation, where the Association would act as a “*state within a state*”.

Spain: Catalonia and the limits of autonomy

Spain, although a unitary state with a high degree of decentralization, faces the challenge of separatist movements from the region of Catalonia. Although Catalonia has considerable autonomy, the demand for independence has created ongoing political and constitutional crises. This example shows that even when broad powers are granted, aspirations for secession can remain alive and undermine state stability.¹⁹

¹⁴Article 1 of the Constitution of the Republic of Kosovo (2008).

¹⁵Ibid., Article 123.

¹⁶Constitutional Court of the Republic of Kosovo, Judgment KO 130/15, date: 23 December 2015.

¹⁷ Kris Deschouwer, *The Politics of Belgium: Institutions and Policy under Bipolar and Centrifugal Federalism*, Palgrave Macmillan, 2012.

¹⁸ Florian Bieber, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, Routledge, 2006.

¹⁹ Montserrat Guibernau, *Nationalisms: The Nation-State and Nationalism in the Twentieth Century*, Polity Press, 2007.

Unitary State Model in Croatia

The unitary state of Croatia is based on the 1990 Constitution, which defines the country as a unitary, democratic and indivisible state. The Constitution emphasizes the sovereignty and territorial integrity of Croatia, while not allowing the creation of any territorial autonomy for ethnic communities or specific regions. Croatia follows a centralized model of government, although it has implemented some decentralizing reforms to strengthen local and regional governance.²⁰ Article 1 of the Constitution of Croatia defines the state as a "*unitary state*" that respects equal rights for all its citizens and communities, without ethnic or cultural exclusion. However, in practice, unity has been challenged by historical and political tensions between Croats and Serbs during and after the Croatian War (1991–1995)²¹.

Decentralization and Local Self-Government

Following the conflict of the 1990s, Croatia has undertaken several decentralization reforms aimed at strengthening local and regional governance, including in Serb-majority municipalities. These reforms have focused mainly on the management of public services and economic resources, granting greater powers to local government units.

However, Croatia's decentralization is more administrative than political. For example, unlike demands for territorial autonomy in countries such as Bosnia and Herzegovina, Serb communities in Croatia have not been granted autonomous powers comparable to the entities in Bosnia, thus preserving the unitary character of the Croatian state²².

The unitary state, in theory, aims to centralize power and preserve territorial integrity, ensuring that ethnic communities live within an indivisible and strong state. However, this structure has been challenged by demands for autonomy and decentralization, which have often been seen as an opportunity to address minority demands.

In this context, Marc Weller, a renowned author and expert on issues of autonomy and minority rights in Europe, has developed a profound approach to territorial and ethnic autonomy. Weller emphasizes that autonomy, as a means of managing ethnic and cultural divergences, is a method that can ensure stability in unitary states, but only if it is managed carefully and within a balanced political process. He argues that autonomy is not a universal solution, but must be adapted to each state, in accordance with its specific needs and the historical and political context of the ethnic groups within it²³.

Weller identifies several forms of autonomy that can help preserve state unity, but that can also jeopardize that unity if they are not adequately controlled and supervised. He highlights that territorial autonomies, which have empowered certain groups to govern themselves and make important decisions, can reinforce divisions and undermine state cohesion if they are not integrated within a strong and unitary system of government.

²⁰ Ivan Koprić, "Decentralization and Local Governance in Croatia," in *Lex Localis* 14, no. 3 (2016): 513–528.

²¹ Kushtetuta e Kroacisë, neni 1.

²² Florian Bieber, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, Routledge, 2006.

²³ Marc Weller, *Autonomy, Self-Determination and the Responsibility to Protect*, Cambridge University Press, 2016.

South Tyrol's model of autonomy cannot be applied in Kosovo

South Tyrol's model presents some lessons²⁴ on discussions on decentralization and autonomy in Kosovo:

1. Unlike the Association of Serb-Majority Municipalities in Kosovo, South Tyrol's autonomy is firmly integrated into the Italian Constitution and does not create parallel institutions that challenge central authority.
2. South Tyrol has managed to harmonize the interests of the majority and minorities through a clear constitutional framework and fair financing.

The Constitution of the Republic of Italy, compared to the Constitution of Kosovo, states that: "Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d'Aosta/Vallée d'Aoste shall have special forms and conditions of autonomy, in accordance with the special statutes approved by constitutional law. The Region of Trentino-Alto Adige/Südtirol is composed of the autonomous provinces of Trento and Bolzano. Other special forms and conditions of autonomy, relating to the areas defined in Article 117, third paragraph and second paragraph, point l) – limited to the organizational needs of the Court of the Peace – as well as points n) and s), may be applied to other Regions by State Law, on the initiative of the Region in question, after consultation with the local authorities, in accordance with the principles set out in Article 119. This Law has been approved by both Chambers of Parliament by a majority of the votes of their members, based on an agreement between the State and the Region in question".²⁵

Whereas, the Constitution of the Republic of Kosovo, regarding local self-government, in Article 124 states that: "*The basic unit of local self-government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-government and encourage and ensure the active participation of all citizens in the decision-making process of municipal bodies.*".²⁶

From this comparison it results that the South Tyrol autonomy model cannot be implemented in Kosovo, for the part of municipalities with a Serbian majority in the north of Kosovo, due to the fact and the constitutional regulation that the Constitution of Kosovo has determined, emphasizing that the Municipality is a basic unit of local self-government, and the city of Mitrovica, even according to the Ahtisaari Plan, consists of two municipalities, the South Municipality of Mitrovica and the North Municipality of Mitrovica, precisely in order to implement territorial integrity and the concept of a unitary state in the Republic of Kosovo.

Conclusion

The unitary state remains a strong model of state organization in Europe, providing political cohesion, institutional clarity, and territorial integrity. Unitary state models, such as France and the United Kingdom, show that it is possible to combine a strong center of power with limited decentralization to meet diverse regional and local needs. Similarly, Kosovo, under its 2008

²⁴ Joseph Marko, "Autonomy and Integration of South Tyrol: A Model to Be Exported?" in *European Yearbook of Minority Issues*, vol. 6 (2006): 379–402.

²⁵ Constitution of the Republic of Italy, article 116.

²⁶ Constitution of the Republic of Italy, article 124.

Constitution, has adopted a unique model of the unitary state, balanced with advanced decentralization to address its specific ethnic and political challenges.

Although Kosovo's decentralization aims to strengthen interethnic coexistence and integrate communities into the state system, challenges related to its implementation and external political influences continue to be significant obstacles. For this reason, the role of independent institutions, such as the Constitutional Court, is crucial to safeguard the principles of the unitary state and to ensure that decentralization does not undermine the integrity of the state.

Finally, Kosovo offers a unique example of the adaptation of the unitary state concept to specific historical and geopolitical circumstances. With a Constitution based on modern principles of governance and supported by international partners, Kosovo faces the complex task of preserving state unity while ensuring fair and equitable governance for all its citizens. The successful implementation of this model requires a commitment to the rule of law and strong cooperation between central and local levels of government.

Kosovo, like many other unitary states in Europe, demonstrates that the unitary state model is not static, but dynamic and capable of adapting to meet the demands of political and social developments in the 21st century. This ability to adapt is what ensures its continuity and sustainability as a sustainable governance model.

References

- Tierney, Stephen (2004). *Constitutional Law and National Pluralism*. Oxford: Oxford University Press.
- Trench, Alan (2007). *Devolution and Power in the United Kingdom*. Manchester: Manchester University Press.
- Constitution of the Republic of Kosovo.
- Constitutional Court of the Republic of Kosovo. Judgment KO 130/15, 23 December 2015.
- Bieber, Florian (2020). *The Rise of Authoritarianism in the Western Balkans*. New York: Palgrave Macmillan.
- Weller, Marc (2008). *Escaping the Self-Determination Trap: The Ethnopolitical Challenge in the Post-Cold War Era*. Leiden: Brill Nijhoff.
- Marko, Joseph (2006). *Autonomy and Integration of South Tyrol: A Model to Be Exported?*. *European Yearbook of Minority Issues*, 6, 379-402.
- Koprić, Ivan. "Decentralization and Local Governance in Croatia." *Lex Localis* 14, no. 3 (2016): 513–528.
- Constitution of the Republic of Croatia.
- Constitution of the Italian Republic.
- Ahtisaari, Martti. *Comprehensive Proposal for the Kosovo Status Settlement*. United Nations, 2007.
- Żornaczuk, T. (2016, July 20). *Serb community in Kosovo – post-war challenges and current trends*. OSW – Centre for Eastern Studies.