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CONSTITUTIONAL IMPLICATIONS OF THE NEGOTIATIONS ON SERBIA'S MEMBERSHIP IN THE EUROPEAN UNION

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Abstract: The European integration process of the Republic of Serbia has raised the issue of amendments to the Constitution of the Republic of Serbia of 2006. The experience of EU member states shows that constitutional changes, as part of the EU membership negotiation process as a whole, are expected and inevitable. Such amendments mainly concern the transposition of the so-called *integrative clause* into national constitutions, including modifications of the constitutional provisions necessary for harmonization with the obligations arising from EU membership. Furthermore, after joining the EU, it could become necessary to make amendments to the Constitution of the member state in accordance with the changes in the functioning of the EU. In that context, the change to the Constitution of the Republic of Serbia is perceived as a necessary step in the further strengthening of the rule of law as well as in further harmonization with the *acquis communautaire* and EU standards. Following the current foreign policy orientation of the Republic of Serbia, in which EU accession is proclaimed the state's strategic priority, the author analyzes the reasons for making amendments to the Constitution of the Republic of Serbia of 2006, the types of constitutional amendments that can be expected in that context, as well as the main challenges and modalities for their successful overcoming. In June 2021, the National Assembly of the Republic of Serbia formally initiated the procedure of changing the Constitution, and in September, the first official version of the text was determined and sent to the Venice Commission for an opinion. Additionally, the specificity of

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the negotiation process of the Republic of Serbia, which places the dialogue between the representatives of the authorities in Belgrade and Priština in the context of European integration, makes the issue of potential amendments to the Constitution in public discourse even more intriguing and controversial. The key research methods in the paper refer to content analysis of the relevant documents and discourse analysis.

Keywords: Republic of Serbia, EU, Constitution, amendments, accession, negotiations, the rule of law, *acquis communautaire.*

INTRODUCTION

The European Union functions on the basis of the powers granted to it by the member states, which have thus transferred to it a part of their constitutional powers, which means that apart from internal law, EU law also applies on the territory of the EU member states. While the internal legal order is based on the supremacy of the constitution, the legal order of the EU is based on the founding treaties of this supranational organization. The large number of supranational competencies and the direct applicability of the Union's legal acts to member states and their natural and legal persons define this the *sui generis* character of this international organization. The EU is in a constant process of improving its own functioning, so it is logical that it differs greatly from the EU of the 1990s. Continued institutional development of the EU makes it obligatory for each new member state to accept the existing legal order of the EU. Currently, the EU *acquis* is divided into 35 negotiating chapters covering a number of technical, legal, economic, and political issues. Within the accession negotiations, the candidate country accepts the *acquis communautaire* in its current form and adjusts to the EU legal, economic, and social system, negotiating the conditions and modalities of the accession. Harmonization with the *acquis communautaire*, in addition to harmonization with the provisions of primary and secondary EU legislation, also includes the adoption of principles on which the EU is based, formulated in the judgments of the Court of Justice of the European Union. As one of the key principles, the principle of supremacy of EU law over the regulations of the member states means that the constitutional provisions of a member state must be in accordance with the obligations arising from its membership in the EU. The European Court of Justice has reaffirmed its commitment to the primacy of European Union law over the law of the member states in a number of its judgments (Internationale Handelsgesellschaft mbH v Einfuhr-und Vorratsstelle für Getreide und Futtermittel, 1970). In this context, the need to introduce an integrative clause

in the constitutions of the member states aims to introduce the law of the European Union into the legal systems of future members and ensure its primacy in relation to national legislation. The issue of changing the 2006 Constitution was raised during the negotiations on the accession of the Republic of Serbia to the EU. Given the dynamics of the accession negotiations and the experience of the member states that joined the Union in the period from 2004 to 2013, it is clear that the Republic of Serbia, as a candidate for EU membership, is not exempt from this issue. This means that if the Constitution of the Republic of Serbia was kept in the same form, the process of the Republic of Serbia's accession to the European Union would be prevented. Considering the scope and dynamics of the constitutional changes of the states that are in the process of joining the Union, the change of the Constitution of the Republic of Serbia, as well as the procedure of change itself, arise as extremely important issues. Based on this, the professionals in this sphere believe that the current process of changing the Constitution should be analyzed in terms of its potential results and benefits. The plan for the revision of the Constitution itself should also provide an answer to the question: will the amendments to the Constitution be adopted partially, as they are identified (in connection with accession to the EU, as is the case with the judiciary, or otherwise), or will all the necessary amendments, which are not related to the integrative clause, be adopted together? (Jerinić, 2019, p. 49).

THE NECESSITY OF CONSTITUTIONAL CHANGES

According to Tanja Mišćević, the change of the 2006 Constitution in the context of Serbia's accession to the European Union will be necessary, with an emphasis on determining the elements that require such a change via screening through all the areas. The former practice of EU members shows that the candidate countries for EU membership started changing their constitutions only in the final phase of the accession process. In the case of the Republic of Serbia, this phase began on January 21, 2014, when the First Intergovernmental Conference between Serbia and the EU was held in Brussels. Previously, Serbia was expected to fulfill its obligations related to the conclusion of the Stabilization and Association Agreement by obtaining candidate status in 2012, to meet the Copenhagen criteria, and thus enter the last and certainly the most difficult phase of membership negotiations. In the context of this research, two documents are particularly important regarding the obligations of the Republic of Serbia: the Stabilization and Association Agreement, which entered into force in 2013, and the

Negotiating Framework for Accession of the Republic of Serbia to the EU of 2014, based on which the current phase of negotiations on EU membership is being conducted. The foundations of this process are laid by Article 72 of the SAA, which stipulates that the harmonization of regulations of the Republic of Serbia with the *acquis communautaire*, especially at an early stage, must focus on basic elements of the judiciary, while the strengthening of institutions and the rule of law are quoted as priority areas (Government of the Republic of Serbia, Ministry of European Integration, 2008). In addition, Article 80 of the Agreement envisages the need to strengthen the independence of the judiciary and improve its efficiency. That a strengthened judicial system is the main precondition for the effective implementation of the *acquis* was confirmed in the Negotiating Framework for the Accession of the Republic of Serbia to the EU, in item 14, which stipulates Serbia's obligation to continue harmonizing its legislation with EU law and ensure full implementation of the key reforms and regulations, especially in the area of the rule of law and judicial reform (CONF-RS 1. Accession Document, 2014, January 21). The provisions of the Constitution (of 2006) on the judiciary contain objections of a formal and essential nature. The essential objection of professionals in this sphere is that the constitutional provisions do not provide for the minimum independence of the judiciary (Radojević, 2009, p. 249). In this regard, the Venice Commission of the Council of Europe in 2007 presented the relevant objections to the normative solutions of the 2006 Constitution, which primarily concern the rule of law. In the position of the Venice Commission on the Constitution of Serbia, the main objection is that: "The National Assembly elects, directly or indirectly, all members of the High Judicial Council, which proposes the appointment of judges and, in addition, elects the judges". Together with the general re-election of all judges after the entry into force of the Constitution, as envisaged by the Constitutional Law on the Implementation of the Constitution, there is a serious danger that political parties will control the judiciary" (European Commission for Democracy through Law (Venice Commission), 2007, March 19). It is exactly this objection of the Venice Commission, which essentially refers to the need to exclude executive power from the functioning of the judiciary, which the European Commission included in its Screening Report for Chapter 23 – Judiciary and Fundamental Rights. It is further stated in the Report that certain constitutional provisions should be additionally harmonized with the recommendations of the Venice Commission, primarily those that refer to the functioning of the National Assembly of the Republic of Serbia and its role in the appointment of judges; the said control of political parties over the parliamentary functions; the

provisions related to the independence of the key institutions in the country; the protection of fundamental rights; as well as data protection (European Commission, 2016). In future amendments to the Constitution, special attention should be paid to the election and composition of the High Judiciary Council and the State Prosecutorial Council. Referring to the relationship between national law and the EU, the principle of hierarchy from the position of state centrism or the position of European centrism does not provide answers to all the peculiarities of the relationship between these two legal orders. As a result, the concepts of constitutional pluralism and multilevel constitutionalism are becoming more widely accepted in theory. (Đorđević, 2013, p. 291). When it comes to the relationship between international and domestic law according to the 2006 Constitution, the wording of the constitutional provisions implies that our Constitution has fully accepted the monistic theory, according to which the Constitution of the Republic of Serbia is the highest legal act, while the ratified international treaties and generally accepted rules of international law are part of the legal order of the Republic of Serbia (Milisavljević, Palević, 2017, p. 33). In accordance with Article 194 of the Constitution, the ratified international treaties must not be contrary to the Constitution as the highest legal act (Ustav Republike Srbije, 2006). Such constitutional provisions actually imply that the Treaty of Accession to the EU, along with the obligations arising from membership, must be in accordance with the Constitution of Serbia so that the Treaty of Accession can be ratified and enter into force. Without changing the current Constitution of the Republic of Serbia, however, this will not be possible since certain obligations imposed by EU membership are not in line with the current Constitution (Međak, 2016, pp. 17-30). Finally, most authors agree that the 2006 Constitution of the Republic of Serbia does not have sufficient legitimacy since it was adopted without consulting the public and without a broader social consensus on constitutional solutions, which makes its revision necessary and certain (Tepavac, 2019, p. 29). Since the Constitution, as the highest legal act of a country, should guarantee the fundamental values of a consolidated democratic society, its illegitimacy and inconsistent implementation call into question the fundamental principles and institutions of the democratic order, the rule of law and the guarantee of basic human rights. Milan Antonijević holds a similar position, emphasizing that by the adoption of the 2006 Constitution, a system was established that fails to provide sufficient guarantees for independence in the work of the judiciary and the legislature (Antonijević, 2019, p. 37). Actually, the very fact that a large number of constitutional articles that refer to the judiciary require amendments, speaks of the need to change the

Constitution, which would give a new chance to ensure an independent judiciary, other independent bodies, and the implementation of the necessary European standards.

TYPES AND METHODS OF CONSTITUTIONAL CHANGES

The changes that are certainly awaiting the Constitution of the Republic of Serbia can be divided into two main types. The first type is changes that had to be made by all EU member states during or after their accession to the EU. These include the so-called integrative clause, which ensures that the decisions of the Union bodies and the legal norms arising therefrom are valid directly on the territory of the member state and have supremacy in relation to domestic legislation. Since Article 99 of the Constitution of the Republic of Serbia stipulates that the National Assembly adopts laws and other general acts that have wider legal effect, it is necessary to make the necessary amendments to the Constitution to ensure the implementation of the general legal acts of the EU — regulations and directives — which are not passed by the Serbian Parliament. The necessary changes in the Constitution of the Republic of Serbia also refer to the norms arising from the corpus of rights of the so-called "European citizenship". The right to vote in the Republic of Serbia is regulated by Article 52 of the Constitution and envisages that "every adult citizen of the Republic of Serbia having legal capacity has the right to vote and be elected" (Ustav Republike Srbije, 2006). The right to vote, whether active or passive, is reserved for the citizens of the Republic of Serbia and this norm is clear and unambiguous. The implementation of rights from the domain of "European citizenship" refers to the active and passive right to vote regarding the election for the European Parliament, which the citizens of the Republic of Serbia shall acquire by joining the EU. Aside from that, they will be granted all other rights under the European citizenship corpus. By joining the EU, Serbia undertakes the obligation to ensure the rights that the Union grants to its "citizens" as an organization, while "citizens of the EU" means all citizens of all the EU member states, regardless of their residence (Charter of Fundamental Rights of the European Union, 2000). All citizens of the EU member states enjoy the rights derived from this corpus. Based on the provisions of EU law, these include: the right to non-discrimination; freedom of movement and residence in the European Union; the right to diplomatic and consular protection; the right to petition the European Parliament and the Ombudsman; and the right to access documents of the EU government (Ugovor o funkcionisanju Evropske unije, 2008). In practice, the application

for European citizenship means that the Republic of Serbia will be required to ensure the right of EU citizens to vote in local elections from the moment it joins the EU because they have the right to free movement and residence. In order to ensure active and passive suffrage for the European Parliament and local elections, regardless of whether it refers to the citizens of the Republic of Serbia or EU citizens, it is necessary to pass a law which would regulate this issue, since this is a new matter unregulated by the existing legislation. According to some estimates, the citizens of the Republic of Serbia could take part in the elections for the European Parliament in 2024 at the earliest, but such a law should be passed much earlier because it is a necessary condition for the completion of negotiations between Serbia and the EU (Međak, 2019, p. 23). The second type of necessary change to the Constitution in the context of the European integration of the Republic of Serbia concerns the mentioned independence of the judiciary and also the exercise of the rights of national minorities, in accordance with European standards and norms. Given the position of the Venice Commission of the Council of Europe of 2007 and objections to the structure and organization of the judiciary, Serbia faced the need for a detailed analysis of the existing regulations, legal solutions and certain constitutional provisions in order to implement possible amendments to the Constitution and ensure the independence and accountability of the judiciary. Due to the dynamics of negotiations with the European Union, the issue of the rule of law has regained its important position and the attention of the Serbian public in recent years, especially after the opening of Chapter 23 in mid-2016. From the point of view of the European Commission, the most problematic articles of the current Constitution refer to the election of judges appointed to this position for the first time (Article 147), the competence of the Assembly to elect members of the High Judicial Council (Article 153) and the competence of the Assembly to elect members of the State Prosecutorial Council (Article 164). Based on this, Serbia tied the process of judicial reform to the process of European integration in all the documents by which it undertook to change the constitution for the purpose of the required depoliticization of the judiciary. Serbia started the necessary reform process on July 1, 2013, when the National Assembly adopted the National Strategy for Judicial Reform for the period 2013-2018. As a result of emphasizing the need for changes in the normative framework and based on the objections of the Venice Commission and the EU, independence, impartiality, professionalism, responsibility, and efficiency of the judiciary were recognized in the Strategy as the five basic principles of judicial reform (Ministry of Justice of the Republic of Serbia, 2013, July). The change of the

Constitution in the area of the judiciary was seen as a necessary step for further strengthening the rule of law as part of harmonization with the *acquis communautaire.* Based on the objections of the EC, in April 2016, the government of the Republic of Serbia prepared an Action Plan for Chapter 23 and sent it to Brussels. The decision to pay great attention to the rule of law in the Action Plan for Chapter 23 was a logical consequence of the analysis of the situation in the judiciary, while special emphasis was placed on amending the Constitution as one of the causes, i.e., obstacles to the full independence of the judiciary. In the Action Plan, answers were envisaged to the objections stated in the Screening Report for Chapter 23 (Ministry of Justice of the Republic of Serbia, 2016, July). Among the most important measures are organizing a public debate on the topic of necessary amendments to the Constitution, the wording of the amendment to the Constitution and its forwarding to the Venice Commission for an opinion. According to Vladimir Međak, it is clear from the provisions of this Action Plan that the issue of independence of the judiciary is intended to be resolved in accordance with the EU standards and recommendations of the Venice Commission, i.e., with the assessments presented in the Screening Report for Chapter 23, and since the government envisaged a public debate on this topic, civil society, the academic community, and other stakeholders should take an active part in the public debate (Međak, 2019, p. 24). The first version of the constitutional changes was presented by the Ministry of Justice of the Republic of Serbia in January 2018. Until October 2018, the Ministry changed the presented text three times under the influence of criticism from the expert public, both domestic (professors, the Supreme Court of Cassation, the High Judicial Council, the State Prosecutorial Council, the appellate courts in Belgrade and Kragujevac, and other courts, a significant part of the bar, professional associations of judges and prosecutors and civil associations advocating human rights), and international (the European Association of Judges, MEDEL, bodies of the Council of Europe – the Consultative Council of European Judges, the Consultative Council of European Prosecutors and the Venice Commission). According to Ms. Dragana Boljević (President of the Association of Judges of Serbia), despite the envisaged improvements, the draft constitutional amendments in the sphere of the judiciary of October 2018 still make it possible for the executive and legislative power *to control* the judiciary and for the National Assembly to elect half of the members of the High Judicial Council. The Council of Europe remained divided over whether this version of the constitutional amendments was in line with the European legal standards, given the opposing opinions of the two advisory bodies of the

Council of Europe. After a number of consultations, the Government of the Republic of Serbia finally received consent for the constitutional changes related to the judiciary in December 2020. In June 2021, the National Assembly of the Republic of Serbia adopted the Government's proposal to amend the Constitution in the part concerning the judiciary by a two-thirds majority. The first official version of the text was determined in September, while the second, current version of the constitutional amendments was drafted in October, based on the opinion of the Venice Commission. Despite recognizing certain improvements in relation to the current constitutional provisions, the experts believe that the main goal of the depoliticization of the judiciary is still not guaranteed. In the position of the Venice Commission on the latest version of the constitutional amendments, the general assessment is that the offered provisions are in line with the European standards, with an objection to the composition of the High Prosecutorial Council, which will include the justice minister and the Supreme Public Prosecutor. When it comes to amendments to the Constitution regarding the exercise of the rights of national minorities on the territory of Serbia, the general assessment is that the Constitution of the Republic of Serbia guarantees the rights of national minorities in accordance with all applicable international and European standards. The Serbian Government's 2016 Action Plan, on the other hand, envisages the necessary mechanisms for the implementation of national minorities' rights and possible amendments to the current Constitution in two cases (Ministry of Public Administration and Local Self-Government of the Republic of Serbia, March 3). First, it is envisaged to consider the need for amendments to certain constitutional provisions in order to strengthen the implementation of affirmative measures aimed at promoting the equality of members of national minorities, i.e., in order to remove possible ambiguities in the Constitution itself regarding this issue.[1] If it is assessed that the amendments regarding this issue are necessary, the Action Plan envisages their adoption, along with other envisaged amendments to the Constitution, as part of the reform of the judiciary in the Republic of Serbia. The second point, which refers to possible amendments to the Constitution regarding the exercise of rights of national minorities on the territory of Serbia, is the envisaged analysis, i.e., the comparative legal practice of other EU member states, primarily from the immediate environment, for the purpose of identifying the best models

[1] In its opinion, the Venice Commission asked whether the provisions of Article 76 of the RS Constitution were sufficiently clear and precise.

of participation of national minorities in the election process and their adequate representation in the representative bodies, at both national, local and provincial levels. Finally, an important issue related to the change in the Constitution is the issue of conducting a referendum on Serbia's accession to the EU. According to Article 203 of the Constitution, the organization of such a referendum is mandatory. The National Assembly shall hold a referendum on the act on amendments to the Constitution in order to confirm if the amendments refer to the preamble of the Constitution, its principles, human and minority rights and freedoms, organization of government, as well as the declaration of war and state of emergency and deviation from human and minority rights during war and state of emergency (Ustav Republike Srbije, 2006). Given the fact that the integrative clause includes amendments related to the organization of government, i.e., that it envisages the derogation of legislative power, which, according to the applicable Constitution, is exclusively within the competence of the National Assembly, it is clear that the amendment to the Constitution related to the integrative clause requires a referendum. At the Intergovernmental Conference of January 2014, the Government of the Republic of Serbia stated that the "final say", i.e., the final decision on the accession of Serbia to the EU, will be made by the citizens of the Republic of Serbia in a referendum (CONF-RS 1. Accession Document 2014, January 21). According to some authors, the necessity of holding a referendum is justified by the numerous shortcomings of the current Constitution, which exceed the needs of the process of accession to the EU. They refer to the constitutional preamble, organization of government, position of the autonomous provinces, as well as certain changes and improvements in the catalogue of human rights. In that sense, it should be noted that if a referendum is not envisaged as a mandatory phase of the procedure of changing the constitution, its holding (at the proposal of the majority of MPs or 100,000 citizens) will always be possible (Jerinić, 2019, p. 48). A successful referendum on the issue of Serbia's membership in the EU requires proper, timely, and continuous information of the citizens on the course of negotiations by the Government of Serbia. Despite the low turnout of voters at the referendum held on January 16, 2022, 59.73% of the citizens of Serbia voted in favor of the Act on Amending the Constitution in the sphere of the judiciary, which was assessed as an important step in the reform of the Serbian Constitution. Still, this is not the end of the process since a number of laws need to be amended for the efficient implementation of constitutional amendments.

POSSIBLE CONSTITUTIONAL CHANGES IN THE LIGHT OF DIALOGUE ON THE NORMALIZATION OF RELATIONS BETWEEN BELGRADE AND PRIŠTINA

At the level of foreign policy, the Republic of Serbia, as a candidate country for EU membership, is facing serious challenges, one of which is the issue of so-called Kosovo's independence. In the context of European integration, special emphasis is placed on negotiating chapter 35, within which there is a direct connection between Serbia's progress in the negotiating process on membership and the so-called comprehensive normalization of relations between Belgrade and the authorities in Priština. The main goal of the current foreign policy of the Republic of Serbia is to reach a solution regarding Kosovo and Metohija that would be a compromise in the sense of not denying *a priori* Serbia's sovereignty and territorial integrity. Still, further fulfillment of the conditions from Chapter 35 could bring the Republic of Serbia into a situation where the current foreign policy orientation comes into conflict with the current constitutional order and also with the national interests (Stanković, 2021, p.188; 2020, pp. 163-188). Such a development for Serbia would mean radical deviation from the Constitution, which obliges all institutions to the preservation of territorial sovereignty and integrity. When it comes to possible amendments to the Constitution which may occur as a result of a dialogue on the normalization of relations between Belgrade and Priština, it is important to note that the Negotiating Framework of January 2014 itself does not guarantee Serbia's full-fledged membership in the Union. According to this document, the ultimate goal of the accession negotiations is the comprehensive normalization of relations between Serbia and representatives of the Priština authorities, which would be defined in the form of a legally binding agreement. It is stated that the aim of this process is to ensure unhindered progress of both sides on the European path without mutual blocking. It is also envisaged in the document that the progress of the negotiations depends on the progress made by Serbia in its preparations for membership, within social and economic convergence, while the process includes "Continuous engagement of Serbia in accordance with the terms of the Stabilization and Accession Process, for the purpose of visible and sustainable improvement of relations with Kosovo" (CONF-RS 1. Accession Document, 2014). Public opinion has it that this does not call into question the position on the status of Kosovo, which is in line with the UN Security Council Resolution 1244/99 and the opinion of the International Court of Justice on the declaration of Kosovo's independence. On the other hand,

certain authors believe that the key impediment to the finalization of the dialogue between the official Belgrade and Priština is the "conflict" between two constitutional concepts. Namely, while according to the Constitution of the Republic of Serbia, Kosovo is an autonomous province, which is an integral part of the Republic of Serbia, according to the Kosovo Constitution, Kosovo is an independent and separate country. It is important to note here that there are currently no clear definitions of the formulation "comprehensive normalization of relations", so it is ungrateful to predict the outcomes of complex political processes, which would imply possible constitutional changes in this sphere. Finally, Serbia is facing a task to, by a serious social consensus and through the adoption of a compromise solution, come to an answer as to how it wishes to position itself before the international organizations in relation to this issue. Apart from the said formal and legal, i.e., normative elements of changing the Constitution, the issue of the Preamble of the Constitution of the Republic of Serbia can also be placed in the context of negotiations between Belgrade and Priština. In the Preamble of the Serbian Constitution and in the wording of the oath taken by the highest state officials, Kosovo is defined as an autonomous province which is an integral part of Serbia. The Preamble of the Constitution is a text which precedes the normative part and represents a solemn statement of political and programmatic nature. As such, the preamble has its specificities (it differs from the remainder of the Constitution). In legal theory, there are different opinions about the legal effect of the preamble, i.e., its legal and obligatory character (Jerinić, 2019, p. 49). Most authors believe that the preamble does not have an obligatory character and that its nature is purely formal. It precedes the constitution and contains no articles or envisaged sanctions. If we, however, adhere to the opinion of certain authors that only one part of the preamble has a legal effect – the part which establishes the constitutional obligations of "all state institutions to advocate and protect the state interests of the Republic of Serbia in Kosovo and Metohija in all internal and foreign policy relations", the conclusion is that the preamble foregrounds, i.e., emphasizes the essential autonomy of the Autonomous Province of Kosovo and Metohija (Jerinić, Kljajević, 2017, pp. 11-12). It is important to note that the Constitution itself does not define the type of this autonomy and its breadth, but leaves it to legal regulations. Consequently, such solutions leave open the issues related to the constitutional status of autonomous provinces in terms of the content, scope, and quality of their competence. The too rigid insistence on the inclusion of this provision in the highest legal act was evidently aimed at reducing room for manoeuvre in the negotiations with

representatives of the Kosovo Albanians on all the current issues in Kosovo. Since the status of Kosovo is also defined by international acts, it will be a great challenge for the political elites in Serbia to take a stand in relation to the preamble of the Constitution. Having in mind the said position, i.e., the opinion of both the Venice Commission and the domestic authors on this issue, it seems that its content does not currently create such an obstacle, especially since it is emphasized that the European integration of Serbia and so-called Kosovo are regarded as separate processes. Still, in case the EU changes its stand on this issue and possibly marks the preamble as a formal obstacle to the accession of Serbia to EU membership, there is no doubt that within the forthcoming change of the Constitution, the change of the preamble would also be necessary (Pavićević, 2010, pp.8-11).

CONCLUSIONS

Considering the issues of constitutional amendments over the last few years in the context of European integration, certain oscillations in the standing of professionals in this sphere can be noticed. From the idea that we should take into account the law of the European Union, the *acquis communautaire* of the European Union and the recommendations and standards of the Council of Europe (the National Strategy for Judiciary Reform), i.e., that we should take into account the recommendations of the Venice Commission and the European standards (the Action Plan for Chapter for 23), we came to the conclusion that the only thing important is the opinion of the Venice Commission because, as the Serbian Government says, "the position of the European Commission is such that Serbia's progress in the reform of the judiciary will be assessed in relation to the assessment of the Venice Commission" (the Proposal of the Serbian Government to change the Constitution submitted to the National Assembly on November 30, 2018). It is certain that at least two amendments to the Constitution await Serbia in the course of the Accession Negotiations with the EU. The first is envisaged by the Action Plan within Chapter 23 and it is in accordance with the recommendations of the Venice Commission and concerns the provision of full independence of the judiciary and achieving European standards regarding the exercise of rights of national minorities. Without this change, progress in the negotiations in Chapter 23 would be brought into question, and thus the entire course of the accession negotiations. The second amendment to the constitution would come at the end of the Accession Negotiations, i.e., upon the signing of the Treaty of Accession to the European Union, when all the parameters under which

Serbia becomes a member are known. At that moment, the integrative clause and amendments from the corpus of rights of "European citizenship" would have to be entered into the Constitution. These amendments to the Constitution are inevitable. Apart from them, it remains to be seen whether and in which way the issue of "comprehensive normalization of relations between Belgrade and Priština" in the form of a legally binding agreement would affect possible amendments to the Constitution, i.e., whether the said agreement would have possible implications for the Constitution of the Republic of Serbia. Also, apart from the issue of a referendum on Serbia's accession to the EU, the current preamble of the Constitution of the Republic of Serbia and its possible amendment pose a special challenge both for the political elites and professionals in this field. One of the important factors must be the very procedure of amending the Constitution, which is rather complex. These facts impose the obligation to fully consider the need for all possible changes, including the necessary consultation of the professionals in this field, which would eventually result in a comprehensive plan for the revision of the current Constitution (Lađevac, 2021, p. 5). Finally, when it comes to the Constitution itself as the highest legal act, we consider this moment to be suitable for breaking with the tradition of adopting constitutions without a wide public debate and broad social consensus, which would also be an opportunity to improve the legal and political order of the country and establish state and social foundations based on entirely democratic values.

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