THE CONSTITUTION OF SERBIA – WEAKNESSES AND SUGGESTIONS FOR THEIR ELLIMINATION

Marko Stanković, PhD
Faculty of Law, University of Belgrade, Serbia

Abstract: This paper analyzes the constitutional system of the Republic of Serbia that has been established by the Constitution of 2006. That Constitution has accepted principles of a liberal-democratic model of constitutionalism and a "rationalized" parliamentarianism. Special attention is paid to the constitutional development of Serbia in last two centuries. Questions that are analyzed in detail are the principles of the Constitution of Serbia of 2006, human and minority rights, position and relations of central authorities and territorial organization of the state. In the end, there are the appropriate conclusions and proposals for improving of the existing constitutional framework.

Keywords: – Constitution of the Republic of Serbia of 2006. – Constitutional history of Serbia. – Parliamentary system. – Autonomous province. – Constitutional reform.

PRE-HISTORY OF THE DEVELOPMENT OF THE CONSTITUTION

Serbia is a country with very rich and turbulent constitutional history. During last two centuries, Serbia was a monarchy and a republic, it was an independent state and part of wider state communities and since 1835 until today Serbia had brought numerous constitutional acts. In the 19th century, although it has not gained formal independence from the Ottoman Empire, Principality of Serbia had three constitutions that were adopted in 1835, 1838 and 1869 (Marković, 2014: 96). After gaining formal independence at the Berlin Congress of 1878, Serbia became only 27th independent state in the world. Up to the World War I, Serbia (elevated to the rank of Kingdomin1882) had brought three constitutions: in 1888, 1901 and 1903 (Jevtić, Popović, 1997: 136).

Special significance in the constitutional genesis of Serbia had the Constitution of the Kingdom of Serbia of 1888. With its adoption Serbian constitutionality moved towards the most liberal constitutional tendencies in Europe. "In terms of the Constitution of 1888, our science and the public has generally accepted opinion that this is the best Serbian constitution, of course together with its little 'complemented and improved edition', the Constitution of 1903" (Jovičić, 1999:

311). Although the Constitution contained some solutions that today seem very retrograde (i.e. state was not separated from the church, although such provisions still exist in the constitutions of some European countries, such as Norway and Denmark), it was at the time of its adoption, and long time after, a very progressive constitutional text. Thus, the Constitution of 1888 is probably the best Serbian constitution, taking into account the time and the circumstances in which it was adopted. But perhaps its greatest weakness lies there – it was too modern for Serbian society of that time, so it was not a "mirror of the social reality" (Stanković, 2014: 20). The quality of the constitutional text was nearly flawless, devoid of ambiguous provisions and legal gaps. Moreover, proclaimed human and civil rights were directly applied on the basis of the Constitution, which was the best guarantee of their inviolability. When it comes to the system of government, Constitution of 1888 introduced a parliamentary system with well-balanced separation of powers and an independent judiciary. The National Assembly had finally become a true legislative power (along with the King), and a system of proportional distribution of seats and free deputy mandate were also established. This Constitution experienced its "second youth" after returning of the Karadjordjevic Dynasty to the Serbian throne until the end of the World War I, in a somewhat amended text. It was formally applied as the new Constitution of 1903, although it was in essence a repeated Constitution of 1888. In both periods of the validity of this constitutional text (1888-1894 and 1903-1918), Serbia was a parliamentary monarchy which followed the latest trends of the European constitutionality.

From 1918 to 2006, Serbia was not an independent state, but part of wider state communities. After World War I, as one of the winner states, Serbia was the backbone of the unification of the South Slav peoples in the so-called "First Yugoslavia", which was initially named the Kingdom of Serbs, Croats and Slovenians. The Kingdom was a unitary state, despite the fact that there were clearly expressed reasons– national, historical, geographical and economic – for the establishment of a federation. That country, which in 1929 changed its name to the Kingdom of Yugoslavia, brought two constitutions. The Constitution of 1921 was the constitution of a parliamentary monarchy, while the Constitution of 1931 quit parliamentary principles and strengthened the position of the monarch, which places it into the group of authoritarian constitutions of the time (together with the constitutions of Portugal of 1933, Austria of 1934 and Poland of 1935).

After the World War II, Yugoslavia made considerable constitutional turnaround. It has adopted a socialist model of constitutionality, whose main comparative model was the Constitution of the Soviet Union of 1936, the famous "Stalin Constitution". Such constitutional system was not a "fertile" ground for classical liberal-democratic constitutionality. The principle of "democratic centralism", which was the basis of state organization from the highest to the lowest level, implied a lack of self-government, while the single-party system meant the actual decision making at the level of the Communist party, rather than at the national or local authorities. Major novelty in the post-war Yugoslav constitutional system was a change of the state structure from unitary to federal, where Serbia was one

of the six federal units in the Federation (other five were Slovenia, Croatia, Bosnia and Herzegovina, Montenegro and Macedonia). Socialist Yugoslavia has brought three complete federal constitutions (1946, 1963 and1974) and one constitutional law (1953), in which constitutional matters have not been regulated comprehensively (Đorđević, 1989: 109). Serbia as the Yugoslav federal unit brought its own respective constitutions, which had to be in accordance with corresponding federal constitutions. This period of development of constitutionalism in compliance with socialist principles is almost without any importance for the present constitutional order of Serbia, except the fact that socialist Yugoslavia had constitutional judiciary, starting from 1963 (Stanković, 2012: 48).

By adopting the Constitution of 1990, although at that time it was still a federal unit within the socialist Yugoslavia, Serbia restored the tradition of the liberal-democratic model of constitutionality. This tradition Serbia cherished back in the 19th century and the first half of the 20th century as an independent state. For this reason, the Constitution of the Republic of Serbia of 1990, in addition to the Constitution of the Kingdom of Serbia from 1888, is considered the most significant for the development of Serbian constitutionality. Basic achievements of liberal-democratic constitutionalism are two principles – the principle of popular sovereignty and the principle of separation of powers. Modern democracy, therefore, rests on two grounds: first, all the power comes from the citizens, and they exercise it either directly or through their freely chosen representatives, and second, three main functions of state power (legislative, executive and judicial) have different holders. Serbian Constitution of 1990 stipulated the so-called "organic concept" of state functions, under which three classic state functions are defined in relation to the organs that exercise them – constitutional and legislative powers belonged to the National Assembly, the executive power to the Government and the judiciary to the courts. Two organs remained outside of this classic division of powers: President of the Republic, who had the so-called "moderating power", and the Constitutional Court, which was entrusted with the function of judicial review (Art. 9 of the Constitution of 1990).

After secession of four Yugoslav federal units in 1991 and 1992 (Slovenia, Croatia, Macedonia and Bosnia and Herzegovina), the third "Yugoslav" state was formed as a two-member federation consisting of only two republics – Serbia and Montenegro. The Constitution of the Federal Republic of Yugoslavia of 1992, similarly to the Constitution of the Republic of Serbia two years earlier, turned back to the principles of liberal-democratic constitutionalism, breaking up that way with the socialist model of constitutionality. In Serbia, during the entire existence of the Federal Republic of Yugoslavia, the Constitution of 1990 was in force. Federal Republic of Yugoslavia existed just little longer than a decade, because in 2003 it was replaced with the State Union of Serbia and Montenegro. The State Union was, as it turned out, the last in a series of steps towards the final separation of the Republic of Serbia and the Republic of Montenegro and their constitutional and international constituting as independent states. That form of union is closest to the theoretical model of real union (and the most notable example of

real union in history was the Austro-Hungarian Empire), with only several common competencies, among which essential were only competencies in foreign affairs and defense (Marković, 2014: 146-147).

Changes in the constitutional arrangement of the Republic of Serbia were made following the secession of Montenegro from the State Union of Serbia and Montenegro in 2006, when Serbia, after almost nine decades, once again became an independent state, which was one of the main reasons for the adoption of a new Constitution of 2006. Conceptually speaking, the adoption of the Constitution of 2006 was not a revolutionary constitutional change in relation to the Constitution of 1990, given that the current constitution adopted almost all of the key solutions that its predecessor contained, with certain adjustments, which in some places are a step forward and in others a step backwards.

PRINCIPLES OF THE CONSTITUTION

The Constitution of the Republic of Serbia of 2006 is an expression of the constitutional continuity in relation to the Constitution of 1990, both in formal and substantive sense. In formal sense because it was passed by the revision procedure which was envisaged by the Constitution of 1990, and in substantial sense because it accepted almost all principles that had been provided by its predecessor (Marković, 2007: 7).

The entire text of the Constitution is divided into ten parts. The first one is entitled "Principles of the Constitution" and contains 17 provisions (principles). A special, difficult procedure is prescribed for their change (Art. 203 of the Constitution). All of the principles can be divided into three groups: 1) general principles; 2) principles relating to the formal characteristics of the state, and 3) principles relating to human and minority rights.

The first group of principles includes *general principles* of the Constitution. They refer to the sovereignty holders (Art. 2), rule of law (Art. 3), division of powers (Art. 4), political parties (Art. 5), prohibition of the conflict of interests (Art. 6), secularity of the State (Art. 11) and provincial autonomy and local self-government (Art. 12). These principles have a fundamental importance and completely determine the constitutional system of Serbia. Constitution accepts the principle of popular sovereignty (Art. 2), according to which "sovereignty is vested in citizens who exercise it through referendums, people's initiative and freely elected representatives". It established the so-called semi-direct democracy, in which, on the one hand, there is a popular representation (parliament), but, on the other, citizens themselves have the opportunity to participate directly in the exercise of state power through referendums and people's initiatives (Stanković, 2015: 138). The principle of the rule of law (Art. 3) is defined in its "classical" form, as it was determined by a famous British constitutionalist Albert Venn Dicey long time ago (Dicey, 1979: 193-194), because Constitution stipulates that it shall be exercised through free and direct elections,

constitutional guarantees of human and minority rights, separation of powers, independent judiciary and observance of Constitution and Law by the authorities. When it comes to the separation of powers (Art. 4), Constitution provides that "government system shall be based on the division of powers into legislative, executive and judiciary", while relation between branches of powers shall be based on "balance and mutual control", but judiciary power shall be independent. This provision clearly shows that the principle of division of powers is accepted in its "soft" form, typical for a parliamentary system of government. Constitution anticipated a political pluralism as one of its principles (Art. 5), because "the role of political parties in democratic shaping of the political will of the citizens shall be guaranteed and recognized and that political parties may be established freely". This principle is characteristic of constitutions of post-socialist countries, which had a single-party system in their relatively recent history. On the other hand, it is rare in classic democracies, because it is included in the constitutional freedom of association. The Republic of Serbia is a secular state, churches and religious communities are separated from the state and no religion may be established as state or mandatory religion (Art. 11). It is important to point out that the Constitution raised the right to local self-government and provincial autonomy to the rank of constitutional principle (Art. 12), which made this form of vertical division of powers very significant. State power is restricted by the right of citizens to provincial autonomy and local self-government. The right of citizens to provincial autonomy and local self-government shall be subjected only to supervision of constitutionality and legality, while the control of suitability (opportunity) of their work is disabled (Stanković, 2015: 107).

The second group of the constitutional principles refers to the *formal characteristics of the state*. These include: definition of the Republic (Art. 1), symbols of the State (Art. 7), territory and border (Art. 8), Capital City (Art. 9), language and script (Art. 10) and international relations (Art. 16). State symbols, territory and borders, Capital City and language and script are hallmarks of the identity of the state, i.e. its legitimacy with which it is identified in the international community (Marković, 2007: 10). So, a special explanation is necessary only for two principles from this group – definition of the Republic and the principle of international relations. The Constitution stipulates that "The Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values". Therefore, the Constitution of 2006 resorted to "ethnic definition", wishing to express that the Republic of Serbia is a state of all Serbian people, including those members of the Serbian people who live in other countries (Venice Commission, Opinion No. 405/2006, 4). This clearly derives from the constitutional provision according to which "the Republic of Serbia shall develop and promote relations of Serbs living abroad with the kin state" (Art. 13.2). On the other hand, the Constitution has also clearly expressed its loyalty to the international law, stipulating that "the foreign policy of the Republic of Serbia shall be based on generally accepted prin-

ciples and rules of international law" (Art. 16). The Constitution additionally provides that generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly, but ratified international treaties must be in accordance with the Constitution. Anyway, the ratified international treaties, according to the Constitution (Art. 194), have a lower legal force than the Constitution, but higher than the law (Marković, 2007: 39).

Finally, a third group of constitutional principles relates to *human rights and minority rights*. This group consists of the principles of gender equality (Art. 15), protection of citizens and Serbs abroad (Art. 13), protection of national minorities (Art. 14) and status of foreign nationals (Art. 17). The State guarantees the equality of women and men and develops equal opportunities policy, protects the rights and interests of its citizens abroad, develops and promotes relations of Serbs living abroad with the kin state, protects the rights of national minorities and guarantees special protection to national minorities for the purpose of exercising full equality and preserving their identity. Pursuant to international treaties, foreign nationals in the Republic of Serbia have all rights guaranteed by the Constitution and law with the exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution and law (Marković, 2014: 490).

In the end, the preamble to the Constitution of 2006 can be classified as a constitutional principle, because it is not just a solemn text that precedes the normative part of the Constitution, but has a legally binding effect. Primarily, the reason for that is that a constitutional norm prescribes a process of change of the preamble (Art. 203 of the Constitution), which implies that the decision of two thirds of the deputies in the National Assembly must be verified by citizens at the mandatory referendum (Marković, 2007: 43).

FUNDAMENTAL RIGHTS AND FREEDOMS

The Constitution of the Republic of Serbia of 2006 pays a lot of attention to human rights. They are a constitutive element of every constitution to that extent that Maurice Hauriou says that every state has two constitutions at the same time - a "social constitution", which regulates the position of citizens, and a "political constitution", which determines the position of the government. The second part of the Constitution of Serbia, which is named "Human and Minority Rights and Freedoms" (Art. 18-81), is a kind of mixture of human rights provided in the most important international documents (The European Convention of Human Rights of 1950, International Covenants of the UN of 1966 etc.) and minority rights stipulated in the Framework Convention for the Protection of National Minorities of the Council of Europe of 1995 (Marković, 2007: 12-13). It is very important that the Constitution stipulates (Art. 18) that human and minority rights guaranteed by the Constitution shall be implemented directly. The law may prescribe the manner of exercising these rights only if explicitly stipulated in the

Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right. Law, thereby, should not affect the substance of the guaranteed rights. Provisions on human and minority rights shall be interpreted to the benefit of promoting "values of a democratic society", pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation.

The Constitution provides even broader protection of human rights with a norm on the hierarchy of legal acts (Art. 194), by which it gives to the international treaties legal force above statutes. This means that, first, ratified international treaties have lower legal force than the Constitution but higher legal force than the statute, and, secondly, courts and other state authorities are obliged to apply the provisions of ratified international treaties, thus providing citizens with comprehensive legal protection.

Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right (Art. 20). Attained level of human and minority rights may not be lowered. When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means.

The Constitution of the Republic of Serbia of 2006 stipulates a *wide range of human rights* of all three generations - civil, political, economic, social, cultural, as well as the rights of national minorities. The Venice Commission in its Opinion on the 2006 Constitution of Serbia stated: "In sum, nearly 70 Articles are dedicated to fundamental rights, i.e. approximately one third of the 206 Articles of the Constitution. From an international and a comparative perspective this number is quite remarkable, in absolute and in relative terms. It shows that Human Rights form an integral and important part of constitutional law and it makes it clear that attention is paid to this element and basic feature of a democratic society in the sense of European Standards such as the European Convention on Human Rights" (The Venice Commission, Opinion No. 405/2006, 6-7). On the other hand, there is an opinion that this "part of the Constitution is, normatively speaking, a failure", because "it is unnecessarily drawn out and detailed" (Marković, 2007: 11).

Finally, the Constitution contains a number of mechanisms to ensure the *realization and protection of constitutionally guaranteed rights*. The most important guarantee of realizing the constitutional rights is the direct implementation of guaranteed rights (Art. 18) and restriction of human and minority rights only if the Constitution permits such restriction and for the purpose allowed by the Constitution (Art. 20). From the special legal tools of protection it is important to

mention the right to equal protection of rights and legal remedy (Art. 36.2), right to judicial protection (Art. 22), constitutional complaint(Art. 170), administrative litigation (Art. 198), right to legal assistance (Art. 67), right to rehabilitation and compensation (Art. 35) and the protection of Civic Defender (Art. 138).

HORIZONTAL ORGANIZATION OF GOVERNMENT

The system of government in the Republic of Serbia according to the Constitution of the 2006 is specific – by its external characteristics it is a semi-presidential system, and by an internal it is "rationalized" parliamentary system – *parlamentarisme rationalisé* (Favoreu et. al, 2010: 398). If we take purely a formal criterion for differentiation of parliamentary and semi-presidential system, i.e. the method of election of the President of the Republic, there is no doubt that the system of government in Serbia is semi-presidential, because President of the Republic of Serbia is elected directly. On the other hand, if we adopt an essential criterion, i.e. the position and powers of the central state authorities (parliament, government and head of the state) then Serbian system of government is without doubt a parliamentary system. The President of the Republic of Serbia, however, does not have broad powers which would be the logical consequence of the great democratic legitimacy which brings direct election. In other words, his constitutional position is much closer to the position of the monarch in a parliamentary monarchies– England, Belgium, the Scandinavian countries (Bradley, Ewing, 2007: 263-268), than to the President of the Republic in the "real" semi-presidential systems – France, Russia (Favoreu et. al., 2010: 675-688). The holder of an active executive power in Serbia is the Government, while the President of the Republic is a passive, moderating power (*pouvoir modérateur*), as it was called by Benjamin Constant and Carl Schmitt (Schmtt, 2008:312). This authority disables blocking of the institutions, prevents escalation of conflicting opinions and leads to joint conclusions and to harmony between all political authorities in the country.

National Assembly

The Parliament is one of the greatest achievements of modern democracy. In countries with a parliamentary system of government, parliament has a central place in political life, because in addition to its core legislative function, it has another equally important function – control over the work of the executive.

Serbian parliament is called National Assembly. The National Assembly of the Republic of Serbia is unicameral, because Serbia is a unitary state. It consists of 250 deputies, who are elected on direct elections by secret ballot. In the National Assembly, equality and representation of different genders and members of national minorities shall be provided (Art. 100). According to the Constitution, "the National Assembly shall be the supreme representative body and holder of

constitutional and legislative power in the Republic of Serbia" (Art. 98). This constitutional provision is not entirely correct, because constitutional power is not performed only by the National Assembly, but this power is shared with the electorate. The Constitution of the Republic of Serbia belongs to the category of rigid constitutions and can be changed only by votes of two-thirds majority in the National Assembly, followed by majority of citizens in a referendum, which is in some cases mandatory, and in the others facultative (Art. 203.6).

The Constitution of 2006 gave important and numerous responsibilities to the National Assembly (Art.99) and they can be classified into three groups: 1) constitutional and legislative functions; 2) competences of the National Assembly as a representative of popular sovereignty and 3) achieving a balance and cooperation between authorities. The first group of competencies has a normative character and includes adopting and amending of the Constitution, enacting laws and other general acts (including budget), granting amnesty for criminal offences, ratification of international contracts and giving previous approval for the Statute of the autonomous province. Secondly, as a representative of popular sovereignty, the National Assembly decides on changes concerning borders, decides on war and peace and declares state of war and emergency, adopts defense strategy, calls for the Republic referendum, adopts development plan and spatial plan and supervises the work of security services. Finally, the third group of competencies – achieving a balance and cooperation between authorities – is of crucial importance for the functioning of system of government in the Republic of Serbia. In that capacity, the National Assembly: a) decides on the dismissal of the President of the Republic (with the prior decision of the Constitutional Court that the President of the Republic had violated the Constitution); b) elects the Government, supervises its work and decides on expiry of the term of office of the Government and ministers (political control of the Government) and c) appoints holders of other state functions (judges of the Constitutional Court, President of the Supreme Court of Cassation, presidents of courts, Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors, Governor of the National Bank of Serbia, Civic Defender, etc.).

Most critics of the domestic and international expert society regarding the constitutional norms on the National Assembly, caused a provision (Art. 102.2) which prescribes that "under the terms stipulated by the Law, a deputy shall be free to irrevocably put his/her term of office at disposal to the political party upon which proposal he or she has been elected a deputy". This created an opportunity to convert free deputy mandate to politically (party) imperative mandate, which caused a flood of criticism (Pajvančić, 2009: 129). However, recent changes of legislation of 2011 have completely annulled this constitutional possibility, so a deputy mandate in Serbia is completely free today and there is no chance to put it at the disposal of the political party (Stanković, 2011: 218). Therefore, the mentioned constitutional norm should be deleted from the text of the Constitution during the first constitutional revision.

The parliamentary system is a system of government in which legislative authority may affect the existence of the executive and *vice versa* (Bradley, Ewing, 2007: 87-88). It is, therefore, a system of equilibrium, in which the balance is achieved by two means: the right of parliament to dismiss the government, on the one hand, and the right of the executive to dissolve parliament, on the other. Dissolution of parliament is a counterweight to its right to vote no confidence to the government and thus take away its mandate. In the Republic of Serbia, the President of the Republic may dissolve the National Assembly, upon the elaborated proposal of the Government (Art. 109). This means that no organ of bicephalous executive power cannot dissolve parliament independently, but both bodies in cooperation. This is the expression of the function of the President of the Republic as a moderator of the constitutional system. In addition to the dissolution of the National Assembly by the will of the executive power, there are four cases of dissolution *ex constitutione*, when the President of the Republic is obliged to dissolve the National Assembly if it fails to elect the Government within the prescribed period (90 days from the day it has been constituted – Art. 109, or 30 days from the time the Government "fell" in the National Assembly –Art. 130-132). This dissolution by force of the Constitution is an asset of "rationalization" of parliamentarianism in the Constitution of Serbia and it contains some elements of the so-called "constructive vote of no confidence" to the Government, which was first time introduced to the world of constitutionality by the Basic Law of Federal Republic of Germany in 1949.

Considering the fact that the Constitution of the Republic of Serbia accepted the principle of the popular sovereignty, which usually involves a semi-direct democracy (Art. 2), it is important that citizens themselves have the opportunity to directly affect decisions about the most important legislative acts through popular initiative (Art. 107, 203) and a referendum (Art. 108, 203). Popular initiative is a possibility of citizens to propose changes in the Constitution or a law they want, while referendum enables them to decide on confirmation of the proposal about amending the Constitution or adopting a particular law. In other words, the popular initiative allows citizens to participate in a phase of proposing regulations, while their participation in the referendum enables them to participate in a phase of their adoption and entry into force. Hypothetically speaking, these two institutes, whose widest application still exist in Switzerland, provide virtually "perfect democracy": out of three stages of the legislative process (phases of initiative, debate and adoption), in the hands of the parliament fully remains just one phase – debate.

Executive – President of the Republic and Government

Countries with parliamentary system of government are characterized by bicephalous executive, consisting of Head of State and the government. Head of State is usually stable and inoperative part of the executive; on the other hand, the

government is unstable and operative part of it. This means that Head of State has no operational powers and he is not responsible for his work, because the government takes over the responsibility for his acts through the institution of ministerial countersignature. The government, by contrast, is the body that has the levers of power in its hands, but it is politically responsible before the parliament. As explained, the system of government in the Republic of Serbia is a semi-presidential by its external features, but it is essentially parliamentary system. The holder of an active executive power is the Government, and the President of the Republic has the moderating authority – prevents the blockade of institutions and provides harmony (Schmitt, 2008: 312).

The President of the Republic "shall express state unity of the Republic of Serbia" (Art. 111 of the Constitution). It is therefore of great importance that the President is neutral, which is provided by a direct election (Art. 114). The President of the Republic is thus the representative of all citizens and has popular legitimacy (Marković, 2014: 324). The term of office of the President of the Republic lasts five years, and no one can be elected to a position of the President of the Republic more than twice (Art. 116).

When it comes to the powers of the President of the Republic of Serbia, they are considerably less than the powers of the presidents in comparative semi-presidential systems, and only slightly larger than powers of Head of State in the parliamentary systems (where Head of State is either a monarch or a president elected by parliament and not directly). At the same time, the powers of the President of the Republic under the Constitution of 2006 are somewhat larger than those under the previous Constitution of 1990. All powers of the President of the Republic (Art. 112 of the Constitution) can be divided into three groups: 1) classical powers of Head of State; 2) mediating powers and 3) powers in extraordinary situations. Classical powers of the President of the Republic are: to represent the Republic of Serbia in the country and abroad, to promulgate laws upon his decree, to propose to the National Assembly holders of positions, to appoint and dismiss ambassadors, to receive letters of credit and revocable letters of credit of foreign diplomatic representatives, to grant amnesties and to award honors and command the Army. The second group of powers is mediating authority, when the President of the Republic acts as a mediator in relations between the National Assembly and the Government. In that capacity, the President of the Republic proposes the National Assembly a candidate for the Prime Minister (after considering views of representatives of elected lists of candidates), has suspending legislative veto and dissolves the National Assembly upon the elaborated proposal of the Government. These powers especially reflect the "weakness" of the position of the President of the Republic of Serbia. Firstly, the President of the Republic of Serbia, unlike the presidents in semi-presidential systems, has no right to independently choose the Prime Minister, but only to propose a candidate to the National Assembly. And secondly, the President of the Republic of Serbia has no right to dissolve the National Assembly on his own, as in semi-presidential systems (Fraisseix, 2006: 167-169). The right of dissolution is "shared" with the

Government. The third group of powers of the President of the Republic are competencies in extraordinary situations, such as state of emergency and war. The President of the Republic has subsidiary jurisdiction in these cases only if the National Assembly is unable to convene, and this jurisdiction is then exercised together with the President of the National Assembly and the Prime Minister (Art. 200-201of the Constitution).

The mandate of the President of the Republic may be terminated before the expiry upon his/her will (resignation) or against his/her will (dismissal).The resignation is a personal gesture, and shall be submitted in written form to the Chairman of the National Assembly (Art. 117). The term of office terminates *ipso facto* when the resignation of the President of the Republic arrives to the National Assembly. Dismissal is a form of legal, not political responsibility, because it can be done only because of violation of the Constitution (Art. 118). The President of the Republic can be dismissed for the violation of the Constitution, upon the decision of the National Assembly, by the votes of at least two thirds of deputies if the Constitutional Court decides that the President of the Republic has violated the Constitution. The procedure of dismissal is one of weak points of the Constitution of 2006, as the President of the Republic can be dismissed easier than elected, which decreases authority of the function, and is not dismissed by the one who has entrusted him the mandate – citizens (Marković, 2014: 332). According to the previous Constitution of 1990, the responsibility of the President of the Republic was realized before the electoral body, which was much more in harmony with the direct election.

When the President of the Republic is prevented from performing the duties, the term of office of the President of the Republic ends before the expiry of the period of time for which he/she has been elected, the President of the Republic shall be replaced by the Chairman of the National Assembly (Art. 120). The Chairman of the National Assembly may replace the President of the Republic for maximum three months, whereby the Chairman of the National Assembly does not have all the powers. This limit has been introduced because the right to replace the President of the Republic under the previous Constitution of 1990 was not time-limited, so it was abused by the chairman of the parliament who performed as Head of State more than a year continuously.

The organ of operative executive power in the Republic of Serbia is the *Government* (Art. 122 of the Constitution), because it holds almost the entire executive power in its hands. In other words, the Government of the Republic of Serbia has all the features typical for a parliamentary system of government. Its competences (Art. 123) can be divided into four groups:1) establishing and pursuing policy (external and internal); 2) executing laws and other general acts; 3) directing and adjusting the work of public administration bodies and performing supervision of their work and 4) representing the Republic of Serbia and managing its property. The Government, therefore, has a triple role: political, executive and controlling. In the area of foreign policy, the Government keeps relations

with other countries, international organizations and institutions, establishes and breaks off diplomatic relations, participates in the conclusion, ratification and implementation of international treaties, decides about membership in international organizations, etc. In the area of internal policies, the Government proposes laws, the budget and other general and individual acts to the National Assembly and gives opinions on draft laws of other authorized proponents.

The Government is politically accountable for its work to the National Assembly, which elects and dismisses it. The Government is elected if the majority of the total number of deputies votes for its election (Art. 127.4). Members of the Government may not be deputies in the National Assembly (the so-called "non-deputy government"). The model of "non-deputy government" is characteristic of the Fifth French Republic, because President Charles De Gaulle thought that no one can ever be "the controller and controlled one" at the same time, i.e. a member of government cannot and will not control himself or herself as a member of parliament (Favoreu et. al., 2010: 690). The Government is accountable to the National Assembly for the policy of the Republic of Serbia, for enforcement of laws and other general acts of the National Assembly, as well as for the work of the public administration bodies (Art. 124). Its political responsibility is realized through classic institutes through which the parliament informs about its work (a deputy question, interpellation etc.). And non-confidence can be voted by the same majority required for its selection (Art. 130-131). However, the responsibility of the Government of Serbia is "narrowed" in relation to responsibility in other parliamentary systems, because there is no institute of ministerial countersignature, which is the reason why the Government is only responsible for its own acts and not for the acts of the President of the Republic. It is logical solution if we have in mind the democratic legitimacy of the President of the Republic, given by a direct election. The Government whose term of office has expired (the so-called "technical government") may only perform affairs stipulated by the Law, until the election of the new Government (Art. 128.4).

The Constitution of 2006 has strengthened the position of the Government in relation to the previous Constitution of Serbia of 1990, so it has predicted special mechanisms for the stabilization of the Government, which was called a "rationalization of parliamentarianism" (*rationalisation du parlementarisme*) by the famous Russian-French constitutionalist Boris Sergeyevich Mirkin-Getzevich (Pinon, 2005: 61-123). Firstly, the Constitution of 2006 has anticipated formal mechanisms that make fall of the Government in parliament more difficult: an increased number of delegates needed to initiate an interpellation and voting of no confidence to the Government and longer terms in processes of interpellation and voting of no confidence to the Government (Art. 129-131). Secondly, the Constitution prescribed relatively short deadline (30 days) in which parliament must elect a new Government after the old has ceased to function; otherwise the National Assembly will be dissolved *ex constitutione* (Art. 130-132). Thirdly, the Constitution established "non-deputy" Government (Art. 126), which made that authority much more independent from the National Assembly. And fourth-

ly, the Constitution has strengthened the position of the Prime Minister, who is not only a "first minister" or *primus inter pares*, but has special powers which make this position closer to the position of Prime Minister in the countries that have adopted the model of chancellor (*Kanzlerprinzip*). The Prime Minister is a personification of whole Government – the Prime Minister manages and directs the work of the Government, takes care of coordinated political activities of the Government, coordinates the work of members of the Government, represents the Government and has th8e so-called "golden voice" in cases of shared voting at the meeting of the Government. Resignation of the Prime Minister terminates the term of office of the whole Government (Art. 132).

Judiciary

One of the basic requirements of the rule of law is an independent judiciary. Unlike the two political powers – legislative and executive – whose relationship rests on checks and balances, judicial power as a professional function must be independent. This can be ensured only by the Constitution, as both legislative and executive branches are subjected to the Constitution. So, the supreme law must protect judicial power from the possibility of the influence of political powers. This means that the Constitution itself must turn off any possibility of legislative and executive to violate constitutionally guaranteed status of judiciary. In addition, independent judiciary is a direct consequence of the principle of separation of powers, independent judiciary acts on that principle in turn, because it is responsible to "keep the balance" in the system of government, since its role is to prevent the abuse of power. That is why James Bryce concluded long time ago that there was no better proof of the validity of a rule than the work of its judicial system (Brajs, 1933: 88). In order to ensure a proper position of the judiciary in the constitutional system, Serbian Constitution of 2006 provides plenty of constitutional principles about judicial power: autonomy and independence of courts, constitutionality and legality, obligatory nature of court decisions, court trials conducted by judge panels (collegiality of conducting trials), citizen participation in the trial (system of mixed jury), public character of the hearing before a court, permanence of judicial office, judicial immunity and incompatibility of judicial office with other public offices, activities or private interests (Art. 142, 145, 146, 149-152).

Undoubtedly, among the most important guarantees of the independence of judges is permanent tenure of their office and methods of their appointment and dismissal. The permanent tenure of office provides the ability to resist the influence of political powers and perform its function professionally. When a judge fears for its own position because of the possibility of being subjected to re-election, he/she cannot be independent in the enforcement of law. In that situation, a judge consciously or unconsciously thinks about the will of the political and financial elite. The Serbian Constitution predicts the permanent tenure of office, with the exception of the first election to a judicial position, which lasts three

years and can be considered a kind of "probation period". The Venice Commission in its opinion (Opinion No. 405/2006, 14) on the Serbian Constitution of 2006, presented compliments to the duration of this trial mandate.

Status matters concerning judicial authority are entrusted with High Judicial Council, which is constitutionally defined as an "independent and autonomous body which shall provide for and guarantee independence and autonomy of courts and judges" (Art. 153). Although the establishment of this body is a step forward compared to the Constitution of 1990, according to which judges were elected by political authority (the National Assembly), the complete independence of the High Judicial Council is not provided, because all of its 11 members are directly or indirectly elected by the National Assembly. In other words, emancipation from the influence of political factors in the selection of judges has stopped halfway.

Another issue regarding the constitutional position of the judiciary in Serbia is the absence of norms that would prescribe termination of office and dismissal of judges in detail, but the regulation of these issues are left to the legislator (Art. 148). As it is said by Ratko Marković, "the deconstitutionalization of the grounds for termination and for relieving from judicial office weakens the position of the judiciary as an independent branch of power in the system of governance" (Marković, 2007: 22).

Finally, the only court whose existence is *expressis verbis* provided by the Constitution is the highest judicial authority in the Republic of Serbia – Supreme Court of Cassation, and the legislator is authorized to arrange the structure of the courts. There is no doubt that the Constitution should contain a little more detailed provisions on the court network.

In summary, the position of the judiciary in Serbia can be improved. It seems that if a constitutional revision comes soon, framers of the Constitution will have to correct their errors made in a period of the adoption of the Constitution and to eliminate the influence of political authorities to the selection of judges, as well as to prescribe the rules about the dismissal of judges in order to give the true meaning to the constitutional principle of the independence of the judiciary.

Other constitutional organizational bodies

In addition to legislative, executive and judicial organs, the Constitution of the Republic of Serbia of 2006 prescribes the existence of some other high authorities, which have an enormous importance for the functioning of the constitutional system.

The Constitutional Court is established as an organ that performs specific state function–the function of judicial review, in the sense in which it was defined by Hans Kelsen (Kelsen, 1928: 201). This is a centralized system of judicial review, as determined by Mauro Cappelletti (Cappelleti, 1989: 132-133). Constitutional

judiciary in Serbia has a tradition of more than half a century, as the Constitutional Court of Serbia was founded already in 1963, during the era of socialist Yugoslavia. The Yugoslav experiment with constitutional judiciary, as it turned out, outlived both the state and the socio-political order in which it was created, because constitutional courts still exist in all of six former federal units of the Federation, which are now independent states. Anyway, the former Yugoslavia had accepted the German model, which takes into account federal state structure in the organization of the constitutional judiciary. So, in addition to the Federal Constitutional Court, there were constitutional courts of federal units.

The position of the Constitutional Court of Serbia in the Constitution of 2006, its composition and competencies is an area of *materiae constitutionis* which is probably the most innovated in comparison to the Constitution of 1990. "Nonetheless, it is still the state organ whose primary function is to protect constitutionality and legality from violations by general legal acts, although the 2006 Constitution underlines, to a greater degree than was the case before, its function of the conflict court (the court for resolving conflicts of jurisdictions)" (Marković, 2007: 27). The Venice Commission positively evaluated the organization of the Constitutional Court in the Constitution of 2006 (Opinion No. 405/2006, 17). The number of justices of the Constitutional Court of Serbia has been increased from 9 to15, and the justification for it can be found in one of its new competences – to decide on constitutional complaints. The issue of election or appointment of justices is regulated in a completely new way in relation to the Constitution of 1990. The Italian system from the Constitution of 1947 served as a model for it, because it essentially takes into account the three-branch separation of powers (legislative, executive and judicial): five of justices are elected and appointed by holders of each of the three branches of government – the National Assembly, the President of the Republic and the Supreme Court of Cassation (Art. 172.2). The Constitutional Court justice may not hold any other public or professional office or be employed, except for being Professor at a Law School in the Republic of Serbia. The Constitution of 2006 prescribes a time-limited mandate of 9 years, whereby a justice cannot perform that function more than two terms. The question is whether such solution is good, because the justice during his/her first term can, performing the function in an appropriate manner, "offer" himself or herself for re-election or re-appointment to the one who decides on it, and all at the expense of conscientious and objective exercise of the function. Competences of the Constitutional Court of Serbia(Art. 167) are relatively wide: 1) normative control of law (statutes and regulations); 2) conflict competence; 3) deciding on whether the President of the Republic has violated the Constitution (in the procedure dismissal); 4) deciding on constitutional complaints; 5) solving electoral disputes and 6) deciding on banning of a political party, organization or civic association. The Constitutional Court decisions are generally binding (have the *ergaomnes* effect), final and enforceable (Art. 166).

The Civic Defender is an independent state body who shall protect citizens' rights and monitor the work of public administration bodies, the body in charge

of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organizations, companies and institutions to which public powers have been delegated (Art. 138). The Civic Defender is elected and dismissed by the National Assembly and accounts for his/her work to the National Assembly. The Civic Defender is not authorized to monitor the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and Public Prosecutor's Offices.

Public Prosecutor's Office is an independent state body which prosecutes the perpetrators of criminal offences and other punishable acts, and takes measures in order to protect constitutionality and legality (Art. 156). That is one of the main achievements of modern rule of law – that the prosecutorial function is separated from the judicial. In comparison to the 1990 Constitution of Serbia, the principle of permanence of the public prosecution office was abandoned (the term of office of the Republic Public Prosecutor is six years, and he/she can be re-appointed to the same office), and a differentiated legal regime for the appointment to office, termination of office and the term of office of the public prosecutor, on the one hand, and the deputy public prosecutor, on the other, was introduced. The State Prosecutors Council is an autonomous body which shall provide for and guarantee the autonomy of Public Prosecutors and Deputy Public Prosecutors (Art. 164).

The Constitution stipulates the existence of two bodies that are important for economic regulation and public finances in the Republic of Serbia. *The National Bank of Serbia* (Art. 95) is a central bank of the Republic of Serbia, independent and subject to supervision by the National Assembly to which it accounts for its work. It is managed by the Governor elected by the National Assembly. *The State Audit Institution* (Art. 96) is the supreme state body for auditing public finances in the Republic of Serbia, independent and subject to supervision by the National Assembly to which it accounts for its work.

VERTICAL ORGANIZATION OF GOVERNMENT

As noted above, the Constitution of the Republic of Serbia of 2006 has raised local self- government and provincial autonomy to the rank of constitutional principle (Art. 12). Moreover, the Constitution has defined provincial autonomy and local self-government as citizens right "which they shall exercise directly or through their freely elected representatives" (Art. 176). The contents of this right are concretized in the section of the Constitution on Territorial Organization (Part Seven, Art. 176-194). Everything mentioned supports the fact that the Constitution of Serbia of 2006 sets the vertical (territorial) division of power in a very high position in the constitutional system.

Local Self-Government

The Constitution has found that "local self-government units shall be municipalities, towns and the City of Belgrade" (Art. 188). Although at first sight it appears that there are three different types of local self-government units, this is actually *single-stage and monotypelocal self-government*, which base unit is municipality, and within such local self-government there are some special solutions for towns and the City of Belgrade (the capital). Thereby, the uniformity of municipalities mitigates to some extent. Such conclusion clearly derives from the fact that all units of local self-government have the same original competences, identical organs and the same legal regime in relation to the state.

Currently, there are 174 local self-government units in the Republic of Serbia – 145 municipalities, 28 towns and the City of Belgrade (the Capital). The number of local government units in the Republic of Serbia is very small considering the size of the territory and the population. As an illustration, the number of local self-government units in Serbia can be compared with the number of units in some European countries, which are similar to the Republic of Serbia in terms of the territory and population .In the first place, as states with a large number of local self-government units, we should mention Switzerland and Austria, which have 2,551 or 2,359 municipalities. Then,there are the countries with "medium" number of municipalities, such as Belgium and the Netherlands with 589 to 393 municipalities. Finally, as examples of a relatively small number of municipalities we can mention Greece with 325 municipalities and Bulgaria with 265. Serbian concept of "large municipalities" has its advantages and disadvantages and its reform should be considered (Stanković, 2015: 152-157).

The self-governing status of municipalities in the Republic of Serbia is composed of several elements. Firstly, they have an independent scope of competencies guaranteed by the Constitution and by law (Art. 190 of the Constitution). These are their original competences, and the state may delegate them other competencies from its own jurisdiction by law. Secondly, they choose their organs autonomously (Art. 191). Thirdly, local self-governments have permanent and stable sources of incomes, which they can spend autonomously. And fourthly, they enjoy the protection of their self-governing status (Art. 193).

When it comes to local self-government organs, the Constitution of 2006 anticipated the right of local self-government to autonomously regulate the organisation and competences of its bodies and public services (Art. 179). In this way the Constitution implemented the principle of organizational and personal independence of local self-government, which is one of the key elements of this political institution. The only organ of local self-government which is mentioned *expressis verbis* in the Constitution is the Assembly of the local self-government, which is defined as the "supreme body" of local self-government(Art. 180). "This is the so-called assembly system of governance, which is based on unity (not sep-

aration) of power for the benefit of the assembly, which was present in the time of the socialist Yugoslavia (1946–1992)" (Marković, 2007: 34).

The Constitution stipulates that citizens' right to local self-government "shall be subjected only to supervision of constitutionality and legality" (Art. 12). In this way, the framers of the Constitution stepped away from the generally accepted standards in comparative law, where it is common that the state controls only the constitutionality and legality of local self-government in the sphere of original competencies, while the state controls the expediency of their work in the sphere of delegated competencies in addition to the constitutionality and legality.

Provincial Autonomy

Serbia's experience with the provincial autonomy began with a fatal acceptance of socialism during the World War II. Provinces in the countries in the world usually have adequate historical foundation and tradition, which is the case for example in Spain or Italy. Serbia owes this "tradition" to the decision of the former Yugoslav communist leadership to form autonomous provinces only in Serbia, of all six former Yugoslav federal units. They formed the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohia. These two provinces, "inherited" from the socialist Yugoslavia, were also kept in the Serbian Constitutions of 1990 and of 2006.

According to the Constitution, "in the Republic of Serbia, there are the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohia". Further, "the substantial autonomy of the Autonomous province of Kosovo and Metohia shall be regulated by the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution" (Art. 182.2). New autonomous provinces may be established, and already established ones may be revoked or merged following the proceedings envisaged for amending the Constitution.

Provincial autonomy in Serbia according to the Constitution of 2006 has three basic characteristics: 1) it introduced a symmetric state structure; 2) the position of provinces is uneven(differentiated) and 3) the process of forming of new provinces is open (Marković, 2014: 450). The first characteristic means that not the whole national territory is divided into autonomous provinces (as in the case of Spain and Italy), but only one-third of the national territory. The second characteristic means that the two existing provinces have different constitutional treatment: Autonomous Province of Vojvodina has an "ordinary autonomy", which is prescribed by the Constitution, while the Autonomous Province of Kosovo and Metohia has a "substantial autonomy", which has to be regulated by a special constitutional law. The third characteristic of provincial autonomy means that the number and territory of autonomous provinces is not immutable, so it is possible to establish new provinces, as well as to remove or merge the existing ones (in the procedure of amending of the Constitution).

The status of autonomous provinces in the Republic of Serbia stipulated in the Constitution does not significantly differ from the standard theoretical model of territorial autonomy. The Constitution regulates the most important issues regarding the autonomous provinces: competences (Art. 183), financial autonomy (Art. 184), legal acts of autonomous provinces (Art. 185), monitoring the work of bodies of autonomous province (Art. 186) and protection of the provincial autonomy (Art. 187). Furthermore, the Constitution guarantees the autonomous provinces to autonomously regulate the organization and competences of its bodies and public services, prescribing that Assembly shall be the "supreme body" of the autonomous province (Art. 179-180). All other questions considering the status and organization of the autonomous provinces are regulated by the laws of the National Assembly and the statutes of the autonomous provinces.

CONCLUSION AND REFORM AGENDA

Serbia can be proud of its rich constitutional tradition. Back in the 19th century it had very progressive constitutions, the kind of even developed European democracies did not have. But it is likely that a problem in their practical application was that those constitutions, especially the one of 1888,were too modern for the Serbian society of that time. Serbia had preserved that tradition of liberal-democratic constitutionalism in the 20th century, initially as an independent Kingdom, and after World War I as a part of the Kingdom of Serbs, Croats and Slovenes (i.e. The First Yugoslavia). The Second Yugoslavia, which was created during World War II and which adopted the socialist model of constitutionality, was not a fertile soil for the development of liberal-democratic constitutional institutions, to which Serbia again returned after the adoption of the Constitution of 1990.That trend of development of liberal-democratic constitutionalism in its social-democratic form continued after the adoption of the current Constitution of 2006.

The Constitution of the Republic of Serbia of 2006 has been in force for exactly a decade. In that time, the constitutional practice has shown good features and flaws of this legal act and crystallized the concrete proposals for its amendments in order to improve the existing constitutional framework.

In the area of *human and minority rights*, the constitutional norms are on a very high level. All the groups of rights – civil, political, economic, social, cultural, as well as the rights of national minorities, are well constitutionally regulated. Naturally, there is always a question about their realization in practice, but we must emphasize that the Constitution of Serbia provided a series of effective means of protecting them. In this regard, we should mention the institution of constitutional complaint, which is a novelty in the Constitution of 2006. However, for the realization of rights of certain groups, such as social rights, a good legal framework is not enough. To make the system of protection of social rights function properly, it is necessary to satisfy all the capacities – financial, technical and human, as well as the efficiency in solving of the cases.

Horizontal organization of government in the Constitution of 2006 was made with the acceptance of a "soft" variety of the principle of separation of powers, in the form of a parliamentary system. Notwithstanding the fact that Head of State is directly elected and has great democratic legitimacy (the same as that of the National Assembly), its powers are only slightly greater than the powers of the monarch in a parliamentary monarchy. The relations between the political authorities that "reflect" the character of a government system as a mirror, are well regulated, as the President of the Republic has role of a moderator between the holders of active powers – parliament and government. The procedure of dismissal of the President of the Republic for the violation of the Constitution requires a better constitutional regulation. The problem that existed with the constitutional possibility to prescribe a politically imperative mandate in the National Assembly was solved in 2011 by adopting appropriate legal solutions, although the disputed constitutional provision (Art. 102.2) should be removed from the Constitution in the near future.

The position of the *Constitutional Court* in the constitutional system of Serbia relies to the half-century tradition of constitutional judiciary in Serbia, which was introduced back in 1963. The Constitutional Court is designed as a carrier of special state function which is in any sense separate from the regular judicial power, i.e. as a "negative legislator" in Kelsen's sense. Serbian Constitutional Court performs many functions, among which the most important are judicial review and deciding on constitutional complaints. The existing legal framework is good, but there is a need for increasing the efficiency in resolving constitutional complaints. That is best evidenced by the fact that there are constant fluctuations in the European Court of Human Rights on whether a constitutional complaint in Serbia is an "effective legal remedy" which has to be exhausted before the direct addressing to the Court.

The independence of the judiciary is probably the weakest point of the valid Serbian Constitution. In summary, the Constitution of Serbia has made four key failures in relation to the judicial power. Firstly, although it has formed a specialized organ of judicial administration – the High Judicial Council, the Constitution has not provided true autonomy and independence of that body, which is under the political influence of the National Assembly. Secondly, an exception to the principle of permanent judicial tenure in the form of a "trial period" of three years is problematic both because it is too short and because the judges "beginners" are elected by a political organ – the National Assembly. The third failure is the lack of precise constitutional provisions on the termination of judicial tenure and leaving these issues to the legislature (although in this area it is possible to follow the good example of the previous Constitution of 1990). And finally, the fourth flaw of the Constitution in the area of judiciary is the lack of more detailed provisions on the establishment of courts, their competence and composition. Altogether, the constitutional position of the judiciary in Serbia today is such that it cannot be considered fully independent, which is in modern times one of the basic elements of the rule of law. It seems that the framers of the Constitution need to correct their errors made in the adoption of the Constitution and to

eliminate the influence of political authorities to the selection of judges, as well as to constitutional rules on the dismissal of judges. Proclamation of constitutional principles is a "dead letter on paper" if these principles are not adequately confirmed and developed in constitutional norms and laws based on them.

In the area of *vertical organization of government* there is a possibility of improvement of existing standards. First of all, it is unclear why the Constitution contains any "common provisions" for the local self-government and provincial autonomy, when it comes to two completely different types of territorial decentralization. In the field of local self-government there are several issues that should be considered in order to improve local self-government in the Republic of Serbia:1) the number and size of units of local self-government; 2) local democracy and election of local representatives, in order to reduce the influence of political parties; 3) method of electing the mayors, for possible increase of the efficiency of local self-government and 4) property of local self-government, whose status should be regulated in a comprehensive manner. On the other hand, in the domain of provincial autonomy some improvements are also possible, because many issues related to this form of decentralization should be resolved by the Constitution. In addition, the adoption of a constitutional law that would regulate the "substantial autonomy" of Kosovo and Metohia is likely to be postponed for a longer period, at least until the end of the so-called "negotiations between Belgrade and Pristina" which take place through the mediation of the European Union.

Finally, the *revision procedure* that is prescribed by the Constitution has often been the subject of critics as too complicated, so it maybe also possible to make a step forward in that field. The Venice Commission itself expressed such an opinion (Opinion No. 405/2006, 21): "It strikes the Venice Commission, first of all, that the procedure drafted is very complex, as it involves two or even three steps: first, the National Assembly has to adopt, by a two-thirds majority of all deputies, a proposal to amend the Constitution (Article 203.3), and then the same National Assembly has to adopt an act amending the Constitution by a two-thirds majority of all deputies (Article 203.6). Finally, Article 205 seems to require the adoption, again by a two-thirds majority, of a further constitutional law for the enforcement of the amendments to the Constitution."

Overall, with the adoption of the Constitution of 2006, the Republic of Serbia has confirmed its belonging to the liberal-democratic type of constitutionality, which has been developing in Europe for centuries and that Serbia has been keeping to since the 19thcentury, with an interruption in the era of socialist Yugoslavia. The return to the liberal-democratic "roots" was achieved a quarter of century ago with the adoption of the Constitution of 1990, and the current Constitution has been striving to eliminate shortcomings of its predecessor. However, during the first ten years, the application of the Constitution of 2006 has also shown some weaknesses that should be corrected during its first revision.

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