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CONSTITUTION IN THE GLOBAL CHANGE EPOCH AND THE GOALS OF CONSTITUTIONAL REVIEW

Globalization as a process represents one of the fundamental characteristics of the contemporary world. A global development of economy, technology and financial capital tears down the borders between the countries and creates the need for open and free flow of goods, services, capital and people. On the other hand, free and open market demands the existence and application of single or at least mainly similar rules and principles on market functioning and market participants' behavior. At the same time, that means that the international community expects the existence of strong guarantees that every state will, on its national level, predict and ensure the respect of both binding rules adopted by corresponding international organizations and the implementation of standards established as an acceptable and desired behavior in certain sector by those international organizations. We could say that the globalization in the field of economy and finance had its immediate influence on the national legal systems.

The second aspect of the global changes initiated in the last century, above all by the work of United Nations and Council of Europe, is founded on the construction, development, expansion and improvement of human rights and freedoms concept and effective mechanism for their protection, which represents the basic precondition of society's democratization. The goal of this concept is to establish the necessary balance between, on one side, the state that by the authority of its power constitutes the rules of conduct, implements them and sanctions their violation, and on the other side, the individual to whom those rules apply. In other words, by guaranteeing human rights and freedoms the protection of individual from the state and its possible abuse of powers is provided. In that manner emerged the obligation for state to ensure the guaranties of human rights and freedoms founded by the international treaties through its national legal system, as well as to establish the mechanisms for realization and protection of human rights and freedoms, on the national level. Simultaneously, the United Nations and the Council of Europe, by the means of their

specialized agencies and bodies, gained at the global, supranational scale the status of the “guardian” watching and supervising the obedience and application of basic principles and standards regarding the realization and protection of human rights and freedoms.

Both previously stated global concepts are directly related to the fundamental principles of the modern democratic society – the principle of the rule of law and the principle of the separation of powers, whereby they strongly influence the content of constitution as the state’s highest legal act.

Namely, it is out of the question that the constitution is the highest legal act of the state that originates from its citizens sovereign will. However, it is obvious that the will of the constitution maker could not be completely unrestricted, because if the state has the tendency of being accepted as an equal member of the international community, which is in actual conditions necessary for it to ensure its economic existence and development, the content of the constitution must comply with the rules and standards of the international community that are giving it the legitimacy of democratic state.

If previously listed general considerations are applied to the European countries we can notice that the constitutions of all the European states, as a rule, at their very beginning proclaim as fundamental values the principle of the rule of law and the principle of the separation of powers, specifically emphasizing the independence of judicial power. Likewise, bearing in mind that the judicial power has the key role in securing and protecting human rights and freedoms, as well as in protecting the rights deriving from the principle of free market and equal position of market participants, the constitutional provisions are paying exceptional attention to the organization of judicial power. Generally, the constitutional provisions should provide judicial independence. However, the way in which the constitution is securing the judicial independence differs from state to state. Whether one constitutional solution would be considered acceptable from the aspect of guaranties of judicial power independence crucially depends on the democratic reputation of the country in question *id est* is it considered to be the country with developed democratic tradition or not. In that way, one constitutional solution might be acceptable for one and not for some other state, disregarding the fact that the judicial system traditionally do exist and function in both countries. Additionally, in relation to some countries it will be considered acceptable that series of specific issues concerning the organization of judicial power are regulated by law, while some others will be obliged to incorporate them into the constitution. Where is this different treatment of some states coming from? The answer to this question essentially lies in differentiation of countries into two categories – the states of old, traditional democracy and

the states of young democracy that include the post-communist countries in which the transition of the political and economic system begun at the end of the 20th century. On the one hand, negative, above all, political heritage following those countries and the fact that the acceptance of different value system simultaneously by institutions and citizens could not happen overnight, and on the other hand, determination of those countries not to stay isolated islands in the united Europe, has for a consequence far more strict demands that are being asked from them and not only during the accession process. The requests regarding the protection of human rights and freedoms and judiciary independence are highly accentuated.

The goals of the constitutional revision in so called countries of young democracies are oriented in several directions. First, human rights and freedoms should be guaranteed by the constitution; accordingly they must be contained in the constitution. Second, the constitution should arrange the judicial power in that manner that every political influence is eliminated, that is to say it should be organized to exclude any involvement of executive and legislative branch of power in the election process of judges and presidents of the courts and to provide a solid ground for realization of other individual guaranties of judicial independence, such as permanency of tenure, guaranties of financial independence, immovability, functional immunity, limited and clearly defined grounds for removal, etc. Additionally, another goal of the constitutional revision in these countries was to establish the constitutional court as an autonomous and independent body authorized to protect constitutionality and human rights and freedoms.

Finally, when it comes to the influence of the constitutional revision on the Constitutional Court, in the Republic of Serbia, within the Socialist Federal Republic of Yugoslavia, as well as in other Yugoslav republics then, the Constitutional Court was established 55 years ago. Since its establishment the Constitutional Court has in its jurisdiction the control of compliance of laws and other general legal acts with the Constitution, as well as of other legal act of lower authority with law. However, after the constitutional changes in 2006 the jurisdiction of the Constitutional Court was significantly extended. For more than 10 years now, the Constitutional Court protects human rights and freedoms guaranteed by the Constitution, identical to those contained in the European convention, by acting in the constitutional complaint procedure. Bearing in mind that the constitutional complaint, within the predicted time frame, could be filed by anyone considering that any of their guaranteed rights or freedoms was harmed or restricted by the court's decision or special act or action of any state body, with the only restriction being prior exhaustion of all legal remedies, acting in the constitutional complaint procedure became the

predominant field of work of the Constitutional Court. Almost 80.000 solved constitutional complaint cases in the past period significantly influenced the visage of the Constitutional Court. In Serbia, as well as in other countries in which constitutional protection is founded on the similar basis, the Constitutional Court is becoming more and more a “regular citizens’ court”, whose role is not only to ensure the harmony of legal order by eliminating from it unconstitutional laws or other general legal acts, but also to ensure the rule of law as a prime principle of democratic society through effective protection of individual rights and freedoms. In that manner, in the global change epoch, the constitutional courts by interpreting and applying the constitutional norms in accordance with the standards and practice of international institutions supervising the fulfilment of human rights, give the meaningful contribution to the establishment of democratic values in their states and overcoming the division between “young” and “traditional” democracies.