ORIGINAL ARTICLES

UDK 342.4(497.11)"2006"

Ratko Marković

REPUBLIC OF SERBIA CONSTITUTION OF 2006 – A CRITICAL REVIEW*

Even though the new Constitution in Serbia had been under way for a long time, the draft Constitution that became the Constitution itself was drawn up in haste and unexpectedly, and the procedure of the adoption thereof was the fastest possible one. For all that, no formal legal breaches of the constitution adoption procedure, as specified by the 1990 Constitution, took place, but the objection that the new Constitution was part of the political compromise of the three largest parliamentary political parties, while the broader political and the entire professional community had been excluded, can hardly be ignored. There were two main reasons for such great haste. One was to pre-empt the decision, potentially adverse for Serbia, of the Security Council on Kosmet[1] status, which has been under international military and civil administration since 1999, in a way that the Constitution would state that Kosmet is „within the sovereign country of Serbia". Since the constitution is to be endorsed at the referendum by a majority of the total number of voters in the Republic of Serbia, this attitude would have the protection of the highest level of legitimacy. The other reason for the „lightning" quickness of the adoption of the Constitution is that Serbia, having become an independent and sovereign country after the secession of Montenegro from the state union of Serbia and Montenegro, which was, apparently, not expected to happen, should be given an appropriate constitution, which would express her new „country status".

That the new Constitution was not drawn up in a highly studious manner is best shown by its unacceptably numerous and inexplicable nomotechnical faults, a number of which will create problems in the enforcement of the Constitution. Moreover, Serbia, in its rich constitutional history, has never had a more illiterate

---

* Due to the importance of the subject matter examined in this paper and the current interest it excites, as well as because of the impossibility to shorten it, in spite of the good will and readiness of the author, Prof. Ratko Marković, without jeopardizing the analysis performed and arguments presented, the editorial board decided that, in this case only, the departure from the standard length of articles published in "The Annals" should be allowed – Editor-in-Chief's note.

1 The author frequently uses the expression "Kosmet", which is short for Kosovo and Metohia (Translator's note).

Constitution, nomotechnically speaking. On the other hand, the basic concept of the Constitution, the scope of the constitutional subject matter, or the understanding of key constitutional institutes are not essentially different from the previous Constitution of Serbia, which undoubtedly failed to meet the underlying request that the new country needs a new constitution. Following the analysis of the entire content of the New Constitution, from the Preamble to the provisions on constitution creation process, the author concludes that the new Constitution is an improvement on the previous one, but that a new, better constitution has not been passed. The predominant political objective was for the old („Milošević's") constitution to cease to apply, and not to create a new, good constitution.

Key words: *Principles of the Constitution. – Human and minority rights. – Economic organization and public finances. – Government organization. – Territorial organization. – Constitutionality and legality. – Constitutional court. – Amendments to Constitution*.

The Republic of Serbia Constitution of 2006 has two main characteristics. The first one is that it can hardly be considered, although it is newly adopted, to be a new constitution, and the other characteristic is that it has a predominantly political purpose.

According to the scope and systematization of the constitution subject matter and the concept of basic constitutional institutes, as well as to the systematization, this is not a new constitution, but, for the most part, a corrected 1990 Constitution of the Republic Serbia, and according to the normative diction, it is a combination of the formulations of the Constitution of the Republic of Serbia of 1990, the Constitution of the Federal Republic of Yugoslavia of 1992, and the Charter of Human and Minority Rights and Civil Liberties of 2003. The wording not taken over from the said acts have been extremely poorly redacted. But even where the solutions are present here that were not present in the said constitutional acts, they are not novel, but already seen and familiar in comparative constitutional law – in the 1947 Constitution of Italy, the 1958 Constitution of France, the 1978 Constitution of Spain.

Since the Constitution is not novel, the question is why it was necessary. There are two reasons, both political. And that is, at the same time, the basic purpose of this Constitution. The first reason is to create a „distance", „disassociation", „separation", „detachment", with regard to the „Milošević's Constitution", or, more precisely, the Constitution that was passed at the time when Slobodan Milošević was the leading politician in the Republic of Serbia. This Constitution is believed to symbollize the times when Milošević held various public offices. Thus, one of the well-known keepers of Serbia, Javier Solana's spokesperson, Cristina Gallach, on the very next day following the adoption of this Constitution in the Parliament, considering this 'thing' with the Constitution over and done, regardless of the outcome of the referendum in the Republic, stated that it was „a positive thing that Serbia no longer has the Constitution

from S. Milošević's period". Another reason is that the Constitution was to serve as an „election tool", as the means to win the election, to attract votes at the imminent election for the two parliamentary parties whose draft texts served to create the Constitution, and, in general, to make those parties politically stronger. This was achieved by providing the Constitution with an unusual function. This Constitution is expected to preserve Kosmet in Serbia, to save it from being taken away from Serbia, since its final status was soon to be decided on in the UN. Two other parliamentary parties (Serbian Radical Party, SRS, and Socialist Party of Serbia, SPS) that participated in the preparation of the Constitution, by way of undoubtedly great political skills of the leaders of the DSS (Democratic Party of Serbia), which was in the background of the Government's draft of the Constitution, were brought into the activities only of the final redaction of the text not created by them, so the credit for the new Constitution and the benefit it should provide would not be attributed to them. In order to avoid that, the public was informed of the true author of the „most important" provisions in that Constitution.

The Constitution creators also provided their own version of the reason for the adoption of this Constitution. Thus the first reason was to preserve Kosmet permanently „within the sovereign state of Serbia", as „its integral part", which was stated in the Constitution without any mingling of words. And since the Constitution was to be finally adopted at the referendum, in this manner the citizens of Serbia would, in the most legitimate way, claim that Kosmet is an „integral part" of Serbia, i.e. its territory. It was interpreted that to vote for this Constitution at the referendum was the same as to be for Kosmet in Serbia, and vice versa. If in truth this had been so, this Constitution need not have been adopted at all, since the then applicable Constitution of 1990, Article 6, already reads that Kosmet „exists" in Serbia", and that „the territory of the Republic of Serbia is uniform and inalienable" (Article 4). The difference is that according to the 1990 Constitution, the Autonomous Province of Kosovo and Metohia is a form of territorial autonomy, while the 2006 Constitution provides for „substantial autonomy" in this province. Since the Kosmet status is be decided on by the UN, and not by the Republic of Serbia in its Constitution, certain media in the West saw this undertaking with the new constitution as „a fig leaf for losing Kosovo and Metohia". As for the other reason for the adoption of the Constitution, the constitution creators claimed the new „state status" of Serbia, now an independent and sovereign country. Since the change of the country status entails the changes of the constitution, Serbia needs a new Constitution, which would reflect its new country status, different from the one of 16 years before. This reason is well founded indeed, and of all the reasons mentioned was the only one which was objective and valid.

The claim that the 2006 Constitution is not novel as a legal creation may best be proved by studying its contents. Firstly, its organization is almost identical to the organization of the 1990 Constitution. Understandably, the 2006 Constitution does not contain the part „Relation to the Constitution of the Socialist Federal Republic of Yugoslavia", which was present in the Serbian 1990 Constitution, but Part Seven of that Constitution, under the heading „Guarantees of Constitutionality", including three subheadings („Constitutionality and Legality", „Constitutional Court", and „Amendments to the Constitution") was in three parts in the 2006 Constitution, where those parts have the same headings as the subheadings of part Seven of Serbian 1990 Constitution. As for the remaining part, when it comes to organization, the only differences between the two constitutions are in headings (for instance, instead of „bodies" and „organization", as in the Serbian 1990 Constitution, the 2006 Constitution reads „structure") of specific parts governing the same constitutional subject matter.

However, the most important thing connecting these two constitutions is the concept of fundamental constitutional institutes, which is, in most instances, identical. Sporadic corrections, which will be pointed out, result from understandable changes having occurred in the world and in the country creating the constitution during a decade and a half. Let us make use of Lowenstein's metaphor on the constitution as a suit – the same suit can hardly be made to fit sixteen years later. The content differences also result from intrusion of the 2006 Constitution into statutory subject matter, and even the subject matter of the Standing Orders of the Parliament, which is not appropriate for a constitution, and which a good constitution creator must stay away from.

Let us start with the Preamble. As in several constitutions in the world, the text of this Constitution as well is preceded by the Preamble (there are constitutions in the world without a preamble, and it was not present in old Serbian constitutions, nor in both constitutions of the Kingdom of Yugoslavia). A preamble is a kind of preface to the constitution. It should explain why the constitution is adopted and what its desired objective is. Therefore, the preamble is the story about the constitution, while the constitution is the legal norm. A preamble is not a legal norm and therefore its diction is free, sometimes even with a heightened pathos. The 2006 Constitution Preamble has the objective of achieving two things: the first one, the bottom-line of the Serbian 1990 Constitution, that Serbia is the creation of the Serbian people, but that in Serbia all its citizens, and all the national (the text reads: „ethnic") communities are equal, and the other one, to present a „patriotic overture" for the Constitution, to emphasize that the Autonomous Province (the text reads: „Province") Kosovo and Metohiaa is an integral part of the Re-

public of Serbia, that it has the status of „substantial autonomy“ in the sovereign state of Serbia, and „that from such status of the Province (redactor's mistake again, R.M.) of Kosovo and Metohia follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohia (an even more significant redactor's mistake, R.M.) in all internal and foreign political relations“. What is the purpose of mentioning Kosovo and Metohia three times in a brief preamble, when it is „within sovereign Serbia“? Since everything „within sovereign Serbia“ is „an integral part of the territory of Serbia“, and thus inseparable from Serbia. That is why this message, bearing in mind the current status of Kosovo and Metohia, is primarily intended for the international public, that Serbia has a constitutional obligation to preserve its territorial integrity and sovereignty in its entire territory, that Serbia has a right to Kosovo and Metohia. That message to the „international community“ may be understood on a national and patriotic basis, but it cannot have any legal effects. The same was stated also in the Serbian 1990 Constitution, even in its normative part, and the UN still exempted Kosovo and Metohia from the state competences of Serbia, although nominally it is still its integral part. Legally, the use of the term „substantial autonomy“ cannot be justified, since it does not possess an established meaning (autonomy may be full or incomplete, and on no account can it be substantial or insubstantial), and, moreover, it can have the opposite meaning from the one it had been intended to achieve. Since substantial autonomy may be the same as sovereignty, it is supreme, unrestricted power, independence. Thus it would turn out that Kosovo and Metohia has sovereign power.

The first part of the 2006 Constitution („Constitution Principles“, Articles 1–17) repeats those very same principles contained in the „General Provisions“, as well as certain Articles from other parts of the 1990 Serbian Constitution and the 1992 Constitution of the Federal Republic of Yugoslavia. Furthermore, the heading „General Provisions“ would be more suitable for the contents of the Articles of this part of the Constitution, since they contain also the provisions which are not principles at all. The constitutional principles are as follows: the principle of civil sovereignty (Article 2), stressed by the formula present in all French Republican constitutions: „No state body, political organization, group or individual may usurp the sovereignty from the citizens, nor establish government against freely expressed will of the citizens“; the rule of law principle (Article 3), which, unlike the Serbian Constitution of 1990, is not reduced to the rule of Constitution and the laws; the separation of powers principle, expressed in the traditional manner (Article 4), while an evident contradiction between paragraphs 3 and 4 of Article 4 is present. Thus, if the „relation between three branches of power shall be based on balance and mutual control“ (incidentally, such a

formulation is more suitable for a textbook on constitutional law than for the Constitution itself), as stated in paragraph 3, the judiciary can hardly be „independent", as stated in paragraph 4. Moreover, Article 145, paragraph 3 of the 2006 Constitution states that „court decisions ... may not be subject to extrajudicial control", while paragraph 4 of the same Article reads that „a court decision may only be reconsidered by an authorised court in a legal proceedings prescribed by the Law". Actually, the text should have read that the relation between legislative and executive powers is based on „balance and mutual control", and that the judiciary is independent; the principle of party pluralism (Article 5), covering all the constitutional regulations on political parties, which is not in line with the heading of that entire part; the principle of prohibition of conflict of interest (Article 6), which is present in the Serbian 1990 Constitution as incompatibility of specific offices and positions. The formulation of that principle in paragraph 2, Article 6 is an example of incomprehensible and inarticulate provisions, and what is meant by „state" and what is meant by „public" office remains unexplained in the Constitution; the principle of integrity and inviolability of the territory of the country (Article 8) is an old constitutional qualification of the state territory, whereas the 2006 Constitution, after the model of French constitutions, provides that the territory is also „indivisible". Should that word serve to indicate territorial wholeness, it is an appropriate, even though a redundant one, but it can, however, preclude internal territorial division of he country, which is not in accordance with the state of affairs, since Serbia, under that very same Constitution, is divided into municipalities, towns, the City of Belgrade and two Autonomous Provinces; the principle of secularism (laicity) of the state (Article 11) is expressed in a traditional manner and supplemented by a provision actually already contained in the meaning of the term of separation of the church and state: „No religion may be established as state or mandatory religion"; the principle of provincial autonomy and local self-government (Article 12) is emphasized by the provision on these two forms of territorial decentralization being subject „only to supervision of constitutionality and legality"; the principle of protection of nationals and Serbs abroad (Article 13) has been needlessly raised to the level of constitutional principle, instead of the protection of nationals being contained in the article on citizenship (Article 38), and the development of relations with Serbs living abroad in article on competences of the Republic of Serbia, since it is already in place (Article 97); the principle of equiparity of international and national law (Article 16) places at the same level the Constitution and the generally recognized rules of international law (the same is confirmed also in Article 167, paragraph 1, point 1), and states that the „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 also that the „ratified international treaties must be in

accordance with the Constitution". The 1990 Serbian Constitution did not contain any such provision, since Serbia at the time of its adoption was not an independent sovereign country. The Constitutional Charter explicitly provided for (Article 16) primacy of international law: „Ratified international treaties and generally accepted rules of international law shall have primacy over the law of Serbia and Montenegro and the laws of the member states „.

Other constitutional provisions in this part are by no means constitutional principles. They provide for state insignia: the coat of arms (Serbia is said to have „its own" coat of arms, as if it were possible for it to have one not belonging to it), flag and anthem (Article 7), capital city (Article 9) and the language and script (Article 10). Three provisions belonging to the part on human and minority rights and liberties are also present here. Those are the provisions concerning the protection of national minorities (Article 14), gender equality (Article 15), and the status of foreign nationals (Article 17).

Prior to formulating the said principles of the Constitution, Article 1 provides a short constitutional „definition" of the state to be defined by these principles. It consists of determining the holders of sovereignty and fundamental values as basis for the state, as well as guidelines in its policies and legislation: „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". The creators of the Constitution thus have the duty of incorporating each of these values into the Constitution. This duty is not always observed. As for the meaning of these values, there is agreement on the subject to a lesser or higher degree, except for the „principle of civil democracy", which could have hardly been formulated in this form in any constitution. The question is: which democracy is „civil" democracy? Does that expression have an ideological meaning, in the sense of bourgeois democracy as a formal one, as opposed to socialist democracy, as a true one? Or is this the case of democracy enjoyed by all the citizens, i.e. the people. In the latter sense all democracy is civil. In any case, it is a purely political qualification to maintain in a constitution that the state is democratic, based on democracy, since it should result from the entirety of constitutional provisions, and not be presented before all the constitutional provisions. Furthermore, it is not quite clear either what those „European principles and values" are, or which act defines them and what the legal consequences of „commitment" to such principles and values are. In any case, the entire Article 1 is a political declaration which, except for psychological and emotional, has none other, and especially not any legal significance.

Part Two of the Constitution, under the heading „Human and Minority Rights“ (Articles 18–81), by the number of articles is almost equal to the current Constitution of the Fifth French Republic, which contains no provisions on human (and especially not on minority) rights, but only expresses commitment to rights of man „as defined by the Declaration of 1789, confirmed and amended by the Preamble to the 1946 Constitution“, and that only in its preamble. The 1789 Declaration of the Rights of Man and Citizen is a short text, made up only of a preamble and 17 short articles, while the Preamble to the French 1946 Constitution is even briefer, and yet no one claims that rights of man in France are restricted, and that France is not a democratic country. This part of the 2006 Constitution is, by its contents, the incorporation of the 2003 Charter on Human and Minority Rights and Civil Liberties and the relevant provisions of Serbian 1990 Constitution. That part of the Constitution is, normatively speaking, a failure. It is unnecessarily drawn out and detailed, and, it may freely be said, at odds with the nature and diction of constitutional regulations. At present there is no member country of the EU whose constitution contains so many words about human and minority tights, and were we to judge by the Constitution, it would seem that Serbia is a leading country in Europe by the number of human rights and concern for the protection thereof. That unnecessary narration in the Constitution can be avoided simply by listing and defining some basic human rights and minority rights in the constitution of a country, followed by stating that the constitution shall recognize and ensure all other human rights and minority rights recognized by international law, and then provide the sources where such rights have been defined. This is stated in this Constitution as well (Article 18, paragraph 2): „The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws“. At the same time, this part of the Constitution contains most of the text which is non-normative, as well as long and confusing sentences bearing little semblance to legal norm (thus, in Article 20, paragraph 3, the word „restriction“ is used eight time in one short sentence!).

After the model of the Charter on Human and Minority Rights and Civil Liberties, this part of the Constitution is divided into three sections. Section One (Articles 18–22) contains „Fundamental Principles“, or, as is better formulated in the Charter, „General Provisions“. They define the purpose of constitutional guarantees for human and minority rights (Article 19), proclaim the general antidiscriminatory clause related to exercising all human and minority rights (Article 21), proclaim the principle of direct implementation of human and minority rights guaranteed by the Constitution (Article 18), proclaim the principle of judicial protection of liberties and rights guaranteed by the Constitution and the

right to address international institutions for that purpose (Article 22) and define the possibility of restricting human and minority rights (Article 20). All these provisions are present not only in the 1990 Constitution of Serbia, but they were also present in the two last constitutions of Serbia while it was a socialist republic of the Yugoslav federation.

Section Two (Articles 23–74) proclaims human rights in the four most important areas of individual's autonomy – physical integrity, participation in public life, economic and social security, cultural and educational standards. In other words, personal, political, economic and social, cultural and educational human rights are defined here. These provisions are mostly taken over from the Charter on Human and Minority Rights and Civil Liberties, although much improved in comparison to the provisions of the Charter, which often were literal translations from English to poor Serbian (non-legal terms were stricken out, „mammoth" articles and paragraphs were divided into two or more separate articles and paragraphs, and so on). The provisions of this Section, especially the ones concerning human rights, actually intruded into the statutory ground. For instance, a constitution should have no use for a provision like this: „A written decision of the court with explanation for reasons of detention shall be delivered to the detainee not later than 12 hours after pronouncing. The court shall decide on the appeal to decision detention and deliver it to the detainee within 48 hours" (Article 30, paragraph 3). Certain new rights have been proclaimed, like the legal capacity of a natural person (Article 37), right to respect diversity (Article 48), rights of child (Article 64), autonomy of university (Article 72); it is expressly stated that secondary education is free (since no education is free, as no health care is free, the Constitution should read „the expenses shall be borne by the state" or „from public revenue", as is stated in some articles). „Free" higher education has been drastically limited – the state provides it to „successful and talented students of lower property status" (Article 71, paragraph 3). Some of the traditional rights, as, for instance, right to citizenship (Article 38) omit one component of protection – that the national may not be extradited, contained by the 1990 Constitution of Serbia (Article 47, paragraph 2) and the Charter of Human and Minority Rights and Civil Liberties (Article 35, paragraph 2). The possibility was introduced (Article 44) that the Constitutional Court may, due to rather large number of reasons stated in the Constitution, ban a religious community. The guarantees for the freedom of press (Article 50) are more restrictive than the ones contained in the 1990 Constitution of Serbia (Article 46). Economic rights, like in the 1990 Constitution of Serbia, stem from property and work, while social rights and rights related to education were extended, through intruding into the subject matter of statutory acts.

Section Three (Articles 75–81) contains the renumbered articles of the Charter on Human and Minority Rights and Civil Liberties (Articles

47–56) defining the minority rights, with the new protection added by prohibition of „undertaking measures, which would cause artificial changes in ethnic structure of population in areas where members of national minorities live traditionally and in large numbers“ (Article 78, paragraph 3) as well as a broader scope of guarantees under the following: „When taking up employment in state bodies, public services, bodies of autonomous province and local self-government units, the ethnic structure of population and appropriate representation of members of national minorities shall be taken into consideration“ (Article 77, paragraph 2).

This part of the Constitution as well shows a profusion of redactor's mistakes and sloppiness. One should have an especially fine ear for subtlety in order to be able to discern the difference between the „freedom of thought“ (Article 43, paragraph 1) and „freedom to hold opinion“ (Article 46, paragraph 1), or to understand the provision that reads: „Everyone shall have the freedom to manifest their religion or religious beliefs ...“ (Article 43, paragraph 3). This part is the beginning (Article 58), and the next part will be the continuation (Articles 86 and 87) of the equality sign between the expressions denoting property and assets, differently defined in all the civil procedure textbooks.

Part Three of the Constitution („Economic System and Public Finances“, Articles 82–96), divided into two Sections (one being „Economic System“, and the other „Public Finances“), serves to show to what extent the provision from Article 1 of the Constitution, in accordance to which the Republic of Serbia is based, *inter alia*, on „social justice“, is just a formal, non-binding declaration. This Constitution takes no heed of social justice. That smallish part of the Constitution was purged of all the levers and mechanisms of social justice for the benefit of a liberal type market economy. It can easily be seen as early on as in the first article of that part (Article 82), which was drawn up after the model of Article 55 of the 1990 Serbian Constitution. The two principles of economic system present in the 1990 Constitution of Serbia are missing. They are: managing and acquiring based on property and work, and the rights of other citizens to social security. Instead, the 2006 Constitution reads: „The impact of the market economy on social and economic status of the employed shall be adjusted through (*sic*!) social dialogue between trade unions and employers“. And which party is the stronger one in such „social dialogue“ is well known in advance.

The essential novelty in this part, and at the same time, in the entire Constitution, is omission of social property as a form of property (although social property as a separate form of property was not mentioned in the 1992 Constitution of the Federal Republic of Yugoslavia either) and the introduction of the new, aggregate expression of public property,

covering state property, autonomous province property and local self-government unit property. Other two property forms are private and cooperative property. The Constitution openly favours private property. It mentions the „equality of private and other types of property“ (Article 82, paragraph 1), and according to it, „the existing social property shall become private property...“ (Article 86, paragraph 3). Therefore, the so-called transformation of social property is unidirectional. It should be mentioned that the 1990 Constitution of Serbia also provided for transformation of social property, but under market conditions. Article 59 of that Constitution reads: „Property rights and obligations concerning the socially– and state– owned property and the terms and conditions under which such property may be converted into other forms of property shall be regulated by the law. – The socially– and state– owned property shall be disposed of under market terms and conditions, in accordance with the law“. It is not clear also whether the 2006 Constitution places the equality sign between the „goods of public interest“ and the „goods in public use“, or whether it is the case of two different types of things, as would stem from Article 87, paragraphs 1 and 2. According to the lexicon definition (*Pravna enciklopedija, 1*, Beograd, 1985, p. 265), the term „goods of public interest“ is broader and includes also the „goods in public use“. The same position was also held by the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (Article 85). The urban construction land is referred to in the 2006 Constitution as being in private property (according to the 1990 Constitution of Serbia it is state– or socially–owned), and the private property of forests and forested land is not subject to any legal restrictions (according to the 1990 Constitution of Serbia it could be „within the limits as specified by the law“). The novelty of the 2006 Constitution is also the proclaiming of consumer protection, whereby „activities directed against health, security and privacy of consumers, as well as all other dishonest activities on the market shall be strictly prohibited“ (Article 90, paragraph 2).

Section Two of this part, with the heading „Public Finances“ (Articles 91–96) is of rather scant contents, and it is not clear why it was excluded from Section One, entitled „Economic System“. In short, this section specifies the obligation of paying taxes which is general, and „based on economic power of taxpayers“ (Article 91), provides that the state and its territorial units shall have budgets (Article 92), and that „execution of all budgets shall be audited by the State Audit Institution“, and that the Republic of Serbia, autonomous provinces and local self-government units may incur debts (Article 93). The constitutional obligation of the Republic of Serbia shall be to „take care“ of „balanced and sustainable regional development“ (Article 94).

Part Four of the Constitution and its only article (Article 97) is absolutely redundant now that the Republic of Serbia has the character of

an independent sovereign country. Such an article in the constitution is typical for federal states (as a rule) or for federal units of a federal state (as an exception). In a unitary state, such as the Republic of Serbia, the only competences to be listed may be the competences of the territorial autonomy units (provinces, regions, etc.) and of the local self-government units (municipalities, districts, counties, etc.), while the competences of the state are presumed, not listed item by item (competences enumeration method). One such article in the 1990 Constitution of Serbia had a historical justification (the impending secession of certain republics from the Yugoslav federation), but even at that time it was an expression of troubled relations in the Federation, since the competences of the republic were defined by the general clause method in the Constitution of the SFRY. Only a federal constitution provides for the competences either of the federal state, whereby the competences of a federal unit are defined in a negative manner, by the general clause method (all the issues „not within the competences of the federation"), or of a federal unit within a federal state, whereby the competences of the federation are defined in a negative manner, by the general clause method (all the „issues not within the competences of federal units").

Still, the presence of this article entails a legal consequence. The Preamble and Article 182, paragraph 2 of the Constitution state that the Autonomous Province of Kosovo and Metohia should have the so-called substantial autonomy. The presence of Article 97 of the Constitution means that such substantial autonomy may not involve the issues under the competences of the Republic of Serbia specified in that article. However, since the law on substantial autonomy of the Autonomous Province Kosovo and Metohia „shall be adopted under the procedure provided for the amendments to the Constitution", it will have to, in case any of the issues listed in Article 97 of the Constitution are to be covered, amend that article of the Constitution or specify that the entire Article is no longer in force.

Part Five determines the holders of certain state authorities and organizes their relations, and that is why it was given the heading „Organisation of Government" (Articles 98–165). It is not clear for what reason the Constitutional Court is placed separately, in the next, Part Six of the Constitution, as if it were not part of the government, especially since the 2006 Constitution omits the part on „Guarantees of Constitutionality" from the 1990 Constitution of Serbia, or, rather, since that part was divided into three separate parts. The organization of government involves the following governmental organs: the National Assembly, the President of the Republic, the Government, the Public Administration, the Ombudsperson, the Army of Serbia, the courts, the High Judicial Council, the Public Prosecutor's Office, and the State

Prosecutors Council. Since the Constitutional Court, the National Bank of Serbia and the State Audit Institution are not mentioned here, it can be inferred that they are not, for the purposes of the Constitution, governmental organs.

The National Assembly was given the same qualification („holder of constitutional and legislative power“) as the one present in the 1990 Constitution of Serbia. It is still a unicameral representative body made up of 250 deputies. The new qualification, that it is „the supreme representative body“ is not correct, since the President of the Republic, being directly elected, is a representative body of the same level of legitimacy as the National Assembly. In line with the new state status of Serbia, the Assembly was granted some new activities as its competences – to adopt the defence strategy, supervise the work of security services, etc. Its electoral rights were broadened – it appoints and relieves of office the Ombudsperson, which was turned into a constitutional category, instead of being a statutory one.

Instead of by the President of the National Assembly, the election for the deputies is called by the President of the Republic, which is more logical, and, as was confirmed in practice, a better solution. Numerous constitutional provisions concerning the activities of the National Assembly are more of a Standing Orders character and it is not good that they were made part of the Constitution now, since in the future they may be amended under a more difficult, constitutional procedure, and not under the procedure for the amendment or adoption of the Standing Orders of the Assembly.

Certain correction and novelties were introduced into the general concept of the National Assembly from the 1990 Constitution of Serbia, mostly where there were uncertainties and confusions in the constitutionnal practice. In order to avoid a possible arbitration of the Constitutional Court in interpreting the Constitution, it was expressly stated that a deputy's term of office belongs to the political party proposing the said deputy: „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“ (Article 102, paragraph 2). This provision, albeit a slightly hypocritical one (since in involves the freedom to waive a right), changed the character of the term of office of deputies. Instead of representing the voters (the people), the results of such a provision are that the deputy represents a party on whose list (by whose proposal) he was elected a deputy. Thus the deputy mandate, although formally and legally free, became imperative in a political sense (the mentioned constitutional solution introduces the possibility of party dismissal). The party may now replace a politically disobedient deputy by another one, since the party is the one disposing of the office.

This practically prejudices the system of distribution of mandates. The said constitutional solution is sensible only within the system of proportional representation, where a party has an election list, a „reservoir“ for replacing deputies from the list of candidates presented for the parliamentary election, and in the majority system it entails a risk of losing a deputy mandate, since the position of the deputy dismissed by the party may be taken by a deputy from the other party. By applying such constitutional provision, in the proportional representation system, a deputy mandate, even in case of dismissal by a party, remains with that party, but in the majority system, in that same case, it may go to another political party.

A novelty is also a very broad circle of offices incompatible with the office of a deputy (deputy „may not be a deputy in the Assembly of the autonomous province, nor an official in bodies of the executive branch of government and judiciary, nor may he or she perform other functions, affairs and duties, which represent a conflict of interest, according to the Law“ – Article 102, paragraph 3).

A new, differentiated manner of decision making was introduced in the National Assembly. The rule is that the National Assembly makes decision by the majority votes of the deputies at the session where the majority of deputies are present. However, in case of specified issues and laws the National Assembly shall decide by the majority votes of all deputies. In addition, the President and one or more Vice-Presidents of the National Assembly are elected by such majority as well. When this „list' is compared to the „list“ of competences of the National Assembly, the question is which of the manners of decision making is the rule, and which one is the exception to the rule.

The number of voters necessary for legislative initiative was increased (from 15,000 to 30,000), which weakened the democratic principle. The institute of dissolution of the National Assembly was further developed. In addition to the solution from the 1990 Constitution of Serbia, that the President of the Republic may dissolve the National Assembly upon the justified proposal of the Government, the solution from the 1992 Constitution of the FR Yugoslavia was added (Article 83, paragraph 2), according to which the Government may not propose the dissolution of the National Assembly if a proposal has been submitted for the vote of no confidence concerning the Government or if the Government has raised the issue of confidence. Moreover, the Government whose term of office has expired may not propose the dissolution of the National Assembly (Article 128, paragraph 5). The solution from 1992 Constitution of the FR Yugoslavia was used as well (Article 82, paragraph 1), according to which the National Assembly shall be „dissolved“ if it fails to elect the Government within 90 days from the day of its

constitution (Article 109, paragraph 3). This is a redactor's mistake. It is not the case of „dissolving" the National Assembly, but the termination of mandate by force of Constitution (*ex constitutione*). The President of the Republic shall issue a decree to dissolve the National Assembly and to call a new election in the following two cases specified by the Constitution: one, „if the National Assembly fails to elect the new Government within 30 days from the passing of a vote of no confidence" concerning the current Government (Article 130, paragraph 4) and the other, „if the National Assembly fails to elect the new Government within 30 days from the day of confirmation of the resignation of the Prime Minister" (Article 132, paragraph 5). And finally, the 2006 Constitution provided the solution that had long been called for, concerning the legal consequence of the dissolution of the National Assembly. The dissolved National Assembly does not cease to exist, it continues to „perform current or urgent tasks, stipulated by the Law. In case of declaration of the state of war or emergency, its full competence shall be re-established and last until the end of the state of war or emergency." (Article 109, paragraph 7). Thus the opinion that the dissolved Assembly is no longer in existence, relying on the reasoning of Slobodan Jovanović, was explicitly disposed of. Namely, relying on the 1921 Constitution of the Kingdom of Serbs, Croats and Slovenians (*Vidovdanski Ustav*), Slobodan Jovanović maintained: „The Assembly having been dissolved may no longer be in session, as well as the Assembly whose term of office has expired; the rule is that the Assembly which was dissolved no longer exists" (S. Jovanović, *Ustavno pravo Kraljevine Srba, Hrvata i Slovenaca*, Beograd, 1924, p. 156).

The President of the Republic was granted some new powers as his competences, stemming from the changed status of the Republic of Serbia. They are the following: appointing and dismissing, upon his/her decree, ambassadors of the Republic of Serbia, upon the proposal of the Government; receiving letters of credit and revocable letters of credit of foreign diplomatic representatives; in accordance with the law, commanding the Army and appointing, promoting and relieving officers of the Army of Serbia. The last mentioned is at the same time also the highest power held by the President of the Republic. The President of the Republic no longer holds independent authorities of that office which were held in the so-called situations of necessity according to the 1990 Constitution of Serbia. His acts are still not subject to the countersignatures of the competent Minister, the Prime Minister, or the entire Government.

The Constitution reformed (Article 113) the institute of a suspendsive legal veto, for the first time provided for in the 1990 Constitution of Serbia (Article 84). However, the constitutional formulation of the su-

spensive legal veto has been redacted so clumsily that it can be interpreted in two different manners. The Constitution reads that within a slightly extended deadline (from seven to 15 days of the day of passing of the law) the President of the Republic, with a written explanation (which was not a constitutional requirement previously), may return the law, submitted to him for promulgation, to the National Assembly „for reconsideration". And then: „If the National Assembly decides to vote again on the law, which has been returned for reconsideration by the President of the Republic, the law shall be adopted by the majority vote from the total number of deputies" (Article 113, paragraph 2). The question here concerns the meaning of the part of this sentence: „if the National Assembly decides to vote again on the law". Can it be that the National Assembly may decide not to vote again on the law, to give up on the law? Is it to decide to vote again on the law only where they fail to adopt the suggestions of the President of the Republic? What happens when all the suggestion of the President of the Republic are adopted by the National Assembly? When it comes to the repeated voting on the law in the National Assembly after a suspensive veto, for the laws which are to be adopted by a simple majority (majority vote of deputies) it is a more difficult procedure of re-adoption, and for the laws which are to be adopted by the majority of all deputies, it means achieving once again the majority already achieved. In any case, the application of this provision will give rise to serious problems and the question is what direction its interpretation will take. Nonetheless, the President of the Republic shall promulgate the law voted on again, as it is the case in the 1990 Constitution of Serbia; however, the 2006 Constitution reads: „if the President of the Republic fails to issue a decree on promulgation of the law within the deadline stipulated by the Constitution, the decree shall be issued by the President of the National Assembly" (Article 113, paragraph 4).

With regard to the election of the President of the Republic, the same solutions remain as the ones present in the 1990 Constitution. The text of the oath taken by the President of the Republic has been corrected in that that it is stated that the preservation of the sovereignty and integrity of the territory of the Republic of Serbia includes also Kosovo and Metohia as its constituent part, as if it had not been the case so far, and as if Kosovo and Metohia had become part of Serbia only as of this Constitution.

One of the grounds for the termination of term of office of the President of the Republic (the other is resignation) is no longer recall, but dismissal. The dismissal mechanism was taken over form the 1992 Constitution of Montenegro (Article 83, paragraph 2, and Article 87), but in the 2006 Constitution of Serbia the formulation of the relevant article

(Article 118) is so distorted and confusing that it cannot be seen that the National Assembly may dismiss the President of the Republic only when the Constitutional Court finds that he has violated the Constitution. Namely, the mechanism of this institute is as follows: the President of the Republic may be dismissed for the violation of the Constitution; the dismissal procedure may be instigated by the National Assembly upon the proposal of at least one third of the deputies; whether the Constitution has been violated shall be determined by the Constitutional Court within 45 days at the latest; the decision on dismissal may be made by the National Assembly by votes of at least two-thirds of the deputies. The essential objection to this mechanism is that the President of the Republic is dismissed by those who did not grant him his mandate, the ones who did not elect him to office. By making it easer to dismiss a President of the Republic than to elect him, and by narrowing the scope of his functions in comparison to the one provided by the 1990 Constitution of Serbia, this constitutional function has been made even more impotent than it was.

The 2006 Constitution, due to the situations we experienced, specifies that the President of the National Assembly may substitute for the President of the Republic for the period three months at the most.

In the part on government organization, the 2006 Constitution had the largest number of interventions, in comparison to the 1990 Constitution of the Republic of Serbia, concerning the Government itself. These interventions made parliamentarism in Serbia „tighter", or as the theory would say, „rationalized". The elements of this „rationalization" are as follows: 1) vote of no confidence to the Government or to a member of Government may be initiated by at least 60 deputies (according to the 1990 Constitution of Serbia, at least 20 deputies); 2) the proposal for the vote of no confidence to the Government or to a member of Government may be considered by the National Assembly five days following the submittal of the proposal at the earliest (according to the 1990 Constitution of Serbia, at least three days); 3) where the National Assembly fails to elect a new Government within 30 days of the voting of no confidence, the President of the Republic shall dissolve the National Assembly and call the parliamentary election (the 1990 Constitution of Serbia contained no such provision); 4) if the Government or a member of the Government is voted confidence, the signatories of the proposal may not submit a new motion for the vote of no confidence prior to the expiry of the time period of 180 days (the 1990 Constitution of Serbia contained no such provision); 5) interpellation (previously this was the category belonging to the parliament's Standing Orders) concerning the same issue may not be submitted prior to the expiry of the period 90 days from the submittal of the previous interpellation.

The 2006 Constitution performed the constitutionalization of interpellation – the interpellation was turned into a constitutional category instead of a Standing Orders one (Article 129). Now it is in immediate relation to the vote of no confidence to the Government or to a member of the Government, since in case the National Assembly should fail to endorse the response to the interpellation, the vote of no confidence to the Government or to a member of the Government shall take place, unless the Prime Minister, or a relevant member of the Government has resigned following the rejection of the response to the interpellation.

Individualized position of the Prime Minister migrated from the current Law on Government (2005) into the 2006 Constitution. The Article 12, paragraph 1 of the Law on Government became the provision of Article 125, paragraph 2 of the 2006 Constitution. It specifies the functions of the Prime Minister. The Ministers shall be accountable for their work and the situation within the competences of the Ministries not only to the Government and to the National Assembly, but to the Prime Minister as well (Article 125, paragraph 3). An expression of such a role of the Prime Minister is also the provision of the Constitution according to which „a member of the Government may tender his/her resignation to the Prime Minister" (Article 133, paragraph 1). According to the 1990 Constitution of Serbia, a member of the Government submitted his resignation to the National Assembly (Article 93, paragraph 8). The Prime Minister (not the Government) is granted special powers when the state of emergency or the state of war has been proclaimed, as well as when prescribing measures derogating from human and minority rights, prescribed by the Constitution when the National Assembly is unable to convene (Articles 200–201).

The 2006 Constitution provides for the public administration as a separate unit in Constitution systematization, within the part on the organization of the state, which means that the provisions referring to public administration are not present in the section on the Government (as was the case in the 1990 Constitution of Serbia). The Constitution does not list the activities of the public administration, but only defines who performs them („ministries and other public administration bodies, stipulated by the Law"). That the public administration is the holder of the same power (executive power) as the Government can be seen from the constitutional provisions specifying that the public administration shall be accountable for its work to the Government, which defines (as stated in a separate constitutional provision) the internal organization of Ministries and other public administration bodies and organizations.

The two state authorities referred to in the 2006 Constitution were not constitutional categories previously. They are the Ombudsperson (statutory category as of 2005) and the Army (which was the category of

the federal Constitution, and from 2003, of the Constitutional Charter). And while the constitutional provisions on the Ombudsperson provide orientation enough for the legislator to legally form this institution, the three existing short provisions on the Army of Serbia are extremely poor in content and insufficient to comprehend the concept of that institution. The function of the Army of Serbia was reduced to defending the country „from external armed threat" (Article 139). Furthermore, it is not usual that nowhere in the Constitution is the military service duty raised to the level of the constitutional obligation of the citizens.

Constitutional principles on courts remain unchanged in comparison to the 1990 Constitution. They are: autonomy and independence of courts; constitutionality and legality (the 2006 Constitution expands this principle, since the courts decide not only in accordance with „the Constitution, Law and other general acts", but also, pursuant Article 142, paragraph 2, in accordance with the „generally accepted rules of international law and ratified international treaties", only to be followed immediately afterwards, in Article 145, paragraph 2 by the omission of the „generally accepted rules of international law", since „court decisions are based on the Constitution and Law, the ratified international treaty and regulation passed on the grounds of the Law", and Article 149, paragraph 1, omits both the ratified international treaties and regulations adopted based on laws, since the judge, in performing his judicial office shall be „responsible only to the Constitution and the Law"); public character of the hearing before a court; court trials conducted by judge panels (collegiality of conducting trials); permanence of judicial office (but not in the absolute sense, as in the 1990 Constitution of Serbia, which is the weakening of constitutional guarantees for judicial independence; immovability („non-transferability", as expressed in the Constitution) of the judge (but then again not in an absolute form as in the 1990 Constitution); incompatibility of judicial office with other public offices, activities or private interests; judicial immunity; participation of judges and lay judges in conducting trials.

In this area the novelties in comparison to the 1990 Constitution of Serbia refer only to the appointment of judges, but there as well matters progressed only mid-way in emancipation from the influence of the political factor (the National Assembly) on the appointment. To be precise, the President of Supreme Court of Cassation (being „the highest Court in the Republic of Serbia"), upon the proposal of the High Judicial Council and having received the opinion of the general session of the Supreme Court of Cassation and the relevant committee of the National Assembly, shall be appointed by the National Assembly for the period of five years. Similarly, the National Assembly, on the proposal of the High Judicial Council, shall appoint for a judge a person elected for judicial

office for the first time, and, for that reason, his term of office shall be only three years. Under the same procedure (the proposal of the High Judicial Council and election in the National Assembly) the presidents of all courts are appointed (Article 99). It is hard to understand the logic whereby the president of the highest court in the country, the judge – high priest, as well as the first time judge, a judge – deacon, are appointed under almost identical procedures. All the other judges for permanent holding of judicial office, in the same or different court, shall be appointed by the High Judicial Council.

The 2006 Constitution recognizes the now uniform institute of the termination of judicial office, for the three groups of reasons: 1) at the request of the judge; 2) by occurrence of the „terms stipulated by the Law"; 3) by relieving of office for the „reasons stipulated by the Law". As expected, the term of office of the judge appointed for the first time for judicial office shall terminate if, upon the expiry of the three year terms, he is not appointed for the permanent judicial office. These solutions of the 2006 Constitution significantly weakened the guarantees of judicial permanence, and thus independence as well, since the prescription of conditions and grounds for relieving judges was left to the law, instead of, as was the case in the 1990 Constitution of Serbia, defining them here. 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. The decision on termination of a judicial official is made by the High Judicial Council, and the judge may appeal this decision to the Constitutional Court, and the lodged appeal precludes the right to lodge a constitutional complaint. Such a solution shows a lack of understanding of the „spirit" of the institution of the Constitutional Court. The dispute concerning termination of a judicial office is not a constitutional dispute, it does not concern the violation of the Constitution as is the case with the constitutional complaint, so the Constitutional Court should not be competent for deciding on that matter. By placing the decision on this dispute within the competence of the Constitutional Court, that Court is made into an instance court, which it can on no account be by its very nature. The decision on termination of the office of the President of the Supreme Court of Cassation shall be made by the National Assembly, where the decision on relieving from office is made upon the proposal by the High Judicial Council. The Constitution does not provide for the possibility of appealing against that decision, not does it specify who is to decide on the termination of office of the President of the Court.

Institutional companion of these solutions in relation to the appointment of judges and termination of judicial offices is the High Judicial Council, which became a constitutional category instead of a statutory

one. Its competences are almost exhausted in these issues. That is why it is difficult to agree with the thesis that the High Judicial Council is an authority of the judicial branch of power, as it is difficult to determine its legal nature. In addition, it is clearer what this body is, than what it is not. It is made up partly of members by office (the President of the Supreme Court of Cassation, the Minister in charge of the judiciary, and the President of the relevant committee of the National Assembly), partly of appointed members (six judges holding a permanent office, one of whom is from the territory of autonomous provinces, and the two „respected and prominent lawyers" /in all the dictionaries of the Serbian language the two words used are synonymous/ with at least 15 years of professional experience, one of which an attorney-at-law, the other a Professor of Law School). All the appointed members are appointed by the National Assembly (Article 153, paragraph 3), which is not listed in its competences (Article 99) within its „election rights", where it is even stated that it shall „appoint and dismiss other officials stipulated by the Law", but not by the Constitution! However, even if we were to leave aside these redactor's mistakes, it is difficult to agree with the solution that most members of the authority which is to serve as the guarantee of judicial independence are appointed by the representative body where decisions are made in accordance with the party affiliation. A member of the High Judicial Council is said to „enjoy immunity as a judge". And this, in relation to Article 151, paragraph 2 of the Constitution, means that the immunity of a member of the High Judicial Council is to be decided on by the High Judicial Council! In addition, an „appeal" may be lodged against a decision of the High Judicial Council with the Constitutional Court, which only deepens the dilemma on the legal nature of its acts and on it as an „independent and autonomous body". Furthermore, this solution provides the Constitutional Court with the completely inadequate character of an instance court, and it is entrusted with resolving a dispute which is on no account a constitutional dispute.

The activities of the Public Prosecutor's Office show no changes in the 2006 Constitution as compared to the 1990 Constitution. It is still an independent state authority prosecuting the perpetrators of criminal and other punishable offences, and undertaking activities for the protection of constitutionality and legality. The relations within the Public Prosecutor's Office are based on vertical centralization principle: public prosecutors are accountable for the activities of the public prosecutor's office and their work to the Republic Public Prosecutor and the National Assembly, and junior public prosecutors are accountable directly to the senior public prosecutor as well. Deputy public prosecutors are accountable for their work to the public prosecutor. Republic Public Prosecutor shall be accountable for the activities of the Public Prosecutor's Office and for his work to the National Assembly.

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 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. In other words, the legal regime for the public prosecutor is different from the legal regime in for the deputy public prosecutor. The solution for the public prosecutors from the 1990 Constitution of Serbia was retained, that they are appointed by the National Assembly, but now it is further specified that it is to take place „on the Government proposal" (Article 159, paragraph 2). For the appointment of the Republic Public Prosecutor, carrying out the competences of the public prosecutor's office within the rights and duties of the Republic of Serbia, it is necessary also to obtain the opinion of the relevant committee of the National Assembly. As regards the termination of the term of office of the public prosecutor, procedurally the same rules as for the appointment of the public prosecutor apply. The decisions on the termination of office of the Republic Public Prosecutor and public prosecutors are made by the National Assembly, and the decision on dismissal is made by the National Assembly upon the proposal of the Government. The public prosecutor in question may lodge an appeal against it to the Constitutional Court, where the lodged appeal shall preclude the submittal of the constitutional complaint (once again here the sloppiness of the redactor may be seen, so a public prosecutor may „lodge", *uložiti,* an appeal with the Constitutional Court, and the appeal is „submitted", *izjavljena,* to the Constitutional Court...). These solutions open up issues of legal nature of the act on termination of public prosecution office. Nevertheless, the grounds for termination of the public prosecution office are, *mutatis mutandis*, the same as the grounds for termination of a judicial office. They are: 1) if he is not re-appointed (bearing in mind the specified term of office); 2) at his own request; 3) occurrence of „legally prescribed conditions"; 4) relief of office for „reasons stipulated by the Law". As in case of termination of a judge's office, the fact that the „conditions" and the „reasons" are prescribed by law, and not directly by the Constitution, may influence the independence of the holders of public prosecution office. Here as well the deconstitutionalization of these conditions and reasons has taken place. In any case, among the constitutional provisions concerning the public prosecutor's office there is no relevant provision (Article 149) which is present in the section on the court and reads as follows: „In performing his/her judicial function, a judge shall be independent and responsible only to the Constitution and the Law. – Any influence on a judge while performing his/her judicial function shall be prohibited." By the letter of the Constitution (which is doubtlessly a

grave redactor's mistake) the public prosecutor's office is not bound by the generally accepted rules of international law, since it „shall perform its function on the grounds of the Constitution, Law, ratified international treaty and regulation passed on the grounds of the Law" (Article 156, paragraph 2).

As for the deputy public prosecutor, different rules are in place when it comes to the appointment, termination of office and duration of term of office. In order to carry out the appointment and decide on the termination of the mandate of a deputy public prosecutor, the new constitutional body is established, called the State Prosecutors Council, whose competences are exclusively related to deputy public prosecutors. That is why it is not clear why this body is defined in the Constitution as „an autonomous body which shall provide for and guarantee the autonomy (it should probably read „independence", R.M.) of public prosecutors (according to the list of competences of that body as provided in Article 165 of the Constitution, public prosecutors are not within its scope, R.M.) and deputy public prosecutors..." (Article 164, paragraph 1). In analogy to the High Judicial Council, this body is made up of members by virtue of their office (Republic Public Prosecutor, the Minister competent for the judiciary, and the President of the relevant committee of the National Assembly) and eight appointed members (six public prosecutors or deputy public prosecutors with permanent office, one of whom is from the territory of an autonomous province, and two „respected and prominent" lawyers with at least 15 years of professional experience, one of whom is an attorney-at-law, and the other a Professor at Law School).

Regarding deputy public prosecutors, as well as is the case with judges, there is a difference between the procedure for appointing a first-time deputy public prosecutor and the procedure for appointing a deputy public prosecutor for permanent office in the same or other public prosecutor's office. The former is appointed by the National Assembly at the proposal by the State Prosecutors Council and the duration of term of office is three years, while the latter is appointed by the State Prosecutors Council and granted a permanent office of the deputy public prosecutor. Once again, it is somewhat of a paradox that the deputy public prosecutor is appointed to office for the first time, and for a relatively short period, under a more difficult procedure (the State Prosecutors Council only proposes him, and the National Assembly appoints him) than the one provided for the deputy public prosecutor appointed to permanently hold the office. The decision on termination of office for the deputy public prosecutor is made by the State Prosecutors Council on the same grounds as for the termination of office of the public prosecutor. The deputy public prosecutor may appeal against the decision to the Constitutional Court, which precludes the right to lodge a constitutional complaint.

Judiciary is the only branch of power whose institutional holder is not provided with a separate article by the Constitution, if we take the Supreme Court of Cassation as an embodiment of the judiciary. The provision concerning that court is contained in paragraph 4, Article 143, and reads: „The Supreme Court of Cassation shall be the highest Court in the Republic of Serbia".

Generally speaking, the provisions of the 2006 Constitution concerning the courts and public prosecutor's office do not contain clear-cut solutions in line with the principles, a large number of proven mechanisms for establishing judicial and prosecuting independence were weakened, the guarantees of independence deconstitutionalized, and, in addition, the redaction of the normative text is impermissibly poor.

The Constitutional Court may have undergone most changes in the 2006 Constitution as compared to the 1990 Constitution of Serbia (the 2006 Constitution, Part Six, Articles 166–175). First, its competences were expanded, at times even to the cases that are not constitutional disputes at all. 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). Its subsidiary competence for resolving election disputes also remained present (it shall „decide on electoral disputes for which the court jurisdiction has not been specified by the Law").

Since the 2006 Constitution states 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 that „ratified international treaties must be in accordance with the Constitution" (Article 16, paragraph 2), the Constitutional Court is to decide on the compliance of laws and other general acts with the Constitution, generally accepted rules of international law and ratified international treaties, as well as on the compliance of ratified international treaties with the Constitution. The legal system of the Republic of Serbia has the following structure. The Constitution and the generally accepted rules of international rules are at the top. Below them are ratified international treaties, below them the laws, and then implementing general acts, issued by various authorities, which must be in accordance with the Constitution and the law. The Constitutional Court is responsible for preserving and protecting such relations in the legal system of the state of Serbia, which are expressed as constitutionality and legality.

The Constitutional Court does not try individual natural and artificial persons, but legal acts, whether general or individual. Constitutionality and legality may be infringed by general, but also by individual

acts of state organs and holders of public offices, and even by their actions. In the latter case, where individual acts or actions infringe or abolish human and minority rights and liberties, a constitutional complaint may be lodged with the Constitutional Court „if other legal remedies for their protection have already been exhausted or not specified" (Article 170). With regard to constitutional complaint, two things are not clear: why it is, although a competence of the Constitutional Court, present in a separate Article of the Constitution, instead of being listed in the one determining the competences of the Constitutional Court (Article 167), and, also, who the holder of the right to a constitutional complaint is (is it only the person believing that his human or minority right guaranteed by the Constitution has been infringed, or any person). The latter should have been regulated by the Constitution and on no account was it to be left to legal regulation. A variation of the constitutional complaint is an appeal that the judge (the Constitution does not specify who the holder of the right to appeal is) may lodge with the Constitutional Court against the decision of the High Judicial Council (Article 155), as well as an appeal that a public prosecutor and a deputy public prosecutor may lodge with the Constitutional Court „against the decision on termination of their tenure of office" (Article 161, paragraph 4).

It is a rule that the Constitutional Court decides on the constitutionality and legality of the applicable laws and other general acts in force. However, under certain circumstances, it can decide also on the constitutionality and legality of regulations and other general acts no longer in effect, as well as on the constitutionality of the laws not yet in force. The former instance was regulated also in the 1990 Constitution of Serbia, while the latter, after the model of the 1958 Constitution of France, was introduced for the first time by the 2006 Constitution. Thus, the Constitutional Court may review the compliance of laws and other general acts with the Constitution, as well as the compliance of general acts with the laws, even following the cessation of their being in effect „if the proceedings of reviewing the constitutionality has been instituted within no more than six months since they ceased to be effective" (according to the 1990 Constitution of Serbia, within one year from ceasing to be effecttive). Moreover, the Constitutional Court may review the constitutionality of the law passed in the National Assembly, but not yet promulgated by a decree (the so-called preventive review of the constitutionality of laws, which we advocated during general debates concerning the necessity of changing the 1990 Constitution of Serbia). This preventive review of the constitutionality of laws is a powerful instrument in the hands of parliamentary opposition, since they, even when having lost to the votes of parliamentary majority (whose political interest may be the adoption of an unconstitutional law as well), have a means of preventing the coming into force of an unconstitutional law. The Constitutional Court has the

duty to examine the constitutionality of such law within seven days, at the request of at least one third of the deputies. If the Constitutional Court reaches a decision that the law in unconstitutional prior to its promulgation, the Constitution states that „that decision shall come into force on the day of promulgation of the law". However, if such law is promulgated prior to reaching a decision on constitutionality, the Constitutional Court is to continue acting on the request, in accordance with the regular procedure for the review of the constitutionality of laws. Where the Constitutional Court finds, prior to the promulgation of the law (the Constitution wrongly reads „prior to its coming into effect", since it promulgation and coming into effect are wrongly taken to be synonymous), that the law is in compliance with the Constitution, the procedure for reviewing the constitutionality of that law may no longer be undertaken.

The institute of preventive review of the constitutionality of laws in the 2006 Constitution (Article 169) was quite improperly founded. First of all, the time period of seven days from the adoption of the law in the National Assembly for the review of constitutionality is unrealistic, and it should be, as in France, at least a month. The Constitution does not provide for the beginning of this time period, but it would be logical to conclude that it should start on the day of the submission of the „request" by one third of the deputies to the Constitutional Court. The rationale for this institute is to prevent the promulgation of an unconstitutional provision of the law (or, potentially, the unconstitutional law in its entirety), so that the possibility provided by the Constitution, that the law is promulgated prior to deciding on its unconstitutionality, is unfamiliar to that institute. In France, the time period for the promulgation of the law ceases to run until the Constitutional Council reaches a decision on its constitutionality. Further indication of failure to understand this institute is also the provision pursuant to which the decision of the Constitutional Court on the unconstitutionality of the law prior to its promulgation is to come into effect on the day of the promulgation of the law. The essence of this entire institute is for the unconstitutional provision of the law (the entire law would be a rare case indeed) to be prevented from being promulgated, as is clearly stated in Article 62, paragraph 1 of the 1958 French Constitution: „The provision found to be unconstitutional may not be promulgated or applied". And, finally, the 2006 Constitution, providing that „the proceedings of review of the constitutionality may not be instituted against the law whose compliance with the Constitution was established prior to its coming into force" abolishes any potentially unconstitutional provision in the law subjected to preventive review of constitutionality for the duration of its being in force, since the entire law is made immune to the constitutionality review. However, the application of the law may show that a different provision, which was not subject to preventive review of constitutionality, is unconstitutional.

When concluding the competences of the Constitutional Court (in Article 167), the Constitution provides in paragraph 1, Article 167, that the Constitutional Court shall „perform other duties stipulated by the Constitution and the Law", only to provide in paragraph 3 of the same Article that „the Constitutional Court shall perform other duties stipulated by the Constitution". In one and the same Article, Regulating the issue in a different manner in one and the same Article could be seen only during practical nomotechnical work of unsuccessful freshmen at Law School. And now something like that exists in the highest legal act of the state of Serbia, in its Constitution.

It is not clear why the number of justices of the Constitutional Court was increased from nine to fifteen, when in the US, the federal Supreme Court, which serves as the Constitutional Court in addition to its regular judiciary activities, has only nine justices. Probably because the 'key' for the composition and appointment of the Constitutional Court justices was taken over from the 1947 Italian Constitution, where it is provided (Article 135) that the Constitutional Court has 15 justices. When appointing the justices the principle of three-branch separation of powers is observed. Each of the three branches, embodied in a state authority (the National Assembly, the President of the Republic, the Supreme Court of Cassation), appoints one third of the justices.

The Constitution also provided (Article 172, paragraph 3) how the authorities participating in the appointment of the Constitutional Court justices find the candidates for the appointments. Thus, the National Assembly shall „elect", „*bira*", five Constitutional Court justices from among the ten candidates proposed to it by the President of the Republic, the President of the Republic shall „appoint", „*imenuje*", five Constitutional Court justices from among the ten candidates proposed to him by the National Assembly, and the general session of the Supreme Court of Cassation shall „appoint", „*imenuje*", five Constitutional Court justices from among ten candidates proposed to it, at the joint session, by the High Judicial Council and the State Prosecutors Council. The third manner of nomination is disputable here. The candidates for the appointment of the Constitutional Court justices, to be carried out by the Supreme Court of Cassation (in general session), are to be determined by the High Judicial Council, the body „appointing judges for permanent judicial office", and, accordingly, the judges in the Supreme Court of Cassation as well, and the State Prosecutors Council, the body appointing „deputy public prosecutors for permanent office". There the role of the High Judicial Council is illogical, and the role of the State Prosecutors Council inappropriate. The High Judicial Council appointed the judges of the Supreme Court of Cassation; however, in that relationship it is but a party proposing the decision to be made by the body whose appointment it

carried out. The State Prosecutors Council decides on the appointment and status of deputy public prosecutors, and has nothing to do with the judiciary. A particularly arbitrary phrase is the „joint session“ of these two bodies with no links between them, where the ten candidates for the Constitutional Court justices are to be determined. The Italian model should have been consistently followed, and thus it should be provided for a third of the Constitutional Court justices to be appointed by highest regular and administrative judicial authorities (three justices are appointed by the Court of Cassation, and one each by the State Council, as the administrative supreme court, and the Court of Auditors).

The new solution, already applied in the 1992 Constitution of the FR Yugoslavia, is that the President of the Constitutional Court is elected by secret ballot of the Constitutional Court justices from their ranks, for the period of three years (the solution familiar from the Italian 1947 Constitution, Article 135, paragraph 3). For the first time since the introduction of constitutional judiciary into Serbia (1963), the Constitution prescribes the requirements for the appointment of the Constitutional Court justice: „A justice of the Constitutional Court shall be elected and appointed from among the prominent lawyers of at least 40 years of life and 15 years of relevant professional experience“ (Article 172, paragraph 5). The Italian Constitution (Article 135, paragraph 2), reads: „The justices of the Constitutional Court are elected from among active and retired judges of the highest regular and administrative courts, Full Professors of juridical subjects and attorneys-at-law having practiced the profession for twenty years“. This formulation is better, since it provides a more precise definition of who a „prominent lawyer“ is.

The term of office for the Constitutional Court justices is nine years, which means that the solution from the Serbian 1990 Constitution, providing for the permanency of office for the Constitutional Court justices, which had been, and quite rightly, criticized at the time, was abandoned, since the Constitutional Court justice is not a profession, like being a judge of the regular court. One person may be elected or appointed for the Constitutional Court justice two times at the most. 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 (this exception was not allowed by the 1990 Constitution of Serbia).

The issue of termination of office of the Constitutional Court justice was taken over, with slight corrections, from the 1990 Serbian Constitution. According to that solution, the Constitutional Court justice’s office shall terminate: 1) upon expiry of the time period for which he was elected or appointed; 2) at his request; 3) after meeting the requirements prescribed by law for age-related pension; 4) by being

relieved of office. The Constitutional Court justice is relieved of office: 1) if he violates the prohibition of the conflict of interests (incompatibility of the judicial office); 2) in case of permanent loss of capacity to perform duties of office of the Constitutional Court justice („which shall be determined by the Constitutional Court" should have been added here); 3) in case he is sentenced to imprisonment or for a punishable offence rendering him unworthy of office of the Constitutional Court justice. The determination of these grounds in the Constitution is a powerful guarantee of independence of the Constitutional Court justices in carrying out their primary duty – reviewing the constitutionality of the laws. Although the Constitutional Court justices are elected by three different authorities, the termination of their office is decided on by only one – the National Assembly, „on request of authorised initiators for election or appointment for election of a justice of the Constitutional Court" (Article 174, paragraph 3). The initiative for commencing a procedure for relieving of office may be taken for the Constitutional Court as well.

The remaining two issues concerning the Constitutional Court (the previous two are competences, and election and composition) – the initiation of proceedings and decision making and the effect thereof – were resolved on the same basis as in the 1990 Constitution of Serbia. The proceedings before the Constitutional Court are to be initiated by authorized initiators. They are: state organs, organs of „territorial" (once again a redactor's mistake, since the Constitution mentions „provincial autonomy" all the time) autonomy or of local self-government, as well as at least 25 deputies. The provision of the Constitution specifying the circle of initiators for triggering the proceedings before the Constitutional Court (Article 168, paragraph 1) results in authorities of territorial autonomy and local self-government being able to initiate the procedure for reviewing the constitutionality and legality of any law or other general act. However, Article 187, paragraph 1, provides that the authority designated by the statute of an autonomous province may do so only against such law or other general act that „obstructs performing the competences of the autonomous province", while the authority designated by the statute of municipality may do so only against the law or other general act that „violates the right to local self-government" (Article 193, provision 2). The provision specifying that even at least 25 deputies may initiate the proceedings before the Constitutional Court is another powerful means in the hands of the parliamentary opposition, which thus has a protector of its position in the Constitutional Court. The Constitutional Court may also initiate the proceedings.

The initiative for commencement of the proceedings may be submitted by any natural or artificial person. The initiation does not oblige the Constitutional Court to commence the proceedings, unlike the pro-

posal for initiating the proceeding of the initiator authorized by the Constitution. The Constitutional Court decides by majority vote of all justices; however, the decision for the Constitutional Court to decide on its own (the Constitution reads „autonomously“) to initiate the reviewing of the constitutionality and legality is made by two-third majority of votes of all justices. The decisions of the Constitutional Court are final, enforceable and generally binding. Where the Constitutional Court finds that the law or other general act is not in compliance with the Constitution, or that a general act is not in compliance with the law, the said law or general act is to cease to apply on the day of the publication of the decision of the Constitutional Court in the official journal. The 2006 Constitution preserved the institute of suspension of enforcement of the individual act or action „undertaken on the grounds of the Law or other general act whose constitutionality or legality it reviews“ until the final decision of the Constitutional Court is made (Article 168, paragraph 4), which used to be a statutory institute (Law on Procedure before the Constitutional Court and on Legal Effects of Its Decisions of 1991, Article 42).

The 2006 Constitution provides for the adoption of the law on the Constitutional Court in order to regulate the following: the organization of the Constitutional Court, the procedure before the Constitutional Court, and legal effects of its decision. This provision as well (Article 175, paragraph 3) results in the competences of the Constitutional Court not being subject to regulation by law. That court has as many competences as the Constitution provided it with.

Part Seven of the 2006 Constitution regulates the territorial organization of the Republic of Serbia (Articles 176–193), which was, prior to the change of the Constitution, believed to be the battlefield for parliamentary parties to fight over the most. However, the agreement, as can be seen from the 2006 Constitution, was reached in terms of repeating the territorial organization of the 1990 Serbian Constitution, which means asymmetric territorial autonomy (with autonomous provinces not in the entire country territory, but in the part of the country territory, where the autonomous provinces are of unequal status) and monotype organization of local self-government (with uniform type of municipality as a local self-government unit, while the towns and City of Belgrade perform the functions of a municipality). Therefore, according to the 2006 Constitution, Serbia is decentralized along the two lines, the line of territorial („provincial“) autonomy and the line of local self-government. The expression „provincial autonomy“ is not a generic one in the Constitution, but the one related to our terminology (there are countries where such a territorial unit is called „district“, or „autonomous community“, etc.). That is why a better expression to use is territorial

autonomy, since it is not derived from the name of the territorial unit enjoying autonomy. The 2006 Constitution has, quite unnecessarily, that part divided into three sections: 1) provincial autonomy and local self-government; 2) autonomous provinces; 3) local self-government. The first section is completely superfluous, since due to its presence the same matters are being considered twice, and, which is even worse, considered differently. So Section One, Article 177, paragraph 2, reads that the competences of autonomous provinces and local self-government units are to be specified by the law, while Section Two, Article 183 of the Constitution specifies the competences of autonomous provinces, and Section Three, Article 190 of the Constitution specifies also the competences of the municipality as the basic unit of local self-government, since the towns and City of Belgrade have the competences entrusted to the municipality by the Constitution. However, it is not wise, bearing in mind the advocates of broader autonomy for autonomous provinces, to formulate the common provisions on territorial autonomy and local self-government in the same Section, since they are thus given a strong argument for the claim that „provincial autonomy" has not gone far from local self-government in the Constitution.

Both types of territorial decentralization are provided with the possibility of being entrusted with the competences of the Republic of Serbia by the law. Its right to self-organization is prescribed, so an autonomous province, in accordance with the Constitution and its statute, is to „autonomously regulate the organisation and competences of its bodies and public services" (Article 179). This right is immediately infringed and also impaired a good deal by the next Article of the Constitution (Article 180, paragraph 1), which reads: „the Assembly shall be the supreme body of the autonomous province and a local self-government unit". By stating that „the Assembly shall be the supreme body" (no such formulation is present in the 1990 Serbian Constitution with regard to the organization of autonomous provinces and municipallities, nor in the current Law on Local Self-government, pursuant to which „the municipal assembly shall be a representative body", while in the previous Law on Local Self-government of 1999 it was stated that it is „the representative body of the citizens") the organization of autonomous provinces and municipalities was determined, their „organization" was prescribed, since all other bodies now must be accountable to the assembly. This is the so-called assembly system of governance, which is based on unity (not separation) of power for the benefit of the assembly, which was present in the time of the socialist Yugoslavia (1946–1992). Within that system all the bodies are appointed and dismissed by the Assembly, which, with regard to the municipality, is also stated in the Constitution in Article 191, paragraph 4. The last paragraph of the same Article reads: „Election of executive bodies of the town and the City of

Belgrade shall be regulated by the Law". The question that can be asked here is what kind of „local self-government system" this is, where the executive bodies of the municipality are elected in one, and the executive bodies of the towns and the City of Belgrade in another manner? Stating in the Constitution that the term of office of deputies (in autonomous province assemblies) and councillors (in municipal assemblies) is four years, that they are elected in direct elections and by secret ballot, the deputies in line with the decision of the Autonomous province Assembly, and the councillors in accordance with the law, as well as that the autonomous provinces and local self-government units with population of mixed ethnic composition are provided with „a proportional representtation of national minorities [...] in accordance with the Law" (Article 180, paragraph 4) is also narrowing the right to self-organize, and unnecessarily going into details.

With regard to autonomous provinces, the 2006 Constitution contains two considerable novelties. The one is that the establishment of new autonomous provinces or termination or merging of the existing ones is an open process. This is to be decided on under the procedure provided for the change of the Constitution, and the proposal is to be confirmed by the citizens at the referendum, in accordance with the law (Article 182, paragraph 3). In line with that principle is the following provision: „Territory of autonomous provinces and the terms under which borders between autonomous provinces may be altered shall be regulated (the singular verb used here[2] should have been a plural verb, R.M.) by the Law. Territory of autonomous provinces may not be altered without the consent of its citizens given in a referendum, in accordance with the Law" (Article 182, paragraph 4). The other novelty is that the two autonomous provinces do not have the same position. While one has a „substantial", the other has an „insubstantial" autonomy. Thus, in the Autonomous Province of Kosovo and Metohia there is a „substantial autonomy", which is yet to be regulated by „the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution". Since Article 182, paragraph 1 states that „Autonomous provinces shall be autonomous territorial communities established by the Constitution, in which citizens exercise the right to the provincial autonomy", it means that in the Autonomous province of Kosovo and Metohia provincial autonomy is also realized, but it is a „substantial" one here. Provincial autonomy is either present or it is not. That term has its meaning in constitutional theory and practice, so the term „substantial autonomy" (unknown in constitutional and legal theory) should express

2 In the Serbian text a singular verb was wrongly used instead of a plural one (Translator's note).

the degree of autonomy superior to the meaning of provincial (territorial) autonomy. If substantial autonomy means full autonomy of three branches of power in a certain territory, it is no longer a provincial autonomy; such a degree of autonomy has an essence differing from territorial autonomy, the one characteristic of state sovereignty. Then again, for the other autonomous province, Vojvodina, the Constitution states that its budget „shall amount to at least 7% in relation to the budget of the Republic of Serbia, bearing in mind that three– sevenths of the budget of the Autonomous Province of Vojvodina shall be used for financing the capital expenditures" (Article 184, paragraph 4). This means that a new, potentially to be established, autonomous province would differ in its position from both Kosovo and Metohia and Vojvodina. It would have a third essence. In comparative constitutional law the instance of existence of two types of territorial autonomy is recognized. In Italy there are areas with regular (15 of them) and areas with specific position (five of them). But if a new autonomous province were to be established in Serbia, each of the provinces would have a *sui generis* position, each would have a different autonomous status.

The 2006 Constitution, by its provisions on the competences of the autonomous province, provides most details on its normative and financial functions, or autonomy. The normative autonomy includes autonomously regulating the issues of provincial significance, in accordance with the law, for the areas specified by the Constitution (Article 183, paragraph 2). The autonomous province makes decision and issues other general acts. The highest legal act of the autonomous province is the Statute, which, as in accordance with the 1990 Constitution of Serbia, is adopted by its Assembly, following the approval of the National Assembly. Financial autonomy involves the existence of direct revenues, which are to fund the competences of the autonomous province, independent creation of the budget and final accounts, as well as the existence of the property of the autonomous province, as a form of public property, and the managing thereof. That autonomy is restricted in a way that the „kind and amount of direct revenues" are specified by the law (Article 184, paragraph 2).

The autonomous province further ensures the „exercising (in case of municipalities, „protection and improvement of" is added, R.M.) human and minority rights, in accordance with the Law" (in case of municipalities, this „in accordance with the law" is not present, R.M.). It establishes the „symbols, as well as the manner in which they shall be put to use" (in case of municipalities, the text reads „as well as their use", R. M.).

The two new constitutional institutes concerning provincial autonomy are supervision over the activities of the autonomous province organs, and protection of provincial autonomy.

Since provincial autonomy is realized under the Constitution and the laws, the state through its organs carries out supervision of the constitutionality and legality of the activities of the autonomous province organs. For that purpose, state organs have at their disposal both regular and special powers, as the ones provided for in Article 186 of the Constitution. Specifically, the Government may initiate the procedure before the Constitutional Court for the review of constitutionality or legality of the decision of the autonomous province, prior to its coming into effect, and the Constitutional Court in that case may, until deciding, defer the coming into effect of the disputed decision of the autonomous province. This also is a form of preventive control of both constitutionality and legality as well. But here there is no provision specifying that the Government may not at a later time initiate the procedure before the Constitutional Court for reviewing the constitutionality and legality of the decision of the autonomous province whose compliance with the Constitution and law was reviewed prior to its coming into effect.

For the purpose of protecting provincial autonomy, the authority specified by the statute of the autonomous province is entitled to appeal to the Constitutional Court, if an individual act or action of a state authority or an authority of local self-government prevents the carrying out of the competences of the autonomous province (although the Constitution mentions a „complaint", from the definition of the conditions for lodging this complaint it is clearly a constitutional complaint). The other instrument for protecting provincial autonomy is, however, less definite. Article 187, paragraph 2, where this instrument is provided for, reads: „A body designated by the Statute of the autonomous province may institute the proceedings of assessing the constitutionality or legality of the law and other legal act of the Republic of Serbia or the legal act of the local self-government unit which violates the right to the provincial autonomy". It is not clear from this provision which body is the one before which the organ of the autonomous province may initiate the procedure of reviewing constitutionality and legality. Probably it is the Constitutional Court. If that is so, it is then not clear why this provision is present at all in the Constitution, when Article 168, paragraph 1 states that the procedure for reviewing the constitutionality and legality before the Constitutional Court may be initiated also by „bodies of territorial autonomy". The provision of Article 187, paragraph 2 of the Constitution withdraws the general authority of provincial autonomy bodies to initiate proceedings before the Constitutional Court for reviewing the constitutionality and legality granted by Article 168, paragraph 1 of the Constitution, and converts it into a special one, existing only where such bodies find that the law, or other general act of the Republic of Serbia authorities, or a general act of a local self-government unit, infringes the

right to provincial autonomy. Therefore, the same right granted by Article 168, paragraph 1 was withdrawn by Article 187, paragraph 2.

Local self-government did not, in terms of concepts, undergo any significant changes in the 2006 Constitution in comparison with the 1990 Constitution of Serbia. The same local self-government units remained (municipality, town and City of Belgrade), with town having the same competences as the ones entrusted to the municipality, while the City of Belgrade has competences entrusted to municipalities and towns by the Constitution, and the law on the capital city may provide also for other competences. Under the 1990 Constitution of Serbia, establishment of municipalities in the territory of towns was a constitutional obligation (Article 117), and in the 2006 Constitution (Article 189, paragraph 4) it is only a constitutional possibility: „It may be envisaged in the Statute of the town to establish two or more town municipalities on the territory of the town". The territory and the seat of local self-government units are defined by law, and the establishment, termination and change of the territory of the local self-government unit is preceded by a referendum in the territory of that local self-government unit. The highest legal act of the local self-government is still the statute of the municipality, issued by the municipal assembly. The competences of the municipality (Article 190) remained practically the same as under the 1990 Constitution of Serbia (Article 113). The funding sources are the same.

The two most significant novelties of the 2006 Constitution in this field are the establishment of municipal (and of towns and of the City of Belgrade) priperty as a form of public ownership, where the municipality independently manages the municipal property in accordance with the law (Article 190, paragraph 4), and, with regard to legislation, the modified relationship between the representative body, the municipal assembly, and executive bodies in the municipality, the relationship now based on the assembly system of governance. The Constitution still provides (Article 191, paragraph 5) for the possibility that the law may organize the relationship between the assembly and executive bodies in towns and in the City of Belgrade in line with different principles.

The constitutional regulations concerning the municipality were expanded to include the two issues that were previously subject to statutory regulations. They are the supervision of the activities of the municipality, and protection of the local self-government. The supervision over the activities of the municipality is carried out by the Government on behalf of the state. The Government is also „obliged to cancel the enforcement of the municipal general act which it considers to be in non-compliance with the Constitution or the Law, and institute the proceedings of reviewing its constitutionality or legality within five days" (Article 192, paragraph 1). Once again there is no mention of the fact that

these proceedings are instituted before the Constitutional Court. The Government also has a constitutional power (Article 192, paragraph 2) to dissolve the municipal assembly, where concurrently with the dissolution the Government is to appoint an interim body to carry out the activities within the competences of the municipal assembly, ensuring that the political and ethnic composition of the dissolved municipal assembly is taken into consideration and preserved.

As regards the protection of local self-government, it is carried out in the same manner as the protection of provincial autonomy – through a constitutional complaint (the Constitution reads only „complaint", but from the specified conditions for the lodging thereof it is clear that this is the case of a constitutional complaint) to the Constitutional Court, and by instigating a procedure before the Constitutional Court for reviewing the constitutionality and legality. Namely, the body specified by the statute of the municipality may initiate the procedure for reviewing the constitutionality and legality of the laws and other general acts of the Republic of Serbia or an autonomous province infringing the right to local self-government. This constitutional provision (Article 193, paragraph 2) is formulated in such a manner that it causes the same uncertainties as the Constitutional provision (Article 187, paragraph 2) concerning the protection of provincial autonomy rights.

Part Eight of the 2006 Constitution concerns the constitutionality and legality („Constitutionality and Legality", Articles 194–202) and contains, in addition to descriptions of the relations between the legal acts in the legal system of the Republic of Serbia, and to the description of „technology" of enforcing and implementing the laws on their adoption in the National Assembly and promulgation by the President of the Republic, also a novelty we advocated following the experiences of introducing the state of emergency in Serbia in 2003, namely the detailed prescribing of the legal system for the period of, at present, only two degrees of the state of necessity – the state of emergency and the state of war (according to the 1990 Constitution of Serbia there was a third degree as well between the two, the state of imminent-peril of war).

The legal system of the state of Serbia is uniform, which is achieved by harmonized relations between the legal acts constituting it. The Constitution is the highest legal act of the Republic of Serbia. Generally accepted rules of international law are of the same rank as the Constitution in their legal force. The ratified international treaties are below the Constitution, but above the laws. The laws and other general acts issued in the Republic of Serbia must be in compliance (owing to the redactor's mistake, the Constitution reads „must not be in contravention of", which is a phrase that had a special meaning in the SFRY 1974 Constitution, different from the meaning of the phrase „must be in com-

pliance“) with the generally accepted rules of international law and ratified international treaties. All the implementing general regulations, regardless of the issuer, must be in compliance with the law.

The publication of the laws and other general acts is regulated in more detail in the 2006 Constitution than in the Serbian 1990 Constitution, although with a rather high degree of inattention on the redactor's part. *Vacatio legis* and the prohibition of retroactive effect of the law are regulated in the same manner as in the Serbian 1990 Constitution. The provision on the legality of administration (Article 198), in paragraph one, aspiring to state the obligation of the holders of administrative power to act under the procedure prescribed by the law, actually fails to state the desired point (that the administration may act only in accordance the procedure prescribed by law), but states a rather banal thing – that individual acts need to based on the law (as if it had been forgotten that laws may be substantive and procedural). Paragraph two, instead of stating simply that final administrative acts shall be subject to the review of their legality in an administrative dispute before a competent court, contains a clumsy formulation that „legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative proceedings“. Which act is an administrative one should be stated in the law, not in the Constitution. Elements of legality are also everyone's right to use their language in the procedure deciding on his right or duty, and that the unfamiliarity with the language of the procedure must not be an impediment for the exercise and protection of human and minority rights.

In order for the state of emergency to avoid violating constitutionality and legality, which is a common side effect of that state, the 2006 Constitution prescribes (Article 200) the elements of legal regime of that degree of the state of necessity. That state is proclaimed by the National Assembly in situations where „the survival of the state or its citizens is threatened by a public danger“. As can be seen, the grounds for proclaiming the state of emergency are expressed by vague terms such as „public danger“ threatening „the survival of the state or its citizens“, which in itself provides room for potential abuse. The decision on the state of emergency is in effect for 90 days at the most, and after the expiry of that period the National Assembly may extend it, by majority vote of the total number of deputies, for another 90 days. This would mean that the state of emergency may last for half a year, which is definitely too long a period. A characteristic of the state of emergency is that while such a state is in effect, the National Assembly is in session without any special convening, and it may not be dissolved. However, there was no need to repeat the same thing in Article 200, paragraph 3, since it is already stated in Article 106, paragraph 4, and Article 109,

paragraph 4. On declaring the state of emergency, the National Assembly may decide on the measures derogating from human and minority rights guaranteed by the Constitution (derogatory measures). Derogation is permitted only to the extent which is necessary, and the derogatory measures may not lead to any differences based on race, gender, language, religion, national affiliation or social origin. They cease to apply on termination of the state of emergency or of war (since they can apply in the state of war as well). The Constitution provides for Articles guaranteeing human and minority rights in relation to which derogatory measures „shall by no means be permitted" (Article 202, paragraph 4).

The Constitution provides for a possibility that the state of emergency, in case the national Assembly cannot convene, may be proclaimed by the decision issued jointly by the President of the National Assembly, the president of the Republic, and the Prime Minister, under the same conditions as the National Assembly. Furthermore, where the National Assembly cannot convene, the derogatory measures may be specified by the Government by way of a decree, and with the co-signature of the President of the Republic. The National Assembly, in case the decision on the state of emergency was not issued by it, is under obligation to confirm that decision within 48 hours („*čas*" here; the Constitution uses the word „*sat*" for „hour", although in previous Articles, for instance in Article 30, the word „*čas*" was used, which is, once again, the redactor's mistake[3]) of issuing thereof, or immediately after it is able to convene. In case the decision is not confirmed, it shall cease to apply on the ending of the first session of the National Assembly after the proclamation of the state of emergency. Similarly, the derogatory measures not prescribed by the National Assembly but by the Government decree must be submitted for confirmation to the National Assembly within 48 hours (it reads „*sat*" here) from issuing thereof, or as soon as the National Assembly can convene. If not, the derogatory measures shall cease to exist 24 hours (it reads „*sat*" here) from the beginning of the first session of the National Assembly held after the state of emergency is proclaimed.

The derogatory measures concerning human and minority rights, regardless whether they were prescribed by the National Assembly by its decision, or the Government by its decree, may last for 90 days at the longest, and following the expiry of this period may be renewed under the same conditions.

The Constitutional rules to apply in case of the state of emergency also apply, *mutatis mutandis*, in case of the state of war. The state of war is also proclaimed by the National Assembly, and if it cannot convene,

3 In common use, Serbian has two different words for "hour", namely "*sat*" and "*čas*". It is recommended to use the word "*sat*" for this meaning (Translator's note).

the decision on proclaiming the state of war is issued jointly by the President of the National Assembly, the President of the Republic, and the Prime Minister. By the nature of things, the Constitution cannot, as in case of the duration of the state of emergency, prescribe the duration of the state of war. It is proper that the Constitution Article on the state of war (Article 201) does not state again that during the state of war the national Assembly convenes without a special call, and that it cannot be dissolved, since it was already provided for in Article 106, paragraph 4 and in Article 109, paragraph 4. Similarly, in case of declaring the state of war, the National Assembly may prescribe the derogatory measures concerning the human and minority rights guaranteed by the Constitution. Where the National Assembly is unable to convene, the derogatory measures concerning the human and minority rights guaranteed by the Constitution are to be determined jointly by the President of the National Assembly, the President of the Republic, and the Prime Minister. The difference between the state of emergency and the state of war can be seen here. In the same situation, and in case of the state of emergency, the derogatory measures may be prescribed by the Government decree, with the co-signature of the President of the Republic. It is difficult to discern why this difference was created. An especially large question mark can be used for the inclusion of the President of the National Assembly in deciding on the proclamation of both the state of emergency and the state of war, and in prescribing the derogatory measures in case of the state of war, since he is thus provided with the authority that he may independently exercise (without prior decision made in the National Assembly). The President of the National Assembly is not the same as the National Assembly, he is only the chairperson of a collegial body, and his attitude may even be different from the attitude of the majority in the Assembly. This is not the case with the Prime Minister, since he is, as office holder, the personification of the Government, while the President of the Republic is an individual authority.

The derogatory measures in case of the state of war, regardless of the authority prescribing them, are to be confirmed by the National Assembly, as soon as it is able to convene. Furthermore, during the states of emergency and war, the Constitution may not be changed (Article 204), as was attempted once before, during the state of emergency in Serbia in 2003.

Part Nine of the Constitution is entitled „Amending the Constitution“ (Articles 203–205) and it describes the revision procedure. Here the 2006 Constitution is fully emancipated, unlike the previous one. The distinction between the two phases in the reviewing procedure remains: the phase of submitting and adopting the proposal to amend the Constitution, and the phase of drafting and adoption of the act amending

the Constitution. However, the procedure for amending the Constitution is no longer uniform, but dual, depending on the parts of the Constitution to be amended. The difference between the two procedures lies in the phase two of the amending procedure, in the action of adoption of the act amending the Constitution.

The requirements for submitting the proposal to amend the Constitution were made stricter. Such a proposal may be submitted by: 1) at least one third of the total number of deputies (the number of deputies in the National Assembly is the same as under the 1990 Constitution of Serbia, but that Constitution required at least 50 deputies for proposing the amendment to the Constitution); 2) the President of the Republic; 3) the Government; 4) at least 150,000 voters (according to the 1990 Constitution of Serbia, the required number was at least 100,000 voters). Regardless of the way it was submitted, the proposal to amend the Constitution is to be adopted by a two-third majority of the total number of deputies. In case such a majority is not reached, the amendment of the Constitution concerning the issues contained in the proposal submitted which was not adopted, may not be undertaken in the period of one year to follow. The revision procedure in this phase is more demanding than the one provided for by the 1990 Serbian Constitution.

When the National Assembly adopts the proposal for amending the Constitution, the drafting of the act to amend the Constitution is to commence. The draft of such an act is drawn up by a supporting working group of the National Assembly provided for by its Standing Orders, and that is, as a rule, the constitutional committee of the National Assembly (Committee for Constitutional Issues).

The National Assembly, after the debate, adopts the act amending the Constitution by the two-third majority of the total number of deputies „and may decide to have it endorsed in the republic referendum by the citizens“ (Article 203, paragraph 6). The Constitution does not state by which decision the National Assembly decides on calling a Republic referendum. This is the case of a facultative constitutional referendum which, undoubtedly, after the adoption of the act on amending the Constitution by two-third majority of the deputies, requires a separate decision. If the National Assembly decides not to subject the act on amending the Constitution to the Republic referendum in order for it be endorsed, the amendment of the Constitution is adopted by voting in the National Assembly, and the act amending the Constitution comes into force on being promulgated by the National Assembly. Similarly, the Constitution fails to specify what happens if the proposed act on amending the Constitution fails to achieve the required majority. It would be logical to assume that the same prohibition in case of non-adoption of the proposal to amend the Constitution should apply: the amendment of

the Constitution concerning the issues referred to in the proposal of the act on amending the Constitution may not be considered during the year to follow.

However, a „tighter" procedure for amending the Constitution is also in place, under which the National Assembly has to call a constitutional referendum in order for the adopted proposal of the constitution amending act (adopted by two-third majority of all deputies) to be confirmed. This is the case of a mandatory referendum on amending the Constitution. Such referendum is mandatory if the Constitution amendment relates to the following: 1) the Constitution Preamble; 2) the Constitution principles; 3) human and minority rights and liberties; 4) governance system; 5) proclaiming the states of war and of emergency, as well as derogation from human and minority rights in states of war and of emergency; 6) procedure for amending the Constitution. When the act amending the Constitution is to be endorsed at the referendum, which is either initiated at the will of the National Assembly (facultative Constitutional referendum), or in order to meet the Constitutional requirement (mandatory Constitutional referendum), the citizens shall vote on the referendum within 60 days at the latest of the day of the adoption of the act demanding the Constitution. The Constitution amendment is deemed adopted if the majority of the voter turnout approves the amendment, regardless of the turnout numbers. The act amending the Constitution which has been endorsed at the Republic referendum comes into effect after the National Assembly promulgates it (by way of its decision). Unlike the law, the Constitution cones into force on the day of its promulgation, and for its implementation the Constitutional Law is to be adopted by two-third majority of the total number of deputies (Article 205). Since the Constitutional Law creates together with the Constitution a normative whole, the 1990 Serbian Constitution provided for (Article 134, paragraph 4) the Constitutional Law to „come into force concurrently with the amendment to the Constitution". The 2006 Constitution does not contain such a provision. In line with the described „tighter" procedure, a new Constitution is also adopted. Although the political and professional circles stressed as one of the basic advantages of the 2006 Constitution, in comparison with the 1990 Constitution of Serbia, the easier procedure of amending the Constitution, anybody who believes this procedure to be easy is gravely mistaken. In the Parliament where the deputy mandates are distributed by the method of proportional representation, achieving the two-third majority may be a Sisyphean task, which was soon demonstrated by attempts to change the 2006 Constitution, if for no other reason, than because of its nomotechnical faults which will prevent its implementation.

* * *

From the time of the adoption of the draft of the Constitution in the National Assembly until the time of the referendum on the Constitution, and in order to persuade citizens both to vote at the referendum and to vote for the desired outcome, what followed in certain political circles was an unprecedented disqualification of the 1990 Constitution of Serbia, as if it were the case of two conceptually opposed acts (it could have started no earlier, since even the deputies themselves saw the draft Constitution on the day of its adoption in the National Assembly). The President of the Republic, Boris Tadić, stated that his party had agreed to the new National Assembly, in spite of all its deficiencies, „in order to break up a blood clot in the heart of the state, and that is the old Milošević's Constitution". And, let us reiterate, there is no constitutional institution in the 2006 Constitution where that Constitution has a concept different from the concept of its model – the 1990 Constitution of Serbia. When we say that, we think of the same (only differently formulated) constitutional principles present in all the provisions of the Constitution. And indeed, the 2006 Constitution contains no new constitutional principle that was not already present in the 1990 Serbian Constitution.

The concept of horizontal government structure (the so-called semi-presidential, or mixed government system) is the same – the National Assembly with the same number of deputies and the same competences, the President of the Republic with the same method of election and powers, who is dismissed instead of recalled, the Government, created under the same concept, but with an additionally strengthened position due to now more difficult requirements for the vote of no confidence and non-deputy composition, the same constitutional principles concerning the courts and the same functions of the public prosecutor's office, with unnecessarily complicated appointment of judges, prosecutors and deputy prosecutors, and with guarantees for judicial and prosecuting independence significantly diminished, the Constitutional Court with the same competences (expanded by a constitutional complaint and deciding on violation of the Constitution by the President of the Republic), the same manner of instigating the procedures and the same mechanism of decision making (accompanied by the wrong implementation of the institute of preventive review of constitutionality of a law), but with a different number of justices and the manner of their appointment.

The concept of vertical system of government is also the same (decentralization along the lines of territorial autonomy and local self-government). The two autonomous units have different statuses, with the possibility of creating new autonomous units. The local self-government units remain the same, with the same concepts – municipality, town, City of Belgrade. Financial autonomy of all territorial units was strengthened

by constitutional guarantee of direct revenue; however, the type and amounts of such revenues are determined by the state through law. Material basis for financial autonomy is the autonomous province ownership and a local self-government unit property, which are forms of public property.

The same principle of the uniform legal system of the Republic of Serbia remained in force, based on which are the relations between different „layers" within that system, with the special protection of these principles at the times which are „dangerous" for constitutionality and legality (state of emergency and state of war), which should definitely be seen as a positive thing.

Is there in the 2006 Constitution anything different in concept and content from the 1990 Constitution of Serbia? There is, the following three matters. First, a different and much more comprehensive declaration of human and minority rights. The 1990 Serbian Constitution has a simple, but one more appropriate for a constitution, declaration of human (not of minority as well) rights. The 2006 Constitution has a buoyant, detailed compilation, a plagiarism in connection with relevant international legal documents, the declaration of human and minority rights. Even so, this declaration is not complete, since it would otherwise just represent a collection of international law documents on human and minority rights. As it is, the declaration is just a selection from these documents, so the question is what role this declaration plays, when the Constitution has the following provision: „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" (Article 16, paragraph 2). This is the case of a kind of „decorating" the Constitution, without any essentially legal significance. The other matter is the property reform undertaken by the 2006 Constitution. Social property as a possible form of property, not a dominant form of property, as the general public was erroneously led to believe (such status was accorded to social property under the 1974 Constitution of the SFRY), was excluded by the 2006 Constitution. Public property was constituted, as a generic name for state property, autonomous province property and local self-government unit property. Private property and cooperative property were retained. At that, private property is openly favoured, although, ostensibly, „all types of property shall have equal legal protection" (Article 86, paragraph 2). Thus the economic system of Serbia is also based, *inter alia*, on „equality of private and other types of property" (Article 82, paragraph 1), and the social property will disappear unidirectionally, by being „appropriated in a manner and under the terms stipulated by the Law" (Article 86, paragraph 3). The third matter is the new legal mechanism for amending the Constitution, due to which the

Constitution of Serbia, instead of being a „strictly" inflexible Constitution (but not as inflexible as the 1974 Constitution of the SFRY, or the 1787 Constitution of the USA) became a „mildly" inflexible Constitution (with dual, different degrees of inflexibility). It seems that the optimum solution was created here. The procedure for amending an inflexible constitution should enable the changes in the country and in the outside world to be expressed in the Constitution, and should not allow for every change in the Parliament majority to result in amending the Constitution. That balance was established by the new revision procedure.

Taking all the mentioned issues into consideration, the 2006 Constitution may be regarded not as the new Constitution, but as the correction, more often for the better, but at times also for the worse, of the 1990 Constitution of Serbia. It is an improvement on the former one, but it does not mean that it is a new, better Constitution. The 2006 Constitution is a kind of an „overhaul" of the 1990 Constitution of Serbia, where life had overtaken it during the full 16 years of its application. It was adopted during the time when Serbia was a member of the „great" Yugoslav federation, and it was in force when Serbia was a member of the „reduced" Yugoslav federation, as well as in the times when it was a member of the bastard state union, and for even a half year from the time Serbia became an independent country. The only two other constitutions to be in force for a longer time were the so-called „Turkish" Constitution of 1838, and the Regent's (*Namesnički*) Constitution of 1869. However, turbulent changes during the period of its being in force negatively influenced the fate of that Constitution. The world had changed, an entire social formation had ceased to exist, surrounding countries had tied their fates to the European Union, Serbia had changed her country status thrice, the science of constitutional law and the related constitutional engineering had developed, and, as of mid-2006, the creator of the Constitution had had no act of greater legal power to curb him, so the creator of the Serbian Constitution was at full legal liberty to create a constitution at his will. That chance to bring something new was not taken advantage of by the Constitution creator. That is why no new constitutional era („age", as Slobodan Jovanović would say) will be deemed to have started in 2006. The development of constitutionality in Serbia failed to experience a „breakthrough" (it had not introduced a representtational government instead of an oligarchy, as the 1869 Constitution, or, instead of monarchical government, the parliamentary one, as the 1888 Constitution, or, instead of socialist self-management constitutionality with delegate parliamentary government, the liberal democratic constitutionality with parliamentary government based on a multi-party system, as the 1990 Serbian Constitution).

In the constitutional history of Serbia, the 2006 Constitution will still be remembered by an infamous characteristic. Until that Constitution

Serbia had never had a more illiterate constitution in terms of law and language, and, most probably, after the experience with this one, it never again will. Inattention, carelessness, and not infrequently ignorance as well, present in formulating the provisions in this Constitution, do not have a character of an inadvertent slip, but they simply represent the „style" of this Constitution, and that will result in its becoming a „case". The Constitution has the advantage over other legal acts, *inter alia*, by the „high sheen" of its provisions, some of which became well-known legal adages (like, for instance, the one referred to in Article 28 of the Declaration of the Rights of Man and Citizen from the French 1973 Constitution: „A people has always the right to review, to reform, and to alter its constitution. One generation cannot subject to its law the future generations."). The provisions of the Constitution are to be „polished" not only by first rate nomotechnics authorities (who are present in Serbia), but also by the best linguistic experts (who are present in Serbia in an even greater number). The linguistic redaction of the 1990 Constitution of Serbia was carried out by the Fellow of the Academy of Sciences and Arts, Mihailo Stevanović. From the standpoint of nomotechnics, the 2006 Constitution is a disgrace to constitution as a normative act.

In the raptures over the 2006 Constitution, which were artificially created, it was bestowed with the characteristics that it does not have and that are outside the field of law, especially constitutional law. Thus, it was pointed out that it was „the first post-communist Constitution" or „the first non-communist Constitution" in Serbia, and that Serbia was the last among the „former communist countries to adopt a Constitution". Let us not dwell on empty qualifications, voiced for political purposes only, that the Constitution is „modern", when it contains no institute less than fifty years old, that it is „democratic", when the minimum number of voters necessary for direct participation in certain functions of government power was increased everywhere, that it is „European", when many of its institutes are present in the Constitutions of African and Asian countries, etc. Anyway, we are quite notorious for easily, when carried away by political passions, conferring liberally the titles of „number one" and „primary", and so everything nowadays is thus: *the first* democratic election, *the first* democratic mayor of Belgrade, *the first* democratic Prime Minister, *the first* democratically elected President of the Republic (although the previous ones were elected under a more complicated procedure, and with a larger participation of voters). Therefore, this is *the first* post-communist Constitution, which is, in addition, *the first* Constitution in our history to have a „popular character", which renders it a „Constitution of the people" (under constitutional typology, each constitution is „of the people" if passed by citizens directly or through their representatives). Serbs, as they like to say

of themselves, much like and appreciate history, especially their own. It seems that, by way of such furnishing names to events and affairs, they are putting their foot in the mouth, since they appear to have no history at all. As soon as they find that they can avail themselves of the opportunity to decide on matters of public importance, Serbs count that as the moment when history begins.