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POLICY BRIEF

The opening of the accession negotiations of Serbia with the European Union is the right moment to launch an inclusive public debate on amending the Constitution. This change, in which the main actor would be the National Assembly, should rearrange the political system, strengthen the parliamentary system and contribute to consolidation of democracy.

Necessity to amend the Constitution of the Republic of Serbia: position and importance of the National Assembly

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Introduction

Scheduling pre-term parliamentary elections and forming a new government in the first quarter of 2014 make an excellent opportunity to form a legislature which will initiate an inclusive public debate on constitutional reform as soon as the Assembly is constituted. Key political factors emphasize that negotiations with the EU are to be completed by the year 2018, which will not be possible until Serbia changes its constitutional framework,[1] particularly in the parts regulating the election of judges and a transfer of sovereignty clause.

In the adopted National Judicial Reform Strategy from 2013, Serbian Ministry of Justice and Public Administration clearly pointed out the necessity to change the constitutional framework. Civil society organizations and independent legal and political experts are increasingly calling attention to the necessity of changing the Constitution, which would enable the political community in Serbia to finally achieve its democratic consolidation. Finally, international organizations like the European Union or the Council of Europe have more than once pointed to inconsistencies in the present Constitution and that it is necessary to harmonize it with the achieved European standards.

There is no significant polarization among the Serbian political public concerning the issue of constitutional revision. With the exception of the Democratic Party of Serbia, all parliamentary parties agree that either certain constitutional norms or the entire Constitution should be changed. The issue of the constitutional revision is therefore no longer a matter political will, but rather of a politically adequate moment in which this important process will be initiated. Experience gained from the negotiation process between Montenegro and the EU and two amendments of the Constitution

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of the Republic of Slovenia before it became a full EU member in 2004 further corroborate statements and assessments that constitutional revision is necessary. These circumstances and defused tensions in the process of normalization of relations between Belgrade and Priština after signing and implementation of the Brussels Agreement were also favorable. At the same time, the Constitutional Court of Serbia ruled that certain provisions of the Statute of Vojvodina are unconstitutional and ordered that amendments be made within the next six months, which brought forward the question of necessary amendments in the bad and patchy text of the Constitution.

In accordance with provisions of the Constitution of the Republic of Serbia, chief institution in the process of constitutional revision is the National Assembly of the Republic of Serbia as supreme representative body of all Serbian citizens. The aim of this paper is to point to key elements which concern this legislative body and its role in the process of constitutional revision. These elements are: the role of the National Assembly in constitutional revision, changes in the composition of the National Assembly, changes in its constitutional and legal competencies and redefining the entire political system.

Role of the National Assembly as initiator of constitutional revision

The role of the legislative body in the process of revision and ratification of the Constitution is defined by the Constitution itself and by certain laws and by-laws, which emphasize the importance of the National Assembly in the process of passing, amending and proclaiming a new constitution. The Constitution states that the National Assembly is the supreme representative body and that it is the "holder of constitutional and legislative power". First of these competencies of the National Assembly is to "adopt and amend the Constitution". Article 203, paragraph 2, states that "The National Assembly shall decide on amending the Constitution". Following the Constitution, Law on the National Assembly also states that one of the key competencies of the Assembly is to adopt and amend the Constitution, and there is a similar provision in the Rules of Procedure of the National Assembly of Serbia. The present Constitution, adopted in 2006, casts a long shadow of illegitimacy, because the key political institution whose constitutional competency is adopting a new constitution, was in fact completely excluded from the procedure of drafting the constitution and from the debate about it. The appropriate committee, i.e. the Committee on Constitutional and Legislative Issues did not draft the new Constitution, although it was the only committee formally entitled to pass it to the Assembly to adopt it.

The draft Constitution was given to deputies without leaving them enough time and possibilities to debate it in a proper way, and vast majority of them voted in favor of the new Constitution, completely disregarding the basic rules of parliamentary democracy and good political practices, such as public debate or discussion. The fact that the Constitution is a result of a compromise between three disparate political ideologies embodied by the Democratic Party, Democratic Party of Serbia and Serbian Radical Party and the facts we have previously mentioned, reduced the legitimacy of the supreme law and enabled delegitimization of political processes in Serbia from 2006 till now. Therefore, it is necessary that the Committee on Constitutional and Legislative Issues should initiate constitutional revision and consultations with those who are authorized to propose amendments of the Constitution – the government, president and parliamentary groups.

Changes in the composition and competencies of the National Assembly

The first step in defining the position of the National Assembly in the new constitution is to change its composition, both in terms of quantity and quality. This means reducing the number of deputies and protecting the freedom of a parliamentary mandate by the Constitution and law.

The question which must be asked before defining the number of deputies is whether it is necessary to define the number of deputies in the constitution, or is it sufficient to make it part of a constitution act or of the Law on the National Assembly. I deem it necessary to leave the number of deputies constitutionalized, or at least that it should be defined by a constitutional act so as to avoid making the number of citizens' representatives depend on the will of the majority in the Assembly, which can amend the Law on the National Assembly at any moment. However, constitutionalizing the number of deputies means that the number of representatives must be demographically, economically and politically justified in order to make the Assembly as efficient as possible, both in plenary sessions and parliamentary committees. There are three main reasons why the number of deputies should be reduced: demography, Assembly's efficiency and economic reasons. Number of representatives in legislative bodies across Europe is different in each country and does not always correlate with the number of voters or the population of a country. Therefore, I think that demographic factor should not be put forward as the main reason for reducing the number of deputies. Still, it is important to point out that the number of deputies (250) does not correspond to the number of voters, that the National Assembly of the Republic of Serbia is among the larger representative bodies in Europe, whereas Serbia is a small country in terms of population.

The main reason for reducing the number of deputies concerns efficiency and legitimacy of the Assembly's activities. Too many deputies, limited time for parliamentary debate in plenary sessions and underdeveloped political culture, which would call public attention to activities of parliamentary committees, create an atmosphere in which deputies are commonly not seen as important in legislative procedures, which strongly correlates with the way deputies are appointed and elected. Taking into account these reasons and the legal framework which turned deputies into mere executors of party politics or their leaderships' orders, one could say that Serbian parliamentarism lags much behind other consolidated democracies in Europe.

Apart from that, reducing the number of deputies would increase control over the parliament and individualize the results of each deputy's work (e.g. acts, amendments, participation in plenary debates, interparliamentary cooperation etc.). All these aspects would significantly contribute to establishing higher responsibility of directly elected citizens' representatives and would improve activities of the entire parliament.

Finally, the third reason is of economic nature. It is a fact that fewer deputies would save significant budget funds, which is of crucial importance, given that the state apparatus is too big and that budget funds are spent irrationally for its functioning. At the same time, it was the main reason why the Serbian Progressive Party, led by President Tomislav Nikolić, proposed that the number of deputies should be cut by half, which means 125 instead of 250, which is still the only official initiative to amend the current Constitution, or at least some of its provisions.

In terms of quantity, it is crucial that the freedom of a parliamentary mandate be regulated by the constitution and law, instead of turning these mandates into parties' property and something they trade in.

This would comply with the provision of the Constitution which states that sovereignty is vested in citizens, who exercise it thought "their freely elected representatives". Therefore, in accordance with the recommendations of the Council of Europe's Venice Commission, all constitutional provisions which state any circumstances in which deputies should entrust their mandates to the party they belong to should be revoked.

Competencies of the National Assembly and redefining Serbian political system

Laws state that the National Assembly has representative, legislative, monitoring and elective functions. With the exception of the representative function, all other functions should more or less be modified or extended during the process of constitutional revision.

The legislative function of the Assembly should be improved by way of changing constitutional norms, which set unattainable thresholds for people's initiative and citizens' participation in the legislative process. Contrary to European principles and the achieved standards, the 2006 Constitution states that the right to propose laws belongs to at least 30,000 citizens (which used to be 15,000), and that a proposal to amend the Constitution must be submitted by at least 150,000 voters (which used to be 100,000), which is politically and demographically inexplicable. Concerning the importance of citizens' participation in the process of consolidation of democratic order, it is my opinion that it is vital to apply provisions from the previous constitution, which is much less restrictive. Furthermore, President of the Republic's right to return the law for reconsideration should be revoked, considering that Serbian political system is parliamentary, which should be further strengthened by amending the present Constitution.

The electoral function of the National Assembly should be altered within the context of changing the entire political system and particularly in terms of horizontal division of power. In this particular case, it means that Serbian political system should be purely parliamentary, and the head of state should have a ceremonial role (which is stated in the present Constitution), but *direct election of the president should be abolished*. The Constitution should instead be amended so as to state that "the President of the Republic shall be elected by the National Assembly", since the system in which the directly elected head of state whose duties are ceremonial is completely illogical, faulty and totally unnatural in a parliamentary system.

The Law on Election of the President of the Republic, Law on the National Assembly and Rules of Procedure of the National Assembly should state who can be head of state nominee and how candidacy is submitted, while the Constitution must determine what kind of majority in the parliament is qualified to elect President of the Republic. Exclusive powers of the President, such as commanding the armed forces, granting amnesties, awarding honors and limited suspensive veto in legislative procedure should be revoked and transferred to the executive power, while his ceremonial powers should remain. In that context, the President would be responsible solely to the National Assembly, which would be authorized to dismiss him/her in a procedure defined by the Constitution and with the majority that elected him/her, or if the Constitutional Court decides that the President has violated the Constitution, under compulsion of the Constitution, and without any further arbitration by the legislative body.

Consequently, these changes in the competencies of the National Assembly would significantly move political power solely to the Government of Serbia as holder of executive power and its Prime Minister as the key factor in Serbian political system. This would prevent frictions between the

president and the government and all other negative effects of cohabitation, which is something Serbia experienced between 2004 and 2008. These changes should be followed by amending an entire set of election laws after an inclusive public debate on best possible solutions.

Another significant change in the electoral function of the parliament concerns election of judges, which is criticized both by the Venice Commission of the Council of Europe and by the European Union. Specifically, in its latest report on Serbia's progress the European Commission states that there is no sufficient guarantee that appointments of judges and independence of the judiciary will be free from political influence or the influence of other branches of power, and that it would be necessary to take appropriate steps by way of changing the legal framework and constitutional amendments. For that reason, the National Assembly adopted the Judicial Reform Strategy for the period 2013-2018, which proposes that the Constitution be harmonized with European acquis in the domain of appointment of judges.[2] This means that chances of political manipulation on the appointment process must be reduced in accordance with modern European legal standards after an inclusive public debate which would lead to the best possible solution.

Amending the Constitution should be used to redefine the relations between the National Assembly and regulatory bodies in the most efficient way, which would guarantee their independence and take into account the necessity that the parliament should monitor their activities. At the same time, the most important regulatory bodies should be constitutionalized so as to make their existence independent of the will of parliamentary majority. In case of these issues, experts should be consulted and constitutional position of independent regulatory bodies should be viewed as a separate aspect in the process of revising the present constitution of the Republic of Serbia so as to avoid turning the control function of the parliament into hindrance to autonomous functioning of regulatory bodies.

A particular change in the competencies of the National Assembly refers to defining the majority necessary for this body to decide on *changes concerning state borders*. Since the text of the present constitution is very confusing, since it states that the territory is inseparable and indivisible, and on the other hand, that the National Assembly decides on changing the state borders and that the borders can be altered in a procedure applied to amend the Constitution. For that reason, it should be clarified whether the state border can be altered and how. The best solution would be to define the state border as inviolable in accordance with the principles of public international law and the UN Charter, while at the same time the National Assembly should be given the right to initiate the procedure for altering the state border by an absolute majority, which would have to be endorsed by citizens in the referendum in accordance with the Constitution and the Law.

The procedure of constitutional revision should be used to extend the part concerning the implementation of the Constitution amendment procedure itself. Since the current procedure does not state that public debate is obligatory or its duration, the amendments should state that amendment of the Constitution or its parts must include a public debate of at least 60 days, which would be initiated by the *National Assembly as holder of constitutional power*.

Conclusion

Since there is a very intense, although not always overt debate in professional and political circles on how and when the present Constitution should be amended,

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the beginning of negotiations with the EU should be made use of, and in the context of necessary harmonization of Serbian legal framework with the European legal framework, an inclusive debate on constitutional amendment should be initiated immediately. This debate should be initiated by the National Assembly as soon as it is constituted after the pre-term elections, since it is the supreme representative body of citizens with the power to alter, pass and proclaim amendments to the present Constitution or adopt a new one. A new constitution would remove the shadow of illegitimacy which has been there since 2006, while changes in the vertical and horizontal distribution of power would make the political system more logical. better and more efficient.

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1 This is particularly emphasized in the latest report by the European Commission on Serbia's progress in 2013.

2 This strategy was adopted on July 1st 2013 and proposes amendment of the Serbian Constitution by 2018.

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