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Scientific paper

EUROPEAN DIRECTION OF THE NEW CONSTITUTION OF THE REPUBLIC OF SERBIA[1]

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1. A FEW GENERAL NOTIONS ON THE 2006 CONSTITUTION OF THE REPUBLIC OF SERBIA

By the end of 2006, the Republic of Serbia got a new Constitution, after almost six years worth of discussions and attempts to achieve the "onerous" majority and high level of consent in the Serbian parliament necessary for adoption and/or amendment of the country's top law. Outstanding firmness and related longevity of the previous Constitution was also provided by the strict

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procedure for its changing.[2] Reasons for the adoption of the new Constitution were numerous, from those political to those relating to legal and issues of the state. However, closer consideration of these reasons, especially those that relate to political goals of parliamentary parties, which had in a very short timeframe, despite several years of disputing (on the need of adopting a new constitution, its contents, and even on the method of its adoption), agreed on the text of the Constitution and passed it unanimously in the National Assembly, truly is outside the scope of this paper.[3] In fact, due to big policy and ideological differences among the leading parliamentary parties, and under pressure of highly unfavourable international circumstances to Serbia (linked also to the resolution of the future status of Kosovo, ending the cooperation with the International Tribunal in the Hague, etc), what was necessary was a whole array of substantial compromises and mutual concessions so that a consensual draft text of the constitution could be obtained. This certainly reduced its overall quality, yet its adoption was assessed as a step forward to Europe.[4]

Subsequent to the referendum in Montenegro (on 21 May 2006) and the dissolution of State Union of Serbia and Montenegro, the Republic of Serbia has been, after 88 years of being in a status of a constituent state, again re-established as an independent and sovereign state. It is understood ***per se*** that a status change of a state invariably prompts a change of its constitution. Yet, this rule was not confirmed when it comes to the 1990 Serbian Constitution. This Constitution remained "unscathed" despite all the status changes that Serbia endured after the break-up of the former Yugoslav Federation. Continuing its existence in the two-member federal state, and later in the state union, Serbia did not change it constitution in spite of explicit provisions of the (1992) Constitution of the FRY and the (2003) Constitutional Charter of the State Union of Serbia and Montenegro requiring it to do so. It was not until the new Constitution took force, being solemnly promulgated on 8 November 2006, that the 1990 Serbian Constitution ceased to be, having been in force in Serbia as a federal republic of the then SFRY, a federal republic of the FRY, then in Serbia

2 See in more detail S. Vučetić, The new Constitution of Serbia, SURVEY - REPUBLIC OF SERBIA, No. 4. 2006. pg. 23. and D. and R. Marković, Predgovor: Ustav Republike Srbije od 2006. godine - Kritički pogled (Preface: the 2006 Constitution of the Republic of Serbia – A Critical View), published with the text of Constitution, IPD Justinijan, Belgrade, 2006, pg. 10. onward.

3 The text of the Draft Constitution was voted for by all attending deputies [members of parliament] (242 of 250 total) on 30 September 2006. The citizens subsequently confirmed the text of the Constitution on a referendum held on 29 and 30 October 2006, by a majority of 53.04% of voters who are eligible to vote.

4 S. Vučetić, op.cit., pg. 24.

as a state member of the State Union of Serbia and Montenegro, and finally, for a half year in Serbia as an independent state. This fact best speaks of the ***de facto*** role of this Constitution in our country in recent years.

The discussion on what the new things that the 2006 Constitution of Serbia has brought and how much of it is "actually a new legal body", in what aspects it remained "identical" to the Constitution it preceded, what the technical shortcomings in its text are (which by their shear number and contents would surely not make its "life" easy) is not the intent of this paper. The focus of our attention will be only on those constitutional resolutions that are significant in the context of Serbia's European integrations.

2. GENERAL OUTLOOK OF THE EUROPEAN DIRECTION OF SERBIA (AND MONTENEGRO) EXPRESSED IN THE 2003 CONSTITUTIONAL CHARTER

Presentation of constitutional hallmarks of contemporary Republic of Serbia that relate to its orientation toward European integrations would not be full without a short retrospection on the determination of the State Union of Serbia and Montenegro in this respect. This determination, which was clearly shown after political changes of 2000, found its normative expression in the numerous provisions of the 2003 Constitutional Charter of the State Union of Serbia and Montenegro (hereinafter: the Constitutional Charter). A retrospection on these provisions seemed to us important for two reasons: ***firstly,*** by the fact that Serbia was a member of that state union that had expressed a clear and unambiguous political orientation toward European integrations, and especially toward the European Union, which was explicitly shown in its constitutional document; and ***secondly***, because the state of Serbia, after the dissolution of the Union, became the Union's legal successor on the international stage.

The Constitution of the Republic of Serbia of 1990, as a constitution of a federal constituency, did not contain provisions on international relations of the Republic of Serbia[5], because at the time of its adoption this issue was a matter to be arranged by the then effective Constitution of the SFRY, followed by the 1992 Constitution of the FRY. Upon reconstitution of the Federal Republic of Yugoslavia, i.e. creation of the State Union of Serbia and Montenegro (in February of 2003), the highest legal act of this State Union – its Constitutional

5 The 1990 Constitution of the Republic of Serbia mentioned international treaties only in Article 73, clause 7, by stipulating in it that the National Assembly shall "ratify international treaties".

Charter – contained numerous provisions significant to the realisation of international relations of Serbia and Montenegro and its constituent states. These were provisions on: objectives of the State Union on the international level; competences of the bodies of the State Union, member states, respectively, in international relations; the procedure of decision-making on memberships of Serbia and Montenegro in international organisations and rights and duties that ensue from those memberships; competences for entering into, execution and ratification of international treaties and agreements; the relations between international and internal law; the constitutional control of compliance of national legislation with the confirmed and published international accords, etc.

Explicit expression of the European direction of the State Union of Serbia and Montenegro seems, upon first glance perhaps even "a bit overstated" [6], did in fact find its place in the Constitutional Charter among the basic goals of this Union. Thus, in Article 3 of the Constitutional Charter it was confirmed that the goals of the State Union of Serbia and Montenegro are "accession into European structures, especially the European Union", followed by "harmonisation of regulations and practices with European and international standards". These principles and standards were also confirmed as "models" for the arrangement of mutual internal relations between Serbia and Montenegro within the State Union. Such a high place of European integrations and the European Union in the constitutional structure of values and objectives of Serbia and Montenegro spoke clearly of the "adherence of the makers of the Constitutional Charter to the new strategic orientation", articulated subsequent to the political changes in Serbia (and Montenegro).

Constitutional Charter then established that the legislative regulation of individual relations is to be performed "in accordance with standards upheld in the European Union". The Assembly of Serbia and Montenegro was authorised, with prior consent of member states, to pass laws and other enactments "relating the membership of Serbia and Montenegro, as a subject of international law, in international organisations and also relating the rights and duties that ensue from such memberships". The "negotiations and coordination of implementation of international treaties, including those that relate to the European Union", as well as "the coordination of relations with international

6 Thus Article 3 of the Constitutional Charter of the State Union of Serbia and Montenegro of 4 February 2003 sets a conclusive list of objectives of the State Union. Of the six objectives in total, three were those that explicitly expressed European direction of Serbia and Montenegro.

economic and financial institutions"[7] were the prerogatives of the Minister of International Economic Relations. Therefore, the aforementioned provisions of the Constitutional Charter, apart from clear political orientation and determination for the inclusion into European structures, i.e. the European Union, also contained an undisputable constitutional basis for the process of association and accession of Serbia into the European Union.

Beside what has been stated, two important constitutional postulates for the realisation of Serbia and Montenegro's adopted European determination were contained in the provisions of Articles 10 and 16 of the Constitutional Charter, which in a general manner defined the place of international accords in the legal and constitutional system of Serbia and Montenegro and its member states. Thus Article 16 of the Constitutional Charter established that "ratified international treaties, agreements, and generally accepted rules of international law ***shall have supremacy*** over the law of Serbia and Montenegro and the over the law of (its) member states". The supremacy of international treaties and agreements over internal law is understood to entail two major stipulations: ***firstly,*** "supremacy in application of a provision of a treaty or agreement in case of discord with internal law"; and ***secondly*** "above-statute legal power" of ratified international treaties and agreements within Serbia and Montenegro and its member states, which means that laws and other regulations and general acts passed in either Serbia and Montenegro or its member states were in the hierarchy of legal enactments below the confirmed international treaties and agreements, which also includes a stipulation that they had to be in compliance with such international treaties and agreements. Some authors claimed that the norms of international law, as according to the Constitutional Charter, had supremacy even over the constitutional documents.[8] The next important provision of the Constitutional Charter is the clause of Article 10, which contained the ***principle of direct application of international agreements*** in the area of ***rights and liberties***. Considering the European direction of Serbia and Montenegro, one could say that this solution was at the same time both "too

7 R. Etinski, Od srpskog i crnogorskog prava prema Evropskom pravu (From Serbian and Montenegrin law toward European Law), Compendium of papers "***Pravni sistem Republike Srbije – usaglašavanje sa pravom Evropske Unije" ("Legal System of the Republic of Serbia – Harmonisation with the Law of the European Union***"), Pravni fakultet Niš (Faculty of Law in Niš), Niš, 2005, p. 357. et seq.

8 See M. Milojević, Ustavna nadležnost za zaključivanje i izvršavanje međunarodnih ugovora, (Constitutional Competence for Concluding and Executing International Treaties) Compendium of papers "***Ustavno pitanje u Srbiji" ("Constitutional Question in Serbia***"), Faculty of Law in Niš, Niš, 2004, p. 223 et seq.

narrow and to wide".[9] Too narrow because it limited the direct application of international law only to the provisions of international treaties on human and minority rights, whereas it excluded direct application of other international treaties and generally accepted rules of international law. Thus, the contents of this solution still might have been an obstacle, or a predicament to the process of stabilisation and association of Serbia and Montenegro with the European Union, because it excluded the direct application of the provisions of agreements that were to be concluded with the European Union (outside the domain of human rights and liberties). On the other hand, it was also too wide, because it referred to all the provisions of international agreements on human and minority rights, whereas many of the provisions of these international agreements are not by their nature, i.e. structure, and composition, suitable for direct application[10].

3. CONSTITUTIONAL FRAMEWORK IMPORTANT TO INTERNATIONAL RELATIONS IN THE PERIOD BETWEEN THE DISSOLUTION OF THE STATE UNION AND THE ADOPTION OF THE 2006 CONSTITUTION

Subsequent to the dissolution of the State Union of Serbia and Montenegro (hereinafter: the State Union) and until the passing of the new Constitution of Serbia, there had been rising questions on the existence of constitutional prerequisites for the continuation of the initiated process of approximation of

9 R. Etinski, ***op. cit***., p. 359.

10 For example, even some very important provisions of the European Convention, such as certain provisions of Article 6 of the Convention on the right to fair trial, or on the right on effective legal remedy, are not such that they could be directly applied. It is quite clear that e.g. provision 13 of the Convention, according to which "any person whose rights and freedoms envisaged by this Convention have been infringed is entitled to an effective legal remedy before national authorities"' is not directly applicable and that with this provision the Convention essentially imposes an obligation on the member state to provide in its domestic legislation an effective legal remedy. Actually, "from this provision one cannot derive any concrete legal asset" with which that person could protect his or her right or freedom before a competent state body (R. Etinski). Such an effective legal remedy must be provided to the citizens of Serbia within the "national law", i.e. before state bodies that exercise public authority, and before which citizens realise or protect their rights, or legal interests. See more about the topic in B. Nenadic, Mesto Evropske Konvencije za zaštitu ljudskih prava i osnovnih sloboda u pravnom sistemu Republike Srbije (The Place of the European Convention for the Protection of Human Rights and Basic Freedoms in the Legal System of the Republic of Serbia), Compendium of Papers "***Primjena Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda u praksi ustavnih sudova" (Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the Practice of Constitutional Courts***), Podgorica, 2006, pp. 23 - 45.

Serbia to the European Union, as well as questions on the place of international agreements in Serbia's legal order, especially relating the European Convention for the Protection of Human Rights and Fundamental Freedoms. These questions were raised by invocation to the fact that the then-in-force Serbian Constitution did not contain provisions on international relations of Serbia and its membership in international organisations as it did not contain references to the place of international law in the legal system of the state of Serbia. It had been pointed out that the European Convention itself does not contain any expressed cogent obligations based on which its norms would be applied directly in the national law, and that the members of the Convention are allowed to provide for the protection of the rights guaranteed by it in any number of ways. However, it remained overlooked what was undoubtedly to be ensuing from the ***Decision on Duties of State Bodies of the Republic of Serbia in the Realisation of Competences of the Republic of Serbia as a Successor to the State Union of Serbia and Montenegro,*** which was adopted on 5 June 2006 by the National Assembly of the Republic of Serbia.[11] In this Decision, the National Assembly accepted that "in accordance with the initial bases for the rearrangement of relations of Serbia and Montenegro ('The Belgrade Agreement') and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the Republic of Serbia ***has become the successor to the State Union and has fully succeeded its international legal subjectivity and its international documents",*** and that "the legal order of the Republic of Serbia is to be harmonised with the principles on which legal orders of developed democratic states are based, as well as to the ***corresponding enactments of the international community".***

Starting from what is stated above, Serbia's legal succession on the international level referred to not only its membership in international organisations, but also to the prospect of continuation of the initiated process of approximation of Serbia to the European Union – a process in which it had largely participated thus far too, even if as a member state. When it comes to the application of international law and fulfilment of assumed international obligations, the legal succession of Serbia meant that: ***firstly,*** all ratified international agreements (multilateral and bilateral) that bounded the State Union of Serbia and Montenegro, continued to be binding to the Republic of Serbia as an independent state; ***secondly,*** that the ratified international

11 See the Decision on Obligations of State Bodies of the Republic of Serbia in the Execution of Competences of the Republic of Serbia as the Successor to the State Union of Serbia and Montenegro ("Službeni glasnik RS" no. 48/2006. – Republic of Serbia Official Gazette no. 48/2006).

agreements had already become constituent parts of the legal order of the Republic of Serbia; and ***thirdly,*** that the "law", i.e. "statutes and other regulations" of the Republic of Serbia had to be harmonised with such documents.

A question remained opened as to how to act in case of "conflict" of legal norms in international and national law, which of these norms are to be deemed "older", i.e. have supremacy, as well as a question whether a norm of a ratified international agreement in the area of liberties and rights could be directly applied in the Republic of Serbia, or not. This question above all referred to, as it has been mentioned, to the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which as far as Serbia (and Montenegro) is concerned entered into force, i.e. began to be applied ***on 3 January 2004***. As according to our view, an answer to this question had to be dealt with in the same manner in which it had been dealt with in the State Union (as a whole and in either of it member states) after coming into force of the Constitutional Charter, i.e. in a manner which had been defined in provisions of Articles 10 and 16 of the Constitutional Charter. This is, above all, for reasons already mentioned, but also due to the fact that the said provisions of the Constitutional Charter that determined the relation between the international and national law had already been directly applied for more than three years on the territory of Serbia as well, or put more aptly, because during this period these provisions had already produced legal effect in the legal order of Serbia. Reverting to the state before adoption of the Constitutional Charter would in this segment be read as "going back". Considering the contents of the European Convention, and other international agreements that were binding to the Republic of Serbia in the sphere of rights and liberties, this would result in "diminishment of the achieved level of human rights" in our country, which would be contrary to the generally accepted tenets and principles of international law, and would not be appropriate to the status that the Republic of Serbia had acquired previously on grounds of Article of the Constitutional Charter, as a successor to the State Union of Serbia and Montenegro. As a matter of fact, as a bearer of continuity on the international level, the Republic of Serbia has acquired not only a right of membership in international organisations (including the Council of Europe), but it also inherited the obligation to respect the enactments of international law that were passed within these organisations in the exact same way that it had to respect them in the predecessor state, i.e. the State Union.

4. RELATIONSHIP BETWEEN THE CONSTITUTION OF MODERN SERBIA AND EUROPEAN INTEGRATIONS

Considering the abovementioned solutions of the Constitutional Charter and the clear political orientation of Serbia regarding European integrations expressed in it, we can rightfully ask a question whether the new Serbian Constitution also establishes a corresponding legal framework for the realisation of such determination to go toward Europe.

The standing Constitution of Serbia, as opposed to the Constitutional Charter, does not contain provisions that explicitly state the determination of Serbia to go forth with European integrations, nor is there an explicit mention of the European Union. However, this does not mean that the Constitution does not contain provisions that offer legal bases for Serbia's participation in European structures, or provisions that clearly establish principles that are significant to Serbia's relations with international organisations and significant to the effects of legal acts and decisions of these organisations in its legal order. Not later than Article 1 of the Constitution, which establishes the keystone tenets on which the constitutional system of the state of Serbia is to be based, the Constitution's makers do, in a way, express a certain "adherence" of the Republic of Serbia to European principles and values. In consequence, by defining the state of Serbia, the Constitution stipulates that Serbia is "a state of the Serbian people and all citizens who live in it, grounded in the rule of law and social justice, tenets of citizens' democracy, human and minority rights and liberties and a state that ***subscribes to European principles and values***".

Apart from this, found among the basic tenets of the Constitution (Article 16), are also the constitutional covenants on which the international relations of the Republic of Serbia are to be based, as well as provisions that determine the place of international law in the legal order of the country. Thus, ensuing from Article 16 is: ***firstly,*** that foreign policy of the Republic of Serbia rests on generally accepted principles and rules of international law; ***secondly,*** that the generally accepted rules of international law and confirmed international treaties are ***constituent parts*** of the overall legal order of the Republic of Serbia; ***thirdly***, that the generally accepted rules of international laws and confirmed international agreements are to be ***directly applied*** (i.e. all international treaties – not only those that relate to rights and liberties);[12] ***fourthly,*** that the confirmed international agreements ***must be in compliance*** with the Constitution.

12 Considering the solutions contained in Article 16 of the Constitution, it is evident that, regarding the application of international law, the Constitution of Serbia has basically opted

Furthermore, the part of the Constitution dedicated to "Constitutionality and Legality", i.e. provisions of Article 194 of the Constitution that is entitled "Hierarchy of Domestic and International General Legal Acts" state that ratified international treaties and generally accepted rule of international law are part of the legal order of the Republic of Serbia, and that ratified international treaties "may not be in conflict with the Constitution, and also that laws and other general acts in the Republic of Serbia "may not be in conflict with ratified international treaties and generally accepted rules of international law".[13]

Therefore, makers of the Constitution are explicit in their provision on the immediate application of international law and in the "above-law power of international treaties". By introducing provisions on the direct application of generally accepted rules of international law and ratified international treaties, the Constitution redressed the already mentioned "shortcomings of the Constitutional Charter" that linked the direct application of international law only to "provisions of international treaties on human and minority rights and civil freedoms". These constitutional stipulations are significant legal prerequisites for the realisation of rights and duties of the Republic of Serbia, as a member of the Council of Europe (primarily regarding the application and execution of the European Convention and of the decisions of the European Court of Human Rights), as well as for the realisation of the European orientation of the Republic of Serbia on its road to full membership in the European Union. With that, these constitutional solutions will facilitate the subsequent application of EU law, but also the application of the doctrine of the Court of Justice of the European Communities on the "supremacy, direct application and immediate effect of European Law in Member States", as well

for the so-called monistic concept, even though in reality there are never clear-cut concepts as such. As a mater of fact, the fact remains that neither monistic nor dualistic approach in the practice of contemporary European states is applied consistently, but rather that these states most frequently use certain elements that belong to both of these concepts when it comes to various sources of international law. On these concepts see in detail in Daniel P. O Connell, The Relationship Between International Law and Municipal Law, 48 ***Geo. L.J.*** (1960), 431. et seq.

13 We direct attention to the fact that there exist certain misbalances between solutions contained in provisions of Arts. 16 and 194 of the Constitution, which deal with the relationship between the international and national law, misbalances which can cause certain dilemmas and contention when applied in practice, both at concluding and at execution of international treaties, but also in the process of assessment of their mutual conformity before the Constitutional Court of the Republic of Serbia. See in more detail about this issue in B. Nenadić, Organizacija i nadležnosti Ustavnog suda – u svetlu novog Ustava Republike Srbije (Organisation and competences of the Constitutional Court – in the Light of the new Constitution of the Republic of Serbia), ***Pravni informator***, Belgrade, 2007, no. 3, pg. 5. et seq.

as the direct application of provisions of treaties that the European Union enters into with countries that are not its member states.

So as to equip in reality for peace and harmony between legal acts in the legal system of Serbia, and especially for balanced relations between national and international law, the Constitution confers control and monitoring of these relations to the Constitutional Court. Thus, the Constitutional Court, apart from other items in its itinerary, shall, pursuant to Article 167, paragraph 1, clause 1 and 2 of the Constitution, supervise also: (1) "compliance of [Serbia's] laws and other general legal acts with the Constitution, generally accepted rules of international law and ratified international treaties"; (2) "compliance of ratified international treaties with the Constitution". In essence, these provisions follow the solutions contained in already mentioned Constitution's clauses on the place of international treaties (Articles 16 and 194), so it is quite logical to also enlist among the powers of the Constitutional Court, in its role of the keeper of constitutionality and legality and of the guarantor of protection of basic human rights and freedoms, the solutions that would empower the Court to perform its constitutional role. Exercise of authority of this Court to decide on compliance of "law", i.e. "legislation" of the Republic of Serbia with ratified and confirmed international treaties is not closely regulated by the Constitution. However, we are of the opinion that these issues may also be arranged by a law on the Constitutional Court, and that such legislation can find its bases to be those solutions of the Constitution that relate to the assessment of compliance of laws and other regulations with the Constitution (both in respect to the Court's decision-making process and in respect to its decisions and their effect). In point of fact, the issue here is of essentially the "identical order of business" – control of compliance of legal acts of lower legal power with those of higher legal power.

Whereas the execution of Constitutional Court's authority to exercise control (assessment) of compliance of domestic legislation with the generally accepted rules of international law and with international treaties should not experience any particular difficulties, such a prediction would not be standing as of yet in respect of execution of Court's authority to assess the "constitutionality" of confirmed international treaties. In consequences, in relation to this authority of the Constitutional Court, a large dilemma presents itself: when in deed the Constitutional Court can (and should) exercise control of compliance of an international court with the Constitution. Is this only control ***a posteriori,*** which could be inferred from the provision of Article 167, paragraph 1, clause 2 of the Constitution, or could this control also be ***a priori?*** When the issue is of this aspect of constitutional court control one must bear in mind the legal nature and character of international treaties as legal acts, and we are full aware that

provisions of international treaties "can be changed and rescinded only in the manner and under conditions that are established within them or pursuant to general rules of international law". There from we deduce an important question as to the character and the effect that the decisions of the Constitutional Court would have in such a dispute, considering that the decisions of the Constitutional Court are “generally binding, enforceable, and final”, relating to whether such decisions would be effective to the provisions of international treaties ***or*** to the provisions of the Constitution. It ensues from the Constitution that in this case too the issue would be of a decision of the Constitutional Court which would establish a discordance of a lower act in the legal order of the Republic of Serbia - in this case a confirmed international treaty, with a higher legal act - in this case the Constitution. Nevertheless, in our opinion this does not necessarily and (cannot) mean that a decision of the Constitutional Court in this kind of dispute would be able to rescind legal rules or certain provisions of international treaties, nor that such a decision could change international obligations that the Republic of Serbia took upon itself. In the opposite case, such decisions would lead to international liability of the state of Serbia. However, it is entirely a matter for itself whether such a decision could prevent application of unconstitutional provisions of an international treaty in internal legal order of the Republic of Serbia.

Regarding the said competence of the Constitutional Court one question emerges as to whether this Constitutional Court’s control essentially relates only to the control of the specific law that confirms, i.e. ratifies an international treaty (which could hardly be concluded from the linguistic meaning of the mentioned constitutional norm). Nonetheless, should such a viewpoint prevail anyway (with all the reserves), even in that case a new question would impose itself – would the Constitutional Court in that situation appreciate only the formal or rather both formal and material constitutionality of a law on confirmation of an international treaty.[14] Whereas an assessment of the formal constitutionality of such a law would not in essence cause any major problems, this is far from being true for the assessment of material constitutionality. If it were to assess its material constitutionality, the Court would also have to delve into assessing the provisions of the related international treaty, because in our legislative practice an international treaty in technical sense is a constituent part of the law on its confirmation, i.e. ratification.

14 As according to the adopted view of the former Federal Constitutional Court (of the SFRY), in this matter the Constitutional Court does not decide on the constitutionality – or lack thereof – of an international treaty, but rather, in formal legal sense, it decides on the constitutionality or lack thereof of the law that ratifies, i.e. confirms such a treaty.

The Constitution contains no special provisions on who can, and when, instigate a procedure of constitutional court assessment of compliance of an international treaty with the Constitution, on what terms it may be initiated, how the procedure is to run, and especially what the effect of the Constitutional Court's decision would be, etc. Exercise of this authority of the Constitutional Court requires suitable special procedural rules adapted to the character of the constitutionally laid out relationship between the Constitution and the confirmed international treaties, in addition to the nature and character of international treaties. Granted, such procedure could indeed run pursuant to procedural rules that ordain assessment of constitutionality of any law, but with necessary specificities established primarily in respect of the effect of the decisions of the Court in such proceedings. Regulation of these issues the Constitution surrendered to the lawmaker.

It would be sensible to "accept" the preceding control of constitutionality of international treaties in the practice of the Constitutional Court of Serbia too, moreover as the Constitution holds no unbridgeable obstacles for such attitude of the Court. On the contrary, we feel that without any constitutional hindrances a law on confirmation of an international treaty, just as any other law, may be submitted to control of constitutionality ***a priori.*** A Constitutional Court's competence executed in such a manner would be in concordance with the nature of relations that are established on the international level between sovereign states, i.e. with the character and the nature of international treaties.

When it comes to fundamental ***human rights and freedoms,*** the new Constitution of Serbia has brought significant guarantees and warranties. We shall mention only those constitutional stipulations that by their contents represents foundational provisions that are supposed to provide fulfilment of European standards in the domain human rights and freedoms – standards that are understood to be universal in Council of Europe member states, and especially in those states that are candidates for the membership in the European Union. Thus, in a large number of provisions the Constitution has guaranteed (set): ***firstly,*** a very wide and highly detailed spectre of human rights and freedoms, with special guarantees for the rights of persons belonging to national minorities[15]; ***secondly,*** an immediate application of provisions of the

15 Therefore, the claim is that the new Constitution of Serbia contains all rights guaranteed not only by the European Convention, but also by other international treaties and other documents in the area of rights and freedoms. Some see in this a significant quality of the new Constitution of Serbia, whereas others feel that such stipulations were needless, considering the provision of Article 18 of the Constitution, which states that the Republic of Serbia "directly applies human and minority rights guaranteed by generally accepted rules of international law, confirmed by international treaties".

Constitution relating human rights and freedoms, but also an "immediate application of human and minority rights guaranteed by generally accepted rules of international law, confirmed by international agreements and laws"; ***thirdly,*** that the provisions on human and minority rights "are to be interpreted in favour of advancement of values of democratic society, pursuant to currently valid international standards of human and minority rights, in addition to the practice of international institutions that monitor their realisation"; ***fourthly,*** that any person shall have a right to judicial protection should his or her constitutionally guaranteed human or minority right be breached or withheld from him or her, as well as any right to redress consequences that were incurred by the breach; ***fifthly,*** that anyone shall have the right to address the Constitutional Court by appeal when a state body or organisation to which public authorities are conferred has, "by a individual legal act or deed", breached or denied his or her human or minority right(s) and/or freedom(s) guaranteed by the Constitution if other legal remedies for their protection have been exhausted or are non-existent"; ***sixthly***, that the citizens are "entitled to address international institutions for the protection of their freedoms and rights guaranteed by the Constitution". Without downplaying the significance of constitutional solutions that relate to rights and freedoms, one cannot circumvent the fact that certain provisions are in the technical sense so stated, i.e. formulated, that due to their evasiveness, imprecision or sometimes incompleteness they require construal and can cause dispute about their legal meaning, which all may exacerbate their real world application.

Pursuant to what has been stated, in the realisation of protection of human rights and freedoms the competent state bodies of Serbia, and especially the judiciary system and the Constitutional Court, will, in the future, have to look "long and hard" not only into Serbia's Constitution, but also into the European Convention for the Protection of Human Rights and Fundamental Freedoms and the opinions of the European Court for Human Rights, and farther, of course, into the Acquis Communautaire and the opinions and practices of the Court of the European Communities. Coming from there, it is quite reasonable that the constitution drafters explicitly arranged for the role of ***the judiciary and prosecutorial bodies*** in the application of international law, irrespective of the fact that provisions of Arts. 16 and 18 of the Constitution on the direct application of confirmed international treaties are binding for all state bodies of the Republic of Serbia. In actuality, due to the role of the judiciary in the protection of fundamental human freedoms and rights, the drafters of the constitution separately ordained that the courts, "as independent and autonomous bodies", shall adjudicate not only on the basis of the Constitution and the laws, but also on grounds of "generally accepted rules of international law and confirmed

international treaties" (Article 142, paragraph 2), i.e. "that the court decisions shall be based on the Constitution, law, ***confirmed international treaty…"*** (Article 145, paragraph 2). When it comes to exercise of prosecutorial function, provisions of Article 156, paragraph 2 of the Constitution state that public prosecutor's office shall exercise it function based on "the Constitution, laws, and confirmed international treaties".

An important question for the operation of state bodies of Serbia in relations that it establishes with European institution, and also for their conduct in the procedure of conclusion and execution of treaties that the state of Serbia is expected to conclude with the European Union, is the question of their constitutional competence, i.e. authority for the conclusion, confirmation and execution of international treaties, including those treaties based on which Serbia is to acquire membership in certain international organisations and communities. The Republic of Serbia is, according to Article 97, paragraph 1 of the Constitution, competent to arrange and provide "sovereignty … of the Republic of Serbia, its international position and relations with other states and international organisations", whereas Article 99 of the Constitution envisages that the National Assembly is the body that "confirms international treaties when the law prescribes the obligation of their confirmation". Furthermore, Article 108, paragraph 2 of the Constitution affirms that the National Assembly may initiate a referendum on issues that comprise its body of competence, but explicitly states that a "topic of referendum" may not be "obligations that stem from international treaties". According to Article 123 of the Constitution, the Executive Government of the Republic of Serbia "establishes and carries out the policy" of the county, which encompasses both internal and external policy. From what has been stated ensues that the Executive Government, with its Ministries, is the body of the Republic of Serbia in charge and accountable for the negotiations and conclusion of international treaties, including those treaties that Serbia would conclude in the process of approximation to the European Union. Concordantly, the provision of Article 25 of the Law on Ministries (of 2007)[16] stipulates that "Ministries within their scope realise international cooperation and pay heed to its improvement and provide harmonisation of regulations with the law of the European Union".

Therefore, from everything stated above we can deduce that constitutional-legal presumptions for an unhindered process of association of the Republic of Serbia into the European Union are contained in its Constitution. Nonetheless, division existing on the political scene of Serbia and its aggravated international positions (due to the issue of unsolved status of Autonomous

16 Law on Ministries ("Republic of Serbia Official Gazette", no. 43/07).

Province of Kosovo and Metohija), prevent full and unconditional attentiveness of political actors and Serbia's state bodies on the optimal internal adaptation to the requirements of European integrations. The Stabilisation and Association Agreement is a very complex and voluminous treaty, making Serbia, as a future signatory to such a treaty that wants to acquire the status of an associated member of the European Union, obligated to perform a large number of tasks. Among these tasks, very important to us lawyers, belong the harmonisations of Serbia's legislation with Acquis Communautaire. With that aim in mind, the Rules of Procedure of the National Assembly set an obligation to sponsor of a draft law to state in the justification of the draft bill not only the constitutional basis, but a basis in the legislation of the European Union and the generally accepted rules of international law".[17] Existence of this administrative obligation, as well as the existence of specially formed Board for European Integrations in the National Assembly,[18] is an additional guarantee of implementation of European principles and values in the internal legal order of the Republic of Serbia, which must also by its structure and contents, and not only by the text of positive legal acts, be in essence harmonious with EU law, i.e. it must be infused with its principles and tenets.

Of course, Serbian does not become European just by entering into constitutional and legal texts normative and other stipulations that modern European law uses and acknowledges, but, above all, by providing to the internal legal system of Serbia practicable legal mechanisms and developed and efficient institutions for the realisation and protection of the basic values on which democratic political systems are founded. Of little value will be provisions of the new Constitution that proclaim attachment of Serbia to European values and principles, i.e. above-law power and direct application of international treaties, if conditions, namely necessary prerequisites are not created for their execution, i.e. if provisions of these legal acts are not realised

17 See Article 136, paragraph 3 of the Rules of Procedure of the Republic of Serbia National Assembly ("Republic of Serbia Official Gazette", no. 56/05). Furthermore, in the National Assembly a "Department for the Harmonisation of Regulations with Legislation of the EU and Recommendations of the Council of Europe" was opened on 9 November 2005.

18 Article 69 of the Rules of Procedure stipulate that this Board "deliberates a draft law, other regulation or general act from the viewpoint of their compliance with the EU and Council of Europe regulations. Beside this, the Board deliberates on "plans, programs, reports and information on the process of stabilisation and association to the EU, tracks the realisation of the strategy of association within the scope of duty of the National Assembly, proposes measures for the establishment of a general, national consensus on the strategy of association to European integrations and develops international cooperation with the boards of parliaments of other countries in an aim of better understanding of processes of association and integration into the European Union".

in reality due to the lack of efficient legal mechanisms and developed democratic institutions in the legal order of Serbia.

5. CONSTITUTION OF SERBIA AND "INTEGRATION" CLAUSE

Accession to the European Union offers to the state that accedes an essentially different position than the one that comes with membership in classical international organisations. With the act of accession to the European Union (which is today more similar to a complex state than a classical international organisation) a member state revokes "exclusive exercise of some of it sovereign rights" or authorities that become exclusive competences of the Union, whereas exercise of some competences it shares with the Union. The seriousness of such an act requires separate constitutional authorisation for its undertaking. Such authorisation in modern European states – members of the European Union - is, as a rule, ***materia constitutionis***, i.e. an issue that is arranged for and formulated in the constitution in the form of the so-called "integration clause". An analysis of the constitutional practice of EU member states shows that they acted differently relating the preparation of their constitutional foundations for the accession to European Communities, European Union, respectively, depending on their own (national) constitutional tradition, but also on the character and degree of the factual European integration.

The question whether the Constitution of Serbia contains a constitutional base that allows concession of competences of the state of Serbia onto regional, supranational or international organisations and communities, i.e. whether competent bodies of Serbia can find in the Constitution authorisation to decide to transfer "a portion of competences of the Republic of Serbia onto the aforesaid institutions" can hardly be answered categorically. The Constitution of Serbia does not possess an expressed solution on whether a portion of competences of the Republic of Serbia may be delegated and what state body would be empowered to decide on the full membership of Serbia in an international body such as the European Union - a membership that, as it has been said, apart from other issues, implies also that "a portion of competences of the state is to be delegated onto its (Union's) bodies and institutions", i.e. that "a portion of sovereignty of members states is to be transferred onto the Union", followed by a direct application of the EU law on the territory of the member state and the decisions of Union's institutions respected and implemented.

Inexistence of expressed "international" clause in the Constitution of Serbia, as we have already noticed, does not present an obstacle in the proves of stabilisation and association of Serbia to the European Union. Provisions of the

Constitution that arrange international relations of the Republic of Serbia, the competences of its state bodies and the application of international do, taken in their entirety, enable the process of association of Serbia to the European Union constitution-wise. However, it is a different issue altogether whether it is possible for Serbia to accede into full membership in the European Union without a revision of its Constitution; if not, then whether the introduction of an "integration" clause would be an issue to be decided only by the National Assembly or by popular referendum as well. To explain, it is clear that the Constitution of Serbia does not contain an expressed “integration” clause, i.e. a solution which would determine the constitutional basis for the possibility of transfer of individual competences of the Republic of Serbia onto international and supranational organisations.

Yet, there exist views that the already mentioned provision of Article 97, paragraph 1 of the Constitution, according to which the Republic of Serbia is competent to arrange and provide for “its international positions and relations with other states and international organisations” can be considered "possible legal grounds for the transfer of individual competences of the state bodies of the Republic of Serbia onto international or supranational organisations”, even though existence of an explicit provision in the Constitution ordaining so would be desirable.[19] We stand on the position that, by the nature of things, and due to its importance, and "international" clause should be explicitly contained in the Constitution. Each change of the Serbian Constitution is subject to a procedure prescribed in the Constitution itself. Depending on what the issue is, the Constitution envisages two different procedures for the passing of constitutional amendments. The National Assembly adopts acts amending Constitution by a two-third majority in the overall number of seats, granted that the Parliament may decide that such an act must be confirmed by the citizens on a station-wide referendum (the so-called facultative constitutional referendum). Nevertheless, on grounds of Article 203, paragraph 7 of the Constitution, the National Assembly ***must*** put the act on amendment of the Constitution to national referendum for confirmation should the change in the Constitution relate to: “Preamble to the Constitution, the principles of the Constitution, human and minority rights and freedoms, the structure of power, proclamation of the state of war and the state of emergency, deviation from human and minority rights and freedoms in states of emergency and war and the procedure for the change of the Constitution itself” (so-called “mandatory constitutional referendum”). When an act on amendment to the Constitution is put for confirmation, the citizens state

19 Cf. Opinion on the Constitution of Serbia, Adopted by the Venice Commission at its 70th plenary session (Venice, 17-18 March 2007.) It can bee seen at the Internet: http://www.venice.coe.int/docs2007/CDL-AD (2007)004-e.asp

their views within 60 days of the adoption of the act on amendment to the Constitution, and the amendment to the Constitution is adopted if simple majority of the turnout voted for the change.

Considering the general scope of the provision, Article 203, paragraph 7 of the Constitution is not quite clear on whether constitutional changes that would enable transfer, i.e. delegation of "portion of competences of the Republic of Serbia onto international organisations, i.e. the European Union" would have to be put to referendum or not. The answer to that question would largely depend on the contents of the so-called "integration" clause, i.e. its position in the text of the constitution. If a supplement was to be performed of any of the provisions listed in Article 203, paragraph 7, then the change of the Constitution that was to introduce the so-called integration clause would invariably be put to referendum (e.g. should such a clause be incorporated into the principles of the Constitution, or into the provisions on arrangement of branches of power, or into the provision on individual bodies of these branches – we above all refer to the National Assembly). On the other hand, if the supplement was to relate to provisions other than those listed in Article 203, paragraph 7 of the Constitution, the referendum would not be compulsory (e.g. if such clause was to be entered through a supplement to the provision of Article 97 of the Constitution that specifically ordain the competences of the Republic of Serbia, which in our opinion is a fully founded possibility). However, in view of the ordained majority needed for the acceptance of a constitutional amendment on the referendum, (majority of the turnout), the referendum is not such a big obstacle to the enactment of a constitutional amendment (as it was according to the 1990 Constitution), which had already been adopted in the National Assembly by a qualified (two-third) majority.

Since the Republic of Serbia is still legally, economically and temporally still "on the road" to candidacy for the reception into the European Union, the process that precedes this act is realistic to include a revision of its Constitution. When and whether the explicit concrete incorporation of the "integration" clause into the Constitution is to be done, or whether its essence would be compensated by interpretation of the aforementioned provisions of Article 97 of the Constitution, surely will depend also on the level of successfulness in meeting the conditions set by the European Union and the related increase of changes for the successfulness of the integration.

6. APPLICATION OF INTERNATIONAL LAW IN HITHERTO PRACTICE OF THE CONSTITUTIONAL COURT – AN IMPORTANT ATTAINMENT IN THE EUROPEAN FUTURE OF SERBIA

In its practice, the Constitutional Court of Serbia had, even before adoption of the 2006 Constitution, applied certain provisions of international agreements, and before all, those that arrange the domain of human freedoms and rights (e.g. provisions of international legal acts on civil and political rights, i.e. economical and social rights, and especially the provisions of the European Convention for the Protection of Human Rights and Basic Freedoms, et al). That is what the Court had been doing prevalently, when deciding in disputes relating abstract control of constitutionality of individual laws. At that, the Court had not perform an assessment of conformity of a concrete law (only) based on an international treaty, but the Court rather assessed certain laws simultaneously in relation to the Constitution of Serbia and in relation to the confirmed international treaties. Thus the Constitutional Court of Serbia did establish an incongruence of certain provisions of laws with the Constitution, or established that the provisions of laws were neither in conformity with the provisions of the Constitution nor with the provisions of the European Convention, i.e. with certain "international standards". At that, in the disposition of the said decision the Constitutional Court did not assess unconformity of a law with international treaties, but rather expressed a view or assessment in the rationale of the decision that that a law in full or perhaps only contested provisions of a law are not in compliance not only with the Constitution but also with certain provisions of international treaties or with some of the generally accepted rules of international law.[20]

Even though that in the time of existence of State Union, i.e. in the time of existence of the Court of Serbia and Montenegro, the Constitutional Court of

20 See for example decisions of the Court: Decision no. IU-232/03 of 18 March 2004, in which the Court was deciding on the constitutionality of Article 70 of the Law on Supplements and Amendments to the Law on Judges, which, by assessment of the Court, diminished the achieved level of autonomy and independence of the courts; Decision no. IU-110/04. of 15 July 2004, in which the Court decided on the constitutionality of Article 8 and 13 of the Law on Amendments and Supplements of the Law on Election of Deputies, i.e. on provisions that establish special measures aimed at providing gender equality and representation of minorities in the National Assembly; Decision no. IU-201/04. of 7 October 2004, with which the Court decided on the constitutionality of the provision of Article 2, paragraph 4 of the Law on Peaceful Assembly of Citizens, which referred to the manner in which the citizens can exercise their freedom to peacefully assemble; Decision no. IU-193/04. of 28 September 2006, with which the Court decided on the constitutionality of the provision of Article 28 of the Law on Amendments and Supplements to the Law on Public Prosecutor's Office, which limited labour rights to assistant prosecutors who had not been re-elected.

Serbia was not in charge of assessing conformity of the law of the Republic of Serbia with confirmed international treaties and agreements, one must take notice of the fact that this Court did, in this period too, invoke, in the rationales of several of its decisions, provisions of international treaties and generally accepted rules of international law. These solutions were taken into consideration by the Constitutional Court especially when interpreting and construing the basic tenets and principles of the Constitution (the rule of law, separation of powers, independence of the court, etc.) Thus the provisions of the European Convention, or better yet the tenets and principles established by the Convention, as well as the practice and standpoints of the European Courts of Human Rights, did serve to the Constitutional Court of Serbia as "additional tools" in taking its views on individual constitutional issues of dispute. In certain decisions adopted by the Constitutional Court in exercise of its abstract control of constitutionality of laws, the Court construed (interpreted) the provisions of the Constitution in a manner established in the provisions of the Convention, i.e. in the same way in which certain provisions of the Convention have been interpreted in practice by the European Court of Human Rights. There had also been cases in which the decisions of the Constitutional Court would have been "harder to defend" if the Court had not, in construing the Constitution of the Republic of Serbia and establishment of its position, i.e. in deliberations on its position in contested constitutional issues, "served itself" also to the tenets and principles contained in the Convention.

One should also underline that the Constitutional Court of the Republic of Serbia had taken born in mind some of the tenets and principles of the European Convention even before its official ratification by the State Union, but then they were considered as "general tenets recognised by civilised nations" (V. Dimitrijević), i.e. as generally accepted rules of international law that are recognised by modern European states. [21]

21 See thus: Decision no. IU-166/03, of 5 May 2003, with which the Court ordered a measure of cease and desistence of execution of individual acts and actions that were undertaken on grounds of Article 15b, 15 g and 15 d of the Law on Organisation and Competences of State Bodies in the Suppression of Organised Crime; Decision number IУ-214/02. of 4 November 2003, with which the Court decided on the constitutionality and legality of the Decree on organisation and realisation of religious schooling and schooling in alternative subject in elementary and secondary schools; Decision number IУ-480/03. of 29 December 2003, with which the Court decided on the constitutionality of provisions of Article 81 and 82 of the Law on Arrangement of Courts, at which it passed a temporary measure invoking the Constitution of Serbia, together with an assessment that the contentious provisions of the Law breach the provisions of the Convention relating the right to an effective legal remedy.

Its standpoint on international treaties as acts of "above-law" legal force in our legal system, the Constitutional Court has expressed in several letters addressed to the National Assembly. Thus the Constitutional Court, pursuant to Article 62 of the Law on the Procedure before the Constitutional Court and the Legal Effect of Its Decisions[22], pointed out to the Assembly that the current positive legislation of the Republic of Serbia is lacking arrangement of certain issues and that our legal order shows evidence of legal voids that the legislators ought to "fill" by guiding themselves with international and European standards in these areas. This is what the Constitutional Court did in its letters to the National Assembly in the period between March 2003 and 2006, and which referred to: free election and protection of election rights; right to an effective legal instrument; right to fair trial; right to speedy trial; gender equality, and other issues.

Therefore, in short, the Constitutional Court of Serbia has in several recent years been starting its considerations by also exploiting the rules of international law, and especially those of the European Convention. These decisions of the Court have by their content contributed, above all, to the strengthening of the rule of law in the Republic of Serbia, to the affirmation of principle of separation of power, independence of the judiciary and prosecutorial bodies and the fuller protection of fundamental human rights and freedoms. If we are to judge according to the stance that the Constitutional Court of Serbia has been taking toward the application of the European Convention and other international treaties, one may say that this Court has been "friendly" toward European principles and values, and that it did not projected itself as a "conservative keeper" of the national sovereignty.

Finally, we feel it is important to point out to the dilemma that has arisen since the dissolution of the State Union and relates to realisation of constitutional court's control of jurisdiction of international and domestic law. At these instances, the Constitutional Court met with a question whether it was competent to solve disputes in which an assessment was asked of conformity of internal law with international treaties, and with the question whether in deliberations of its decisions this Court may directly apply the provisions of an international treaty, considering that the Serbian Constitution does not envisages

[22] See Article 62 of the Law on Procedure before the Constitutional Court and Legal Effect of Its Decisions" ("Službeni Glasnik RS" no. 32/91 ("Republic of Serbia Official Gazette", no. 32/91), which stipulates that the Constitutional Court "shall inform the National Assembly of the status and problems in the realisation of constitutionality and legality in the Republic, issue opinions and direct attention to the needs for passing and amending of laws and undertakes other measures for the protection of constitutionality and legality".

this competence for the Constitutional Court. Regarding these dilemmas, our viewpoint was that, after dissolution of the State Union and its institutions, the Constitutional Court of Serbia was competent to assess compliance of domestic legislation with international treaties and that the said international treaties may be applied directly. When taking this standpoint, we started from the fact that the place of international treaties in the legal system of the Republic of Serbia is determined in Articles 10 and 16 of the Constitutional Charter, and that subsequent to the dissolution of the State Union, the state of Serbia, as its legal successor, did not change the position of international treaties in its legal system. On the contrary, by the aforesaid Decision of June 5, 2006, the National Assembly, in our opinion, indeed confirmed the "found" state and position of international treaties in the legal order of the Republic of Serbia. As the Constitution of Serbia (Article 1) established the rule of law as one of the three fundamental values on which the constitutional system of Serbia is based, and as paragraph 5 of Article 9 of the Constitution "the protection of constitutionality and legality" was explicitly conferred to the Constitutional Court, the Constitutional Court was authorised to assess not only conformity of other regulations and general acts with an international treaty, but also the congruence of the laws of the Republic of Serbia with international treaties. In a country that is based on the principle of the rule of law (which invariably implies mutual conformity of legal acts in the country's legal order), such control by the Constitutional Court could not have been excluded because the legal order of the Republic of Serbia was uniform and was consisting of both domestic and international sources of law. Each of these sources had to have had its place in the hierarchy of legal acts, which goes for international treaties, too. The conformity of acts in the legal order of the Republic of Serbia, in which lower legal acts must be in conformity with the higher legal acts was a constitutional prerogative of the Constitutional Court.

7. IN LIEU OF CONCLUSION

Considering the contents of the solutions of the modern Constitution of the Republic of Serbia, it is not contentious that the Constitution offers a sufficient legal foundation to the competent bodies of the state of Serbia for the running of negotiations and conclusion of the EU Stabilisation and Association Agreement, followed by a constitutional grounds for the realisation of obligations of that agreement, as well as other agreements that the Republic of Serbia is to enter into with the European Union in this process. In this sense, especially important are those provisions of the Constitution that establish the place of international treaties in the legal system of Serbia and their direct

application. In the legal order of the Republic of Serbia ***de constitutione lata*** confirmed international treaties do represent a portion of the united legal order of the Republic of Serbia, in which the Constitution is the "supreme legal act", and immediately following the Constitution, in legal power, are confirmed (ratified) international treaties, with which all laws and other general acts passed in the Republic must conform.

Apart from that, provisions of all international treaties that are binding to the Republic of Serbia are, by Constitution, to be applied directly by all branches of state government – legislative, executive and judicial. Of course, comparative practice also confirms that directly applying can be only those provisions of international treaties that are not conditioned in relation to their execution or their effect with adoption or by existence of any other legal act of the state of Serbia. This are in fact those provisions of international treaties that are (as the Court of European Communities puts it) "legally complete", i.e. "legally perfect and capable" to produce a legal effect.

Regardless of the beginning difficulties that objectively exist when one country starts with a direct application of numerous international treaties (unlike an earlier period when only those international treaties were applied that are implemented into the domestic legislation), by an insight into the decisions of regular courts, and especially of the Constitutional Court of Serbia, one could reliably conclude that even so far these bodies did not eschew when it comes to direct application of some of the provisions of international treaties, as well as generally accepted rules of international law.

It is indubitable that numerous international treaties, i.e. numerous provisions of these legal acts cannot be directly applied due to technical textual reasons, but that they necessitate an implementation into the internal legal order. Aside from that, the question of execution and direct application of the provisions of international treaties in a certain country, as well as the application of assumed obligations that ensue from its membership in international and supranational organisations, is not only an issue of constitutional proclamation, nor only an issue of shear formulation and contents of each individual provision of these treaties, nor, also, only a question of a stance that individual national institutions take toward obligations that ensue from said membership, but largely an issue of "strength" and "capability" of the state to fully provide for the realisation of assumed obligations.