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European Union Member-States and Changes in their National Constitutions-Lessons for the Macedonian Constitution in the Process of EU Integration

Abstract

The paper analyses some most important aspects of the process of "Europeisation" of the EU Member States' national constitutions, as well as the need for the Republic of Macedonia to join this process, having in mind the experience of the countries that have already went along this path. The experience of the EU members is particularly important for the Republic of Macedonia because it can help in reflecting all the problems and difficulties that this journey brings along, and can identify possible solutions in the process of amending the national constitution. European integration, undoubtedly, causes major changes in the content of the national legal systems of the Member States, as well as in the systems of the candidate countries for EU membership. Equally important is the process of harmonization of the national constitution with EU law, keeping in mind the place and the role of the national constitution in the hierarchy of the legal systems of every individual country. A simple comparison shows that membership in the EU raises numerous and specific constitutional challenges due to the specific features of the EU legal system. Almost all EU Member States have amended their Constitutions in order to meet the requirements of the integration in the EU legal system. Some countries applied cosmetic changes of their constitutional provisions without making some deep and essential cuts in their political and constitutional systems, while other countries applied serious and detailed constitutional changes in the process of constitutional harmonization with the EU standards. Still, a joint characteristic for all countries is that the constitutional changes tackle numerous procedural and essential issues and aspects.

Key words: constitution, constitutional amendment, constitutional court, Europeisation, EU integration, supremacy of the EU law

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I. INTRODUCTION

1. EU membership, speaking from the experience and the practice of the countries that previously joined the EU, is connected with number of constitutional implications for the new members. In context of full and sustainable implementation of the EU law as integral part of the national legal system, many EU member countries have made constitutional amendments which enabled direct implementation of the EU law in their national legislation and have defined the rank of the EU law in their national legal hierarchy.

In order to successfully deal with these challenges, there is a trend among the EU member countries not to regulate these issues with the existing constitutional provisions that concern the international treaties, including the membership of the country in international organizations or alliances, **but to adopt new set of constitutional provisions focused exclusively on the European integration**, with all the elements of the ratification procedure, including the need of a referendum.

On the other hand, there are countries whose constitutions do not include any constitutional provisions on the EU specifically (Holland, Luxemburg, Spain, Denmark).

2. The paper addresses **several different techniques of making constitutional amendments in the EU member countries**. Unlike some countries that incorporated entire EU related chapters in their constitutions (France, Croatia, Romania), other countries regulated this issue with concrete EU-related constitutional amendments (Germany, Portugal, Slovakia, Hungary, Bulgaria, Lithuania). There is a third group of countries who applied a model of "full constitutional revision"(Republic of Ireland, Austria.)

3. Despite the fact that the European institutions **do not prefer a specific model of constitutional amendments**, i.e. the choice of how the constitutional amendments will be regulated is left to the EU candidate country, the experience shows that the European Commission, during the negotiation process, openly suggests to the candidate country to overcome certain constitutional weaknesses, i.e. weaknesses in the system, as a condition to close a certain chapter.

4. While some EU member countries have decided to implement the constitutional amendments ***after*** **joining the EU**, others have done it ***prior to*** **the joining**. It seems that the latter have applied much more reasonable policy when they decided to go on with the constitutional reforms and finish them before they joined, because in that way the constitutional adjustment was done much more carefully, without any time pressure and this gave significant capacity to the national institutions to overtake the obligations coming from the EU legislation.

II. THREE MAIN CONSTITUTIONAL CHALLENGES

1. We can identify very minor changes in the constitutions of the 10 countries of Central and Eastern Europe which were part of the so-called big EU enlargement wave in 2004. The changes are mainly in three areas:

a) International relations, i.e. the membership of the given country in international organizations, and, in that context, in the EU, as well as the ratification of international treaties;

b) The issue of correlation between the national law and the EU law (in some countries the constitutional provisions that were in collision with the EU law remained unsolved despite the advices from the legal experts for overcoming this situation), and

c) The issue concerning the national sovereignty.

2. In context of the above-said, the EU member countries in the process of "Europeization" of their national constitutions faced three main challenges:

a. The first challenge concerned the limiting (transferring) part of the national sovereignty in favor of the so-called European sovereignty. This limiting of the national sovereignty is put in context of the right of the European institutions to create legislation of supra-national character within the institutions, as well as with the existence of regulatory authorities that function outside the national borders. This challenge formulates and introduces new set of changes within the national constitutions of the EU member countries. Even the first post-war constitutions of the three largest EC founders (France[2], Italy[3] and Germany) incorporated provisions which limited the national sovereignty at the expense of the sovereignty of the then European Community, i.e. this introduced stipulations which practically transferred part of the national authority to the then existing European Community of Coal and Steel, with the help of an international treaty. All other member countries, except for the UK and Finland, incorporated in their constitutions special constitutional clauses before they joined the EU.

Today, the situation is pretty mixed. Some countries have **specific clauses in their constitutions concerning the transfer of powers to the EU,** most of them coming from the experience of the older member countries, such as France and Germany, i.e. the Maastricht

[2] The Constitution of France contains provisions which clearly highlight the readiness of the country to participate in the work of the European Community and the EU by fulfilling the joint obligations. In this context is the constitutional provision for limiting part of the national sovereignty and its transfer to the EU institutions.

[3] As Article 117 of the Constitution reads, the legislative power in Italy belongs to the state and to the regions in accordance with the Constitution and within the limitations determined with the EU law and the international treaties. The state has an exclusive legislative power in the following areas: foreign policy and international relations; relations between the state and the EU, and the right to asylum and the legal status of the citizens who come from a non-EU countries.

Treaty; some used the experience of the "newer" members. Surprisingly, great number of countries continued to apply this generic approach for the transfer of powers, i.e. for the limiting of their sovereignty, highlighting in this context that these restrains are made in the favor of the international organization, without the EU being directly mentioned.

After 60 years of existence of the process of European integration, one can note limited "European" language in the national constitutions. Some constitutions even have special chapters focused on the EU, which stand separate from the clauses for "domestic use". When reading the constitutional chapters on the organization of the system and distribution of powers, the reader cannot sense anything about the country's membership in the EU, i.e. how the functioning of the political institutions is affected by the EU membership.

Article 15 2.1 of the Constitution of the Republic of Ireland is a good practice in this context. It reads: ""“The sole and exclusive power of making laws valid for the state is hereby vested to the Parliament, no other legislative authority has power to make laws for the State”. This is why the clauses for the transfer of powers are treated much more as clauses with limited power when it comes to the national sovereignty, rather than as provisions that influence radical changes in the traditional concept of sovereignty.

The new EU member countries from Central Europe were equally conservative as the older members when they adjusted their constitutions in the process of joining the EU, by making minimalistic adjustments.

Most problematic in these context were several constitutions of the older member countries (including the constitutions of some of the EU founders, such as Holland), which did not contain any provisions mentioning the EU, i.e. the constitution did not say anywhere that the country is a member of the Union.

b. When it comes to the relations between the national law and the EU law, it is an undeniable fact that the European integration "assaults" the hierarchy of the national legislation, as well as the monistic concept of sovereignty. While the EU Court of Justice continues to believe that the primary EU law is the "highest law in the Union" and that this court has an exclusive authority to assess the validity of the EU acts, the national constitutional courts believe that the EU law has as much primacy as recognized by the national constitutions. Still, what we can note as a trend in the Union is continuous liberalization of this rigid position.

Here we should point out the process of liberalization from the practice of the constitutional courts of Germany, France[4] and Italy[5],

[4] The position of the French National Council is that there is only a limitation of the French sovereignty and not transferring. This limitation must be compatible with the French Constitution and must not harm "the essential conditions of the national sovereignty." The basis for this interpretation is in Article 88-1 of the French Constitution which says that the Republic has a mandate to participate in the EU.

[5] The Italian Constitutional Court believes that the European Law has supremacy over the Italian law, but not in sense of hierarchy of the norms, which directly implies a problem with the sovereignty, but in sense of the

which after long debates finally accepted that there are restraints over the national sovereignty. **This is why the second challenge is called supremacy of the EU law[6], which causes direct effect from the EU law on the national legislations, based on the principles defined by the EU Court of Justice.** This challenge did upset the traditional constitutional provisions on the hierarchy of the national legal acts, i.e. the stipulation which speaks about the Constitution as a highest legal act. In the legal system of the EC/EU, the consistency between the national and the EU Law is validated by the EU Court of Justice.

In this context, a well-known example is the one concerning the EU Court of Justice and the German Constitutional Court in Karlsruhe[7], which produced legal debate on this issue throughout entire Europe. Another interesting issue is the model of democracy, which is used as a prism for the relations between the national and the European law, i.e. the relations between the Constitutional Court and the EU Court of Justice[8].

The case law of the national constitutional courts leads to a conclusion that the sovereignty as an essential element is still strongly connected with the national states. Still, there are differences in formulating this process, i.e. whether it is viewed as "delegating", as "transfer of powers" or as "limiting" of the sovereign rights and hierarchy relations between the two regimes. The courts believe that there is a complex overlapping in the EU legality and that the Union still lives in the model of "delegated democracy," although it does show signs that are characteristic for the "cosmopolitan democracy." In order to cross over to a pure form of cosmopolitan democracy, the EU needs to redefine the sovereignty, i.e. to separate it from the positive and static understanding of this concept.

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competences. In this way, the Italian court not only answered the dilemmas concerning the collision between the specific EU regulations and the constitutional rights of the Italian citizens, but it also defined the division of competences between the national legislation and the EU law.

[6] The so-called horizontal provisions for the European integration of the countries by definition are abstract norms. When the provisions allow supremacy of the EU law over the national constitutional legislation, it by definition eliminates the possibility for conflict between the EU law and the national legislation.

[7] The German Constitutional court is one of the strongest defenders of the idea that the EU law cannot harm the national constitutional order, i.e. to weaken the constitutional principles, especially the rights of the citizens. The member countries are still perceived as "masters of the treaties", this was the position of the constitutional judges in Germany until the *Solange I and Maastricht* cases. After these cases, the situation changed in favor of the provision for cooperation when applying control over the applicability of the EU law in Germany. In time, this control became more restrictive. The German Constitutional Court received guarantees in the part of protection of the basic freedoms and rights, but still what was left in the air was the issue about the standard for protection and division of competences between the two courts.

[8] In theory, there are three models. The first model is the model of "delegated democracy", the second model is the "model of federal democracy", and the third model is the model of "cosmopolitan democracy".

The cooperation between the EU Court of Justice and the constitutional courts of the member countries can be best seen through this decision of the Constitutional Court of Romania[9].

Another interesting issue is whether the constitutional courts have an obligation to address the EU Court of Justice in a preliminary ruling in case of dilemma on whether the national legislation is in accordance with the EU Law. For example, the Constitutional Court of Estonia, and this was also the opinion of the constitutional courts of Austria and Poland, believes that the EU Law has primacy in its application over the national legal acts, and if the national act is in collision with an act of the EU law, that act should not be applied[10].

The General Assembly of the **Estonian Supreme court** has said that the Estonian legislation does not allow a system in which the national laws that are contradictory with the EU law should be declared void. The court also believes that the European Commission is obliged to check the compatibility between the national legislation and the EU law.

The court practice of the **Italian Constitutional Court** is also interesting, which was seriously altered after the changes in the constitution in 2010. According to Article 117 of the Italian Constitution, "the legislative authority in Italy belongs to the state and to the regions, in accordance with the Constitution and within the boundaries determined by the EU Law and the international obligations of the country". As a result of this constitutional stipulation, the Italian Constitutional Court accepted in number of cases to validate the compatibility of the national legislation with the EU law. (Sentenza no.406, 10 October 2005, Sentenza no. 129, 23 March 2006).[11]

One may conclude that the constitutional courts of the member countries predominantly respect the dualistic principle, i.e. when the national law is in a collision with the EU law they find the national norms inapplicable. This does not mean that the national courts have an obligation to raise an issue of validating the constitutionality before the constitutional courts, which are the only ones that can validate the national laws vis-à-vis the constitutions. This in fact creates a new legal concept, which is no longer dependent on the old hierarchy of the legal acts, nor from the concept of sovereignty which is viewed as unique and inseparable[12].

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[9] Namely, the Constitutional Court of Romania has concluded that the compatibility of the national legislation for state aid with the European legislation should be re-examined because according to the Romanian constitution the EU law has primacy over the national law. But, instead of addressing the European Court of Justice, the Romanian court decided on its own that the national legislation for financial measures for small and medium-sized breweries is in accordance with the EU legislation, despite the opinion of two judges who believed that the EU law was not taken into consideration.

[10] Decision No 59./2007

[11] See: Report "Community Law and National Constitution in the light of the Italian Experience", by Mr Sergio Bartole, CDL-UDT(2007)011, Venice Commission, Strasbourg, 4 October 2007.

[12] See: Maduro M., "Sovereignty in Europe: The European Court of Justice and the Creation of a European Political Community", M.L.Volcansek and J.F.Stack (eds) Courts Crossing Borders. Blurring the Lines of Sovereignty, Durham, NC: Carolina Academic Press, 2005, (p. 55).

More and more dominant opinion in the EU is the one about the existence of two separate systems (national vis-à-vis the European) that can overlap without opening an issue about their hierarchical order[13].

c. The third challenge, known in the EU as an institutional challenge, is viewed from an aspect of overlapping between the national and the European political institutions. This challenge is connected with the functioning of the institutional system of the EU and its direct influence on the functioning of the national institutional system. In this context, there are two central dimensions which indirectly influence the functioning of the national institutional system. On one hand, the national governments of the member countries play a key role in the decision-making process in the EU through their representatives in the Council of Ministers and its bodies. In this way, they affect the traditional controlling function of the national parliaments over the activities of the government, as well as the autonomous space for policy-creation which holds a supra-state level of governing. On the other hand, the national courts at all levels are integrated in the judicial application of the EU law through the mechanism of preliminary ruling, which enables them to strengthen the role of the European Court of Justice in the application of the rules coming from the previous ECJ practice. In this way, they upset the internal division of obligations among the courts (the regular courts vis-à-vis the Constitutional Court), as well as the traditional distinction between the judges on one hand, and the legislator on the other.

A peculiar situation was created in the EU after the enforcement of the Lisbon Treaty. **Namely, this treaty brought along formal recognition of the role and importance of the national constitutions in context of the clause concerning the national identity[14]**, as well as some new obligations for the national parliaments[15] and compulsory application of the EU Charter for Basic Human Rights.

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[13] MacCormick N., "Beyond the Sovereign State", The Modern Law Review, 56(1), 1993, (p. 9).

[14] The clause concerning the constitutional national identity was also subject of discussion by the constitutional courts of Spain and France, who validated the compatibility of the EU Constitutional treaty, and who addressed the European Court of Justice on whether the constitutional codification, and in that context, codification of the EU law supremacy, will cause new constitutional problems in Europe. The text of the constitutional treaty reads that: "the EU law will have supremacy over the law of the member countries", without making a clear distinction between the Constitution and the other acts of the national law. This article, in fact, brought along an idea for codifying the existing court practice of the European Court of Justice, having in mind the fact that by adopting the Treaty the member states will also adopt all other implications form the doctrine of supremacy created by the European Court of Justice.

[15] The new Protocol about the role of the national parliaments which is part of the Lisbon Treaty continues the tradition established by the Protocol with the same title adopted in 1997 as part of the Amsterdam Treaty. It increased the obligation of the EU institutions to inform the national parliaments and to give them enough time to express their views regarding the political measures undertaken by the Union. From a legal aspect, two elements are important here, the element of subsidiarity, and the element of proportionality.

III. SUPREMACY OF THE EU LAW, RATIFICATION OF THE INTERNATIONAL TREATIES AND RANK OF THE EU LAW IN THE NATIONAL LEGAL SYSTEM

1. The issue of coordination of the national constitution with the EU law is as old as the European community itself. In time when there is no unified European model for constitutional changes concerning this issue, the process of amending the national constitutions for every member country is done in different way and with a different scope[16]. With the full-fledged membership in the EU, the EU law becomes an internal law for the member-country, in accordance with the conditions determined in the Accession Treaty. It is a well-known position of the European Court of Justice that the EU law has supremacy over the national law, thus including the constitutional law[17].

2. In case of collision between the two laws, the national administrations, same as the courts of the member-countries, are obliged to apply the EU rules and not the national ones[18]. It is important to mention here that **the supremacy of the EU law does not mean declaring the contradictory rules of the national legislation void.** The other, even more complex dimension of the process is integration of the EU law in the national legal system, which starts from the moment of ratification of the Accession Treaty.

On this issue, we should highlight two aspects:

1. The ratification procedure of the Accession Treaty, and

2. The issue concerning the rank of the EU law vis-à-vis the national legislation.

The ratification of the Accession Treaty, i.e. of the founding treaties of the EC/EU, is different for the old and new member countries. For example, the Italian Constitution from 1947 regulates the ratification of the treaties with a separate constitutional clause which concerns the limitations of sovereignty[19].

On the other hand, the German Fundamental Law from 1949 links the ratification of the founding EC/EU treaties with the issue of transfer of power from the national bodies to the international organizations[20].

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[16] The Constitution of Lithuania, the Constitution of Portugal, the Constitution of Slovakia Article 7(2), the Constitution of Slovenia Article 3a.

[17] ECJ Case 11/70, Internationale Handelsgesellschaft (1970) ECR 1125, 1135 para 3; ECJ Case 149/79 Commission vs. Belgium (1980) ECR 3881, 3903 para 19; ECJ Joined Cases 97-99/87 Dow Chemical Iberica and others vs. Commission (1989) ECR 3165 paras 37-38; ECJ Case 473/93 Commission v. Luxembourg (1996) ECR I-3207, 3258 paras 37-38.

[18] ECJ Case C-184/89 Nimz (1991) I-321 para 20.

[19] Article 11 of the Italian Constitution reads: „Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organizations furthering such ends".

[20] Article 24 of the German Basic Law

On the third hand, Holland, when it joined the EU in 1953, adopted a separate constitutional amendment for the transfer of powers to the international organizations. Namely, with the Article 67 of its Constitution (now Article 92), the legislative, executive and judicial power can be transferred to international organizations. In this context, the international treaties which are obligatory for the Dutch citizens are given advantage vis-à-vis all earlier and later stipulations in the national law.

Holland foresaw a possibility for the international treaties, which are not in accordance with the Constitution, to be ratified in the parliament if they win 2/3 majority of votes in the two houses of parliament.

Until the adoption of the Maastricht Treaty, the ratification procedure of the founding treaties of the European Community by all then member-countries demanded simple, i.e. relative majority in the parliament, with an exception of Luxemburg, who demanded 2/3 majority of votes.

The procedural issues concerning the ratification became stricter when the old member countries faced with the signing of the Maastricht treaty. Germany, for example, adopted a new article in its Basic Law in 1992, which mainly concerns the transfer of powers to the EU[21].

Germany also adopted a provision, which stipulates that the EU law that impacts or is contradictory with the German constitutional law can be considered valid only if supported by 2/3 majority in the two houses of the German parliament (quorum that is needed for constitutional amendments, i.e. situation similar to the one in Holland.)

Provoked by the ratification of the Maastricht Treaty, the State Council of France, in accordance with Article 54 of the Constitution, issued an opinion in which it determined the need of amendments to several provisions of the French Constitution before the ratification of the treaty. Hence, **France decided to incorporate a special chapter in the Constitution focused on the EU affairs**, after the Council concluded that, according to Article 89, paragraph 3 of the Constitution, it will be exceptionally difficult to win 3/5 majority in the parliament at a joint session of the Senate and of the House of Representatives.

In 1972, the House of Commons of the UK adopted the EC Treaty and the ratification of the Accession Treaty with a simple majority.

In Denmark, paragraph 20(2) of the Constitution allowed delegating of powers to international organizations or bodies with a law that should be adopted with 5/6 majority in the parliament or with a simple majority at a referendum, if majority in the parliament is not achieved[22].

When it comes to the ratification of the international treaties, several models can be identified.

[21] Article 23(1) of the German Basic Law

[22] Paragraph 20 of the Danish Constitution. In accordance with the agreement among the Danish political parties, the Accession |treaty was put on a referendum without prior vote in the parliament. At the referendum on 2 October 1972, 57 % of the citizens voted in favor of the Treaty.

1. Some member countries, regardless the special nature of the EU, use their constitutional stipulations which refer to the ratification of international treaties in general (Finland, Lithuania, Cyprus).

2. In the second group of countries, the idea for limiting (transferring) the sovereignty dominates, although we must say that after this idea was abandoned in the French Constitution and was replaced with the new clause for "joint execution of powers" with the 1992 amendments, this model of limiting the sovereignty is no longer applied by any of the new member countries.

Besides France, this language of limiting the sovereignty was also present in the Constitution of Italy. Limiting of the sovereignty is also evident in the Constitution of Greece with simultaneous advocating for the concept of transfer of powers. In the past, this constitutional construction was considered feasible with the other constitutional provisions concerning the sovereignty, **having in mind the fact that the sovereignty is merely limited, i.e. that there is no doubt whether it still belongs to the citizens.** According to this conclusion, any threat that the EU membership will undermine the citizens' sovereignty can be easily removed with this model.

3. The idea contained in the expression ***transfer of powers***, as used in the constitutions of the old member countries (Germany, Denmark, Holland and Sweden), points to the fact that the legislative, executive and judicial governments are no longer exclusive matters for the state institutions, but that they can be transferred and run forward by the international organizations, i.e. by the EU itself. **The organization and its institutions have a constitutional legitimacy to execute these powers because the governments have expressed their trust in these institutions through a special procedure.**

Although not said very explicitly, there is still a clear benchmark which implies that certain powers remain on national level. In the constitutions of Denmark and Sweden, this benchmark is described as an "act of delegating", i.e. as a transfer of powers from national to supra-national level. The new EU member countries, such as Latvia, Poland and the Czech Republic, enter the group of countries which use the term *delegating*, instead of *transfer of powers*. Unlike them, Bulgaria is closer to the German and Danish terminology.

4. The fourth group of countries speaks of "joint execution of powers" (Luxemburg, Belgium, Spain, Portugal and France.) According to this model, the ruling power is mainly within the framework of the state institutions, but it can also be executed at another governing level. The state still holds its constitutional power to adopt national laws and measures in number of areas concerning the EU, but it also agrees that these laws and measures must be compatible with the EU law. **The clause for "joint execution of powers" can be interpreted as a demand for the supremacy of the EU law to be put within a framework concerning the fundamental principles and constitutional values**, as said by the Spanish Constitutional Court in its opinion on the Treaty for European Constitution. The new member countries find this model very attractive. Slovakia and Slovenia are some of the countries that have applied it. For the old member countries, the clauses for "joint execution of powers" are a constitutional category,

which gives advantage to the EU law over the national laws. Jurisprudence with such effects exists in Belgium, Luxemburg, Portugal and Spain.

The situation is less clear when it comes to the conflict between the EU law and the national constitutional law.

In Slovakia, there is a principle of supremacy of the EU law over the national laws. Article 7, paragraph 2 provides supremacy of the "legal binding acts of the EC/EU." Although this provision was originally meant only for the secondary law, and not for the founding treaties, the supremacy of the EU law is still guaranteed with Article 7, paragraph 5 of the Constitution. But, Article 125, paragraph 1 of the constitution speaks about the authorities of the Constitutional Court and says that there is no supremacy of the EU law over the constitution and the constitutional laws.

The Constitution of Romania[23] has a similar position. It explicitly determines supremacy of the EU Law over the national law, but demands prior procedure for protection of the constitutionality of the international treaties (Article 11, paragraph 3.) Unlike these examples, the constitution of Slovenia, in its new Article 3a, paragraph 3, leaves room for interpretation. The text of the article points to the legal strength of the acts adopted by the international community to which Slovenia has transferred some parts of its own legal acts in accordance with the acts of the organization." Here, one may get an impression that, on one hand the Slovenian constitutional law provides supremacy of the EU law over the national laws and over the constitutional law; but, on the other hand, **the Constitutional Court of Slovenia has said that before the introduction of the constitutional amendments, every conflict between the Constitution and the international treaty must be solved in favor of the constitution.**

5. And finally, **the group of several countries that have directly linked the EU accession with concrete constitutional changes. This method was first applied by the Republic of Ireland, followed by Austria, who created its own model of "complete constitutional revision."** In Estonia, for example, a separate act for amending the constitution was adopted, which, as a category, was never foreseen in the Constitution.

6. The issue concerning the theoretical and practical differences in the ratification procedure of the international treaties also impacts the domestic ranking of the EU law. In the old member countries, the constitutional requirement about the rank of the international treaties determines the internal positioning of the EU law in the legal system.

This situation is less clear when it comes to the new member countries.

For example, the international treaties are part of the Malta's legislation from the moment of their incorporation in the system through a special act adopted by the Parliament. Article 65 of the Constitution of Malta, in accordance with the constitutional changes says that the EU

[23] Bulgaria and Romania went through "essential process of constitutional reforms" before they joined the EU.

law has supremacy over every law adopted by the parliament, i.e. that the *lex posterior* rule is invulnerable. But, on the other hand, having in mind the Chapter 6 of the Constitution of Malta which speaks of the supremacy of the Constitution of the country, the EU law does not have primacy over the national constitution.

In Cyprus, this situation is identical as the one in Malta. Namely, in Cyprus the international treaties are enforced only if they are ratified with an act of the Parliament and if they are published in the Official Gazette. According to Article 169(3) of the constitution, the international treaties have an advantage over the national law. But here, the Cypriot jurisprudence says that this principle in no way can harm the supremacy of the Constitution as determined in Article 179(1) of the Constitution. According to Chapter 4 of the Constitution, the Accession treaty has supremacy over the other national laws and legal acts[24].

According to Article 138(3) of the Constitution of Lithuania, the international treaties that are ratified by the parliament are part of the national legal system. In 1995, the Constitutional Court gave an explanation saying that the international treaties will be applied in the legal system of the country "in the same manner as the national laws." But, in case of application of the lex posterior rule contained in Article 11 (2) of the Law for International Treaties of Lithuania, the international treaties will be given priority over the national laws and other legal acts. If this provision is applied for all international treaties, it will mean supremacy of the EU Law. Still, having in mind the fact that the Constitution is not mentioned anywhere, the principle of constitutional supremacy, as determined in Article 7(1) of the Constitution, refers also to the EU Law.

In the second group of EU member countries are those whose constitutions contain clauses which allow transfer of powers by determining the internal ranking of the EU Law.

Article 94 of the Constitution of Holland foresees that the supra-national law has supremacy over the national law. In Germany, both the old (Article 24) and the new (Article 23) clauses for transfer of powers are interpreted as a possibility for supremacy of the EU law over the national laws. Still, the German constitutional court had also reserved its right to reject the application of the EU law if the protection of the human rights in the EU legal system is lower than the protection provided with the national legal system.

According to Article 91(3) of the Polish Constitution, which concerns the international treaties that Poland has signed and which transfer powers to international organization, in case of collision of these treaties with the national laws the international acts have supremacy, if that is directly foreseen in the treaty. Since this provision contains

[24] The lack of this approach became visible when a Cypriot citizen was to be extradited based on the European Arrest Warrant, issued by the British authorities. Having in mind the fact that Article 11 of the Constitution of Cyprus contains a provision according to which the Cypriot citizens cannot be extradited, the Supreme Court of Cyprus confirmed that the extradition is impossible, This court decision was in line with the Cypriot Law, but contrary with the EU Law. Hence, on 28 July 2006 the Greek members of the Cypriot Parliament voted in favor of this constitutional amendment.

nothing about the supremacy of the EU Law, it can be subject of review by the Polish Constitutional Court. Still, according to the decision for accession from 11 May 2005, the constitutional justice should decide whether the Accession Treaty and the founding EU treaties are in accordance with the Polish constitution.

IV. CONSTITUTIONAL IMPLICATIONS FOR THE REPUBLIC OF MACEDONIA IN THE PROCESS OF JOINING THE EU

1. There is no doubt that Republic of Macedonia, as a candidate for membership in the EU, is obliged to carefully monitor the changes that took place in the national constitutions of the EU member-countries and, according to their experiences, to develop a national, beyond party concept of constitutional changes that should take place before the country joins the EU, aimed at speeding up the negotiations with the European Commission, i.e. faster completion of the Acquis chapters. In this way, the constitutional adjustments will be completed in a reasonable timeframe, based on detailed analysis of their form and content, and also based on the capacity of the institutions to take over the obligations that will come from the application of the EU law and the European standards.

2. Having in mind the fact that the EU does not favor any model of constitutional amendments, leaving it to the national authorities to decide, one may notice that the technique of composing a separate part in the constitution concerning the EU, in addition with specific amendments in certain articles, is the best option for constitutional changes in the Republic of Macedonia.

3. Here we need to stress that this separate part in the Constitution should cover the most relevant issues concerning the country's membership in the EU, such as:

- The legal grounds for membership and the obligation of Macedonia to participate in the development of the EU;
- Transfer of constitutional authorities from the national to the European institutions and the participation of Macedonia in the EU institutions;
- The rank of the EU law in the national legal system, i.e. defining that the international treaties that are ratified in the procedure which concerns, i.e. causes amendments to the Constitution, and which are published in the "Official Gazette" and are in force in the Republic of Macedonia, *are* part of the national legislation. They should be given supremacy in case of collision with any stipulation of the domestic law, i.e. if the text of the international treaty is different than the text of the law, then the international treaty will be applied.
- determining special procedures that concern the European affairs.

4. With specific constitutional amendments interventions will be needed in the following areas:

- Amendment 32 of the Constitution of the Republic of Macedonia, in context of the European arrest warrant;

- The second part of the Constitution focused on the basic freedoms and rights of the citizens, in context of:

- Implementation of the rights from the EU Charter about the Fundamental rights that are not incorporated in the Constitution of the Republic of Macedonia;

- Implementation of active and passive voter's rights (at local elections) for the Macedonian citizens who live in an EU member country, and for citizens of another EU country who live or reside in Macedonia (thoughts can be given about certain existing limitations, for example, in the Constitution of France, for nominating a foreigner for mayor.)

- Guaranteed freedom of movement and stay for the Macedonian citizens on the territory of all EU member countries;

- Guarantees for the right of diplomatic and consular protection for the Macedonian citizens in any member country and equal protection of the Macedonian citizens who are in a third country in which Macedonia does not have a diplomatic or consular office;

- The right to petition in front of the European Parliament for every Macedonian citizen;

- The right to submitting a case to the European ombudsman;

- The right to address the institutions and the EU advisory bodies in Macedonian language, as well as in all official EU languages, and the right to response in the same language, in accordance with the conditions and limitations contained in the regulations on which the EU is based upon, as well as in accordance with the measures adopted on the grounds of these agreements;

- Incorporating a clause for joint execution of powers by the national and the European institutions;

- Changes in the part concerning the international relations, regarding the ratification of the international treaties with 2/3 majority of votes in the Parliament of the Republic of Macedonia.

V. CONCLUSIONS

Considering the experiences of EU Member States, we may conclude that constitutional adaptations come as a result of different constitutional types and traditions in individual countries, conditions typical for their political situation as well as due to the accession negotiations with the EU. However, there is a list of constitutional issues to be addressed before the accession takes place and there are number of solutions from which to choose.

The Republic of Macedonia will have to immediately launch the process of Europeisation of its constitution, having in mind the numerous different experiences of the "old" and the "new" EU Member States in the process of building joint European standards and norms.

One can notice that some countries, on one hand, applied cosmetic changes of the constitutional provisions without making some deep essential cuts in their constitutional and political systems, while other countries applied serious and detailed constitutional changes in the process of constitutional harmonization with the EU standards.

Still, what can be determined, as a joint characteristic of all countries, is that the constitutional changes in both groups tackle numerous procedural and essential issues and aspects. In the group of procedural aspects the most important issues is the issue of sovereignty and its transfer from national to the European level, while in the group of issues that concern the content most important aspect is the acquis communautaire, the institutional balance on national and European level in the process of decision making and in the process of efficient application of the EU Law, the issue of realization and protection of the human rights and fundamental freedoms etc.

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