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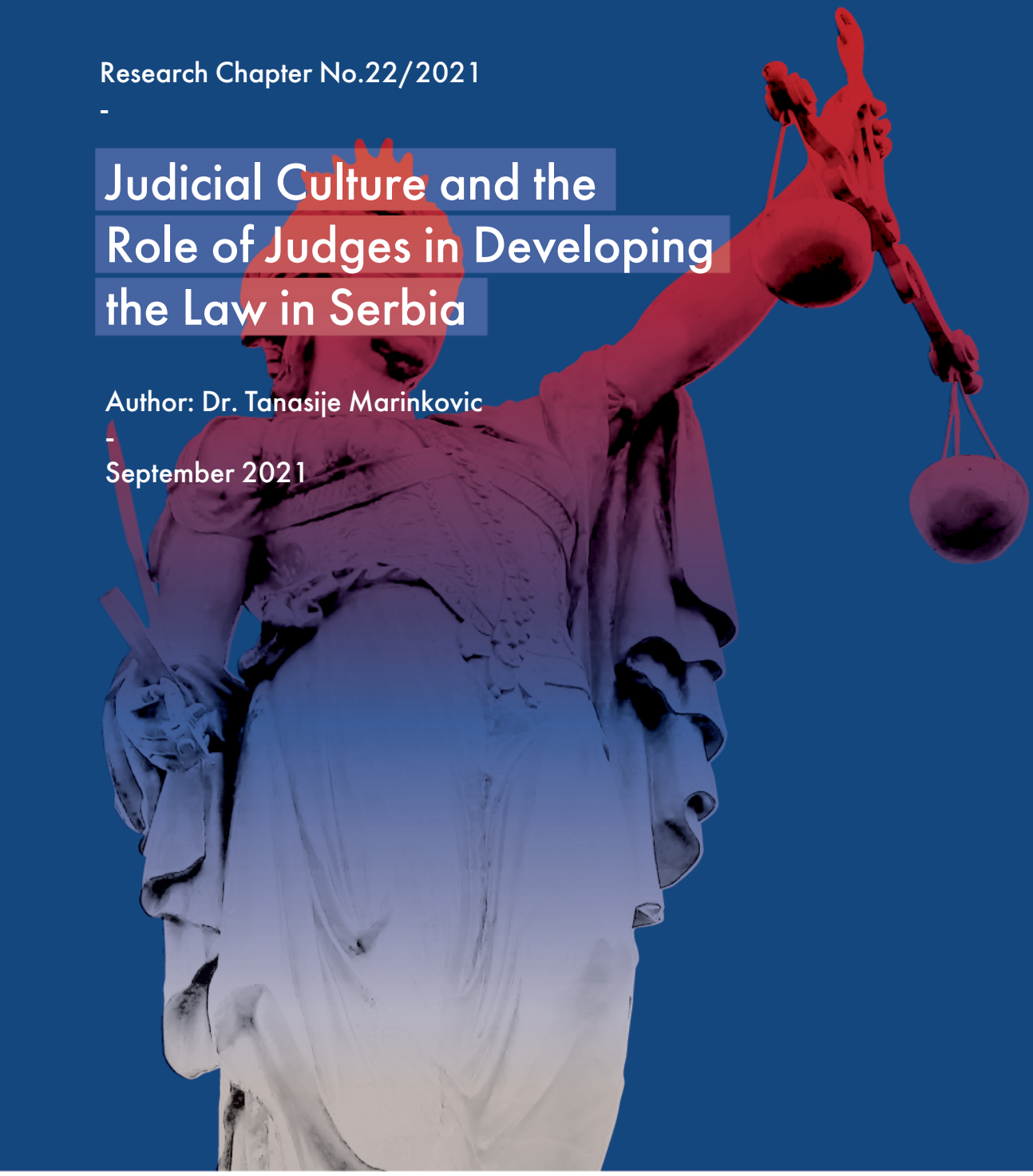

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JUDICIAL CULTURE AND THE ROLE OF JUDGES IN DEVELOPING THE LAW IN SERBIA*

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1. INTRODUCTION

The term "culture" has had multiple meanings depending on the disciplines and contexts.[1] One of its major senses is "the values, customs, beliefs and symbolic practices by which men and women live".[2] Within this meaning the term culture includes subjective concepts, such as values, beliefs, attitudes, orientations, underlying assumptions; but also objective notions, including customs, practices, human relations and institutions.[3] In this paper I look at judicial culture in Serbia as a subjective-objective phenomenon, meaning the customary ways Serbian judges think and behave when interpreting and applying the law. And, from another perspective: to what extent Serbian judges perceive themselves and act as a governmental power in their own right.

Cultural approach in legal studies is not a novelty. However, its relevance has increased after many European countries have regressed in the third wave of democratization. It became ever more obvious that both the democratic and the rule of law institutions need to be studied contextually - with a full knowledge of history and social practices of the given polities - for the constitutional borrowings and legal transplants to be meaningful. As Edmund Burke opined more than two centuries ago: "Manners [meaning customs and convictions, *T.M.*] are of greater importance than laws. The law depends upon them, in great measure … Manners are what vex or soothe, corrupt or purify, exalt or debase, barbarise or refine us, by a constant, steady, uniform, insensible operations, like the air we breathe. They give the whole form and colour to our lives".

For conservatives, like Burke, "culture is the sediment in which power settles and takes roots". And, culture should indeed be taken seriously when planning, formulating and implementing legal reforms. Nevertheless, its weight and the understanding of its immutability may be nuanced. While, "the central conservative truth is that it is culture and not politics, that determines the success of a society. The central liberal truth is that politics can change a culture and save it from itself".[6]

This paper relies on the second, liberal tenet - that politics and law can change the customary ways in which institutional actors think and behave, thereby saving the society from the unwanted culture - preventing societal progress. Based on these premises, the paper examines the Serbian judicial culture and proposes improvements so that the Serbian judiciary can perform its constitutionally mandated role independently and professionally, thereby establishing itself as a separate branch of government for the benefit of the parties before it and the society at large.

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1 Samuel P. Huntington, "Cultures Count", in Lawrence E. Harrison, Samuel P. Huntington (eds.), *Culture Matters*, Basic Books, New York, 2000, XV
2 Terry Eagleton, *Culture*, Yale University Press, New Haven and London, 1
3 Cf. S. P. Huntington, XV
4 Isaac Kramnick (ed.), *The Portable Burke* (Harmondsworth: Penguin, 1999), p. 520. Quoted in: T. Eagleton, 65.
5 T. Eagleton, 65.
6 Daniel Patrick Moynihan. Quoted in: S. P. Huntington, XIV

For those purposes, I study the tradition of the judicial independence in the Serbian constitutional history (2) and how the international actors, such as the European Commission (3) and the European Court of Human Rights have contributed to the profiling of the current Serbian judicial culture. Following these considerations, I present the main features of the judicial culture in Serbia (4), to what extent the judiciary in Serbia is the third branch of government (5), what is the judges' approach to the law in Serbia (6) and the role of the Constitutional Court in shaping the judicial culture in Serbia (7). The paper ends with a conclusion (8) and policy recommendations (9).

2. OVERVIEW OF THE TRADITION OF INDEPENDENT JUDICIARY AND JUDICIAL CULTURE

There are three major periods in the Serbian constitutional history. In the nineteenth century, Serbia gradually gained independence from the Ottoman Empire, establishing itself first as a principality, and then as a kingdom (2.1.). In the twentieth century, Serbia actively participated in the creation of Yugoslavia and served as its determining component until its dissolution (2.2.). With the definite dissolution of Yugoslavia in the twenty-first century, Serbia became once again an independent state (2.3.).

All of these historic periods have played a role in the shaping of the current Serbian judicial culture and the specific tradition of independent judiciary within it. They reveal that the political and legal elites naively reduce the understanding of the judicial independence to its constitutional and legislative guaranties and underestimate the weight of the authoritarian political and legal culture, and notably of the non-discursive legal education, in influencing how these normative mechanisms apply in practice (see also *infra*, 4.). Another lesson coming from the Serbian constitutional history is that the political branches of government tend to disrespect the autonomy and independence of the judiciary, particularly in politically sensitive matters, even when the principles of separation of powers and rule of law are clearly constitutionally mandated (see also *infra*, 5.). Furthermore, a common point across history has been the violation of the permanent tenure of the judge's office on the occasion of constitutional reforms. As a result, the Serbian judiciary has neither the knowledge nor the attitude to consistently act as a true governmental power, and it is particularly attentive to the expectations of the executive and legislative branches with regard to cases that are of particular importance to them.

2.1. Nineteenth-Century Liberal Democratic Transplants

In the nineteenth century, Serbia first gained autonomy within the Ottoman Empire and then full independence. Being committed to the development of modern public law institutions during the restoration of its statehood, Serbia introduced the separation of powers and rule of law mechanisms in its constitutional order. Those were, primarily, institutional guarantees for judicial independence. However, their evolution was not always straightforward. Thus, the *Sretenje* (1835) and the Turkish (1838) constitutions prescribed an enviable level of judicial protection considering the culture and the state of mind in Serbia of the time. The Regency

Constitution (1869), although fully guaranteeing the principles of legality and autonomy, recognized only the elements of judicial immunity of all guaranties of personal independence; while the Granted Constitution (1901) created an even greater gap regarding the advanced institutions of the Radical-Progressive Constitution (1888). Regardless of these ups and downs, Serbia has always taken as model other European States of its time, notably France and Belgium, in shaping its public law institutions. Nonetheless, with its 1888 and 1903 constitutions, Serbia introduced mechanisms of appointment of judges and termination of their offices, which went beyond the usual corpus of functional and personal guarantees of judicial independence. For instance, in these two constitutions, the methods of judicial cooptation and monarchical appointment were combined in the appointment of the second and third-instance judges.

However, when giving such high marks, it should not be overlooked that judicial independence is measured not by the formal guarantees, but by the level of their implementation in practice. Constitutional guarantees are a necessary step in that direction, at least in Continental Europe, but certainly not a sufficient one. Favorable political and social conditions, and, above all, developed social awareness of the judges in terms of their duties to the state and society, as well as their awakened awareness, are a precondition necessary to implement judicial independence.[7] Much like the Serbian constitutions in the nineteenth century, which resembled houses of sand that would fall down under the first strong political wind,[8] the judicial independence was solid on paper and fragile in real life. Change of dynasties, constitutions and laws were regularly used as a pretext for changing court members, thus preventing the judiciary from developing into a separate branch of government. In addition to this, the rulers, especially princes Miloš Obrenović and his son Mihailo Obrenović, exercised pressure on the judiciary in cases which were of particular importance to them.[9]

2.2. Twentieth-Century Socialist Formalist Legacy

The "Short Twentieth Century", in Eric Hobsbawm's words, was Serbia's Yugoslav century. In 1918, Serbia became a member of a bigger state which was initially a monarchy and then a socialist republic after the Second World War. The institutions of the Yugoslav monarchical constitutions – the *Vidovdan* Constitution (1921) and the September Constitution (1931) - were generally modeled on the Serbian 1903

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7 Đorđe Tasić, *O jemstvima sudske nezavisnosti*, Poseban otisak iz Spomenice Kongresa pravnika, Beograd, 1935, 16. [*On guarantees of judges' authonomy*, Special print from the Congress of Jurists' Memorial (Belgrade, 1935, p. 16)].

8 Jaša M. Prodanović, *Ustavni razvitak i ustavne borbe u Srbiji <Constitutional Development and Constitutional Fights in Serbia>*, Izdavačko i knjižarsko preduzeće Geca Kon, Beograd 1936, 432.

9 For more information on the law and practice of the judicial independence in the nineteenth century Serbia, see: Tanasije Marinković, "Jemstva sudijske nezavisnosti u ustavima Kneževine i Kraljevine Srbije", <Guaranties of Judicial Independence in the XIX Century Constitutions of the Principality and Kingdom of Serbia>, *Anali Pravnog fakulteta u Beogradu*, 2/2010.

Constitution.[10] This was particularly the case with the *Vidovdan* Constitution, while the September Constitution was an abbreviated version of the *Vidovdan* Constitution. The provisions on judicial power in the *Vidovdan* Constitution were much less elaborated than those contained in the old Serbian constitution. Although the 1921 Constitution did prescribe all-important substantial and personal guarantees of judicial independence, it did fail to envisage participation of the higher instance judges in the nomination of candidates for judicial posts. The provisions on judicial independence guarantees in the September Constitution were simplified and copied from the *Vidovdan* Constitution.[11]

The complete ideological turn came with the victory of the national liberation movement led by the Communist Party of Yugoslavia in the Second World War. Some of the basic tenets of constitutional democracy were abandoned. Hence, the system of separation of powers was replaced by the unity of powers, and the political pluralism by the one-party system. Fitting into the pattern of socialist constitutionalism, all three Yugoslav constitutions (1946, 1963, and 1974) positioned the National Assembly at the apex of the people's government. Consequently, these constitutions guaranteed functional autonomy and substantial independence of judges but failed to protect their personal independence. The substantial judicial independence was tied in the 1946 Constitution to the principle of legality, and in the 1963 and 1974 constitutions to the principles of constitutionality and legality. However, there were neither guarantees of permanent tenure of judges' office and their immovability, nor of their protection in the process of their dismissal. The 1946 Constitution did not even provide for the immunity of judges. In all three constitutions, the appointment of judges was vested in the hands of representative assemblies – purely political bodies on different levels of government, while the 1963 Constitution allowed for the direct elections of judges, delegating the implementation of this provision to the legislature. The 1963 and 1974 constitutions stipulated that the courts had the right and obligation to inform the representative assemblies of the application of the laws and the functioning of the courts. Furthermore, the 1974 Constitution explicitly stated that judges were elected for a limited period of time and they could be reelected, and provided for the "moral and political acceptability", as one of the criteria for the election of judges and their dismissal.

Although the guarantees of personal independence of judges were formally missing in Socialist Yugoslavia, it appears that there was a certain legal and political culture which allowed judges

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[10] Slobodan Jovanović, *Ustavno pravo Kraljevine Srba, Hrvata i Slovenaca <Constitutional Law of the Kingdom of Serbs, Croats and Slovenes>*, Novinsko-izdavačka ustanova Službeni list SRJ, Beograd 1995, 44.

[11] For more information on the *Vidovdan* and September constitutions, see: Tanasije Marinković, *Serbia* (International Encyclopaedia of Constitutional Law), Wolters Kluwer, 2019, 51-59.

to perform their public function professionally and without fear of political reprisals for their rulings. Judges who were interviewed and who worked in those days bear witness to the fact that they could exercise their judicial role impartially. The exception to this rule were judges adjudicating in the sensitive criminal law case who were indeed under political pressure. As a matter of fact, those types of cases were generally allocated to predetermined judges whose readiness to cooperate in politically sensitive matters was expected.[12]

2.3. Twenty-First Century Democratic Transition Challenges

While still being one of the Yugoslav republics, in 1990 Serbia adopted a new constitution, formally re-embracing the values of liberal-democratic constitutionalism. Thereby, Serbia joined other post-socialist countries in the third wave of democratization, which spread across Europe in the aftermath of the fall of the Berlin Wall. This trend continued in 1992 when the Constitution of the Federal Republic of Yugoslavia was adopted. The rump Yugoslavia, consisting of only two federal units, Serbia and Montenegro, ended in 2006 when Montenegro seceded and Serbia restored its statehood. Consequently, the very same year Serbia adopted its current constitution, once again in the spirit of liberal-democratic constitutionalism. In respect of the guarantees of judicial independence, the 2006 Constitution made some important improvements, but it also failed to adhere to many standards set by the 1990 Constitution.

The substantive independence is defined in a modern and scholarly way: 'The courts shall be autonomous and independent in their work and shall adjudicate on the basis of the Constitution, laws and other general acts, when it is envisaged by the law, generally accepted rules of international law and ratified international treaties' (Article 142(2)). Furthermore, every influence on a judge in the exercise of his/her judicial function is forbidden and no judge may be held responsible for his/her opinion or vote expressed in the process of adjudication, except in the case of a criminal act of breach of law by a judge (Article 149(2) and 151(1)).

On the one hand, the safeguards of the personal independence of judges were improved as a result of the constitutionalization of the High Judicial Council in 2006, but on the other hand, they were weakened by not being fully guaranteed by the Constitution. Hence, a judge is appointed to a permanent tenure, except for a first-time appointee to a judicial office whose tenure lasts for a period of three years. The National Assembly appoints judges to three years of office, upon a proposal of the High Judicial Council, while the latter appoints judges to a permanent tenure of judicial office (Article 146, and Article 147(1) and (3) Constitution).

[12] Interview with a former Supreme Court of Cassation judge; Interview with the Belgrade Appelate Court judge; Interview with the Belgrade Appelate Court judge.

Apart from the departure from the permanent tenure of judicial office, which was guaranteed without exceptions in the 1990 Constitution, the new Constitution also went below the old one by failing to state all the reasons for the termination of the judicial office and delegating the regulation of that matter to the legislator (Article 148(3)). Nevertheless, the Constitution introduces one important guarantee of judicial independence – the right for a judge to file a complaint before the Constitutional Court against the decision of the High Judicial Council on the termination of his/her office (Article 148(1)).[13]

This constitutional provision proved to be essential in the protection of judicial independence in the period to come. More specifically, in the first six years of the application of the new Constitution, Serbia was confronted with some of the major political and legal challenges in nascent democracies – resetting of the institutions in the process of democratic transition and consolidation. One of those was the reform of the judiciary. Its most sensitive element was the demise of all sitting judges in the country. The Judges Act, adopted in 2008, provided for the termination of tenures of all judges. The judges were in the position to apply for their offices and the High Judicial Council was competent to rule on their new appointment to the office. Several hundreds of judges who were not appointed filed complaints with the Constitutional Court. The Constitutional Court adjudicated in favour of the procedural rights of judges in the proceedings they had previously brought before the High Judicial Council, relying on the fair trial standards as developed by the European Convention on Human Rights' case-law. Thereby, the Constitutional Court eventually helped most of the non-appointed judges to regain their judicial posts by 2012.[14]

The "judicial reform episode" had a strong, negative impact on the Serbian judges. All of the judges who were interviewed and who went through that reform express a strong fear among their colleagues as to the possibility of a new, similar vetting of the judiciary in the near future.[15] Nevertheless, the judges organized within the civic society – notably within the Judges' Association of Serbia and the Judicial Research Centre, together with the wider judicial support network and the European Commission continue to advocate for the reform of the 2006 Constitution, arguing that it does not sufficiently safeguard the judicial independence. They claim, in particular, that the 2006 Constitution, fails to prevent the political pressure on the judiciary due to the National Assembly's participation in the appointment of judges. With the perspective of the Serbian integration in the European Union (EU), the Serbian Government organized, in 2017 and 2018, a number of public consultations regarding the possible amendments to the Serbian Constitution; and finally, in December 2020, it tabled an official and undetailed Proposal for the amendments to the Constitution. In June 2021, the National Assembly formed the official commission to draft the amendments and announced that the Constitution would be amended in Fall 2021.

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[13] For more information on guarantees of judicial independence in the 2006 Serbian Constitutions, see: T. Marinković, *Serbia*, 139-140.
[14] For more information on the general reappointment of judiciary in Serbia, see: T. Marinković, *Serbia*, 141-143.
[15] Interview with a former Supreme Court of Cassation judge; Interview with the Belgrade Appelate Court judge.

3. ROLE OF THE EUROPEAN UNION IN REFORMING THE JUDICIARY AND JUDICIAL CULTURE

Given the essential role of the Member States' judiciary in applying the EU law and putting the Court of Justice in action, the European Commission regularly assesses, in its progress reports, the role and functioning of the judiciary in the candidate states, as well as the state of its independence.[16] As Serbia had filed its application for the EU membership in December 2009 and was finally granted the status of a candidate country in March 2012, the European Commission reports on the country's progress towards the EU and its recommendations became increasingly important in the power politics in Serbia. With such leverage, which has had not only political but also economic repercussions, the EU has been in a position to push the government to reform the constitutional system in the direction which was favorable to judicial independence.

Hence, the European Commission regularly reports on the normative framework which leaves room for undue political influence on the judiciary affecting its independence. As of 2013, it has been recommending constitutional reform,[17] and in 2014 it formulated what such reform should address: the composition and method of election of members of the High Judicial Council and State Prosecutorial Council, as well as the introduction of judicial review of dismissal decisions.[18] The European Commission has also been reporting, since 2014, on the practice of publicly commenting on trials and announcing arrests and detentions in the media ahead of court decisions, which risks being detrimental to the independence of the judiciary and raises serious concerns.[19] It has also been noted that judges from higher and appellate courts have been confronted "with direct attempts to exert political influence over their daily activities without the High Judicial Council properly defending their independence".[20]

However, the role of the EU in reforming the judiciary and judicial culture has not been without ambiguities. The EU initially welcomed the 2008 legislative reform of the judicial system, which included the dismissal of all judges and prosecutors (see, *supra* 2.3.).[21] It considered that "there has been progress in the form of adoption of a new legislative framework and steps to implement it"; while admitting, at the same time, that "the ongoing reform and its partly hasty implementation pose big risks for the independence, accountability and

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16 See in that respect Judicial Independence in the EU Accession Process, Open Society Institute 2001.
17 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/brochures/serbia_2013.pdf, 39.
18 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf, 41.
19 *Ibid.*
20 *Ibid.*
21 http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf, 11.

efficiency of the judiciary".[22] Nevertheless, this reshaping of the personal composition of the judicial branch caused an immediate reaction of the judges who gathered around the Judges' Association of Serbia. They challenged the constitutionality of the taken measures and were very vocal in informing the domestic and international audience about the constitutional and legislative deficiencies of the general reappointment of the judiciary in Serbia. Legal scholars, distinguished members of the legal profession and other non-governmental organizations protested against a repeated legislative breach of the constitutional guarantees of judicial independence, by making appeals to the professional and general public.[23] This "judicial support network" managed to animate the international players and even compelled the EU to change its views on the reform.[24] Hence, the EU reported in 2010 that "Serbia made little progress towards further bringing its judicial system into line with European standards", referring to the major aspects of the reform as "a matter of serious concern" and underlining that "the reappointment procedure for judges and prosecutors was carried out in a non-transparent way, putting at risk the principle of the independence of the judiciary".[25]

Another point of disagreement between the EU, on one side, and most of the judges, prosecutors, and legal scholars on the other side is the role of the Judicial Academy in the selection of future judges and prosecutors. The EU reported in the beginning that the institution was largely understaffed and underequipped,[26] that its training capacity and expertise should be significantly increased,[27] and later on that "no progress was made in addressing the Venice Commission's advice on how to effectively 'protect the Academy from possible undue influence'".[28] Nevertheless, since 2013 the EU has consistently maintained that the Academy should become the compulsory point of entry to the judiciary and that legislative and institutional changes are needed in that respect.[29] However, most of the legal professionals in Serbia consider that the Judicial Academy is not sufficiently independent and professional to become a sole nationwide entry point to the profession at the basic courts' and prosecutors' offices level. Their argument is that if the Judicial Academy was a sole entry point, its selection of candidates would limit the power of the High Judicial Council and State Prosecutorial Council as they would be entitled to only appoint graduates from the Academy as judges and prosecutors.

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[22] *Ibid*., 12.
[23] See: Tanasije Marinković, "O ustavnosti opšteg reizbora sudija" < On the constitutionality of the general reappointment of judges >, *Anali Pravnog fakulteta u Beogradu*, 1/2009.
[24] See Tanasije Marinković, "Strengthening Judicial Independence in the Process of EU Integration", *Tackling Constitutional Challenges on the Road to the European Union. Perspectives from South-East European Accession Countries*, Association Zenith, Konrad Adenauer Stiftung, 140-157.
[25] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf, p. 10.
[26] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/brochures/serbia_2013.pdf, p. 39.
[27] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf, p. 41.
[28] https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf, p. 22.
[29] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/brochures/serbia_2013.pdf, p. 39.

4. MAIN FEATURES OF THE JUDICIAL CULTURE

The judicial culture in Serbia is heavily marked by the historical conditions within which the Serbian society developed, especially in the past two centuries. The influence and remnants of the socialist tradition are very strong and still determining. According to Dragoljub Popović, legal historian, constitutionalist and former judge of the European Court of Human Rights with respect to Serbia, "the main feature of the legal heritage of Serbia is the trace of the Communist regime in its liberalized Titoist version".[30] However, that period should not be seen as total rupture, but as a particular continuation of the nineteenth century legal and political culture in which the democratic and rule of law institutions did not fully take roots. In that sense, the judicial culture in Serbia resembles the culture in those Central and Eastern European countries in which the modernizing processes triggered by the French Revolution took place with some delay.

Socialist judicial opinions and legal writings in the Central and Eastern European countries of the Cold War period have been generally associated with a simplified legal dogmatism: "The Socialist ideal of judicial reasoning became a dogmatic textual exegesis. Socialist legal opinions were written in a clearly cognitive way; through their reasoning, judges came to the one 'right' answer".[31] A new conception of limited law was established, described as ultra-formalism.

The "one right answer" type of judicial culture has been explained by a wider legal and political culture of Central and Eastern Europe. In that culture, the authoritarian discourse dominated, in contrast to the Western European constitutionalism, which has generally been the product of rational, discursive authority.[32] On the one hand, the rational discourse, as suggested by Robert Alexy, "assumes that conditions of communication prevent irrational termination of argumentation, secure freedom of choice of topics and equal conditions for participants, and exclude coercion".[33] On the other hand, authoritarian discourse is characterized by "the proclamation and imposition of one truth as universal and final. Such discourse was authoritarian since it purported to have a social monopoly over determining the meaning of legal and political

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[30] Dragoljub Popović, Sailing upon the Charted Seas : Notes on the Evolution of Serbian Law after the Ratification of the ECHR, *Serbian Studies: Journal of the North American Society for Serbian Studies* 31: 25–40, 2020, 26.
[31] Zdenek Kuhn, *The Judiciary in Central and Eastern Europe - Mechanical Jurisprudence in Transformation ?*, Martinus Nijhoff Publishers, 151.
[32] Siniša Rodin, « Discourse and Authority in European and Post-Communist Legal Culture », *Croatian Yearbook of European Law and Policy,* Volume 1, 5-6.
[33] R. Alexy, A Theory of Legal Argumentation (1989) R. Adler and N. MacCormick (trans.), Oxford. Quoted in: S. Rodin, 3.

language at the top of the political hierarchy and communicating it downward".[34]

In socialist Yugoslavia, the system of unity of powers implied that the Government, which was officially called the "Federal Executive Council", was a mere transmission of the Assembly's will, and so was the role of the judiciary - to apply the law and not settle disputes between parties (see *supra*, 2.2.).[35] The legal scholarship was generally not critical but descriptive and apologetic, "while the function of education was understood as transmission of the uncontested ultimate truth from teachers to disciples: *magister dixit, discipulus scripsit*".[36]

On the surface, the Yugoslav's authoritarian, one-party system was fundamentally different from the legal and political system of the Principality and Kingdom of Serbia, based on the separation of powers and other liberal-democratic premises (see *supra*, 2.1.). However, the liberal-democratic institutions were embraced in nineteenth century Serbia in an accelerated way - before the process of transformation from agrarian-patriarchal to civil society was completed. Hence, the "dominant political consciousness was enslaved mostly by the egalitarian and collectivistic spirit, with the insufficiently developed idea of individual freedom and with substantial lack of tolerance above everything".[37]

Consequently, the present judicial culture in Serbia is also marked by the dogmatic textual exegesis and simplistic, non-discursive, "one right answer approach" to adjudication. According to this understanding of law, there is only one right answer which can be discovered through a simplistic textual exegesis. The interviews which were conducted with judges and prosecutors show that judges prefer to adjudicate not on the basis of constitutional or legislative sources, but on the basis of by-laws which attempt to regulate social relations in every detail.[38] However, when that regulation is not available all the weaknesses of the tradition of textual exegesis and "one right answer approach" become especially evident: on many occasions, there is no proper reasoning in the rulings.[39]

The problem of poorly reasoned judgments in the practice of the Serbian courts, even when there is a detailed legislation, has been confirmed by the case-law of the European Court of Human Rights. For instance, in a labor law case, *Anđelković v. Serbia*, the European Court found that the first-instance court

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[34] S. Rodin, 6.
[35] *Ibid.*
[36] *Ibid.*
[37] *Olga Popović Obradović, Parlamentarizam u Srbiji - 1903-1914 <Parliamentarianism in Serbia - 1903-1914>,* Službeni list SRJ, Beograd 1998, 422-423.
[38] Interview with a former Supreme Court of Cassation judge; Interview with the Belgrade Appelate Court judge.
[39] *Cf.* D. Popović, 25-26.

had established certain facts and had ruled in favor of the applicant's legal entitlement to the holiday pay claimed. However, the District Court had overturned that judgment upon appeal and rejected the applicant's claim without even referring to the facts and the labor law as presented by the first-instance court. The European Court particularly underlined that the District Court did not "refer in the impugned judgment to what the law was, how it should have been applied to the applicant's case or whether the conditions stipulated in the applicable collective and enterprise bargaining agreements had been met in the applicant's case".[40]

The judges who were interviewed explained the problem of poorly reasoned judgments by the big case backlog and pressure to respect the right to trial within a reasonable time.[41] The big case backlog is an old-time problem of Serbian and formerly Yugoslav judiciary, which was furthermore accentuated by the 2008-2012 reform of the judiciary in two aspects. Firstly, the number of judges was initially reduced by the reform, and only later, by the "reform of the reform" most of the non-appointed judges were gradually reintegrated into the judiciary (see *supra*, 2.3.). Secondly, the reform included the reduction of the number of basic courts. Consequently, there are 66 basic courts and 29 judicial units outside of the basic court seats, which means that judges regularly spend (actually, waste) their professional time in commuting from the premises of their courts to the judicial units so that they could hold hearings. The right to trial within a reasonable time, as well as its importance and the obligation of the courts to ensure that it is consistently observed has grown since 2004 when Serbia became a party to the European Convention on Human Rights which stipulates this right under Article 6(1).

Due to these challenges, the interviewed judges and prosecutors admit that a particular policy of "solving the cases and not the problems" is generally accepted in the Serbian judiciary.[42] However, they also underline that although the judgments are most of the time not well reasoned, they are impartially rendered and correct on the merits.[43] Still, due to the poor reasoning of judgments, justice is not always visible, and it certainly does not perform its educational function. Also, it appears that the policy of solving the cases and not the problems is true in politically non-sensitive matters, while in those which are politically sensitive there is rather the policy of "delaying the cases and not solving them".

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[40] *Anđelković v. Serbia*, no. 1401/08, 9 April 2013, par. 27.
[41] Interview with a former Supreme Court of Cassation judge; Interview with the Belgrade Appelate Court judge.
[42] Interview with a deputy public prosecutor of the Prosecutor's Office of the Republic; Interview with the Belgrade Appelate Court judge.
[43] Interview with a former Supreme Court of Cassation judge; Interview with the Belgrade Appelate Court judge.

5. JUDICIARY AS THE THIRD BRANCH OF GOVERNMENT

According to the traditional, Continental European understanding, the judiciary is "merely a secondary branch of the executive function and a separate 'power' only in the limited sense that the judicial action is performed by distinct agencies or persons."[44] Also, it would be quite unusual to consider judicial power as a political power in the sense of decision-making which is, legally speaking, discretionary - not bound by law, and has a collective effect.[45] However, the judiciary is, or rather, should be, a branch of the government in its own right in the sense of the professional and independent exercise of the public power to settle disputes between parties. Judges should decide cases on the basis of the law and without undue pressures, especially those coming from other branches of government. And, since the language of the law often allows for a range of semantic possibilities, the judges must manifest their interpretative fidelity to law when choosing the legal meaning of the text from different possibilities, explicit or implied.[46] The most important way for the judges to legitimize their work, thereby accreting their influence over their broader legal and political environment, is to carefully develop the case-law, building it on precedents that both enable and constrain their creativity. Judges have to give defensible reasons in justification of their judgments, and the output of such adjudication will be the production of a coherent case-law, which may be called *jurisprudence*.[47] Only then, when there is jurisprudence, which both enables and constrains the creativity of judges, can one speak of the judiciary as the third branch of government.

Judges in Serbia generally do not perceive themselves as a separate branch of power and they do not always act like one, as manifested by the phenomenon of incoherent case law; they are under open pressure from other branches of government, especially in politically sensitive cases; and, finally, the legal education does not equip future judges with the heuristic tools necessary for the establishment of the judiciary as an effective third branch. The decades-long Socialist ideology of unity of powers left marks on the way judges understand their public function, particularly with respect to the idea of judicial law-making and production of jurisprudence. The interviews, conducted with

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44 Karl Loewenstein, *Political Power and the Governmental Process* (Chicago: The University of Chicago Press, 1957), 239.
45 Charles Eisenmann, "La justice dans l'Etat", in C. Leben (ed.), *Charles Eisenmann, Ecrits de théorie du droit, de droit constitutionnel et d'idées politiques*, Edition Panthéon-Assas, Paris, 2002, 158-168.
46 Cf. Tanasije Marinković, "Barak's Purposive Interpretation in Law as a Pattern of Constitutional Interpretative Fidelity", *Baltic Journal of Law and Politics*, vol. 9/2016.
47 Alec Stone Sweet, Helen Keller, The Reception of the ECHR in National Legal Orders", *A Europe of Rights – The Impact of the ECHR on National Legal Systems*, Oxford University Press, Oxford–New York 2010.

judges and prosecutors, indicate that judges perceive themselves as civil servants who exercise an important public function.[48] They consider the judiciary to be a contentious branch of the executive power, in contrast to the administration, which applies the law in non-contentious cases. The idea of judicial law-making is not at all close to them. The principle of separation of powers is understood as placing them in the position of law-applying institutions. They lack self-confidence, which may be explained by a number of factors. Firstly, the best law graduates generally do not pursue their legal careers in the judiciary, and those who do decide to take that path usually leave the judiciary after a while to become attorneys.[49] Secondly, legal education at the law faculties, which is the most important level of education for the creation of professional identity and self-perception of judges, does not boost the image of a judge – lawmaker, but rather of a judge – simple mouth speaker of the law. The curricula of the law faculties and their respective teaching methods are also more supportive of the authoritarian discourse rather than the discursive authority, which prevents students – future judges from having not only heuristic tools but also a mere idea of how to produce jurisprudence.[50] Thirdly, the 2008-2012 judicial reform instilled fear in judges from a possible new resetting of the judiciary (see *supra*, 2.3.). Hence, the judges are more sensitive to the expectations of other branches of government.[51] Finally, those judges who reason beyond dogmatic textual exegesis, act as an independent branch of government and rightly criticize the other two branches of government are exposed to populist attacks and lynch by the media close to the ruling party, which dominates the executive and legislative branches of government.[52]

The inability of the Serbian judiciary to produce coherent case-law and establish itself, through its jurisprudence, as a separate branch of government, can also be attributed, at least partially, to the systemic deficiencies inherited from the Socialist period. More than thirty courts of appeal and the Supreme Court, composed of around a hundred judges, in a small country, could by no means produce a coherent case law.[53] Furthermore, the Supreme Court was entitled to render advisory opinions, but those opinions were not binding on the lower courts and the Serbian lawyers have not been willing to accept the doctrine of precedent.[54] As a result, the case law of the Serbian courts is only exceptionally studied in university courses with Serbian professors of law preferring to make

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48 Interview with a deputy public prosecutor of the Appelate Prosecutor's Office; Interview with the Belgrade Appelate Court judge.
49 Interview with the Belgrade Appelate Court judge; Interview with the Belgrade Appelate Court judge.
50 Interview with the Belgrade Appelate Court judge; Interview with the Belgrade Appelate Court judge.
51 Interview with a former Supreme Court of Cassation judge; Interview with the Belgrade Appelate Court judge.
52 Tanasije Marinković, *Odgovornost predsednika Republike za povredu Ustava – zabrana uticaja na vršenje sudijske funkcije < Responsibility of the President of the Republic for the Violation of the Constitution – Prohibition of Influence on the Exercice of the Judicial Function >*, Cepris, Beograd, 2021 (forthcoming); Dragana Boljević, "Osporavanje legitimiteta sudske vlasti u procesu ustavnog uređenja nezavisnosti sudstva na primeru Srbije" < Challenging the Legitimacy of Judicial Power in the Process of Constitution Drafting of the Judicial Independence – The Case of Serbia >, *Fondacija centar za javno pravo*, 2020. Available at: http://www.fcjp.ba/analize/Dragana_Boljevic2-Osporavanje_legitimiteta_sudske_vlasti_u_procesu_ustavnog_uredjenja_nezavisnosti_sudstva_na_primeru_Srbije.pdf
53 D. Popović, 28.
54 *Ibid*.

use of foreign jurisprudence for the purpose of illustration.[55] Hence, the image of the Serbian judiciary, as a separate branch of government, is totally alien to future judges and other legal and political elites, created at the law faculties. The problem concerning the harmonization of jurisprudence in Serbia also gave rise to a number of judgments of the European Court of Human Rights.[56]

The Socialist heritage is not the only one to blame for the difficulties of the Serbian judiciary to establish itself as a separate branch of government. Judge Dragana Boljević, the honorary president of the Judges' Association of Serbia, claims that incoherent case law and the resulting insufficiently reasoned judgments, are problems which also stem from the bad regulation attributed to the present political powers: the courts' network and the number of judges in the courts do not correspond to the courts' caseload; the Supreme Court of Cassation has yet to gain jurisdiction to issue guidelines to other courts; the judgments of the highest courts are not easy to reach and research; there are no adequate working conditions in the courts, particularly in the judicial units outside of the courts; and the judges and their assistants are underpaid.[57] This view is shared by another judge who was interviewed.[58]

However, the legislative and executive branches of government are not only unwilling to regulate the necessary conditions for the judicial function to be performed professionally. Their prominent representatives have also engaged, for the past four years, in the veritable populist attacks on individual judges and the judiciary as a whole, with the intention to intimidate judges who do behave as an independent third branch of government, as well as all the others who could potentially follow suit. The aggressive, anti-judicial rhetoric came about in the context of the reform of the Serbian Constitution with respect to its provisions on the judiciary and prosecutor's office (see *supra*, 2.3.). The prominent members of the ruling Serbian Progressive Party, including the national deputies, the Prime Minister and the President of the Republic have accused the judiciary of corruption, chaos and frame-ups. In their view, judges have estranged themselves from the citizens and have turned into a kind of a caste. It is also purported that judicial independence has become a myth and that independent judicial conviction has been nothing more than a mere ideological trick.[59] What is particularly worrying is

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[55] *Ibid*., 28-29.

[56] See Dragoljub Popović, Tanasije Marinković, "The emergence of the human rights protection in Serbia under the European Convention on Human Rights: The experience of the first ten years", in Iulia Motoc, Ineta Ziemele (eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe - Judicial Perspectives,* Cambridge University Press, Cambridge, 2016.

[57] Dragana Boljević, "Otkuda sad autentično tumačenje zakona" < How Come There is all of a Sudden an Authentic Interpretation of Law >, *Srpski pravnički klub*. Available at: https://srpskipravnickiklub.rs/2021/07/14/otkud-sad-autenti%C4%8Dno-tuma%C4%8Denje-zakona.html

[58] Interview with a former Supreme Court of Cassation judge.

[59] See Tanasije Marinković, "Law Within the Bounds of Politics – Do the Constitutional Amendments Abolish the Right of Judge to Independent Conviction?", in *Testimony – Preparation for the Changes to the 2006 Constitution and the Legal Profession*, Judges' Association of Serbia, Belgrade 2018.

that the President of the Republic appears to be the most vocal in these attacks. His rhetoric can be qualified as discrimination, more concretely hate speech, on political grounds. Being opposed to political pluralism and separation of powers, he perceives judges and prosecutors as partisan and ideological enemies although they cannot be classified as such by virtue of the very nature of their function.[60]

6. JUDGES' APPROACH TO LAW

It transpires from the preceding considerations that judges from the ordinary courts generally see their role as a mere application of the law rather than interpretation and further development. The interpretations of the law and facts are insufficient. The judges generally do not question the meanings and goals of the text, which are accepted by the practice of their fellow colleagues. The legislative history is rarely taken into consideration.[61]

The authentic interpretations were almost non-existent until 2012 – only one in 11 years.[62] However, in the period between 2012 and 2021, the National Assembly adopted no fewer than 19 authentic interpretations. Some judges denounce the authentic interpretation as abusive since in many cases it is used to reformulate the meaning of the legislative provision with a retroactive effect, and as a contradiction to the separation of powers principle since it deprives the judges of their power to interpret the laws.[63] However, a younger judge, who was interviewed, found the authentic interpretations to be constitutionally legitimate, especially in light of the principle of popular sovereignty.[64]

7. ROLE OF THE CONSTITUTIONAL COURT IN SHAPING THE JUDICIAL CULTURE

The Constitutional Court of Serbia was established in 1963. Along with the constitutional courts of other ex-Yugoslav republics, the Constitutional Court of Serbia is one of the oldest constitutional judiciaries in Europe. However, for a very long time, i.e., until 2006, there were no political and legal conditions

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60 See T. Marinković, *Odgovornost predsednika Republike za povredu Ustava – zabrana uticaja na vršenje sudijske funkcije* < *Responsibility of the President of the Republic for the Violation of the Constitution – Prohibition of Influence on the Exercice of the Judicial Function* >, Cepris, Beograd, 2021 (forthcoming).

61 Interview with a deputy public prosecutor of the Appelate Prosecutor's Office; Interview with the Belgrade Appelate Court judge.

62 Dragana Boljević, "Potkopavanje (nipodaštavanje) građana" < Undermining (Demeaning) of Citizens >, *Otvorena vrata pravosuđa*. Available at : https://www.otvorenavratapravosudja.rs/teme/ustavno-pravo/potkopavanje-nipodastavanje-gradana

63 *Ibid*.

64 Interview with the Belgrade Basic Court judge.

for this court to properly exercise its functions. In Socialist, one-party Yugoslavia which embraced the unity of powers, the review of the "socialist constitutionality" did not make much sense (see *supra*, 2.2.).

The 2006 Constitution establishes the Constitutional Court with the status and jurisdiction, which are typical for the centralized European model of constitutional adjudication. Hence, it is an autonomous and independent state institution, the rulings of which are final, enforceable, and binding. It has a wide range of powers, including the abstract review of constitutionality and conformity with the ratified international treaties. Nevertheless, Serbia has made a real breakthrough of constitutional justice with the practice of individual constitutional appeals, which was introduced for the first time in an effective way in 2006.[65]

The most important competence of the Constitutional Court not only in terms of the size of its docket but also with respect to its role in shaping the judicial culture in Serbia is the adjudication on the constitutional appeals. Serbia's integration in the European system of human rights protection in 2004 increased the importance of the constitutional appeal proceedings and the Constitutional Court as the reviewer of the compliance of the domestic courts with the human rights entrenched in the Constitution and European Convention on Human Rights. Putting itself in the position of the "small Strasbourg", the Constitutional Court regularly relies on the Convention case-law, and attributes to it both binding and persuasive force. As a result, references to the European Court's jurisprudence are ever more frequent in the case-law of ordinary courts in Serbia, providing evidence of the shift in the legal thinking and practice towards the adoption of the European values and standards, as embodied in the Convention. This includes the evolution of the understanding of law and its sources (especially of the importance of the "judge-made law"), as well as of the role of the State and its sovereign prerogatives.

Nevertheless, the role of the Constitutional Court in these developments should be nuanced. It is overall positive, indeed, because its strict commitment to the Convention case-law in the constitutional appeal proceedings obliges all other courts in Serbia to engage in the application of the Convention. This "learning-by-doing" helps ordinary judges to question and even abandon the excessive formalism of post-Socialist law and the authoritarian legal culture based on many old-fashioned Continental legal myths. Yet, the Constitutional Court has not managed to establish itself as the true authority in the Serbian

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[65] For more information on the Constitutional Court of Serbia, see: *T. Marinković*, Serbia, 143-149.

legal arena, since it is perceived by the domestic judges and legal scholars more as a good political conveyor of the European Court's messages rather than as a good judicial model to follow. In the first place, the Constitutional Court has generally shown extreme submissiveness to the executive and legislative branches of government in the abstract review of constitutionality of laws. Its behavior in this type of proceedings compared to its rulings in constitutional appeal proceedings makes it look like Janus, Roman double face god.[66] This casts a shadow on the sincerity of its commitment to the Convention case-law leading to a conclusion that it is not value-based, but strategically driven: the respect for the Convention case-law comes from the submissiveness to another instance – the European Court – which is in the position to review its rulings. Furthermore, the introduction of the power of the Constitutional Court to annul the judgments of other courts, including those of the appellate courts and the Supreme Court of Cassation, places it at the apex of the judicial system in Serbia, when it comes to human rights protection. The dethroning of the Supreme Court of Cassation from its constitutionally defined position of the highest court in Serbia was not without reaction and resistance of its judges, as witnessed by the ping pong rulings between the two courts. The Supreme Court of Cassation and the appellate courts' judges reproach to their Constitutional Court colleagues that they are not justices in the full meaning of the word because the conditions and procedure for their appointment do not resemble those applied to other judges, more specifically, they are more dependent on the will of the political branches of government.[67] Finally, the Constitutional Court's rulings are not easy to reach and research, which renders them insufficiently visible, even when they are of good quality.[68]

Consequently, there is no practice of ordinary courts' judges bringing preliminary references before the Constitutional Court; nor is there a practice of application of the Constitutional Court doctrines - those few that it has developed - by the ordinary courts' judges. Direct application of constitutional norms is rare, contrary to the international treaties, especially the European Convention on Human Rights and the European Court of Human Rights case-law which are increasingly being considered as sources of law by the ordinary courts' judges.[69]

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[66] See Tanasije Marinković, "Janus - les deux faces de la Cour constitutionnelle serbe", *EST EUROPA - Revue d'Etudes Politiques et Constitutionnelles Est Européennes: N° spécial 2015 "La Serbie aujourd'hui : enjeux politique et européen"* (sld. Philippe Claret). Available at: http://www.est-europa.univ-pau.fr/images/archives/2015NS/marinkovic2.pdf

[67] Five justices are appointed by the National Assembly, another five justices are appointed by the President of the Republic, and again five justices are appointed at the plenary sitting of the Supreme Court of Cassation.

[68] Interview with a deputy public prosecutor of the Appelate Prosecutor's Office; Interview with the Belgrade Appelate Court judge.

[69] Interview with a deputy public prosecutor of the Appelate Prosecutor's Office; Interview with the Belgrade Appelate Court judge.

8. CONCLUSION

Judicial culture, in the sense of the customary ways judges think and behave when interpreting and applying the law, is very much determined by the constitutional history of the given polity and socio-political conditions within which it evolved. The same applies to the Serbian judicial culture.

Serbian constitutional history consists of three major periods. In the nineteenth century, Serbia gradually gained independence from the Ottoman Empire and started introducing modern public law institutions, taking as model other European States of its time. Among those institutions, the most important were the separation of powers and the rule of law mechanisms, including the constitutional guarantees of judicial independence. In the "Short Twentieth Century", Serbia became a member of a bigger state, Yugoslavia, which was initially a monarchy and then a Socialist republic after the Second World War. The "Socialist revolution" meant the complete ideological turn in shaping the public law institutions: the system of separation of powers was replaced by the unity of powers, while the formal guarantees of judicial independence significantly deteriorated. In the twenty-first century, after the definite dissolution of Yugoslavia, Serbia re-embraced the values of liberal-democratic constitutionalism. However, it was also confronted with the challenges of the democratic transition and consolidation, in particular the resetting of the institutions, including the reform of the judiciary and the dismissal of all sitting judges and prosecutors.

No matter how distant and different these historic periods are, they have all contributed to the shaping of the present day Serbian judicial culture and the specific tradition of the independent judiciary within it. Firstly, they point to the fact that the importance of constitutional and legislative guarantees of judicial independence is overestimated, while the weight of the authoritarian political and legal culture in influencing the application of these norms is generally underestimated. Secondly, the Serbian constitutional history reveals that political branches of government tend to disrespect judicial independence, especially in politically sensitive matters. Finally, a common historic tread is that the permanent tenure of a judge's office is not secured even when it is constitutionally mandated, which affects judicial behavior towards executive and legislative branches of government.
It was not only the historic circumstances that preconditioned today's Serbian judicial culture and the understanding of the judicial independence. The international factors such

as the European Union and the Council of Europe have been playing their role, as well. As Serbia became a candidate country in 2012, the European Commission reports on the country's progress towards the European Union and its recommendations, including those favoring judicial independence, became increasingly important in the power politics in Serbia. And even prior to this, in 2004, Serbia became a party to the European Convention on Human Rights. This implied the supra legislative status of the European Court's case-law and, accordingly, the evolution of the understanding of the importance of the "judge-made law".

As a result of all these endogenous and exogenous factors, Serbian judicial culture can be summarized as predominantly dogmatic and formalist, with a long-term perspective to evolve towards a more robust role of judiciary in developing the law. Serbian judges generally prefer to adjudicate not on the basis of constitutional or legislative sources, but on the basis of by-laws which attempt to regulate social relations in very details. And, since such regulation is not always available, on many occasions, there is no proper reasoning in the rulings. However, the problem of poorly reasoned judgments is not just the consequence of the tradition of textual exegesis and "one right answer approach". It is also explained by the big case backlog and pressure for the respect of the right to trial within a reasonable time. Due to these challenges, many judges unwillingly adhere to a particular policy of "solving the cases and not the problems", whereas when it comes to politically sensitive matters, it appears that the policy of "delaying the cases and not solving them" is mostly dominant.

The other side of the coin of the predominantly dogmatic and formalist approach to adjudication is that judiciary in Serbia has not established itself as a third branch of government. Serbian judiciary generally does not perceive itself as a separate branch of power and it does not always act like one, as manifested by the practice of poorly reasoned judgments and incoherent case law. It is under open pressure from the executive and legislative branches of government, especially in politically sensitive cases. Furthermore, their prominent members have engaged, for the past couple of years, in the veritable populist attacks on the judiciary, with the intention to intimidate judges who do behave as an independent third branch of government, as well as all the others who could potentially follow suit. Finally, the legal education does not equip future judges with values and heuristic tools necessary for the establishment of the judiciary as an effective third branch. The education at the law faculties does not boost

the image of a judge – lawmaker, but of a judge – simple mouth speaker of the law: the syllabi and teaching methods being more supportive of the authoritarian discourse rather than of the discursive authority.

Despite all the burdens of the past and present times, rulings in the Serbian judicial system are generally impartially rendered and correct on the merits. And the quality of their reasoning is also being improved in the direction of being more discursive, more attentive to the overall coherence of the case-law and more open to the international sources of law. These developments are mostly the product of the Serbian membership in the European system of human rights protection. This "learning-by-doing" has helped a number of judges to question and even abandon the excessive formalism of post-Socialist law and the authoritarian legal culture based on many old-fashioned Continental legal myths.

9. POLICY RECOMMENDATIONS

- Bar exam should be reformed so as to include European human rights law. This reform would allow future judges, prosecutors and attorneys to have the basic knowledge of the law which is judge-made and to grasp what the concept of the discursive authority means in practice. In addition, the reform of the bar exam would prompt the inclusion of European human rights law course in law faculties' curricula.

- Law faculties' curricula should be reformed so as to include European human rights law as a mandatory course. Thereby the students of law – to be judges, prosecutors and attorneys, but also lawmakers and administrators – would embrace from an early stage of their professional education the liberal-democratic values, indispensable for an effective profiling of the judiciary as the third branch of government.

- Legal ethics course, promoting, inter alia, the values of the independent and professional judiciary, should be introduced as a mandatory course in the law faculties' curricula.

- The best comparative and domestic examples of judge made-law should be included in the law faculties' courses' syllabi.

- Law faculties' curricula should be amended to provide for more interactive and discursive teaching methods;

- Ordinary courts' rulings should be easily reached on the courts' websites. This way, their rulings would be more visible and open to professional critique, which in return would gradually contribute to their better quality.

- Constitutional Courts' rulings should be more easily reached on the Courts' websites. This way, its rulings would be more visible and open to professional critique, which in return would gradually contribute to their better quality. Also, already present, good practices of the Court in the constitutional appeal proceedings would thereby be more accessible to ordinary courts' judges, prosecutors and attorneys enabling them to apply it in their practice.

Information about the project

The underlying objective of this project is to ***complement the European Commission's process of vertical judicial Europeanization with an internal, horizontal, initiative that would combine an academic and practical approach in detecting and noting the main shortcomings of our judicial culture,*** and through consultations with international and regional experts, outline recommendations for future steps in the Europeanization of judicial culture.

The project is coordinated by the **Institute for Democracy "Societas Civilis" Skopje (IDSCS)** from North Macedonia, in cooperation with **T.M.C. Asser Instituut** from the Netherlands, the **Judicial Research Center (CEPRIS)** from Serbia, and the **Albanian Legal and Territorial Research Initiative (ALTRI)**, and supported by the **Dutch Fund for Regional Partnership (NFRP)/Matra**. The project will be carried out and have impact in **Skopje (North Macedonia)**, **Belgrade (Serbia)** and **Tirana (Albania)**.

Information about IDSCS

IDSCS is a think-tank organisation researching the development of good governance, rule of law and North Macedonia's European integration. IDSCS has the mission to support citizens' involvement in the decision-making process and strengthen the participatory political culture. By strengthening liberal values, IDSCS contributes towards coexistence of diversities.

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Judicial culture and the role of judges in developing the law in Serbia

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