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CONSTITUTIONAL IDENTITY OF SERBIA: WHAT DOES THE 2006 CONSTITUTION SAY?*

Abstract

The 2006 Constitution of the Republic of Serbia was adopted in an unexpectedly short period of time, in an insufficiently transparent manner, and, most likely, as a consequence of the reaction to the dissolution of the State Union of Serbia and Montenegro, at the initiative of a smaller member of the joint state, that is, Montenegro. The most important elements of the constitutional formation of the “new” state formation, which actually strengthened its independence after many decades of living in multinational states, include the components that were used by the Constitution of 2006 in order for the key components of the constitutional order to be self-identified. The mentioned include, rarely explicitly recognized in the context of comparative law, the “minority rights”, but also a high level of concern for the full preservation of territorial integrity, with the Autonomous Province of Kosovo and Metohija in a particularly important place. Although it is full of inconsistent and linguistically and stylistically, to say the least, “surpassable” solutions, the Constitution of Serbia introduces some new, unexpected elements into the world’s constitutional heritage, contained in the wording dedicated to the protection of basic rights and freedoms. The paper examines the central components of the constitutional identity

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created by the constitutional document that has been in force for almost two decades. Outlines of the constitutional identity of Serbia are also examined in the context of the content of other comparative legal sources in the field of constitutional law, as well as earlier constitutional acts in Serbian history.

Keywords: constitutional identity, constitutionalism in Serbia, the 2006 Constitution of Serbia, constitutional identity of Serbia, constitutional history of Serbia

INTRODUCTION

On the eve of the 20th anniversary of the entry into force of the Constitution of the Republic of Serbia of 2006 (Ustav Republike Srbije 2006), it is necessary to determine to what extent one can speak of the existence of a separate constitutional identity, created primarily on the basis of the document's *text*. The view that constitutional identity is nothing more than the identity of the Constitution is indeed a reflection of "a very practical approach", since it is the Constitution itself that appears as "the most authentic source" of the concept of constitutional identity (Szente 2022, 7). Since, with its somewhat "dizzying" 206 articles, the 2006 Constitution is among the most extensive supreme normative acts of states on European soil, it somewhat facilitates the possibility of determining what the components of the constitutional identity of the Republic of Serbia (Serbia) would be.

The text of the 2006 Constitution is riddled with numerous terminological errors and inconsistencies, as if its authors had remarkably lost focus on many (when it comes to any constitution, without exception, *important*) points. This classifies it as a legal (constitutional) document whose reading is more confusing than it would serve to provide the desired information on the constitutional reality of Serbia or its socio-political tendencies. The process of the adoption of this document was characterized by "inertia and lack of creativity" (Simović 2019, 805). Additionally, it seems that the 2006 Constitution was adopted in the spirit of a trivial political compromise, within which the four largest political parties at the time tailored the document in a way that each of

them incorporated something into its text, which was the outcome of a petty party compromise (Samardžić 2016).¹

Based on the above-mentioned, it appears that it is not that demanding to share a conclusion about the components of the constitutional identity of Serbia, a country whose Constitution appears as a defectively integrated patchwork of various particular interests, based on the daily politics' logic of *do ut des*. In addition, Serbian constitutional scholars appropriately indicated the significant similarities of the 2006 Constitution with its predecessor, the 1990 Constitution of the Republic of Serbia (Ustav Republike Srbije 1990). The 2006 Constitution is, therefore, "a kind of 'general' (repair) [of the 1990 Constitution] in the topics in which life has surpassed it during [...] the years of its implementation" (Marković 2006, 43). However, since the category of constitutional identity was insufficiently explored during the period of validity of the 1990 Constitution (especially due to the simultaneous existence of the Federal Republic of Yugoslavia, which was constituted two years later), the need to establish the most reputable components of the constitutional identity of Serbia, the one created by the 2006 Constitution, remains to be emphasized.

However, despite these inherent fragilities of the 2006 Constitution, there is space for determining certain key identity points in its provisions, which have, at least formally, regulated the legal and political life of Serbia in the last two decades. The paper raises the question of what can be announced when it comes to determining the elements of the constitutional identity of Serbia according to the 2006 Constitution. After the first part of the paper, which is dedicated to a summarized consideration of the concept of constitutional identity in comparative and domestic constitutional science, the following parts of the paper present the components of which, in the opinion of the author of this paper, the constitutional identity of Serbia is comprised. This, fundamentally, refers to the particular style in which the 2006 Constitution set out the framework for the protection of human rights and fundamental freedoms, but – in a manner which is, from the comparative point of view, highly authentic – also the guarantees of minority rights. In addition, the constitutional identity of Serbia is also based on the (not

¹ This is the summary of the part of the cited author's presentation at the conference of the Serbian Association for Constitutional Law, held on the occasion of the 10th anniversary of the 2006 Constitution.

much surprising) constitutionalization of the status of its autonomous provinces, with a special concentration on the *special* status of Kosovo and Metohija within the constitutional order of Serbia. The objective of the paper is to attempt to contribute to the dialogue on the content of the constitutional identity of Serbia, as well as to establish a convincing catalogue of its constituent parts.

ON THE CONSTITUTIONAL IDENTITY

Much has been written about the issue of constitutional identity, as well as – to a lesser extent – about the constitutional identity of Serbia. Nevertheless, some authors are convinced that it is still too early for constitutional identity to be “fully” incorporated in the list of the components of the conceptual apparatus used by constitutional science. Perhaps the reason for this lies in the fact that constitutional identity is, among other things, determined by bearing significant interrelationships with the determination of the political and institutional identity of any state.

Some theorists deny the possibility of the concept of constitutional dignity being constructed at all (Boros 2023, 23). Notwithstanding, a number of authors allow only that, as an independent constitutional concept, constitutional identity “does not have a long past” (Szente 2022, 10). It is fittingly pointed out that, as a “relatively mysterious concept” (Dubout 2010, 453), only a few decades ago, constitutional identity was “an obscure concept” which attracted the attention of only a small number of researchers in the field of constitutional science (Tribl 2022, 226). As a “theoretical question that has been upsetting the world’s most famous names in the field of constitutional law and political science for decades” (Nikolić 2024), constitutional identity is “a concept that is largely undefined” (Cvetković 2021, 6), which is, “difficult to define”, but which (nonetheless) can, in the form of a *temporary* definition, be described as “the union of general and specific constitutional principles and values” (Petrov 2017, 13). Similarly, constitutional identity has become “an all-encompassing term, perhaps as broad as the constitution itself” (Doyle 2023, 728). After all, seemingly somewhat paradoxically, “constitutional identity is shaped through debates about constitutional identity itself” (Boros 2023, 28), which, from the point of view of the author of this paper, seems like a perfectly valid conclusion. It is useful to add that “constitutional identity is the identity which is set up by a

constitution, while pre-constitutional and extra-constitutional identities are those which exist in a society prior to and/or independent of a constitution” (Stojanović i Krcunović 2025, 51).

On the other hand, according to a number of scholars, the role of constitutional identity in legal science is not only unquestionable, but it also occupies a progressively remarkable position. Its importance is particularly growing with the adoption of new constitutional documents around the world. In this sense, “since constitutions must define the political community”, the drafters of the constitution “must look for elements that can serve to substantiate their common identity” (Van den Berg 2023, 36), given that constitutional identity serves the “self-identification” of that same community (Belov 2017, 83). In addition to strictly normative aspects, constitutional identity also includes certain aspects which represent philosophical, sociological, and psychological components (Allezard 2022, 59), as well as constitutional history (Kruzslisz 2018, 119), which is probably especially true in the case of Serbia as a state with a relatively long independent constitutional tradition.

Appearing as a “charter of values” (Chandra 2023, 142, 157), constitutional identity is “a set of fundamental constitutional provisions”, which form the “substantial (inviolable, essential) core of the constitution” (Kucherenko and Klochko 2019, 116), which, in turn, includes “the inalienable respect of some fundamental principles on which the very structure of that State is grounded” (Galimberti and Ninatti 2020, 416). Constitutional identity is “the ‘core’ of the Constitution, its essence, which, though not immutable, is extremely difficult to change” (Petrov 2021, 9). Based on this definition, a difference is recognized between the regular provisions of a constitution and “core, or fundamental, constitutional provisions which are given special status and regarded as unamendable”, at least according to the usual procedure for amending the Constitution (Polzin 2016, 412), and the other ones, which are not distinguished by a particularly high degree of originality, and, in general, do not contribute to the development of comparative constitutional and political science.

One of crucial ingredients of constitutional identity, inevitably, are decisions of constitutional courts, especially in Europe (Allezard 2022; Doyle 2023; Dubout 2010; Đurić 2017, 267; Galimberti and Ninatti 2020; Jovanović 2011, 10; Kruzslisz 2018, 120; Kucherenko and Klochko 2019; Petrov 2021; Petrov and Đorđević 2022; Polzin 2016;

Szente 2022; Scholtes 2020; Stanić 2021; Tribl 2022; Cvetković 2021; Chandra 2023). The same goes for other national courts (Belov 2017, 77), but also with legislators, and even other actors “in the public and private domain” (Jacobsohn 2006, 370). The professional literature also writes about a sort of misuse of the concept of constitutional identity in the European Union (EU) (Halmai 2018).

In constitutional theory, a tendency is point at the emergence of “the populists and authoritarians”, as well as of “the anti-pluralist critiques of constitutional identity”, who abuse the notion of constitutional identity, so that certain member states of the EU could avoid the implementation of their “transnational legal obligations” (Scholtes 2021, 534), thereby achieving “the authoritarian appropriations of constitutional identity” (Scholtes 2021, 536). Constitutional identity also has a protective function, recognized as “the protection of the inviolable core of national constitutionalism” (Belov 2017, 82), which has a special impact on the process of strengthening the sense of national identity. The significance of constitutional identity also lies in the fact that the provisions on which it is based represent an important factor in the process of constitutional *interpretation* (Allezard 2022, 58). This, understandably, brings us back to the undeniable importance of the activities of constitutional courts in this regard.

It is equally possible to determine the components of separate national constitutional identity by observing the arrangements that exist in individual states. This is especially true for countries with a deeply established constitutional tradition and constitutions that have a particularly important comparative influence. Thus, in France, the central element of constitutional identity is the unitary form of the state (Allezard 2022, 68), whilst in Germany it is the unquestionable division of the federal state into its constituent parts (Đurić 2015, 103). In India the function of establishing the corner-stones of the national constitutional identity is performed by secularism and equality of citizens, which aimed at abolishing the ancient caste system (Chandra 2023, 159), and in the United States of America the basic feature of constitutional identity is the immutable republican form of the country’s constitutional organization (Jacobsohn 2006, 362), which applies both to the federal state and to all its individual members.

In Serbian constitutional science, there exist certain contributions to the clarification of the constitutional identity *in general*, but to the explanations of the components of the constitutional identity of

Serbia itself. As it is known to this author, the earliest mention of the (constitutional) identity of Serbia appeared in 1988, as a result of a scientific conference held at the University of Belgrade, Faculty of Law. In the concluding part of the collection of papers presented at the conference, the organizers determined that, amongst other things, “without an appropriate organization of the most important forms of state power” in Serbia, “it is not possible to ensure the identity of the [Socialist Republic] of Serbia as a sovereign and unitary state with provinces within its boundaries”, as it was additionally pointed out that the “unsustainability of the current state organization in the Republic, from the standpoint of legal theory, comparative law, and legal practice” exists (Mitrović i Lubarda 1988, 742). Nonetheless, in accordance with one author’s view, not earlier than the 2006 Constitution was adopted should one search for a historical moment which would represent “the point from which to begin the investigation of the constitutional identity” of Serbia (Cvetković 2021, 15).

Some of the Serbian constitutional scholars have already highlighted certain elements of Serbia’s constitutional identity, which in this regard do not necessarily coincide with the conclusions of the author of this paper. Therefore, Serbia’s constitutional identity consists of: the constitutional judiciary and the relationship between international and domestic law (Cvetković 2021, 50, 61), the rule of law (Đurić 2017, 272), and, in the context of the 1990 Constitution, the somewhat melodious style in which that act was written (Petrov 2020, 31). It should be added that the 1990 Constitution “effectively introduced principal discontinuity with the communist tradition, introducing liberal democratic values such as parliamentary democracy, market-oriented economy and respect of private property” (Stojanović and Krcunović 2025, 53).

When it comes to the 2006 Constitution, it, according to one view, “failed to unite the essential features of Serbia’s constitutional identity in a relatively consistent manner” (Petrov 2017, 13), which corresponds to the conclusion that Serbia “still does not have a stable and clearly defined constitutional identity” (Simović 2019, 804). On the other hand, the esteemed Prof. Ratko Marković “proudly emphasized that Serbia is a country with its own constitutional identity [...], built over more than two centuries” and worthy of full attention and care for its cautious development (Simović 2024, 79). In addition, “it cannot be said that the Constitution of 1990 contained strong expressions of Serbia’s national and historical traditions or identities” (with the exception of the

reference contained in its Preamble, in accordance with which Serbia was defined as a “democratic State of the Serbian people”) (Stojanović and Krcunović 2025, 53–54).

Following this last conclusion, and with full awareness of the demanding nature of the researcher’s task, the author of this paper will attempt to outline certain components of the constitutional identity of the Republic of Serbia. Since establishing constitutional identity requires “distinguishing certain provisions that are particularly worthy of attention” (Dubout 2010, 459), it is important to outline *which* prominent features of the 2006 Constitution might be recognized as Serbia’s particularities in the context of comparative constitutional law. The fulfillment of this task commences with the establishment of the identity role of the constitutional framework for the protection and promotion of human and minority rights.

HUMAN AND MINORITY RIGHTS AS COMPONENTS OF THE CONSTITUTIONAL IDENTITY OF THE REPUBLIC OF SERBIA

The first significant component of Serbia’s constitutional identity may be determined by reading the 2006 Constitution provisions dedicated to the protection of fundamental rights and freedoms of individuals. The object of this protection is not limited only to generally defined “human rights”, but also to particularly regulated and separately recognized “minority rights”, explicitly guaranteed by the document, with due regard for all guarantees that Serbia has assumed in this area from relevant acts of public international law.

It should be noted that in this regard the authors of the 2006 Constitution transferred a large number of related provisions from *the Charter on Human and Minority Rights and Civil Liberties* (Povelja o ljudskim i manjinskim pravima i građanskim slobodama 2003), adopted at the level of the former (and short-lived) State Union of Serbia and Montenegro (SUSM), although formally it was adopted by the former Federal Assembly, the legislative body of the – now also defunct – Federal Republic of Yugoslavia. Moreover, given its *significant* scope (Ustav Republike Srbije 2006, čl. 18–81), the section of the 2006 Constitution dedicated to the protection of human and minority rights represents an exception in comparative law, when it comes to its voluminosity. About a third of the text of the 2006 Constitution is

dedicated to human and minority rights, which places Serbia amongst the very few constitutions in Europe that, numerically speaking, devote such attention to this sensitive topic.

The most important provision on this matter imposes the prohibition of lowering the acquired level of human and minority rights (Ustav Republike Srbije 2006, čl. 20, st. 2). This solution, quite rare in comparative law, represents a true “protective clause” (Đurić 2017, 270). It is based on the provision of the Charter, according to which “attained level of human and minority rights, whether individual or collective, may not be lowered” (Povelja o ljudskim i manjinskim pravima i građanskim slobodama 2003, čl. 57, st. 1). In the context of establishing the protection of fundamental rights as the first component of the constitutional identity of Serbia, it should be noted that this (or any comparable or similar) solution is *not* contained in the Constitution of Montenegro (Ustav Crne Gore 2007), the former second member of the Yugoslav federation, i.e., the SUSM.

The special significance of the aforementioned provision of the 2006 Constitution in the field of constitutional identity lies in the consequences of its *application*. Namely, its text (albeit somewhat tacitly) orders all public authorities (including the judiciary, as the non-political branch of government) to refrain from adopting legal acts, regulations, or decisions (or from applying such documents) that could reduce the obtained level of the protection of fundamental rights, and this, it seems, is valid “in the long run”, which means that this solution should also oblige future constitution writers (who could perhaps appear in the near future). In this way, the prohibition of any regression at the level of fundamental rights and freedoms is established. Although in practice it is not undemanding to determine what *level* of acquired rights was established at the time of adoption of the Constitution, this *acquis* of the constitutional order of Serbia opens up space for the adoption of similar models on a comparative constitutional level. This is especially true for states whose basic political and legal identification is based precisely on respect for and protection of fundamental rights and freedoms of citizens and of human dignity.

In terms of constitutional identity based on the protection of individual rights, the introduction of the legal profession as a constitutional category (Ustav Republike Srbije 2006, čl. 67, st. 2) is also remarkable, making Serbia one of the few European countries in which the provision of legal assistance, at least in principle, is

regulated at the constitutional level. The intention of the drafters of the Constitution to comprehensively protect human rights *via* specific normative mechanisms is also evidenced by the constitutionalization of the constitutional complaint (Ustav Republike Srbije 2006, čl. 170), as well as of the institution of the Ombudsman, or the *Civic Defender* (Ustav Republike Srbije 2006, čl. 138).

In the 2006 Constitution, seven individual (concise and clear) articles (Ustav Republike Srbije 2006, čl. 75–81) are devoted to the protection of the rights of members of national minorities. It also contains quite authentic solutions, such as the mention of “equality of all citizens and ethnic communities in Serbia” (in the text of the Preamble), which is additionally explicitly guaranteed in terms of performing public functions and confirmed eligibility of members of minorities for election to public office (Ustav Republike Srbije 2006, čl. 77). The same applies to the decidedness of the authors of the 2006 Constitution to emphasize that “specific regulations and provisional measures which the Republic of Serbia may introduce in economic, social, cultural and political life for the purpose of achieving full equality among members of a national minority and citizens who belong to the majority” (Ustav Republike Srbije 2006, čl. 76, st. 3), as well as – which is comparatively a very rare example of constitution-drafting – to claim that in the field of education, culture and information, Serbia “shall give impetus to the spirit of tolerance and intercultural dialogue, and undertake efficient measures for enhancement of mutual respect, understanding and cooperation among all people living on its territory, regardless of their ethnic, cultural, linguistic or religious identity” (Ustav Republike Srbije 2006, čl. 81). It is correct, therefore, to underline that, unlike its predecessor, the 2006 Constitution “brings one significant difference in its Section dedicated to human rights”, and this difference is contained in providing “the guarantees of minority rights”, whereby the provisions on the protection of minority rights “represent that part of the constitution that provides elements of a multicultural constitutional identity” (Cvetković 2021, 50).

Although it abounds in inconsistent and, in terms of linguistics and style, at the very least, “surpassable” solutions, the 2006 Constitution also introduced certain new, somewhat unexpected elements into the global constitutional heritage, which are contained in formulations dedicated to the protection of fundamental rights and freedoms. The author of this paper believes that substantive and measured constitutional

protection of minority rights is a virtuous starting point for creating a collective constitutional and, more broadly, political identity of Serbia, regardless of the particular nationality of any of its individual citizens. This does not necessarily have any bearing on the correct statement that “the constitutional identity of contemporary Serbia [...] contains a noticeable acknowledgement of Serbia’s pre-constitutional and extra-constitutional identities, foremost its national (Serb ethnic) identity” (Stojanović and Krcunović 2025, 56).

AUTONOMY OF PROVINCES AS PART OF THE CONSTITUTIONAL IDENTITY OF THE REPUBLIC OF SERBIA

The constitutional status of the two autonomous provinces of Serbia represents a particularly notable comparative feature of the 2006 Constitution (it was, in fact, transferred to that document from previous constitutional acts of Serbia, as a member of the former Yugoslav federations). In this regard, it is important to emphasize that this act set an exceptionally high level of responsibility for the exhausting preservation of the territorial integrity of Serbia, with the Autonomous Province of Kosovo and Metohija (APKiM) holding a particularly important place in this context.

Like the Republic of Italy or the Kingdom of Spain, Serbia is a state with an asymmetrical structure of territorial autonomy, because, unlike is usually the case in comparative constitutional law, autonomy is based on the existence of only two units of territorial autonomy. Moreover, a significant part of the state territory (the use of the term “Central Serbia” should be avoided, as it is reminiscent of unfortunate solutions adopted during the period of the existence of the former Socialist Yugoslav state) is not subject to the same constitutional status enjoyed by the aforementioned units (provinces).

Serbia is one of the few countries in Europe whose Constitution explicitly links the need for the protection of territorial integrity with a part of its territory, whether it is a federal unit, a regional unit, or, as in our case, a territorial autonomy. The 2006 Constitution accords special attention to the mutual relationship between a unit of territorial autonomy and the inviolability of the territory of Serbia as an independent and sovereign state. Namely, the status of the APKiM is explicitly regulated in a different way from the status of the Autonomous Province of

Vojvodina (APV), since the latter enjoys “substantial autonomy” (Ustav Republike Srbije 2006, st. 2 preamble i čl. 182, st. 2).

The constitutional phrase “substantial autonomy” is transplanted from the United Nations Security Council Resolution No. 1244 (UNSC, S/RES/1244), adopted on June 10, 1999 (UNSC, S/RES/1244, Preamble, Art. 10–11, pt. “a”, and Annex 2, Para. 5). The Resolution employs exactly the term substantial autonomy (*une autonomie substantielle*; *существенная автономия*; *una autonomía sustancial*) in the above-mentioned places. Elsewhere in the Resolution (UNSC, S/RES/1244, Annex 1, pt. 5, and Annex 2, Para. 8), it refers to “substantial self-government for Kosovo” (*степень самоуправления для Косово*; *un gobierno autónomo sustancial para Kosovo*), which is most likely just a synonym for the term “substantial autonomy”.² On the other hand, the 2006 Constitution does not provide any such guarantee of autonomy for the other autonomous provinces. Thus, “all provisions of the Constitution on territorial autonomy actually apply only to [APV], because the Constitution provided that [APKiM] enjoys substantial autonomy” (Cvetković 2021, 54).

It is not out of place to point out the weaknesses of the deceptive thesis that can sometimes be heard in the Serbian public, in accordance with which the constitutional guarantees of preserving the APKiM within the framework of Serbia can only be found in the Preamble of the 2006 Constitution. It is quite the opposite. Although it is indisputably mentioned in the Preamble, the APKiM also finds its place in the provision dedicated to the need to adopt a special (constitutional) law by which the essential autonomy of the APKiM within the constitutional order of Serbia would be regulated. Specifically, this model of autonomy “shall be regulated by the special law that shall be adopted in compliance with the proceedings envisaged for amending the Constitution” (Ustav Republike Srbije 2006, čl. 182, st. 2). According to the logic that arises from the procedure prescribed for its adoption, a law thus adopted must have a legal status equal to the other provisions of the 2006 Constitution itself.

The APKiM is also mentioned in the text of the oath taken by the President of the Republic upon assuming office. In it, he, *at the first place*, undertakes to protect the territorial integrity of Serbia, including,

² It is interesting that at this point in the Resolution, in its French version, the phrase “substantial autonomy” (*une autonomie substantielle*) reappears.

explicitly, the APKiM as its integral part (Ustav Republike Srbije 2006, čl. 114, st. 2). In light of the above-mentioned, one may conclude that the autonomy of the APV “is not an unquestionable component of the constitutional identity of the Republic of Serbia, and it should undoubtedly not become one, due to its proven disintegrative effect on the political system” (Simović 2019, 827). These words could lead to the formulation of the position that, *unlike the status of the APV*, the constitutional position of the APKiM indicates that the constitutional provisions dedicated *to it* contain components that would be helpful in determining the content of the constitutional identity of Serbia. Of course, this attitude is supported by the author of *this* paper, who does not wish to attribute similar conclusions to other researchers.

It is correct to conclude that the Preamble of the 2006 Constitution “represents a very important part in determining and understanding constitutional identity”, and, hence, it is not possible to “bypass the Preamble in the analysis of constitutional identity” (Cvetković 2021, 20, 21). This does not decrease the significance of the thesis that “the concept of substantial autonomy of Kosovo and Metohija was introduced where it is the least appropriate, in the ‘preface’ to the Constitution”, since it would have been better that the “solution from the 1990 Constitution was retained”; as the result, the Preamble of the 2006 Constitution became “anti-identitarian” (Petrov 2017, 22–23). Certainly, the Preamble of the 2006 Constitution indisputably “has a normative function, because it emphasizes the constitutional obligation of all state authorities to represent and protect the state interests of Serbia in Kosovo and Metohija”, especially since it (i. e., the Preamble) “is subject to a more complicated revision procedure, because it involves holding a referendum” (Simović 2020, 190).

It is imaginable that one of the main motives for the formulation of the provisions of the 2006 Constitution (and perhaps even of the whole document *as such*) was contained in the need to emphasize, in extremely sensitive international and regional circumstances, the indisputable status of the APKiM as Serbia’s integral part. Such an impulse by the authors of the Constitution would certainly have points of contact with the thesis, which appears to be quite acceptable, that “each constitution introduces a set of values and ideas which it wants to implement into reality” (Stojanović and Krcunović 2025, 52). This is notably important if one takes into account that constitutional identity also serves as one of the “legitimation strategies” (Belov 2017, 73), especially if we (probably

not, although perhaps unfoundedly) assume that drafters of the 2006 Constitution potentially sought to strategically position the issue of the foreseeable status of the APKiM in a timely manner as a topic that can be resolved exclusively within the framework of the internal organization of Serbia. In this manner, the identification of the *constitutional moment* (of 2006) with the need to emphasize the preservation of the APKiM within Serbia's legal and political framework would occur in such a way that the concern for the APKiM as a threatened (and temporarily alienated) part of Serbia would be assessed as a kind of "conscience" of the 2006 Constitution, and the primary reason for its adoption (as the first independent Constitution of a sovereign Serbian state since 1903).

Having "wandered" for a little over a century within the framework of constitutional association with other nations in the territory of the former Yugoslavia(s), it is conceivable that Serbia in 2006 attempted to emphasize the inseparability of its provinces from the state territory, as a central element of Serbia's own constitutional identification (with special reference to the APKiM in this context). This is especially verifiable due to the fact that several years before the adoption of the 2006 Constitution, Serbia lost effective mechanisms for exercising state powers in the territory of the APKiM. This hypothesis is supported by the insufficiently successful historical patterns for resolving the constitutional status of the territory of Kosovo and Metohija, precisely in the period starting from its (re)integration into the legal and political order of Serbia, a little over a century ago.

INSTEAD OF A CONCLUSION

To write about a coherent constitutional identity of Serbia is not without difficulties. This is due to the fact that the text of the 2006 Constitution was adopted abruptly, without (sufficient or, rather, *any*) observation by the informed public within expert forums, and in a manner that resulted in a – without any doubt – *significantly improvable* final text of the document by which the life of the political community of the country has been navigated through the last 20 years. However, although constitutional identity represents a fresh, very contemporary constitutional theoretical concept, it is necessary to cautiously investigate whether – and in which ways – Serbia can be included in the society of states that form an established constitutional identity and certain

particular achievements in terms of improving the scope of constitutional regulation.

If the constitutional identity of a state is defined – quite broadly – as the constitutional self-definition of a given political community, according to the findings of the author of this paper, in terms of the constitutional order of Serbia established by its 2006 Constitution, its basic components include a particularly well-established concept of the protection of human and minority rights, as well as the autonomy of its two provinces – Vojvodina and Kosovo and Metohija – within the framework which guarantees Serbia's territorial integrity and unquestionable sovereignty. Although the issue of constitutional identity in theory has not been clarified sufficiently reliably (and in terms of contemporary constitutionality in Serbia, it represents a noticeably unexplored topic), there is a need to invest further research efforts in determining the elements of the constitutional identity of Serbia. The author of this paper has attempted to contribute to settling the collection of constituent parts of the constitutional identity created by the provisions of the 2006 Constitution.

According to the conclusions of the paper, the focal points of Serbia's constitutional identity are the manner of constitutional regulation of human and minority rights, as well as the special status recognized by the 2006 Constitution for units of territorial autonomy (Serbia's two autonomous provinces), with particular reference to the distinction between the provinces, taking into account the fundamental interest of the drafters of the Constitution in emphasizing the special constitutional position of the southern Serbian province.

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УСТАВНИ ИДЕНТИТЕТ РЕПУБЛИКЕ СРБИЈЕ ПО УСТАВУ ИЗ 2006. ГОДИНЕ**

Резиме

Устав Републике Србије из 2006. године усвојен је у неочекивано кратком року, на недовољно транспарентан начин и, највероватније, као последица реакције на дисолуцију Државне заједнице Србија и Црна Гора, изазвану иницијативом мање чланице заједничке државе. У важније елементе уставног уобличења „нове” државе, која је, заправо, оснажила своју самосталност након бројних деценија живота у многонационалним и сложеним државама, спадају компоненте које су Уставом из 2006. послужиле за самоидентификовање кључних саставница уставног поретка. У њих спада, у упоредноправном контексту ретко изричито присутан, Уставом признат корпус људских и „мањинских права”, али и изузетно висок ниво старања о пуном очувању целине територијалног интегритета, са Аутономном покрајином Косово и Метохија на нарочито важном месту. Иако обилује неконзистентним и језичко-стилски у најмању руку „надмашивим” решењима, Устав Републике Србије у упоредну уставну баштину уноси и неке нове, неочекиване елементе, садржане у формулацијама посвећеним заштити основних права и слобода. У раду су испитани средишњи састојци уставног идентитета створени уставним документом који је на снази безмало две деценије. Обриси уставног идентитета Републике Србије испитани су и у контексту садржине других упоредноправних извора у области уставног права, али и ранијих уставних аката из српске историје.

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Кључне речи: уставни идентитет, уставност Србије, Устав Србије из 2006. године, уставни идентитет Србије, уставна историја Србије

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