



SUNICOP

Comparative governance in CEE



SUNICOP



Serbia



CONSTITUTIONAL DEVELOPMENT

- Former: part of ex-YU
People's Republik of Serbia
Socialist Republik of Serbia
part of state union of Serbia and Montenegro
- 11 April 1992 – FRY (Serbia and Montenegro)
- **27 April 1992 – Constitution**
- 4 Feb 2003 – Constitutional Charter establishing state union of Serbia and Montenegro
- **3 June 2006 – Montenegro's Declaration of Independence**
- 5 June 2005- Serbia officially proclaimed its independence
- **8 Nov 2006 – Constitution of Serbia**

NEW CONSTITUTION - CIRCUMSTANCES

- summer 2006;
- **only a couple of months for preparing a text;**
- the deputies of the NA received the text on the same session when the voting had to be performed;
- **no discussion in the NA!**
- Constitution was adopted unanimously during **irregular session** of the NA!
- submitted to referendum **without public discussion!**

SEE: Opinion of the Venice Commission
from March 2007

2006 Constitution

- 10 titles, 206 articles:
 1. Constitutional principles
 2. Human and minority rights and freedoms
 3. Economic and public finances
 4. Competences of the Republic of Serbia
 5. Organisation of Government
 6. The Constitutional Court
 7. Territorial organisation
 8. Constitutionality and legality
 9. Amending the Constitution
 10. Final provision

SERBIA - EU

- not a member
- 2006 – the Feasibility Study with the EU
- 2006 - terminated negotiations of the Agreement on Stabilisation and Accession

- the European Integration Office (governmental office)
- the European Integration Committee (within the NA)

- Constitution does not contain “integration-clause”

BASIC CONSTITUTIONAL PRINCIPLES

- principle of sovereignty: popular s., state s., legal s.
- rule of law
- division of power
- democracy

DIVISION OF POWERS

LEGISLATIVE: one chamber (250)

EXECUTIVE: Chief of State – direct elections, 5 years
Government

JUDICIAL: CC, Supreme Court of Cassation, appellate courts, district courts, municipal courts

TERRITORIAL DISTRIBUTION OF POWER:

- 1. PROVINCIAL AUTONOMY** – two autonomous provinces (Vojvodina and Kosovo and Metohija)
- 2. LOCAL SELF-GOVERNMENT** – municipalities, towns and the city of Belgrade

ELECTORAL SYSTEM

- Parliament name: Narodna skupstina / National Assembly
- **Unicameral, 250 seats**
- LEGAL FRAMEWORK: Electoral Law 18 October 2000
Last updated on 01.01.2006
- **One nationwide constituency**

Voting system: **Proportional:**

Members are elected by a single nationwide constituency using a **list proportional representation** system. The minimum threshold to win a seat is 5 per cent of the total number of votes. However, there is no minimum threshold for political parties representing coalitions of ethnic minorities. Parliamentary seats are allocated in proportion to the number of votes won by each list, using the highest quotient system (**d'Hondt method**). For allocation of the final seat, if the quotient calculated for two or more electoral lists is the same, the seat shall be allocated to the list having received the largest number of votes overall.

PRESIDENT OF RS
- Boris Tadić -



PRIME MINISTER OF
RS – Mirko
Cvetković



NA



CONSTITUTION MAKING

PROPOSAL TO AMEND THE CONSTITUTION:

1. at least 1/3 of deputies
2. President of Republic
3. Government
4. at least 150,000 voters

NATIONAL ASSEMBLY:

- decides on amending the Constitution
- 2/3 majority of the total number of deputies
- an act on amending C – 2/3 majority of all
- proclaim of the Constitution

CONSTITUTIONAL REFERENDUM

MANDATORY:

NA **MAY DECIDE**

to put forward an act on
republic referendum

OBLIGED:

NA **IS OBLIGED**

to put forward an act to referendum in
cases **when the amendment
pertains to the:**

1. preamble of the C,
2. principles of the C,
3. human and minority rights and freedoms
4. system of authority,
5. proclamation the state of war and emergency derogation from human and minority rights
6. proceedings of amending the C

PROHIBITION TO AMEND THE CONSTITUTION

FIRST CASE:

in the time of the state of war and emergency

SECOND CASE:

connected to the failure of the proposal for amending the C in the NA:

- the same issue may not be subject of const.amendment in the **following 12 months** –

LEGISLATIVE PROCEDURE

RIGHT TO PROPOSE LAWS:

- every deputy
- the Government
- assemblies of autonomous provinces
- at least 30,000 voters
- the Civic Defender and National Bank of Serbia – on issues falling within their competence

REQUIRED MAJORITY:

COMMON RULE: votes of more than one half of the deputies

MAJORITY VOTE OF ALL DEPUTIES – laws which regulate:

1. referendum and national initiative,
2. human and minority rights,
3. territory of autonomous provinces and local self-government units,
4. conclusion and ratification of int.treaties,
5. budget
6. other issues stipulated by the C

PROMULGATION OF LAWS

THE PRESIDENT OF REPUBLIC:

1. **decree on promulgation of laws** (within 15 days), or
2. **return the law to the NA for reconsideration**
– with a written explanation

NA – majority vote of all deputies for adoption of returned law

- the President **obliged** to promulgate the newly adopted law

REFERENDUM

UPON THE REQUEST OF:

1. the majority of all deputies
2. at least 100,000 voters

THE SUBJECT OF R MAY NOT INCLUDE:

1. duties deriving from international contracts,
2. laws pertaining to human and minority rights,
3. fiscal laws,
4. the budget and financial statement,
5. introduction of the state of emergency
6. amnesty,
7. issues pertaining to election competences of the NA

POPULAR INITIATIVE

LEGISLATIVE

*-signed by at least
30,000 voters*

CONSTITUTIONAL

*-signed by at least
100,000 voters*

LEGISLATION BY DECREES

- GOVERNMENT DECREES ON MEASURES PROVIDING FOR DEROGATION FROM HUMAN AND MINORITY RIGHTS – during the state of war and state of emergency
- only when the NA is unable to convene;
- verification of the NA within 48 hours/soon as the NA is in possible to convene
- **effective 90 days at most** (for another 90 days – majority votes of all deputies in the NA)
- for the effectiveness of governmental decree – countersignature of the President of Republic

FOREIGN POLICY

- **THE NATIONAL ASSEMBLY:**

- ratifies international agreements
(majority votes of all)

- **THE PRESIDENT:**

- represents Republic in the country and abroad,
 - upon the proposal of the G – appoints and dismisses ambassadors

- **THE GOVERNMENT:**

- right to conclude int.treaties provided that the content of treaty do not affect the competences of legislative power

STATE SECURITY

- **THE NATIONAL ASSEMBLY:**

- decides on war and peace,
- proclaims the state of war and state of emergency
- decides on measures of derogation from human and minority rights during the state of emergency or war

- **THE PRESIDENT:**

- -commands the army and appoints/dismisses officers of the Army,
- -when the NA is unable to convene: together with PM and the president of NA proclaims war or state of emergency...

- **THE GOVERNMENT:**

- civil control of armed forces,
- when the NA is unable to convene:
 1. the right of PM to proclaim the state of emergency together with the President,
 2. the right to issue a decree countersigned by the President for derogation from HRs...

BUDGETARY POLICY

- FINANCIAL AUTONOMY OF AUTONOMOUS PROVINCES

- STATE AUDIT OFFICE –
 - independent and supreme state body for auditing of public funds*
 - responsible to the NA*

- THE NATIONAL ASSEMBLY:

adopts the Budget and financial statement

OTHER UNRELATED COMPETENCES

- **THE GOVERNMENT:**
 - *supervision of the entire state administration,*
 - *supervision of the legality of work of local governments and governments of a.p.*

- **THE PRESIDENT OF RS:**
 - *calls for parliamentary elections,*
 - *expresses state unity,*
 - *commands the army*

- **NATIONAL ASSEMBLY:**
 - *grant amnesty,*
 - *gives previous approval for the Statute of the autonomous province,*
 - *passes the laws on the state bodies....*

NA – PRESIDENT OF RS

- PRESIDENT DECIDES ON DISMISSAL OF THE NA:
 1. upon the elaborated proposal of the Government – decides to accept or not
 2. bound to dissolve by the Constitution

- President – oath before the NA

- President – entitled to attend (upon an invitation) the session of the NA

PRESIDENT - GOVERNMENT

- absence of counter signature:
 - *possibility to the President to refuse the proposal of the G-*

- President may *require from the G* to take an **attitude** about a **certain issue** from its competence:
- the G *is obliged* to inform him immediately

NA - G

- G:
submission of the law proposal or document to the NA

- G:
informs the NA abouts its activities

- G:
sumbmitts report to the NA – upon its request or at ist own initiative – at least once a year

- NA:
may decide to request from the G to submit a report on its work

NA - CC

- CC **informs the NA** about the implementation of constitutionality and legality and about the problems occurring therein
- CC **submits its opinions and advice** about the necessity of adopting/amending laws

- The proceeding for the dismissal of the President:
 1. NA – proposal / decision to institute proceeding
 2. CC – violation of the Constitution? – decision to the NA

FORMATION OF THE G

1. a candidate for the PM is proposed to the NA by the President – after he/she considers the opinions of representatives;
2. the candidate for the PM – presents to the NA Programme of the G and propose its constitution;
3. the NA simultaneously vote on Programme and election of the PM and members of the G;
4. the G is elected if the MAJORITY OF THE TOTAL NUMBER of deputies votes for

TERMINATION OF TERM OF OFFICE OF THE G

- **COMMENCE** on the day of taking an oath before the NA

- **LASTS** until the expiry of the term of office of the NA which elected it

- **WILL TERMINATE BEFORE** by:
 1. the vote of no confidence
 2. dismissal of the NA
 3. resignation of the PM
 4. other cases stipulated by the Constitution

TRUST AND ACCOUNTABILITY BETWEEN NA-G

- **THE GOVERNMENT**

is responsible for its work to the NA:

- **report** of its work upon the request of the NA,
- **annual report** on its work no later than 60 days before the proposal of the financial statement of the budget,
- is bound to **respond to interpellation** within the period of 30 days

- **THE MINISTERS**
are responsible to the G and the NA:

1. **INDIVIDUAL**
2. **COLLECTIVE responsibility**

SUPERVISION OF THE WORK OF THE G

- INTERPELLATION

1. at least 50 deputies
2. G **obliged** to respond within 30 days
3. NA – discussion and voting on the response
4. to discuss again about the same subject – the expiry of 90 days

- VOTING OF CONFIDENCE to the G or minister

- at least 60 deputies
- discussion by the NA no later than 5 days after the proposal
- NO CONFIDENCE – more than half deputies
- President of R – obliged to initiate proceeding for election of the new G

SAFEGUARDING THE CONSTITUTION

- CONSTITUTIONAL COURT

- CIVIC DEFENDER (OMBUDSMAN)
- Provincial ombudsman (Vojvodina)

- **NA** – the right of 1/3 of total number of deputies to initiate proceedings for preliminary norm control + preliminary approval for the Statute of the AP;
- **GOVERNMENT** – the right of supervision of the work of the AP-bodies + of the work the local governments;
- **PRESIDENT** – the right to suspensive legislative veto + to institute proceedings for assessing constitutionality

CC

- established in 1963;
- **15 judges:** 5 appointed by the NA
5 appointed by the President
5 appointed by the general session of the
Supreme Court of Cassation
- **9 years** term of office
- prominent lawyers, at least 40 years of
experience in practising the law

CC - COMPETENCES

- **SUPERVISION OF CONSTITUTIONALITY AND LEGALITY**
– **preliminary and subsequent;**
- direct **protection of human and minority rights;**
- resolving **conflict of jurisdiction** between state bodies / republic and provincial bodies / bodies of local self-government units;
- resolving **electoral disputes;**
- decision on **prohibition of work of a political party**, trade union organization...;
- decision on **breach of the C by the President;**
- safeguarding the **provincial autonomy and local self-government;**
- decision on the **appeal to terminate the tenure of judges' office**

NORM CONTROL

- PRELIMINARY (*a priori*)

Includes:

1. laws
2. acts brought by the bodies of AP
3. common acts of the municipality

1. - REQUEST OF AT LEAST 1/3 OF THE TOTAL NUMBER OF DEPUTIES – 7 days!
2 AND 3.- Government

- SUBSEQUENT (*a posteriori*)

Includes:

1. laws and other general acts
2. generally accepted rules of the international law and ratified int.treaties
3. ratified int.treaties
4. other general acts
5. statute and general acts of AP and local s.g. Units
6. general acts of organizations with delegated public powers, political parties, trade unions, civic associations and collective agreements

- **RIGHT TO PROPOSE:**

1. state bodies
2. bodies of territorial autonomy or the local s.g.
3. at least 25 deputies

+
CC – own initiative

CC of Serbia



DIRECT PROTECTION OF HUMAN AND MINORITY RIGHTS

- **right to submit the CONSTITUTIONAL APPEAL:**

1. *each individual who deems that his/her **human or minority rights guaranteed by the C. has been violated or deprived by SINGLE ACT OR ACTIVITY** of the state power body or organization authorized to public authority;*
2. *any other physical entity competent **to monitoring and realization of human and minority rights***

ADOPTION OF C.A.:

- **CC annuls** the relevant act which violate.....;
- **CC orders** the **removal of harmful consequences** within a determined period of time

PROHIBITION OF WORK...

- ...OF A POLITICAL PARTY, TRADE UNION ORGANIZATION OR ASSOCIATIONS OF CITIZENS:
- **CC MAY BAN THEM IF the activity is aimed at:**
 1. violent overthrow of constitutional order,
 2. violation of guaranteed human or minority rights,
 3. or inciting of racial, national and religious hatred

-OF RELIGIOUS ASSOCIATION:
- **CC MAY BAN IT if its activities infringe:**
 1. the right to life
 2. Right to mental and physical health
 3. Right of child
 4. Right to personal and family integrity
 5. Public safety and order
 6. Religious, national or racial intolerance

Thank you for your attention!