Прегледни чланак 061.1EU(497.11)
doi:10.5937/zrpfns53-21565

Darko T. Dimovski, Ph.D., Associate Professor
University of Niš
Faculty of Law Niš
darko.dimovski@yahoo.com

Jelena M. Stanojević, Ph.D., Research Associate
University of Niš
Faculty of Sciences and Mathematics Niš
jelenastanojevic83@yahoo.com

LEGAL AND ECONOMIC CONDITIONS FOR THE EU MEMBERSHIP – EXAMPLE OF THE REPUBLIC OF SERBIA*

Abstract: *The European Union (EU) is an important player at the international level, which has largely contributed to the smooth development of the world economy. Joining the European Union implies a fulfillment of various conditions. The authors focus on the example of the Republic of Serbia to analyze the legal and economic conditions that are requested for a membership in the European Union. In this regard, the legal conditions laid down in Chapter 23 were analyzed in the first part of the paper, through a review of the current status in the field of judiciary, fight against corruption and fundamental rights. Afterwards, the authors devoted a special attention to the study of some of the economic conditions that the Republic of Serbia must fulfill in the process of the European Union accession.*

Keywords: *European Union, accession, Republic of Serbia, legal conditions, economic conditions.*

1. INTRODUCTION

The European integration has made the EU the strongest and most competitive single economy in the world, which plays a leading role in international

* The research was carried out in the framework of the projects no. 179046 and 179066, Ministry of Education, Science and Technological Development of the Republic of Serbia

market, significantly contributing to the smooth development of the world economy. The EU supports developing countries to use opportunities to foster the overall development and, implicitly, raise their living standards. Therefore, EU accession process is expected to have a positive impact on economic growth of all EU member states. Accordingly, many of the new member states, but also in the candidate countries, hope that EU membership will pave the way towards their prosperity, having in mind that according to their prospective the earlier entrants have fared pretty well after their accession.

Nevertheless, not everyone has benefited to the same extent from the new opportunities. The large EU and especially new entrants are in front of a challenge. They must be capable to create an endogenous growth process by investing in physical and human capital and maintain high growth rate even if there are strong pressures of new competition and adjustment. To achieve that, new entrants need more investment leading to further improvements in productivity, skills, and technology transfer; stable legal and economic framework provided by EU membership and assistance from EU funds (World Economic Forum, 2017).

The most recent EU accession rounds that happened in 2004, 2007 and 2013, commonly known as "Central and Eastern European Countries (CEEC)" enlargement, have brought further interest in growth implications of the EU integration. It is thus important to assess whether the accession of transition economies with the quite different economy and low income level in the EU has led to short-term and/or long-term positive growth effects for these EU member states. In this context, special attention in the article is paid to the analysis of legal and economic reforms that need to be implemented in the Republic of Serbia as a precondition for its membership in the European Union. The Republic of Serbia has set the EU membership as its main political goal after the 5th October changes. Membership in the EU requires the fulfillment of a set of strictly defined legal and economic conditions which all candidate countries need to fulfill prior to the EU accession. Therefore, the first part of the paper analyzes legal conditions, while the second part focuses on the analysis of economic conditions.

2. LEGAL CONDITIONS FOR MEMBERSHIP OF THE REPUBLIC OF SERBIA IN THE EU

Accession to the European Union requires the process of the fulfillment of certain legal requirements that are embodied in the so-called Chapter 23. Namely, during 2013, the Republic of Serbia passed through the procedure of analytical review of the harmonization of its own legislation with the acquis and EU standards, thus making the first step towards further integration process. The Republic of Serbia has developed an Action Plan for Chapter 23 (hereinafter: the Action Plan),

which was endorsed by the European Commission.[1] Chapter 23 refers to three major areas: the judiciary, the fight against corruption and fundamental rights. Bearing in mind the character of Chapter 23, the paper focuses on the key points in each of the above areas.

2.1. Judiciary

Judicial reform is foreseen in the National Strategy for Judicial Reform for the period 2013-2018 (hereinafter referred to as the Strategy) adopted by the National Assembly of the Republic of Serbia on 1 July 2013. The Strategy emphasized that judicial reform is a priority of the Republic of Serbia with the aim of improving the independence of the judicial system – the impartiality and the quality of justice, the improvement of the expertise of the competent institutions, responsibility and the efficiency of the judiciary. Based on the above principles, the reform of the judicial system should be carried out in order to fully protect the rights of all citizens, with continuous work on improvement and concrete application of them at each stage of the development of the judiciary and the application of the law.[2] The key point of the mentioned judicial reforms is the change of the Constitution of the Republic of Serbia[3] from the aspect of the manner of election of judges and prosecutors. In other words, the Strategy foresees that, for the sake of independence of the judiciary, the Constitution changes in the part concerning the influence of the legislative and executive authorities on the process of election and dismissal of judges and prosecutors, with a precise role and position of the Judicial Academy as a mechanism for joining the judiciary.[4] By insight into the Action Plan, it can be seen that the deadline for formulating concrete proposals for the amendment of the Constitution was ending in 2015. At the same time, the Action Plan foresees that all steps regarding the amendment to the Constitution will be completed by the end of 2017.[5] However, no constitutional reform has yet been made in terms of changing the way judges choose their judicial functions. Also, the proposed changes to the constitutional reforms have caused a lot of controversy, since the competent ministry proposed changes that, according to expert and non-governmental organizations, do not fulfill the requirement that the holders of judicial functions be elected without the influence of politics.

---

[1] Milica Kolaković-Bojović, „Pristupni pregovori Republike Srbije sa EU u okviru Poglavlja 23 i potreba za izmenom krivičnog procesnog zakonodavstva“, (Accession negotiations between the Republic of Serbia and the EU under Chapter 23 and the need to amend criminal procedural legislation),*Dominantni pravci razvoja krivičnog zakonodavstva i druga aktuelna pitanja u pravnom sistemu Srbije,* Srpsko udruženje za krivičnopravnu teoriju i praksu – Intermex, 2016, 232.

[2] National Judicial Reform Strategy for the period 2013-2018, 2013, 3.

[3] Constitution of the Republic of Serbia, *Official Gazette of RS*, no. 98/2006.

[4] Action Plan for Chapter 23 -APC 23, 2015, 19.

[5] APC 23,30.

The reform of the constitutional norms related to the selection of judges and prosecutors requires a preliminary analysis of the current situation in order to determine the direction of amending the given provisions. Namely, Article 4 of the Constitution prescribes the separation of powers into legislative, executive and judicial, emphasizing that the relationship of these three powers rests on balance and mutual control. At the same time, paragraph 3 of the same article prescribes that the judicial power is independent. The Constitution of the Republic of Serbia (Article 99, paragraph 2, item 3 and Article 147) for the first time prescribes that the National Assembly, acting upon the proposal of the High Judicial Council, elects a judge from candidates. The mandate of the judge elected to the judicial office for the first time is set at three years. In this regard, the question may arise as to why the National Assembly of the Republic of Serbia has the authority to choose for the first time a person in a judicial office, based on the fact that a member of the National Assembly is guided exclusively by the political orders of the party to which he or she belongs, and even when able to assess the expertise of a particular a candidate for performing a judicial function, he does not. In this way, the jurisdiction of the High Judicial Council in the process of election of judges is degraded.[6] Also, one of the basic characteristics of judicial independence is the permanence of its function which is degraded by a constitutional solution that judges should first be elected for the period of three years. After a period of three years, a judge first elected to a judicial function and evaluated that he "performs exceptionally well the judicial office", as required by paragraph 2 of Article 52 of the Law on Judges, is obliged to be chosen as a judge by the High Judicial Council. A person who is deemed "not satisfied" can not be chosen as a judge in a permanent judicial function (paragraph 3, Article 52). Evaluation of judges first elected is renewed once a year (paragraph 1 article 35). The inconvenience arising from this legal solution arises when a judge, first elected as a judge, is assessed as "not satisfied" during his three-year term of office, but also that he "performs exceptionally well the judicial function". Will he be elected to a permanent judicial office in this situation or not? An additional confusion was created by the obligation of a judge to be appointed to a permanent judicial office if he is judged to be extremely successful in performing a judicial function, and during the three-year period when he was first elected judge is assessed and is extremely successful in performing judicial function and does not satisfy.Therefore the right question arises which is the purpose of Article 52 of the Law on Judges.[7]

---

[6] Vojislav Đurđić, "Imenovanje i razrešenje sudija"(Appointment and dismissal of judges), *Zakonodavni i institucionalni okvir nezavisnog sudstva u Republici Srbiji*, Niš, Pravni fakultet u Nišu i Konrad Adenaur, 2009, 83.

[7] Jelena Stanojević, Darko Dimovski„„Uloga države u privlačenju stranih direktnih investicija" (The role of the state in attracting foreign direct investments), *Zbornik radova „Pravna sigurnost*

Another problem in the election of judges is that members of the High Judicial Council are elected by deputies or they themselves, as well as representatives of the executive branch, are members of the same body. Thus, Article 5 of the High Judicial Council Act[8] stipulates that members of the Council President of the Supreme Court of Cassation, which is normally elected by the National Assembly, the Minister of Justice, President of the authorized committee of the National Assembly as members *ex officio* and eight electoral members elected by the National Assembly, in accordance with this Law.

The Constitution of the Republic of Serbia in Article 148, paragraph 1, prescribes that a judge terminates his/her judicial function at his request by the fulfillment of legally prescribed conditions or the dismissal on the basis of the legally prescribed reasons, and if s/he is not elected to a permanent function. Letting the National Assembly of the Republic of Serbia to standardize conditions by the law, as well as the reasons, without any constitutionally imposed restrictions on the termination of judicial office, is unnecessarily overridden, which jeopardizes the principle of the continuity of judicial function.[9] The procedure for dismissal of judges is additionally compromised by the body that decides on the termination of the judicial office – the High Judicial Council. Namely, it was previously pointed out that the High Judicial Council was not free from political influence.

Political influence exists in the election of prosecutors. Namely, Article 5 of the Law on the State Council of Prosecutors[10] prescribes that this body has eleven members. At the same time, the same article stipulates that the members of the State Council are the Republic Public Prosecutor, the minister in charge of the judiciary and the chairman of the competent committee of the National Assembly, as members holding the office and eight election members elected by the National Assembly in accordance with this Law. Article 13 prescribes jurisdiction of the State Prosecutor's Council, according to which this body, among other things, determines the list of candidates for the election of the Republic Public Prosecutor and public prosecutors to the Government and proposes to the National Assembly candidates for the first election as deputy public prosecutor. The shortcomings in the procedure for the election of public prosecutors and their deputies are similar to the procedure for the election of judges, and are reflected in the influence of the policy on the selection of prosecutors. Therefore, we will not specifically explain them, except that we will note that the political influence here is even greater, because the members of the State Council of Prosecutors are the minister in charge

kao pospešujući faktor za direktne strane investicije", Pravni fakultet Univerziteta u Kragujevcu, 2016, 84.

[8] High Judicial Council Act, *Official Gazette of RS*, no. 116/2008, 101/2010, 88/2011 and 106/2015.

[9] V. Đurđić, 84.

[10] Law on the State Council of Prosecutors, *Official Gazette of the Republic of Serbia*, no.116/2008, 101/2010, 88/2011 and 106/2015.

of the judiciary and the chairman of the competent committee of the National Assembly, while at the same time the National Assembly decides on the first election for the deputy public prosecutor.

2.2. Fight against corruption

The action plan envisages that the next area to which special attention must be paid is corruption. The occurrence of corruption puts at risk the realization of the rule of law and the legal state, equality of citizens, trust of citizens in public institutions, equality and justice, but empowering and aggravating social differences. It hampers the development of the entrepreneurial climate and political culture and other basic social values, while encouraging an endeavor to live in an unfair way over the possibility and to be rich in downplaying the value of honest work.[11] Although the Republic of Serbia has ratified all the most important international instruments in the field of fighting corruption, and set up numerous bodies, such as the Coordination Body for the implementation of the Action Plan for the implementation of the National Strategy for the Fight against Corruption, the Anti-Corruption Agency and the Anti-Corruption Council, the problem is not solved as foreseen, but is still present in all its manifest forms. In other words, the Republic of Serbia has adopted the necessary legal acts for the fight against corruption, but it is necessary to work on its reduction, because, as pointed out by Aleksandar Fatic, corruption is part of public life, composed of selective application of law.[12]

Although one of the objectives stated in the Action Plan is the fight against corruption, there is still a lot to be done to reduce its scope.[13] Before considering the necessary measures to reduce corruption, it is necessary to point to its scope. Namely, the best indicators for the extent of corruption are provided by the non-governmental organization Transparency International. According to the latest indicators from 2017, the Republic of Serbia occupies 77th place out of 180 countries with an index of corruption perception 41 (on a scale from 0 to 100, where zero represents a highly corrupt country, while 100 is a country without corruption). However, in order to make a final conclusion on the welfare of the fight against corruption, as the Government of the Republic of Serbia proclaimed in the Action Plan, it is necessary to determine at what point the Republic of Serbia was in the

[11] Živojin Đurić, Dragan Jovašević, Mile Rakić, "Korupcija – izazov demokratiji" (Corruption – A Challenge to Democracy), Institut za političke studije, Beograd, 2007, 76.

[12] Amichai Magen, Leonardo Morlino, International Actors, Democratization and the Rule of Law: Anchoring Democracy?, Routledge, New York, 2008, 173.

[13] See more about this: Milica Kolaković Bojović, „Monitoring i evaluacija reformi u oblasti borbe protiv korupcije" (Monitoring and evaluation of reforms in the field of fight against corruption), *Zbornik Instituta za kriminološka i sociološka istraživanja*, Institut za kriminološka i sociološka istraživanja, 1/2019, 83-97.

previous years in regard to the level of corruption. Since 2012, the Republic of Serbia has made slight progress, given that the perception of corruption perception date was 39. In the period from 2012 to 2017, the corruption perception index ranged between 39 and 42, which indicates that there is a high perception of corruption in the Republic of Serbia, and that the measures undertaken by the Government of the Republic of Serbia do not give the expected results.[14] Therefore, in the next part of the paper, we will present the basic problems from the normative basis, which is necessary to change, so that the index of perception of corruption is as high as possible and thus the Republic of Serbia has progressed to the ranking list created by Transparency International.

The Law on the Anti-Corruption Agency[15] does not stipulate the procedure in cases where the responsible persons will not act on initiatives for dismissal of officials. In other words, when the Anti-Corruption Agency, pursuant to Article 51, makes a measure of public announcement of a recommendation for dismissal, the competent authority has no obligation to proceed to the proposed measure, which gravely diminishes the capacity to fight corruption. The effectiveness of this legal solution is evidenced by the fact that the Anti-Corruption Agency succeeded in removing only eighteen functionaries in the previous three years based on the measures of public announcement of recommendations for dismissal from a public office, although the Agency brought in from 2016 to 2018 64 measures for the public release of a recommendation for dismissal. In 35 procedures, the Agency was informed that the competent authority will not act on the initiative, and in 11 cases the functions of the officials who have violated the law have ceased due to their resignation, expiry of the mandate, retirement and other similar reasons.[16] Therefore, it is necessary to work on legal changes in order to create a mechanism that the competent state bodies must act on the recommendation of the Anti-Corruption Agency.

As a tool in the fight against corruption, in 2002, the Anti-Corruption Council was formed, and the Anti-Corruption Agency was established in 2008 on the basis of the Law on the Anti-Corruption Agency. The difference between these two institutions is reflected in the fact that the Agency is an independent state body whose committee was elected by Parliament on the proposal of nine institutions, whose activity is reflected in the supervisory, control and proposing function. On

---

[14] Corruption Perceptions Index 2017, *https://www.transparency.org/news/feature/corruption_perceptions_index_2017, 29*, December 2018.

[15] Law on the Anti-Corruption Agency, *Official Gazette of RS,* 97/2008, 53/2010, 66/2011 – decision CC, 67/2013 – decision CC, 112/2013 – authentic interpretation and 8/2015 – CC decision.

[16] Bahati državni direktor Mile Bugarin zaposlio sina da nam „mladi ne bi odlazili", a njegovo objašnjenje „zašto je bolje zaposliti rodbinu" je urnebesno, *https://www.blic.rs/vesti/drustvo/bahati-drzavni-direktor-mile-bugarin-zaposlio-sina-da-nam-mladi-ne-bi-odlazili-a/1jve5ps*, 03 January 2019.

the other hand, the Council for the Fight against Corruption is the body of the Government of the Republic of Serbia, which has an advisory function. The Anti-Corruption Agency has a legally defined competence. However, it seems that although there is a clear division of competencies between the Council and the Agency, institutional mechanisms for combating (political) corruption are weakened, since the Republic of Serbia is inclined to establish and accumulate a large number of state bodies and agencies dealing with the same business, and it shares responsibility. Also, this dispersed the power of independent state bodies in the fight against corruption.[17]

The Republic of Serbia in 2014 adopted an adequate regulatory framework for whistleblowers. Although the situation of citizens who report corruption and other illegal activities improved,[18] Whistleblowers Protection Act[19] creates a certain confusion. Namely, the legislator prescribed three types of alerts – internal whistle-blowing, external whistle-blowing and public whistle-blowing, whereby it did not explicitly make a basis for distinguishing when the alert is applied. At the same time, apart from the fact that the legal text can be improved for nomotechnical reasons, there are some other illogicalities. One of them concerns internal whistle-blowing by which the obligation to provide information, which relates to the employer itself, to the same employer. Human rights violations do not constitute a ground for the public whistle-blowing, which is hardly acceptable. If the information contains classified information, the whistleblower is obliged to comply with general and special measures for the protection of classified information, prescribed by the Law that regulates the confidentiality of data. We note that the legislator adopted the Law on the Protection of the Whistleblower, while not taking into account the provisions of the Law on the Prevention of Abuse at Work, although these legal texts should be complementary in the fight against corruption. It is necessary to improve the text with new changes and to remove any doubts that we have pointed out at work. Only in this way one can work to reduce the extent of corruption and other illegal activities. Also, one should consider the practice emerging in the United States that whistleblower can charge a certain percentage of damage caused by illegal activity of the company in litigation proceedings, in order to encourage citizens to report such cases.[20]

[17] Darko Dimovski, „Politička korupcija" (Political corruption), Pristup pravosuđu – instrumenti za implementaciju evropskih standarda u pravni sistem Republike Srbije, Centar za publikacije Pravnog fakulteta, Nis, 2010, 402.

[18] See more about this: Jonathan Macey, Getting the Word Out About the Fraud: A Theoretical Analysis of Whistleblowing and Insider Trading, In: Retaliation and Whistleblowers: Proceedings of the New York University 60th Annual Conference on Labor, Editors: Secunda,P., Estreicher, S., Kluwer Law International, New York, 2009, 442.

[19] Whistleblowers Protection Act, *Official Gazette of RS*, 128/2014.

[20] Darko Dimovski, Ivan Ilić, „Uzbunjivači kao sredstvo borbe protiv korupcije (Whistleblowers as a means of combating corruption)", *Reformski procesi i poglavlje 23 (godinu dana*

2.3. Fundamental rights

The last legal requirement that the Republic of Serbia must fulfill in order to become a member of the European Union is to protect basic human rights. The scope of human rights protection is very wide and covers a whole range of areas: 1. Prohibition of torture, inhuman or degrading treatment and punishment, 2. Freedom of thought, conscience and religion, 3. Freedom of expression, including freedom and pluralism of the media, 4. Principle of non-discrimination and position socially vulnerable groups, 5. gender equality, 6. children's rights, 7. position of national minorities, 8. position of refugees and internally displaced persons, 9. measures against racism and xenophobia, and 10. protection of personal data. Due to the scope of the analysis of the protection of human fundamental human rights in Chapter 23, we will focus only on the issue of torture, inhuman or degrading treatment and punishment.

One of the biggest problems regarding the protection of human rights is the torture, inhuman or degrading treatment and punishment.[21] One of the ways of preventing torture, inhuman and degrading treatment is the increase in the number of prison institutions in the Republic of Serbia, as well as the increased use of alternative criminal sanctions aimed at relieving the accommodation capacities of the penitentiary system in which there are too many convicted persons. Namely, the European Court of Human Rights in its decision Kalashnikov v. Russia considers that the lack of adequate accommodation capacities in prison is unacceptable and constitute degrading treatment and violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[22]In other words, the collective accommodation of convicts or the placement of an excessive number in the same room was recognized by the European Court of Human Rights as a possible violation of the Convention. Also, the overcrowding of capacities in penitentiary institutions violates the obligation stipulated in Article 79 of the Law on the Execution of Criminal Sanctions[23] and Article 15 of the Ordinance on the House Rules of Penitentiary and Penitentiary Institutions and District Prison,[24] that for each convicted person it is necessary to provide at least 8 cubic meters, as well as 4 square meters of space in the dormitory. It should be stressed that the strict implementation of legal obligations on the required number of square and cubic meters will lead to the fact that the real capacities of the

posle): krivičnopravni aspekti, Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, 2017, 464-471.

[21] Action Plan for Chapter 23, 2015, 209.

[22] Case of Kalashnikov v. Russia, appl. no. 47095/99, judgement, Strasbourg, 15 July 2002.

[23] Law on the Execution of Criminal Sanctions, *Official Gazette of the Republic of Serbia*, 55/2014.

[24] Rulebook on the house order of correctional institutions and district prisons, *Official Gazette of the Republic of Serbia*, 72 / 2010.

penitentiary system in Serbia are about 4,500 prisoners, while it is currently in the penitentiary system for serving the prison sentence or in detention for over 10,000 people.[25]

Another way of relieving the penitentiary system in Serbia is the increased application of alternative criminal sanctions. Potential ways of resolving this issue are embodied in the greater application of the opportunity principle and more frequent pronouncing of alternative criminal sanctions. Criminological studies, conducted by Professors Darko Dimovski and Miomira Kostić from the Faculty of Law in Niš, conducted in the Basic and Higher Public Prosecutor's Office in Niš for a three-year period (2010-2013), has shown a possibility of further relaxation of the penitentiary system in Serbia. In fact, for many criminal offensesinstitute percentage of applications conditional delay of criminal prosecution is very small. Achieving the efficiency of more frequent use of this diversionary form would lead to a further reduction in the number of prisoners. However, the frequency of the use opportunities does not depend solely on the work of the prosecution, but on the circumstances related to the suspects in terms of fulfilling the obligations laid down in the Code of Criminal Procedure, which implies that any increased and more efficient activity of the public prosecutor's offices would not inevitably lead to a successful application of the principle of opportunity. At the same time, this criminological study includes the analysis of criminal sanctions in the Basic Court in Nis for the same period of time. The obtained results show that there is no room for a further relaxation of the penitentiary system since the court, in the line with legal requirements, already pronounces alternative criminal sanctions for the majority of criminal offenses.[26]

The conducted criminological study shows that the Republic of Serbia has to invest additional funds to increase accommodation capacities of the penitentiary system in order to meet European standards. At the same time, the second part of the study related to implementation shows that the institute of conditional release could have a greater use, while the results obtained for alternative criminal sanctions implies that the number of prisoners cannot be reduced by pronouncing more criminal sanctions. It should be noted that making a final conclusion requires a criminological study at the Republic of Serbia level. By applying alternative measures to a larger extent by the competent authorities, the Republic of Serbia would apply similar practices in the Benelux countries.[27]

---

[25] The prison system in Serbia, *https://www.ecoi.net/en/file/local/1283810/1788_1316773479_82760.pdf*, 7 June 2019.

[26] Darko Dimovski, Miomira Kostić, „Penološki pristup prevelikom broju osuđenih lica u penitencijarnom sistemu Republike Srbije" (Penological approach to the excessive number of prisoners in the penitentiary system of the Republic of Serbia), *Žurnal za kriminalistiku i pravo,* Kriminalističko-policijska akademija, Belgrade, 2/2015, 175-176.

[27] Pretrpani zatvori u Srbiji, *http://www.rts.rs/page/stories/sr/story/125/drustvo/3506804/pretrpani-zatvori-u-srbiji.html*, 7. June 2019.

3. ECONOMIC CONDITIONS FOR MEMBERSHIP OF THE REPUBLIC OF SERBIA IN THE EU

Economic conditions for accession of the Republic of Serbia to the European Union are prescribed in several chapters. Due to the impossibility to cover all chapters dealing with the economic conditions of EU accession in one article, and in order to leave the possibility for further research in the given area, the paper focuses on the chapter 17 related to the Economic and Monetary Policy.

3.1. National Bank of Serbia

The legislation of the Republic of Serbia under Chapter 17 – Economic and Monetary Policy is largely aligned with the EU legislation. Article 95 of the Constitution of the Republic of Serbia stipulates that the National Bank of Serbia (in further text: NBS) is the Central bank of the Republic of Serbia, independent and subject to control of the National Assembly to which is responsible, and should be managed by the governor elected by the National Assembly. Although a special law is passed on the National Bank of Serbia, Article 107 of the Constitution provides the possibility for NBS to propose laws within its jurisdiction. In this regard, the Law on the National Bank of Serbia[28] has been adopted ensuring its functional, institutional, personal and financial independence. The Law of the NBS is to a large extent aligned with requirements related to the independence of central banks arising from the Treaty on the Functioning of the European Union and the Statute of the European System of Central Banks and the European Central Bank. However, although there is a compliance of the Law on the NBS with the relevant standards, there are still rooms for possible improvements.

Article 2 of the NBS Law prescribes a general prohibition on giving and receiving instructions and predicts that NBS, its bodies and their members must not request or receive instructions from state bodies and organizations, nor from other persons. However, in the process of EU accession it is necessary to amend this article in the sense of prohibiting the requesting and receiving instructions not only from state authorities, but also from EU bodies (article 130 of the Treaty on the Functioning of the European Union). The amendments should provide the exception of this prohibiting rule for the European Central Bank. Further, Article 2 of the NBS Law requires another normative procedure. Namely, paragraph 2 of Article 2 stipulates that NBS is a subject to the Assembly supervision. In order to ensure full independence of the Central bank, especially institutional independence,

[28] Law on the National Bank of Serbia, *Official Gazette of the Republic of Serbia*, 72/2003, 55/2004, 85/2005 – other law, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015 – decision CC and 44/2018.

there is a need to amend this provision with regard to the prevention of a legal possibility to NBS for receiving any instructions from the Serbian Parliament.[29]

The next possibility of improving a legal text about NBS is reflected in a precise determination of other goals which should be achieved in addition to the main goal. Namely, in paragraph 1 of Article 3 of the NSB Law is prescribed that the achievement and maintenance of price stability is a primary goal, while there are no information on other goals. Another legal norm that can jeopardize the interdependence of the Central bank is Article 10. Performing its functions, the National Bank of Serbia cooperates with the Government and other state bodies and takes necessary measures to improve that cooperation without jeopardizing the achievement of its goals. However, when Article 10 is observed through the prism of Article 15 paragraph 6, which stipulates that the Minister of finance attends the Monetary Committee meetings, the NBS independence is questionable. In other words, although the minister responsible for finance does not have the voting right in these meetings, his participation in the Executive Board meetingsmay influence decisions of this body of the Central bank. Therefore, there should be a provision according to which the Minister of finance can be invited to attend the Executive board meetings, but without a possibility of weakening the independence of NBS.[30]

Similarly, until the moment of joining the EU, the Republic of Serbia has to harmonize the paragraph 8 of Article 28 of the NBS Law with the corresponding provisions from the Statute of the European Central Bank. Namely, the official of the National Bank of Serbia may submit an appeal against the decision on dismissal to the Constitutional Court within 30 days from the date of publishing this decision in the Official Gazette of the Republic of Serbia. However, Article 12.2 of the Statute of the European Central Bank stipulates that the governors of the national central banks who are relieved of their duties may refer this decision to the European Court of Justice.[31]

According to Article 62, the National Bank of Serbia cannot grant credits, loans, overdrafts or other forms of credit relief to the Republic of Serbia, autonomous province or local self-government unit, public enterprises and other legal entities founded by the Republic of Serbia, autonomous province or units of local self-government. Also, NBS cannot provide guarantees for settlement of obligations of those entities in which the Republic of Serbia, autonomous province or local self-government units have controlling interest, nor in any other way to ensure settlement of their obligations. Although this article corresponds to Article 123 of the Treaty on the Functioning of the European Union, the list of public sector entities

[29] Screening Report Serbia Chapter 17 – Economic and Monetary Policy- SRSC 17, 2015, 9.
[30] SRSC 17, 10.
[31] SRSC 17, 10.

should be expanded with central, regional, local and other state bodies, other public law entities and public enterprises of other Member States and Union institutions and bodies.[32]

3.2. Public debt

The Law on the Budget System[33] of 2010 in Article 27e stipulates that the general government debt may amount to 45% of GDP, excluding obligations based on restitution. At the same time, the same article foresees that the target annual fiscal deficit in the medium term is 1% of GDP. Although these legal provisions have a declarative character without a sanction for their violation, their achievement is of a high importance for the Republic of Serbia in order to avoid a public debt crisis. According to the report of the Public Debt Management Department of the Ministry of Finance, public debt is being reduced in the last years. Namely, the public debt amounted to 70% of GDP in 2015, while in 2016 it amounted to 67.8% of GDP. The downward trend in public debt continued in 2017 when it was 57.9% of GDP.[34]Although the nominal public debt of the Republic of Serbia is decreasing with the assessment that the state is on the right path to reach the projected public debt rate of 45% of GDP in the coming years, it should be extremely cautious having in mind the absolute values of a debt which still amounts to 24 billion euros. Therefore, economic experts emphasise that the fall in public debt was due to a change in the methodology of calculating gross domestic product. In addition to the changed methodology calculation, they argue that the second reason for the reduced public debt of the Republic of Serbia stems from strengthening the dinar against the US dollar by 15%. By returning the value of US dollar to the former value per dinar, the debt of the Republic of Serbia would be increased by one billion euros without taking any additional state loan.[35]

3.3. Reform of public enterprises

Accession of the Republic of Serbia to the European Union also requires implementation of the reform of public enterprises. The three largest public companies in Serbia are Srbijagas, Elektroprivreda Srbije (EPS) and Zeleznice. The public company Zeleznica has started first with the implementation of reforms, with a reduction in number of employees for 6,000 workers, and being devided

---

[32] SRSC 17,10-11.

[33] Law on the Budget System, „*Official Gazette of RS*“, no. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 – correction., 108/2013, 142/2014, 68/2015 – other law, 103/2015, 99/2016, 113/2017 and 95/2018

[34] State debt condition and structure, 2017, 5.

[35] Javni dug Srbije se smanjuje, a i dalje dugujemo isto novca,http://rs.n1info.com/Biznis/a433278/Javni-dug-Srbije-se-smanjuje-a-i-dalje-dugujemo-isto-novca.html, 08 January 2019.

into three parts: *Serbia Trains for Passenger Transport*, *Serbia Cargo for Transport of Goods*, and *Infrastructure Zeleznica*. At the same time, unsafe railway lines were closed and the basis for obtaining subsidies from the state budget was changed. However, unlike this company, Srbijagas and EPS have not taken necessary steps to be restructured in time. Although Srbijagas according to the latest data is operating profitable, additional efforts should be made to ensure a lasting profitability having in mind reasons for the current success in the the fall in gas prices on a global level and better collection of receivables. At the same time, the Fiscal Council proposes to take two measures by Srbijagas to make this public company profitable in the future: 1) price of gas for public supply should be indexed with future changes in global gas prices, and 2) gas should not be delivered to legal entities that cannot settle their debts for this gas. In this way the practice to supply companies like Petrohemija, MSK, DP Novi Sad would be stopped given their unpossibility to cover debts toward Srbijagas. The one of three mentioned public companies that creates major economic problems for the Republic of Serbia is EPS. Namely, couses of the problem lie in a large number of employees and their high salaries. Likewise, EPS's weak business is reflected in the big losses on the network as well as unprofitable units within the entire system. In this regard, EPS insufficiently invests in maintenance and increase of production capacities, which in the long run can slow down the economic development of the Republic of Serbia as there will not be an adequate electrical infrastructure for the future growth of manufacturing production.[36]

4. CONCLUSION

Accession of the Republic of Serbia to the European Union requires the fulfillment of a whole range of legal and economic conditions. The most significant request in terms of legal conditions relates to the change of constitutional provisions regarding the manner of election of judges and prosecutors. The significance of this change is reflected not only in eliminating the influence of politics on the election of judicial functions holders, but rather in opening a door to a more successful fight against corruption and thus achieving another legal requirement. It is important to note that the Republic of Serbia does not abide by its own dynamics of amending the constitutional provisions regarding the manner of election of judges and prosecutors, while at the same time the expert and general public expresses the fear that the changes will go towards keeping the politics influence on the mentioned election.[37] At the same time, the fulfillment of these two legal conditions

[36] Opinion on the fiscal strategy for 2019 with projections for 2020 and 2021, 2018, 7.

[37] Venice Commission on Amendments to the Constitution of Serbia, 2018, 1-2.

requires the undertaking of a major legislative activity by the Serbian Parliament. Likewise, satisfying the last legal requirement – the rule of law – requires not only normative activity, but also the investment of additional financial resources for raising the capacity of the penitentiary system of the Republic of Serbia, as well as the change of a penal policy.

Fulfilling the economic conditions of EU accession implies, among other things, the further strengthening of independence of the National Bank of Serbia in terms of removing any doubts in the relevant legal text. Also, a major economic problem for the Republic of Serbia is a public debt, which although decreasing the relative values, keeps its absolute value at the same level. In other words, the relative decrease in a public debt of the Republic of Serbia was caused by certain external factors, not by the internal monetary and fiscal policy. One of the main challenges in the process of fulfilling economic conditions is the restructuring of public enterprises. Although the restructuring of public companies is one of the economic priorities of the Government of the Republic of Serbia, special efforts are needed not only to complete the initial reform of the railroad, but also to reform other public enterprises in order to improve their efficiency followed by proper financial support for the capacity building.

The analysis of legal and economic conditions has shown a challenge for the Republic of Serbia in fulfilling the legal and economic conditions for the EU membership. A greater degree of concrete steps should be taken in order to speed up the process and to ensure the quality of the undertaken actions. Only then international expert bodies, such as the Venice Commission, would evaluate the reform with a satisfactory mark.

REFERENCES

Professional literature

Amichai Magen, Leonardo Morlino, International Actors, Democratization and the Rule of Law: Anchoring Democracy?, Routledge, New York, 2008;

Darko Dimovski, „Politička korupcija“ (Political corruption), Pristup pravosuđu – instrumenti za implementaciju evropskih standarda u pravni sistem Republike Srbije, Centar za publikacije Pravnog fakulteta, Nis, 2010;

Darko Dimovski, Ivan Ilić, „Uzbunjivači kao sredstvo borbe protiv korupcije (Whistleblowers as a means of combating corruption)“, Reformski procesi i poglavlje 23 (godinu dana posle): krivičnopravni aspekti, Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, 2017;

Darko Dimovski, Miomira Kostić, „Penološki pristup prevelikom broju osuđenih lica u penitencijarnom sistemu Republike Srbije“ (Penological approach to the excessive number of prisoners in the penitentiary system of the Republic of

Serbia), Žurnal za kriminalistiku i pravo, Kriminalističko-policijska akademija, Belgrade, 2/2015;

Jelena Stanojević, Darko Dimovski, „Uloga države u privlačenju stranih direktnih investicija" (The role of the state in attracting foreign direct investments), Zbornik radova "Pravna sigurnost kao pospešujući faktor za direktne strane investicije", Pravni fakultet Univerziteta u Kragujevcu, 2016;

Jonathan Macey, Getting the Word Out About the Fraud: A Theoretical Analysis of Whistleblowing and Insider Trading, In: Retaliation and Whistleblowers: Proceedings of the New York University 60th Annual Conference on Labor, Editors: Secunda, P., Estreicher, S., Kluwer Law International, New York, 2009;

Milica Kolaković Bojović, „Monitoring i evaluacija reformi u oblasti borbe protiv korupcije" (Monitoring and evaluation of reforms in the field of fight against corruption), *Zbornik Instituta za kriminološka i sociološka istraživanja*, Institut za kriminološka i sociološka istraživanja, 1/2019, 83-97

Milica Kolaković-Bojović, „Pristupni pregovori Republike Srbije sa EU u okviru Poglavlja 23 i potreba za izmenom krivičnog procesnog zakonodavstva" (Accession negotiations between the Republic of Serbia and the EU under Chapter 23 and the need to amend criminal procedural legislation), Dominantni pravci razvoja krivičnog zakonodavstva i druga aktuelna pitanja u pravnom sistemu Srbije, Srpsko udruženje za krivičnopravnu teoriju i praksu – Intermex, 2016;

Vojislav Đurđić, "Imenovanje i razrešenje sudija" (Appointment and dismissal of judges), Zakonodavni i institucionalni okvir nezavisnog sudstva u Republici Srbiji, Niš, Pravni fakultet u Nišu i Konrad Adenaur, 2009;

Wolfram Kaiser, Brigitte Leucht, Morten Rasmussen „The History of the European Union: Origins of a Trans- and Supranational Polity 1950-72", New York: Routledge, 2008;

Živojin Đurić, Dragan Jovašević, Mile Rakić, "Korupcija – izazov demokratiji" (Corruption – A Challenge to Democracy), Institut za političke studije, Beograd, 2007;

Legal regulations

Action Plan for Chapter 23, 2015;

Case of Kalashnikov v. Russia, appl. no. 47095/99, judgement, Strasbourg, 15 July 2002;

Constitution of the Republic of Serbia, Official Gazette of RS, no. 98/2006;

High Judicial Council Act, Official Gazette of RS, no. 116/2008, 101/2010, 88/2011 and 106/2015;

Law on the Anti-Corruption Agency, Official Gazette of RS, 97/2008, 53/2010, 66/2011 – decision CC, 67/2013 – decision CC, 112/2013 – authentic interpretation and 8/2015 – CC decision;

Law on the Budget System, "Official Gazette of RS", no. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 – correction., 108/2013, 142/2014, 68/2015 – other law, 103/2015, 99/2016, 113/2017 and 95/2018;

Law on the Execution of Criminal Sanctions, Official Gazette of the Republic of Serbia, 55/2014;

Law on the National Bank of Serbia, Official Gazette of the Republic of Serbia, 72/2003, 55/2004, 85/2005 – other law, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015 – decision CC and 44/2018;

Law on the State Council of Prosecutors, Official Gazette of the Republic of Serbia, no.116/2008, 101/2010, 88/2011 and 106/2015;
National Judicial Reform Strategy for the period 2013-2018, 2013;
Opinion on the fiscal strategy for 2019 with projections for 2020 and 2021, 2018;
Rulebook on the house order of correctional institutions and district prisons, Official Gazette of the Republic of Serbia, 72/2010;
Screening Report Serbia Chapter 17 – Economic and Monetary Policy, 2015;
State debt condition and structure, 2017;
Venice Commission on Amendments to the Constitution of Serbia, 2018;
Whistleblowers Protection Act, Official Gazette of RS, 128/2014.

Internet sources

http://rs.n1info.com/Biznis/a433278/Javni-dug-Srbije-se-smanjuje-a-i-dalje-dugujemo-isto-novca.html, retrieved 08. January 2019;
https://europa.eu/european-union/about-eu/history_en, retrieved 24. December 2018;
https://fee.org/articles/the-european-economic-com munity/, retrieved 24. December 2018;
https://www.blic.rs/vesti/drustvo/bahati-drzavni-direktor-mile-bugarin-zaposlio-sina-da-nam-mladi-ne-bi-odlazili-a/1jve5ps, retrieved 03. January 2019;
https://www.transparency.org/news/feature/corruption_perceptions_index_2017, retrieved 29. December 2018;
Treatyhttps://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0022, retrieved 24. December 2018.
The prison system in Serbia, https://www.ecoi.net/en/file/local/1283810/1788_1316773479_82760.pdf, 7 June 2019
Pretrpani zatvori u Srbiji, http://www.rts.rs/page/stories/sr/story/125/drustvo/3506804/pretrpani-zatvori-u-srbiji.html, 7. June 2019.

Др Дарко Т. Димовски, ванредни професор
Универзитет у Нишу
Правни факултет у Нишу
darko.dimovski@yahoo.com

Др Јелена М. Станојевић, истраживач сарадник
Универзитет у Нишу
Природно-математички факултет у Нишу
jelenastanojevic83@yahoo.com

Правно-економски услови учлањења земље у Европску унију – пример Републике Србије

Сажетак: *Европска унија има значајну улогу на међународном плану, доприносећи несметаном развоју светске привреде. Међутим, чланство у Европској унији подразумева претходно испуњавање низа услова. Аутори у раду као пример користе Републику Србију приликом анализе правних и економских услова које је неопходно испунити како би једна земља постала члан Европске уније. С тим у вези у раду је прво дата анализа правних услова, прописаних у Поглављу 23, кроз преглед постојећег стања у областима правосуђа, борбе против корупције и основних права. Након анализе правних услова, аутори су посебну пажњу посветили проучавању неких од економских услова које Република Србија мора да испуни у процесу приступања Европској унији.*

Кључне речи: *Европска унија, приступање, Република Србија, правни услови, економски услови.*

Датум пријема рада: 06.05.2019.