

LEGAL ANALYSIS OF THE PROCEDURE OF CONSTITUTIONAL AMENDMENT IN THE CONSTITUTION OF THE REPUBLIC OF NORTH MACEDONIA AND CHANGES OF THE PREAMBLE THROUGH A CONSTITUTIONAL AMENDMENT

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Abstract

In this article we will try to give an overview of the examines the constitutional amendment process in the 1991 Constitution of the Republic of North Macedonia and, more specifically, how these changes have affected the preamble of the constitution. The constitutional amendment process is conducted in accordance with the procedures outlined in the 1991 Constitution. The modification of the preamble is a consequence of constitutional amendments. This study explores the constitutional adjustments of the Republic of North Macedonia as well as the alignment of these changes with practices in Europe. This work offers a more detailed analysis of the Republic of North Macedonia's constitutional amendment process and changes to the preamble. The research topic will examine the permissibility of amending the preamble or any segment of the preamble through constitutional amendments. It will analyze various perspectives on whether the preamble constitutes an integral part of the constitution and consequently assess the feasibility of amending it via a constitutional amendment. In this regard, as a source in terms of methodology will search relevant scientific literature actually scientific books, constitutions, scientific papers in printed version and on the online databases as Google Scholar, Researchgate (journals indexed on EBSCO, SCOPUS, WEB OF SCIENCE) insight by keywords: “*amendments*” “*procedure of constitutional amendment*”, “*constitution of the republic of North Macedonia*” and “*constitution of the Republic of Croatia*”. All these books and scientific works are in different languages, such that, in English, Macedonian, Croatian, Turkish, etc. In that way, the references and the quality of this scientific research are enriched.

Keywords: Amendments, Procedure of Constitutional Amendment, Constitution of the Republic of North Macedonia, Change of Preamble, EU Membership Process

1. Introduction

As a country trying to harmonize North Macedonia's national law with EU law during the European Union harmonization process and within the framework of harmonization packages, it is trying to make the necessary legal and statutory regulations. In this regard, nationalities with national minority status are guaranteed at the constitutional level in line with the guidance of the EU Commission and other bodies. In this context, a process that envisages making changes to the Preamble of the constitution has been a matter of discussion for a long time. In this sense, answers will be sought to the questions of whether both the constitutional amendment procedure and the preamble can be changed within this framework. In this regard, in this article will be researched and used relevant scientific literature actually scientific books, constitutions, scientific papers in printed version and on the online databases as Google Scholar, Researchgate (journals indexed on EBSCO, SCOPUS, WEB OF SCIENCE) insight by keywords: “*amendments*” “*procedure of constitutional amendment*”, “*constitution of the republic of North Macedonia*” and “*constitution of the Republic of Croatia*”. The following elimination criteria were used in the selection of publications: (a) papers written in English,

Macedonian, Croatian, Turkish and other languages, (b) papers published only in the period from 1990 to 2023, and (c) papers examining the use of force in public law and constitution law. In addition to meeting the elimination criteria, over 35 scientific papers were retrieved from the aforementioned online databases. All these books and scientific works are in different languages, for example; in English, Macedonian, Croatian, Turkish, etc. In that way, the references and the quality of this scientific research are enriched.

2. Legal framework

2.1. Procedure of Constitutional Amendment in the Constitution of the Republic of North Macedonia : The 1991 Constitution of the Republic of Macedonia governs Constitutional amendments under the title of "Constitutional Amendment" (Title VIII). According to Article 129, the Constitution of the Republic of Macedonia can be modified through a process known as "*constitutional changes*" or "*amendment*". This regulatory approach has also been applied in a similar manner in the 1963 and 1974 Constitutions of the Socialist Republic of Macedonia. However, utilizing constitutional amendments primarily serves for making minor alterations to the constitution. On the other hand, constitutional law is better suited for addressing substantial changes, providing a more fitting method that aligns with its inherent nature. So much so that the country's 1946 and 1953 Constitutions stipulate that changes will be made by Constitutional law. (Шркариќ, 2014, p. 434).

Article 130 of the Constitution outlines the process for proposing Constitutional amendments in the Republic of Macedonia. These proposals can be initiated by the President, the Council of Ministers, a minimum of 30 Members of Parliament, or by a group of 150,000 citizens with voting rights. It's noteworthy that the threshold of 150,000 citizens for proposing amendments is relatively high when compared to countries of a similar population size. For instance, in Slovenia, a nation with a population close to that of Macedonia, the requirement stands at 30,000 citizens. (Шркариќ, 2014, p. 434-435). Similar to the Slovenian example, it is easy to notice that in other European and neighboring countries this number is drastically lower, for example: the Constitution of the Republic of Serbia provides for 100,000 voters, the same applies to the Constitution of Switzerland. (Шркариќ, 2015). From this point of view and from the expert group that was in charge of the preliminary draft of the new Constitution of 1991, the figure was predicted to be 30,000 voters, which would be more democratic for a country with about 2 million inhabitants.

Article 131 provides a structured framework for adopting an amendment decision, encompassing its approval and enactment. The article outlines the following key steps: The decision to initiate a constitutional amendment is reached through a two-thirds majority vote of the total number of deputies. Proposed constitutional amendments must secure approval through a majority vote of the total number of deputies in Parliament and are subsequently subjected to public debate. The decision to amend the Constitution requires the Parliament's approval by a two-thirds majority vote of the total number of deputies. Constitutional amendments are formally announced by the Parliament. These provisions establish a thorough and well-considered process for amending the Constitution. (Article 131 of the Constitution, Constitutional Amendment No. 4-th paragraph added. Official Gazette No. 91/01).

Constitutional Amendment XVIII introduced the fourth paragraph to this article, which holds significant implications. According to this paragraph, any modifications to the Preamble of the Constitution, local government articles, provisions concerning majority rights, especially those found in Article 131, as well as Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, Article 104, and the inclusion of new provisions related to these topics, necessitate a 2/3 majority of the total number of members for approval. Furthermore, an additional requirement is the endorsement by a 2/3 majority of members of parliament from non-majority nationalities,

adhering to the "Badenter principle" or the "double majority" rule. This dual requirement ensures a robust and balanced decision-making process for such critical constitutional changes. (Zejneli J., Shabani , & Lofton , 2023)

The "Rules of Procedure" of the Assembly meticulously outlines the procedural aspects of Constitutional Amendments. As per Article 195 of the Rules of Procedure, the initiation of a constitutional amendment proposal is open to members of parliament, the President, and the Government. In cases where these authorities do not submit a proposal for an amendment, the Parliament's Presidency takes the responsibility of forwarding the proposal to the relevant parties. The discussions surrounding the constitutional amendment proposal and the corresponding sessions are handled as an integrated process, with a defined maximum duration of 10 working days. Each Member of Parliament is granted multiple speaking opportunities, each limited to a total of 20 minutes. Additionally, a specific total speaking time of 30 minutes is allocated to the Party Group Coordinator.

The individual proposing the changes also has the privilege of speaking multiple times, provided that each speaking session does not exceed 30 minutes. Decisions pertaining to constitutional amendments are ratified by the Parliament through a 2/3 majority vote of the total number of deputies. Following the Parliament's approval to initiate a constitutional amendment, a deadline is established by which the proposer of the amendment must prepare the draft text of the constitutional amendment. This structured process ensures an ordered approach to the amendment procedure. (Assembly Rules of Procedure, Article 200)

Article 197 outlines a crucial timeline for the submission of the draft text of the Constitutional amendment. After the proposing party submits the draft text to the Speaker of the Parliament, there is a requirement to deliver this draft text to relevant bodies, such as the President and the Council of Ministers, no later than 30 days before the scheduled session date, particularly in cases where the proposers are not Members of Parliament. In the first paragraph of Article 198, it is specified that Parliamentary discussions can be conducted separately, allowing for the expression of opinions and suggestions following the presentation of the draft text. These negotiations may span over three business days, with each draft amendment text discussed individually. During these discussions, Members of Parliament are granted a total speaking time of 20 minutes, while group coordinators are afforded a total speaking time of 30 minutes. Additionally, the representative who presented the draft text is allowed a total speaking time of 30 minutes. The deliberations of the Constitutional Commission and the Legislative-Legal Commission, as outlined in paragraph 2, may also take three working days for the preparation of each draft amendment individually. Paragraph 3 emphasizes that the Parliament votes on each draft Constitutional amendment separately, requiring a majority vote of the total number of deputies. In paragraph 4, the Parliament opens the draft amendment for public debate, emphasizing transparency and public engagement. Lastly, paragraph 5 stipulates that after setting the date for public debates, the Assembly is responsible for specifying how the draft amendment will be published and the deadline by which the relevant representative will report on the results of the public debates and provide the text of the amendments to the Constitution. This process ensures a structured and well-informed approach to constitutional amendments.

Article 199 further elucidates the procedural intricacies involved in the constitutional amendment process. According to this article, the individual or entity proposing the amendment must furnish an explanatory text that accompanies the Constitutional amendment proposal, alongside a report detailing the outcomes of the public debates. This comprehensive documentation is to be submitted to the Speaker of the Parliament.

Following this, it is the Speaker of the Parliament's duty to present this explanatory text, in conjunction with the proposal and the report on the results of public debates, to members of parliament, the President, and the Council of Ministers. This presentation should be completed

at least 30 days prior to the scheduled session for discussions. Furthermore, the article prescribes that if the constitutional amendment proposal is not initiated by a member of parliament, the relevant commission, or the Council of Ministers, a member is still entitled to introduce an amendment.

Such an amendment must be submitted no later than eight (8) days before the session in which the Constitutional amendments will be under consideration. In exceptional circumstances, amendments to the draft text can be proposed by the original proposer until the conclusion of the discussion. These amendments are intended to harmonize the text of the draft amendments that have been altered due to the adoption of an amendment. This procedural flexibility ensures a thorough and adaptable approach to managing changes during the discussion of Constitutional amendments. (Assembly Rules of Procedure, Article 200)

Article 200-a, as specified in the Assembly Rules of Procedure, provides a comprehensive framework for the discussion of the draft text of Constitutional amendments. The process involves several key steps: *General Meeting and Subsequent Session:* The Constitutional Commission and the Legislative-Legal Commission convene a general meeting to deliberate on the draft text of the proposed Constitutional amendments. Following this initial meeting, a subsequent session is scheduled, which extends over three working days.

Multiple Speaking Opportunities: During the general discussion, members of both the Constitutional Commission and the Legislative-Legal Commission, as well as members of parliament, have the flexibility to request the floor multiple times for speaking. However, their overall speaking time is restricted to a maximum of 20 minutes. The group coordinator is granted a more extended total speaking time of 30 minutes. Likewise, the individual who initiated the amendment is allowed 30 minutes for their contributions.

Separate Votes: The Assembly conducts separate votes on each alteration made to the text of the Constitutional amendment. Each proposed change must secure a majority vote from the total number of representatives to be accepted.

Speaking Time Limitations: In the context of discussing modifications to the proposal's text concerning Constitutional amendments, specific time limitations are imposed. Each deputy may speak only once within a 10-minute period. Group coordinators or any individuals speaking on behalf of a group may address the assembly once every 15 minutes. The proposal of the amendment is permitted to request speaking opportunities before every 5 minutes. These regulations are designed to facilitate an organized and efficient discussion of proposed Constitutional amendments, ensuring that all relevant parties have an opportunity to participate in the process while maintaining a structured debate.

Article 204 plays a crucial role in ensuring the acceptance and entry into force of the Constitutional Regulation. Here's a more detailed explanation:

Individual speaker's right: As per Article 204, only the individual who has proposed the amendments to the text of the draft amendment to the Constitution is granted the right to speak. Their allotted speaking time is capped at 10 minutes.

Multiple proposers: In cases where there are multiple individuals who have proposed the amendment, they must collectively share a total speaking time of 10 minutes.

Separate voting: The Parliament is responsible for making determinations and decisions regarding each proposed amendment independently. Each proposed amendment is subjected to a separate vote. The outcome of these votes relies on securing a majority vote from the total number of deputies.

Acceptance and entry into force: Article 204 is instrumental in regulating the process of accepting and implementing the Constitutional Regulation. It ensures that the amendments are considered meticulously and that each change has its own vote.

By stipulating these procedures, the Constitutional Regulation underscores the significance of thorough deliberation and the need for an inclusive, organized, and transparent process when

amending the Constitution. This helps safeguard the integrity of the Constitution and the democratic principles it upholds.

The structure and content of the constitution reflect a liberal democratic essence, emphasizing the positive legal aspects over ideological content. While not labeled as a preamble, the introductory section comprises two main segments with several paragraphs. The initial part outlines key milestones in Macedonia's legal evolution, articulating the aspirations of the nation towards sovereignty and independence. The subsequent portion designates the Assembly as the entity responsible for adopting the constitution. (P, Ристовска, & Христовска, 2021, стр. 150-153).

2.2. Different Perspectives on Amending the Preamble of the Constitution: The constitution's framework encompasses diverse content elements: preamble, fundamental principles, normative provisions, amendments, and supplementary sections. Yet, in comparative terms, most constitutions predominantly comprise two fundamental segments: the preamble, serving as a concise introduction, and the normative provisions, constituting the most comprehensive section. (Bačić, 2006, s. 100-101). The normative segment stands as an indispensable component within every constitution, serving as its quintessence by housing the legal norms. Although not all constitutions incorporate preambles, the typical structure often includes a preamble alongside the normative division. Additionally, variations exist among constitutions; while some encompass constitutional amendments, others might feature annexes or supplementary sections. According to the widely held view, A. Bačić emphasizes that a constitution might exist without a preamble; however, lacking the normative part renders it non-existent. This underscores the paramount importance of the normative provisions, acting as the backbone that grants the constitution its substantive legal weight and essence. (P, Ристовска, & Христовска, 2021, s. 61).

Constitutions featuring constitutional annexes present unique supplements integral to the constitutional text, forming an indivisible entity. These supplementary elements are adopted concurrently with the constitutional text and lack independent existence, unlike constitutional laws or amendments. They serve a functional role, interrelated with specific constitutional provisions, either by adding content or providing a basis for practical implementation. (Шкарик, 2015, s. 77-79).

The preamble, acting as the introductory section of the constitution (in French, "preamble" signifies preface or introduction), precedes the normative section. When pondering its status as an integral component, Professor Deskoska emphasizes its significance both before and after the title "Constitution." Specifically, if the preamble appears before the title ("Constitution of..."), it is not considered an integral part of the constitution. However, if it follows the title of the constitution, then it is regarded as an integral part. From this standpoint, in the case of the Constitution of the Republic of North Macedonia, given the preamble's positioning before the title "Constitution of the Republic of North Macedonia," Professor Deskoska suggests that the preamble should not be deemed an integral component of the constitution. (P, Ристовска, & Христовска, 2021, s. 60-61).

On the other hand, when addressing the issue of the binding nature of the constitution's preamble, diverse constitutional and supreme courts, through their binding rulings, extensively delve into the overarching philosophical and legal context of this matter. (Uran P., 2015).

In certain constitutional frameworks, preambles play a pivotal role in interpreting the constitution. For instance, in the context of the German Federal Constitution, it's argued that the preamble holds substantial legal weight, outlining the core principles for interpreting the constitution. Notably, the Federal Constitutional Court of Germany's ruling on the Treaty of Lisbon's compatibility with the German Constitution, dated June 30, 2009, stands as a prime

illustration where the preamble distinctly demonstrates its influential role in constitution interpretation. (Kockott J., 2010, s. 101).

In the specific case addressing the alignment of the Federal German Constitution with the Treaty of Lisbon, the contention revolves around concerns that the EU, upon the treaty's enforcement, would transform into a federal state. Contrary to the apprehensions suggesting that such a transformation would necessitate amendments to the German Constitution, potentially compromising national sovereignty, the court placed emphasis on Article 23/1 and the Preamble of the Constitution. It highlighted the German people's expressed intent to contribute to global peace as an equal participant within a unified Europe. By evaluating these elements, the court concluded that the German people's choice to be part of the EU aligned with democratic principles. It determined that the structure of the Union should maintain compatibility with democratic principles, preserving the sovereignty of member states. As a result, the court ruled that the Union wouldn't transform into a federal state but would safeguard national sovereignties. Consequently, it concluded that the Treaty didn't infringe upon the sovereignty of the Federal German State. While acknowledging the legal binding nature of the preamble in constitutional interpretation, the court stipulated that individuals cannot derive subjective rights directly from the preamble of the Federal German Constitution. (Hekimoğlu M., 2010, s. 125).

The French Constitutional Council, while assessing the constitutionality of the law enacted by Parliament on July 16, 1971, and considering the preamble of the 1946 constitution, declared the provision unconstitutional due to its contradiction with the freedom of association—a fundamental principle recognized within the laws of the republic. This landmark decision marked an essential juncture where the council employed the constitutional preamble as a distinct benchmark in its constitutionality assessment. By incorporating the preambles of both the 1958 and 1946 constitutions, along with the French Declaration of the Rights of Man and of the Citizen of 1789, into the constitution's normative framework, the council solidified the preamble's role within the constitutional hierarchy. Subsequently, in numerous resolutions and decisions, the Constitutional Council reiterated the preamble's status as an independent source of constitutional rights. (Orgad L., 2010).

The Constitutional Courts of Turkey and Poland have aligned in a similar direction. The Constitutional Court of the Republic of Poland, akin to its Turkish counterpart, frequently invokes the preamble of the Constitution of the Republic of Poland in its rulings. Notably, in a pivotal decision rendered in 2005, the Polish court concluded that Poland's accession to the European Union did not violate the constitution for analogous reasons. This convergence showcases how both courts consider the preamble as a pivotal reference point in their deliberations concerning matters of constitutional significance. Once more, while assessing the constitutionality of the Lisbon Treaty in 2010, the Constitutional Court scrutinized the treaty through the lens of the phrases "Poland's sovereignty and national identity" as articulated in the Preamble of the Constitution. Consequently, the court ruled that the treaty wouldn't exert an adverse impact on Poland's sovereignty and national identity. This decision underscores the court's utilization of the preamble as a pivotal reference point in evaluating treaties concerning their alignment with the fundamental values enshrined in the constitution. (Korbayram A., 2023). In examining the preamble and the legal enforceability of the 1982 Constitution of the Republic of Turkey, it encompasses expansive definitions outlining the nation's sovereignty, dedication to Atatürk's revolutions (nationalism), human rights and freedoms, national solidarity, social justice, individual and communal peace, and the democratic rule of law. The Constitutional Court, in numerous rulings, has invoked the preamble, contending that it forms the foundation of core principles and exhibits a close nexus with the normative section of the constitution. Consequently, this inclusion of the preamble

within the framework of fundamental principles has positioned the Republic of Turkey among constitutions where the introductory segment carries legal bindingness. (Korkut L., 2017)

3. Conclusion

In conclusion, the process of amending legislation within the Macedonian Parliament stands as a critical mechanism, reflective of the dynamic nature of legal systems. Amendments play a pivotal role in addressing evolving societal needs, aligning statutes with contemporary challenges, and ensuring the resilience and adaptability of the legal framework. The Macedonian Parliament's approach to amending laws exemplifies a commitment to responsive governance, aiming to uphold the principles of justice, equality, and societal progress. The amendment of the Preamble in the Constitution of Macedonia signifies a crucial phase in the evolution of the nation's foundational document. This endeavor carries profound significance, aiming to reflect the contemporary ethos and aspirations of the Macedonian society while honoring its historical heritage. The amendment process of the Preamble embodies a concerted effort to redefine and reaffirm the core values, identity, and aspirations of the nation. It stands as a testament to the responsiveness of the Macedonian Constitution to the changing dynamics of society, emphasizing inclusivity, diversity, and the recognition of all segments within the nation.

From all of the above, and having in mind, that after the Ohrid Framework Agreement, among other things, a small part of the preamble was amended and supplemented, even the position of a certain number of professors in the field of constitutional law, as decisions of constitutional courts from various countries that have already been highlighted, even practices from various countries such as Turkey, Germany, Poland etc., in that direction we also consider that the preamble is integral part of the constitution and that it can be changed by a constitutional amendment that also provides within the framework of the constitutional norms of the Republic of North Macedonia.

After all, this scientific paper, in its first part, explains in detail the current procedure of constitutional amendment, while in the second part, it tries to explain the different understandings regarding the change of the preamble with a constitutional amendment and whether the preamble can be modified and supplemented by a constitutional amendment.

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