

THE IMPORTANCE OF RESHAPING THE EUROPEAN IDENTITY FOR THE EUROPEAN INTEGRATION PROCESS OF SERBIA

Marija VLAJKOVIĆ*

Abstract: The European Union, as we know it today, is the result of a complex evolutionary process that is characterized by its “vertebral column”: European integration. On the one hand, European integration encompasses numerous internal intertwined economic, political, and legal processes that built the present Union of 27 Member States from the first European communities. On the other hand, European integration also represents the EU’s strongest foreign policy tool, which results in a long and thorough process that is “exported” outside and whose outcome is determined by the Union. Associated or candidate countries, like Serbia, go through this process in order to accede and become an integrated part and member state of the EU. Of course, only when all the criteria assumed by European integration are met. The article analyzes the process of reshaping the European identity and its impact on the European integration of Serbia. Therefore, changes in the “European constitutional arena” are very important, all the more so if we take into account the spillover effect, which is of great importance to the candidate states and also to the EU enlargement policy itself. Studying the legal evolution of European principles and values as well as their role in the (re)construction of European identity, the text sheds new light on the dynamics of the current process of European integration of the Republic of Serbia.

Keywords: European identity, values, rule of law, candidate country, Europeanization, European integrations, Serbia.

* Assistant, Faculty of Law, Belgrade. E-mail: marija.vlajkovic@ius.bg.ac.rs. This paper is the result of research conducted within the scientific strategic project of the University of Belgrade Faculty of Law for 2022, under the name: ‘Savremeni problem pravnog sistema Republike Srbije’ (Contemporary Problems of the Legal System of the Republic of Serbia’; sub-topic: ‘The influence of International Law and International Processes on the Legal System of the Republic of Serbia’).

INTRODUCTION

The European integration process went well beyond the concrete achievements that prominently stood hand in hand with the principle of solidarity as the “carrying pillars” of the then newly introduced European Community in the Schuman Declaration (Schuman Declaration, 2020, May 8).¹ The European project has outgrown the Community motivated predominantly by purely economic reasons (at least for most of the founding states) and evolved into the political Union that is founded on the values common to its Member States. So, with stronger and more coherent political integration, followed by the legal evolution of the founding Treaties, the EU accentuated the importance of “unity” in every possible aspect. This “unity” is strongly depicted in the idea of European identity – the notion which reflects the EU’s legal and political evolution and has gained importance, especially in the dialogue on the commonality of values in the European arena nowadays. This dialogue was preceded by previous enlargement rounds and pre-accession conditionality introduced with the Copenhagen Criteria in 1993 (Copenhagen European Council, Presidency Conclusions, 1993) and especially after the “Big Bang” enlargement (Zalan, 2020) that succeeded. Furthermore, all of this has shaped and influenced the integration path of the Western Balkans, especially that of Serbia and Montenegro, being the frontrunners on their road to the European Union. Hence, the main idea of this article is to point out the connection between the reshaping of the European Union, with special emphasis on the evolution of the European identity built on the concept of common values and common constitutional traditions, on the one hand, and the spill-over of the EU internal processes on the external integration, i.e., on the EU integration of candidate countries such as the Republic of Serbia, on the other hand. Having that in mind, we will first briefly analyze the growing importance of common values in the evolution of the European Union, especially their dual role: in the widening and, in parallel, in the deepening of the EU, meaning in the building of the European identity. Additionally, we will cover the role of these values in the EU conditionality policy and enlargement processes (previous and current). Furthermore, we will then identify the shortcomings of the said conditionality policy used in the enlargement

¹ The Schuman Declaration was adopted on May 9, 1950, and is considered “the foundation of the European Union as we know it”.

rounds that resulted in the crisis of values in the EU. The latter demonstrated how the idea of validating the European project—which was based on its founding ideals and values—is complicated by the collision of two identities: the national and the European. Taking into account all the above, the second part of this article will give a different perspective on European integration: one country that recently “celebrated” a decade since the European Council granted it candidate status (European Council Conclusions, 2012).² On its (long) path to the EU, the Republic of Serbia is rebuilding not only its political reality, but it has also undergone, and continues to undergo, democratic transition of its political and legal systems. We can freely state that the EU integration process has had and continues to have a transformative impact on the legal order of the Republic of Serbia. The process of Serbia’s Europeanization shares common traits with the south-eastern enlargement rounds, but, at the same time, it is specific and strongly influenced by the internal EU post-accession conundrums (De Ridder, Kochenov, 2011, p. 196).

BUILDING EUROPEAN IDENTITY THROUGH A COMMUNITY OF VALUES

The rhetoric on “European values” is not something that came out of nowhere and appeared in the midst of a “polycrisis” in the EU (Speech by President Jean-Claude Juncker, 2016, June 21).³ Moreover, the common civilization background that stems from the ancient Greek tradition and the ideas and values shared during the Renaissance and Enlightenment periods, on the one hand, and Christianity, on the other, has portrayed the uniqueness of the European continent since the very beginning (Rakić, Vljaković, 2021, p. 236). So it was no wonder that when the Treaty establishing a Constitution for Europe was discussed, Christianity and shared values among the member states were mentioned as the founding

² In March 2012, Serbia was granted EU candidate status. On January 21, 2014, the First Intergovernmental took place and Serbia’s accession negotiations officially started.

³ The former president of the EU Commission, Jean-Claude Juncker, often used the Greek word “polycrisis” to describe the situation in the EU arena in the last decade, burdened by the economic crisis, refugee crisis, security threats, and finally the crisis of values.

ideas of the European identity. In addition, even before values appeared in the Treaties or in the European Court of Justice's practice, the member states were already declaring their shared ideals and political traditions in another important regional European organization – the Council of Europe. The Statute of the Council of Europe affirmed values as common heritage shared among their parties, and symbolically, two decades later, this Statute was the inspiration for the first document of the European Communities which announced a new dimension of unity among the member states: the Declaration on the European Identity (Council of Europe, 1949).⁴ The Declaration (1973) marked the orientation of further European integration that would have the aim of ensuring the political legitimization of a United Europe. In order to follow the dynamic nature of EU integration and to create the European Union, the member states agreed that they would, among other things, cherish the values that are common to them. However, in accordance with Robert Schuman's prediction, there were many more "concrete achievements" to be accomplished in order to create a solid ground for the notion of "common" as well as the feeling of "commonality" in the sense of the European identity. The criteria that were set up by the European Council in 1993, the famous Copenhagen criteria, marked a new era in the enlargement policy and EU integration process of future candidate countries. It was very clear that the criteria set were envisaged *pro futuro* for the new countries that were preparing for the EU accession process, especially the countries of Central and Eastern Europe. Those were the countries that were going through democratic transition and the Europeanization process, and criteria such as economic development and enhancing administrative and institutional capacities to effectively implement the *acquis* were not sufficient in order to be adequately integrated into a growing political entity such as the Union. Therefore, another criteria, political (or democratic criteria), was brought up and it demanded guaranteeing the stability of institutions, democracy, the rule of law, human rights, and respect for and protection of minorities, i.e., guaranteeing the (future) values of the European Union (European Commission, 2022; Vljaković, 2019). That same year, the Maastricht Treaty, besides creating the European Union with a plethora of legal, political, and institutional novelties,

⁴ "Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy (...)"

introduced another equally important component of the European identity *in statu nascendi* – European citizenship (The Treaty on European Union, 1992, Article 8). The idea was not to replace national identity but to upgrade it and to create another sense of belonging, especially in the political sense (Rakić, Vlajković, 2021, p. 253; Vlajković, 2018). That way, the European project could gain political legitimization, which was another step forward in creating a European identity with supranational elements. Since the beginning, common values were not enunciated as values but as principles until the Treaty of Lisbon (Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007, Article 2). The Lisbon Treaty continued and slightly altered the path that the Treaty establishing a Constitution for Europe aimed to achieve. In its *travaux préparatoires* (Penelope Project, 2002), values prominently stood out as the foundation of the EU. Aside from the controversial introduction of Christianity as another common aspect among Europeans, which was dismissed, Article 2 of the Lisbon Treaty⁵ took over most of the narrative of the values of the “European Constitution”. The role of values in the Treaty of Lisbon is multifold and multilayered.⁶ Firstly, values are portrayed as the axiological foundations of the European Union (Jovanović, 2021, p. 8). Furthermore, they confirm the EU’s identity in international relations and re-affirm the goals of its foreign policy.⁷ Moreover, with Article 7, values transcend their role as solely symbolical and aspirational goals that should be promoted among the member states (Article 3).⁸ The respect of values by the member states is now guaranteed

⁵ Article 2 of the Lisbon Treaty: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to all the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail”.

⁶ Values are mentioned in ten articles in the Lisbon Treaty: Articles 2, 3, 7, 8, 13, 14, 21, 32, 42, and 29.

⁷ It was not only mentioned in the Lisbon Treaty articles but also in the Preamble where it stated: “Resolved to implement a common foreign and security policy including the progressive framing of a common defense policy (...), thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world (...)”.

⁸ Article 7, envisaging sanctions when the core values are being violated, was introduced in the Treaty of Amsterdam in 1997. The idea behind it was to create an EU legal and political instrument that should be at its disposal when values

by the sanctioning mechanism envisaged in Article 7. Finally, and most importantly, to emphasize the importance of values in the process of EU integration, Article 49 states that “any European state that respects the values referred to in Article 2” is eligible to become a candidate for EU membership. Taking into account the most important Treaty articles values-wise (Articles 2, 7, and 49), we can conclude that values were indeed finally normed and (at least partially) legally defined, taking over as the leading criteria in the further Europeanization process inside, but especially outside of the EU. However, not everything was so bright on the road to acceptance of the values that ought to be common for each member state from the very beginning. On the one hand, the introduction of the common values led us to a situation where values that were supposed to be the sort of glue that is depicted in the “United in diversity” motto are actually strongly contested by several member states (EU, 2022). On the other hand, and as a consequence, values are promoted and enunciated more than ever by the Court of Justice of the EU (CJEU) and other EU institutions in order to remedy the shortcomings in the previous enlargement rounds that resulted in the crisis of values. Finally, this strongly influenced future enlargements too.

ENLARGEMENT: A SUCCESS STORY THAT RESULTED IN AN IDENTITY CRISIS

In order to understand why the idea of European identity was reshaped even before it was properly formed, one should make a connection between the “pre-accession conditionality with post-accession conundrums” (De Ridder, Kochenov, 2011, p.196). The pre-accession phase, marked by the implementation of the conditionality policy by the EU, resulted in several post-accession weak points that deeply impacted the European Union. The one standing out in the aforementioned plethora of crises is the “rule of law backsliding” (Kochenov, Pech, 2016, p. 1063), which encompassed the backsliding of common values *in toto* and brought upon identity clashes and the everlasting primacy-sovereignty discussion between the member states and the EU. The latter became painfully noticeable with the cases of Hungary and Poland, which are now called the states of “constitutional capture”

enunciated first in Article F and then in Article 6 are violated. This coincided with the Eastern Bloc states’ accession that was ongoing and was a sort of insurance that the political criteria, as set up in Copenhagen, were fulfilled even upon the accession.

(Müller, 2015, p. 142) or “illiberal democracies” as Hungarian President V. Orban tends to call them (Kovács, 2019, July 27).⁹ To simplify, as tackling issues that are occurring in these two member states would have to be the topic of a separate article, according to the EU institutions that triggered Article 7 Para. 1 against Poland in 2017 (European Commission Reasoned Proposal, 2017) and against Hungary in 2018 (European Parliament Resolution, 2018), values were jeopardized by the member states’ governments, and those values were the ones that are common to all member states, i.e., European values (Scheppelle & Pech, 2018, March 10). Therefore, the European identity was at stake, and it was compromised by (for now at least) two member states (EURACTIV, 2006, January 13).¹⁰ If we were to make a ‘U-turn’ and go back to the pre-accession phase, we would be able to determine why the abovementioned scenario was inevitable and how it affected the building of the European identity. Firstly, the “ambiguity and vagueness of the Copenhagen criteria” (Kochenov 2004, p. 23) implemented by the EU Commission made sure that future member states did comply with the conditionality mechanisms, but mostly “on paper” in the form of a pre-accession “window dressing” (Kochenov 2011, p. 598). Without a doubt, the conditionality mechanisms imposed requirements and future member states that were going through transition complied with them without ever questioning the quality beyond formal fulfillment. Furthermore, the understanding of values and principles substance, which was at the basis of the said criteria or requirements, was never discussed or determined: neither by EU institutions observing the progress in the democratization and Europeanization processes, nor by the avid candidate countries rushing to transform and become a part of the European Union. The monitoring system that followed the process of negotiations and the

⁹ The expression “illiberal democracy” was coined by the Hungarian president in order to manifest his political tendencies by not deserting democratic principles in governance but at the same time not adapting them to the European liberal democratic model.

¹⁰ It would be good to point out that prior to these two “rogue” member states, the EU had initiated post-accession value debates in 1999 and 2000, when the far-right Austrian party joined the government. The case of Austria or the Haider affair sparked a debate since it failed to provoke the member states to trigger preventive mechanisms for the protection of EU values, i.e., Article 7 of the Treaty of Nice. Questioning the political acceptability inside the EU, Cécile Leconte stated: “The EU is now less likely to take steps against national governments or leaders that might openly contest its fundamental values”.

fulfillment of the Copenhagen criteria was imposed on each candidate country in 1997 (Moorhead, 2014, p. 13). However, it varied from state to state and was “poorly executed” by the EU institutions. As Moorhead discussed, this was more of a “process-oriented process, that emphasized “progress” at all cost” (Moorhead, 2014, p. 30). Secondly, when those countries became fully-fledged member states of the European Union, conditionality was replaced with the principles of mutual solidarity and sincere cooperation (Vlajković, 2020, p. 247). It was implied that all values are common and that all member states share them. However, this is where we come to our third point, or, so to say, a question: are values really common to all member states? More precisely, do all member states have the same understanding of their content and their meaning, having in mind that the EU “constitutionalisation” of values was introduced just before the Big-Bang enlargements, and not from the very start? The commonality of values stemmed from the fact that it was assumed that for founding member states (or for the Western member states) they already existed and were understood as common from the very beginning, and for the others that arrived later, they became common, because that was one of the most important conditions in order to enter the EU (Torcol, 2017, p. 395). Moreover, as it was more a matter of progress with quick results rather than a thorough process, grasping the importance of common values in building European identity was definitely not among the priorities of the states trying to live up to the Western criteria and standards while acceding to the EU. Coming back to the present times, it is no wonder that Hungary is claiming its own exclusive values (Körtvélyesi, Majtényi, 2019) that are different from the European’s, referring to its self-identity¹¹ and that Poland is strongly defending its own constitutional identity against the European (Constitutional Tribunal of Poland, Case K 3/21). The latter case is particularly interesting as the Polish Constitutional Tribunal, upon request for the interpretation made by the Polish Prime Minister Mateusz Morawski, declared that Articles 1, 2, and 19 TEU are partially unconstitutional.

¹¹ In the case of Hungary, the Constitutional Court explored and underlined the notion of self-identity, extracting it from the Hungarian historical constitution that the Fundamental Law of Hungary recognizes. Besides equalizing the protection of constitutional identity with sovereignty issues, the Hungarian Constitutional Court draws attention to exclusive national constitutional values, among which are constitutional self-identity as well as belonging to the Christian church, belonging to the Hungarian ethnic nation, fidelity, etc.

Focusing solely on the Article 2 interpretation for the purposes of this paper, we draw your attention to the fact that in this case, the Constitutional Court of a member state renounced any other significance to Article 2 than the “axiological” one. This decision seemed to continue the line of decisions brought by the Constitutional Court of Poland since the entry into the EU, where it questioned the application of the founding principles, such as the principle of primacy (Constitutional Court of Poland, Case K 18/04) and now common values – all core elements of the European constitutional identity that Poland should be (at least on paper) a part of. Pulling the “constitutional identity” card when it comes to the changes in the legal and constitutional systems of both states is not something that should be scrutinized, as there are no “European constitutional standards” that can determine the limits of national constitutional identities against the European identity (Körtvélyesi, Majtényi, 2019, p. 1724). However, when the constitutional identity narrative is used directly in relation to EU law and its constitutional factors, it is inevitable to question whether and to what extent the European identity is nuanced and reshaped by these actions. Moreover, EU institutions, especially the Court of Justice of the EU, expressed the urge to “step up” and be more prominent about the importance of the European identity and its constitutional foundations – common values. This is the reason why, in its most recent decision in February 2022, the CJEU, while dealing with the measures for the protection of the Union budget in the cases of breaches of principles of the rule of law challenged by Hungary and Poland, stated that the values envisaged in Article 2 TEU are “the values on which the European Union is founded – which have been identified and shared by the member states and which define the very identity of the European Union” (CJEU, Cases C-156/21 and C-157/21, Pares. 127 and 145). Besides outlining the identity of the EU, the Court emphasized that the core value, such as, here contested, the rule of law, is a “value common to their (member states’) own constitutional traditions, which they have undertaken to respect at all times” (CJEU, Para. 266). The CJEU continues to elaborate on the importance of values in the construction of EU identity: “Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values which (...) are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the member states” (CJEU, Para. 264). It seems that on both sides – European and national – the notion and the content of identity became a shield and a sword, putting forward the “game of values” and the European understanding of the latter into the spotlight. As Faraguna and Drinóczi explained, the difference

between the member states' roles in the building (but also in the understanding) of the European identity's basic principles and values is visible as "older member states have been participating in these changes" and the ones who have joined the EU adapted their constitutional and legal systems to the "state of integration they found at the time of their accession" (Faraguna, Drinóczy, 2022). Bearing all that in mind, ensuring value homogeneity becomes a mission impossible (Claes, 2019) that takes the lead role in the discourse on further European integration.

THE SIGNIFICANCE OF REDEFINING THE EUROPEAN IDENTITY FOR THE EUROPEAN INTEGRATION OF SERBIA

The Republic of Serbia, along with Montenegro, is the "frontrunner" of the European integration process in the Western Balkans region (WB). Without a doubt, the European integration process was, and still is, a key factor in not only constitutional changes but also the transformation of the (entire) legal and political system in the Republic of Serbia. Furthermore, since the beginning of the twenty-first century, or more precisely since the democratic transition that introduced core democratic changes, external regional players, beginning with the OSCE, the Council of Europe (with special emphasis on the role of the Venice Commission), and, of course, the EU, have played an important role in the stabilization and then the Europeanization process of the Republic of Serbia. If we take Anastasakis' definition of Europeanization as "a means and an end" (Anastasakis, 2005, p. 78), we can see that European integration of the Republic of Serbia is a (long-term) process in which Serbia has been actively involved for more than two decades, but it is at the same time a primary strategic goal of the Government of Serbia. Since the Stabilization and Association Process was initiated, and especially since starting negotiations process in 2014, the EU became an active participant in the Serbian legal and constitutional evolution, as the Europeanization process became a part of a complex state-building encompassing legal, political and social changes (European Commission, 2003).¹² The most powerful "weapons" of European integration – conditionality instruments were

¹² "The Stabilisation and Association Process (SAP) is the European Union's policy towards the Western Balkans, established with the aim of eventual EU membership". The SAP was initiated in 1999 and confirmed at the Thessaloniki Summit in 2003, where Serbia participated.

established through the Stabilization and Association Agreement (Stabilization and Association Agreement between the European Communities and the Republic of Serbia, 2013) and at the same time through the negotiation chapters adapted from previous enlargement rounds, particularly the last with Croatia, and adapted for Serbia and Montenegro (European Commission, 2004).¹³ However, when it comes to the fundamental values that are at the core of the political accession criteria, with special emphasis on the respect of the rule of law, which is central to Chapters 23 and 24,¹⁴ Croatian experience led the EU to change the approach when it comes to negotiating the two aforementioned chapters. Because of the noticeable shortcomings in the previous enlargement rounds, respect for the common European values became essential for the negotiating framework with candidate countries such as Serbia (European Commission, 2006, December 13; Council conclusions, 2011).¹⁵ In addition, this approach included more proactive involvement of the European Commission in not only the observation and guidance through the process of the EU *acquis* adoption but also in the process of introducing legislative changes and adopting constitutional amendments (European Commission, 2016, pp. 4, 54).¹⁶ In particular, opening and closing (as well as interim) benchmarks were introduced when it comes

¹³ When it comes to the accession of Croatia to the EU, the use of “benchmarks” was first introduced when it comes to opening and provisionally closing the Negotiation Chapters.

¹⁴ Negotiating Chapter 23 - Judiciary and Fundamental Rights; Chapter 24 - Justice, Freedom, and Security.

¹⁵ One of the examples is the Cooperation and Verification Mechanism, an instrument introduced with the entry of Bulgaria and Romania to the EU, with the aim of actually remedying the rule of law related issues post-accession. “Strengthening the rule of law and public administration reform is essential to come closer to the EU and later to fully assume the obligations of EU membership. The experience acquired from the negotiations with Croatia should be used to the benefit of future negotiations, notably in relation to the negotiating chapters on judiciary and fundamental rights and to justice, freedom and security”.

¹⁶ The Progress Report of the European Commission for 2016. Chapter 23 opens up with the sentence: “The EU’s founding values include the rule of law and respect for human rights. A properly functioning judicial system and an effective fight against corruption are of paramount importance, as is respect for fundamental rights in law and in practice (...). As regards political criteria...constitutional reforms are needed for alignment with EU standards”.

to Chapters 23 and 24, along with the possibility to suspend negotiations with Serbia (or other candidate countries) if there is a serious and persistent breach of values on which the Union is founded (Pejović, 2021, p.657). In that way, the respect of the values was pre-introduced in a more rigorous and stringent way, 'mirroring' article 7 TEU even for candidate countries. Furthermore, together with the Venice Commission, the EU Commission provided reports regarding the progress of the Republic of Serbia in the process of first drafting and now introducing the constitutional changes, especially related to the judiciary reforms (Council of Europe, Venice Commission, 2022). This also reflected one of the characteristics of the "upgraded" Europeanization process, where a cross-cutting institutional approach was implemented through the cooperation of various external key factors, such as the Council of Europe and the EU, which actively participated in the core constitutional and legal changes. In the case of Serbia and other WB countries, this regional institutional cooperation when it comes to internal legal, especially constitutional reforms, stands out as a prominent feature of a candidate country's transformation. Externalization, or the involvement of foreign European actors in the adoption of the EU *acquis* as well as in constitutional reforms, is present in the Republic of Serbia from the beginning (drafting or amending the constitutional or legal norms) to the end (implementation of the new constitutional amendments and legislation). One of the examples is the National Action Plan for Chapter 23 by the Government of the Republic of Serbia that was brought up in July 2016, and has undergone many changes influenced by different internal as well as external actors and stakeholders.¹⁷ "Enlargement is not about ticking boxes", stated the Enlargement Commissioner Štefan Füle in order to accentuate the shift in the EU enlargement approach, motivated by the drawbacks in the values' respect by the member states that were a direct result of the early 2000's pre-accession conditionality policy that led to the painfully present "Copenhagen dilemma" (Füle, 2010, November 9; Reding, 2013, April 22). Internal doubts about Europe's identity forced the EU institutions and member states to reconsider its most important tool, enlargement policy. As a consequence, in 2018 the European Commission published a Communication titled "A credible enlargement

¹⁷ Also, the Negotiating Position of the Government of the Republic of Serbia from 2016 for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 23 - Judiciary and Fundamental Rights.

perspective for and enhanced EU engagement with the Western Balkans” where it promoted the principle “fundamentals first” (European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018). The document clearly stated: “Addressing reforms in the areas of the rule of law, fundamental rights, and good governance remains the most pressing issue for the Western Balkans. It is also the key benchmark against which the prospects of these countries will be judged by the EU. The region should embrace these fundamental values of the EU more strongly and more credibly” (EC Communication, 2018, p. 4). Furthermore, the need for an “overall balance” that will link the progress in the rule of law (political criteria) chapters with the opening and closing of other negotiation chapters was strongly emphasized (Pejović, 2018, p. 79) for both Serbia and Montenegro. In addition, to strengthen the role of the EU Commission, an elaborate system of monitoring (*Ibid.*, p. 81) was re-affirmed, introducing, besides standardized Annual Progress Reports delivered by the European Commission, Non-papers on Chapters 23 and 24 that focus solely on the progress made in the aforementioned Chapters, with special emphasis on the respect and insurance of the values. Consequently, as a direct result of the rule of law backsliding, which is at the heart of the European identity crisis, new instruments as well as the revision of the accession methodology for the candidate countries were proposed by the EU at the beginning of 2020 to Serbia and Montenegro and set for other WB countries (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Enhancing the accession process – A credible EU perspective for the Western Balkans) (European Council, 2021, May 11).¹⁸ In the case of Serbia, which accepted this revised methodology on July 10, last year, this different approach to the negotiations with the EU demanded a stronger and more visible commitment to reforms that were once part of the negotiating chapters, now being replaced with clusters. The first cluster, called “Fundamentals”, encompasses former Chapters 23 and 24 and determines the pace of the whole negotiation process. Furthermore, besides proving to be more

¹⁸ “The Council announced the application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia, after both candidate countries expressed their acceptance of the new methodology”.

demanding when it comes to the fulfillment of the conditions and the reporting on the demands met, especially regarding the Fundamentals cluster, the sanctioning mechanism, similar to the one in Article 7 TEU, was intensified. The intention was to prevent the possible breach or risk of breaching the common values as well as backsliding by candidate countries acting according to the revised methodology (Pejović, 2021, pp. 661-663). Determined (at least politically) to stay on its path towards the EU, the Republic of Serbia pleaded for clearer guidelines when it comes to the adaptation to the functioning of the new (revised) methodology, having in mind that the European Commission provided a uniform methodology for all WB countries (The Government of the Republic of Serbia, 2022, March 2).

CONCLUSIONS

To sum up, in the last two decades, the Republic of Serbia has been a candidate country whose constitutional and legal *ordre juridique* were without a doubt influenced by the Europeanization process determined by European integration. This can be drawn firstly by noting Serbia's formal determination in the Constitution where it defined itself as a state committed to the European principles and values (Constitution of the Republic of Serbia, Article 1) or in its EU-related documents such as Serbia's Action Plan for Chapter 23 (Government of the Republic of Serbia, Action Plan for Chapter 23, 2016), which opens with the introductory headline "Commitment to European values". It can also be concluded from its strategic political determination and finally from its ongoing and active involvement in the European integration process: from the undertaking of the 2012 methodology, followed by a decade of negotiations and legislative harmonization chapter by chapter, to the acceptance of the 2020 revised methodology. Evidently, the revised methodology was the outcome of the "spill-over", or in this case, internal disintegration stemming from the inner EU circles that were hit hard by "polycrises" to the outer EU circles. Hence, the Republic of Serbia has a not-so-easy task for numerous reasons: Firstly, with further disagreements on the common European values inside the EU, another additional layer of alterations, in order to ensure that those values are respected in the future, was added to the accession and integration methodology applied to the candidate countries. The latter leads to the question, will it be the last revision of the accession methodology and what can the candidates rely on in terms of legal and political security? Second, the previously

mentioned additional “layers” that comprise the revised methodology are not country-specific but are provided “in bulk,” risking the possible dispersion of a candidate country’s understanding of the common values on the one hand and proper and focused monitoring by the EU Commission on the other. Finally, given the changes and additional conditions that have been implemented over the years, the decline of European identity may contribute to increased fatigue from enlargement both inside and outside the EU (European Western Balkans, 2018, February 2).¹⁹ This particularly refers to the current situation with the candidate states for joining this supranational organization. (Maričić, 2022, April 29).²⁰ The aforementioned reasons point out the fact that the Republic of Serbia is a good example of making a *liaison* between the internally driven processes depicted in the reshaping of the European identity and the external circles of the “European onion” (De Neve, 2007). The accession process that forms a part of the enlargement policy is very asymmetrical: it is determined and influenced by the EU and its own political evolution. How the other side, in this case, the Republic of Serbia, adapts and prepares itself for the new circumstances and the constant evolution of European identity, is of utmost importance for its further EU integration path.

¹⁹ In 2018, former European Commission President Jean-Claude Juncker marked 2025 as an indicative date for Serbia’s accession, however, stating: “It is wrong to assert that I and the Commission have said that Serbia and Montenegro must be in by 2025. No, that is an indicative date, an encouragement, so that the parties concerned work hard to follow that path”.

²⁰ According to the Public Opinion Research effectuated by Ipsos, in the Republic of Serbia in April 2022, 35% of the citizens were for joining the EU, while 44% were against it. This also shows a big discrepancy if we compare it to 2009, when 74% of the Serbian citizens were in favor of EU membership. We also have to bear in mind the momentum of the information gathered.

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