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Constitutional Implications of Bulgaria's Accession to the European Union

(The Constitution of 1991 and the Accession of Bulgaria to the European Union)

The main purpose of this short report is to outline the parameters shaping the debate on the amendments of 1991 Constitution of Republic of Bulgaria and to emphasize the proposals, which have the maximal chances of being drafted. Special and detailed attention will be paid to constitutional amendments implied by the full membership of Bulgaria to the European Union, which has been a focus of the largest constitutional agreement in Bulgarian Public opinion among politicians. There is no political party or even any political actor to oppose the priority of the country's efforts to join the European Union.

In the pages that follow I will make an attempt to point out some of the ideas and trends in the integration process marking new developments in the European constitutionalism.

In the beginning I will attempt to contribute to the theoretical debate on the EU constitution and the second on the constitutional amendments implied for the new member states constitutions and in particular for the Republic of Bulgaria.

Some of the speculations of the report might seem premature or controversial but the purpose of my reflections is not to put an end but rather to incite more vigorous debate.

In the first part of the report the current constitutional structure of the European Union is addressed and two controversial answers might be provided. Drafting of the EU constitution has to be intensified especially after the Amsterdam Treaty has provided for the institutional reform being related to the future enlargement of the European Union. The second is that EU does not need a written constitution for it has one already. I attempted to develop the second thesis.

Second part of the report is describing the current constitutional debate and analyzing the possibilities for securing Bulgaria's accession provided by the constitution.

In the third part of the report the need to adapt the national constitutions of the new Member states is analyzed in comparative perspective and particularly within the context of the constitutional amendments implied by the ratification of the Treaty of Maastricht.

The final part outlines contents and procedure of constitutional amendments implied by Bulgaria's full EU membership.

I. Some Insights on the Current EU Constitution and Survey of the Attempts on the Constitutional Drafting in EU Integration

1. How the Founding Treaties are Related to a Constitution ?

Traditionally authorities in the legal science extrapolate and emphasize the differences between the international treaties and the written constitutions. It is a well known fact that a constitution of the modern nation state is an offspring of the people and national sovereignty in the nation state regarded as an universal and free association of the citizens living on certain territory. The constitutions are indispensable in providing limited and responsible government, framing the political power structure, dividing the powers between the constituted political institutions and protecting human and citizen rights. The constitutions are created by a constituent power and draw their legitimacy from popular sovereignty and basic human rights. In principle, a democratic constitution is undisputed prerequisite and a cornerstone to the rule of law in the nation state.

The International treaties are based on the consensus reached between the representatives of the foreign sovereign states to achieve certain goals They are drafted and after successful negotiations are signed by the governments of the foreign states in a solemn atmosphere, being quite different from the publicity of a robust public constitutional debate.

No doubt , comparison between an exhaustive definition of the constitutions and international instruments will add a long list of different features and qualities and will bring to the widely shared common belief that the constitutions and international treaties are not only different but also opposing legal instruments.

During the first stages of the European communities evolution for more than three decades after the Treaty of Rome a metaphoric usage of the term constitution encompassing the primary law would have meant nothing more than a symbolic significance which can be compared to the qualifying of the structure of the Christian church as a constitution during the middle age.

The integration process after the Single European Act and especially after The Treaty on the European Union, has added two new pillars (though still intergovernmental), has surpassed the economic cooperation and has evolved on the path of a gradual laying of the foundations of a political Union. Clearly enough the European Union does not have all of the features of a prefederal or confederal state, but it has surpassed the international organizations known so far in the history.

Eurosceptics always bring the argument of a constitution being a fundamental law of the nation state in order to avoid any possibility of a constitutional drafting in the

European Union.[1] After half a century the European integration has not created a federal state identical to the known models of federalism in the world.[2] None of the confederations ever created resembles the European Union at the present stage of its development. In contrast to the federalism and confederalism political integration in the European Union in the two new pillars added by the Treaty of Maastricht is of an intergovernmental nature.[3] According to the eurosceptics present and future institutionalization of the European integration is and will preserve the shape of an international and a functional intergovernmental organization.[4] Anticipations of further limitations of the sovereignty of the nationstate feed apprehensions and bring to the reaffirmation of realism and new functionalism, whose ideas has had adherents among the politicians and academics during all the stages of the European integration process.[5]

The arguments of the federalists traditionally follow several tracks. Some of them are putting a lot of effort into proving that our scientific apparatus produces inadequate means to the explanation of the current state of the integration process. They insist upon the thesis that the European Union has surpassed orthodox percept of an international organization and is evolving towards quasiconfederal structure or a non state entity uniting sovereign states, international organization sui generis , prefederal union or non state association of states with its own rational evolution, creating unique structural and

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[1] . This thesis has many adherents in the academic circles and has been extensively expounded by the Judge P. Kirchoff of the German Constitutional Court in the famous Brunner case decision, BVerfGE 89,155

[2] .See Ä. ÄæÝëåéçúð, Ñðàâíèòåëüíûé ôåäåðàëèçì, Ï îëèñ, 1995,¹5, 106-115 ; For dichotomic classifications W.H.Riker, Federalism. Origin, Operation, Significance, Boston, 1964, or other classifications, .McWinney, Comparative Federalism, Toronto, 1965, 16-17; D..Kommers, Federalism and European Integration: A Commentary, in M.Cappelletti, M. Seccombe, J. Weiler, Integration through Law Berlin, 1986, v.1, b.1, 603 -616 ; Ê.C.Wheare, Federal Government, Greenwood Press, Westport, 1980, 35-39

[3] Confederalism is founded on an international treaty as an union of sovereign and equal states, sharing common values and striving to achieve common political goals. The confederation member states preserve their legal personality in the international law. Compared to federalism the institutional structure of a confederal state remains quite limited including a representative institution for common policy, but does not envisage a full fledged separation of powers., G.Malinverni, The Classical Notions of Confederation and of a Federal State in The Modern Concept of Confederation, Council of Europe, 1995, 39-51, 40

In the modern time confederalism was relatively unstable leading to a dissolution of the union or its evolution to a federal state USA , Switzerland 1815 -1848, Germany 1815 - 1866 - 1867 , see for more details, J.F.Aubert,The Historical Development of Confederations, in The Modern Concept of Confederation,... 17-39

4. A.B. Haas, Technocracy, Pluralism and the New Europe, Berkeley, DPSRS,1963, 64-66; Ibid.,The Uniting of Europe, Stanford, 1958; .

[5] Genetically the integration was a victory of functionalism over federalism. European integration has been a voluntary economic sector unification and not a political union which has been a foundation of federalism. The snow ball effect and spillover has brought to the situation that even before the Maastricht Treaty, the communities brought to intergovernmental forms of political cooperation. According to federalists the action has been always quicker than the thought, and thus producing chaos, might be interpreted as a concession to the predominance of functionalism in the process of integration.

constitutional features.[6] Globalization and transitory nature of the nation state and state sovereignty have been brought too by some authorities in the field in order to emphasize that the European Union will need a written constitution.[7] Bringing new features of statehood besides the territory and the nation in the institutional structure and the functioning of the European Union and speculation on the crisis of the territory and nation as a statehood elements have been another arguments brought in the discussion.[8]
After reconstructing the traditional forms of the state there has been some speculation that the European Union is a unique postmodern state [9].

The public discourse on how the founding treaties relate to a constitution of the European Union would be incomplete and incorrect if the role and jurisprudence of the European Court of Justice is ignored. Measured by standards of the continental (civil law) legal system judicial activism has succeeded in laying down and affirming the principles of EC law and has been a watchman for the preservation of the Treaties. Jurisprudence of the Court of Justice and the community legislation enacted by the communities institutions were instrumental to the affirming of the integration process through law and not as political union exemplified by the federalism. In this sense the " constitution of Europe" has emerged as a result of legal and not statehood evolution. A decisive factor in the gradual transformation of the founding treaties to a constitution of the European Union was the process of constitutionalization of the founding treaties.

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[6] . See G. Schuppert, On the Evolution of a European State: Reflections on the Conditions of and the Prospects for a European Constitution in Constitutional Policy and Change in Europe, ed. J.J. Hesse and N. Johnson, Oxford, 1995, 324-368, 330, 344-348 ; For German doctrine treating the European Union as a functional international organization, being a regime and not a federation or concordat interlocking system see R.Hrbeck, Federal Balance and the Problem of Democratic Legitimacy in the European Union, in Aussenwirtschaft 50, Jahrgang 1995, Heft I, 43-66, 46-49 ;
M. Zuleeg, The European Constitution Under Constitutional Constraints: The German Scenario, 22 European Law Review, 1997, Feb., 19-34, 20-21

[7]. N. MacCormick, Beyond the Sovereign State, 56 Modern Law Review, 1993, 1; " Sovereignty: Myth and Reality, 11 Scottish Affairs; " Sovereignty, Democracy and Subsidiarity" in Democracy and Constitutional Culture, ed. R. Bellamy and oth., London, 1995 ; C.M.G. Himsworth, In a State No Longer: The End of Constitutionalism?, Public Law, Winter, 1996, 639-660; V.Schmidt, The New World Order, Incorporated: The Rise of Business and the Decline of the Nation-State, EUI Working Paper, RSC N95/5; For critique on sovereignty in the Public International law see L. Henkin, International Law: Politics, Values and Functions, General Course on Public International Law, Academy of International Law, Dodrecht, 1989, 44 - 49 ; See J. Habermas, Citizenship and National Identity in Between Facts and Norms,Polity Press, 1996, 490-515

[8] Globalization has casted a new focus on territory as the basic element of the state. In the ideas of Poggi this constellation has been developed as a crisis of territoriality, G. Poggi, The State, Its Nature, Development and Prospects, Stanford, California, 1990, 183-189. The power of transnational organization has been as if separated (severed) from the state territory and their decisions within the legal boundaries of action have had direct impact on national legal persons within the member states, see V. Schmidt, The New world Order, Incorporated: The Rise of Business and the Decline of the Nation State, EUI, RSC, N 95/5

[9] For extensive treatment see J. Caporaso, The European Union and the Forms of State: Westphalian, Regulatory, or Postmodern ?, Journal of Common Market Studies, v.34,N 1, March 1996, 28-52

2. The Constitutionalization of the Founding Treaties.

The constitutionalization of the founding treaties goes beyond securing the supremacy of the international law in the municipal legal order. Most of the constitutions provide that international norms under certain conditions become part of the national legal order and acquire legal force of a parliamentary legislation, or by superseding the statute law stand second to the constitution only.[10]

The constitutionalization is the process of gradual transformation of the founding treaties into a supreme and fundamental law penetrating the national legal order, having a supremacy to the legal systems including constitutions of the EU Member States . By this process the Treaties legally bind the sovereign EU Member States by a vertical legal regime with enforceable rights and obligations to all the institutions of government and national legal persons.

The European Court of Justice has been an indispensable vehicle in the process of constitutionalization, affirming through different stages community law as autonomous supranational legal order .[11] The role of the Court can be compared to the judicial review in the United States in securing the growth of the U S constitution, making the formal constitutional amendment unnecessary while adapting the content of the constitutional provisions to the new realities.

The constitutionalization is a mechanism through which the unwritten constitution is taking shape through the Court's jurisprudence. In the words of Judge Mancini " If one were asked to synthesize the direction in which the case - law produced in Luxembourg has moved since 1957, one would have to say that it coincides with the making of a constitution for Europe ."[12]

Basic elements of constitutionalization encompass the defense and promotion of the supremacy, direct, immediate and universal effect of the community law, which the court has affirmed sometimes against the will of the Member States. Besides that the European

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[10] .On the hierarchy of legal acts see Å. Òàí÷åâ, Èçòî÷íèöèòå íà ïðàâîòî â Ñðàâíèòåëíîòî êîíñòèòóöèîííî ïðàâî, â Ñúâðåì åâðîïðàâî 1995, êí.1 è 3; Ð. Òàøåâ, Èçòî÷íèöèòå íà ïðàâîòî , Ñîôèÿ, 1997; Law in the Making, ed. Al. Pizzorusso, Springer, 1988; Sources and Categories of European Union Law, ed. G. Winter, Baden-Baden, Nomos, 1996; L.M.Diez-Picazo, Sources of Law in Spain: An Outline, EUI, Working Paper, N 94/10, Florence

[11] .According to Sweet there are two stages from 1962 till 1979 ã. and from 1979 ã. till present ., A.S. Sweet, Constitutional Dialogues in the European Community, EUI, Florence, R SC ¹ 95/38 1995 ; Though on different ground Ludlow and è Weiler speak for 3 stages, P. Ludlow, History of the European Union, East-West Forum, 1995 ; According to Schuppert there are six phases ., G. Schuppert, Op. cit., 334 - 341; see also R. Dehousse, From Community to Union, Europe after Maastricht- An Ever Closer Union, ed. R.Dehousse, Munchen, 1994

[12] . G. F. Mancini, The Making of a Constitution for Europe, 26 C.M.L.R.,1989, 595; See also Caporaso "Constitutionalization is a process of transiton from a state where the countries are governed by contracts to a state where they are bound by constitutional principles which are closer to the municipal law than to the international law ", J. Caporaso, Op.cit., 37

Court of Justice has affirmed that the national institutions and judges should abide the interpretations of EC law, provided by its preliminary opinions and jurisprudence.[13]

The constitutionalization of the founding treaties has been a gradual process, influenced and having an impact on the political evolution in the process of integration. The jurisprudence of the Court has affirmed the autonomy of EC legal order, its supremacy, direct, immediate and universal effect [14], doctrine of implied powers of the communities institutions and preemption in the areas defined by the founding treaties, protection of human rights etc. .[15]

Gradually the founding treaties have acquired a status of higher law or supremacy, which was an indisputable feature of constitutions for ages.[16] The legal nature of constitutionalization of the EC primary law has surpassed the classical international law pacta sunt servanda principle and has transformed, the supremacy of international law into a supranational legal order sharing formal juridical features of the national constitutional law.[17]

Constitualization of the founding treaties in the Court's jurisprudence brought to the qualification of the EC primary law as a constitutional charter of the European communities .[18]

The European court Opinion on the Draft agreement on an European Economic Area, delivered in December 1991 has been marked as a zenith of the description of the founding treaties as a constitution " the EEC treaty, albeit concluded in the form of international agreement, none the less constitutes the constitutional charter of a Community, based on the rule of law. As the Court of Justice has consistently held, the Community treaties established a new legal order for the benefit of which the states have limited their sovereign rights, in ever wider fields, and the subjects of which comprise not only Member States but also their nationals...The essential characteristics of the Community legal order which has been established are in particular its primacy over the

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[13] . See A.S. Sweet, Constitutional Dialogues in the European Community, EUI, Florence, R SC ¹ 95/38 1995 ; J. Weiler, The Constitution of Europe: Do the New Clothes Have an Emperor ?, Forthcoming in Cambridge University Press

[14] These indisputable features of EC law were formulated by the Court during the 60ies , N.V. Algemeine Transport - en Expedite Ondernereming van Gend & Loos, v. Netherlands Fiscal Administration; Case 26/62; Costa v. ENEL; Case 6/ 64

[15] See E. Stein, Lawyers, Judges and the Making of a Transnational Constitution, American Journal of International Law, vol.75, January 1975, N 1, 1-27; P. Pescatore, The Doctrine of Direct Effect, European Law Review, 8, 1983, 155-157 ; J. Weiler, The Community System: the Dual Character of Supranationalism, Yearbook of European Law 1, 1981; A. Easson, Legal Approaches to European Integration in Constitutional Law of the European Union, F. Snyder, EUI,Florence, 1994-1995

[16] For the meaning of higher law during centuries see Ì.Cappelletti in Judicial Review in the Contemporary World, 1971, 25-32 , and his Comparative Constitutional Law, Charlottesville, 1979, 5-11

[17]. For differentiation between the supremacy of the international norms and EC law direct effect see J.Weiler, The Transformation of Europe, Yale Law Journal, in The Constitution of Europe..., 41-42

[18] Case 294/83 1986 ECR 1339,

law of the Member States and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves" .[19]

In a more narrow sense the meaning of constitutionalization is a process differentiating of a complex of primary EC law norms and decisions of the Court comprising the unwritten constitution of the European Union.

The legal effect of constitutionalization on countries applying for full membership is the imperative requirement to adapt their national constitutions, when they ratify the founding treaties and join the European Union.

3. The Unwritten Constitution of the European Union

Since antiquity at least two meanings of the constitution evolved[20]. The real (functional) constitution has been present since the ancient times and still is a feature of every state and even organized human entities and corporations. The real constitution refers to the institutionalized forms of different associations and is related to the structure and functioning of the institutions and their relationship to the members of the collective body. In this train of thought one cannot deny that European Union has a real constitution, consisting in the structure and functioning of its institutions, their relationship with with the Member States and their citizens.

Modern written constitutions appear at a much later stage of evolution, although some of the acts of Roman emperors bore the name of constitutions.

A written constitution is a charter, a higher law comprising set of norms providing for organization, separation and functioning of political power, protecting basic rights of man and citizen in order to prevent abuse and concentration of absolute power, to guarantee civil, political and economic liberties. The written constitution acquired their meaning of a fundamental law and took their contemporary shape after the adoption of

[19] S. Weatherill , Law and Integration in the European Union, Oxford, 1995, 184 - 185; See also Opinion 1/91, December 14, 1991ã. ; see for more details D. Curtin, The Constitutional Structure of the Union: A Europe of Bits and Pieces, C.M.L.R., 30, 1993 , 17-69

[20] In Politics Aristotle uses the term polity which has been translated in English as constitution, meaning real constitution, since it concerns organization and division of political power between the institutions and not a higher law , supreme legal act ., Aristotle, Politics, Book IV, ch. 1, Baltimor, 1970, 151; Contemporary authorities in the field differentiatiate 3 meanings of constitution. According to F.Snyder empirical constitution refers to the way in which a state is organized, material or substantive constitutions is a set of fundamental legal norms making the legal order of the state, instrumental constitutions are written documents or fundamental legal acts which set forth the principal constitutional legal norms., F.Snyder General Course on Constitutional Law of the European Union, Collected Courses of the Academy of European Law, vol.VI, Book I, 41- 155, 53; Blondel adds to the real and legal (written) constitution the prescriptive constitution referring to doctrines, values, goals and ideals including limited constitutional government , J. Blondel, Comparative Government, An Introduction, New York, 1995, 217-218; See also V. Bogdanor, Constitutions in Democratic Politics, ed.V.Bogdanor, Aldershot, 1988, 5 - 7; Ph. Allott, The Crisis of European Constitutionalism: Reflections on the Revolution in Europe, Common Market Law Review, 34, 1997, 439-490, 468-469; N. Walker, European Constitutionalism and European Integration, Public Law, Summer, 96, 266 - 290, 270

the constitutions of the fourth generation after the World War II. There are more than 180 constitutions of sovereign states today and the constitutions drafted since 1970 outnumber the constitutions created before that date.

Being the motherland of the western democracy Great Britain has still an unwritten constitution, though during the revolution it was the first to create the Instrument of Government. It has been a common approach to compare the EU primary law to the UK unwritten constitution comprising a set of charters, bills, declarations, statutes of the parliament and constitutional conventions, containing fundamental legal norms. In this train of thought the founding treaties especially after Amsterdam were considered by some authorities to be the EU unwritten constitution .[21]

The uncodified character of constitutional norms in a single document has been the most common feature of the unwritten constitutions. The unwritten constitution is a policonstitutional act , comprising of provisions, contained in the founding treaties and some of the decisions of the Court having a constitutionalizing effect. Though the unwritten constitution is more difficult to understand it reflects a relatively high level of independence of the Communities from the Member States and has a highly developed level of legally regulated power, institutional framework independently existent from the Member States and citizenship of the nationals from the country Member States. The unwritten EU constitution provisions relate to the fundamental values and principles of EC law. They are contained in the founding treaties and in the jurisprudence of the European court of justice and they meet most of the formal requirements of the norms of the constitutions of the nation states as higher law or law of the land. [22]

One should not miss another of the existing approaches in the constitutional research. The perception of the constitution as a fundamental social contract between the government and the people has a constant presence in the history of constitutionalism. If we look on the constitutions as contracts between people and government we can compare them to the international treaties which reflect the consensus between the peoples and nationstates, represented by their governments. From this perspective the legal nature of the founding treaties, created by the agreement reached by Member States is much closer to a constitution than if a constitution is regarded as unilateral product of constituent power deriving from popular sovereignty.

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[21] Jo Shaw, Law of the European Union, London, 1996, 63-66 Deirdre Curtin, The Constitutional Structure of the Union: A Europe of Bits and Pieces, Common Market Law Review, 30, 17-69, 1993; Walter van Gerven, Toward a Coherent Constitutional System within the European Union, 2 EPL, 1996, 81 - 103 ; M. Zuleeg, The European Constitution under Constitutional Constraints: The German Scenario, 22 European Law Review, February, 1997, 19-34, 20-21; Ëóèäæè Ôåðàéñè, Îòúä ñóâðåìåííàòà è ãðàæäàíñêîòî.Çà åäèí ñâîòîâåí êîíñòèòóöèîíàëèçúì , Ñúâðåìåííî ïðàâî, êí. 6 ,1995, 70-78

[22] For higher law concept evolution in the antiquity and after the drafting of the written constitutions see M. Cappelletti, W. Cohen, Comparative Constitutional Law, Charlottesville, 1979, 5- 11; C. Friedrich, The Philosophy of Law in Historical Perspective, Chicago, 1963, 12-26

The legal characteristic of the EC and EU founding treaties bears a set of peculiarities compared to the traditional international agreements and the constitutions of the nation states. They create enforceable rights and obligations not for governments alone, but have direct, immediate, and universal effect on the citizens and legal persons belonging to the Member States. Understanding European integration as a dynamic process, though at the present the concept of EU as unsouvereign entity (not having still its own legal personality), as an international organization sui generis is predominant , one can bring the proposition that the primary EU law evolves in a direction from international agreement to an emerging constitution. Indicative of this evolution are certain phenomena such as the creation of European citizenship(which although different from traditional status of a physical person within a state and existing as far as a nationality of a Member State is a prerequisite, has been common feature of statehood alone, and not to any international organization), evolution of a judicial review exercised by the European Court of Justice as a guardian of the founding treaties, and secondary law of EU institutions, having supranational, direct, immediate and universal effect, enforceable by the institutions and the judiciary of the Member States without any requirement for ratification after the countries have been notified that EC legislation has entered into force. The approximation of legislation and acquis communautaire are also to be mentioned as unique legal instruments in differentiating EU law from the international agreements. Evolving civil society in the European Union and the reform of the procedures for taking decisions where the unanimity principle is gradually but constantly replaced my majority rule in new fields are also paths in this direction of transformation. Besides, objections to the international institutions on the grounds of democratic deficit and lack of legitimacy have not been common in the international law, since the international agreements have resulted from intergovernmental negotiations representing the will of sovereign states and under the presumption that national governments are legitimately elected by their own peoples and duly represented by their agents.

Though governments of the Member States are the masters of the Treaties, and the procedure for the amendment resembles the procedures in the international agreements, the negotiating of diplomatic consensus has been predetermined by the constitutional values achieved in the parliaments and the courts. [23]

To a great extent in a formal sense some provisions of the founding treaties have perfomed functions of constitutional norms. If compared according to the their contents one can see that provisions of the founding treaties share some of the features of constitutional norms. In material sense constitutional norms traditionally proclaim basic

[23] . B. de Witte, Op.cit., 14-15

values, principles and liberties[24], regulate the structure and functioning and powers of the institutions.

One should not be mislead to base the difference between EU primary law from a constitution in its naming as founding treaties. However, it is worth remembering that some of the old constitutions including the " Articles of the Perpetual Union", which was the confederal fundamental law were not formally named constitutions, for the states retained their sovereignty and the Continental congress was not an institution expounding sovereignty of the Union between the states.[25]

The formal and substantial features of the constitutionalized primary community law meets to a great extent the unwritten constitution characteristics. Moreover, due to the predominance of the economic factors in the integration process, the founding treaties coincide with the term economic constitution[26] even more than the fourth generation constitutions of the nationstates, drafted after the World War II.

The unwritten EU constitution interacts with the national constitutions predetermining the structure of the community institutional framework and the legal system, on one hand, and influencing the internal legal order and functioning of political institutions of the Member States, on the other. Contrasted to a federal system, where all the states constitutions are to be in subordination to the federal constitution, the constitutions of the countries EU Member States are adapted to he founding treaties with a limited transfer of sovereignty and other requirements, in this way preserving national identity and historical peculiarities in the constitutionalism of the Member States. When related to the adapting of constitutions to the EU primary law at present stage of the integration process acqui communautaire does not require extensive amendments to the national constitutions, neither it concerns problems of the form of government or the models of the of different

[24] The system of the fundamental values on which the unwritten, functional EU constitution is based includes striving for peace and avoiding military conflicts; unity as a precondition to peace, democracy, rule of law, political stability, economic prosperity; freedom, equality, solidarity and security, protection of human rights, recognizing national identity and cultural heritage; creating an ever closer Union of the people of Europe; principles of subsidiarity, flexibility and proportionality in the functionig of the institutions and in decision taking and in their relationship to the Member States; building a united institutional framework as a guarantee to the reaching of the goals of the European Union and preserving acquis communautaire., see W. van Gerven, Toward a Coherent Constitutional System within the European Union, European Public Law, Vol. 2, Issue 1, March 1996, 81-102, 87

[25] J.Madison, A.Hamilton, J.Jay, The Federalist, N.Y., 1961; The Anti - Federalist Papers, ed. R. Ketcham, New York, 1986, 357

[26] On the term economic constitution, which has been introduced since the Weimar Constitution in German theory see, L. Constantinesco, La constitution de la C.E.E., 1977, 13 Revue trimestrielle de droit europeen, 244-273 ; see also Ì.Streit and W. Mussler, The Economic Constitution of the European Community : From Rome to Maastricht in European Law Journal, , ¹ 1, March 1995, 5-30

political institutions of the legislative, executive and judicial branches of government. Substantial amendments of the unwritten constitution or drafting of EU constitution in the future will require further adapting of the constitutions of the Member States. For the countries that have applied for a full EU membership the legal acquis communautaire will consist in the adapting of the constitution to the founding treaties, approximation of legislation, preparing the institutions, judges, state employees and lawyers to be able to understand, apply and enforce EU law.

II. The Current Constitutional Debate and the Constitutional Implications of Bulgaria's Accession to the European Union

1. The Bulgarian July 1991 Constitution was the first completely new constitution, drafted among the constitutions of the emerging democracies in the Central and Eastern Europe. It has been recognized that all of these democratic constitutions share some common features and principles and with no exception are built on popular sovereignty, separation of powers, rule of law, recognition of international, comparative standards on inviolability and protection of the rights of man and citizen as a cornerstones of limited constitutional government . What is not so widely accepted is that , although to a different degree, all of the post-totalitarian constitutions are reactive to the prior constitutional tradition for they mark a break in the natural evolution of the ancient regime.[27]

However, as time elapsed since the drafting of the constitution, it has been proven that it is much easier to build democratic constitutional framework, while the democratic political culture growth is a much slower process, during which sometimes years and generations may elapse. Discrepancies of this kind sometimes bring to difficulties and malfunctioning of the democratic political process. Nominal constitutionalism, legal nihilism and fetishism inherited from the constitutional tradition of the ancient regime do not disappear immediately after the constitution has been enacted. The performance of democratic constitutional framework in the emerging democracies might sometimes bear the burden of the old political stereotypes.

The practice of constitutionalism throughout the whole world has also shown that during the first decade the constitutional infrastructure is built and with the decisions of the Constitutional Courts, political agreements, the meditation of the President the living

[27] For extensive treatment of reactive constitutions see Vernon Bogdanor's introductory essay in Constitutions in Democratic Politics, V.Bogdanor ed., Aldershot 1988

constitution takes its shape.[28] Sometimes during this process all discourse on the constitutional amendment is premature.

Anticipating problems of this kind and averting the possibilities to restore any kind of dictatorship during the process of formal amendment of the constitution, the founding fathers created an extremely rigid constitution.

According to chapter IX of the Bulgarian 1991 Constitution a dual (hybrid) regime of exercising of the constituent power has been established.

Following the traditions and legacy of the Tirnovo 1879 Constitution the most important amendments of the Constitution should be drafted by a Grand National Assembly of 400, elected ad hoc for the constitutional revision. Exclusive prerogatives of this classic, though outdated, repository of constituent power are to adopt a new constitution, to decide on changes related to the territory of the Republic and ratify any international instruments envisaging such problems, to decide on the changes on the form of state (unitary, federal, confederal, or to grant autonomy) or the form of government, direct applicability of the constitution and supremacy of the international law, certain human rights guarantees and the amendments concerning constitutional amendment.

All other constitutional amendments are within the powers of Grand National Assembly and the Parliament as well. The founding fathers provided a rationalized model of constituent power vested in the National Assembly for all the other amendments with the exception of those reserved as exclusive prerogatives of the Grand National Assembly. Though contrived along the modern fourth constitutional generation constitutional amendment devises, the Bulgarian model for constitutional revision has proven so far to be an effective barrier against quick, authoritarian and not well thought out constitutional amendments and an ineffective mechanism bringing to the flexibility of the Constitution in the transition. The procedure for the constitutional amendment through the National Assembly requires extremely high level of consent for the constitutional amendments should be passed by super majorities. Amendments are to be initiated by the President or one fourth of the members of Parliament. The amendments become part of the Constitution if they receive three fourths majority vote in the Assembly to be cast three times, and there is a possibility for drafting with two thirds majority if the bill on the constitutional amendment has been supported in the first and second ballot by less of the three fourths, but has received more than two thirds support of the members of parliament. This model of voting bears some resemblance to the two thirds majorities in the first and second ballot and the possibility for election of the President of the Greek Republic in the third ballot with a three fifths of the members of parliament (art. 32, par.3 of the 1975 Constitution of Greece). Though

[28] The 1958 Constitution of the Fifth French Republic is probably the best example. Inspired by de Gaulle 1946 in his Bayeux speech in his own words the Constitution needed sometime to adapt to the political reality " In the fifth year of its life the Fifth Republic was established on the foundation I had laid down.", C. de Gaulle, Memoirs of Hope: Renewal and Endeavor, v. 3, 1971, 338

supermajorities in elections have much more a plebiscitary characteristic as they mark reaching an agreement over a single candidacy in a pluralistic representative assembly. In the context of the liberal constitutionalism and constitutional, responsible government with limited powers the purpose of supermajorities in the constitutional amendment process has been to generate consensus behind the proposed revision, to defend opposition and parliamentary minority against unilateral and authoritarian decisions of the parties in power and to exclude potential encroachments on human rights. In a pluralistic, highly fragmented Parliament sometimes with fragile coalitions to mobilize these majorities , as the case with Bulgaria is proof, has been nearly impossible.

2.So far only one amendment was introduced and although incremental it has not succeeded. In 1994 before the pending general elections it was proposed that the 36th National Assembly should continue its business during the election campaign and its mandate should expire automatically with the election of the New 37th Assembly. After a short debate following political agreement between all of the parliamentary relevant parties and their parliamentary groups the first ballot did not reach a qualified majority
and there was not any discourse so far on this proposal.

There are lot of debates in society, among politicians and in the academia about different merits and demerits of 1991 Constitution of the Republic of Bulgaria. Probably the closest to reach parliamentary floor was the proposal for constitutional amendment defining the mandate and powers
of the interim government which was designed along the lines of art. 37 of the Constitution of the Greek Republic. After one of the longest and the soundest decisions of the Constitutional Court in Bulgaria a constitutional amendment on the powers of the interim government was not introduced.

With this in mind I will outline the possible amendments which have been circulating in the public discourse but have not acquired the status of official proposal for constitutional amendment.

Most the proposals for constitutional amendments refer to the enhancement of both institutional and functional constitutional safeguards of individual rights:

- the establishment of an ombudsman which was an integral part of several draft constitutions is obligatory, all the more this institution exists in most of the EU member states, some of the associated new democracies, as well as in the European Parliament;
- improvement of the functioning of the judicial system by taking the investigation office out of the judiciary, transferring the prosecution service to the executive power and introducing limited term of office for judges;

- stipulation of the right to individual complaints to the Constitutional Court, legitimating citizens as parties to constitutional proceedings on defending their rights whenever infringed by unconstitutional laws.[29]

Any proposals for a constitutional change in the field of institutions are aimed at procuring greater efficiency of a constitutionally limited government founded on the principle of the rule of law and developing political democracy. It has to be pointed out that this group of constitutional amendments is a result of sometimes hectic political debates in which the actors' arguments shift and depend on their changing political statuses related to the control on the political power and political interests predominantly reflect a momentary context.

These amendments, when summed up, outline the following directions:

- consolidation of the presidential institution through the adoption of qualified majority voting for overruling the Head of State veto; strengthening the functions of the president as far as it concerns his position as a political arbiter by eliminating restrictions on Parliament; dissolution and widening the discretion of the Head of State in the cabinet investiture procedure; the Head of State's power to appeal to the people by holding referenda, as well as the unwell considered option for empowering the president with the right of legislative initiative. With no intent to enter on an analysis of the substance of these proposals for amending of the Constitution, I would allow myself to observe that the performance of the sum total of these amendments would lead to a transformation of the parliamentary system of government into a semi-presidential or presidential one and the constitutional amendment procedure provided in Chapter IX should be followed by electing a Grand National Assembly to decide on their adoption;

-- rationalization of the government investiture provided in the Constitution which has been borrowed from the Constitution of Greece of 1975;

-- elucidation of the status and the powers of a caretaker government .

There are exceptionally low chances for success as for the following subsisting propositions:

-- regulating delegated legislation as an effective instrument of modern parliamentary democracy;

-- setting up a Second Chamber of the parliament;

-- the restoration of monarchy.

[29] The Constitutional Court in Ruling N 1 of 1 July 1997 constitutional decision N 5 of 1997 took a radical step towards the transfer of the right of an individual claim in an indirect way through the empowerment of Supreme Court of Cassation panels and Supreme Administrative Court panels to interrupt the hearing of a case and to refer the matter of the constitutionality of an act to the Constitutional Court. Each of the parties to such a case may claim the control of the constitutionality of an act., S.G.,N. 54,8 July 1997. This is, of course, the utmost power of the Constitutional Court in respect of complying with the effective constitutional provisions which the Court is not allowed to change.

3.In the pages that follow I will dwell on the constitutional amendments implied by the efforts of Bulgaria to join European Union. Though they are not still drafted, introduced and pending on the legislative agenda now in Bulgarian Parliament they probably will be a sine qua non to the Bulgaria's full membership to the E U.

The constitutional amendment problem precedes significantly in time the moment of the accession of the Republic of Bulgaria as a full member of the European Union. If the enlargement of the Union would include our country within the period by the end of this century or by the year 2005, some time should certainly be spent in bringing the Constitution in conformity with the requirements of the EC Treaties. However, in the opinion of the Commission, as well as by the most optimistic prognoses of politicians the accession may be possible after approximately 10 years. The European integration is an active, irregular, step by step forward process. The juridical foundation of the latter or its primary law originates as an international law regulation, passes through the constitutionalisation of the Treaties in order to result in the future drafting of an European constitution. Therefore, the nature of the amendments will be effected by the trends in the development of the 'constitution' of the European Union.

In contrast with the legislative reforms, the constitutional amendments attract public attention more and more. They also require a considerably more profound public discourse to generate as a result a higher degree of public consensus in the democracies.

This paper is not exhaustive and still less indisputable, but it does aim to to inaugurate the political debate about the necessity for constitutional amendments, to lay down their range and to identify the exigent ones preceding the ratification of the European Union primary law by the Republic of Bulgaria.

The preparation for the accession of Bulgaria as a full member of the European Union in the legal sphere includes also the problem of complying the Constitution with the requirements of the EC Treaties before signing and ratifying the primary law. The Association Agreement and the White paper stipulating obligations for approximation of the legislation do not contain requirements for amending the Constitution. The countries getting ready for full membership during the period preceding the accession face the problem of approximation of legislation, and not providing the supremacy, the direct , universal and immediate effect of the European law in the territory of the associated members, or in other words, achieving the full juridical effect of the European law in respect of the European Union member states. The legal essence of approximation of legislation resembles partly the transplant of certain foreign standards in Bulgarian legislation and partly the introduction of the international law in the domestic legal order under the system of dualism.

The analysis of the amendments of the Constitution of the Republic of Bulgaria of 1991 is underlined by three prerequisites. The latter may generally be systematized in the following directions:

- diagnosis of the current condition - elimination of discrepancies preceding the accession;

- comparative study of the amendments to the constitutions of the European Union member states and the amendments preceding the ratification of the founding treaties of the Communities, as well as the amendments to the constitutions of the countries accepted as full members after the enlargement of the European Union since 1993.

- drawing trends in the development of the unwritten 'constitution' of the European Union which will change the sphere of the amendments to the Constitution at the moment of the accession of Bulgaria as a full member of the European Union.

The conformity of the constitutions of the countries entering the Union differs from the introduction of international provisions into the domestic legal order as part of the problem about the legal effect of the international treaties, as well as from the subordination of the constitutions under the federalism. This is so because at present the European integration process has outstripped even the most developed regional international organizations and the European Union law unlike international law and national law constitutes a new transnational legal order which, however, is not a federalist legal entity of the well-known existing classic types and models in the civilization process. Nevertheless, complying the national constitutions with the requirements of European Union primary law reflects not so much the supremacy of the common international law over the domestic law, but it resembles the interdependence between the constitutional framework on national and international level.

The compliance of the national constitutional law with the principles and provisions of the primary European law differs considerably from the approximation of the legislation as well, because of the nature of constitutions as basic laws of supreme legal power whose effect spreads over the territories of the member states.

The constitutional acquis communautaire is the achieved degree of compliance and interaction between the primary law and the constitutions of the member states. The ratification of the primary law during which most of the European Union member states amended their constitutions draws the trend of a necessity for constitutional amendments, which will go along with the adoption of new amendments in the primary law of the European Union following some amendments to the Treaty of the European Union and even develop on sounder grounds of a new treaty adoption or a Constitution of Europe. That is why the European Union member states will enact partial constitutional amendments each time during the ratification of the amendments to primary law whenever they contradict the national constitutional law. The frequency and the scope of the constitutional changes in the EU member states depend on the scope of the envisaged transfer of sovereignty or the delegation of powers to supranatonal institutions. The newly accepted EU full members will have to adopt the primary law in full and to put their constitutions in compliance with the

requirements of the latter on their very entry. There is a conspicuous trend that each later accession will presuppose more and larger in ambit constitutional amendments as far as the degree of community integrity achieved will widen the gap between the primary law and the constitutions of the non-member states and the European Union member states.

4.The necessity for constitutional amendments before the accession of the Republic of Bulgaria stems from several factors. Their preliminary elucidation overwhelms the arguments of opponents and reveals to a considerable degree the imperatives of part of the future changes in the basic law of 1991.

Firstly, the amendments in the Constitution concerning the accession arise from the inappropriateness of the existing constitutional provisions in respect of European law enforcement.

Secondly, the legal nature of the primary and secondary community law excludes the use of the subsisting constitutional mechanism providing the enforcement of the European law.

The content of the necessary amendments precludes the Constitutional Court from using an interpretative approach to adapt the constitutional provision mechanism which allows the incorporation of the international law into the national legal system and thus prevent any amendments to the 1991 basic law of the Republic.

The comparative analysis of the constitutional evolution in the European Union member states before and after the signing the Treaty of Ì aastricht indicates the necessity for amendments to the Constitution of Bulgaria.

The Constitution of 1991 under the provision of article 5 section 4 reflects the democratic principle of the primacy of subsisting international law and the latter is considered to be an integral part of the supremacy of the law proclaimed by the classic wording of the German Rechtstaat doctrine which is the continental equivalent of the Rule of Law. Moreover, the Constitution adopts the monistic principle of integrating international norms into the national legal system. The international treaties which are signed, ratified, and promulgated are part of the domestic legal order and no special national legislation has to be enacted for their enforcement. Furthermore, the provision of the Constitution explicitly states that international law norms which have become part of the domestic legislation prevail over any conflicting provisions of parliamentary acts.

Is there any option the Constitution not to be amended and the wording of article 5 section 4 of the Constitution to be used instead? Assuming that the primary law of the European Union is suitable for transplantation through the mechanism of adopting international law norms into the domestic legal order, then the issue of the acquis communautaire and the European law effect cannot be solved because of its specific character in comparison with international public law. This is so because of supranationalism, because of the supremacy, the direct, immediate and universal effect on all national legal

subjects within the territory of European Union member states.[30] Simultaneously, the supremacy of primary and secondary European law does not require any consent on behalf of national institutions concerning any new act through which EC law develops as an autonomous transnational legal order and therefore should be applied by the state authorities of the European Union member states. In this very sense the supremacy of European law acquires also infranational effect and autonomous enforcement in the territory of member states, unlike either monism or dualism on the adoption of international law norms, arising from the primacy of international law, into the domestic legal order.

The supranational character of the European Union law implies, in the event of a conflict, supremacy over provisions of national constitutions, as well as gives rise to the obligations of member states to procure the enforcement of the European Union law provisions.

According to the subsisting constitutional provisions concerning the adoption of international law into the domestic legal order the provisions of international treaties precede the provisions of any act belonging to the hierarchy of legal acts of the national legal system.[31] Seemingly the Constitution of the Republic of Bulgaria of 1991 does not solve the problem of the correlation between the legal force of the international law norms which have become part of the domestic law and of the provisions of the Constitution. However, it is sufficient to interpret the text of article 85, section 3 and article 149, section 1, count 4 indicating that the legal force of international law norms does not prevail over the intensity of the legal effect of the supremacy of the Constitution. The same could be concluded by means of the comparative analysis of the constitutions in the states which have adopted legal monism which reveals that international law norms do have lower or, as an exception, equal legal force in comparison with the provisions of their constitutions. Hence the implicit provision of article 85, section 3 and article 149, section 4 and the analogy with some legal systems of European countries places the provisions of international treaties on an equal par with or above the parliamentary acts, but below the Constitution of the Republic of Bulgaria. The opposite assumption contravenes the Constitution. If international treaties had had legal force equal to or above that of the Constitution, then article 85, section 3 and article 149,

[30] These undoubted characteristics of the European law are formulated by the Court as early as the beginning of the 60s, N.V. Algemeine Transport - en Expedite Ondernereming van Gend & Loos, v. Netherlands Fiscal Administration; Case 26/62; Costa v. ENEL; Case 6/ 64.See in a detail E. Stein, Lawyers, Judges and the Making of a Transnational Constitution, American Journal of International Law, vol.75, January 1975, N 1, 1-27; P. Pescatore, The Doctrine of Direct Effect, European Law Review, 8, 1983, 155-157 ; J. Weiler, The Community System: the Dual Character of Supranationalism, Yearbook of European Law 1, 1981; A. Easson, Legal Approaches to European Integration in Constitutional Law of the European Union, F. Snyder, EUI , Florence, 1994-1995

[31] See. Å. Òàí÷åâ, Èçòî÷íèöèòå íà ïðàâîòî â Ñðàâíèòåëíîòî êîíñòèòóöèîííî ïðàâî, Ñúâðåìåííî ïðàâî 1995, êí.1 è 3; Âèæñúùî òàêà Law in the Making, ed. Al. Pizzorusso, Springer, 1988; Sources and Categories of European Union Law, ed. G. Winter, Baden-Baden, Nomos, 1996; L.M.Diez-Picazo, Sources of Law in Spain: An Outline, EUI, Working Paper, N 94/10, Florence

section 4 would have been redundant. If they had had the same force as the provisions of the Constitution at the time of their signing and ratification, they would have been automatically incorporated into the constitutional text and there would have been neither need for changing the Constitution before concluding international treaties in conflict with it, nor any reviewing of the text of the Constitution, nor even testing the latter for its compliance with an international treaty before ratification, by the Constitutional Court. Furthermore, the constitutional provisions would have been overridden and changed by the mere fact of signing and ratifying an international treaty whose provisions are in conflict with the subsisting constitutional provisions. Thus, in practice, the primacy of international law would acquire the dimensions of a constituent power and would directly do away with the fundamental principle of international law of recognizing national sovereignty.

These arguments are valid at the time of the current condition of the European Union as a non-state formation. Future evolution of the European Union, in the direction of acquiring outlines of federal or confederal formations or will be getting closer to them in its own manner, will probably more definitely further exclude the contingency of accession without any amendments to the Constitution.

Besides, still another option should be excluded - the Constitutional Court of the Republic of Bulgaria would hardly be able by an expanded interpretation to change the meaning or the scope of the constitutional provisions and at the same time prevent the intervention of the constituent power, because otherwise the Court would take up its functions in contravention with the content of the Constitution itself. Moreover, the Court is called upon to protect the latter and abide by it.

Here one could adduce other arguments and still others, but the above- mentioned ones are sufficient to conclude that article 5, section 4 of the Constitution is not capable to guarantee the supremacy, or the universal, direct and immediate effect of the secondary law comprising the fundamental bulk of provisions of the European law either.

The adequate constitutional model of providing the effect of European law involves a partial transfer of national sovereignty or devolution of powers of nation states onto the European Union. This model is substantially different from the primacy of international over domestic law which according to article 2 of the United Nations Charter involves full respect for national sovereignty. Unlike the domestic legal delegation of power within the national constitutional law, the transfer of sovereignty in limited scopes of the European Union is absolute and does not involve any option for the states, which have delegated restricted powers, to abandon their act or to deter the performance of the delegated power by legal instruments. The delegation, limited on its subject-matter, but absolute in respect of the exercise of power by the Union involves amendments of the constitutions of the European Union member states.

The comparative analysis of the constitutions of the member states and the amendments already adopted before and after the Treaty on the European Union, also prove undoubtedly that both the adaptation of national basic laws to the requirements of the founding treaties and the effect of the European law as a whole assumes an establishment of a new constitutional mechanism in Bulgaria.

III.Comparative Survey of the Constitutional Amendments in the Process of the Ratification of the TEU (Germany, France, Ireland, Spain, Portugal, Sweden, Austria and Finland)

1. Consttitutional Amendments in Germany in the Process of Ratification of TEU

The adaptation of the German Constitution to the process of the European Integration represents a matter of special interest for the following circumstances: Federalism presupposes a subordination of the lender constitutions to the fundamental law of the Federal Republic of Germany (Grundgezets) as well as a vertical division of powers among the institutions of the Union and the governing bodies in the federation. Accommodating the Grundgezets to the founding treaties requires a detailed regulation for the relations of Germany with the European Communities concerning the federation and the lenders. Furthermore the interpretation on the part of the German Constitutional Court in Karlsrue on the interaction between the Community law and the Fundamental Act of the Federal Republic of Germany is a result of a complex controversial development.

Being made already out the Fundamental Act of the Federal Republic of Germany set forth the possibility for a transfer of sovereign power by legislative means. The provision of Article 24, not rarely being qualified as an "open statesmanship" guarantees the ratification of the founding treaties of the European Communities in the 50s.

Under one of its decisions ruled in 1967 the constitutional court of Germany ruled that the European Communities do have their own constitutional jurisdiction incorporated under their founding treaties.[32] In 1974 the German Constitutional Court under the decision on the case "Solange I " stipulated as a precondition for the application of Community Law provisions their compliance with the fundamental rights proclaimed under the Constitution of the Federal Republic of Germany.[33]

In this way obstacles were made as for the supremacy and the direct effect of the European law and the Constitution of Germany appeared to be a prerequisite as a

[32] .M.Zuleeg, The European Constitutionalism under Constitutional Constraints: The German Scenario,1997, European Law Review, Feb., 19-34, 19
[33] .Ibid., 24

peculiar standard for the very European law which shall comply before being applied within the federation. Thus practically the priority of the national constitution has been presumed as for the founding Community law the latter being qualified in 1967 by the Constitutional court as Constitution of the Communities.

The constitutional jurisdiction of Germany revises its position under the decision on the case known as "Solange II " of 1986 ruling that it shall not put the European law to a test for compliance with the fundamental rights proclaimed under the Constitution of the Federal Republic of Germany for the reason that the European Court of Justice secures effective guarantees against any breach of the fundamental rights on the part of the institutions of the European Community. From that time on the trend for the priority of the European law over the national legal system has been set up and this trend can be distinguished in the amendments of the Constitution on the ratification of the treaty of the European Union.

The Constitution of Germany notwithstanding the provision concerning the transfer of sovereignty incorporated thereunder has been amended thus the scope of the amendments getting beyond the one in each of the European Union Member States.[34]

Amendments to the Basic Law of the Federal Republic of Germany providing for the creation of a new article 23 headed European Union. By reason of the exclusive significance of the provisions the latter will be cited hereby.[35] The Constitution provides for consulting the separate chambers according to the principle of shared competence under the federalism depending on the nature of the questions which solution is forthcoming for the EU.

"Art.a - ë. 23 (European Union)

1. With a view of establishing a united Europe the Federal Republic of Germany shall participate in the development of the European Union, which is committed to democratic, rule of law, social and federal principles as well as the principle of subsidiarity, and ensures protection of basic rights comparable in substance to that afforded by the Basic Law. To this end the Federation may transfer sovereign powers by law with the consent of the Bundesrat. The establishment of the European Union as well as amendments to its statutory foundations and comparable regulations which amend or supplement the content of this Basic Law or make such amendments or supplements possible shall be subject to the provisions of paragraphs (2) and (3) of Article 79.

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[34] . The Constitution requires that the amendmends have to be approved by two-thirds majority of the members of the both chambers of the Parliament. The vote on the ratification of the Treaty on the European Union gets beyond the requirements according to which the Bundesrat shall pass its decision unanimously and the Bundestag by a majority of 543 votes pro and 17 votes con, The Ratification of Maastricht Treaty..., 87-109, 296 ; Regarding the amendments of the Constitution after 1989 See G.H. Gornig, S. Reckewerth, The Revision of the German Basic Law. Current Perspectives and Problems in German Constitutional Law, Public Law, Spring, 1997, 137- 158

[35] . Constitutions of the Countries of the world, ed. Flanz and Blaustein, Oceana, 1995, 115 - 117

2. The Bundestag and, through the Bundesrat , the Lender shall be involved in matters concerning the European Union. The Federal Government shall inform the Bundestag and the Bundesrat comprehensively and as quickly as possible.
3. The Federal Government shall give the Bundestag the opportunity to state its opinion before participating in the legislative process of the European Union. The Federal Government shall take account of the Bundestag in negotiations. Details shall be the subject of a law.
4. The Bundesrat shall be involved in the decision-making process of the Federation in so far as it would have to be involved in a corresponding internal measure or in so far as the Lender would be internally responsible.
5. Where in an area in which the Federation has exclusive legislative jurisdiction the interests of the Lender are affected or where in other respects the Federation has the right to legislate, the Federal Government shall take into account the opinion of the Bundesrat . Where essentially the legislative powers of the Lender, the establishment of their authorities or their administrative procedures are affected, the opinion of the Bundesrat shall be given due consideration in in the decision-making process of the Federation; in this connection the responsibility of the Federation for the country as a whole shall be maintained. In matters which may lead to a expenditure increases or revenues cuts for the Federation, the approval of the Federal Government shall be necessary.
6. Where essentially the exclusive jurisdiction of the Lender is affected the exercise of the rights of the Federal Republic of Germany as a Member State of the European Union shall be transferred by the Federation to a representative of the Lender designated by the Bundesrat . Those rights shall be exercised with the participation of and in agreement with the Federal Government; in this connection the responsibility of the Federation for the country as a whole shall be maintained.
7. Details regarding paragraphs (4) and (6) shall be subject of a law which shall require the consent of the Bundesrat.

Under Article 24, dedicated to the international organizations, the constitutional amendment provides for a new paragraph supplementing the text.
"÷ë.24 para. 1à.
Where the Lender have the right to exercise governmental powers and discharge governmental functions they may with the consent of the Federal Government transfer sovereign powers to transfrontier institutions in neighboring regions.

A special provision in the amendments has been dedicated to the voting rights of European citizens in local elections.

Under the third sentence of Article 28, para.1 the following text has been incorporated: " In county and municipal elections persons who are nationals of Member States of the European Community, too, may vote and shall be eligible for election in accordance with European Community law." In lieu of the rescinded Article 45 concerning the status of the Bundestag commissions the text on the formation of a specialized parliamentary European Union committee has come into force. "The Bundestag shall appoint a Committee on European Union. It may empower the Committee to exercise the Bundestag's rights in relation to the Federal Government in accordance with Article 23 ."

The amendments to the Basic Law of the Federal Republic of Germany of 1949 provide for the possibility that the Lender participate in the decision making on matters concerning the State's relation to the European Union. Thus according to Article 50 in its new version: "The Lender shall participate through the Bundesrat in the legislative process and administration of the Federation and in matters concerning the European Union". Under Article 52, para. 3a of the Basic Law the possibility has been provided in favor of the Bundesrat to form a European Chamber where each Lander shall be represented by equal number of deputies and shall vote en bloc.

With respect to the monetary union under the Treaty on the European Union, the amendments to Article 88 regulate the possibility for a transfer of powers by the Bundesbank to the European Central Bank which is independent and whose primary aim is to safeguard price stability.

When the constitutional amendments shall have been passed the president shall wait until the Constitutional Court of Germany being referred to rules on constitutional cases being filed with respect of the ratification of the Treaty of the European Union.[36]

The decision ruled by the constitutional jurisdiction on the case of Bruner confirms the compliance of the Treaty on the European Union with the amendments to the Basic Law of the Federal Republic of Germany. In addition to that the Karlsrue court has reached conclusions leading to changes in the European Law status and its effect on the territories of the Member States. What is especially worth noting is the requirement before the legitimacy development and the overwhelming of the democratic deficit on the setting up and functioning of the European Union institutions , the rejection of the existence of a constitution for the process of the European Integration has been deprived of statesmanship and the European citizenship is not found on ethnic characteristics, the power of the Constitutional Court to control together with the Court of the European Union the European Law applicability has rejected the automatic adoption of measures on the economic and monetary union without a preliminary approval by the Government

[36] . The Constitutional Court has been referred to by more than 20 claims. However, the most significant case has been filed on claim of M. Bruner, ex head of the cabinet of M. Bangeman who was a member of the European Commission., See for details The Ratification of Maastricht Treaty... 99-103

and the Parliament of Germany.[37] Besides it has been expressly put down that the aim of the Treaty of the European Union is to set up a union among the peoples of Europe but not a state of the European people. By its decision the Consitutional Court secures the ratification of the Treaty of Maastricht but along with that "re-writes the law of the European Community in the sense of a reverse towards the earlier national state model ".[38]

The German model for constitutional adaptation on the ratification of the Treaty of Maastricht provides for the most embracive constitutional amendments among all the Member-States of the European Union. Largely, however, the broad scope of Basic Law amendments is due to the federalism as well as to the necessity of a precise constitutional regulation of the relations between the federation and the Lender and furthermore to the relations of the European Union with the federation on the one hand and with the Lender on the other.

2.Amendmend to the 1958 Constitution of the Fifth French Republic on the ratification of the Treaty of the European Union.

The adaptation of the French constitutionalism to the requirements of the process of the European integration earmarked the constitutional experience gained. France has been named an European constitutional laboratory for since the time of the Great French Revolution 16 constitutions have been adopted and regimes de facto preparing constitutional bills have been set up however not succeeding in their implementation. It could be hard to find a constutional principle, a political institution and a form of government that has not been tried up under the conditions of the constitutional evolution.[39]

The amendments to the constitution of the Fifth French Republic earmark the most systematic, however mostly complicated model of adaptation of the Basic Law on

[37] . The decision on the case amounts to a volume of 85 pages. Largely the views of prof. P. Kirkhof , the reporter on the case, has been reproduced there being advanced earlier in the doctrine. See for the basic conclusions of the court: Document. Extracts from Bruner et al v. The European Union Treaty (Cases 2 BvR 2134/92 and 2159/92), Bundesverfassungsgericht , Judgement of 12 October 1993., in Common Market Law Review 31, 251-262; see also M. Herdegen, Maasricht and the German Constitutional Court: Constitutional Restraints for an “Ever Closer Union”., id., 235 - 249 ; S. Boom, The European Law after the Maasricht Decision: Will Germany Be the Virginia of Europe ? in American Journal of Comparative Law, vol.43, 1995, 177- 226; F. Wooldridge, The German Federal Constitutional Court Upholds the Ratification of the Treaty on European Union, European Business Law Review, February 1994, vol.5, N 2, 38-42

[38] . M. Zuleeg, Op.cit., 27

[39] .Ì .Ï ðåëî, Êîíñòèòóöèîííîå ïðàâî Ôðàíöèè, Ì îñêâà, 1957, 23-354; A.Esmein, Elements de droit constitutionnel Francais et compare, t.II, Paris, 1928

the ratification of the Treaty of Maastricht.. The adaptation of the the French constitutionalism represented in the most schematic way go in the following directions.[40]

The question concerning the amendments to the constitutions neither of the IVth nor of the Vth republics has not been posed within the first stage of the integration process ending by the passing of the Single European Act notwithstanding that even then the compatibility between the national sovereignty and the integration has been discussed. Not only has not the ratification of the Single European Act stirred up any constitutional amendments but on the ground of the consent achieved among the political forces no requirement was set forth that the Constitutional Council should rule on the compatibility of this act with the Basic Law of France.

Several stages appear on the constitutional amendment process on the ratification of the Treaty on the European Union.

1.From 1992 together with the signing up of the Maastricht Treaty on 7 02 1992 it is subject to ratification the law being passed by the Parliament or through referendum according to Article 53 of the Constitution of the Fifth French republic. The political forces shall reach an agreement the recognition of the Treaty of the European Union to be performed through a referendum which shall attach a higher degree of legitimacy to the people's will for a more profound integration in Europe to be achieved.

2. On the grounds of Article 54 the president referred to the Constitutional Council of France and the latter ruled on the April, 9th 1992 interpretation the treaty compatibility with the Constitution of the Vth Republic. Under its decision of April, 9th 1992 the Constitutional Council found the Treaty to be inconsistent with the national sovereignty principle . That is due to the possibility of the European citizens to participate in local elections in France and particularly through exercising their passive voting right on the elections for mayors and vice-mayors. In this way those of the European citizens who are not French residents could influence indirectly the panel of the upper chamber of the French parliament. for the senators are elected indirectly by an electoral body consisting of mayors. [41]

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[40] .See for details the exposition of the president's consellors on the European Integration D. Moss and G. Conac under the Stenographic protocol N 5, Legislation Council, the Republic of Bulgaria, Thirty Seventh National Assembly ; The Ratification of the Maastricht Treaty,...147-174; J.Rideau, Manuel Droit institutionnel de l'union et des communautes europeene,Paris, 1994, 759-764; . H. Cohen, France, in European Law Review, 1993, N 18, 233-236; Les constitutions nationales a L' epreuve de L'Europe, J.C.Masclet et D.Mauss, 1992; P. Oliver, The French Constitution and the Treaty of Maastricht, International and Comparative Law Quarterly, vol.43, January 1994,1-25; S.Boyron, The Conceil Constitutionnel and the European Union, Public Law, 1993, Spring, 30-37; S. Wright, The French Conceil Constitutionnel and Constitutional Reform, European Public Law, vol. .I, issue 1, March 1995,23-25

[41] . Decision N 92-308 DC du 9 avril 1992 du Conceil Constitutionnel ; F. Luchaire, L'union europeen et la Constitution, Revue du droit public, may-june, 1992, 608-616

3. Preparation and movement of a bill for constitutional amendment in the form of Chapter XV "On the European Communities and the European Union". [42]

By reason of the exclusive importance of Chapter V of the Constitution its whole text will be found hereby cited.

Article.88.1 outlines the appurtenance of France to the EC and EU the wording being more explicit than the one of Article 23 of Grundgezetz of FRG.

"The Republic participates in the European Communities and the European Union, constituted by states which have freely chosen, by means of treaties created by them, to exercise in common certain of their competencies."

There is a possibility incorporated under Article 88.2 for limiting the sovereignty by transfer of powers from the national state to the EU.

"Under the reservation of reciprocity and according to the modalities specified by the Treaty on the European Union signed on February 7, 1992, France consents to the transfer of competencies necessary for the establishment of the European economic and monetary union as well as to the determination of regulations relative to the crossing of exterior frontiers of the Member States of the European Community".

The amendments to the Constitution provide for the voting rights of the European citizens who are not French residents in a way guaranteeing their compatibility with national sovereignty according to the expressed will of the Constitutional Council of the French republic.

Article 88.3 "Under the reservation of reciprocity and according to the modalities specified by the Treaty on the European Union signed on February 7, 1992,the right to vote and of eligibility in municipal elections can be accorded to citizens of the Union residing in France. These citizens cannot exercise the functions of mayor or deputy to participate in the designation of senatorial electors and the election of senators. An organic law, passed under the same terms and by the two assemblies, determines the conditions of the application of this article." [43]

The increased controlling functions of the national parliament on the definition of the position of the French Government in the work of the European institutions is also a subject-matter of constitutional amendments. The possibility of the French deputies and senators to have a say in advance on the legal rules-to-be of the secondary law of the European Union by which the interaction between of the national parliament with the legislative mechanism in the European Union has been institutionalized and is provided for in the last text of chapter XV of the Constitution. Under Article

[42] .Chapter XV was passed by the constitutional law 93-952 of July, 27th 1993 being a part of a whole constitutional reform encompassing a number of other relations including the organization of the judicial power and especially the status of the High Judicial Council as well as provisions concerning ministers' criminal liability.

[43] .That referrs to the qualified majority required of three fifths of the deputies in both chambers of the parliament the latter acting as a founding authority by the sense of Article 79 of the Constitution.

88.4 "The government submits to the National Assembly and to the Senate proposals from the Council of the Communities pertaining to matters of the legislative nature. During the sessions and outside of them, resolutions can be voted within the framework of the current article according to the modalities determined by rules of each assembly."

4. The amendment constitutional bill was passed by a simplified procedure through a qualified majority more than three fifths of the deputies in the two chambers of the French parliament. Consciously the procedure for passing the constitutional amendment by direct voting under Article 89, Section 2 has been avoided, especially after the negative result of the first referendum in Denmark.

5. The president exercised his powers under Article 11 of the Constitution and held a referendum concerning the ratification of Treaty on the European Union.

6. Referring the matter of full compatibility with the Constitution after the constitutional amendments being passed and the Maastricht Treaty being ratified to the Constitutional Council of 60 senators. The Constitutional Council ruled that both chambers, vested with the capacity of the constituant power and thereby having revised the Constitution by a qualified majority, put into compliance the Constitution of the Fifth Republic in France with the Treaty on the European Union.

3.Amendmends to the Constitution of Ireland.

Ireland is the only country among the member-states of the European Union which revised its Constitution three times in order to guarantee the compliance of the Basic Law with with the primary European Law.

On its very entering into European Communities in 1972 Ireland revised its Constitution by including a provision that guarantees the supremacy of the community law. Under Article 29.4.3 "No provision of this Constitution invalidates laws enacted or acts done by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Communities or their institutions from having a binding force of law."

Since the Single European Act was passed the Ireland have been the only country among the Member States that revised its Constitution and ratified the Treaty through a referendum.[44] Into the wording of the constitutional provision under Article

[44] . The constitutional amendment was necessitated by the presence of Chapter III including provisions concerning the political cooperation., The Ratification of Maastricht Treaty..., 181- 190, 182; J.Rideau, Manuel Droit institutionnel de l'union et des communautes europeene,Paris, 1994, 823 -827;

29.4. included was the sentence that the State ratified the Single European Act following a referendum .

With the Treaty on the European Union being passed in 1992 Ireland ratified the Treaty again through a referendum amending the Constitution by adding to the wording of Article 29 the words European Union following the term European Communities. Thus by means of the shortest wording, however not the shortest and mostly simplified procedure, the Irish Constitution covers the formula for the European law supremacy over the national Basic Law setting the precondition for the necessary revisions in the constitutional law performed through the the parliamentary statutes on the ground of that formula.

4.The Revision of the Constitution of Spain.

Even on the creation of the Spanish Constitution in 1978 the latter covered several provisions bearing the lead of the association of the state to the European Communities. The integration of Spain into the united Europe was underlined by the wording of Article 93 revealing the possibility that the Parliament shall regulate the social relations according to the the requirements of the Community law and to adapt the Constitution to the requirements of the European Law in practice so that its priority over the national legal system to be guaranteed. " An organic law may only grant the right to conclude treaties by virtue of which a certain international organization or an institution shall be granted the right to exercise a capacity derived from the Constitution. Depending on the case the General Corteses or the Government shall undertake to guarantee the execution of these Treaties and the resolutions resulting from the international or supranational organizations that have performed the cession". [45] Thus instead of a transfer of sovereignty or powers an interesting figure of a cession of state functions was invented implicitly containing the idea of delegation of power. The basic advantage of the Spanish formula was the that it avoided the disputed formula of the transfer of sovereignty through the cession of the state power in the form of an international treaty to which Spain is a party. In this way the Constitution of Spain seems to open out for the integration process in so far as the constituent power delegates the legislative function of complying the requirements, the imperatives of the European Law with the Constitution by passing organic laws. This inner delegation, however conditionally, provides a possibility the Spanish Constitution to be qualified as "open" for the provision of Article 93 creates an easier way for adaptation of the Basic Law. As a whole the Constitution remains a rigid

[45] . See Spain: Constitution and Public law legislation, N. Nenovski, G. Blisnashki, P. Kirov, Sofia, 1992, 34

one, however concerning the relations with the European Union its open character makes her a typical flexible Constitution.

The constitutional amendments ensuing from the Treaty on the European Union and particularly from the European citizenship are largely unnecessary for the advanced formulae of the Basic Law wherein the framers of the Constitution forestalled the time and seemingly foretaste the integration process trend even before the accession of Spain to the European Communities. A particular intensity in this respect should be attained to the political rights to the residents of other states and their possibility to take part in local elections. Under Article 13, Section 1 "In Spain the residents of other States shall be able to take advantage of public freedoms guaranteed herein under the conditions stipulated under the Treaties and the Law". And Article 13, Section 2 rules that " Only the Spanish shall be entitled to the rights acknowledged under Article 23 save when abiding by the criterion of reciprocity a treaty or agreement may provide an active voting right in local elections.[46] The circumstance that the delegation of Spain was the one to pass in the proposition for an European citizenship February, 21st 1991 on the Nongovernmental Conference should not be forgotten. Under this document a more detailed regulation of the European citizenship is incorporated as well as the rights to the European citizens by the contents of Article 8 of the Treaty on the European Union.[47]

Notwithstanding the "open' character of the Spanish Constitution , the Constitutional Court has ascertained that a controversy exist between the Constitution and the requirements under the Treaty on the European Union concerning the right of the European citizens to participate in local elections. On the ground of the consent achieved among the politicians the possible minimum has been held out on the amendment of the Constitution. Under the provision of Article 13, Section 2 the word "and passive" has been added and thus the Constitution provides for the possibility of the residents of states other than Spain to be elected in the local government bodies due more particularly to the

[46] . Definitely during the time when the Constitution was being created this provision had to be interpreted as related to "the privileged residents to other state" or these non-Spanisch citizens who are citizens acknowledging the same rights to the Spanisch when being on their state territory. That is the philosophy of the Organic Law N 7 of July, 1 1985 concerning the rights and freedoms of the residents to other states, Op. cit, 112 - 123

[47] . The proposition of the Spanisch delegation reflected the understanding on the European citizenship as a third autonomous sphere of the freedom of the freedom of the citizens of the European Union along with the first sphere of national citizenship and the second sphere concerning the status of the privileged residents to other states which ones are provided to the citizens of the Member States by virtue of the Community Law. The Spanisch proposition goes ever further for it contains a claim concerning also the setting up a unified procedure in the whole Community as it was provided for under Article 138, Section 3 of the Treaty on the European Economic Community. The writers of the proposition support for in the future the European citizens shall be able to take part in all the elections in the states where they abode for a long lasting as well as the development and the emergence of new politics shall broaden the catalogue of European citizens' rights., See The Intergovernmental Conference on Political Union: Institutions, Reforms, New Policies and International Identity of the European Community, ed. by F. Larsen and S.Vanhoonacker, Maastricht, 1992, 225-229

requirement of reciprocity of the European citizens. The minimum contents provides for the eased procedure of constituant power implementation to be used this procedure being regulated under Article 167 concerning a partial constitutional amendments by providing for a qualified majority of three fifth each chamber of the General Courteses needed so that an amendment to be passed.[48]

The Spanish experience in adapting the Constitution to the Treaty on the European Union is indicative of the pragmatism providing for low social expenses on the implementation of the founding power and providing also for a ratification of the Treaty of Maastricht despite the hard characteristic of the Spanish Constitution. Along with this it is worth to mention that the minimum amendments conceal some risques. Thus for example the avoidance of amendments to the Constitution or the organic legislation to be included concerning the European economic and monetary union gives rise to serious economic problems for the national currency.[49]

5.The Amendment to the Constitution of Portugal.

Even before the accession of Portugal to the European Communities the Constitution adopted the principle of supremacy of the international law. The provision of Article 8, Section 2 is analogous to Article 5, Section 4 of the Constitution of the Republic of Bulgaria. Simultaneously even before the membership of the state to the European Communities the Portugal Constitution under Article 8, Section 3 provides for "the rules, set up by the competent authorities of the international organizations to which Portugal is a member shall have a direct effect into the national legal order if that is stipulated under the respective founding treaties."[50]

The Treaty of Maastricht being asset the Commission of the Parliament on Constitutional matters, the rights, freedoms and guarantees, at a request of the president ascertained the controversy of a number of constitutional provisions and rules that the Basic Law must be amended before the ratification of the Treaty on the European Union.

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[48] . the revision of the Constitution , regulated under Article 168 provides for a complicated procedure inherent to hard Basic Laws. The founding power passes the amendments both chambers having voted them by qualified majority of more than two thirds and immediately dissolve. General parliamentary elections having been held both chambers of the new legislature have to pass amendments by qualified majority of more than two thirds of the deputies' votes. Notwithstanding that during the elections the public will has been consulted, the amendments should been passed through a referendum after the second vote of the General Courteses. It is not difficult that the characteristics of an updated variant of the founding power model being created under the first French Constitution of 1791 to be found. See The Ratification of Maastricht Treaty...129-136; Spain, European Law Review, vol.18, 1993, 247-250: J.Rideau,op.cit.,779-786

[49] . See The Ratification of Maastricht Treaty...137 - 141; Spain, European Law Review, vol.18, 1993, 247-250

[50] .The Constitution in the world.....225

The constitutional amendments are a result of 6 bills passed in the parliament by different political parties. By a qualified majority of more than two thirds of the deputies in the parliament the constitutional amendments shall be passed and by an simple majority the president shall approve and the president shall ratify the Treaty on the European Union.

Under the Constitution the following reform is made:

- in the text of Article 7, related to the role of Portugal in international relations, a new Section 6 provides that Portugal may consent on a common performance of powers that are necessary for an united Europe to be created. in compliance with the principles of subsidiarity aiming at a social and economic unity to be achieved;

-Under Article 15 concerning the status of aliens it is provided for that under the conditions of reciprocity the European citizens residing in Portugal may elect and may be elected in the local elections and in the elections for European Parliament.

- Under Article 105 for the European system of central banks as well as the European Central Bank is allowed to take on competencies reserved for the National Bank of Portugal;

-Under Articles 166 and 200 amendments were made that guarantee the parliamentary control as well as the possibility for the parliament to follow and estimate the participation of Portugal in the work of the European Union institutions as well as the obligation of the Government to provide the Parliament with information concerning the European Union and the participation of Portugal.[51]

6.The Accession of the New Member States - Sweden, Austria and Finland.

The first enlargement wave of the European Union after the Treaty of Maastricht covers the accession of Sweden, Austria and Finland.[52] The Ratification of the Treaty on the European Union is preceded by an adaptation of the Constitutions and the adoption of the acquis communautaire.

Amendments to the Constitution of Sweden concerning its accession to the European Union.

The Constitution of Sweden in force being passed in 1974 has been preceded by a long-lasting constitutional evolution and proceeding from the middle of the XIV century.[53]

[51] . See The Ratification of Maastricht Treaty...234

[52] . Norway anew held a referendum out on the matter of the membership in the European Union ending again by a negative result.

[53] . The first royal charters date back to the middle of the XIV century and are qualified as written constitutions. They have been followed by several "Instruments of Government", the first was to be

Chapter X of the Constitution, concerning the relations of Sweden with other States was amended before the ratification of the Treaty on European Union.

The amendments under Article 5 are fully rendered herein after because of their exceptional significance for the present research.[54] "Section 1 The Rikstag may assign the decision-making right to the European Communities in so far as they guarantee a protection of the rights and freedoms corresponding to the protection guaranteed under this Instrument of Government and the European Convention on Human Rights and Fundamental Freedom. The Rikstag shall permit that delegation by a majority not less than three thirds of those of its members that are present. The Rikstag may also pass its decision through the constitutional legislative procedure.

Section 2 In the rest of the cases the decision-making right whenever these decisions shall be directly on the ground of this Instrument of Government related to the making of rules, the use of public property or conclusion or denunciation of international treaties may be assigned, within the limits of an international organization for peaceful cooperation in which Sweden is a member or shall become a member or of an international court. The decision-making on matters for the enforcement, amendment or abrogation of a Basic Act , the act on the Rikstag or the act on the election of the Rikstag, as well as the limitation of whatever of the fundamental rights and freedoms regulated under chapter II must not be delegated. The provisions on the Basic Law enforcement shall apply on such a delegation. If the time shall not allow for a decision-making complying with the procedure related herein the Rikstag may approve the delegation by a majority of not less than the votes of five sixths of the attending and not less than three fourths of all the deputies.

Section 3 Whenever the law shall indicate that the international treaty shall have the force of a Swedish law, the Rikstag may rule through the procedure related herein under Section 2 that every future amendment to the treaty that is binding within the Kingdom shall also be applied in the Kingdom. Such a decision shall refer to future amendments of a limiting nature."

Sweden ratified the Treaty on European Union by referendum in which over 82 % of the voters took part over 52 % voting in favor of the accession.

The amendments to the Basic Law of the Austrian Republic on the accession to the European Union.

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passed in 1634. 1766 is an outstanding date in the history of the Swedish constitutionalism when the first Law on the freedom of publishing was passed. The Constitution of 1974 replaced the "Instruments of Government" of 1809. See The Constitutional Documents of Sweden, Stockholm, Publ. by The Swedish Riksdag, 1981, 7-13; as well as Îëëå Íþìàí "Ââåäåíèå â Øâåäñêîå ï ð àâî", Ìîñêâà, 1986, 44-47

[54].The amendmends to the Swedish Constuitution are hereby cited by the English text published in Constitutions of the World, ed. Flanz and Blaustein, 1996, v.18, 20-22

At the beginning of the political discourse concerning the accession of the Republic of Austria to the European Union it was considered that the amendment to the constitution was not necessary. It is a consequence of the incorporation of the provision of Article 9, Section 2 into the text of the Constitution as early as 1981. According to that provision "on the ground of a law or a state treaty, approved in compliance with Article 50, Section 1, particular sovereign rights of the Federation may be transferred to intergovernmental organizations or their institutions and the activity of the bodies of other states in the country as well as the activity of the Austrian bodies abroad may be regulated within the international law."[55]

By a series of decisions passed earlier and concerning the European Convention on the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court ruled that by its ratification the grounds of the Constitution were affected which necessitates a constitutional revision.[56] In the same way the constitutional jurisdiction interpretates the accession of Austria to the European Union and because of that the law on the accession should be passed through a referendum.

To a great extent the amendments to the Constitution of the Republic of Austria resulting from the full membership of the country in the European Union have been contingent on federalism. The partial transfer of rights by state authorities to supranational institutions ensues amendments to the sharing and the balance of powers between the federal government and the subjects to the federation. This transfer is set up under the Constitution of Austria. Along with that the moment of the accession coincides with the preparation for a constitutional revision concerning the federation.

The amendments to the Austrian Constitution cover the writing out and the incorporation under the body of the Basic Law 6 new provisions of the Articles - 23à - 23f each of which has several sections. By its imposing volume the revision of the Austrian Constitution is getting nearer to the slide-rule amendments to the Basic Law of the Federal Republic of Germany on the ratification of the Maastricht Treaty. For the enormous volume of the texts their contents will be provided abbreviated.

Under Article 23 the passive and active voting rights of the Austrian citizens are regulated the possibility being provided for the citizens of the Member States of the European Union to take part in the elections for the European Parliament by the

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[55] .Under Article 50, Section 1 of the Austrian Constitution it is provided that the political international treaties may be concluded only after the approval of the National Assembly., Êîíñòèòóöèîíå ïî ñâåòà,..., 79, 103

[56] . Likewise the German constitutional doctrine it is considered in Austria that traditionally the constitutional revision affects the basis of the Constitution - the principles of democracy, the rule of law, the federalism, the republicanism, the parlamentarism, the division of powers, the fundamental rights and freedoms and the judicial control on the administrative acts., See. Seidl- Hohenveldern, Constitutional Problems Involved in Austria's Accession to the E U, Common Market Law Review, 32, 1995, 727-741, 729 -730; C. Herbst, Austrian Constitutional Law and Acession to the European Union, European Public Law, vol.1, issue 1, March , 1995, 1-7

principles of the proportional system. The federal territory makes up a single voting district. The voting legal personality for the active voting right comes in force on the completion of the age of 18 and for the passive voting right on the completion of the age of 19. The divestment of voting rights may ensue from a judgment ruled by a court.. Governing bodies on the elections for the European Parliament are the bodies that perform the organization and that held the elections for the National Council and the voting lists are made up by the municipal administration. Voting abroad is permitted.

The status of the nominees for deputies in the European Parliament is provided under Article 23 â. They are entitled to immunity being larger in content than the immunity of the deputies in the National Council of Austria. The requirements established with reference to the incompatibility of the deputies in the National Council are valid for the deputies in the European Parliament .[57]

The furthered parliamentary control on the appointment of representatives of the Republic of Austria in the institutions of the European Union is regulated under Article 23c and Article 23e.

The Head Commission of the National Council shall consent that the government nominees be appointed members of the Commission of the European Union, the Court of Justice, the First Instance Court, the Court of Auditors and the Governing Council of the European Investment Bank. The obligation of the Government to inform the head commission of the Austrian Parliament as well as the Federal President on its draft decisions was concurrently introduced. The members of the Economic and Social Council shall be nominated before the Government by different economic and social groups to the society. The appointment of the members of the Committee on the Regions and the deputy-members shall be performed on the ground of propositions of the provinces as well as of the Austrian unions of cities and municipalities.

The Constitution obliges the ministers to inform immediately both the chambers of the parliament about all the drafts of the European Union and provides a possibility for the National Council of Austria to make a statement. The statements of the parliament on the drafts of the European Union requiring the adoption of a federal law or a directly applicable act bind the federal government on the discussion and the voting in the European Union the government being able to divert from those of them only for important foreign political or integrational political reasons. If the draft legal act of the European Union would cause amendments to the Austrian constitutional law a diversion from the statement of the parliament shall be possible on the part of the federal government only if the National Council has not objected to within a respective

[57] . The provision of Article 23, Section 2 is of particular interest providing that the university teachers may continue their scientific and teaching activity during the time when being deputies in the European Parliament since their remuneration for that activity not exceeding 25% of the remuneration of the rest university teachers on active professional experience.

reasonable term. After the voting in the European Union the competent minister shall present a report before the National Council. In the case of a diversion from the statement of the parliament the National Council should immediately be informed about the reasons on the part of the government..

The detailed sharing of powers and responsibilities between the federal government and the provinces regulated under Article 23 d. is a matter of interest. Under that article the obligation of the federal government to inform the provinces about all the decision-drafts within the European Union that shall affect their competence is provided. The provinces may submit their opinion to the federal chancellor. Excepting important foreign political or political integrational reasons about which the provinces should be informed the Federation is bound by the general statements of the provinces on the voting in the institutions of the European Union.

The provinces shall pass obligatory measures on the application of the acts of the Community law and on non-performance of that obligation when being ascertained by the judicial order in respect of the Republic of Austria.

The participation of Austria in the common foreign and security policy according to Chapter V of the Treaty on European Union is regulated under Article 23f. In this sphere the Austrian Constitution provides the obligations of the Government to inform the parliament and the possibility for the exercise of control on the part of the National Council on the actions of the federal executive power.

The Amendments to the Constitution of Finland

The accession of the Republic of Finland to the European Union ensues significant amendments to the basic law of that country of 1919as well to the Act of Parliament of 1928.[58]

The amendments caused by the requirements for a full membership and the ratification of the founding treaties of the Communities and the European Union form a part of the revision of the Constitution in 1995.

The amendments concern two basic groups of objects of a constitutional regulation.

The first one provides amendments to the constitutional status of the Finns and proclaims the rights of the European citizens incorporated under the body of the basic law by the writing out of Chapter II of the Constitution concerning the fundamental rights that chapter reproducing the text of the European Convention on the protection of Human Rights and Fundamental Freedoms. The preference for a wider formulation of the

[58] Constitutional Laws of Finland, Procedure of Parliament, Published by the Parliament of Finland, Ministry of Foreign Affairs, Ministry of Justice, Helsinki, 1996

rights of the European citizens is worth of a special attention these rights covering the freedom of movement and the right of establishment, the right of opinion, the freedom of conscience, the passive and active voting right on the elections for the bodies of local government and of European Parliament.

The second direction of the amendments to the Constitution of the Republic of Finland on the accession of the country to the European Union covers the participation of the parliament in the decision-making on the European Integration. The constitutional regulation has been written out in 1995 and is incorporated under Article 33 of the basic law as well as Chapter 4of the Act of Parliament. The provisions of Articles 54 à to 54 g regulate in detail the obligations of the president and the government to inform the parliament and to obtain its consent on the matters of the European Integration whenever they refer to matters concerning the powers of the National Assembly..

7.Amendments with Constitutional Significance to the National Legislation

Despite peculiarities on national level in all of the Member States institutional modifications are performed the latter not requiring amendmends to the constitutions, however being directly related with the constitutional systems and they may be grouped in the following three directions:

- the representation of the states in the institutions of the communities.
- the mechanisms of the shaping of national positions on the community policies as well as the functioning of the European Community.
- defining the national authorities authorised to apply the community law.

Among the amendmends to the constitutional law which do not always ensue amendmends to the basic laws the parliamentary control on the matters of the European Integration deserves a special attention.

The participation of the national parliaments of the Member States of the European Union in the process of decision-making is a result from the necessity for the

creation of a larger legitimacy of the law of the European Union as well as a compensation for the democratic deficit in the work of its institutions.

On the transfer of more powers towards the European Union and the enlargement of the principle of subsidiarity the necessity for a control by the national parliaments on the propositions of the executive power before the EU or the position of the state which the executive power should present in the Council. On the one hand the constitutional amendments are called to guarantee the fuller and exacter expression of interests of the State and on the other as an extension of the principle of representative government and an implementation of the principle of the openness and in this way they act as a corrective of the democratic deficit in the functioning of the institutions of the EU.

The process of the integration affects the effect of two controversial trends in the position and the activity of the national legislatures. On the one hand a process of a weakening of the role of parliaments is going on as a result of the transfer of sovereignty and the delegation of legislative power to the Government and on the other hand the sphere of the parliamentary control and the deputies' power to debate the European legislation -to-be are substantially enlarged. [59] The parliaments shall control the position of the national government in the European Institutions, the delegated legislation performed by the executive power for the aims of the directives to be achieved, the measures proposed by the Commission before the European Parliament..

The National parliaments shall become participants in the supranational European legislative process. The role of the parliaments in the European legislative process shall ensue the setting up of new structures as presented by the permanent comissions on the matters of the european integration and shall develop the functions of the parliaments. The role of the parliamentary commissions on the matters European Union is regulated under the constitutions, in the acts of accession, in special acts or the reglaments of the parliaments. A matter of special interest is the proposition for the setting-up of the lower chamber of the European Parliament, constituted by delegated deputies of the national parliaments.

[59] In the literature the role of the national parliaments on their reciprocal activities with the European Union is subject to ambivalent conclusions. According to some of the authors the transfer of sovereignty shall influence as an additional factor of the limitation of the national legislatures and shall deepen the crisis of the parliamentarism. K.D. Bracher, The Crisis of Modern Parliaments in Comparative Politics, ed. R.Macridis and B. E. Brown, Homewood Illinois, 1977, 391-418, 406.; Ph. Norton draws a special attention to the trend of a marginalisation of the national parliaments, See National Parliaments and the European Union, London, 1996, 182;. According to others the participation of the parliaments in the European Integration Process shall win the recognition of their role and shall consolidate the parliamentary regime., See L. Dubois, The European Union: An Opportunity for the French Parliament to Recover Powers ?, in National Parliaments as Cornerstones of European Integration, ed. E. Smith, Kluwer, 1996, 49-63; See also The Changing Role of Parliaments in the European Union, ed. F.Laursen and S.Pappas, European Institute of Public Administration, 1995

8. Models and Peculiarities of the Constitutional Amendment in the EU Member States

The fact that not all of the European Union member states amended their constitutions on ratifying the Maastricht Treaty has been a sound argument in favor of the opponents of constitutional amendments.

However, during the periodization of the process of adapting constitutions several stages come up, the watershed being The Maastricht Treaty.

Indeed, only 5 out of the 12 states amended their constitutions on ratification of the Treaty of the European Union since the others had adopted the minimum of necessary amendments some time before that. Belgium, Denmark, Greece, Italy, Luxembourg, The Netherlands and Great Britain did not amend their constitutions on ratifying the Treaty of the European Union. This option stems from previous amendments or available constitutional provisions within the texts of the basic laws even before the formation of the European Union. Alongside with that the fact, that there are no obstacles on the part of the Constitution, as well as the procedure of implementing the constituent power, as well as the model, limits, and opportunities for interpretation of the constitutions in respect of their interaction with international law, all these have to be taken into account. Last but not least, a ratification without any amendments is a result of the attitude of the public opinion, the particular configuration of political forces in the executive power and national parliaments, and the level of consensus achieved in respect of the EU membership of the state and the adaptability of the current constitutional provisions towards the implications stemming from the membership status. The option of no amendments to the Constitution on ratification of the founding treaties is more pragmatic since it entails restricted social costs and this falls within the competence of the constituted powers.

In Belgium the constitution in article 38 (since 1970) has provided that any exercise of powers may be transferred to the institutions of public international law on grounds of a treaty which is in fact a constitutional admissibility for transferring sovereignty. The Constitution of Denmark also provided for transfer of sovereignty option as early as in 1953. The Constitution of The Republic of Greece in its article 28 has provided for the option of limiting national sovereignty as early as its adoption in 1975. Both the ”peaceful” provision of article 11 of the Constitution of the Republic of Italy of 1947 and the basic law of The Grand Duchy of Luxembourg of the 50s are of identical nature. The Constitution of the Kingdom of Netherlands has a provision in respect of conferring powers to international

organizations. Great Britain, having no written constitution, has amended its constitutional law by an Act of Parliament.

The ratification of the Treaty on the European Union has led to constitutional amendments in Germany, France, Ireland, Spain and Portugal. Moreover, some of them have undertaken constitutional amendments despite the availability of provisions for any transfer of sovereignty. Ireland has amended its constitution for the third time after Maastricht since after its accession to the Communities in 1972 and after signing the Single European Act it amended its constitution again. The amendments in some countries like Germany, France and Austria are considerable in scope. Along these lines, Austria, Sweden and Finland, accepted into the European Union in 1995, amended their constitutions on ratification of the primary law.

The models, procedures and the content of constitutional amendments in EU member states analyzed above deserve special consideration since the scope of the present paper imposes their only marking.

If the main models, procuring the interaction between the national constitutional law and the European law, constitutional amendments being only part of this same interaction, are considered most generally, and several options could be outlined depending on links of the constitution with European law, as well the position of the particular constitution within the national legal system.

The first model followed on ratification of the Treaty of the European Union by Belgium, Denmark, Greece, Italy, Luxembourg, The Netherlands and Great Britain has been performed without any constitutional amendments as far as the constitution itself was amended earlier in respect of the option for partial transfer of sovereignty. The implications of the Maastricht Treaty have been regulated in other sources of constitutional law like electoral laws, or other acts, as well as in enactments of the national parliaments.

The second model assumes substantial and maximum in scope constitutional amendments which in their turn have an impact on the rest of the constitutional law sources. This model is followed by Germany, France, Ireland, Portugal on ratification of the Treaty on the European Union and Austria on its accession. To a great extent the most comprehensive amendments are contingent on the federalism in Germany and Austria. The partial transfer of sovereignty provides an impact on the structure of the national constitutional system established not only on the horizontal, normative, functional and institutional separation of powers, but also in the vertical dimension of the principle of division of competencies among the federal government and the institutions of lenders. The settlement of federalist problems requires extremely detailed regulation because of integration of federations into the European Union, which in its own turn develops towards a pre-federal formation and especially because of the plans for a Europe of the Regions which are put forward from time to time. In France, Ireland and Portugal the extensive

constitutional amending has resulted from a number of national specific features, political arguments of irreversibility of the obligations undertaken in respect of the integration, a wish for greater precision of constitutional provisions.

The third model, designed by Spain, Sweden and Finland assumes making the fewest amendments possible in the text of constitutions, as well as performing considerable amendments in other sources of constitutional law.

The Spanish model has been the most attractive in terms of flexibility. This model provides a constitutional system adapting by organic laws. Thus, the rigid Constitution of the Kingdom of Spain is formally "opened" by the construction of a cession by virtue of which the right to enter into treaties could be conferred by an organic act, thus international organizations are empowered with competence provided in the Constitution itself. Thus the provision of article 93 makes an easier regime for adapting the constitution to the European integration without any amendment to the procedure performing the constituent power.[60] The progressive formulae of the constitution where the framers forestall the time and anticipated the trends in the integration even before the accession of Spain to the European Communities, enabled the amending of the Constitution by supplementing the passive voting rights in local elections.[61]

The Spanish version for opening the constitution leads to a transfer of the option for providing the primacy of the European law from the constituent power to the legislative power through the internal delegation by which the Parliament is to decide how to correct the inconsistency and to enforce the European law in contrast with external delegation of a transfer of sovereignty or a cession of powers.

The minimum amendments in respect of the adapting of the national constitutions assume both a combination of external delegation or a partial transfer of sovereignty towards the European Union and a combination of external delegation with internal delegation on the part of the constituent power towards the parliament and the latter to enact laws providing the conformity between European law and national constitutional law. By its nature internal delegation resembles the performance of the rationalized power in the contemporary fourth constitutional generation when this power is vested in the parliament. Legislative assemblies

[60] Depending on the event the General Cortesses or the Government provide the necessary warranties for the performance of these treaties and the resolutions passed by the international and supranational organizations having performed the cession. Thus, instead of a transfer of sovereignty or powers an interesting figure of cession of state functions is set up and the latter implicitly contains the idea of the delegation of power. The major advantage of the Spanish formula is that it evades the formula of the transfer of sovereignty by a cession of state power in the form of an international treaty to which Spain is a party. Generally, the Constitution is a rigid one, but in the relations with the European Union the open character of this constitution transforms the latter into a typically flexible constitution.

[61] In the provision of article 13 section 2 the wording "and passively" is added, since as early as its drafting the constitution provided the option for foreigners to be elected on reciprocal grounds in local self - governing bodies

perform it through complicated procedures and qualified majority procuring a higher degree of consent than any ordinary legislative act gets.

In the combination of the constructions of internal and external delegation a reverse dependency in their scope could be outlined, which predetermines also the content of constitutional amendments. Unfortunately, due to the lack of a provision on delegated legislation and an option for a delegation of restricted powers on behalf of the constituent power to the constituted institutions of legislative and executive power, the Constitution of the Republic of Bulgaria precludes any implementation of the pragmatic Spanish model in respect of adapting the Constitution to the necessities of integration.

Constitutional amendment procedures in the European Union member states reproduce the rationalized variant of performing the constituent power provided in contemporary constitutions. In most of the states judgments and rulings of Constitutional Courts in respect of the compliance of the basic laws with the text of the founding treaties is an obligatory element of the procedure followed on ratification. Furthermore, in Germany and France The Constitutional court and Conseil constitutional intervened before and after constitutional amendments during the process of ratification. The very ratification was carried out by dramatic referendums especially in Denmark, Ireland, France or in the considerably more tranquil atmosphere of parliaments passing decisions by qualified majorities.[62]

The content of constitutional amendments include several categories of provisions in respect of :

-- restriction on and a partial transfer of state sovereignty;

-- European citizenship, a number of rights inherent to European citizens and especially their passive and active voting rights both in local elections and in elections for European Parliament, the term of office and the immunities of its deputies;

-- direct effect of European law;

-- parliamentary control and establishment of special parliamentary committees on matters concerning the European Union, any information about the activity of the European institutions and forthcoming acts of community law to be followed by statements of national parliaments which produce binding effect on the respective governments, the requirement for a consent in respect of nominated national candidates for members of the Commission, The European Court of Justice and The First Instance Court, of the Audit Office and the Board of Managing Directors of the European Investment Bank;

[62] For the direct democracy and referenda in Austria, Denmark and Norway see I. Seidl, Constitutional Problems Involved in Austria Accession to the EU, CMLR,32, 727 -741, 1995 ; For a synopsis of the ratification of Maastricht Treaty see The Ratification of Maastricht Treaty, Issues, Debates and Future Implications, ed. F.Laursen, S. Vanhoonacker, 1994, European Inst. of Public Administration; Les constitutions nationales a L' epreuve de L'Europe, J.C.Masclet et D.Mauss, 1992, J. Rideau, Mànuel droit institutionnel de l'union et de communautes europeene, Paris, 1994; European Law Review, N 18 1993, 228 -247

-- the Economic and Monetary Union and the option of the European Central Bank to assume competencies bestowed chiefly on national banks;
-- participation in the common international policy, as well as the security policy according to chapter V of the Treaty of the European Union and obligations for the national executive to inform the parliament.

In most of the states a number of national constitutional law amendments were undertaken, which require no amending of basic laws. The above mentioned amendments delineate the scope of these constitutional changes which new member states should carry out on their accession.

IV. Contents and Procedure to the Amendment of 1991 Constitution of the Republic of Bulgaria

1. Content of the Constitutional Amendments Implied by Bulgaria Full Membership to the European Union

At first glance national constitutional amendments in the associated members are not top priority list as far as approximation of their legislation is precedes in time the adaptation of constitutions, which should be performed on the ratification of the founding treaties. In contrast with the legislation, however, constitutions are fundamental laws and are based on the exclusively high degree of public consent. In this sense, as early as during the preparation of the Republic of Bulgaria for joining the European Union the constitutional amendments, entailed by the full membership, must be a subject-matter of the public discourse in order the necessary national consensus about the content of constitutional changes to be generated. At the same time some conflicting provisions of the 1991 Constitution should be put in conformity as early as during the preparation period full membership.[63] Even now they are not only in a conspicuous contravention with the fundamental principles of the European integration and the requirements of the founding treaties but also they would comply our legal system with European and universal standards. They would also favorably affect other fields beyond the approximation of legislation as far as they favor the country's economic development and consequently provide conditions for the preparation of the Republic of Bulgaria for full membership to the European Union.

The main lines of amendments to the Constitution of the Republic of Bulgaria of 1991 are defined by the necessity for complying the basic law with universal standards in the field of fundamental rights, as well as for improving the efficiency of functioning of the established configuration of institutions so that Bulgaria could take into account the recommendations

[63] Commission Opinion on Bulgaria's Application for Membership of the European Union, Doc/97/11, Brussels, 15th July 1997

referring to the political criteria for membership included in the Opinion of the Commission of EC on the Bulgarian application for accession to the European Union. At present constitutional amendment proposals entailed by the preparation for full membership are in line with the context of the current political discourse about any amendments of the Constitution of the Republic of Bulgaria of 1991. The scope of this paper, however, allows only for outlining major directions. Besides the analysis of the amendments so proposed falls beyond the framework of this research as far as most of them do not stem from the preparation for full membership. The content of the amendments is relevant to the requirement for complying the Constitutions with the Founding treaties solely and to an extent that will form an adequate constitutional framework and meet the political criteria for membership. These constitutional amendments manifest the national sovereignty above all, but they have to set the constitutional framework in accordance with the universal democratic political and legal standards and most of all in conformity with a viable democracy and a government based on the rule of law.

In respect of the taxonomy of this report, as well as the relation of constitutional amendments to the membership of the Republic of Bulgaria of the European Union they may be grouped in several directions:

The first group includes amendments related to the fundamental rights of citizens. Article 22 of the Constitution, among these, directly pertains to the full membership whereas the rest of the amendments only indirectly affect the accession because on their purpose they concern the reinforcement of the principle of the rule of law which constitutes one of the political criteria formulated as a requirement in Agenda 2000.[64]

It is necessary that the subsisting ban on foreigners to acquire land under the provision of article 22 be eliminated.[65] The legislative permission is a palliative which hardly encourages foreign investors. In a state of the rule of law the overruling of a constitutional ban by a legislative regulation in respect of its legal effect is as inadmissible as the circumvention of the constitution and the laws by any natural and legal persons using subtle, jeweler-like juridical constructions. By virtue of the supremacy and the direct effect of the constitution under the provision of article 5 of the 1991 Constitution of the Republic of Bulgaria the subsisting constitutional ban of article 22 could be enforced and precluded from being potential. Besides there is a complete discrepancy between preserving article 22 unchanged and the full membership of the European Union, as far as this is flagrantly in conflict with the fundamental principle of Community law concerning the free movement of persons, goods, services and capitals. Keeping the text of article 22 unchanged would also be treated as an act of discrimination in respect of European citizens who are not Bulgarian citizens.

[64] Àgenda 2000, For a Stronger and Wider Union , Bulletin of the European Communities, Supplement 5/97

[65] This ban is delicately noted in the statement of the European Commission, Op.cit.,46

Second, in order but not in a significance, some of the proposals for the constitutional amendments refer to the already mentioned constitutional provisions of the country member states during the ratification of the Founding Treaties.

There are no obstacles for the implications of the Treaty of the European Union to become part of a full constitutional revision preceding a full member accession Agreement for years. In consequence there would be an exceptionally great political impact, for the amendments will be a cogent demonstration that the Republic of Bulgaria is ready for full membership to the European Union. Thus the amendments stemming from the membership may be subject to an independent performance or a concurrence with the other constitutional changes being a part of the solution of other problems concerning the constituent authority.

Depending on the scope of the amendments necessary for the membership of Bulgaria to the European Union a full more pragmatic revision of the Constitution which probably would affect the functioning of the institutions might take place as well.

2.The Constitutional Amendment Procedure in the Bulgaria's Accession to the European Union

The Agreement on the accession of the Republic of Bulgaria as a full member to the European Union imposes by necessity preliminary amendments to the Constitution in force. The amendment would be aimed at the compliance of the legal rules under the Constitution with the European law in force at the moment when the agreement shall be concluded.

The subject-matter of the constitutional revision forestalls the implementation of the one of the both regimes under chapter IX of the basic law. When along with the amendments forestalled by the full membership agreement forestalled will be amendments to the basic law that are under the exclusive competence of the Grand National Assembly by virtue of Article 158 the model of classic constituent power shall be applied. Having constitutional amendments concerning the model of state organization and the form of the state government been undertaken the constitutional revision procedure would be substantially complicated. The change in the balance between the powers constituted by the Constitution through enlargement or diminishment of their powers constitutes by itself a change in the form of government. This is the aim to avoid the exclusively hard mode of a constitutional revision by involving the Grand National Assembly that makes the project of an amendment embracing only what is necessary for the agreement between the Republic of Bulgaria and the European Union that is considered to be preferable.

Amendments to the Constitution can be made within the rationalized procedure in the National Assembly on a maximum consent between the state institutions, among the political parties and on a consensus in the society concerning the purposes of the

constitutional revision. The President of the Republic embodying by the Constitution the unity of the nation and thereby disposing with large possibilities to participate in the common state policy and to exercise an influence on its conducting . In general terms the positions of the President as a relatively " strong " head of the state with individual functions within the framework of the parliamentary form of government provide for the possibility of a n easier and efficient setting up of the procedure of the constitutional amendment in the National Assembly. It is clear that the particular features of the constitutional regulation must be considered when international treaty be concluded, ratified, and come into force as well as the particular features of the very procedure of the constitutional revision that is performed in the National Assembly. The enforcement of the agreement for the accession of the Republic of Bulgaria to the European Union as a full member could not be just a single act.. It is a final result of the realization of several consequent stages each preceding one preparing and being the ground of the following. Different subjects shall take part in them and the synchrony in their activities shall be a prerequisite for the achievement of the aim desired. Consequently shall be performed: a preparation of the agreement on the accession to the European Union; a preparation and passing into the National Assembly of a legislative bill on the amendment to the Constitution /Article 85, Section 3 of the Constitution/; a performance of the procedure under Chapter IX of the Constitution on the passing of the amendments; the signing of the agreement and the making of a provision for time within which the ratification shall have to be performed; referring to and ruling by the Constitutional Court under Article 149, Section 1, count 4 on the compliance of the Agreement concluded with the Constitution before the ratification; passing of an act of the National Assembly on the ratification of the agreement..

By virtue of Article 85, Section 3 of the Constitution of the Republic of Bulgaria the Association agreement for the full membership in the European Union may be signed only after amending the basic law. The negotiations on the preparation of the agreement are normally conducted by the executive power presented by the Council of Ministers. When the final draft has been made a precise estimation needs to be made as to the determination of the texts that do not comply with the constitutional provisions at the moment of the accession of the country. On the ground of this estimation a legislative bill should be drafted in relation to the amendment to the Constitution in force. The persons entitled to the right to pass in such a bill are the President of the Republic and one fourth of the members of the Parliament. It is the usual way that the president symbolizing the unity of the nation and an institution of an unifying purpose in the political life of the country shall pass a bill of constitutional amendment . The working out of the latter may be left to a larger scope of experts, both of the political forces in the state and independent ones. Such experts groups on different social areas have already be set up at the presidency. A broad publicity and transparency should obviously be needed on the working out of this project. It could be

possible that before the legislative bill has been brought in the parliament it can be published for a broader discussion following which if corrections be necessary they can be done thus reaching the final version. Within this highly responsible task the President of the Republic may conduct periodical consultations with the leading bodies of the political forces represented in the Parliament aiming at a political consensus to be reached within the parliament on the constitutional amendment. Generally the role of the head of the state in this process would be the one of a political arbiter and a go-between both as for the parliament and the government and as for the political elite and the society as a whole. The President shall pass the final draft bill in the National Assembly and shall set up the procedure under Chapter IX of the Constitution.

Another, more complicated variant of a drafting and passing in of a legislative bill on amending the Constitution is possible. It would provide for all the activity to be performed by the National Assembly. By a decision of the Parliament arising by the deputies a special ad hoc commission shall be set up for preparing the bill. Only lawyers shall be members to that commission the principle of proportional representation of parliamentary political parties being applied. The parliamentary commission shall work out and deliberate the constitutional amending bell and motives to it also under the regime of openness to the society. When the bill shall be finally passed by the commission on the basis of a consensus among its members, the bill shall be presented to the members of the Parliament the latter expressing their support by signing it up. The signatures of a total number of one fourth of the deputies shall be sufficient for the bill to be passed in the National Assembly /Article 154, Section 1 of the Constitution/. From this moment on the procedure under Chapter IX of the Constitution shall be in motion.

The constitutional amendment bill passed in the National Assembly shall pass through three readings with three voting under the procedure of Article 155, Section 1 or Section 2 of the basic law. The parliament may establish a special commission for a preliminary deliberation on the bill when the latter has been passed in by the President of the Republic. In that case the president of the National Assembly may alternatively allocate the bill to the standing commission on legal issues. Whenever the bill has been passed in by one fourth of the deputies it is usually worked on by the parliamentary commission which has worked it out.

The Parliament shall deliberate and vote the bill on the first reading on principle the report of the commission having been heard out . On the first voting the bill shall be deliberated in the mass in the plenary hall. The members of the parliament shall express their opinion on the fundamental matters and the purpose of the constitutional amendment intended.

After the end of the first reading the deputies may submit written suggestions concerning amendments and sumplementations in the text passed on principle. The

suggestions shall be submitted through the president of the relevant parliamentary commission. The commission shall pass a motivated report in the National Assembly containing the written suggestions of the deputies submitted together with the statement of the commission thereby as well as the suggestions of the commission on the legislative bill deliberated being passed on the suggestion of a member of that commission.

The National Assembly shall deliberate and vote the legislative bill on the second reading text after text. On this reading only the deputies' suggestions submitted in writing and passed after the first reading in as well as the suggestions of the commission incorporated in its report shall be deliberated. The suggestions contravening the principles of the bill passed on the first reading shall not be subject to deliberation.

On the third reading of the legislative bill on the amendment of the Constitution the former shall be voted beforehand a reasonable time having been left for the deputies to determine their final will. At the end of the third reading the bill shall be considered to be passed. The final text shall signed by the president of the parliament and shall be promulgated within seven days in the Official Gazette. It is usual that the law shall come in force on the day of its promulgation.

The amendments to the constitution being a fact the road to signing the agreement on the accession of the Republic of Bulgaria to the European Union and respectively its ratification and entering into force shall be revealed.

It is necessary that before the passing of the ratification bill in the parliament the President of the Republic shall refer to the Constitutional Court filing a claim for a judgment on the compliance of the agreement with the already amended constitution /Article 149, Section 1, count 4 of the Constitution/. It is usual for the Constitutional Court to constitute as interested parties on that constitutional case the President, the Government and the Parliament. In case that the Constitutional Court shall rule by decision the compliance with the basic law the Council of Ministers shall pass in the Parliament the draft bill on the ratification of the agreement. From this point on the ordinary legislative procedure under the Rules of Procedure of the Parliament shall follow. After the ratification law is passed the latter shall be promulgated by the President and by its entering into force the membership agreement shall effect its legal consequences.

The complicated procedure related to the agreement on full membership in the European Union requires from the political elite of this country as well as from the state institutions a quick generating of consensuses based on the modern political discourse.

Concluding Remarks

The content and phrasing of the amendments to the Constitution of the Republic of Bulgaria could only be formulated at present because they are a changing variable, depending on the future content of acquis communautaire[66] at the moment of the accession of Bulgaria to the E U. A paradigm could be constructed stating that if the content of the Constitution being a constant dimension during the coming decades, for which one cannot be certain, the range of the amendments to the constitution of the Republic will be predetermined by the current evolutionary degree of the European Union at the time of Bulgaria's accession. The paradigm is getting more and more complicated on the submission of two variable parameters which basically influence the content of acquis communautaire taking into account the impossibility to apply the formula of the growth of the constitution (implicit virtual interpretation) to the European constitutions including the Bulgarian one, which is an impermissible heresy in the continental legal family. The second variable parameter is the condition of the European Union in respect of the degree, intensity and spheres of integration process. In formal terms, everything seems to boil down to the issue whether there will be a written constitution of the European Union. This would predetermine the amendments to the Bulgarian constitution considered already as a subordination of constitutions under the conditions of federalism. However, the evolution of the unwritten or uncodified constitution, in the form of founding treaties and their constitutionalisation by means of the decisions of the European Court of Justice, would probably enlarge the range of necessary amendments to the Constitution of Bulgaria arising from the full membership in the European Union during the coming decade.

[66] See Carlo Curty Gialdino, Some Reflections on Acquis Communautaire, CMLR, 32, 1995,1089 - 1121.