

FLEXIBILITY OF CONSTITUTIONS AS A FACTOR OF POLITICAL STABILITY. THE CASE OF WESTERN BALKANS STATES

Summary

This paper elaborates on the relationship between the political system's stability and a constitution's flexibility. Using the comparative constitutionalism perspective, one can find some background assumptions underlying political system mechanisms. The core of the constitutional system is made of political elements manifested in the Preamble and legal elements, which are to be found in the body of the written document of the constitution. Rules and procedures for interplay between these elements are crucial for comprehending political stability issues. This theoretical approach shows its full gravity when analyzing the political peculiarities of Western Balkans states, where constitutions are utilized as political instruments for stabilizing volatile multi-ethnic and pluralistic societies. The outcome of the research is significant for better understanding the Balkan political context as well as the inherent logic of the idea of constitutionalism.

Keywords: political stability, comparative constitutionalism, Western Balkans, preamble, flexibility, resilience, political system, constitutional law

1. Introduction

According to the spirit of constitutionalism, the law should provide solutions to achieve political systems' resilience. Hence, constitutionalism has a lot to do with political stability. The paper aims to investigate the relationship between a constitution's flexibility and the condition of the political system. The flexibility of a constitution can be manifested by many different modes, such as opening the constitution for changes, amendments, novelizations, etc. Moreover, apart from these modes of change, there is also a question of the general character of a constitution, which makes it more or less susceptible to being changed, violated, or rejected. Considering this, one can find three categories comprising crucial dimensions of a constitution: flexibility, inclusiveness, and specificity (Elkins, Ginsburg, Melton, 2009). Although one can formulate many hypotheses about a constitution's endurance regarding these categories, particular attention will be given to the rules and principles determining what can be changed within the constitutional document and the political consequences of these modifications. From this point of view, one should glance at the function of a preamble, which plays a crucial role in anchoring a constitution on fundamental values. Operations on the preamble can be seen as an essential phenomenon of constitutionalism affecting political stability. To make the research more precise, we will focus on Western Balkans countries that share similar jurisprudence traditions and face similar difficulties in adjusting their regimes to Western standards of constitutionalism. Other constitutional systems shall be evoked only as a matter of comparative analysis. The problem has its historical background regarding the period of post-communist transformation and the recent context determined by the relation to the institutions of the European Union. Thus, the topic might be relevant for understanding the constitutionalism of both countries—those that already are EU member states and candidates for EU membership. To conclude,

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the vision of constitutionalism and the commitment to practicing it play a crucial role as a factor of political stability. Therefore, our research will be based on a few steps toward elaborating this link. First, general remarks on the structure of constitutionalism and political stability will be introduced. That will be equipped with some examples of constitutional systems of different ranges of flexibility. Second, we will juxtapose the Western Balkans constitutional system in terms of a twofold subject matter consisting of preambles to the constitutions and the rules and procedures for changing them. Third, each case will be presented in detail. Fourth, we will arrive at the conclusions relevant to the main topic.

2. On a Preamble and Why it Matters

Preambles are usually underestimated from the legal point of view, treated just as manifests or declarations of values attached to the body of a legal act. At this point, there is room for study in political science or comparative constitutionalism in particular because the preambles could be understood as an expression of the will of people gathered in constitutional conventions or the political community as such. In general terms and using some simplification, one can say that in a body of the constitution, there is legal content to be found, whereas, in a preamble, we deal with political elements. Recent literature comprises many useful findings for studies on constitutional dynamism. As we read: “The constitutional lawyer’s lens does not suffice here for a full understanding. Clearly there is a lot more to preambles than their (indirect) legal value for the system of constitutional law of a country.” (Voermans, Stremmer, Cliteur, 2017, p. 150). Hence, a preamble to the Constitution is worth considering from comparative constitutionalism, constitutional law, and political theory. The way the preamble can both affect and reflect the reality of a given political system is a research problem that might be and is a subject matter of plenty of interesting contemporary studies (Orgad, 2010, p. 738). This topic became increasingly relevant because constitutionalism is worth pursuing as an element of every stable political system. Constitutional tools may be utilized to maintain a political system's balance on its different layers when political stability is at stake. One can find a correlation study of the relationship between such variables as religion, history, sovereignty, ethnicity, principles, and progress indicators: economic, social, environmental, and structural (Ummareddy, Alam, 2021).

This research presents an approach in which the preamble manifests political attitudes, preferences, and values recognized by the citizens or constitution framers. A preamble can be an object of study itself; a preamble's internal perspective could be even more interesting to present. This means that one can approach the constitution as a legal reality that comprises some elements that constitute a mechanism with its structure. This mechanism can be analyzed in terms of its impact on the environment of the constitutional system and in terms of political issues that determine this mechanism. Nonetheless, one should grasp the idea of a constitution as a structured object. As Frosini points out: “[...] preambles are not just the hortatory language that introduces a series of operative provisions; they are not just the “ornately designed cover” of a book called “the Constitution.” However rhetorical the preamble may sound, it is there to remind us why the constitution was approved” (Frosini, 2017, p. 628). The relation between the body of the constitution and a preamble is dialectical. It is worthwhile to consider it as a pair of elements that manifests itself in dichotomies like, for example, ends and means: “Preambles, more than any other parts of constitutions, make vivid the complex relationship between the presumptive ends underlying a given constitution and the particular means that it authorizes to achieve those ends” (Levinsons, 2011, pp. 158-159). Another dichotomy from the preamble-body of constitution distinction pertains to the temporal dimension. From this perspective, the preamble bridges political entities' future and past. As Lazar observes: “[...] Preambles often contain speech act language such as “proclaim” and “hereby” which seems to point to the pivotal nature of a constitution as a political event. Framing a constitution is a bold act, and leaders must persuade the people that it is in their future interest. But how could we know the future?

Through the use of temporal-rhetorical framing, leaders can imply that the constitution is the necessary mechanism of bringing that desirable future about. The act of making the constitution is partly for this reason, legitimate” (Lazar, 2019, pp. 1-2). In the same mode, the constitution can mark or recall the past. Historical mentions, references to tradition, culture, identity, etc., can do it. Another author says: “In the case of constitutional preambles, the aspects of memory are taken quite far, as one of the main functions of constitutions is the codification of the guiding principles of a nation. Of course, the constitutional memory can vary a great deal, all the way from the best possible outcomes of democratic and political practices to the agendas of a single political party.” (Nyyssönen, Metsälä, 2019, p. 4). All issues aforementioned allow us to regard a constitution as a political event: “[...] preambles are not just descriptive or instructive, and not just exhortative and expressive in the abstract with respect to the content of the constitution as law or the symbolic self of the state. Instead, they are often persuasive by means of the narrative situation of the constitution as a political event” (Lazar, 2019, p. 8). This assumption is of great analytical significance because it leads to a possibility beyond constitution as a written text. According to this assumption, political science offers the most adequate research framework. In this view, the distinction between a preamble and a constitution might be considered as an interplay between static and dynamic elements. The former should be assigned to the preamble and the latter to the body of the constitution. It means that the preamble is established for navigating under circumstances where there is a gap in a legal system, which must be fulfilled by referring to values and general principles. In this case, a preamble is used as an anchor. On the other hand, the body of the constitution must keep a range of flexibility. In this sense, a constitution is flexible when it can easily adjust the shape of the legal system to the change in environment or political needs. The most known way of dealing with this situation is a process based on rules and procedures for amending the constitution.

There is a point at which the question about the proper function of a preamble arises. There are few ideas in the literature on the typology of these functions. According to Orgad’s typology, there are: “[...] three legal functions of preambles: the ceremonial-symbolic, in which the preamble serves to consolidate national identity but lacks binding legal force; the interpretive, in which the preamble is granted a guiding role in statutory and constitutional interpretation; and the substantive, in which the preamble serves as an independent source for constitutional rights.” (Orgad, 2010, p. 715). Another typology is to be found in Voermans et al. studies, where they point out the following functions: a) expressive function; b) identifying function; c) evocative function; d) "bridge in time" function; e) educational function (Voermans, Stremler, Cliteur, 2017, pp. 92-94). Regardless of the particular approach, one can conclude that there is room for some fundamental presuppositions and constraints that might be imposed upon changing the constitution in the preamble. Thus, in general, the purpose of a preamble – from a formal point of view – is to set boundaries beyond which it is impossible to go without contradiction on the constitutional ground. It is to underline that despite the gravity of the content of the preamble, the crucial thing is its power to affect constitutional operations. According to Orgad, the content of preambles can be classified into five categories: a) The sovereign; b) Historical Narratives; c) Supreme Goals; d) National Identity; e) God or Religion (Orgad, 2010, pp. 716-717). Each of these categories, being equally important, would lose gravity without being included in the frame of the Preamble. Having the static character of a preamble sorted out, one should take a look at the modes of flexibility as a manifestation of the dynamic element of a constitution: its body.

3. The Modes of Constitutional Flexibility

The flexibility of the constitution consists of modes and possibilities of changing the constitution by legal means contained in the constitution itself or the doctrine of constitutionalism. One can evoke the distinction between the written and unwritten parts of the constitution as a

perspective of this problem. Thus, the modes of change can be included in the constitution's document and constitutionalism practice.

Many constitutional crises blow up because there is a single written document, which is the subject of controversy over the interpretation. Paradoxically, a constitutional act established to provide some order may lead to instability. In this case, the lack of flexibility is the leading cause of the political crisis. On the other hand, there can be a contradiction within the written text that needs to be clarified about the proper applications of procedures and ways of implementing political decisions. Regarding constitutionalism, rigidity can be perceived as a factor of stability and instability.

Conversely, there is a system based on the unwritten constitution. In this case, flexibility is found in the most exposed form, where both constitution and constitutionalism could be a subject of dynamic and uncontrolled change. Between these two extremes, plenty of models differ in the flexibility of constitution and constitutionalism. Although many elements may be considered, one of the most vibrant examples of the problem of flexibility is to be grasped on the ground of the preamble.

As an ideal model, a preamble expresses fundamental, undisputable values or principles governing a society. Let us glance at the Israeli example, although there is an uncoded constitution system. One can find a substitute for a preamble, a Declaration of the Establishment of the State of Israel. Whereas the body of the Constitution is highly flexible, the Preamble is untouchable (Barak, 2011). It contains crucial ideas and principles that determine the shape of the State of Israel and the spirit of its constitution.

As we can see, the flexibility of a constitution can be separated as a factor of stability, and the correlation between these elements is to be found. However, one should inquire about other criteria, like inclusiveness and specificity, to get a more profound answer to this question. Regarding the case of the Republic of North Macedonia, there is a high level of flexibility, which leads to the extension of inclusiveness due to political problems (Atanasov, 2023, p. 45). Although it seems an effective way of dealing with political stability, it is not a good position from this perspective. Extreme flexibility can hinder political stability by making a constitution susceptible to political contingencies, whereas the constitution was meant to be a solid structure for blocking unwanted political fluctuations. If the amendment can change the preamble, we will deal with a loss of static features of the constitution, as mentioned in the introduction above. Having assumed the distinction between the phenomenon and potential, one can say that although there is a stabilization in the domain of politics, it makes the constitution a much weaker instrument of stabilization (Perlikowski, 2021).

To conclude, there is no universal response to the question of the interdependencies between the flexibility of a constitution and the stability of a political system. However, by contextualizing each case by equipping it with other criteria (specificity and inclusiveness), one can achieve a proper picture of a problem and a satisfying response. That type of research can be labeled as a qualitative survey of comparative constitutionalism.

The issues that may arise along with this problem are related to the following questions: Is a rigid constitution a factor that correlates with the stability of the political system? Does a flexible constitution determine the stability of a political constitution in a more effective way than a rigid one? All these questions can be reduced to comprehending the concept of stability, defined as constancy, invariability, and flexibility. From a different angle, political stability is a phenomenon and has potential.

Flexibility seems to be the primal and most fundamental feature of a constitution because the issues written down in the constitution are unique. Those who establish the constitution want, for some reason, to emphasize the elements that are part of the constitution. Giving reverence to these elements means that one cannot change or reject given issues by removing them from the frame of the Constitution. According to Carl Schmitt's observation, in the modern

approach toward constitutionalism, it does not matter what kind of substantial topic it is when there is a will to put a particular element in the constitution. In the Weimar Constitution, plenty of elements typically belong to the lower order within the structure of a legal system issues like detailed rules for education or the rights of administrative officers have been equalizing with those of fundamental importance for the shape of an entire polity (Schmitt, 2008, pp. 67-69). Taking this fact for granted and accepting the so-called relative approach to the Constitution, one can conclude that paradoxically, what makes a part of the Constitution is not a fundamental character of a given issue, but the fundamental character of a given issue is determined by being a part of the constitution. Hence, the scope of flexibility may show us the true character of a constitution and the emphasis that is given to the particular elements thereof. On the other extreme of this topic is a stance held by Thomas Paine, who considered the constitution merely as an instrument for maintaining democratic rule instead of purpose itself. He observes, "A Constitution is not the act of a Government but of people constituting a Government, and Government without Constitution is power without right" (Paine, 1996, p. 141). Hence, the constitution is a people-dependent document that must be submitted for revisions: "But as it would have been unwise to preclude the benefit of, and in order also to prevent the accumulation of errors, if any should be found, and to preserve a unison of Government with the circumstances of the state to all times, the Constitution provided that at the expiration of every seven years, a convention should be elected for the express purpose of revising the Constitution and making alteration, additions, or abolitions therein if any such should be find necessary" (Paine, 1996, p. 143). Thus, as we see above, the question of the flexibility of the constitution might be considered a rudimentary issue for understanding the gist of constitutionalism and its interplay with politics.

For comparative purposes, we will analyze some examples of preambles and means of protection against changes. There will be one preliminary step before the main analysis. The scope to which flexibility can be extended shall be shown using examples of changeability of the preamble. After that, the proper analysis will pertain to Western Balkans countries, focusing on preambles and their capacities and limitations. Having a particular interest in flexibility, one cannot miss the other two relevant elements: inclusiveness and specificity.

4. Flexibility of Constitutions on Western Balkans states

Although the flexibility of constitutions might be regarded in order to many different criteria, we must precisely determine the focus of our survey. That will be the constitutional status of a preamble and its relation with the body of the constitutional text. The location of some specific constitutional content, like values, aims of social cooperation, etc., really matters in interpreting constitutional law. Emphasizing some elements over others is an operation that might signal that some elements are superior to others, and their changeability is somehow limited, whereas the status of different elements is of minor importance and might be submitted to the changing process. There are a plethora of instruments for securing constitutional change. The most popular requirements are supermajorities, referendums, constraints on subjects entitled to propose a change, and other procedural checks. As a perspective for the research, we shall go toward a three-stage analysis. First, the preambles of studied constitutions will be juxtaposed and analyzed. Second, the rules and procedures for amending and changing the constitution will be exposed and elaborated. Third, as a final stage, we shall deliver a general characteristic of the flexibility of the constitution.

5. The Modes of Preamble Operation

Although, in general terms, the Preamble is to be an anchor for the constitutional act, the situation is more complicated than it looks at first glance. One can find a few different ways of

coping with preamble rigidity. Thus, unconventional modes of treating a preamble go as follows:

- a) Minor changes to the text caused by some political event, e.g., the case of the German preamble, which was amended in 1990 after reunification: “The new preamble declares that the Germans in all of the German Lander – including the five Lander in the East – ‘have achieved the unity and freedom of Germany in free self-determination.’” (Voermans, Stremmler, Cliteur, 2017).
- b) The preamble was changed by the constitutional amendment, e.g., the case of the Indian preamble, which was changed by adding the words “socialist” and “secular.” It was to emphasize the ideological turn in politics in 1976.
- c) Another preamble modified the content of the preamble, e.g., the case of a French preamble called *matryoshka* structured preamble (consisting of a collection of constitutional documents). Frosini describes the process: „Then (and this is extremely important) the Council went on to say that the law under scrutiny did not encroach the Preamble of the 1946 Constitution. The Council did not grant protection to conception, and therefore protection for the embryo. All of this emerged from the debate prior to the approval of the 1946 Preamble, when the drafters decided to exclude the following sentence: “the right of the child to life and to health shall be guaranteed prior to birth” (Frosini, 2017, pp. 617-618).
- d) The change of a preamble by attaching an additional element, e.g., the case of Charter of the Environment added to the French constitution as a new element in 2005.
- e) The Preamble of the constitution of the entity belonging to the federation changed by the amendment of the federal constitution, e.g., the case of the constitution of Republika Srpska. “In fact, the text of the Preamble of the Constitution of RS had been modified by Amendments XXVI and LIV whereby it had been explicitly stated that “these amendments form an integral part of the Constitution of the Republika Srpska” (Frosini, 2017, p. 621).
- f) Preamble protected from any constitutional change, e.g. the case of Nepal “A unique example of a substantive preamble appears in Nepal. Article 116(1) of the Nepalese Constitution proclaims that “a bill to amend or repeal any Article of this Constitution, without prejudicing the spirit of the Preamble of this Constitution, may be introduced in either House of Parliament.” This clause invalidates even a constitutional amendment that violates that spirit of the preamble (Orgad, 2010, p. 728).
- g) Adding a new preamble to achieve a combination of new and old elements, e.g., the Latvian constitution from 1922 and 1993. “The Latvian constitution dates from 1922. It contained a very short preamble: ‘The People of Latvia have adopted, through their freely elected Constitutional Assembly, the following Constitution.’ During the Soviet-period, the constitution was suspended, but in 1993, it was fully reinforced. The new preamble was added to the constitution in 2014. (Voermans, Stremmler, Cliteur, 2017, p. 101)”.
- h) Introducing a preamble to the previously existing document, e.g. the case of Lebanon (1926, 1990). “The rather old constitution of Lebanon – dating from 1926 – lacked a preamble in its original version. The preamble was added by constitutional amendment in 1990, in the wake of the Taif Agreement that was designed to end the Lebanese Civil War. In fact, the preamble is a literal copy of the part on General Principles from this agreement” (Voermans, Stremmler, Cliteur, 2017, 101).
- i) Replacing a preamble by the constitutional amendment, e.g. the case of the Republic of North Macedonia in 2001. (extensively elaborated below)

As one can conclude from the above-enumerated types of preamble operations, this should be taken into account along with rules and procedures of constitutional amendments to consider the flexibility of a constitution as a relevant factor of political stability. To make it clear – when political stability is to be understood in terms of the potential resilience of the political system, the flexibility of the constitution plays a crucial role in determining how far political change can go, and on the other hand, it reflects the political will expressed by a nation or society. So, to analyze accurately how it works in the Western Balkans states ecosystem, it will be helpful, to begin with the legal background of this context. Below are crucial elements of constitutional law that are indispensable in this research.

6. Western Balkan States – the Context of the Research

Although all constitutions of Western Balkan states differ to some extent, they are also affected by similar factors that make them prone to comparative analysis. Below are preambles to the constitution of the following states: North Macedonia, Serbia, Montenegro, Croatia, Kosovo, Bosnia, and Herzegovina. Particular attention should be given to Macedonian case, which is most apparent in the context of analysis. Nonetheless, a comparative glance at other cases is necessary to grasp the clue of the problem in an appropriate way.

Table no 1 Preambles to the Constitutions of Western Balkans States

North Macedonia	Serbia	Montenegro	Croatia	Kosovo	Bosnia and Herzegovina
“The citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniak people and others taking responsibility for the present and future of their fatherland, aware of and grateful to their predecessors for their sacrifice and dedication in their endeavours and struggle to create an independent and sovereign state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal in rights and obligations towards the common good - the Republic of Macedonia - in accordance with the tradition of the Krushevo Republic and the decisions of the Antifascist People’s Liberation Assembly of Macedonia, and the	“Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia, Considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations, the citizens of Serbia adopt CONSTITUTION OF THE REPUBLIC OF SERBIA” (The Constitution of the Republic of Serbia, 2006)	“Stemming from: The decision of the citizens of Montenegro to live in an independent and sovereign state of Montenegro, made in the referendum held on May 21, 2006; The commitment of the citizens of Montenegro to live in a state in which the basic values are freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and the rule of law; The determination that we, as free and equal citizens, members of peoples and national minorities who live in Montenegro: Montenegrins, Serbs, Bosniacs, Albanians, Muslims, Croats and the others, are committed to democratic and civic Montenegro; The conviction that the state is responsible for the preservation of nature, sound environment, sustainable development, balanced development of all its regions and the establishment of	“[...] Setting forth from these historical facts and the universally accepted principles governing the contemporary world and the inalienable and indivisible, non-transferable and perpetual right of the Croatian nation to self-determination and state sovereignty, including the inviolable right to secession and association as the fundamental conditions for peace and stability of the international order, the Republic of Croatia is hereby established as the nation state of the Croatian nation and the state of the members of its national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians and others who are its citizens and who are guaranteed equality with citizens of Croatia nationality and the exercise of their national rights in accordance with the democratic norms of the United Nations and the countries of the free world.	“We, the people of Kosovo, Determined to build a future of Kosovo as a free, democratic and peace-loving country that will be a homeland to all of its citizens; Committed to the creation of a state of free citizens that will guarantee the rights of every citizen, civil freedoms and equality of all citizens before the law; Committed to the state of Kosovo as a state of economic wellbeing and social prosperity; Convinced that the state of Kosovo will contribute to the stability of the region and entire Europe by creating relations of good neighborliness and cooperation with all neighboring countries; Convinced that the state of Kosovo will be a dignified member of the family of peace-loving states in the world; With the	“Based on respect for human dignity, liberty, and equality, Dedicated to peace, justice, tolerance, and reconciliation, Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society, Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy, Guided by the Purposes and Principles of the Charter of the United Nations, Committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law, Determined to ensure full respect for international humanitarian law, Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and

Referendum of September 8, 1991, have decided to establish the Republic of Macedonia as an independent, sovereign state, with the intention of establishing and consolidating the rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community, and, in this regard, through their representatives in the Assembly of the Republic of Macedonia, elected in free and democratic elections, adopt..." (The Constitution of the Republic of North Macedonia, 2011)		social justice; The dedication to cooperation on equal footing with other nations and states and to the European and Euro-Atlantic integrations, the Constitutional assembly of the Republic of Montenegro, at its third sitting of the second regular session in 2007, held on 19 October 2007, adopts THE CONSTITUTION OF THE REPUBLIC OF MONTENEGRO." (Montenegro's Constitution of 2007 with Amendments, 2013)	Respecting the will of the Croatian nation and all citizens so unwaveringly expressed in free elections, the Republic of Croatia is hereby established and shall further develop as a sovereign and democratic state in which equality, freedoms and the rights of man and citizen are guaranteed and secured, and economic and cultural advancement and social welfare are promoted." (The Constitution of the Republic of Croatia, 2014).	intention of having the state of Kosovo fully participating in the processes of Euro-Atlantic integration; In a solemn manner, we approve the Constitution of the Republic of Kosovo." (The Constitution of the Republic of Kosovo, 2016)	Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments, Recalling the Basic Principles agreed in Geneva on September 8, 1995, and in New York on September 26, 1995, Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows..." (The Constitution of Bosnia and Herzegovina, 2009)
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Table no 2 Rules and procedures for amending the constitutions of Western Balkans states

North Macedonia	Serbia	Montenegro	Croatia	Kosovo	Bosnia and Herzegovina
Article 129 The Constitution of the Republic of Macedonia can be changed or supplemented by constitutional amendments. Article 130 A proposal to initiate a change in the Constitution in the Republic of Macedonia may be made by the President of the Republic, by the Government, by at least 30 Representatives, or by 150,000 citizens. Article 131 The decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives. The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate. The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives. The change in the Constitution is declared by the Assembly. (The Constitution of the Republic of North Macedonia, 2011)	Article 203 The National Assembly shall be obliged to put forward the act on amending the Constitution in the republic referendum to have it endorsed, in cases when the amendment of the Constitution pertains to the preamble of the Constitution, principles of the Constitution, human and minority rights and freedoms, the system of authority, proclamation the state of war and emergency, derogation from human and minority rights in the state of emergency or war or the proceedings of amending the Constitution. (The Constitution of the Republic of Serbia, 2006)	Article 157 Confirmation in the referendum Change of Articles 1, 2, 3, 4, 12, 13, 15, 45, and 157 shall be final if minimum three-fifths of all the voters support the change in the national referendum. (Montenegro's Constitution of 2007 with Amendments, 2013)	Article 136 Amendments to the Constitution of the Republic of Croatia may be proposed by a minimum of one-fifth of the Members of the Croatian Parliament, the President of the Republic and the Government of the Republic of Croatia. Article 137 The Croatian Parliament shall decide by a majority of all Members of Parliament whether or not to initiate a procedure for changing the Constitution. Draft amendments to the Constitution shall be determined by a majority of all the Members of the Croatian Parliament. Article 138	Article 81 1. The following laws shall require for their adoption, amendment or repeal both the majority of the Assembly deputies present and voting and the majority of the Assembly deputies present and voting holding seats reserved or guaranteed for representatives of Communities that are not in the majority [...] 2. None of the laws of vital interest may be submitted to a referendum. (The Constitution of the Republic of Kosovo, 2016)	Article 10 1. Amendment Procedure. This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives. 2. Human Rights and Fundamental Freedoms. No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article 2 of this Constitution or alter the present paragraph Article 2 Human Rights and Fundamental Freedoms 1. Human Rights 2. International standard 3. Enumeration of Rights 4. Non-Discrimination 5. Refugees and Displaced Persons 6. Implementation 7. International Agreements 8. Cooperation (The Constitution of Bosnia and Herzegovina, 2009)

			A decision to amend the Constitution shall be made by a two-thirds majority of all Members of the Croatian Parliament. Article 139 Amendments to the Constitution shall be promulgated by the Croatian Parliament. (The Constitution of the Republic of Croatia, 2014)		
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7. The Case of the Republic of North Macedonia

The North Macedonian case is the most relevant from the perspective of this paper's objectives. It meets all presuppositions that were used during the conceptualization of this research. Modes of amending the constitution are inextricably linked with the flexibility of a preamble. The constitution of the Republic of North Macedonia is open for amendments according to the art. 129 of the constitution (The Constitution of the Republic of North Macedonia, 2011). The initiative to commence an amending process (art. 130) belongs to the president, the government, representatives (at least 30), or citizens (150.000 – which is the same amount required in the referendum according to art. 73). The implementation of the amendment is conducting by the Assembly (art. 131). All these statutory provisions make a constitution quite flexible, and the process of amending is accessible for different subjects of the political system. However, the most important factor of flexibility has not been predicted, *expressis verbis* in the constitution's text, and it pertains to the status of the Preamble. Since no provisions have secured the Preamble, it can be subjected to amendments, just as any other element of the constitution. And this is precisely what has been done – the preamble was changed in 2001 mainly due to the need to recognize minorities.

The current situation is elaborated in literature: “The Macedonian model after Ohrid Agreement and constitutional amendments works, but it cannot solve the difficult problems. The benefits are only for the ethnic elites. [...] The multicultural model is usually intended to make everyone (for the most part) equal. In the case of Macedonia, power-sharing relations between ethnicities (Macedonians and Albanians) define the dominant political and social order. In this way, the multicultural model leans toward ethnic rather than ‘multicultural democracy’.” (Atanasov, 2023, p. 33). Hence, the issues related to ethnicity have been submitted to the process of politicization, and they have also manifested in constitutional solutions. A central issue that is crucial for grasping the problem of political stability in this context is expressed by Atanasov: “Whether the unstable societies in the Balkans can support stable states?” (Atanasov, 2023, p. 42) This question could also be modified to ask about the correlation between an unstable (or extremely flexible constitution) and the stability of states since constitutionalism reflects, to some extent, social order and the degree of its stability. According to Atanasow: “The internal ethnicity tensions and not consolidated nation-building projects are obstacles to political integration, and cannot change overnight the social risks in which citizens in these two small Balkans states live. Whether they ‘use’ as a political resource history, ethnicity, religion, language, or other sociocultural elements, the ethno-political elites of small countries in the Balkans do not create a democratic context to stabilize their societies, which could then support political integration that would build prosperity. Especially in the direction of the European

integration processes and the ‘democracy on demand’” (Atanasov, 2023, pp. 42-43). Although modifying the preamble to the constitution by the amendment is rather an unconventional way of dealing with constitutional change, it has some historical background in the context of Macedonia. As Kuqi observes: “[...] the institution of amendment underlies the Macedonia approach to constitutionalism since the time of the socialist period in its history. The process of a transition that led to independence was ignited by amendments to the Constitution of the Socialist Republic of Macedonia. The ideological declaration of the state has been changed by removing the word “Socialist” from the name of the Republic.” (Kuqi, 2021, 153). However, the path to independence has been paved by constitutional modification it is necessary to assert that exceptional cases require exceptional methods. Nonetheless, it is problematic when exceptions become a norm. In this sense, one should agree with Vankovska's remarks on “constitutional independence”: “According to the Framework Agreement, the constitutional procedure had to be completed within 45 days. The constitution is meant to be *lex superior* not only in legal terms but also in political terms (“by the people”). In this case the constitution-making process was but constitution-mocking: it had been alienated from the only bearers of sovereignty (the people) and *materia constitutionis* had to be adopted through an urgent procedure. Well-known constitutionalist Pierre Wigny argued that the constitution is a sacred text, which should be touched rarely, and, even then, by a trembling hand. His warning was obviously ignored in Macedonia, or to put it differently the hand was trembling for reasons Wigny never had in mind. Instead, Macedonia lost its constitutional independence” (Vankovska, 2012, pp. 25-26). This fact let us perceive the situation as it can serve rather as a beginning of a troublesome series of subsequent events than a solution to a vital issue. Due to this structural opportunity, Bulgaria has reported another need for minority-related changes. Bulgarian demands manifest the broader phenomenon of rivalry between countries, where the issues related to heritage and historical identity are at stake. Amongst other actions undertaken by the Bulgarian side (Hudson, Dodovski, 2023, pp. 224-230), one of particular significance is a demand for recognition of the Bulgarian minority as one on a special status expressed in the constitutional document. It would require a change in the constitution. Although this kind of amendment is plausible from the formal point of view, there appear to be reasonable doubts connected to the unacceptable external impact on constitutional issues. One could ask if that kind of demand would be possible if a Macedonian constitution (as well as constitutionalism) were more rigid.

Another evidence of the powerful impact of a preamble on political decision-making is to be seen in the example of the Supreme Court adjudication. It pertains to the criterion of inclusiveness of a constitution regarding ethnic policy and its right to self-determination: “In Macedonia, the Supreme Court of the Republic upheld restrictions on the freedom of political association because certain activities were perceived as contrary to the preamble. It held that a political association that overtly denies the right of Macedonian self-determination is legally forbidden.” (Orgad, 2010, p. 725). It shows how so-called judicial politics is operating on the grounds of constitutional rights and their limitations. By regulating inclusiveness, one can influence a recognition of the political entity and its elements. As Orgad points out: “By including only a limited national narrative and expressing future aspirations of a specific national group, the original Macedonian preamble had excluded the Albanian minority from the mainstream of Macedonian life; it thereby weakened the Constitution’s political legitimacy” (Orgad, 2010, p. 732).

Using criteria introduced by Melton, Elkins, and Ginsburg, one can conclude that in the case of Macedonia, we are dealing with a situation in which there is a) moderate specificity of a constitution, b) extreme flexibility (because the operation of replacing the preamble); c) and broad inclusiveness. These settings shape Macedonian constitutionalism as susceptible to fluctuations and changes. Moreover, the incentives for these changes may come from external sources, which negatively affect the stability of the political system. At least on the dimension

of potentiality. It concludes that decision-makers and law-givers should grant constitutional politics an interest and care. To grasp the scale of the problem, one should compare the Macedonian case with other cases from Western Balkan states.

8. Comparative Overview

a) The case of the Republic of Serbia

The rigidity of the constitution is confirmed by a two-step procedure, which has been complained about by the Venice Commission (Velaers, 2007, p. 7). Any amendments to the preamble are to be authorized by the referendum, which is a reference instance. (The Constitution of the Republic of Serbia, 2006, art. 203). This is how to limit a constitution's flexibility on its fundamental level.

b) The case of the Republic of Montenegro

Fundamental values put aside from the Preamble. An amendment is possible to be adopted. However, some elements are secured by the referendum's confirmation requirement with a strictly determined degree of majority (Montenegro's Constitution of 2007 with Amendments, 2013, art. 157). As Sasajkovski observes: "The Constitution does not have a preamble in which the bearer of sovereignty would be defined and identified. This is done in Article 2, which states that the holder of sovereignty is the citizen who has Montenegrin citizenship". (Sasajkovski, 2023, 70). Thus, the important problem related to the criterion of inclusiveness is managed to avoid controversy over the fundamental character of the ethnicity-based nation-building questions.

c) The case of the Republic of Croatia

What the Croatian case shows is important to EU candidate states and those already members of the EU. There are some controversies in the Republic of Poland around the superiority of the EU legal system to the Polish constitution (Perlikowski, 2024, pp. 326-331). The amendment extended the Croatian constitution after it joined the EU. It adds an entirely new section called VIIA European Union. By doing so, it became clear that EU law was adopted by the Croatian legal system with all consequences and was as distinct as possible. However, this move took place in the body of the constitution. Hence, it most likely may be submitted to the amendment process without violating fundamental values expressed broadly in the Preamble.

d) The case of the Republic of Kosovo

There is a modest Preamble. Values and fundamentals are moved to the body of the constitution (The Constitution of the Republic of Kosovo, 2016, art. 7). Rigidity of the constitution is secured by the term "Legislation of vital interest" (The Constitution of the Republic of Kosovo, 2016, art. 81, 2.). What is extremely interesting, in the case of Kosovo, is that most likely due to its unstable ethnic background, those issues defined as of vital interest are prohibited from being submitted to the referendum. In the case of Serbia, it was seen as a reference instance, but in the case of Kosovo, it is perceived as a factor of instability. The degree of inclusiveness and the character thereof make a difference in both cases.

e) The case of the Bosnia and Herzegovina

The human rights issues are superior to the Preamble, which is dominated by the references to the international law. Some references to the Preamble's character are found in controversies between federal entities of Bosnia and Herzegovina: "The defendant, the People's Assembly of the Republika Srpska, contested this challenge [the challenge to art. 138 of the Constitution of Republika Srpska]. In addition to other arguments, it claimed that the Preamble of the Constitution of BiH was not included in the normative part of the Constitution and could not, therefore, serve as a basis for review of Amendments LI and LXV." (Frosini, 2017, 619). BiH case was elaborated above as another

unique example of what can be done to the preamble by constitutional tools. Frosini comments this issue as follows: “In fact, the text of the Preamble of the Constitution of RS had been modified by Amendments XXVI and LIV whereby it had been explicitly stated that “these amendments form an integral part of the Constitution of the Republika Srpska” (Frosini, 2017, p. 621). The Constitution of BiH is rigid, as can be seen in the frequency of changes. It has been changing once in the case related to decentralization (Keil, Anderson, 2021, 173). It is usually identified as a rather status-quo oriented from a constitutional point of view (Abraham, 2021, pp. 207-208). As we can read in the literature: “The irony of constitutional politics in Bosnia is that all major political parties demand constitutional reform and adjustments to the peace agreement and the power-sharing system, civil society actors and international actors alike (Perry 2015a), yet no major change has been effected since the promulgation of the new constitution in 1995.” (Keil, Anderson, 2021, p. 174). A paralyzing element of the constitution is a vital interest concept, which has been criticized, as by the Venice Commission: “[...] a precise and strict definition of vital interest in the Constitution is necessary. The main problem with veto powers is not their use but their preventive effect. Since all politicians involved are fully conscious of the existence of the possibility of a veto, an issue with respect to which a veto can be expected will not even be put to the vote. Due to the existence of the veto, a delegation taking a particularly intransigent position and refusing to compromise is in a strong position. It is true that further case-law from the Constitutional Court may provide a definition of the vital interest and reduce the risks inherent in the mechanism. [...] The Commission nevertheless considers that it would be important and urgent to provide a clear definition of the vital interest in the text of the Constitution. (European Commission for Democracy Through Law, 2005, 9-10). The need for revising the constitution appears as a concept of “a revolving constitution”, which: “[...] is not a new constitution for Bosnia. It is merely a process (or mechanism) for allowing people to have a meaningful say and role in assessing whether to amend the existing constitution. It is ‘revolving’ because that process can be iterated every new generation, according to a fixed and regular schedule. Over time, with enough revolutions of the constitution, a new constitution for Bosnia may result (Abraham, 2021, p. 261).

As can be seen in the above-enumerated examples, there are different ways of dealing with the changeability of the constitution and utilizing a preamble. The case of North Macedonia, from the perspective of conditions and socio-political context, has a lot in common with the Bosnia and Herzegovina case. However, the way of dealing with constitutional issues is very different in both states. BiH employed the politics of struggling for the *status quo*, and in accordance with this approach, the flexibility of the constitution is perceived as a negative factor of political stability. Whereas in the Macedonian case, extreme flexibility has been adopted as a solution for providing inclusiveness in terms of constitutional order. The fact which must be taken into account is that since Ohrid Agreements the Republic of North Macedonia is defined as a bi-national state of unitary character. BiH is a federal state with a multi-ethnic society. Analyzing the case from the perspective of constitutionalism, one can say that *ceteris paribus*, the Macedonian strategy, is much more precarious because of the widening range of issues that might be submitted to the amending process. It can be learned from both strategies that the crucial element of political stability is to define the concept thereof since stability can be regarded as flexibility as well as rigidity.

9. Conclusions

The arguments presented above have validated the relevance of interpreting political stability in terms of constitutional flexibility. We intended to show that constitutionalism can be regarded not solely as a normative ideal to be pursued by any political instrument. Instead, constitutionalism seems to be a system of mechanisms that is rather to be regarded as an ecosystem governed by rules and principles as well as a combination of political, legal, and social elements.

Although the method borrowed from Melton, Elkins, and Ginsburg could be applied in many different modes, we found it most useful for distinguishing sectors of constitutionalism (flexibility, specificity, inclusiveness), which allows us to trace the interplay of these elements in Western Balkans states' constitutional systems. One can say that the most important way of dealing with political stability, particularly in the Balkan context, consists in regulating these three dimensions of constitutionalism.

For the forthcoming research, one can establish a conceptual framework made of hypotheses which could go as follows: A constitutionalism determined by a moderate specificity, extraordinary flexibility, and broad inclusiveness on the grounds of multi-ethnic society is correlated with a lack of political stability. This kind of hypothesis should be juxtaposed with those proposed by authors for example: "[...] constitutions are more likely to endure when they are flexible, detailed, and able to induce interest groups to invest in their processes." (Elkins, Ginsburg, Melton, 2009, p. 89) either: "Specific documents are more likely to generate common knowledge and agreement on when a constitutional violation has occurred." (Elkins, Ginsburg, Melton, 2009, p. 90). This leads to a question of crucial importance: Does constitutional endurance necessarily presuppose the stability of the political system? As we were trying to show above, adopting any change and signals from the environment does not always stay in line with maintaining the stability of the political system. Thus, one can conclude that the degree of constitutional flexibility must definitely be taken into account regarding the stability of the political system, though its impact might be negative or positive. The decisive element for analyzing given cases should be the shape of the combination of other constitutional elements (flexibility along with specificity and inclusiveness) and other factors that play a role in maintaining political stability (stability of the political system, stability of government authorities, stability of the society, international environment impact).

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