

**COMPARATIVE ANALYSIS OF THE LEGAL VALUE AND IMPORTANCE OF PREAMBLES OF CONSTITUTIONS: THE POSSIBILITY OF BEING AN EXAMPLE OF THE CROATIAN CONSTITUTIONAL PREAMBLE IN RELATION TO THE MACEDONIAN CONSTITUTION**

**Azam Korbayram, page 19-38**

**ABSTRACT**

In a period that is preparing for constitutional changes in North Macedonia, especially in the part of the preamble, we received the opinion that there is a need for a detailed analysis of the subject, which will be researched the legal framework and the importance of the preamble, then through the prism of comparative analyzes of preambles and court decisions on the same (both constitutional judiciary and supreme courts) of different European countries, and finally a separate comparison of the preamble of Croatia, which is considered one of the most liberal-democratic models on the European continent, and the preamble of North Macedonia as a candidate member of the EU, especially due to the fulfillment of the Copenhagen criteria, one of which is respect for minorities,. With used literature from more than four languages and formats of scientific works, elements or legal changes that would be necessary for the constitution or the democratization of the constitutional order of the Republic of North Macedonia will be proposed.

**Keywords:** Preamble, Legal Framework of the Preamble, Constitution of the Republic of North Macedonia, Constitution of the Republic of Croatia

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## **INTRODUCTION**

Whether the preambles of the constitutions have a legal value it is one of the most discussed issues. This scientific paper, tries to bring an explanation of the importance and legal framework of the preamble as the initial text of the constitution through the prism of judicial decisions (both the constitution and supreme courts) in various Western European countries.

In this respect, it is aimed to answer the following questions, which maintain their importance about the subject and in the sense of hypothesis. First, should we think of the preambles and the principles to be derived from them as norms that form part of positive law, or as a symbol as a summary of moral and philosophical principles in the constitution?

The second issue is brought to the constitutional changes through amendments for contribution and advancement in the EU membership process. In that direction, the constitution that is considered one of the most liberal-democratic constitutional models of the EU, the Constitution of the Republic of Croatia from 1990 (due to the initial part established as a preamble, covers literally all ethnic minorities living in the country) proves to be an exemplary constitutional model as an expression of constitutional guarantee and that the Macedonian democracy should follow the same example. For those reasons, the topic of debate will be the comparative analysis of the Croatian preamble with the Macedonian preamble.

## **METHODOLOGY**

Relevant scientific literature was searched actually scientific books, constitutions, scientific papers in printed version and on the online databases Google Scholar, Researchgate and Dergipark (journals indexed on EBSCO, SCOPUS, WEB OF SCIENCE) insight by keywords: *“preamble”* *“legal framework of the preamble”*, *“constitution of the republic of North Macedonia”* and *“constitution of the Republic of Croatia”*. The following elimination criteria were used in the selection of publications: (a) papers written in English, Macedonian, Croatian, Turkish and other languages, (b) papers published only in the period from 1990 to

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

## 1. THEORETICAL FRAMEWORK

### 1.1. The Legal Framework of the Preamble

The structure of the constitution consists of its various content components such as: preamble, basic principles, normative provisions, amendments and annexes or additions. However, from a comparative point of view, the majority of constitutions consist of two basic parts: the preamble (short introduction) and normative provisions (the most extensive part). As it is generally accepted, A. Bačić reminds that the Constitution can exist without a preamble, but without the normative part it simply does not exist!<sup>1</sup> An inevitable part in any constitution is the normative part. The normative part is the essence of the constitution because it contains the legal norms. It is common for the structure of the constitution to consist of a preamble and a normative part, despite the fact that not all constitutions have preambles. Some constitutions have constitutional amendments, and some have annexes.<sup>2</sup>

Those constitutions that have constitutional annexes that are special additions to the constitution that, together with the constitutional text, represent an integral whole. These additions are adopted together with the constitutional text and cannot exist independently, as is the case with constitutional laws and constitutional amendments. They are functionally related to certain constitutional provisions in terms of their content addition or as a basis for their implementation in practice. Typical examples of appendices include the constitutions of countries that once belonged to the British commonwealth of nations; India, Pakistan, Nepal, Malesia, Burma, New Zealand, Malta, as well as the constitution of 1995

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<sup>1</sup> Bačić, A., *Ustavno Pravo Republike Hrvatske. Praktikum*, Pravni Fakultet Sveučilišta u Splitu, Split, 2006, p.100

<sup>2</sup> Дескоска Т. Р., Ристовска М., Христовска Т. Ј., *Уставно Право*, Просветно Дело, Скопје, 2021, p. 61.

Bosnia and Herzegovina with constitutional supplement Dayton agreement.<sup>3</sup>

The preamble is the introduction of the constitution (French preamble - preface, introduction) and precedes the normative part of the constitution. When asked if the preamble is an integral part of the constitution, Professor Deskoska states that it is the basic principle before and after the title Constitution. Namely, if the preamble is located before the title (Constitution of...), then it is a preamble that is not an integral part of the constitution. If it is under the title of the constitution, then the preamble is an integral part of the constitution. From this point of view, she believes that in the case of the Constitution of the Republic of North Macedonia, considering that the preamble is located before the title Constitution of the Republic of North Macedonia, he believes that the preamble should not be considered an integral part of the constitution.<sup>4</sup> But on the other hand, regarding the problem of the binding character of the preamble of the constitution, various constitutional and supreme courts in their binding decisions clearly see that they have penetrated into the overall philosophical and legal framework of the problem.<sup>5</sup> In some constitutional orders, the preambles of constitutions are key to the interpretation of the constitution. It is stated that the preamble of the German Federal Constitution has a binding legal effect, as it expresses the main lines in the interpretation of the Federal Constitution. The decision of the Federal Constitutional Court of Germany from June 30, 2009 on the compatibility of the Treaty of Lisbon with the German Constitution can be considered as a typical example in which the preamble reveals its effective role in the interpretation of the constitution.<sup>6</sup> In the case in question, the harmonization of the Constitution of Federal Germany with the Treaty of Lisbon is contested, i.e. after the entry into force of the same agreement, that the EU will become a federal state, contrary to the accusations that if the Union turns into a federal state, amendments to the Constitution and

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<sup>3</sup> Шкарик С., *Уставно Право*, Осмо Издание, Скопје: Култура Пресс, 2015, p. 78-79.

<sup>4</sup> Дескоска, Ристовска, Христовска, *Уставно Право*, 2021, p. 61.

<sup>5</sup> Uran P., *Anayasaların Başlangıç Kısımları*, İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (Journal) Vol. LXXIII, No. 1, p. 223-248 (230-233), 2015. URL: <https://dergipark.org.tr/tr/download/article-file/230781> (8.8.'23)

<sup>6</sup> Ibid. p. 231; and for additional literature see: Kockott J., *The Basic Law at 60 – From 1949 to 2009: The Basic Law and Supranational Integration*, *German Law Journal*, Vol.11, No.1, 2010, p. 100-101.

Federal Germany will be necessary he will lose his nationality, the court, emphasizing the intention of "the German people to serve world peace as an equal part of a united Europe" in Article 23/1 and the Preamble of the Constitution, concluded that being part of the EU reflects the will of the German people, the structure of the European A union should be compatible with democratic principles regarding the limits and nature of the delegation of sovereign powers, therefore, he considered that the union would not turn into a federal state, but would be a structure in which the sovereignty of national states would be protected and decided that the Treaty does not violate the sovereignty of the Federal German State. It is accepted that the preamble is legally binding in the interpretation of the Constitution, however, it is not possible for individuals to derive subjective rights from the preamble of the Federal German Constitution.<sup>7</sup>

In another different example,

The french constitutional council, assessing the constitutionality of the law passed by parliament on july 16, 1971, and the preamble of the 1946 constitution. And ruled that the provision was unconstitutional, arguing that it contradicted the freedom of association, which is one of the fundamental principles recognized by the laws of the republic. In this extremely important decision, the council used the constitutional preamble as an independent standard norm in the verification of constitutionality. He included the preamble of the 1958 constitution, thus the preamble of the 1946 constitution and the french declaration of the rights of man and of the citizen of 1789 in the block of normativity of the constitution. In many of its subsequent resolutions and decisions, the constitutional council has confirmed that the preamble constitutes an independent source of constitutional rights.<sup>8</sup> Items of this type can be multiplied. Namely, the decision of the Constitutional Court of Turkiye and the decision of the Constitutional Court of Poland are in the same direction.

The constitutional court of the republic of poland references the preamble of the constitution of the republic of poland in its decisions. In a decision

<sup>7</sup> Hekimoğlu M., Federal Almanya Anayasası'nın Başlangıç Kısımına Karşılaştırmalı Hukuk Açısından Bir Bakış, *Bahçeşehir Üniversitesi Hukuk Fakültesi Kazancı Hakemli Hukuk Dergisi*, No. 69-70, May-June 2010, p. 125.

<sup>8</sup> Ibid., Uran P., Anayasaların Başlangıç Kısımları, p. 230-232; Doğan M., Karşılaştırmalı Anayasa Çalışmaları (Başlangıç Hükümleri), *Türkiye Büyük Millet Meclisi Araştırma Hizmetleri Başkanlığı*, Ankara, TBMM Basımevi, 2012, p. 3; especially see for literature, Orgad L., The Preamble in Constitutional Interpretation, *ICON (International Journal of Constitutional Law)*, Vol. 8, No 4, 2010, p. 727-728.

given in 2005, the court decided that Poland's accession to the European Union was not unconstitutional for the same reasons.<sup>9</sup> Again, in its decision evaluating the constitutionality of the Lisbon Treaty of 2010, the Constitutional Court evaluated this treaty in terms of the expressions “Poland's sovereignty and national identity” in the Preamble of the Constitution, and as a result decided that the treaty would not have a negative effect on sovereignty and national identity.<sup>10</sup>

When we look at the preamble and legal bindingness of the 1982 Constitution of the Republic of Türkiye, it has broad definitions that we can identify as the sovereignty of the nation, commitment to Atatürk's (nationalism) revolutions, human rights and freedoms, national solidarity, social justice, individual and community peace and welfare, democratic state of law. It is seen that the constitutional court has decided by referring to the preamble in many of its decisions, on the grounds that it is included within the framework of basic principles and because it is highly related to the normative part of the constitution.<sup>11</sup> And for this reason, it causes the republic of turkey to be included in the group of constitutions where the initial part is legally binding.<sup>12</sup>

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<sup>9</sup> Constitutional Court of the Republic of Poland, K 11/03 (Referendum on Poland's Accession to the European Union), 27 May 2003 (for the text of the decision, see: [http://trybunal.gov.pl/fileadmin/content/omowienia/K\\_11\\_03\\_GB.pdf](http://trybunal.gov.pl/fileadmin/content/omowienia/K_11_03_GB.pdf)); Poplawska E., Preamble to the Constitution as an Expression of the New Axiology of the Republic of Poland, *Acta Juridica Hungarica*, Vol. 52, No. 1, 2011, p. 40–53.

<sup>10</sup> Constitutional Tribunal of Poland, K 32/09 (Lisbon Treaty), 24 November 2010, (For text of the Decision, see [http://trybunal.gov.pl/fileadmin/content/omowienia/K\\_32\\_09\\_EN.pdf](http://trybunal.gov.pl/fileadmin/content/omowienia/K_32_09_EN.pdf).)

<sup>11</sup> For the relevant Constitutional Court decisions, see: Decision of the Constitutional Court dated 13 June 1985, **No. 1984/14, K. 1986/7**, *Journal of Constitutional Court Decisions*, No: 21, p. 173-174; **E. 1989/1, K. 1989/12**, dated 7 March 1989 (*Journal of Constitutional Court Decisions*, No: 25, p. 133-165; **E. 1994/43, K. 1994/42-2** dated 9 December 1994, *Constitution Journal of Court Decisions*, Issue: 31, Volume: 1, p. 292-295. **E. 2000/45, K. 2000/27** dated 5 October 2000, Official Gazette, 28 October 2000, No: 24214.

<sup>12</sup> Korkut L., Başlangıç Kısımlarının Hukuki Etkisi, Temel Nitelikleri ve 1982 Anayasası: Karşılaştırmalı Bir Analiz (Preambles' Legal Value, Main Qualifications and the 1982 Constitution: A Comparative Analysis), *Istanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi* 4 (2), 2017; 43-82. <https://dergipark.org.tr/tr/download/article-file/1102245>

## 1.2. The Legal Framework of the Preamble of the Constitution of the Republic of North Macedonia

It is generally accepted that the development of the Constitution of the Republic of North Macedonia went through several stages from 1946 to 1991: the first on December 31, 1946, when a constitution was first adopted. The original Constitution was in force until the adoption of the second Constitution on April 12, 1963, with changes made in 1972. The third Constitution was adopted on February 5, 1974 and was in force until November 17, 1991.<sup>13</sup>

In its structure, the Constitution of the Republic of Macedonia contains a preamble and a normative text. The normative text of the 1991 constitution covers the standard elements of the constitutional matter, namely the basic freedoms and rights of man and citizens and the organization of the state government based on the theory of separation of powers. Namely, the provisions on the freedoms and rights of man and citizens precede the provisions of the organization of the government, which consists of civil, political, economic, cultural, minority rights, as well as institutional mechanisms for the legal protection of the same.<sup>14</sup> Furthermore, the constitution with the regulation of state power constitutes the following bodies; The Parliament, the President, the Government, the Judiciary, the Public Prosecutor's Office, the Constitutional Court and the Ombudsman.<sup>15</sup>

In this way, the constitution and its structure derives the conception of a liberal democratic constitution, which insists on the positive legal aspects of the norms, and not on the ideological content of the program. Although this introductory text is not titled as a preamble, it essentially consists of two parts and a few paragraphs, of which the first part highlights certain

<sup>13</sup> Zejneli J., Shabani F., Lofton J., Constitutional Changes in the Republic of North Macedonia and their Function in promoting Stability, Peace and Integration. *Journal for Peacebuilding and Transcultural Communication*, Vol. 2, Issue 3/4 p. 37-47. Available from: [https://www.researchgate.net/publication/359314996\\_Constitutional\\_Changes\\_in\\_the\\_Republic\\_of\\_North\\_Macedonia\\_and\\_their\\_Function\\_in\\_promoting\\_Stability\\_Peace\\_and\\_Integration#fullTextFileContent](https://www.researchgate.net/publication/359314996_Constitutional_Changes_in_the_Republic_of_North_Macedonia_and_their_Function_in_promoting_Stability_Peace_and_Integration#fullTextFileContent) (accessed Aug 05 2023).

<sup>14</sup> Korbayram A., Hoca E., Human Rights Protection From The Perspective Of The 1991 Constitution Of Macedonia, *Vision International Scientific Journal*, Vol. 6, No. 2, December 2021, p. 43-53. DOI: <https://doi.org/10.55843/ivisum2126043h> (accessed: Aug 05 2023).

<sup>15</sup> Korbayram A., Relations And Control Mechanisms Between The Legislature And The Executive Bodies In The Macedonian Constitutional Order, *Vision International Scientific Journal*, Vol. 6, No. 1, March 2021, p. 93-108, DOI: <https://doi.org/10.55843/ivisum2116093k> (accessed: Aug 05 2023).

findings from the state-legal development of the Macedonian state and defines the goals of its development as a sovereign and independent state. In the second part, it defines the Assembly as the adopter of the constitution.<sup>16</sup>

In the preamble of the Constitution of the Socialist Republic of Macedonia from 1974<sup>17</sup>, the Albanian and Turkish nationality was highlighted as a constituent element of the Macedonian state, where it was not found in the 1991 constitution and was easily dropped from the preamble. In 2001, with the signing of the Ohrid Framework Agreement (which ended the military conflict), the text of the preamble was changed with Amendment IV.<sup>18</sup> The Ohrid Amendments focus on the protection and promotions of equal rights of all ethnic communities and recognizes the value of ethnic diversity in North Macedonia. Amendment IV replaces the preamble of the Constitution by specifically recognizing the value and rights of citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, and the Bosniak people.<sup>19</sup> Then the preamble is finalized as follows:

*“Taking as the points of departure the historical, cultural, spiritual and statehood heritage of the Macedonian people and their struggle over centuries for national and social freedom as well as for the creation of their own state, and particularly the traditions of statehood and legality of the Krushevo Republic and the historic decisions of the Anti-Fascist Assembly of the People's Liberation of Macedonia, together with the*

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<sup>16</sup> Дескоска Т. Р., Ристовска М., Христовска Т. Ј., *Уставно Право*, Просветно Дело, Скопје, 2021, р. 151-153.

<sup>17</sup> Preamble to the Constitution of SRM from 1974 paragraph 2; “... *that the Macedonian people, together with the nationalities of Macedonia, in the common liberation struggle with other Yugoslav nations and nationalities, created the Socialist Republic of Macedonia as a national state of the Macedonian people and a state of the Albanian and Turkish nationalities within it, in which the historical aspirations of the Macedonian people for national freedom and state independence, of nationalities for equality and of the working class and all working people for a socialist society;*” <https://www.marxists.org/makedonski/istorija/makedonija/ustav-srm1974/preambula.htm>

<sup>18</sup> Шкарик С., *Научно Толкување-Устав на Република Македонија*, Култура Прес, Скопје, 2014, р. 86-87.

<sup>19</sup> Ibid., Zejneli, Shabani, Lofton, *Constitutional Changes in the Republic of North Macedonia*, p. 37-47 (40).



*constitutional and legal continuity of the Macedonian state as a sovereign republic within Federal Yugoslavia and the freely manifested will of the citizens of the Republic of Macedonia in the referendum of September 8th, 1991, as well as the historical fact that Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romanies and other nationalities living in the Republic of Macedonia, and intent on:*

- the establishment of the Republic of Macedonia as a sovereign and independent state, as well as a civil and democratic one;*
- the establishment and consolidation of the rule of law as a fundamental system of government;*
- the guaranteeing of human rights, citizens, freedoms and ethnic equality;*
- the provision of peace and a common home for the Macedonian people with the nationalities living in the Republic of Macedonia; and on*
- the provision of social justice, economic wellbeing and prosperity in the life of the individual and the community”.*<sup>20</sup>

Primarily, an amendment was made to the constitutional Preamble, in which it is determined that citizens of the Republic of Macedonia, the Macedonian people, as well as the citizens living within its borders who are part of the people (nationality) of Albanian nation, the Turkish nation, the Wallach, the Serbs, the Romanian, the Bosniak and others, taking responsibility..., aware and grateful to their ancestors for the sacrifices and dedication... and responsible to future generations for the preservation and development of everything that is valuable..., equal in their rights and obligations to the common good - Republic of Macedonia - in accordance with tradition.<sup>21</sup>

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<sup>20</sup> Constitution of the Republic of North Macedonia t.e. Ammandment IV. 2001: [https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns\\_article-constitution-of-the-republic-of-north-macedonia.nspx](https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx) (acc essed: Aug 06 2023).

<sup>21</sup> Дамјановска Г. Н., Уставните Промени Во Република Македонија – Одроз на Актуелните Општествени и Политички Состојби *Политичка Мисла* \_ 20 Години од *Vision International Scientific Journal, Volume 8, Issue 2, September 2023*

However, previously the historical development and the important decisions for the formation of the state itself were emphasized. Namely, historical decisions of the Republic of Krushevo and ASNOM are also emphasized, as well as the referendum of September 8, 1991, which was the basis of the independence of the republic. An important moment is the introduction of the word, that is, the spirit of the agreement, the Ohrid Framework Agreement as a historical factor for the constitution of the state as a sovereign and independent state, with the intention of strengthening the rule of law, respect for human and civil rights, to ensure peace, coexistence between the citizens, social justice, economic well-being, advancement of personal and common life, through their representatives in the Assembly through democratic and free elections which enact this constitution.

In particular, importance is gained and one of the novelties consists of the concept of citizen, it is generally accepted that after the Ohrid Agreement (in fact, this is an attempt to achieve the) all entities and nationalities are equalized at the constitutional level and the listed six nationalities are basic entities that are constituents and bearers of sovereignty in the Macedonian state which guarantee that they fought for the independent Macedonian state and will continue to fight for the advancement of the state as independent and independent.

From the ideologically normative structure of the constitution contained in the preamble further into the normative part of the constitution with several special mechanisms the constitution maker tries to practice and apply in real life. Among others, the Committee for ethnic relations between communities, Badenter's voting principle are a few of them. Also, the formation of a government coalition of different ethnic political parties, reconstruction, reform and equal employment in the public administration.<sup>22</sup> But it is especially important, when it comes to the

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*Донесувањето на Уставот на Република Македонија Година*, Institut for Democracy/Konrad Adenauer Foundation Press, број 35, септември Скопје 2011, p. 11-23 (15). [https://www.kas.de/c/document\\_library/get\\_file?uuid=55b1ebb4-58b8-4928-4a35-bf0123a3ca6f&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=55b1ebb4-58b8-4928-4a35-bf0123a3ca6f&groupId=252038)

<sup>22</sup> About the public administration reform agenda of R.S. Macedonia from independence to today, take a look at the following interesting scientific paper: Nuredin A., The Public Administration Reform Agenda In Macedonia -Three Decades Of Challenges And Results, *SuiGeneris Scientific Journal*, Vol. 1, No. 2 (2022), p. 1-8. <https://doi.org/10.55843/SG2212001n>

respect of minority rights as one of the Copenhagen criteria as a condition for EU membership, R. North Macedonia should pay attention to the legal regulations and their implementation, and the deputies from the national majority, when enacting the laws, should take into account and respect the rights of minorities from various aspects.<sup>23</sup>

### **1.3. The Legal Framework of the Preamble of the Constitution of the Republic of Croatia**

The constitution of the Republic of Croatia begins with the preamble/basic principles and it is not separated from the entire constitutional text, but it is integral, constitutive-integral part (specially titled and marked as its first /1./ part).<sup>24</sup>

*“The millennial national identity of the Croatian nation and the continuity of its statehood, confirmed by the course of its entire historical experience in various political forms and by the perpetuation and development of the state-building idea grounded in the historical right of the Croatian nation to full sovereignty, has manifested itself:*

- in the formation of the Croatian principalities in the seventh century;*
- in the independent medieval state of Croatia established in the ninth century;*
- in the Kingdom of the Croats established in the tenth century;*
- in the preservation of the attributes of statehood under the Croatian-Hungarian personal union;*
- in the independent and sovereign decision of the Croatian Parliament in 1527 to elect a king from the Habsburg Dynasty;*
- in the independent and sovereign decision of the Croatian Parliament to ratify the Pragmatic Sanction in 1712;*

<sup>23</sup> For legal procedure and lawmaking at the Parliament of RS. Macedonia see: Korbayram A., Delev J., Lawmaking and Procedures in the National Assembly of the Republic of North Macedonia, *International Scientific Journal "Sui Generis"*, Volume 2, No 1, June 2023, p. 29-44. <https://doi.org/10.55843/SG2321029k>

<sup>24</sup> Rešetar V., O Preambuli (Izvorišnim Osnovama) Ustava Republike Hrvatske, Zbornik Radova Pravnog Fakulteta u Splitu, god. 58, 4/2021, str. 1079-1100.

- *in the conclusions of the Croatian Parliament of 1848 regarding the restoration of the integrity of the Triune Kingdom of Croatia under the authority of the ban (viceroy), rooted in the historical, national and natural right of the Croatian nation;*
- *in the Croatian-Hungarian Compromise of 1868 regulating relations between the Kingdom of Dalmatia, Croatia and Slavonia and the Kingdom of Hungary, resting on the legal traditions of both states and the Pragmatic Sanction of 1712;*
- *in the decision of the Croatian Parliament of 29 October 1918 to sever all constitutional ties between Croatia and Austria-Hungary, and the simultaneous accession of independent Croatia, invoking its historical and natural national rights, to the State of Slovenes, Croats and Serbs, proclaimed in the former territory of the Habsburg Empire;*
- *in the fact that the Croatian Parliament never ratified the decision made by the National Council of the State of Slovenes, Croats and Serbs to unite with Serbia and Montenegro in the Kingdom of Serbs, Croats and Slovenes (1 December 1918), subsequently proclaimed the Kingdom of Yugoslavia (3 October 1929);*
- *in the establishment of the Banate of Croatia in 1939, which restored Croatian state autonomy within the Kingdom of Yugoslavia;*
- *in the establishment of the foundations of state sovereignty during the course of the Second World War, as expressed in the decision of the Territorial Antifascist Council of the National Liberation of Croatia (1943) in opposition to proclamation of the Independent State of Croatia (1941), and then in the Constitution of the People's Republic of Croatia (1947) and in all subsequent constitutions of the Socialist Republic of Croatia (1963-1990), at the historic turning-point characterized by the rejection of the communist system and changes in the international order in Europe, in the first democratic*

*elections (1990), the Croatian nation reaffirmed, by its freely expressed will, its millennial statehood;*

*– in the new Constitution of the Republic of Croatia (1990) and the victory of the Croatian nation and Croatia’s defenders in the just, legitimate and defensive war of liberation, the Homeland War (1991-1995), wherein the Croatian nation demonstrated its resolve and readiness to establish and preserve the Republic of Croatia as an independent and autonomous, sovereign and democratic state. 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 Croatian nationality and the exercise of their national rights in compliance with the democratic norms of the United Nations and the countries of the free world. 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, freedom and human and civil rights are guaranteed and secured, and economic and cultural advancement and social welfare are promoted.”<sup>25</sup>*

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<sup>25</sup> For full text of the Constitution of the Republic of Croatia; <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>

The preamble under the name of the fundamental basis of the Constitution of the Republic of Croatia contains 513 words in three paragraphs and is one of the longer preambles. Greece, as a unitary parliamentary republic, has the shortest preamble to the Constitution, only 11 words. As pointed out by many numerous authors, Smerdel also believes that preambles (in addition to constitutional significance and validity) have a particularly important role, both for the interpretation and understanding of the Constitution of the Republic of Croatia.<sup>26</sup> The preamble of the Republic of Croatia, which is being formed and developed as a sovereign and democratic state, are determined; equality is guaranteed and ensured for all its citizens, freedom and rights of man and citizen, realization of national rights in accordance with democratic norms, and the Republic of Croatia undertakes to promote economic and cultural progress and social well-being of its citizens). After all, the original basis, i.e. the preamble, was adopted and changed according to the same procedure prescribed for the Constitution, i.e. it shares the legal fate of the entire Constitution.<sup>27</sup>

Simović, on the preamble of the constitution states: that in some constitutions it is expressly determined that the preamble is an integral part of the constitution, which is why the preamble cannot challenge its legal effect; that not a small number of preambles to the constitution contain legally relevant content, although the creator of the constitution did not explicitly determine its legal effect; that the number of countries in which the preamble is used as a measure of constitutional law in constitutional judicial decision-making is increasing; and that in a

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<sup>26</sup> Smerdel, B., *Ustavno Uređenje Europske Hrvatske*, Zagreb, Narodne Novine, 2013, p. 250-277. He believes that preambles have a specific political-symbolic role and significance and are not shaped in the form of a legal norm, they are evidently an integral part of the overall constitutional text and have the same meaning, importance and binding force as other parts of the Constitution. Therefore, Smerdel categorically believes that the preamble of the Constitution of the Republic of Croatia should not be changed, and euphorically notes that due to their historical significance, they are comparable to the Declaration of Independence (for example, the US constitution) or the Declaration of Human and Citizen Rights (for example, the French constitution).

<sup>27</sup> Bačić, A., „Konstitucionalizam, Historizam i Postmodernizam“, *Zbornik Radova Pravnog Fakulteta u Splitu*, god. 50., br. 1., 2013.

significant number of states the preamble is used as an auxiliary tool when interpreting constitutional norms.<sup>28</sup>

Similar to the Macedonian constitution from 1991, it can be easily noticed that the first part of the preamble in Croatian is directed to historically important moments that originated the state. In that part, all the elements and contents, as well as kingdoms and wars, are highlighted in detail, which in the second paragraph specifies which events the Croatian people together with other entities and nationalities contributed to the formation of a modern, democratic, just, independent state. In the third paragraph, the constitutional legal principles and values on which the state and the constitutional order of Croatia are based are stated. Namely, national minorities which are also a constituent element of the state under constitutional guarantee are listed taxatively and all nationalities are enumerated according to the numerus clause principle. Among other things, 22 nationalities are listed, among them are Macedonian, Turkish and Albanian nationalities, as minority nationalities, as citizens t.e. part of (Croatian) *demos* as a whole,<sup>29</sup> of Croatia who enjoy equal rights and are equal before the constitution and laws of the republic. In this way, all nationalities are covered by the constitution, which is treated as one of the most modern and democratic-liberal constitutions in the European continent and the European Union. It should be emphasized that a large number of renowned professors of constitutional law call this act of democratization a positive step for the democratization of the modern republic.<sup>30</sup>

<sup>28</sup> Simović, D., O Pravnoj Prirodi Preambule Ustava“, Niš: Zbornik Radova Pravnog Fakulteta u Nišu, god. LIX, br. 87., 2020., str. 16-26. Therefore, although the functions of the preamble are primarily of a sociological nature, it is a legally relevant part of the structure of the constitution and there can only be a doubt regarding its legal relevance. At the same time, Simović cites the opinion of American judge Regeera B. Taney that in the entire constitution no word was used or added without some valid reason.

<sup>29</sup> For the differences regarding ethnos and demos of the Croatian people, see: Rešetar V., O Preambuli Ustava Republike Hrvatske, p. 1095-1097.

<sup>30</sup> For more details: Kutlešić V, Preambule Ustava – Uporedna Studija 194 Važeća Ustava“, *Analiza Pravnog Fakulteta u Beogradu*, god. LVIII, br. 2., 2010. Originally text t.e. 3-th paragraph of preamble of the Constitution of Croatia: “...*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*

So, part of Croatian intellectuals believe that Croatia is consistently regulated as a civil state by the 1990 Constitution, with special provisions on the protection of ethnic and national minorities. The prologue has no normative significance, nor does it grant any special rights to members of the Croatian nation.

## **CONCLUSION**

In conclusion, firstly, detailed analyzes with comparative law were highlighted above, starting from the Croatian constitutional model, as exemplary for Macedonia, as well as the legal importance of the preamble through the prism of the court decisions of Germany, France, Poland, Turkey, which can be concluded that European countries (at all kinds of court decisions, as well as the views of scientists) interpret the preamble as part of the constitution and give special importance to it.

Secondly, Republic of North Macedonia, as a candidate for EU membership, must fulfill the basic criteria, including the Copenhagen criteria, which means the respect for minorities and minority rights. For those reasons, the Preamble of the Republic of Croatia was, in fact, together with Macedonia, part of the Yugoslav Federation, and it can be safely said that they share a similar demographic infrastructure. Namely, with the constitutions of 1974, minority nationalities such as Albanian and Turkish were marked as constitutive elements of the state, which the Republic of Croatia, after the declaration of independence in 1990, expanded the preamble with all minority nationalities down to the smallest community in terms of number with the intention of achieving a multicultural state and society guaranteed by the constitution. On the other hand, the Republic of Macedonia 1991 is trying to establish a nation-state under the leadership of the Macedonian people, contrary to the constitutional tradition and the spirit of multinationalism. With the constitutional amendments of 2001, the historical mistake was corrected and the nationalities that fought for the survival and independence of the state are listed in the preamble as a constituent element. But in the

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*of Croatian nationality and the exercise of their national rights in compliance with the democratic norms of the United Nations and the countries of the free world.”*



meantime it turned out that some specific national minorities, other than the Macedonian majority people, were not included in the text.

Due to the liberal-democratic character of the constitution of the Republic of North Macedonia on the one hand, the step towards the European future and European values (satisfying the criteria for respecting minority rights which will be guaranteed by the constitution), and with the knowledge and facts presented above, our opinion is that , taking into account the demographic infrastructure that fought for an independent Macedonia and the position of the EU, i.e. the reports of its bodies, it can be said that the Croatian constitutional model would be an adequate, appropriate and successful example of the democratic spirit of society as equal citizens of the Republic of North Macedonia.

## REFERENCES

Bačić, A., *Ustavno Pravo Republike Hrvatske. Praktikum*, Pravni Fakultet Sveučilišta u Splitu, Split, 2006.

Bačić, A., „Konstitucionalizam, Historizam i Postmodernizam“, Zbornik Radova Pravnog Fakulteta u Splitu, god. 50., br. 1., 2013.

Дамјановска Г. Н., Уставните Промени Во Република Македонија – Одроз на Актуелните Општествени и Политички Состојби *Политичка Мисла \_ 20 Години од Донесувањето на Уставот на Република Македонија Година*, Institut for Democracy/Konrad Adenauer Foundation Press, број 35, септември Скопје 2011, р. 11-23 (15).  
[https://www.kas.de/c/document\\_library/get\\_file?uuid=55b1ebb4-58b8-4928-4a35-0123a3ca6f&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=55b1ebb4-58b8-4928-4a35-0123a3ca6f&groupId=252038)

Дескоска Т. Р., Ристовска М., Христовска Т. Ј., *Уставно Право*, Просветно Дело, Скопје, 2021.

Doğan M., Karşılaştırmalı Anayasa Çalışmaları (Başlangıç Hükümleri), *Türkiye Büyük Millet Meclisi Araştırma Hizmetleri Başkanlığı*, Ankara, TBMM Basımevi, 2012, p. 3; especially see for literature, Orgad L., The Preamble in Constitutional

Interpretation, *ICON (International Journal of Constitutional Law)*, Vol. 8, No 4, 2010.

Hekimoğlu M., Federal Almanya Anayasası'nın Başlangıç Kısımına Karşılaştırmalı Hukuk Açısından Bir Bakış, *Bahçeşehir Üniversitesi Hukuk Fakültesi Kazancı Hakemli Hukuk Dergisi*, No. 69-70, May-June 2010.

Kockott J., The Basic Law at 60 – From 1949 to 2009: The Basic Law and Supranational Integration, *German Law Journal*, Vol.11, No.1, 2010.

Korkut L., Başlangıç Kısımlarının Hukuki Etkisi, Temel Nitelikleri ve 1982 Anayasası: Karşılaştırmalı Bir Analiz (Preambles' Legal Value, Main Qualifications and the 1982 Constitution: A Comparative Analysis), *Istanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi* 4 (2), 2017; 43-82. <https://dergipark.org.tr/tr/download/article-file/1102245>

Korbayram A., Delev J., Lawmaking and Procedures in the National Assembly of the Republic of North Macedonia, *International Scientific Journal "Sui Generis"*, Volume 2, No 1, June 2023, p. 29-44. <https://doi.org/10.55843/SG2321029k>

Korbayram A., Hoca E., Human Rights Protection From The Perspective Of The 1991 Constitution Of Macedonia, *Vision International Scientific Journal*, Vol. 6, No. 2, December 2021, p. 43-53. DOI: <https://doi.org/10.55843/ivisum2126043h> (accessed: Aug 05 2023).

Korbayram A., Relations And Control Mechanisms Between The Legislature And The Executive Bodies In The Macedonian Constitutional Order, *Vision International Scientific Journal*, Vol. 6, No. 1, March 2021, p. 93-108, DOI: <https://doi.org/10.55843/ivisum2116093k> (accessed: Aug 05 2023).

Kutlešić V, Preamble Ustava – Uperedna Studija 194 Važeća Ustava“, *Analiza Pravnog Fakulteta u Beogradu*, god. LVIII, br. 2., 2010.

- Nuredin A., The Public Administration Reform Agenda In Macedonia - Three Decades Of Challenges And Results, *SuiGeneris Scientific Journal*, [Vol. 1, No. 2 \(2022\)](#), p. 1-8.  
<https://doi.org/10.55843/SG2212001n>
- Poplawska E., Preamble to the Constitution as an Expression of the New Axiology of the Republic of Poland, *Acta Juridica Hungarica*, Vol. 52, No. 1, 2011.
- Rešetar V., O Preambuli (Izvorišnim Osnovama) Ustava Republike Hrvatske, Zbornik Radova Pravnog Fakulteta u Splitu, god. 58, 4/2021.
- Smerdel, B., *Ustavno Uređenje Europske Hrvatske*, Zagreb, Narodne Novine, 2013.
- Simović, D., O Pravnoj Prirodi Preambule Ustava“, Niš: Zbornik Radova Pravnog Fakulteta u Nišu, god. LIX, br. 87., 2020.
- Шкарик С., *Научно Толкување-Устав на Република Македонија*, Култура Прес, Скопје, 2014.
- Шкарик С., *Уставно Право*, Осмо Издание, Скопје: Култура Пресс, 2015.
- Uran P., Anayasaların Başlangıç Kısımları, İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (Journal) Vol. LXXIII, No. 1, p. 223-248 (230-233), 2015. URL: <https://dergipark.org.tr/tr/download/article-file/230781> (8.8.2023)
- Zejneli J., Shabani F., Lofton J., Constitutional Changes in the Republic of North Macedonia and their Function in promoting Stability, Peace and Integration. *Journal for Peacebuilding and Transcultural Communication*, Vol. 2, Issue 3/4 p. 37-47. Available from: [https://www.researchgate.net/publication/359314996\\_Constitutional\\_Changes\\_in\\_the\\_Republic\\_of\\_North\\_Macedonia\\_and\\_their\\_Function\\_in\\_promot](https://www.researchgate.net/publication/359314996_Constitutional_Changes_in_the_Republic_of_North_Macedonia_and_their_Function_in_promot)

[ing Stability Peace and Integration#fullTextFileContent](#)  
(accessed Aug 05 2023).

### Court Decisions

- Constitutional Court of the Republic of Poland, K 11/03 (Referendum on Poland's Accession to the European Union), 27 May 2003 (for the text of the decision, see: [http://trybunal.gov.pl/fileadmin/content/omowienia/K\\_11\\_03\\_GB.pdf](http://trybunal.gov.pl/fileadmin/content/omowienia/K_11_03_GB.pdf));
- Constitutional Tribunal of Poland, K 32/09 (Lisbon Treaty), 24 November 2010, (For text of the Decision, see [http://trybunal.gov.pl/fileadmin/content/omowienia/K\\_32\\_09\\_EN.pdf](http://trybunal.gov.pl/fileadmin/content/omowienia/K_32_09_EN.pdf).)
- Constitutional Court decisions of Türkiye , see: Decision of the Constitutional Court dated 13 June 1985, **No. 1984/14, K. 1986/7**, *Journal of Constitutional Court Decisions*, No: 21, p. 173-174;
- **E. 1989/1, K. 1989/12**, dated 7 March 1989 (*Journal of Constitutional Court Decisions*, No: 25, p. 133-165;
- **E. 1994/43, K. 1994/42-2** dated 9 December 1994, *Constitution Journal of Court Decisions*, Issue: 31, Volume: 1, p. 292-295.
- **E. 2000/45, K. 2000/27** dated 5 October 2000, Official Gazette, 28 October 2000, No: 24214.