

We will end this contribution with a question that seemingly has nothing to do with an internal problem such as constitutional change – the role of the European Union. Without the EU mediation the Constitutional Charter would never have come out. The charter achieved the Union's political goal of preserving the state union, or better still, it stopped the fragmentation of the Balkans into a number of statelets. To all appearances, however, the role of the European Union does not end here.

The confederal form of the state union does not provide for sufficient institutional guarantees that it will actually operate, because it is a political rather than legal structure. Accordingly, it does not have legal automatism it requires for proper functioning. Another political problem is the fact that the state leadership of Montenegro has failed to demonstrate political will to make the state union stronger in the times to come. Quite the contrary, Montenegrin leaders reiterate incessantly that their ultimate political goal is an independent Montenegro. The teleological presumption of this constitutional structure is quite the opposite – it proceeds from the currently available minimum in order to create a realistic political base through permanent integration practices for the gradual strengthening of joint state functions. The only adequate legal equivalent to this process is a permanent constitutional review towards federal solutions. On the other hand, the only realistic guarantor of this process of evolution, for any devolution would lead to ultimate state separation, is the integration support of the European Union. If we use a European analogy, we could say that in three years the Constitutional Charter gave the member states to reconsider their position in the state union, Serbia and Montenegro as a state union should travel a road of integration the European community travelled for fifty years. Besides, the Union itself is yet to promulgate its first formal constitution.

So, what this role of the European Union has to do with our topic of rule of law? The answer is quite simple. The European Union has two ways at its disposal in the process of mediation. Firstly, it can artificially support and maintain this state union as long as its security interests require so. Or, secondly, it can use its undeniable authority to demand its strengthening by supporting integration forces within the state union. The European Union will resolve this dilemma as soon as the state union of Serbia and Montenegro, once in place, begins talks on the Stabilisation and Association Agreement with it. To reach and implement the SAA, the institutions of the state union will require a broader legal capacity and a wider room for maneuver than provided for by the Constitutional Charter. Whether this internal condition will be met by repeated constitutional reviews or legal harmonisation does not matter the most. What does, however, is the process of internal integration of the state union which its entry into European integration processes should allow for. If the European Union sticks to this goal, its role that began by its mediation in the adoption of the Constitutional Charter will be fulfilled. It goes without saying that the member states should also respect this cause in order to materialise their respective strategies for European integration. It is only in this way that each member state and the state union can expect simultaneous internal evolution towards the system of rule of law.