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## PRESIDENTIALIZATION OF PARLIAMENTARISM IN SERBIA – CAUSES AND CONSEQUENCES

### ABSTRACT

Although the principle of separation of powers in Serbia has been regulated following the parliamentary model in the span of three decades, it has in practice functioned most often as a semi-presidential system. This paper analyzes two groups of factors that are the cause of presidentialization. Institutional factors that systematically create an environment suited for presidentialization include shortcomings in the constitutional design, the proportional electoral system and oligarchic tendencies in the party system. Direct election gives the President of the Republic strong legitimacy, and by retaining the position of party leader, in an electoral system with closed electoral lists and weak intra-party democracy, the head of state can easily control the parliamentary majority, the government and the parliament, thus upsetting the balance of power. Another group of factors that strongly affect the action of the aforementioned institutional aspects are a political culture with a strong authoritarian tradition and a lack of respect for the constitution and the democratic tradition. The consequences are strong authoritarian and populist tendencies and a departure from the liberal concept of democracy. The options proposed by the academic and political public as a solution to the situation blocking the consolidation of democracy in Serbia include the normativization of the incompatibility of office of the head of state and party leader, the abolition of direct elections, and a semi-presidential system.

**Keywords:** Parliamentarism, presidentialism, electoral system, party system, political culture

## INTRODUCTION

Defining the division of powers between the executive and the legislature and choosing the electoral system type were the two “constitutional choices” facing the political public in countries transitioning from authoritarian to democratic regimes three decades ago.<sup>1</sup> The debated alternatives were the majoritarian or the proportional electoral system, the parliamentary or the presidential system of governance. Leading academics have rightly argued that these options constitute the “most important institutional difference” among modern democracies, such that the choice of institutional arrangement also means the choice of a model of democracy.<sup>2</sup> In a number of Eastern European successor states to the former Soviet Union and Yugoslavia, both the academia and the political programs of the parties advocated a semi-presidential system modeled on the French tradition.<sup>3</sup> British parliamentarism was formed in a different environment that was not typical of emerging democracies and as such was not useful for their constitutional design.<sup>4</sup> The semi-presidential model seemed like a wiser choice because parliamentarism, in the transition from decades-long authoritarian patterns of politics and the parliamentary system, would essentially be a *leap into the different and unknown*.<sup>5</sup>

Serbia has observed such a practice. The chosen model was a separation of powers where the directly elected President of the Republic has modest constitutional powers. His role was defined as an inactive portion of the bicephalous executive that was supposed to moderate and maintain a balance between the National Assembly and the government. Legal experts in Serbia had different views on this organization of government, considering it quasi-parliamentary, mixed by construction, and essentially parliamentary.<sup>6</sup> Foreign researchers had fewer dilemmas and classified Serbia’s political

<sup>1</sup> A. Lijphart, “Constitutional Choices for New Democracies”, *Journal of Democracy*, vol. 2, no. 1 (1991), pp. 72-84.

<sup>2</sup> A. Lijphart, “Democratization and Constitutional Choices in Czecho-Slovakia, Hungary and Poland 1989-91”, *Journal of Theoretical Politics*, vol. 4, no. 2 (1992), pp. 207-223.

<sup>3</sup> C. Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, Princeton 2005, p. 1-2. Some authors point out that this was also fueled by the crisis of parliamentarism, see G. Pasquino, “Semi-Presidentialism: A Political Model at Work”, *European Journal of Political Research*, vol. 31, no. 1 (1997), p. 136. Two years ago, this model, most famously incarnated by the constitution of the French Fifth Republic, marked six decades of its existence. For further information see *Politeja*, vol. 17, no. 1(64) (2020): *Sześć dekad V Republiki Francuskiej*, especially Łukasz Jakubiak, “Elementy prezydenjalizmu w systemie ustrojowym Francji okresu V Republiki”, pp. 37-59.

<sup>4</sup> D.V. Verney, “Parliamentary Government and Presidential Government”, in: A. Lijphart (ed.), *Parliamentary versus Presidential Government*, Oxford 1994, pp. 31-48.

<sup>5</sup> G. Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, New York 1994, pp. 135-136.

<sup>6</sup> Prominent constitutional law experts assessed the political system of Serbia in differing views: ranging from it being “mixed by construction” and “quasi-parliamentary”, P. Nikolić, “Ustav Srbije i problemi demokratizacije”, *Pravni život*, vol. 41, no. 1/2 (1991), p. 91; to the view “that it is a semi-presidential system”, M. Jovičić, “Parlamentarni sistem nasuprot predsedničkom i skupštinskom sistemu”, *Arhiv za*

system as semi-presidential.<sup>7</sup> Political scientists have long established that the premier-presidential and presidential-parliamentary phases alternate in semi-presidential systems.<sup>8</sup> In other words, mixed systems are “true and genuine systems” precisely because of their uniqueness, oscillating between the presidential and parliamentary phases due to the action of numerous political factors.<sup>9</sup>

Presidentialization is a rising trend in modern parliamentary democracies. The system of separation of powers, especially in situations where the holders of legislative and executive power come from the same political party and/or political coalition, is becoming ineffective. Perhaps seven decades ago, Duverger's assessment of the role of political parties seemed overly strict: *The executive and the legislature, the government and parliament, are just a façade: in reality, the party alone exercises power.*<sup>10</sup> Processes in contemporary democracies have not proven him wrong - on the contrary. The executive dominates the system of government, and the parties gain the upper hand by relying on that mechanism.<sup>11</sup> Researchers, meanwhile, have compiled an ever expanding list of factors influencing the process of presidentialization of parliamentarism: international influences on political decision-making, the complication the functions of the modern state, erosion of policies based on traditional divisions, changes in the structure and function of mass media, the presidentialization of political parties.<sup>12</sup>

Our analysis of this phenomenon is rooted in the concept of “path dependence”<sup>13</sup> and the theory of institutionalism, or more precisely, the paradigm of historical institutionalism. People in the political community make decisions at critical junctures or “constitutional moments” and thus create political institutions. The creation of institutions traces the expected functioning of the political system, whose modification will

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*pravne i društvene nauke*, vol. 48, no. 1 (1992), p. 34; and the opinion “that it has external features of a mixed system, but due to the weak powers of the head of state vis-à-vis the government, it leans more towards a parliamentary than a mixed system”, R. Marković, *Ustavno pravo i političke institucije*, Beograd 2008, p. 208.

<sup>7</sup> R. Elgie, *Semi-Presidentialism: Sub-Types and Democratic Performance*, Oxford 2011, p. 24.

<sup>8</sup> M.S. Shugart, J.M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge 1992, pp. 23-27. See also: M.S. Shugart, “Semi-presidential Systems: Dual Executive and Mixed Authority Patterns”, *French Politics*, vol. 3, no. 3 (2005), p. 334.

<sup>9</sup> G. Sartori, *Comparative...*, pp. 131-135.

<sup>10</sup> M. Duverger, *Political Parties: Their Organisation and Activity in the Modern State*, London–New York 1954, p. 394.

<sup>11</sup> A. Sajó, R. Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism*, Oxford 2017, p. 158.

<sup>12</sup> T. Poguntke, P. Webb, “The Presidentialization of Contemporary Democratic Politics: Evidence, Causes, and Consequences”, in: P. Webb, T. Poguntke (eds.), *The Presidentialization of Politics: A Comparative Study of Modern Democracies*, Oxford 2005, pp. 347-352.

<sup>13</sup> T. Ginsburg, R.A. Kagan, “Institutionalist Approaches to Courts as Political Actors”, in: T. Ginsburg, R.A. Kagan (eds.), *Institutions & Public Law: Comparative Approaches*, New York 2005, p. 2; P. Pierson, “Increasing Returns, Path Dependence, and the Study of Politics”, *The American Political Science Review*, vol. 94, no. 2 (2000), pp. 251-267; C. Parsons, *How to Map Arguments in Political Science*, New York 2007, pp. 85-91.

be exceedingly difficult for the actors, because of the simultaneous creation of expectations and commitments that encourage actors to follow in that direction. Over time, the cost of leaving the path of addiction increases. We talk about the planned influence of an institution, but in reality, actors are not influenced by the institution itself, but by the constellation of interests and strategic positions – the institution is only a mere reflection of this complex context.

By constitutional design, the political system of Serbia was supposed to function according to the parliamentary pattern. The actors were supposed to follow that path of constitutional design. Thirty years of practice demonstrated that the Serbian political system did not function according to constitutional provisions. The head of state has never managed to play the role of an independent moderator. The presidential-parliamentary phases were much longer than the premier-presidential intervals. What are the causes of the presidentialization of parliamentarism in Serbia? Is presidentialization a consequence of constitutional engineering? Did political culture factors encourage the actors to leave the path of institutional functioning traced by the constitution? What are the consequences of these institutional frameworks and political processes on democracy? These are the questions that this paper attempts to answer.

## PHASES OF PARLIAMENTARISM AND PRESIDENTIALISM

According to the 1990 Constitution of the Republic of Serbia, the division of powers is based on a parliamentary pattern: the government is elected and controlled by the National Assembly, and the President of the Republic has no authority in electing and replacing the government and parliament, but is elected directly by citizens.<sup>14</sup> The projected goals of the designer were explained by two basic arguments. Firstly, the head of state was supposed to act as arbiter and ensure a balance between parliament and government, in an environment where the government, as the effective part of the executive, constantly strives to exercise its influence by dominating parliament. Secondly, it was crucial for a distinctly divided society such as Serbia (with open national and state issues) to *choose its national symbol, a symbol that stands above politics*.<sup>15</sup> The head of state, whose legitimacy is directly obtained from citizens, should be this symbol and an institution that ensures stability, in times of establishing a representative democracy, political pluralism and a party system.<sup>16</sup> The model of separation of powers that rationalizes parliamentarism in favor of the executive was imposed by the transformed communist elites, without the participation of the opposition. The result was essentially the first, deep split on the political scene. It is still present today and it still generates

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<sup>14</sup> D. Simović, *Polupredsednički sistem*, Beograd 2008, p. 28.

<sup>15</sup> C. Skach, "The 'Newest' Separation of Powers: Semipresidentialism", *International Journal of Constitutional Law*, vol. 5, no. 1 (2007), p. 98.

<sup>16</sup> D. Simović, "Uzroci prezidencijalizovanja parlamentarizma i dometi ustavnog inženjeringa u Republici Srbiji", in: E. Šarčević, D. Simović (eds.), *Parlamentarizam u Srbiji*, Sarajevo 2018, p. 54.

problems in consolidating democracy and encourages authoritarianism. Following the change of ruling political elites in 2000, the critics could finally change this political system model. However, the new 2006 Constitution of the Republic of Serbia retained essentially identical provisions in the operationalization of the principles of separation of powers, and the relationship between the legislature and the executive<sup>17</sup>.

After three decades of the existing constitutional model, 11 legislatures and five different presidents, the periodic delimitation of the parliamentary and presidential phases in the political system of Serbia are clearly visible.

The first phase (1990-2000) represents the first decade of transition. The renewal of Serbian parliamentarism is marked by the domination of the President of the Republic, not only in relation to the government, the second branch of the executive, but also to the National Assembly, the legislative branch. From 1990 to 1997, Slobodan Milošević, with two victories in presidential elections, in effect led state policy while the government and parliament were reduced to *institutional support for such a distribution of political power*.<sup>18</sup> At the end of his second mandate as President of the Republic of Serbia, Milošević became President of the Federal Republic of Yugoslavia. The new President of the Republic of Serbia, an official of the ruling Socialist Party of Serbia, did not have real power to extend the presidential phase, thus the system formally functioned in accordance with the constitution. Real power had moved to the federal level together with the chairperson of the ruling Socialist Party of Serbia, Milošević.

The second phase, (2000-2003) began with the election victory of the Democratic Opposition of Serbia in the federal parliamentary and presidential elections of December 23 2000, which brought an end to the ten-year rule of Milošević's Socialists. Formally, it was a period of cohabitation. The head of state at the time, Milan Milutinović, still an SPS functionary, had no political power; his function was reduced to its formal constitutional frameworks, often even degraded. This did not mean the dominance of the parliamentary phase – it was quite the opposite. It was replaced by a phase of 'premierization': the charismatic opposition leader Zoran Đinđić became Prime Minister, but his position was not nearly as dominant as the one held by the president in the previous period. His power did not stem from the strength of the Democratic Party that he led, but from the unstable parliamentary majority of 18 parties diverse in terms of ideology, platform and politics. This broad coalition functioned as a brake against a stronger presidentialization by the prime minister. This phase ended tragically, with the assassination of the prime minister. The environment which saw the most powerful state functionary killed, the mandate of the head of state expire with the Chairman of the National Assembly becoming President without full legitimacy, and the introduction of a constitutionally and legitimately challenged state of emergency, hindered Serbia's consolidation of democracy.

The third phase (2004-2008) was also a period of cohabitation between the coalition government of Prime Minister Vojislav Koštunica, leader of the Democratic Party

<sup>17</sup> E. Bujwid-Kurek, *Serbia w nowej przestrzeni ustrojowej: Dzieje, ustroj, konstytucja*, Kraków 2012, p. 97.

<sup>18</sup> D. Simović, "Uzroci...", p. 56.

of Serbia, and President of the Republic Boris Tadić, leader of the Democratic Party. Although a continuation of presidentialization by the Prime Minister could have been expected, it did not occur. The reason was that it was a minority government. The weakness of both cohabitation partners and the mutual struggle for dominance in the political arena kept the relationship between the legislative and executive branches in balance, and the political system functioned within the constitutional framework.

The fourth phase, (2008-2012) again pushes the pendulum into the field of presidentialization. Although the second government of Prime Minister Koštunica was in a coalition with the party of the head of state, due to different visions of the European integration process, the coalition was dissolved and early parliamentary elections held. The Democratic Party, headed by the head of state Tadić, formed a government with the support of the Socialist Party of Serbia, a weak coalition partner fighting for survival on the political scene, thus meeting the conditions for the end of the short parliamentary phase. Presidentialization in a democratic environment takes place in the same way as in the first phase. As the president of the Democratic Party that leads the government and the head of state, Tadić dominated the parliament and the government and essentially led domestic and foreign policy.

The fifth phase, (2012-2014) was a new short-lived break from presidentialization in extremely specific political circumstances. After the parliamentary and presidential elections, there was a reversal. Tomislav Nikolić, the leader of the newly founded Serbian Progressive Party, beat Tadić in the second round of elections. The Democratic Party of the defeated incumbent and the Serbian Progressive Party (SNS) of the newly elected president had a coalition potential to form a government. The Socialist Party of Serbia, third by number of votes in the parliamentary elections, broke the coalition with the Democrats. Using its extorting potential, the SPS took the post of prime minister, and the Progressives capitalized on their position in the conflict with the Serbian Radical Party they broke off from, with a triumphant entry into power. For the first and only time in three decades of restored parliamentarism, the elected head of state Nikolić resigns from the position of Chairman of the Serbian Progressive Party and an atmosphere of peaceful cohabitation and political system functioning within the constitutional framework ensues.

The sixth phase, 2014-2017, began with a dizzying rise in support for the Serbian Progressive Party and its new leader – Aleksandar Vučić, at the time Deputy Prime Minister, who took over the vacant position of SNS Chairman. After less than two years, the Prime Minister and leader of the SPS, Ivica Dačić, aware that other potential coalition partners reduced his negotiation potential, offered Vučić a switch in government positions. However, the Serbian Progressive Party and its leader, wishing to utilize the growing influence among voters to strengthen the party, insisted on early elections. The electoral triumph awarded the SNS an absolute parliamentary majority and the prime minister's position to their Chairman, Vučić. A new cycle of premierization began. For the first time in three decades, the leader of a party led a parliamentary majority of 4/5 of deputies and predominantly led domestic and foreign policy as prime minister. The head of state remained within the scope of constitutional powers. Deprived

of the office of party leader, his political power did not have the institutional and political leverage to surpass his constitutional powers.

The last and currently ongoing phase began in 2017. Vučić, Chairman of the SNS and Prime Minister, forced his political patron and President of Serbia, Nikolić, to withdraw his candidacy for a second presidential term. The party refused its support to its founder, who led them in electoral victory, and nominated its leader Vučić for the presidency of Serbia. With his victory, the pendulum oscillated deep into the field of presidentialism. The dominant power of the head of state and the marginalization of the parliament and the government is manifested much more explicitly than in the previous presidential phases.

It is interesting that during all different phases there were no significant conflicts between the Prime Minister and the President, which is a practice that has been empirically verified in similar systems, especially in the countries of Central and Eastern Europe.<sup>19</sup> There were no open conflicts within the executive branch or between the president and the parliament, either over the interpretation of constitutional competencies or over the appointment and conduct of politics. In the presidentialist phases, presidents effectively controlled both the government and parliament. The exception is the mentioned second term of the government of V. Koštunica. This sole significant conflict was resolved by overthrowing the government and provoking early elections, after which the system re-entered the presidential phase.

## CAUSES AND CONSEQUENCES OF PRESIDENTIALISM

The constitutional-institutional design and external factors are two segments in which the factors of presidentialization are situated. The latest wave of comparative research is increasingly focusing on the impact of external factors.<sup>20</sup> We will analyze the effect of constitutional design, electoral and party system, on the one hand, and the authoritarian legacy, weak constitutional culture and the absence of democratic traditions, on the other hand, as the main factors determining presidentialization in the Serbian political system.

The Constitution established the principle of separation of powers according to the parliamentary pattern. The National Assembly has constitutional and legislative power; it elects and controls the government. The executive branch is bicephalous. The government is an active and effective part of the executive, and the President of the Republic represents state unity and continuity. In accordance with such an office, he is endowed with appropriate constitutional powers. Firstly, the President of the Republic proposes a mandatee for constituting a government after an audience with the representatives of all electoral lists that have won parliamentary seats. Secondly, he

<sup>19</sup> T. Sedelius, O. Mashtaler, "Two Decades of Semi-presidentialism: Issues of Intra-Executive Conflict in Central and Eastern Europe 1991-2011", *East European Politics*, vol. 29, no. 2 (2013), pp. 109-134.

<sup>20</sup> R. Elgie, "Three Waves of Semi-presidential Studies", *Democratization*, vol. 23, no. 1 (2016), p. 49 ff.

has a suspensive veto on the promulgation of laws adopted by the National Assembly. Thirdly, following a justified proposal by the government, he may dissolve the National Assembly.<sup>21</sup> The President of the Republic is not independent in exercising these powers, because these decisions are based on proposals or confirmation of decisions by other bodies. So, normatively speaking, this is a neutral constitutional design in separation of powers. However, the President of the Republic is directly elected by citizens. The institution of the head of state thus gains legitimacy equal to parliament and significantly stronger than the government. The strongest political legitimacy in the system of government has extremely modest constitutional powers. Directly elected heads of state are not appointed in such a way as to merely open “flower fairs”, as Duverger says.<sup>22</sup> They strive to turn their strong legitimacy into political power, which becomes a source of inexhaustible frustration for this individual institution.<sup>23</sup> Comparative experiences show that direct election and a fixed mandate encourage presidents of the republic to position themselves above other institutions and lead politics independently. This is manifested by frequent recourse to non-institutional means in conducting and controlling state policy. Retaining the position of party leader is another mechanism of constitutional design that creates the institutional environment for the presidentialization of the National Assembly. Both constitutions of the Republic of Serbia explicitly stipulate that the office of the President of the Republic is incompatible with any other public office. Most constitutional law experts consider the office of head of a political party to be a public office.<sup>24</sup> Political parties are sui generis associations unto which the constitution conveys the exercise of public authority: shaping the political will of citizens, proposing candidates for representative bodies, participating in the use of public goods in financing party work and participation in elections, proposing members of electoral bodies, the President of the Republic consults political parties when proposing a mandatee etc. Therefore, the office of head of party contains explicit elements of public law, thus making it incompatible per the constitution for the head of state to hold that office. Accumulating these functions brings into doubt the roles of arbitrator and moderator, for reasons of lack of political independence.<sup>25</sup> The Constitution provides a special procedure for the National Assembly to remove the President of the Republic with a two-thirds majority and a decision by the Constitutional Court. Parliament has never initiated the process of dismissing the head of state for violating the Constitution,

<sup>21</sup> “Constitution of the Republic of Serbia”, *Official Gazette of the RS*, no. 98/2006, Article 109, 112 and 113, at <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution#d5>.

<sup>22</sup> M. Duverger, *Echec au roi*, Paris 1978, p. 21, as cited in D. Simović, “Uzroci...”, p. 76.

<sup>23</sup> O. Protsyk, “Politics of Intraexecutive Conflict in Semipresidential Regimes in Eastern Europe”, *East European Politics and Societies*, vol. 19, no. 2 (2005), pp. 135-160.

<sup>24</sup> D. Stojanović, *Ustav i političko zakonodavstvo Republike Srbije*, Niš 1991, p. 92; O. Vučić, “Pet godina posle: primena Ustava, poštovanje Ustava”, in: M. Petrović (ed.), *Ustav Republike Srbije: pet godina posle: (2006-2011)*, Niš 2011, pp. 35-46; D. Simović, V. Petrov, *Ustavno pravo*, Beograd 2014, pp. 160-164.

<sup>25</sup> I. Pejić, “Podela vlasti u ustavnom sistemu Srbije: mogućnost ravnoteže”, in: E. Šarčević, D. Simović (eds.), *Parlamentarizam u Srbiji*, Sarajevo 2018, p. 49.



nor has the Constitutional Court assessed this political practice. Although political practice has shown that such a constitutional design leads to presidentialization and the constant deformation of parliamentarism, the experience did not prove inspiring enough to produce a solution to this problem with the new 2006 Constitution. Moreover, in comparison to the 1990 Constitution, apart from the head of state being deprived of authority in the field of state of emergency, all other competencies remained the same, including their direct election. Thus, at the beginning of the transition, the constitutional design traced, and later the constitutional revisions strengthened, the environment for permanent degradation of the parliamentary model and encouragement of presidentialization.<sup>26</sup> Serbia has in such a way become one of the comparative examples that confirm that direct election and a fixed mandate encourage the head of state to place themselves above other institutions and lead state policy independently.<sup>27</sup>

The electoral system for members of parliament is another important institutional element that supports presidentialist tendencies. Serbia only applied the majoritarian electoral system at the beginning of the transition, in the first multi-party elections of 1990. It was quickly replaced in the first snap elections in 1992 by a proportional electoral model with several constituencies, closed electoral lists, a 5% statutory electoral threshold and the D'Hondt method for allocating seats, only to be reformed in 2000 by a single nationwide constituency.<sup>28</sup> Comparative experiences show that closed lists affect party leaderships to ensure stronger and more loyal MPs.<sup>29</sup> Proportional election formulas can be a strong barrier to presidentialization. Proportional electoral systems usually result in coalition governments. A larger number of actors in the formation of the parliamentary majority and the government points to building compromises, consensus, agreements, it strengthens the possibility of control and brings balance in the distribution of power in making and conducting policy. It is harder for a president to "presidentialize" the parliament in such an environment. However, the characteristics of Serbia's electoral system demonstrate that presidents successfully circumvent these obstacles in several ways. First, they are not just "gatekeepers" of the parliament for party contenders to parliamentary positions, because they control the procedures and possess the greatest statutory power in nominating candidates. They are the leaders of electoral lists. Their name personifies a political party. According to electoral rules, the ballot paper displays the choice of electoral lists of parties or coalitions with only the name of the party leader and the first candidate on the electoral list. Citizens are not able to vote for candidates. They vote for the party and its leader, and the party elites

<sup>26</sup> D. Simović, "Prezidencijalizacija srpskog parlamentarizma (2006-2016)", *Srpska politička misao*, Special Edition 2017, pp. 111-126.

<sup>27</sup> R. Elgie, "The Perils of Semi-Presidentialism: Are They Exaggerated?", *Democratization*, vol. 15, no. 1 (2008), pp. 49-52.

<sup>28</sup> M. Jovanović, "The Designing of Serbia's Electoral System", *Serbian Political Thought*, vol. 3, no. 1 (2011), pp. 63-86. See also: M. Jovanović, "Izborni sistem Srbije – dve decenije posle", in: S. Orlović (ed.), *Partije i izbri u Srbiji: 20 godina*, Beograd 2011, p. 233.

<sup>29</sup> S.M. Saiegh, "Executive-legislative Relations", in: J. Gandhi, R. Ruiz-Rufino (eds.), *Routledge Handbook of Comparative Political Institutions*, New York 2015, pp. 162-180.

are the ones making the real choice. Such an electoral system strengthens the power of the party leader and depersonalizes the deputies. They depend on the will of the party leadership, most often the head of the political party. Comparative experience shows that the leaders themselves and/or a circle of close associates *effectively choose the majority, if not all, of the candidates for the legislature*.<sup>30</sup> Electoral campaigns best expose such a situation. As a rule, they are not centered on programs but leaders. Candidates for deputies are extras. Such a status puts them in a position of subordination and unconditional discipline in relation to the party and its leader.<sup>31</sup>

The party system is a kind of presidentialization *perpetuum mobile* in the political system of Serbia. Three decades after the beginning of re-democratization, the party system is still fragmented and unstructured. Such a state of the party system is due to the proportional electoral model, the depth of social, ideological, ethnic divides, and a low level of intra-party democracy. Contrary to a participatory model of intra-party life – direct elections for party office and public function candidate election, party referendums, deliberation etc. – we have an undemocratic model of party governance. The parties favor patterns of identification that turn the leader from a party “servant” into a “party Caesar.”<sup>32</sup> Party membership is not only unmotivated, but it is systematically prevented from participating in party decisions. Vertical and horizontal relations between diverse levels of the party structure are built on the principles of hierarchy and centralization. In such an environment, power is readily concentrated in the hands of the party leader, especially in parties with MPs. Power is very efficiently dosed and controlled by leaders who distribute it to a very narrow circle of individuals in their entourage and/or latent groups that are often formed on generational, interest and geographic bases.<sup>33</sup> These forces form oligarchic tendencies in the party system of Serbia. Alongside political management, internal communications, relations with the entourage, setting internal rules, economic management competencies, selection and nomination of candidates for parliamentary positions, just one of the indicators of power in zones of uncertainty. However, it is of particular importance in charismatic, leadership and clientelistic parties.<sup>34</sup> The leader of the party, who is President of the Republic at the same time, becomes the dominant figure in politics. They personify the party and state. If their party can form a government, they are a key negotiator and signatory of coalition arrangements. As party leader, they are the shadow head of the parliamentary

<sup>30</sup> M.P. Jones, “Presidential and Legislative Elections”, in: E.S. Herron, R.J. Pekkanen, M.S. Shugart (eds.), *The Oxford Handbook of Electoral Systems*, Oxford 2018, p. 2.

<sup>31</sup> M. Jovanović, “Izborni i partijski sistem u funkciji prezidencijalizacije parlamentarizma u Srbiji”, in: E. Šarčević, D. Simović (eds.), *Parlamentarizam u Srbiji*, Sarajevo 2018, pp. 106-108.

<sup>32</sup> Z. Stojiljković, “Struktura, modeli i praksa unutarstranačkih odnosa”, in: Z. Lutovac (ed.), *Političke stranke u Srbiji: struktura i funkcionisanje*, Beograd 2005, p. 19. See further: S. Orlović, “Partijski sistem Srbije”, in: S. Orlović (ed.), *Partije i izbori...*, pp. 12-68.

<sup>33</sup> Z. Stojiljković, V. Mihailović, D. Spasojević, “Unutarstranačka demokratija u Srbiji”, in: Z. Stojiljković, D. Spasojević, J. Lončar (eds.), *Kako internu unutarstranačku demokratiju učiniti mogućom: institucionalni faktori i interna demokratija unutarstranačkih odnosa*, Beograd 2015, pp. 71-72.

<sup>34</sup> A. Panebianco, *Political Parties: Organization and Power*, Cambridge 1988, p. 36.

group. As head of state, they give a mandate for the composition of the government to their selected party colleague. Thus, constitutional and institutional design accord the President of the Republic the status of the most powerful political institution. An omnipotent head of state controlling the party, parliament, government and coalition partners, with a more stable mandate than other institutions, in fact translates into absolute power without real control and responsibility. Such a constellation of political institutions in a system of separation of powers is an ideal incubator of authoritarianism and populism.

The institutional setting is the accelerator of the presidentialization of the political system of Serbia. It is complemented by an authoritarian legacy, a weak constitutional culture and the absence of democratic traditions, three important historical verticals in the Serbian political pattern that play a role of additional fuel in this process.

The complex and ambivalent cult of personality, present from the times of the Principality and Kingdom of Serbia and all different incarnations of Yugoslavia have enshrined personalization as an axiom of politics. This ranges from rare bright examples of devoted leaders to more frequent cases of modern populist rulers who *are not just a shadow in the mirror of Serbian hubris and self-delusion, but the fruit of a long malignant process that [...] gave a commanding lead to greedy and selfish political usurpers and megalomaniacs.*<sup>35</sup> Modernization and reform often boiled down to a change of leader, usually unconstitutional and often violent. An integral part of that pattern are idolatry, suppression of critical thinking and turning political rivals into enemies with intensity varying from intolerance, political ruin to physical destruction.<sup>36</sup> Authoritarian leaders, dominant in the political matrix of government, are deeply imprinted in the political code of individuals, society and political institutions. The strong gravitational action of authoritarianism is the core of the resistance to change towards participatory and deliberative political culture inherent to the liberal concept of democracy. In two thirds of the period covered by this analysis, competitive authoritarianism is at work: competitive but non-free and/or unfair elections, media freedom violations and a “non-level playing field” where ruling and opposition parties compete.<sup>37</sup> A number of such processes that shape authoritarian patterns and present a great challenge to democratic consolidation are similar to those already identified by researchers in a number of neighboring Balkan countries.<sup>38</sup>

Authoritarianism is the antithesis of constitutional democracy whose axiom is the limitation of state power. It enforces voluntarism and puts law at the service of politics. Frequent changes of the constitution – eleven different constitutions between 1804 and 2006 from *almost all types of constitutions known to theory*, show an enviable tradition of

<sup>35</sup> M. Matić, *O srpskom političkom obrascu*, Beograd 2000, p. 71.

<sup>36</sup> K. Čavoški, *O neprijatelju*, Beograd 1989, p. 224.

<sup>37</sup> N. Vladislavljević, “Izbori, demokratija i takmičarski autoritarizam i takmičarski autoritarizam u Srbiji 1990-2000”, in: M. Jovanović, D. Vučićević (eds.), *Kako, koga i zašto smo birali – Izbori u Srbiji 1990-2020*, Beograd 2020, p. 991.

<sup>38</sup> F. Bieber, *The Rise of Authoritarianism in the Wester Balkans*, Cham 2019, pp. 42-53.

limiting the power of rulers and building a legal system.<sup>39</sup> However, it also demonstrates frequent discontinuities, fierce political disputes and confrontations about the fundamental principles of the political community, which in itself devalued the possibility of strengthening the rule of law, the importance of the legal system, laws and constitutions, all necessary conditions for law and order.<sup>40</sup> The list of affronts to and violations of the constitution by the rulers, encroaching on constitutional powers of other government institutions are practices that mark the history of modern Serbian statehood. The most current examples are from the mandate of the current President of the Republic. Prominent legal experts attribute to him, as head of state, the violation of a number of articles of the Constitution: [he] *grossly violates the principle of separation of powers... by exercising, or coordinating powers constitutionally reserved to the Government – especially conducting domestic and foreign policy – usurping as well certain prerogatives of the public prosecutor... and public administration bodies..., with clear and continuous political pressure... commentary on the work of the judiciary, criticism and suggestions directly deny the principle of independence of the judiciary and judges.*<sup>41</sup> Dozens of actions of President Aleksandar Vučić can be classified as violations to the Constitution: reduction of pensions; signing an international agreement with the United States and Israel regarding the Province of Kosovo and Metohija; the announcement of the reduction of the mandate of the Government immediately after the elections in 2021; interference in the exercising of the judicial office; issuing direct orders to ministers and even directors of public sector corporations etc.<sup>42</sup> Calling a referendum to modify the Constitution, which should reduce the potential influence of politics on the election of judges and the independence of the judiciary, is the most recent example. The Referendum Law was adopted by a politically monolithic parliament (due to the boycott of the 2021 parliamentary elections by some opposition parties dissatisfied with the electoral conditions), without broad public debate and under the guise of an urgent procedure only two months before the referendum was called. Despite criticism from the civil sector, segments of academia and protests from citizens, the President of the Republic promulgated the referendum law, despite having the option of a limited veto that he could have used to return the law to the National Assembly for reconsideration. Instead of that constitutional mechanism,

<sup>39</sup> R. Marković, *Sa ustavne osmatračnice*, Beograd 2017, p. 367.

<sup>40</sup> From 1804 until today, Serbia has fought in wars 12 times, changed the constitution 11 times, made 10 changes in foreign policy, changed borders seven times, changed its political system seven times, went through four economic blockades, was occupied and liberated three times, and all its rulers except Knez Miloš, Josip Broz Tito, Milian Milutinović, Boris Tadić and Tomislav Nikolić, were forcibly overthrown or killed. L. Dimić, D. Stojanović, M. Jovanović, *Srbija 1804-2004: Tri videnja ili poziv na dijalog*, Beograd 2009, p. 15 and 158.

<sup>41</sup> Z. Tomić, “Vučić u oštrom sukobu sa Ustavom”, *Danas*, 7 May 2019, at <https://www.danas.rs/dijalog/licni-stavovi/vucic-u-ostrom-sukobu-sa-ustavom/>, 7 May 2019.

<sup>42</sup> “Marinković: Vučić od 2017. najmanje 25 puta kršio Ustav u vezi sa sudijama”, *NI*, 8 November 2021, at <https://rs.n1info.com/vesti/marinkovic-vucic-od-2017-najmanje-25-puta-krasio-ustav-u-vezi-sa-sudijama/>, 8 November 2021. See also: “Profesor Čiplic: Vučić prekršio Ustav više stotina puta, naročito u Vašingtonu”, *O21*, 16 May 2021, at <https://www.o21.rs/story/Info/Srbija/274087/Profesor-Ciplic-Vucic-prekrasio-Ustav-vise-stotina-puta-narocito-u-Vasingtonu.html>, 16 May 2021.

a few days later, he simply ordered the government to propose changes to the said law in the exact provisions that were the subject of criticism and protest.

Short democratic episodes in a little more than two centuries of modern Serbian statehood were not a sufficient ground for the development of cultural patterns that are invaluable for the fine-tuning and proper functioning of the gears of liberal democracy. The uninterrupted period of undemocratic regimes in the 20<sup>th</sup> century, lasting over 70 years, an average human lifespan, is not a stimulating and inspiring experience for the consolidation of democracy and parliamentarism.<sup>43</sup> The period of political monism left devastating effects on political pluralism and the importance of the function of free and fair elections as pillars of the liberal concept of representative democracy. Control over government decisions; representative government; free, fair and frequent elections; freedom of expression and access to alternative information including criticism of officials, the government, the regime, the socio-economic order and the ruling ideology; access to alternative sources of information, the right of citizens to seek alternative and independent sources of information from other citizens, experts, daily newspapers, magazines, books, etc. which must not be influenced by government or any political group and must be protected by law; freedom of association and citizenship that guarantees all rights: all these aspects are elementary institutions of democracy.<sup>44</sup> In three decades, Serbia has built a coherent set of norms that a democratic system needs for free and fair elections. However, in practice, almost all election cycles witnessed violations of election rules that threaten the freedom of voting, equal treatment of candidates, impartial determination of results. The normative framework maintains Serbia as a model of electoral democracy. However, the rule of law, political responsibility, bureaucratic integrity and openness of all political institutions to public debate as deeper levels of the liberal model of democracy have not been achieved. Insisting on reforms of electoral institutes is useful and always necessary for improving electoral procedures, but it will not in itself nudge democracy in Serbia from an electoral to a liberal model. Electoral democracy is a newly opened door to liberal democracy, a door that authoritarian practice can easily close. The pronounced deficits in the links of the democratic chain, such as the rule of law, freedom of the media, political responsibilities of a competent, professional bureaucracy, together with the afore-mentioned factors, are fertile ground for presidentialization. The absence of quick steps in that direction turns electoral democracy into a democratic ritual of an essentially authoritarian society.

## CONCLUSION

Although constitutional design defines the political system of Serbia according to the parliamentary pattern, in order to make a complete assessment, it is necessary to consider the political reality. The broader picture shows that whenever the conditions for

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<sup>43</sup> S.G. Marković, "Razvoj parlamentarizma u Srbiji", in: V. Pavlović, S. Orlović (eds.), *Dileme i izazovi parlamentarizma*, Beograd 2007, p. 264.

<sup>44</sup> R.A. Dahl, *On Democracy*, New Haven–London 1998, p. 85.

a synergic effect of institutional and political culture factors that enable the President of the Republic to upset the constitutional balance of parliament and government were met, they could not resist the call of power and the political system functioned in a semi-presidential manner. The cumulating effect of the position of the head of state and the leader of the party that has a parliamentary majority created the conditions for presidentialization – the concentration of power in one person who effectively dominated the creation of domestic and foreign policy, disturbing the balance between parliament and government. The President of Serbia uses such a strengthened political position to increase the asymmetry of power. Asymmetric power often remains masked because when it is strongest, it does not need to be used openly.<sup>45</sup> The President of Serbia is doing the exact opposite – he emphasizes the asymmetry of power in order to show the omnipotence of his function in relation to other political institutions. That is why he reduces the Government to his cabinet – S. Milošević, B. Tadić and A. Vučić appointed persons without political authority and power in political parties as prime ministers – and the National Assembly to the factory for voting laws. As a rule, this causes the overreach of the President of the Republic, by encroaching on the constitutional competencies of other government institutions and violation of the Constitution. He could only be politically responsible for such policymaking, but not criminally responsible as members of the government could. The ultra-presidential reality was out of balance with the parliamentary and semi-presidential constitutional design. The direct election of the President of Serbia, the only institution directly elected by the citizens, is a source of strong legitimacy, which together with the ruling party's leadership, proportional electoral system with closed electoral list and strong oligarchic tendencies in the party system, closes the circle of institutional factors causing presidentialization. The authoritarian heritage, weak capacities of civil society, short intervals of democracy and lengthy periods of undemocratic rule with an unresolved state issue, are strong fuel for the institutional engine of presidentialization.

Constitutional design is not in itself a cause of presidentialization. Formally, it has a neutral character. However, non-compliance with the constitutional provisions on the incompatibility of the functions of the party leader and the head of state, with the cooperation of the electoral and party system, forms a set of institutional conditions for presidentialization. The critical moment for suppressing this process was the adoption of the new Constitution in 2006. Why haven't the new elites changed the institutional framework unequivocally towards a parliamentary model or a clear semi-presidential system? Because once formed, institutions show a strong tendency to survive for a long period. The status quo is reinforced by the benefits that actors have felt from such institutional design. That is why institutional turnaround was not an attractive option for the actors. They were unsure of the political consequences that institutional reform would produce for their positions on the political scene. At the same time, they calculated that they would continue to use the established matrices of government. In

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<sup>45</sup> P. Bachrach, M.S. Baratz, "Two Faces of Power", *American Political Science Review*, vol. 56, no. 4 (1962), pp. 947-952.

addition, institutional reforms produce long-term effects, and it is well known that politicians under pressure from election deadlines are primarily interested in quick and short-term effects. This can prove to be an important fact in the further erosion of the division of power. Namely, it is known that the ability of certain actors to impose rules of conduct on others, leads to self-strengthening of power.<sup>46</sup> Authority that has been reinforced in such a way can be effectively used to change either institutions or public policies.

The institutional environment presented in this analysis proved to be a limiting factor in the consolidation of democracy. On the contrary, it was an accelerator of authoritarianism. The claim that the functioning of such semi-presidential models allows for heads of state *who take advantage of constitutional autonomy for a long period of time to transform their countries from semi-presidential democracy to constitutional dictatorships* is confirmed by the example of Serbia's political system.<sup>47</sup> The presidentialist phases in the functioning of the system, which were dominant in the analyzed three decades, are accompanied by negative trends in all areas important for the functioning of the liberal model of democracy. All electoral processes are accompanied by violations of the principles of free and fair elections, which calls the integrity of the electoral decision into question. Democratic election deficits spill over into other segments. The executive power, embodied in the uncontrolled head of state, marginalizes the parliament. Disrupting the balance in the separation of powers threatens the rule of law. The dominant position of the ruling majority ensures control of the media in a way that degrades the function of free media in a democratic order. In such an environment, the already weak civil society remains on the margins and incapable of controlling and correcting public policies. These trends culminated in the last phase of the ongoing presidentialization. That is why international organizations that monitor and evaluate the state of democracy around the world classified Serbia in the category of hybrid systems.<sup>48</sup>

The debate in the professional public on how to stop the processes of democratic backsliding, break the chain of authoritarian rule and strengthen the liberal concept of democracy in general branches out into different directions. The first one aims at finding a solution within institutional design that would weaken presidentialization and establish a balance in the separation of powers. One group of experts sees the abolition of the direct election of the President of the Republic as an effective solution. Electing of the head of state in the National Assembly would deprive the head of state of a strong source of power and reduce it to a representative function. The political system would

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<sup>46</sup> P. Pierson, "Increasing Returns...", p. 259

<sup>47</sup> C. Skach, "The 'Newest' Separation of Powers...", p. 99.

<sup>48</sup> In the 2021 report, the V-Dem Institute classifies Serbia in the category of electoral autocracy, (S.I. Lindberg (ed.), *Autocratization Turn Viral – Democracy report 2021*, University of Gothenburg: V-Dem Institute, 2021, 15 June 2021, p. 31, at [https://www.v-dem.net/static/website/files/dr/dr\\_2021.pdf](https://www.v-dem.net/static/website/files/dr/dr_2021.pdf)); In the report *Nation in transit in 2020*, Freedom House classifies Serbia in the category of hybrid regimes (source: *Nation in transit – Serbia 2020*, at <https://freedomhouse.org/country/serbia/nations-transit/2020>, and *Nation in transit – Serbia 2021*, at <https://freedomhouse.org/country/serbia/nations-transit/2021>), 10 October 2021.

thus lose the features of a semi-presidential system and function according to the parliamentary pattern of government. The second group of proposals believes that this would eliminate the moderating role of the head of state in potential crisis situations between the government and parliament. Therefore, it follows the belief that the direct election of the President of the Republic should be preserved, with an explicit prohibition of holding the office of the head of a political party at the same time. This would emphasize the political neutrality of the institution; which would formally represent all citizens and embody state unity and as such could play a key role in the balance of power between parliament and government. The third school of thought believes that the constitutional design should be fully harmonized with the semi-presidential model. They believe that not only should the direct election of the head of state be maintained, but also that the constitution should expand the range of powers at his disposal in creating and conducting policy. According to these ideas, the counterweight to such a powerful head of state should be a strong position of the Constitutional Court and/or an upper house of the National Assembly. These ideas contend that the political constitution should be likened to norms, because the emphasized personalization of the semi-presidential system corresponds to political tradition. Another direction of reforms focuses on changes in political culture. Proponents of such opinions emphasize the importance of values of liberal democracy, which must become dominant in the political pattern. The rule of law, free and fair elections, free and independent media, civil society are elements that must be reinforced. Without them, institutional reforms would not be enough. Only simultaneous reforms in these two fields can lead to the consolidation of democracy. The view is that accelerating the process of Euro-Atlantic integration, moving away from cooperation with systems and societies that do not share these values are crucial efforts in making democracy in Serbia an irreversible process.

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