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*Constitutional Design and Viability of
Semi-presidentialism in Serbia*

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Abstract

This paper examines characteristics of semi-presidentialism in new East-European constitutional democracies, with a particular reference to the Republic of Serbia. New constitutions adopted in the former Soviet and East-European countries in the last decade of the 20th century entail some formal provisions for strengthening the position of the president of the republic and establishing strong parliamentary bonds between the government and the parliamentary political majority. In the process of adopting the constitutions and creating new political institutions in these post-communist countries the issues under consideration included not only the nature of the parliamentary and presidential system of organizing state authority but also the advantages and the disadvantages of the semi-presidential system, which is generally known as the “French model”.

A distinctive feature of the semi-presidential model is the co-existence of the president, elected in popular elections, and the prime minister who enjoys the parliamentary majority support. The successful operation of the constitutional and political system designed on the semi-presidential model depends considerably on the viability of cohabitation between the two different political majorities: the parliamentary majority and the presidential majority. In addition, it is affected by the scope of constitutional powers and the degree of political authority that the president and the prime minister enjoy. Thus, the support of the parliamentary majority to the popularly elected president has an impact on his position in the entire constitutional system. In case the president does not enjoy such a support, he will be driven into cohabitation with the prime minister, who comes from the opposing political majority. The underlying problem is that the popularly elected presidents in post-communist republics do not always enjoy a clear support of the parliamentary majority. For this reason, they are bound to exercise their own version of “cohabitation”, at times departing from the democratic constitutional practices.

In this paper, the author has endeavoured to classify the Serbian system by applying the general system typology criteria used in the comparative, primarily European, constitutional and political practice. Mindful of not getting into the trap of *de iure* comparison of constitutional solutions, the author has made an effort to discern the main legal as well as political elements of the semi-presidential system. These elements are further correlated to the institutional constitutional structure at the level of the legislative and the executive branch of government, including the president - prime minister relation within the executive branch of government. In the period between adopting the first Serbian Constitution in 1990 (after the breakdown of communism) and the adoption of the new 2006 Constitution, the Serbian constitutional system can be said to have been primarily semi-presidential, even though, considering the actual political power of some

constitutional factors, such as the president of the republic and the prime minister, there were elements of “rationalized” parliamentarism in some brief intervals within this constitutional period.

1. The semi-presidential system in the new post- communist democracies

In the political history of constitutional democracies, the waves of democratization were fewer than the waves of “parliamentarization”. From the 17th to the 20th century, it is possible to identify nine waves of parliamentarization, whereby the last (ninth) wave is actually the one which spread to the European post-communist countries. K.V. Beyme argues that all four 20th century waves of democratization, including the last one in the East-European countries, were characterised and permeated by the wave of “parliamentarization” of the constitutional systems.¹

In constitutional literature there is a great deal of agreement that the semi-presidential model, generally known as the “French model”, was applied in most of the new constitutions in the post-communist countries.² Semi-presidentialism is a specific constitutional construction based on the model of parliamentary government with distinctive characteristics of a presidential government, which implies a significant shift of focus from the prime minister onto the president of the republic in the system of the separation of powers.³ M. Duverger is among the first authors who in the 1970s explicitly referred to this system as a “semi-presidential” system.⁴ However, there are

¹ According to K.V.Beyme, the most important characteristics of these systems were proportional representation combined with the parliamentary government, and the majority election system combined with semi-presidentialism. (K.v.Beyme, *Parliamentary Democracy: Democratization, Destabilization, Reconsolidation, 1789-1999*, London: Macmillan Press, 2000, pp. 18-30)

² The countries that have this model are: Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Kazakhstan, Kirghistan, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovenia, Croatia, Ukraine and Uzbekistan (R.Elge (ed.), *Semi-presidentialism in Europe*, Oxford: Oxford University Press, 1999; C.Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, Princeton and Oxford: Princeton University Press, 2005. Also, see: Introduction; H.Bahro, B.H.Bayerlein & E.Veser, "Duverger's Concept: Semi-Presidential Government Revisited", *European Journal of Political Research* Vol. 34, 1998, p. 208; A.Siaroff, "Comparative Presidencies: The Inadequacy of the Presidential, Semi-presidential and Parliamentary Distinction", *European Journal of Political Research*, Vol. 42, 2003, p. 308; J.H.Reestman, "Presidential Elements in Government: Introduction", *European Constitutional Law Review*, Vol. 2, 2006, pp. 54-59)

³ C.Skach thinks that its common constitutional characteristics are: “1) The head of state is a popularly elected president with a fixed term of office; 2) The head of government is a prime minister, usually appointed by the president, responsible to the legislature”. (“Constitutional Origins of Dictatorship and Democracy”, *Constitutional Political Economy*, Vol. 16, No 4, 2005, p. 348)

⁴ The work that received most attention was "A New Political System Model: Semi-Presidential Government" (*European Journal of Political Research* Vol. 8, No. 2 (1980), pp. 165-187). In the French constitutional literature, however, there were many different qualifications of this system, indicating that it was a modulated or amended parliamentary system with important elements of a presidential government. Thus, P. Avril described this system as “plebiscitary democracy”, whereas J. Gicquel preferred the term “presidentialism”, thinking that it was more appropriate for the classification of political systems in the Fifth French Republic; however, in his definition of the character of this system, he considerably agrees with the definition given by M. Duverger that it is a system which concentrates the power in the hands of the president considering the way he is elected and the decision of the parliamentary majority. (J.Gicquel, *Droit constitutionnel et institutions politiques*, Paris: Montchrestien, 1997, pp. 130-131) G. Vedel considered that the term is too weak to refer to the French constitutional model, which he described as “ultra-presidential” reality. (Quoted after H.Bahro, B.H.Bayerlein & E.Veser, op.cit., p. 203)

opinions (O. Duhamel) that a system can be typified only if a clear distinction is made between the political systems and constitutional regimes. Thus, the former (political systems) would establish the mode of governance (arising from the dominant institutional practice) as one of the classification criteria, whereas the latter (constitutional regimes) would encompass a total set of rules for exercising the governmental or constitutional authorities.⁵ Therefore, the French model of “presidentialism” could be classified as a political system while the semi-presidential model could be classified as a constitutional system, which means that the presidentialism in France was provided with (or endowed by) the semi-presidentialism.⁶

There are opinions that the model of “rationalized parliamentarism” (created on the model of the French and the German systems) was given preference in the course of constitutional design process in the post-communist countries. The basic characteristics of “rationalized parliamentarism” are: popularly elected president of the republic (except for the clear parliamentary systems such as those in the Czech Republic and Hungary), limitations in view of the parliamentary motion of censure (Hungary and Russia), and collective ministerial responsibility for the purpose of making a stable government (moreover, Poland introduced the principle of individual ministerial responsibility).⁷ In most post-communist countries, there were a high percentage of fluctuating (swing) voters and weakly consolidated political parties, which proved to create a better political environment for the semi-presidential model.⁸

The new East-European democracies seem to have deliberately circumvented the clear presidential system in the process of designing their constitutional democracies. A. Arato points out to some of the basic indicators of the American constitutional system which were not present in the new democracies, such as: the organization of presidential power, electoral system, the organization of the federal chamber, judicial and constitutional review. He thinks that, in their first discussions on establishing parliamentarism, the East-European countries preferred semi-presidentialism on the basis on the assumption “your president, our prime minister”,⁹ in combination with the electoral system with no fixed calendar and with the executive power which is accountable before

⁵ O.Duhamel, quoted after H.Bahro, B.H.Bayerlein & E.Veser, op.cit., p. 203

⁶ In his classification, J.Gicquel. used the same grounds for the classification of political and constitutional systems. (See J.Gicquel, op.cit. pp. 120-133)

⁷ Compare K.V.Beyme, op.cit. p. 37; M.Wyrzykowski & A.Cieleń, “Presidential Elements in Government: Poland – semi-presidentialism or ‘rationalized parliamentarianism’?”, *European Constitutional Law Review*, Vol. 2, 2006, p. 262; J.Kysela & Z.Kühn, “Presidential Elements in Government: The Czech Republic”, *European Constitutional Law Review*, Vol. 3, 2007, pp. 94-95

⁸ Compare M.S.Shugart&J.M.Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge: Cambridge University Press, 2003, p. 3; K.V.Beyme, op.cit., p. 13

⁹ A.Arato, “The New Democracies and American Constitutional Design”, *Constellations* Vol. 7. No.3, 2000, p. 319

parliament. B.Ackerman posits that since 1989 “American jurists have become big boosters of the American Way at constitutional conventions everywhere”.¹⁰

The adoption of semi-presidentialism in the early days of constitutional design in the new democracies was also the result of a kind of compromise between the old and the new elites. One of the assumptions for accepting the semi-presidential model in the new democracies, which do not have a well-profiled and established party system, may be evident in the stipulation that “semi-presidentialism has to serve as a functional equivalent of party control in order to avoid special interest legislation”.¹¹

Given the specific circumstances of its development, the wave of semi-presidentialism in the new democracies showed that “semi-presidential systems appear endowed with both more governmental capabilities and more institutional flexibility than the parliamentary and presidential system respectively”.¹² As this model was originally created in the special circumstances of the Fifth French Republic, M. Duverger considered it to be a sustainable constitutional mechanism that could provide political stability in times of hardship.¹³ Accordingly, in introducing such a system, the new East-European democracies might have been motivated by a similar necessity. However, considering the experiences in applying the semi-presidentialism, some authors are of the opinion that “in view of some of the experience with this type of system it seems dubious to argue that in and by itself it can generate democratic stability”.¹⁴

The reasons for introducing this model may be contrasted with the effects it has produced in the new democracies. First of all, in the circumstances of the newly-established political pluralism after the collapse of communism and a shift to the constitutional democracy with the formally proclaimed rule of law principle, it was assumed that direct election of the president of the republic would provide a clear legitimacy to this constitutional body of authority. At the same time, and in clear contrast, there is a parliament, which is not politically profiled. This outcome can hardly yield a responsible and stable government with full political capacity to exercise its constitutional authorities. It was therefore considered that having the so-called “plebiscitary” president was a

¹⁰ He rejects “Westminster as well as Washington as my guide and proffer the model of constrained parliamentarism as the most promising framework for future development of the separation of powers”. (B.Ackerman, “The New Separation of Power”, *Harvard Law Review*, Vol. 113, 2000, p. 640)

¹¹ K.V.Beyme, op.cit. p. 71

¹² G.Pasquino, "Semi-presidentialism: A Political Model of Work", *European Journal of Political Research* Vol. 31, 1997, p. 136

¹³ M.Duverger, op.cit. pp. 167-187

¹⁴ J.J.Linz, “Presidential or Parliamentary Democracy: Does It Make a Difference?”, in J.J.Linz and A.Valenzuela (eds.), *The Failure of Presidential Democracy*, Baltimore: John Hopkins University Press, 1994, p. 55

much better constitutional solution than having the so-called “parliamentary” president.¹⁵ Given the social circumstances that usually accompany development of these new democracies, one can argue that “the popularly elected president may serve as a symbol of national unity”.¹⁶ Other standpoints on the role of the president in the semi-presidential system explain that he assumes the role of a neutral arbiter („pouvoir neutre“), and that he embodies the need for establishing balance („equilibrium“) in the system of the separation of powers.¹⁷

2. Serbia: institutionalization of the separation of powers in the constitutional period 1990-2006

The first Serbian Constitution was adopted in 1990 in the course of the disintegration of the Socialist Federal Republic of Yugoslavia and the breakdown of communism in Europe. It was supposed to be the first step in establishing a constitutional democracy based on the principle of the separation of powers. During the 1990-2006 constitutional period (from adopting the first Constitution in 1990 to adopting the new Constitution in 2006), we may discern two distinctive phases in the process of institutionalizing the separation of powers in Serbia. The first phase covers the period from 1990 to 2000, and the second includes the period from 2000 to 2006. The entire constitutional period was characterized by a common trait - the unchanged constitutional provisions on the organization of government in the Republic. On the other hand, the rules of the political game were considerably different in spite of being based on the same constitutional assumptions.

The formal constitutional organization of governmental powers was based on the separation of powers into the legislative, executive and judicial branch of government. While the legislative branch was embodied in the National Assembly as a mono-cameral representative body, the executive branch was the bicephalism of government type comprising: 1) president elected in popular election and provided with overpowering constitutional authorities (such as: the right to dissolve the parliament, the right of a suspension veto, the right to pass decrees with legal effect in emergency situations whereby none of his enactments was subject to ministerial counter-signature) and 2) the government, whose power was based on the support of the parliamentary majority and had traditional executive body authorities.

¹⁵ Within the meaning of the “Degolistic” concept, in the post-communist systems this semi-presidential system showed the following characteristic: “when interesting representation is diverse, the popularly elected president has to serve as the representative of the “common well-being”. (K.V.Beyme, op.cit. p. 13)

¹⁶ H.Bahro, B.H.Bayerlein & E.Veser, op.cit., p. 209

¹⁷ “Equilibrium was a favorite of the framers of the Weimar Republic who thought that the popularly elected president should be a counterpoise against the chaotic parties in parliament.” (H.Bahro, B.H.Bayerlein & E.Veser, op.cit., pp. 216-217)

In the first phase of the constitutional period (1990-2000), the entire institutional system was clearly dominated by one person – the President of the Republic (S. Milošević), which considerably disfigured the work of the constitutional institutions in terms of the existing constitutional provisions on the separation of powers. This period may be said to have been characterized by a formal organization of government based on the separation of powers, where the President had a predominant constitutional position and authorities as well as a strong political and personal authority. It all occurred in the circumstances of underdeveloped political party structure dominated by one single political party, the Socialist Party of Serbia, which had grown out of the Communist Party tradition. In order to shift the focus of power onto the President of the Republic, the dominant political majority imposed clear limitations on the operation of the constitutional system of the separation of powers.

The constitutional power and the scope of governmental authorities of the President, combined with his political authority, were aimed at weakening the institutional capacity of the other constitutional bodies, primarily the National Assembly. At the same time, there was almost full political consensus among the Parliament, the Government and the President of the Republic, which suggests that the same political majority supported the President of the Republic and the Prime Minister. It had a considerable impact on strengthening the position of the President of the Republic, concurrently weakening the powers of the Parliament and the Government. In 1993 this political consensus ceased to exist.¹⁸ As the government ceased to enjoy the support of the parliamentary majority, the President considered that he should exercise his role of the constitutional arbiter through his authority to dissolve the National Assembly. After the subsequent parliamentary elections, they managed to secure a new political consensus among the parliamentary majority, the Government and the President.

In the same period, the National Assembly had a secondary role because its task was only to support the politics carried out by the President and “his” Government. For the most part, the Parliament had a character of a “talking” parliament, and a rather insubstantial role as a “working” parliament. The parliamentary plenum was used as a political arena, where the parliamentary minority had a chance to promote their political programs and thus make them accessible to the public. It is worth mentioning that the instruments of government control were seldom used or put

¹⁸ As a result of the early parliamentary elections in 1992, there was the Government of the so-called “homogenous minority”, which also supported the President of the Republic. The Government comprised only one of the parliamentary parties in the National Assembly (the Socialist Party of Serbia, with 101 MPs) which was however supported by the second strongest parliamentary party (the Serbian Radical Party, with 73 MPs). After the failure of the “tacit” agreement and the subsequent motion of censure, the President of the Republic used his constitutional authority to dissolve the Parliament.

into effect.¹⁹ On the other hand, the parliamentary statistics in the period from 2001-2006 shows the decreased number of parliamentary questions,²⁰ which indicates that the vital role of Parliament in scrutinizing the work of the government was completely undermined.²¹ The parliamentary minority still kept using the parliamentary plenum for presenting their political programs, without being directly accountable to their voters who had originally initiated these parliamentary questions.

As for the vertical organization of the state (the Federal Republic of Yugoslavia), the first phase was also characterized by a full political consensus within the parliamentary majority on the level of the federal and republic state authorities of that time (the Federal Assembly and the Serbian National Assembly). It allowed the President of Serbia (S. Milošević) to use his strong constitutional position and political authority in 1997, and assume the position of the head of the Federal State.

After the general elections in 2000 and 2001 (federal and republic, parliamentary and presidential), there were significant changes in the political profile of the legislative and executive powers. The Democratic Opposition of Serbia, a large coalition of pro-reform and pro-European parties, won a vast majority in the 2001 parliamentary elections and formed a government. During its term in office the political balance changed significantly, which determined the profile and the power of certain constitutional institutions. The rationalization of parliamentarism was now effected by strengthening the position of the Government whereas the President of the Republic had only a traditional and symbolic political role despite the fact that his authority derived from the popular election. Providing we accept M. Duverger's definition that semi-presidential republic is actually an alternating or interchanging sequence of the presidential and the parliamentary intervals,²² then one

¹⁹ According to the available statistics, in 1993 there were only 363 questions asked in Parliament; in 1994, there were 304 questions, two-thirds of which were actually addressed and answered. Compare, S. Antonić, "Parlamentarizam u Jugoslaviji 1990-1996" ("Parliamentarism in Yugoslavia 1990-1996"), *Arhiv za pravne i društvene nauke*, 1997, No. 2, str. 197

²⁰ According to the data by the Serbian parliament statistics service, in the course of 2004 there were only 16 parliamentary questions, merely half of which were answered; in the first half of 2005, there were 20 questions, fourteen of which received the government reply.

²¹ In the comparative parliamentary practice, the average number of MP questions raised on the annual basis varies depending on the kind of parliamentary question. In the German Bundestag, for example, each member of parliament is entitled to ask two questions per week, which are answered in an oral form. In the period from 1990 to 1996, the German Government received 4.215 questions; in the same period, there were as many as 16.665 questions in writing. On the annual basis, the number of questions raised in parliament is circa 5.000 questions in different forms. (G.T.Kurian (ed.), *World Encyclopaedia of Parliaments and Legislatures* Vol. I, Washington D.C.: Congressional quarterly inc. 1998, p. 271). The French National Assembly parliamentary practice also shows a significantly large number of questions asked in writing, ranging from 17.000 to 18000 per year, with a relatively fewer number of oral questions (about 200 per year) which were not subject to parliamentary debate. (Y.Mény & A.Knapp, *Government and Politics in Western Europe: Britain, France, Italy, Germany*, Oxford: Oxford University Press, 1998, p. 211). In the British Parliament, the number of MP questions raised in the British House of Commons is circa 70.000 questions on the annual basis. (A. Adonis, *Parlament danas (Parliament today)*, Podgorica: Unireks, 1996, str.137)

²² M.Duverger, op.cit., pp. 185-186

can argue that the parliamentary system was the predominant constitutional model in Serbia in the first years (2000-2003) of the second phase.

Following the 2003 parliamentary and the 2004 presidential election, Serbian system of government started functioning for the first time in the framework of “peaceful” cohabitation. This period was mainly characterized by the parliamentary-presidential system because there was a sort of quiet consent between the two political majorities: the President’s and the Prime Minister’s. As for the parliamentary majority supporting the Prime Minister (V. Koštunica) and a part of the parliamentary minority supporting the President of the Republic (B. Tadić), these two constitutional bodies of authority exercised their constitutional powers by protecting the institutional capacity of the National Assembly. The President of the Republic used his right of suspension veto but the Government still had primacy in the legislative process regarding the number of proposed bills and adopted legislative acts. Besides, the President exercised his authorities mostly in the field of foreign policy, whereas the Prime Minister with his Cabinet primarily dealt with internal policy. The consensus achieved between the parliamentary majority and the parliamentary minority in view of adopting the new Constitution (October-November 2006) was a solid ground for the completion of the first successful cohabitation in the Serbian constitutional system.

Cohabitation implies both rationalization and moderation in using constitutional authorities. Cohabitation was possible in this short period due to the very nature and similarity of the political programs of the two majorities: the President’s (represented by the Democratic Party) and the Prime Minister’s (represented by the Democratic Party of Serbia), both of which were pro-reform and pro-European. The viability of cohabitation in Serbia depends not only on the new constitutional solutions and the accompanying legislation but also on the possibility of establishing a political balance between different political programs, primarily those which are embodied in the parliamentary position and the parliamentary opposition. When the party system is not consolidated, clearly profiled and developed, the political scene is abundant in the so-called fluctuating (swinging) parties that have failed to build the party discipline; consequently, there is a continuous parliamentary majority problem, including the way in which the government secures its support as well as its relations with the president elected in popular elections. In such circumstances, it is likely to expect that the Constitutional Court would assume the role of an arbiter and assure the institutional balance.

Following the adoption of the new Serbian Constitution in 2006, the organization of government has remained considerably unchanged. In the system of the separation of powers, the legislative power is in the hands of the mono-cameral National Assembly (250 MPs), the executive

powers are exercised by the President of the Republic and the Government, whereas the judicial authority is exercised by independent judicial bodies. Upon the President of the Republic proposition, the Government is subject to formal investiture through the process of parliamentary voting. Besides, the Government is responsive to the Parliament through the institution of ministerial responsibility, both individual and collective. The President of the Republic is elected by popular vote in the presidential election, and he is assigned substantial governmental powers, such as the right of a suspension veto, which means the right to delay the date of coming into effect of legislation, and the right to dissolve the National Assembly “on reasoned government proposal (as compared to the previous one, the new 2006 Constitution excludes his right to pass acts with legislative effect in emergency situations). The new Serbian constitutional system establishes the rule on incompatibility, i.e., the conflict of interest in holding a ministerial office and a parliamentary term of office concurrently. This rule is a kind of departure from the traditional form of parliamentarism in which the compatibility of the parliamentary mandate with the ministerial office was permissible. Accordingly, this constitutional rule implies that the Prime Minister may not be a member of parliament either. The next basic distinctive feature of this system is the constitutional rule on the support that the Prime Minister and the Government have to enjoy during their term of office, which is an original and fundamental parliamentary principle. Parliament has at its disposal the traditional government control instruments, such as the parliamentary questions, the interpellation, and the motion of censure. Taking into account that the Constitution has envisaged formal investiture, even the very act of government selection is a form of parliamentary control; it is the very first parliament action in controlling the government.

3. Serbia: an attempt at system classification

Considering the fact that semi-presidentialism has proved to be suitable for the so-called transitional systems, it does not come as a surprise that the greatest number of the post-communist countries has accepted it. As one of many new democracies created in the democratization wave at the end of the last century, Serbia falls into the same group, alongside with a large number of East-European countries and former Soviet states. In the attempt to classify the Serbian system, features such as the level of democracy i.e. the results achieved in establishing the constitutional and political democracy will be left out²³ since they should not have a significant impact on determining the system type. There is a formal constitutional framework and assumptions for the operation of

²³ Some authors think that some of these East-European states, including the states established in the territories of former Yugoslavia, may not be subject to comparative analysis, which is hindered by some of the elements of the system, such as the underdeveloped economy which prevents or hinders the government in its efforts to assume the burden of exercising public affairs and take a certain position against the president. (K.V.Beyme, op.cit., pp. 19-29)

political pluralism, which makes an attempt to determine the character of the Serbian constitutional system plausible. In doing so, the first question to ask is which classification criteria to consider. If we apply P.O'Neil's criteria stating that the semi-presidential system is the one where the executive power is divided between the president and the prime minister, where the president or the head of state has the crucial "substantial power",²⁴ then the Serbian system may be classified as a semi-presidential model because, under the Constitution, the President of the Republic has a strong governmental power. On the other hand, R. Elgie considered that the main problem regarding the inconsistency of approach was in the fact that it might be possible to apply two basic classification criteria: 1) "dispositional properties", taking into consideration the elements of the constitutional organization of power such as the role of the president and/or the prime minister, the manner of their election and the length of their terms of office, and 2) "relational properties", which "are descriptions of the actual power situation".²⁵

Taking into consideration the classification criterion suggested by R. Elgie which "combines formal constitutional arrangement with actual powers, or, more accurately, dispositional and relational properties",²⁶ and comes from classification assumptions given by M. Duverger,²⁷ the 1990-2006 constitutional period may be in fact divided into two phases, in which semi-presidentialism and parliamentarism were actually interchangeable. According to this classification, in 1990-1997, Serbia had a semi-presidential system of government, given that the substantial power was in hands of the first president of Serbia (S. Milošević) stemming from his direct popular election and the strong formal constitutional authorities he enjoyed. Applying the same criterion, it can be said that in the period from 1997 - 2000 there were the prevailing elements of parliamentarism, because the role of the second President of the Republic (M. Milutinović) was undistinguished, and he was quite a vague political figure. With great political changes introduced at all levels of government after the general elections (2000-2001), the President of the Republic gave up his strong constitutional authorities completely and the actual power shifted onto the Prime Minister.

However, this period did not comprise all elements of the traditional parliamentarism because, even after being elected president of the Yugoslav Federation in 1997, S. Milošević still acted as a "phantom" figure in the position of the President of the Republic of Serbia. It was only in the short constitutional period from 2001-2003 that the influence of the Prime Minister was

²⁴ P.O'Neil, "Presidential Power in Post-Communist Europe: the Hungarian Case in Comparative Perspective", *Journal of Communist Studies* Vol. 9, No 3, 1993, p. 197

²⁵ R.Elgie, "The Classification of Democratic Regime Types: Conceptual Ambiguity and Contestable Assumption", *European Journal of Political Research* Vol. 33, 1998, p. 224

²⁶ R.Elgie, op.cit., p. 224

²⁷ M.Duverger, op.cit., p. 166

strong and predominant: first, because the then President (M. Milutinović) - being indicted by the Hague Tribunal - renounced his constitutional authorities awaiting for the end of his term of office; and second, because the two subsequent presidential elections in Serbia failed. In the circumstances of a constitutional and presidential election vacuum, characterized by strong political domination of pro-reform forces in the Parliament, the influential Prime Minister (Z. Djindjić) assumed the vital role in the constitutional system of government. Applying the same criterion, it can be said that the most recent period (2004-2006) - where both the President of the Republic (B. Tadić) and the Prime Minister (V. Koštunica) belonged to the democratic block of the pro-European and pro-reform oriented political parties – has characteristics of semi-presidentialism. Applying the M.S.Shugart&J.M.Carey classification,²⁸ it could be defined as parliamentary-presidential in terms of who controls the prime minister and the government.

This classification, as suggested by its author R. Elgie, is subjective because it introduces certain elements, which are related to the substantial power of the president. Nevertheless, it has proved appropriate, for example, in the attempt at classifying the West-European systems, which - unlike the new post-communist counties - have a longer tradition in running the constitutional and political democracy. Including all the drawbacks and inconsistencies typical for the development of new democracies (including the deviations which, for example, Serbia had in the first decade of its democratic development), it is obvious that the above analysis of the relatively short political period 1990-2006 and the attempt at internal systematization may be characterised as subjective and prone to further criticism.

Finally, we may apply a third system classification criterion provided by R. Elgie in his most recent study, in which he rectified his previous point of view. In the new definition, he eliminates the possibility of introducing a subjective determination by providing a rather rational and objective classification criterion. Thus, the semi-presidential system can be defined as “the situation where a popularly-elected, fixed-term president exists alongside a prime minister and cabinet who are responsible to parliament”.²⁹ This criterion takes into consideration the more objective classification elements, avoiding the element of “the presidential powers”, which has significantly prevented the objective separation of powers. Considering this (in many respects more objective) criterion, the Serbian system of organizing governmental powers can be considered as semi-presidential, both under the 1990 Constitution and under the new Constitution of 2006.

²⁸ M.S.Shugart&J.M.Carey, op.cit., p. 15

²⁹ R.Elgie, “Semi-presidentialism: Concepts, Consequences and Contesting Explanations”, *Political Studies Review*, 2004, Vol. 2, p. 316

In line with the basic criteria as suggested by M. Duverger, it can be said that in the period from 1990-2006 the Serbian system was profiled as semi-presidential for the following reasons: (1) the President of the Republic was elected in direct popular elections; (2) the President had substantial constitutional authorities, such as: the right to dissolve the National Assembly, the right to a suspension veto as the right to delay the date of coming into effect of legislation, the right to pass legal acts in emergency (under the 1990 Constitution, but not under the new 2006 Constitution), as well as the right to initiate procedure before the Constitutional Court; and (3) apart from the President, the executive branch of government included the Prime Minister and his cabinet, who stay in power as long as they enjoy the support of the parliamentary majority.³⁰

This criterion is difficult to reasonably object as far as the constitutional presumptions for the classification are concerned. However, there is the remaining question of how this system relates to the other elements which determine the content of political democracy within a formal constitutional framework. This other point of view on the system typology may give rise to the question of whether at the time of instituting the multiparty system (1990)³¹ there were elements for the functioning of the semi-presidential system as defined by many authors on the model of stable democracies (M.Duverger 1980; A.Lijphart 1991; J.J.Linz 1991; P.O'Neil 1993; G.Pasquino 1997; H.Bahro, B.H.Bayerlein & E.Veser 1998; R.Elgie 1999 and 2004; K.V.Beyme 2000). For this reason, M. Duverger's argument on the post-communist systems as "semi-presidential pseudo-regimes", prolonging communist rule under different name" and the use of the semi-presidential system that came into being "in processes of basic transformations from authoritarian or totalitarian political systems into democracies when party structures are nonexistent or weak"³² seems appropriate in understanding the Serbian case.

Over time, this constitutional construct has caused a debate in the Serbian academia. Most authors believe that it has brought about a significant rationalization of parliamentarism in favor of the executive branch of government. However, the degree of constitutional rationalization has surpassed the boundaries of contemporary parliamentarism, which came as a result of setting new societal, economic and social requirements before the constitutional state in which the power of political action was clearly shifted towards the government. Shifting the focal point of

³⁰ Compare M.Duverger, op.cit., p. 166

³¹ The system was dominated by one political party (the Socialist Party of Serbia) grown out of the tradition of the Communist Party, against which there was the divided and disunited Serbian opposition (generally known as the Democratic Opposition of Serbia).

³² Quoted after H.Bahro, B.H.Bayerlein & E.Veser, op.cit., p. 207

governmental powers in the constitutional system of Serbia from the legislative to the executive branch it has acquired the main characteristics of the semi-presidential system.³³

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³³ According to P.Nikolić, this shift of focus points to a system which is mixed in structure and quasi-parliamentary in character. M.Jovičić argues that it can be classified as semi-presidential system. (Compare P.Nikolić, "Ustav Srbije i problemi demokratizacije" ("The Constitution of Serbia and the problems of democratization"), *Pravni život*, 1991, No. 1-2, p 91; P.Nikolić, "Raspad Socijalističke Federativne Republike Jugoslavije i obrazovanje novih država" ("The Breakdown of the Socialist Federal Republic of Yugoslavia and the creation of new states"), in *Od raspada do beznadja i nade (From the breakdown to desperation and hope)*, Beograd: Filip Višnjić, 1997, pp 89-91; M.Jovičić, "Parlamentarni sistem nasuprot predsedničkom i skupštinskom sistemu" ("The Parliamentary System versus the Presidential and Assembly System"), *Arhiv za pravne i društvene nauke*, 1992, No 1, p 34)

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