

POSITION AND FUNCTIONS OF STATE SOVEREIGN (HEAD OF STATE)

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Olivera Vučić

Faculty of Law, University of Belgrade, Belgrade

Abstract. *As proposed earlier, the President of the Republic should be a guarantor of continuous democratic transformation, and use his position in the system and authority granted by the Constitution so as to ensure the much needed development of democratic society and stable institutions. In line with Constant's view of the role of the sovereign, the head of state will be the "directing power", the fourth branch of sovereign power, and the necessary independence of his position will be possible due to the fact his power emerges directly from the people.*

Key words: *head of state, president of Republic, state of emergency, countersignature, suspensive veto*

"Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy".

Hamilton, The Federalist, LXX, p. 357.

How much has the modern age, our, ever more complex, present moment, confirmed or denied the truth lying behind these words by Hamilton? One thing is certain, proponents and opponents still lively communicate. For, this, in the words of R. Markovic, "naïve and romantic" view¹ has not lost its acuity in the present day, indeed has not fallen into oblivion because of a different, generally accepted position. Quite the contrary, in its

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¹ R. Markovic, The Executive, Belgrade, 1980, p. 233.

constitutional solutions that are still alive, and in the practice still going on underneath them, this view is always fresh, a subject matter of almost all scientific disputes and all activities whose goal is to write a new constitution. Intertwining with these scientific and professional uncertainties, assuming principal position in this process, one finds questions related to the position, power, and "authority" of the head of state.

Serbia has anticipated the proclamation of a new Constitution for quite a while. Much is spoken and written about this act, future solutions are announced, praised and contested. This anticipatory and all-out "discussion" has attracted all: scientists, legal professionals, political stakeholders, those from the population who understand and are interested in the issue, and even those who do not fully understand but take a very active stance on the matter, taking it (quite justifiably) to be one of the questions of "common interest". In the years behind us, everything started with the criticism of the current Serbian Constitution proclaimed in 1990. This criticism had commenced not only on the day of its coming into force, the day its solutions were brought to life, but rather as of the day in which its writing started, which means the critique was not so much aimed at the solutions, but at the way in which its adoption was decided, and, foremost, at those adopting it. Therefore, the original criticism was much more political than legal in nature, and the purpose of such endeavours was much more political, than legal. Accordingly, the constitutional issue was experienced and treated more as a matter of politics, and less as a matter of law, while dealing with constitutional changes was seen mainly as the task and topic for politicians, and less for lawyers.

As the essence of any constitution, including the Serbian one, is legal more than political, the time has come, the final hour, for experts in law to finally state their opinion and take their stand, decide and act, so that changes would come true. For, no matter how precious and invaluable is the help many can offer in writing the constitution – sociologists, political scientists, historians, and all other experts willing to and capable of providing such assistance, after the establishment of a basic social consensus on fundamental values the democratic majority in Serbia wishes to turn into constitutional principles, more simply put – consensus on what kind of constitution they wish – it is the lawyers who must reach agreement on correct institutional solutions and, hopefully, perfect constitutional formulations. Naturally, the essential question remains: has Serbia reached the basic consensus that we have mentioned, and have all participants in constitutional disputes mentioned above vouched for particular solutions, believing them to be the best for Serbia in this period? If the answer is affirmative, the task set before constitutionalists will be an endeavour worth undertaking, where the legal profession will have an opportunity to prove itself worthy. If, however, the answer is negative, all the knowledge of legal professionals and scientists cannot be of any help.

One of many issues expected to be reformed in the new Serbian Constitution is that of head of state, President of the Republic. This is one of the places in the current Constitution that has been perhaps most sternly criticized, attacked from all weapons, mostly political. The impression remains that the question of the President of the Republic has been that principal target of such attacks more for non-constitutional than for constitutional reasons, and more for supposed and possible than for realistic and actually conducted Constitutional actions. For all those reasons, the entire constitutional category in question is blurred, and, since it is also overburdened with criticism that dangerously made political questions more powerful than legal ones, it has been put into position where basic, elementary conceptions of this category need to be cleared up. Only this way will we reach the desired, undisputable, new constitutional foundation of the institution of President of the Republic.

For those reasons, we need to recall some "clear" and practically proven truths from the science of constitutional law, related to the institution of the head of state, or state sovereign in general.

The real power of state sovereign, in republican systems – the President of the Republic, as representative of the sovereignty of the state in internal and international relations, and, to a smaller or greater extent, participant in the executive, should not primarily, not even largely, be sought in his competences and their extent, but rather in the procedure for his election,² possibility and way of his revocation, duration of term in office, and way he communicates with the parliament, including the possibility that head of state should dismiss the parliament. In the light of all these factors, the very list of competences of state sovereign makes up only a portion of the real role he carries out and only one of the sources of the power he has. Constitutional history and practice of valid comparative solutions lead one to conclude that the real role of the head of state in carrying out governance is mostly connected to the way the sovereign has been elected. Although time has proved that the original intention of the creators of the institute of the American President was indeed to make him independent of political parties, as early as in late eighteenth century this was contested due to the victory of party leaders. The truth remains, however, that direct election of head of state in itself creates a strong sentiment that, in Bryce's words, "the public opinion governs via him".

Having proclaimed the current Constitution in 1990, renouncing the self-governing socialist constitutionality and, acknowledging the best of both its own constitutional tradition and the legacy of modern European constitutionality, Serbia, which is now facing new changes to the constitution, indeed became one of the countries whose constitutions are accorded with the times. Now it is expected only to change those constitutional solutions that have become outdated or anyhow surpassed in the immediate period behind us. Thus, in regulating the authority of the head of state, Serbia should remain a parliamentary state in which the system of parliamentary government would truly function. This way, the country will best provide constraints on the role of head of state, even without primary consideration of the extent of competence conferred upon him by the Constitution.³

As proposed earlier, the President of the Republic should be a guarantor of continuous democratic transformation, and use his position in the system and authority granted by the

² See the view of J. Stefanovic on this issue. In short, its essence is found in his conclusion that "both formal and actual role of the President of the Republic can vary, and usually do vary, depending on the way he has been elected." J. Stefanovic, *Constitutional Law of Federal People's Republic of Yugoslavia and Comparatively*, Volume II, Zagreb, 1956, p. 306.

³ It is useful here to return to Stefanovic's position on the relation between the status and power of the President of the Republic and way in which power in the country is horizontally organized. In his words – "By viewing the actual role of the President of the Republic in various states, we reach an almost universal conclusion, that the system of parliamentary government, wherever enacted, diminishes this role. One could say this is an almost inevitable consequence of the enactment of such a governance system – naturally, if it indeed functions in the appropriate way". J. Stefanovic, *op. cit.* p. 308. If one has in mind that Serbia has fulfilled its commitment for a parliamentary government for more than a decade now, it can only persist in this path and use the forthcoming constitutional reform to improve any inconsistencies of constitutional solutions or their limitations noticed during the enactment period. That way, by fulfilling all the elements of a complete and realistic parliamentary system, the country will reach a more perfect form of both constitutional and actual role of the institution of President of the Republic.

Constitution so as to ensure the much needed development of democratic society and stable institutions. In line with Constant's view of the role of the sovereign, the head of state will be the "directing power", the fourth branch of sovereign power, and the necessary independence of his position will be possible due to the fact his power emerges directly from the people.⁴

A weak president, subordinate to the Parliament, with radically limited authority, is a concept that seems to be in opposition to our constitutional tradition, to comparative experience of similar countries, and to current political circumstances in Serbia. As the President to all the citizens of the Republic of Serbia, the President of the Republic will have opportunity to make the common interest superordinate to specific interests, to serve the people and not the political organization he is coming from, and to objectively, not participating in various political rifts, prevent the danger that the entire sovereign power should be concentrated in a single political institution. This way, the President becomes a balance to the power of the politically fragmented Parliament.

After we have given our view on what we believe is the desirable constitutional coverage of head of state in Serbia today, we shall now provide some remarks on current drafted texts of the new Serbian Constitution, with regard to the institution of head of state.

In the proposal of Belgrade Centre for Human Rights⁵, the President of the Republic of Serbia represents all citizens and all peoples of the unified Republic of Serbia, in which he secures the advancement of a democratic and stable society. The President of the Republic is elected by the National Assembly, in a secret vote, without discussion, in the joint session of the House of Commons and the Senate. The decision on election is adopted when the majority of representatives and senators have voted in favour of it. In case no candidate should win majority of the total number of representatives and senators in the first round, the runoff will include two candidates with the most votes or two candidates with an equal number of votes. In the runoff, the candidate with the most votes becomes the President of the Republic. In terms of the duration of term in office, the President of the Republic, the draft reads, is elected for a five-year period, without a possibility for re-election.

Quite similar to this proposal is the solution drafted by the IURIS Forum.⁶ The President of the Republic is elected by the houses of the Serbian Assembly (The House of Commons and the House of Territorial Autonomies). The President is elected in a joint session of

⁴ Contributing to this position, let us cite the well-known Milovanovic's reaction to this Constant's opinion, which, in our view, goes fully along with our commitment to direct election of head of state. As it may be, mentioning Constant, M. Milovanovic says that this "publicist", having labelled the role of the sovereign a "directing power", opted for an "unfortunate phrase", but also that "Constant is wrong in taking this role to be the fourth pillar (function) of sovereign power, i.e. that in a parliamentary republic the president of the republic would never again be so independent. For such independence, the president of the republic would need to have the people as the direct source of his authority. In other words, the people need to elect him direct, while in those republics, he is appointed by the parliament. For this reason, both the republic with parliamentary government and the constitutional monarchy in which the sovereign's authority has lessened now wish to turn themselves into a convent government, where the executive and the legislature are fully merged." M.Dj. Milovanovic, *State Law and Other Studies in Constitutional Law*, afterword by R. Markovic, Belgrade 1977, p. 141-142.

⁵ *Proposals for the New Serbian Constitution*, Friedrich Ebert Stiftung, Belgrade 2004, p. 39 et passim.

⁶ *Ibidem*, p. 144 et passim.

both houses, and the vote is secret.⁷ If in the first round none of the candidates wins the required majority, the vote repeats in the runoff, with two candidates who obtained the most or equal number of votes in the first round. The one with the most votes is elected President. The President of the Republic has a five-year term in office, without a possibility for re-election. This important position can be taken by a male or female citizen of the Republic of Serbia older than 40, with permanent place of residence in the Republic of Serbia.

In the "Draft Serbian Constitution" of the Democratic Party,⁸ the President of Serbia is elected by the one-house National Assembly by secret vote, by majority of the total number of MPs, for a four-year term in office, with a possibility of one subsequent re-election. To become a President, a person must be at least 40 years of age and must have resided in Serbia for the last 10 years.

In its "Draft Constitution of the Republic of Serbia"⁹, the Democratic Party of Serbia differs from the solutions described above. In this draft, the President of the Republic is elected in direct elections, by secret vote, where the candidate who wins the majority of votes of the electorate taking part in the elections is elected. In case no candidate is elected in the first round, the runoff is organized between two candidates who have won the most votes in the first round. The candidate who wins the most votes becomes the President. The term in office of the President of the Republic is five years, and no one can be elected for this position more than two times. This solution does not specify whether the re-election is successive or non-successive, so we may suppose that the writer of this provision had in mind both situations: both two sequential elections, and two elections in general.

In its Draft for the New Serbian Constitution¹⁰, the Constitutional Committee of the Serbian National Assembly provides a few alternative choices for the election of President of the Republic (as it does in numerous other matters). On one proposal, the President of Serbia is elected by the Serbian Assembly by secret vote, through the majority of the total number of members of parliament. The second option prescribes direct election of the President, by secret vote, through the absolute majority of votes in the first round. If the President is not elected in the first round, in the runoff two candidates, who have won the most votes in the first round, remain. The one who wins the majority of votes becomes President, on condition over a half of the total electorate turned out in the elec-

⁷ Let us provide just one of the justifications given in this proposal, leaving it to the reader to judge how relevant the arguments are. "IURIS Forum has decided to propose that the President be elected by the Parliament for a number of reasons. First, our most recent experience has shown that direct election of the President of the Republic in "a number of sequential runoffs" can turn out to be a complete failure. This "election" can result in numerous difficulties, including the extreme and least desirable situation in which the president (of the country, republic) is not elected at all. Second, viewing comparative constitutional solutions of EU countries, it turns out that only a few countries still have direct presidential election: for instance, Ireland, Portugal, and France. Third, numerous examples and our own experience suggest that a "strong" president appointed in direct elections moves the balance of political power – from the legislator on to the executive. Thus, an asymmetry of powers enters the parliamentary system, and it leads to a semi-presidential system – in our national variant: without "constrained personal power" and disturbed balance between the executive and the legislator". R. Stepanov, "On the New Serbian Constitution Project – Comparative Overview of New Constitutional Projects", *Rights of Man*, No. 3-4, Belgrade 2003, p. 16-17.

⁸ *Proposals for the New Serbian Constitution*, Friedrich Ebert Stiftung, Belgrade 2004. p. 196. et passim.

⁹ *Ibidem*, p. 239 et passim.

¹⁰ *Ibidem*, p. 311. et passim.

tions. According to this proposal, the President of Serbia is elected for a five-year term in office, with no possibility for re-election. However, there is a remark in the text in which the dilemma is mentioned – whether to link the term in office of the President of the Republic to that of the Assembly.

The proposal of Serbian Liberals¹¹ reads that the President of Serbia is elected by citizens in a general, direct and secret election, where the candidate who has won "majority of votes of the number of citizens who voted in the election becomes the President". The President of the Republic is elected for a five-year term in office, and the possibility of re-election is not covered in this draft. In terms of the prerequisites that the person competing for office must meet, it is said that this person must be a Serbian citizen who was born in Serbia, and must have resided in Serbia for the last ten years.

In its "Open Issues for the New Constitution", G 17 Plus¹² covers the dilemmas regarding a "weak" or "strong" President. In this text, the "power" of the President more relates to his competences and authority than to the way he is elected. As we believe that the issue should be viewed and judged exactly from this opposite perspective, let us only mention that the writer of this text contends that the determination for a "strong" president requires that this person be directly elected, while the choice of a "weak" president compels one to propose that he be elected in the National Assembly. Whatever choice is made, the issue of "light" or "strong" electoral procedure remains.

In the draft Serbian Constitution made by the Socialist Party of Serbia¹³ it is pointed out that the President of the Republic, embodying non-parliamentary executive, should be elected directly by the electorate. Such a proposal is a consequence of the idea that "the system of power in Serbia should be that of parliamentarism, where head of state (President of the Republic) would carry out moderating power". This is so because "experience has shown that fusion of parliament and government, typical of parliamentarism, can result in the government controlling the parliament, instead of the other way round. Exactly in order to ensure the true division of power, we need a body of the executive that is constituted, that functions, and that is politically responsible according to the principle of non-parliamentary executive. Only then is a true balance of powers, so typical of parliamentarianism, possible".

Since in the beginning of this text we laid out a position that the election of the head of state is the key question related to his power in the system of governance, we paid the most attention exactly to the provisions of constitutional drafts dealing with this issue. From all given above, one can conclude that, if we consider all the variants, including the alternative proposals of the Constitutional Committee of Serbian National Assembly, a bit over a half of proposers vouch for a direct election, and yet about a half proposers for an indirect election of head of state. This very fact points to the validity of arguments of both sides. However, we are inclined to conclude, as mentioned earlier, that for Serbia at present a directly elected President of "invulnerable legitimacy" would be a better, and more reliable solution. We should bear in mind that any solution has its advantages and disadvantages. However, it is certain that a directly appointed, "plebiscitary" president can fit

¹¹ Ibidem, p. 370 et passim.

¹² Ibidem, p. 392 et passim.

¹³ Draft of a New Serbian Constitution, Belgrade 2004, p. 13 et passim.

into the parliamentary system, and that, along with the strong parliament, which has real power, informed and active public opinion can be a pillar of this, much needed, harmony of parliamentarianism.¹⁴

In addition to all this, one needs to stress the role of the Constitutional Court with regard to the President of the Republic. Almost without exceptions, drafts of the new Serbian Constitution vouched for the competence of the Constitutional Court of Serbia as an institution controlling the responsibility of the President of the Republic to abide by the Constitution. Thus a respectable, depoliticized and independent institution, which in its essence is the ultimate obstacle to breaching the Constitution, the guardian and guarantor of its respect, the Constitutional Court, provides the much needed (even more so in the currently insufficiently organized Serbia) guarantee and prevention that the desired and justifiably "strong" president should not become an omnipotent, uncontrolled factor in the government. For this reason one should point out that one of the rare issues around which everyone has agreed and harmonized their position when making these various drafts of the Serbian Constitution is precisely the issue of constitutional coverage of the relationship between the President of the Republic and the Constitutional Court. Apart from being praiseworthy in itself, this harmonious view also testifies that such a solution is justified and, as such, should be unequivocally incorporated in the new Serbian Constitution.

In terms of functions conferred upon head of state, a number of issues stand out as very important, and therefore cannot be evaded in this discussion. First, as a rule, in a parliamentary regime, head of state does not "use his relatively broad authority, so that his actual power is much smaller than prescribed in constitutional texts".¹⁵ Second, only seemingly contradicting the previous sentence, the very existence of head of state increases the reputation of the executive. When he himself is (and he should be) a distinguished and respected personality, political professional endowed with exceptional knowledge and skills accorded with the role conferred upon him, he can indeed play an important role in the complex political process, the venue of action of many political groups, and thus he can assist in their better understanding.¹⁶ Third, in the words of S. Jovanovic, "Especially in terms of the rights and obligations of either the head of state or the Parliament, constitutional acts should not be interpreted too strictly. Actually, the relationship between these two constitutional factors is the relationship of powers – in other words, a struggle. The Constitution attempts to mitigate this struggle in such a way that it should provide certain legal forms that will enable deals and compromise. However, no matter how mitigated or controlled, a struggle remains a struggle – and this is why the exercise of constitutional authority that the head of state will assume depends ultimately on his political strength."¹⁷ The quotation leads one to conclude that the scope and range of authority of the state sovereign are neither primarily nor decisively a consequence of law, i.e. of his constitutionally sanctioned competences, but a result of his actual political strength. And fourth. The exercise of one's constitutional competences is not just a right,

¹⁴ J. Stefanovic is one of those authors who see the essence of parliamentary regime precisely in the balance (equilibrium) and harmony of power, coming from the supple division of power. See J. Stefanovic, "Sanction of Parliamentary Regime", *Archive of Legal and Social Sciences*, May-June 1939, p. 500 et passim.

¹⁵ R. Markovic, op. cit. p. 133.

¹⁶ Also I. Krbek, *The Law of FNRJ Public Administration*, Vol. I, Zagreb, 1960, p.41.

¹⁷ S. Jovanovic, "Peric on the Authority of the Sovereign", *From History and Literature*, Vol. I, Belgrade 1991, p. 637.

but a commitment and a duty. We add to this that the sovereign, the modern head of state, is undeniably left a broad possibility for free assessment in carrying out his duties, for "as is widely known, the higher we go up the hierarchy of state bodies, the broader the scope of their free estimation is: in the case of the sovereign, who stands on the top of all state bodies, together with the Parliament, this scope is the broadest".¹⁸ For, although legal acts have "clearly delineated the authority and competences of the sovereign, in exercising this authority, the sovereign is to be governed by his own intelligence and insight".¹⁹ Finally, fifth. The state sovereign is due to act. He is equally guilty of doing things not allowed by the constitution, for action *ultra vires*, and for not carrying out constitutional provisions and not abiding with expectations and hope contained in the constitutional norm and expressed by society.

If we classify the tasks of the executive in five groups, as done by R. Markovic in his study of the executive²⁰, we may discuss the functions of head of state with regard to the following affairs: 1) executing legal acts, "subordinate legislature", 2) coordinating and directing the administration; 3) conducting foreign policy; 4) planning general policy; and 5) passing political acts (acts of the Government). As the limited length of this paper and purpose of its publication are an obstacle to a detailed analysis of each of these five domains of activity of head of state, let us only say that in the drafts of Serbian Constitution, mentioned above, as a rule, all five of these domains of action are listed. This undoubtedly suggests that proposers have abided by the well-established pattern of completing the functions of state sovereign. Although some of them justify their positions in favour of the "strong" or "weak" head of state, calling upon the scope of his authority and competences, principal differences from current, still valid constitutional provisions of the 1990 Serbian Constitution, are most clearly seen in three domains.

The first one deals with the right to declare state of emergency. In introductory remarks to the draft Serbian Constitution written by Belgrade Centre for Human Rights,²¹ one finds the claim that the National Assembly, as the supreme authority in the Republic of Serbia, is the only institution authorized to declare state of emergency. State of war is not mentioned at all, "since Serbia is a federal unit, and not an independent state".²² Apart from the proposal written by Serbian Liberals, in which the President of Serbia "declares state of emergency" (Art. 98 of the Draft),²³ other proposers do not give such an authority to the head of state, but, with different shades of interpretation, hand it over to the house of representatives. In the draft offered by the Socialist Party of Serbia, there is a statement that the "Parliament should proclaim state of emergency, state of imminent war and state of war" because "our experience has shown that reasons for declaring a state of emer-

¹⁸ Ibidem, p. 636.

¹⁹ Ibidem, p. 636.

²⁰ Also R. Markovic, *op. cit.* pp. 82, ending in 111.

²¹ See the text by L. Basta Fleiner, *Constitutional Solutions for Serbia and Yugoslavia, Recommendations of an Independent Group of Experts*, Belgrade 2001, p. 15.

²² It is specifically mentioned that the proposed solution represents a "recognizable reaction" to the current Constitution of the Republic of Serbia which, "precisely through the competences of the President of the Republic establishes state of war as a legal condition for 'constitutional dictatorship' (first, in his right to proclaim a state of war or state of imminent war himself, and second, in his right to 'pass acts on issues normally under the authority of the National Assembly' during that time)". Ibidem, p. 15.

²³ *Proposals for the New Serbian Constitution*, Friedrich Ebert Stiftung, Belgrade 2004. p. 372.

gency in the country should be defined in the constitution in advance (armed rebellion and any form of illegitimate and illegal takeover of power, mass danger for the security and property of the population, economic or technological catastrophe) and that its duration should be maximized".²⁴ Further text mentions that, although the Parliament and President of the Republic should be directly elected people's representatives, since in the Parliament there are numerous political options, the Parliament should still be the institution in charge of declaring state of emergency.

The second issue out of three is that of countersignature. Most parties proposing the new Serbian Constitution vouch for this institute, whose introduction would condition the legal validity of the resolutions of President of the Republic. One cannot conclude for sure whether creators of other drafts, who do not mention countersignature, also have in mind such an institute. Additionally, one cannot be certain whether the countersignature would be obligatory for all the resolutions of head of state, or whether some of them would be exempted from this obligation. This is so as some drafts are not available in the form of complete, full solutions of all relevant issues. Thus "Open Issues of the New Constitution" and "Sketch for a New Serbian Constitution" have not fully, "constitutionally" presented all solutions. Not further discussing this issue, we shall only state that, in the case of the directly elected head of state, this kind of conditioning of his resolutions by a state body which does not have direct electoral legitimation, and is thus a body of subordinate power and prestige, would make the essence of this institute meaningless. If the countersignature of the Prime Minister or Minister in the Government is a form of cooperation of two bodies of the executive, two elements of a bicephalous executive branch, whose goal is to institutionalize joint responsibility of these two bodies of the executive, then, with the directly elected head of state, behind whom there stands the majority of the population, striving for, we suppose, a true and ultimate "division of power" is actually a path toward degradation of the independence of head of state, and his subordination to the Government, a body appointed by the Parliament and often an offshoot of just one political option, or a few options that needed a deal in order to win majority in the Assembly.

Third, the question of suspensive veto remains. A burning issue, consistently and vigorously attacked in the 1990 Serbian Constitution, where attacks have often been disproportionate to the realistic strength and importance of this institute, the veto does not appear in new drafts of the Constitution. Without any intention or desire to defend the current solution, or vouch for its survival after the constitutional reform, we only wish to stress a few facts. The first one is that this is a *suspensive*, and not *absolute* veto, and the second one is that for a repeated vote, special majority in the Serbian Parliament is not required. We add to these two facts a third one, that the President of the Republic carries direct electoral legitimacy, just like the Parliament itself, and that, since one of these bodies is collective and the other unipersonal, the collective body is given advantage, because it is allowed to retain its decision in the repeated procedure, which is not more difficult – as it poses no additional, stricter requirements. Thus, it seems there is no real power of the head of state to prevent the Parliament from exercising its legislative authority. Through this institute, the single-house Parliament would even be granted the measure

²⁴ Sketch for a New Serbian Constitution, Belgrade 2004, pp. 13-14.

for a more complete and facile, thus probably better thought-out, decision making, which is exactly what proposers of the two-house Parliament must have had in mind.

Finally, let us only recall that solutions without both advantages and disadvantages, if any, are very rare. The constitutional position and actual role of head of state depend on the maker of the constitution. However, perhaps equally strongly, they are also made through the democracy level achieved in the given society, political culture of its citizens, strength of other institutions in the system, strength and informedness of the public. The person taking this important position must also be worthy of it, in terms of both knowledge and virtues. Before and more than any other participant in the political life of a country, the head of state must also be a leader with undisputed reputation, who has full support of true majority, whether it comes from the parliament, or directly from the citizens.

POLOŽAJ I FUNKCIJE DRŽAVNOG POGLAVARA (ŠEFA DRŽAVE)

Olivera Vučić

Predsednik Republike, kako je već predlagano, treba da bude garant kontinuiteta demokratskog preobražaja i da svojim položajem u sistemu i svojim ovlašćenjima dobijenim Ustavom, obezbeđuje toliko potrebnu izgradnju demokratskog društva stabilnih institucija. U duhu Konstanovog viđenja uloge vladaoca, državni poglavar biće "vlast koja umerava", četvrti deo suverene vlasti, stekavši tu potrebnu nezavisnost položaja neposrednim izviranjem te vlasti iz naroda.

Ključne reči: *šef države, predsednik Republike, vanredno stanje, premapotpis, suspenzivni veto*