

# The Role of Presidents in Croatia and Serbia, 1990-2015

By: Mislav Ilija Vulić

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Supervisor: Zsolt Enyedi

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## Abstract

Both Croatia and Serbia introduced a semi-presidential system of government in 1990. In Croatia this choice was motivated by a need to have a decisive and efficient decision-making institution in light of the upcoming instability and war. In Serbia introduction of semi-presidentialism was motivated primarily by the need of Slobodan Milošević to be legitimized as a national leader. Croatian semi-presidentialism in 1990s was of a presidential-parliamentary subtype because the President had autonomous power to appoint and dismiss the Government. Serbian semi-presidentialism was of a premier-presidential subtype because the Government was accountable solely to the Assembly. In both countries tendencies towards authoritarianism emerged. The death of Franjo Tuđman and the resignation of Slobodan Milošević ended the authoritarian rule but the two countries diverged in how they dealt with the institutional framework of semi-presidentialism. In Croatia the Constitution was amended immediately after the change of government. In Serbia it remains the same even today with only minor alterations. The present system of government in Croatia can be characterized as parliamentary while system of government in Serbia can be characterized as semi-presidential. The key difference does not emerge from constitutional powers but from the fact that Croatian President is forbidden to be a member of the political party or its president, while in Serbia this possibility exists, and can be used to position the President as a central figure in the political system.

Key words: President, Semi-presidentialism, Croatia, Serbia

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## Table of Contents

1. Introduction.....	1
2. Presidents in Semi-Presidential Systems.....	5
2.1. Duverger and the French Archetype of Semi-Presidentialism .....	6
2.2. Sartori and the Interchangeable Dominance in the Dual Executive .....	9
2.2. Subtypes of Semi-Presidentialism .....	10
2.3. Minimalist Theories of Semi-Presidentialism .....	13
2.3.1. Elgie: A Clear Constitutional Definition of Semi-Presidentialism .....	13
2.3.2. Cindy Skach: Empirical Subtypes of Semi-Presidentialism .....	15
2.4. Concluding Remarks .....	16
3. The Role of President in Croatia 1990-2015.....	18
3.1. Historical Context of the Transition and the New Constitution .....	18
3.2. Constitutional powers of the President of Croatia.....	22
3.2.1. Powers of the President 1990-2000.....	22
3.2.2. Powers of the President 2000-2015.....	25
3.3. Croatian Semi-Presidentialism in Practice .....	29
3.3.1. Tuđman Presidency (1990-1999) .....	29
3.3.2. Mesić Presidency (2000-2010) .....	34
3.3.3. Josipović Presidency (2010-2015) .....	37
3.4. Concluding Remarks .....	38
4. The Role of President in Serbia 1990-2015 .....	40
4.1. Historical Context of the Transition and the New Constitution .....	40
4.2. Constitutional Powers of the President of Serbia .....	41
4.3. Serbian Semi-Presidentialism in Practice .....	45
4.3.1. Milošević Presidency (1990-2000) .....	45
4.3.2. Presidency of Serbia between 2000 and 2004.....	49
4.3.3. Tadić Presidency (2004-2012) .....	51
4.3.4. Nikolić Presidency (2012- ) .....	53
4.4. Concluding Remarks .....	54
5. Conclusion .....	56
References.....	58

## List of tables

Table 1. The Powers of the Croatian President under the Constitutions of 1990 and 2000...28

Table 2. The Powers of the Serbian President under the Constitutions of 1990 and 2006...44

# 1. Introduction

The breakdown of communist regimes in Central and Eastern Europe in the period after 1989 presented these countries with many challenges that came with the process of political and economic transition. One of the most important issues was the choice of the system of government – parliamentary, semi-presidential or presidential. Semi-presidential systems were often chosen in countries where either the president had a strong influence over the constitution making process or where there were competing political elites which saw advantage in opting for the semi-presidential system (Elster 1996). In the end, only the Czech Republic and Hungary among the most researched cases chose “pure” parliamentary systems (Kubát 2001, 12).

Semi-presidential systems provide the means of incorporating into a political system all the strong points of both classic parliamentary and classic presidential system, and at the same time eliminating many of their weaknesses (Boban 2011, 13). Sartori (1994) argues that semi-presidential systems perform better than either pure presidential or pure parliamentary systems because they avoid “the structural gridlock and feeble and inconstant government inherent in both”.

During the political transition in Central and Eastern Europe, semi-presidential systems turned out to be a desired choice for many political elites of the post-communist European countries. Boban (2011, 14) finds this to be the result of a perceived need to create an institution of a president that has substantial powers, and is elected by a popular vote. This was mainly the result of the fact that all newly democratized regimes in Central and Eastern Europe were starting from almost nothing and were faced with many sources of uncertainty and potential political instability along the path of their political transitions. In light of various circumstances within a particular political system this choice sometimes led some of these

political systems to evolve in a type of an authoritarian regime.<sup>1</sup> This was the case with many of the post-Soviet states but also the case with Croatia and Serbia.

Orlić (2011) finds that after the collapse of the communist regime in Yugoslavia nationalism became the only remaining viable source of political legitimization of a regime. The institution of a president was not seen merely as an institution of the head-of-state but also as an institution of the head-of-nation (in a primarily ethnic sense of a nation). Therefore, the direct election of the president was seen as crucial for the legitimization of regimes in post-Yugoslav region.<sup>2</sup>

In this study I will analyze the semi-presidential regimes of Croatia and Serbia. These countries were chosen for three main reasons: (1) both of them were involved in the wars in former Yugoslavia<sup>3</sup>, and so they are examples of institution-building in conditions of war and related political instability. (2) These countries represented the core of the former Yugoslavia and so they can be seen to some extent as exemplifying cases of the evolution of the systems of government in this region. (3) Both countries introduced a version of a semi-presidential system of government at similar times and the rule of their first presidents ended at similar times. Therefore, I will provide an analysis of these under-researched cases of semi-presidentialism and determine the relevant causes and the evolution of the systems of government in Croatia and Serbia from the adoption of their first post-communist constitutions in 1990 to present day.

In order to gain better insight into the evolution of the systems of government of Croatia and Serbia, I conducted interviews with several experts on the subject matter and participants of the relevant events. My interviewees were: Violeta Beširević, professor of

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<sup>1</sup> Interview with Davor Boban, 23 May 2015

<sup>2</sup> Interview with Tibor Várady, 27 May 2013.

<sup>3</sup> Socialist Federative Republic of Yugoslavia; not to be confused with the Federal Republic of Yugoslavia – a federation created in 1992 between the Republic of Serbia and the Republic of Montenegro.

constitutional law at the Union University in Novi Sad; Davor Boban, assistant professor and expert on semi-presidentialism from the Faculty of Political Sciences in Zagreb; Dušan Pavlović and Milan Podunavac, professors of political science at the Faculty of Political Sciences in Belgrade; Vladimir Šeks, politician co-author of all the Croatian Constitutions (1990 to 2010) from Zagreb; and Tibor Várady, legal scholar from the Central European University in Budapest.

My main hypothesis is: The political systems of Croatia and Serbia cannot be considered parliamentary because in both countries the Presidents of the Republic are not passive actors within the system since they have some non-ceremonial powers which give them an ability to influence political processes in a manner that the presidents in pure parliamentary systems do not have.

The main research question is what was/is the role of presidents in Croatia and Serbia and how has it evolved from the 1990s to the present. In order to answer this question I will attempt to provide answers to the following subquestions:

- What (considerable) powers do/did the presidents have in Croatia and Serbia?
- How did the presidents use their powers to influence the political processes?
- Which powers following constitutional reforms are non-ceremonial, and how can the presidents use them to influence the political processes?
- Are direct elections of marginal relevance to the position of the president or do they make a difference?

In order to answer the above-mentioned research question the following chapter provides an overview of the concepts and practices of semi-presidentialism. As we will see, there is no clear agreement on what can and what cannot be considered a semi-presidential



system of government. Therefore, it is important to understand what we are referring to when we classify a particular system of government as semi-presidential or parliamentary.

The next chapter deals with the evolution of the system of government in Croatia. We will see that Croatia's system of government had a rather straightforward evolution, at least in comparison to Serbia's. In 1990 a new constitution was adopted by which a semi-presidential system of government was adopted. This system was supposedly modeled after the French Fifth Republic. In reality, the Croatian semi-presidentialism was more similar to the model of the German Weimar Republic.<sup>4</sup> After the death of the Croatian president Franjo Tuđman and the subsequent political changes that ensued, the powers of the President were substantially reduced.

The subsequent chapter deals with the evolution of the system of government in Serbia. Here the situation is more complex. Serbian constitution of 1990 gave the president significant powers within the system, albeit to a lesser extent than in the case of Croatia. However, Serbian president Slobodan Milošević had a position within the political system that was more powerful than what a simple analysis of his constitutional powers would imply. After Milošević stepped down as the president of Serbia in 1997 in order to assume the office of the president of the Federal Republic of Yugoslavia, and after his ousting in 2000, the system of government started to change. The Constitutional provisions have not changed significantly but now the system operates in a more democratic environment so these elements are expressed differently.

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<sup>4</sup> Interview with Davor Boban, 23 May 2013

## 2. Presidents in Semi-Presidential Systems

Semi-presidentialism is a regime type concept that has attracted substantial interest among political scientists in the past 30 years. Unlike the pure presidential systems epitomized by the classical model of the United States or the pure parliamentary systems best represented by the classical Westminster model of the United Kingdom, semi-presidentialism does not seem to have strong ideal-type model. France is often put as an example of the classic semi-presidentialism although this seems to be more the result of the fact that theoretical interest regarding semi-presidentialism started with Duverger's (1980) description of this regime type that started the whole academic debate on semi-presidentialism. However, as it will be shown below, there are many other examples of political systems that could be used as an ideal-type of semi-presidentialism and there is little agreement on which should be taken as the classical or ideal-type model of semi-presidentialism. The only certain theoretical common point between different concepts of semi-presidentialism is that semi-presidential systems are types of system that cannot be easily classified as either presidential or parliamentary.

A "pure" parliamentary system is defined by two constituting elements: (1) the executive authority (prime-minister and the cabinet) is derived from the legislative assembly; (2) the majority in the legislative assembly can at any time dismiss the executive authority via a vote of 'no confidence' (Shugart 2005, 324). Therefore, the relationship between the executive and the legislative branch in a "pure" parliamentary system is hierarchical since the legislature appoints and fully controls the executive (Shugart 2005, 324).

The "pure" presidential system of government is characterized by three constitutive elements: (1) the head-of-state is popularly elected and fully commands the executive, i.e. the president is the 'chief executive'; (2) the terms of the president and the assembly are fixed,

and not subject to mutual confidence; (3) the president names and directs the cabinet and has some constitutional authority regarding lawmaking (Shugart 2005, 324-325). Therefore, the president and the assembly have separate sources of legitimacy and their mutual relationship is transactional – and not hierarchical as is the case with parliamentarism – which means that in the presidential system the executive and the legislative branches of government are equals which need to cooperate in order for the system to function properly; in the parliamentary system the executive is, in theory, subordinate to the legislative and any disagreement can be resolved by the legislative dismissing the executive and appointing a new cabinet (Shugart 2005, 325).

Semi-presidential system of government is neither parliamentary nor presidential. As it will be established below, the main feature of semi-presidentialism is the existence of a *dual executive* (Shugart 2005, 324). One pole of this dual executive resembles the executive in the presidential system, and the other resembles the executive in the parliamentary system. However, different hierarchical and transactional relations between the presidents, the cabinets and the assemblies result in a formation of a completely separate system of government that is neither parliamentary nor presidential, all their similarities notwithstanding.

### **2.1. Duverger and the French Archetype of Semi-Presidentialism**

Maurice Duverger introduced the concept of semi-presidentialism in comparative political theory. His concept was modeled after the French system as it is applied in the Fifth Republic (1958- ). Duverger (1980, 166) provides three constituting elements of semi-presidentialism:

1. The president of the republic is elected by universal suffrage.
2. The president possesses quite considerable powers.

3. The president has opposite him a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them.

Duverger finds that in 20<sup>th</sup> century Europe until 1980 only seven political systems possess the characteristics of semi-presidentialism: German Weimar Republic (1919-1933), Finland, Austria, Ireland, Iceland, Portugal, and France after 1958 constitutional amendments that introduced the direct election of the President<sup>5</sup>.

Duverger notes that constitutional practice often diverged from the political system design set out in the constitutions of the respective countries. Based on these divergences Duverger classifies these semi-presidential systems in three categories. The first category are countries with figurehead presidency (1980, 167) in which he includes Austria, Iceland and Ireland. Here the president is merely a guardian of the Constitution, and his true powers include initiation of constitutional review and constitutional referenda. The second category are countries with an all-powerful presidency (1980, 170). France is the only country among the seven that falls under this category. The third category is comprised of countries with a balance of powers between the presidency and the government (1980, 173). Here Duverger includes the Weimar Republic, Finland and Portugal. After further analysis where Duverger compares the constitutional texts and the true operation of political systems in practice, he concludes that the only examples of true semi-presidential systems are France after 1958, Finland, Weimar Republic and Portugal (1980, 179).

Duverger's analysis shows that semi-presidential regimes are established as a response to political crises – most often the breakdown or political paralysis of the previous regime – when the introduction of a strong presidency become the most viable option of restoring the stability in the political system. However, the true power of the presidency cannot be

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<sup>5</sup> Initially, the President was elected by an electoral college that was comprised of the members of Parliament, members of departmental assemblies and representatives of municipalities. This election method was replaced in 1962 by a two-round direct popular elections. This amendment was adopted in a plebiscite initiated by De Gaulle using his presidential powers given by the 1958 constitutional reform (Shugart 2005,332).

established by merely changing the constitutional provisions that regulate this. Instead, it greatly depends on the constellations of various variables of the political system such as the party system and the ability of the president to control the majority in the parliament.

Siaroff (2003, 303-305) developed the Duverger's concept of considerable powers establishing nine variables which determine the extent of presidential powers:

1. whether the president is popularly elected or not;
2. synchronized terms for the president and the assembly (which maximizes the presidential influence over the composition of the assembly);
3. discretionary appointment by the president of some key individuals such as the prime minister, other cabinet ministers, high court judges, senior military figures and/or central bankers;
4. the ability of the president to chair formal cabinet meetings and thus engage in agenda setting;
5. the power of the president to veto legislation, or more accurately, the right to return legislation for further consideration;
6. whether a president has broad emergency or decree powers for national disorder and/or economic matters which are effectively valid for an unlimited time;
7. whether a president has a central role (or indeed the central role) in foreign policy, including presiding over a security or defense council and/or having a say in the choice of foreign and defense ministers, attending and speaking for the country at international political meetings and summits, and generally 'making' foreign policy in at least certain key areas;
8. whether a president has a central role in the formation of the government;
9. the ability of the president to dissolve the legislature at will, at most subject to only temporal restrictions.

Based on the results Siaroff (2003, 287) rejected the concept of semi-presidentialism and classifies the countries into categories of (1) presidential systems, (2) parliamentary systems with presidential dominance, (3) parliamentary systems with a presidential corrective and (4) parliamentary systems with figurehead presidents<sup>6</sup>.

## **2.2. Sartori and the Interchangeable Dominance in the Dual Executive**

Giovanni Sartori amended the Duverger's concept of semi-presidentialism and established five essential features of semi-presidential system of government: (1) the president is elected directly or indirectly via popular elections for a fixed term; (2) the president shares the executive authority with the cabinet; (3) the president is independent of the parliament yet cannot govern directly but indirectly via the cabinet; (4) the cabinet is always accountable to the parliament; (5) the dual structure of the executive allows for the change of power balance within the executive but each component of the executive is potentially independent (Sartori 1994a, 132). We can see that Sartori does not insist on direct popular elections of the president but accepts also indirect elections. The only requirement is that the president is not elected by the parliament. This is in conformity with the original design of the French Fifth Republic where the president was elected by an electoral college before the introduction of direct popular elections following the 1962 plebiscite.

Sartori sees semi-presidentialism as a system between parliamentarism and presidentialism which has characteristics of both these systems (Sartori 1994a, 121). He emphasizes that in contrast to presidential systems, in semi-presidential systems the executive is bicephalous instead of being monocentric. This bicephalous system is flexible in a sense that different constellations of power between the parties in the political system will determine which head of the executive takes the lead and dominates over the other (Sartori

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<sup>6</sup> Croatia (1990-2000) is classified as a parliamentary system with presidential dominance and Croatia (2000-) as a parliamentary systems with a presidential corrective; Serbia was not included in the analysis.

1994a, 125). Due to this characteristic, semi-presidential system is preferable to pure presidential system because its structure eliminates the threat of a divided government, which is one of the most important shortcomings of the presidential systems.

Sartori emphasizes a distinction between the formal and the material constitution and claims that in order for a system to be classified as semi-presidential both the formal and the material constitution must be in conformity with his essential features of semi-presidentialism. Thus, Ireland, Austria, and Iceland, notwithstanding their semi-presidential formal constitutions, are not semi-presidential systems since their presidents in practice do not possess considerable powers (Sartori 1994a, 126). In accordance with this principle, Sartori rejects Shugart's and Carey's concept of semi-presidentialism since they do not take into account the material constitution of a particular political system. Boban (2011, 31-33) criticizes Sartori's insistence on the necessity that both formal and material constitutions are semi-presidential for a system to be designated as such. Boban claims that this significantly narrows the number of countries that fall under the semi-presidential category, and makes extremely difficult to classify political systems which are characterized by periodical incongruity between their formal and material constitutions.

## **2.2. Subtypes of Semi-Presidentialism**

Matthew Sørensen Shugart and John Carey (1992) developed a concept of semi-presidentialism that is also maximalist with regards to the constituting conditions of semi-presidentialism they set forth. However, the main contribution of their concept is the introduction of two subtypes of semi-presidentialism: premier-presidential and president-parliamentary. Shugart (1993, 30) recognizes five types of systems of government: (1) "pure" presidential, (2) premier-presidential, (3) president-parliamentary, (4) parliamentary with "president" and (5) "pure" parliamentary. The latter two are basically the same. The only

difference is that in “pure” parliamentary system the head of state (monarch or president) is either not elected or is elected by the parliament, while in parliamentarism with “president”, the president is directly elected but possesses no independent powers (Shugart 1993, 31). The premier-presidential and the president-parliamentary represent the two types of semi-presidential systems. Therefore, we can say that Shugart and Carey do not see semi-presidentialism as a single system of government but as a group of systems of government that are neither presidential, nor parliamentary, although they combine the features of both of these two (ideal) types of government regimes.

Premier-presidential subtype of semi-presidentialism is a subtype where the prime-minister has an advantage over the president because the president can dismiss neither the prime-minister nor the cabinet as this power is only vested with the legislative assembly. Therefore, in premier-presidential system the cabinet is exclusively accountable to the assembly majority (Shugart 2005, 333). So, here the cabinet is the ‘chief executive’, and not the president who is merely the head of state possibly with ‘quite considerable’ powers. According to Shugart, presidential powers can be deemed ‘quite considerable’ only if the president has the power to dissolve the parliament or if he has the constitutional veto power to block legislative acts (2005, 339). In the case with the veto power the president has significant power within the system because, even if a qualified majority is not required to counter the presidential veto, this power still gives the president the ability to conduct transactional bargains with the legislature and, by extension, with the cabinet. If the president has an active role in appointing the *formateur* during the process of appointing the government in the parliament that enhances his powers even further (Shugart 2005, 338).

The president-parliamentary subtype is characterized by four features: (1) the president is elected via direct popular elections; (2) the president can appoint and dismiss the cabinet; (3) the cabinet is also accountable to the legislative assembly; (4) the president can



dissolve the parliament, or he has active role in the legislative process through constitutional veto powers (Shugart and Carey 1992, 24). Shugart emphasizes (2005, 333) that in presidential-parliamentary system the cabinet is *dually* accountable to both the president and to the assembly majority, and this is the crucial difference in relation to the premier-presidential system.

Shugart (2005, 328) made another important contribution to the debate on semi-presidentialism by analyzing the distinctions between the various systems of government using the distinction between the hierarchical and transactional relationships within the system of government. In a hierarchical relationship one institution is subordinated to the other, while transactional relationships include actors who are equals. Thus the parliamentary system is defined by the hierarchical relationship between the assembly and its subordinate – the cabinet. On the other hand, in a presidential system where both the executive and the legislative are separately legitimized this relationship is transactional and cooperation is required in order to achieve desired goals. In semi-presidential system there are both hierarchical and transactional relationships present, and their constellations determine whether the system will be premier-presidential where the institution of the president is less powerful or a president-parliamentary where this institution is very powerful.

Shugart rejects Duverger's and Lijphart's claim that semi-presidentialism entails the alternation of presidential and parliamentary phases within the political system (2005, 328). Shugart makes a distinction between the institutional characteristics of the political system and the behavioral outcomes of the system. Thus he claims that even if the president becomes more or less powerful depending on whether the assembly majority is under presidential control, this fact does not affect the institutional design of the system, although it creates different behavioral patterns of the government. Every system of government has some *immutable features* (e.g. constitutional provision) that are difficult to change. These features

relate to the institutional structure of the system, and these are the features that determine if the system is parliamentary, presidential or semi-presidential. Opposite to them are *transitory features* (e.g. parliamentary election outcomes) which determine the behavioral pattern (Shugart 2005, 328).

### **2.3. Minimalist Theories of Semi-Presidentialism**

Minimalist theories of semi-presidentialism define semi-presidentialism by using only a minimum number of essential criteria. This is a short overview of the concepts of semi-presidentialism created by the two most notable advocates of minimalist theories of semi-presidentialism: Robert Elgie and Cindy Skach.

#### **2.3.1. Elgie: A Clear Constitutional Definition of Semi-Presidentialism**

Elgie is the most notable theorist of minimalist concepts of semi-presidentialism. He posits only two conditions that need to be met for a political system to be classified as semi-presidential: (1) the president is elected by a popular vote on a fixed term, and (2) aside from the president, the executive includes the prime-minister and the cabinet which are accountable to the parliament (Elgie 1999, 13). Elgie finds that his definition is ‘pure constitutional definition’. Elgie’s concept is notable for the fact that he abandons the criterion of quite considerable powers of the president<sup>7</sup>. Elgie finds that the major problem with the criterion of considerable powers is the problem of clearly defining it. This results in various researchers applying various definitions of considerable powers. Thus, the same countries are often classified as semi-presidential according to one researcher, only to be classified as non-semi-presidential by another researcher, and some researchers define ‘considerable’ too broadly

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<sup>7</sup> Elgie uses the term ‘significant powers’ instead of the original Duverger’s ‘quite considerable powers’. However, there is no important difference between these two terms as they relate to the same concept. Therefore, in this study I exclusively use the Duverger’s term.

(Elgie 2007, 5). Boban (2011, 34) finds that Elgie's rejection of the considerable powers criterion constitutes a conceptual bias, making absurd the entire concept of dual executive. If a popularly elected president has no considerable powers then his position is the same as the position of the president elected by the parliament. Thus the criterion of considerable powers is central to the concept of semi-presidentialism and should not be abandoned (Boban 2005, 35).

Elgie also emphasizes the distinction between the dispositional and relational properties in the process of classification of political systems (1998, 224). Dispositional properties are the ones that do not describe the powers of institutions within the system. They just denote the basic characteristics of an institutional framework of any political system. Relational properties, on the other hand, are the ones that describe the relations of power and how different actors can use the political resources at their disposal. According to Elgie (1998, 226), if we use dispositional properties to classify political systems we need to combine three criteria: (1) is there a dual executive or is the executive monocentric; (2) are the heads of the executive directly elected; (3) are they elected for a fixed term? By combining these criteria we will get 24 possible systems of government of which only five exist in reality, and semi-presidentialism is one of them.

Elgie's contribution is also valuable because he identifies three type of contexts in which a country opts for a semi-presidential system – which in this case means that it chooses to elect its president directly. The first context is of a symbolical nature, e.g. if a newly independent country wants to increase the legitimacy of its institutions, but does not want to create a powerful presidency. The second context is connected to the problems of governance, e.g. if a previous parliamentary system collapsed a country will opt for a semi-presidential system to avoid the weaknesses of the former system. The third context is found in situations of democratic transition when the choice of a system often depends on the constellation of

powers within the political elites, which, among others, can result in either a strong or a weak presidency, directly or indirectly elected president (Boban 2011, 36).

Elgie also offered a classification of empirical types of semi-presidential systems (2005, 102). According to this classification we distinguish (1) highly presidentialized semi-presidential systems, (2) semi-presidential systems with a ceremonial president, and (3) semi-presidential systems with a balance between presidential and prime-ministerial powers.

### **2.3.2. Cindy Skach: Empirical Subtypes of Semi-Presidentialism**

Skach (2005, 6-7) also finds that semi-presidentialism is an independent type of systems of government. Her definition of semi-presidentialism is identical to Elgie's, i.e. semi-presidentialism is characterized by a popularly elected president, and a prime-minister and the cabinet which are accountable to the parliament.

Skach finds that the most critical characteristic of the semi-presidential system is the additional separation of powers, i.e. the separation of the executive branch into an institution of a popularly elected president and a cabinet appointed by the parliament (Skach 2007, 96). The second important characteristic is the different legitimacy and accountability of the president and the cabinet, which makes the cabinet dependent on the parliament, while the president is independent.

Skach analyzed the semi-presidential system in the German Weimar Republic and found that semi-presidentialism can lead a country into a constitutional dictatorship – situation when during periods of difficulty the executive extensively utilizes its emergency powers and the powers to legislate by decrees (Skach 2007, 99). In order to analyze how semi-presidentialism can bring about constitutional dictatorship, Skach developed a classification of empirical subtypes of semi-presidentialism. Each of these subtypes has a

different level of danger of turning into a constitutional dictatorship. These subtypes are: (1) consolidated majority government, (2) divided majority government, and (3) divided minority government. In a consolidated majority government both the president and the parliamentary majority belong to the same political party or a bloc. This is the most stable subtype. Divided majority government exists when the president is in opposition to the party or bloc that has the majority in the parliament, and the prime-minister and the cabinet are supported by the parliament majority. This is in fact a description of the cohabitation in the French Fifth Republic. The third subtype is the most dangerous. In a divided minority government, the president and the prime-minister belong to one political option which has no majority in the parliament. Skach notes that this is a situation when the most problematic aspect of presidentialism – divided government – is combined with the most problematic aspect of parliamentary system – minority government (Skach 2007, 104-105). According to Skach, the only way to avoid divided minority government is to have a stable majority in the parliament and a president that is fully integrated into the party system (Boban 2011, 40).

## **2.4. Concluding Remarks**

As the previous discussion demonstrated, the concept of semi-presidentialism is not nearly as clear as is the case with the parliamentary or presidential system. Therefore – before I move to the analysis of semi-presidentialism in Croatia and Serbia – I need to establish the criteria which I will use in the further analysis.

I agree with the critics of the minimalist theories of semi-presidentialism and I also find that popular election of the president combined with the prime-minister and the cabinet being accountable to the parliament are insufficient criteria for classifying the system as semi-presidential. If we used the minimalist theories then Croatia and Serbia are certainly semi-presidential systems, since the minimalist conditions applied from 1990s to present-day. The

central criterion on which political scientists base their assessment of semi-presidential character of present-day systems of government in Croatia and Serbia is the criterion of ‘quite considerable’ presidential powers. As demonstrated above, there is no single definition of ‘quite considerable’ powers. It is not a problem to determine which powers are truly considerable (e.g. the power to dissolve the parliament at any time, the power to appoint the prime-minister, the veto power over legislative acts etc.). It is also not a problem to determine which powers are not considerable (e.g. the power of the president to award decorations). The problem lies in the powers that are between these two extremes.

In my understanding, the pure parliamentarian system is the one where the constitutional role of the president is exclusively ceremonial. That means that the president has no means of actively participating in the operation of the government. A popularly elected ceremonial president has the popular legitimacy and he can advocate certain political ideas. Aside from legitimacy and the power of advocacy, the president has no institutional means of influencing the parliament or the prime-minister.

If a president has at least some institutional means to influence the parliament or the prime-minister (e.g. the power to appoint the *formateur*) then it cannot be said that his powers are merely ceremonial, especially if the political practice is such that the president often has an active role within the political process. However, if this is to be accepted then this would essentially mean the acceptance of the minimalist theories of semi-presidentialism. And minimalist criteria seem to be overly inclusive since they put in the same category countries as for example Russia and Austria, but in different categories countries like Austria and Germany. Therefore, in this study I will not consider minimalist criteria as sufficient grounds to classify a system of government as semi-presidential.

### **3. The Role of President in Croatia 1990-2015**

#### ***3.1. Historical Context of the Transition and the New Constitution***

The process of transition in Croatia was cumbersome. The country went through a triple transition in a sense that at the same time it needed to establish a market economy, a democratic political system, and resolve issues of nation- and state-building (Offe 1997, 34). Another factor that greatly affected the process of transition was the war of independence that the country waged from 1991 until 1995, as well as all the consequences of the war.

Liberalization of the Croatian regime started in 1989/1990 through a combination of external pressures and internal weaknesses of the regime (Zakošek 2008, 597). The external pressures were coming from Serbia, where the nationalist movement led by Slobodan Milošević was gaining strength, and from the federal government that initiated comprehensive economic reforms. The internal weaknesses of the regime made the hardliners of the ruling League of Communists of Croatia (SKH) lose influence to its reformist faction. This initiated a process of political liberalization resulting in free democratic elections that were held in Croatia in April 1990 (Zakošek 2008, 597).

Zakošek (2008, 589) notes that the state-building especially if accompanied by war is a great impediment to the democratization process because of three main reasons: (1) state-building exacerbated by war leads to many conflicts; (2) simultaneous transformation of the economy, the political system, and waging a war create a lot of contradictory imperatives which can block the transition processes; (3) war and nation-building create anti-democratic tendencies since they foster centralization of power, and make political deliberation and safeguarding of political and civil rights extremely difficult.

Before the collapse of Yugoslavia, Croatia had no real experience as an independent nation-state. Also, as Haberle (2000, 49) notes, the Croatian Constitution of 1990 was one of

the pioneering democratic constitutions in Eastern Europe. Thus, the country could not even rely on experiences of other transitioning countries, unlike for instance Poland that initially made only an interim constitution, which was thoroughly reformed in 1997 (Boban 2011).

The first multi-party elections were held before the enactment of the 1990 Constitution, for the three Chambers of the Assembly in accordance with the communist Constitution of the Socialist Republic of Croatia, and under the same election procedure for all three chambers of the assembly which was modeled after the French absolute majority system (Zakošek 2002, 19).

The design of the election system was under full control of the ruling League of Communists of Croatia (SKH) and deliberately chosen to maximize the communists' chance of winning the elections (Zakošek 2002, 18). The deputies were elected in single-member districts in two rounds. If in the first round no candidate won an absolute majority, a second round for the candidates that received at least 7% of the votes was held 14 days later. In the second round the candidate with the most votes won the seat.

Contrary to the expectations, the Croatian Democratic Union (HDZ) won an overwhelming majority of seats in all three chambers of the assembly. This enabled the HDZ to dictate the constitution-making process and to create an institutional and electoral framework that best suited their (future) interests.

The Croatian Democratic Union (HDZ) was not at the time a well-structured political party, which was not surprising since the formation of political parties was only recently legalized. Instead, HDZ was a movement of various political groups from the extreme right of the political spectrum to the former members of the League of Communists (Čular 2001, 126). The integrating idea that held the movement together was the idea of creating an independent Croatian state.



The leader of the HDZ was Franjo Tuđman, a former general of the Yugoslav People's Army (JNA) and a communist dissident politically marginalized in 1971. Vuković (2013, 10-11) stresses that the Croatian political system in the 1990s was centered on Franjo Tuđman and that HDZ without Tuđman would have been a much weaker party, which is also demonstrated by the fact that Tuđman won both presidential elections in 1992 and 1997 with a significantly larger percentage of votes than the HDZ ever received in parliamentary elections.

Tibor Várady, a short-term minister of justice of the Federal Republic of Yugoslavia claims<sup>8</sup> that after the communist party lost its legitimacy, nationalism became the only remaining viable source of legitimacy for any political regime in former Yugoslavia. At least this was the common perception at the time. And there is no better leader than a directly elected president with extensive powers.

Vladimir Šeks, one of the authors of the 1990 constitution recalls<sup>9</sup> that the common perception at that time was that instability and war are imminent. This required a strong leadership that can act quickly and decisively. The most suitable solution was a semi-presidential system. Šeks claims that at the time they were inspired by the French semi-presidential system, and that, when he proposed the idea to Franjo Tuđman, he found out that Tuđman was also thinking of an institutional structure along those lines.

Therefore, the main reasons that guided the introduction of semi-presidentialism in 1990 were: (1) Tuđman preferred this system, and the experts agreed with him; (2) absence of a democratic tradition in Croatia, and a historical proclivity towards personalization of power; (3) perception of future instability which required a strong decision maker at the head of the state (Smerdel 2011, 287). Zakošek (2002, 111-112) adds two additional reasons: (4) the previous system employed an institution of a collective president – the Presidency

<sup>8</sup> Interview with Tibor Várady, 27 May 2013.

<sup>9</sup> Interview with Vladimir Šeks, 23 May 2013.

(*Predsjedništvo*) – which was an effective way to prevent personalization of power but made the decision making ineffective which was dangerous in times of crisis; (5) the populist character of the HDZ required a prominent position of a political leader, and this position needed to be institutionalized as a constitutional category.

Smerdel (2006, 375) claims that a system of government similar to the semi-presidential model already existed in Croatian political tradition before 1918 in the institution of the *ban* – a viceroy that governed Croatia in the name of a monarch during the Habsburg era. In 1848 *ban* Josip Jelačić appointed a council which Smerdel sees as the first Croatian government in the modern sense and which was very similar to the characteristics of semi-presidentialism. However, Sokol (1992, 6) sees the same historical example as a case of parliamentarism since the Assembly (*Sabor*) was in the center of the system and the *ban* derived its power from the authority of the Assembly.

Duška Šarin (1997) in her extensive account on the constitution-making process found that most of the constitution-makers agreed with the introduction of a semi-presidential system. There were dissenting voices in favor of parliamentary system solutions but they were in the minority and usually from the oppositional parties which did not look favorably to having a powerful president from the ranks of HDZ (Šarin 1997, 255). Although smaller concessions were made (e.g. instead of a seven-year term the Constitution established a five-year term for the President (Šarin 1997, 315)), the main concept was never seriously questioned.

## **3.2. Constitutional powers of the President of Croatia**

### **3.2.1. Powers of the President 1990-2000**

The new constitution was enacted on 22 December 1990, and introduced a semi-presidential system with quite considerable powers of the president. The President is the head of state; he represents the Republic at home and abroad, and ensures the continuity and the unity of the Republic and ensures the regular functioning of the government (Article 94).

The election of the president is regulated in the Article 95 of the Constitution. The president is elected on a five-year term. The same person can only be elected twice. The presidential elections employ a two-round system. If no candidate wins an absolute majority of the votes in the first round, a second round is scheduled. In the second round only the two candidates with the most votes participate and the candidate that receives the most votes is elected president. Unlike the Serbian case, no minimum voter turnout requirement exists. Although the constitutional and statutory provisions regarding the election of the president have been changed in some details, this method of electing the president did not change.

The following are the powers and duties of the President under the 1990 Constitution of the Republic of Croatia:

- The President appoints and dismisses the Prime Minister and the ministers (Article 98).
- The President may at any time convene a session of the Government, set the agenda, and presides over the session (Article 102).

- The Government is, however, accountable to both the President and to the House of Representatives<sup>10</sup> (Article 111).
- The President may dissolve the House of Representatives (Article 77) at the Government's proposal and only if the House passed a no confidence vote to the Government, or failed to adopt the proposed state budget within one month (Article 104). The President cannot dissolve the House again for one year.
- The President may also request that the Parliament convenes for an emergency session (Article 78).
- The President promulgates laws passed in the Parliament (Article 89) but he does not enjoy a legislative veto of any kind.
- The President may call a binding referendum on the issues of importance to the Republic, but only at the proposal of the Government (Article 87).
- The President may propose amendments to the Constitution (Article 136).
- During states of emergency, when the Parliament cannot convene, the President may restrict individual freedoms and right (Article 17). In such times, the President is authorized to issue legislative decrees which subsequently need to be confirmed by the Parliament (Article 101).
- The President has autonomous power over appointment and dismissal of ambassadors (Article 99); concludes international agreements (Article 132) and may initiate procedures for association with other states (Article 135).

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<sup>10</sup> Under the 1990 Constitution the Croatian Parliament consisted of two Houses – the House of Representatives and the House of Counties. The House of Counties consisted of 3 representatives from each of the 20 counties and the capital, who were elected directly at the same time when local elections were held. Each county formed an election district in which 3 representatives were elected according to the proportional system using the D'Hondt formula. The President also appointed 5 additional members of his own choice (Article 71 of the Constitution). The powers of the House of Counties were insubstantial. Its main power was a limited veto that could merely delay the adoption of the acts of the House of Representatives but not block it. The absolute majority in the House of Counties was always held by the HDZ until this House was abolished by a 2001 Constitutional amendment making the Croatian Parliament unicameral. In this study when referring to the Parliament I will refer to the House of Representatives since the House of Counties is not of major relevance to this analysis.

- The President is the commander-in-chief of the armed forces, and autonomously appoints military commanders and relieves them of duty (Article 100).
- The President appoints to the House of Counties up to 5 additional members of his own choice (Article 71).
- The President calls elections for the Parliament, grants pardons, and confers decorations and awards (Article 98).
- The President annually submits a report on the state of the Republic to the Parliament (Article 103).
- After the expiry of his term in office, the President becomes a lifelong member of the House of Counties (Article 71).
- Although forbidden from performing any other public or professional duty, the President may perform party-related duties (Article 96).

As the list of powers of the President of Croatia under the 1990 Constitution shows, the President had all the necessary preconditions to become the dominant figure within the political system. However, three powers of the President were crucial: (1) The right to issue decrees with legislative power in state of emergency (Boban 2007, 2) This power was especially important in the light of the upcoming war. The second power was (2) the right to appoint and dismiss the prime-minister and the cabinet (Boban 2007, 2). This power allowed the President to have complete control over the executive, provided that he controls the parliamentary majority. The third crucial power was (3) the right to convene a session of the government, to preside over it, and to set the agenda (Zakošek 2002, 112). These powers come very close to the position of presidents in presidential regimes where they fully command the executive. However, that the President's power to dissolve the House of Representatives is limited in two ways: (1) it can occur only following a no confidence vote to

the government or in case of failure to adopt the budget; (2) after dissolution, the President cannot dissolve the Parliament again for one year.

Soon after the new system of government came into practice, there were attempts to classify this system as a variant of parliamentary systems (Sokol 1992;Sokol 1993) or even to classify it as a system *sui generis* (Kasapović 1992). However, in light of the main concepts of semi-presidentialism, and given that there is a clear hierarchical relationship between the directly elected president and the presidentially appointed government, the system of government of Croatia between 1990 and 2000 can easily be classified as a text book example of Shugart's and Carey's presidential-parliamentary subtype of semi-presidentialism.

### **3.2.2. Powers of the President 2000-2015**

Following the 2000 parliamentary elections, which are described in more detail in the following subchapter, the Constitution of 1990 was thoroughly amended, mostly in regard to the powers and the position of the President, which were significantly reduced in favor of increasing the powers of the Government. According to the amended Constitution of 2000 the position of the President, which was not altered by subsequent amendments<sup>11</sup>, is as follows:

- The President's role in the appointment of the Government has been reduced to the appointment of the *formateur* of the Government (Article 98); however, he has some personal discretion regarding the appointment.
- The President may now only propose to the Government to hold a session and consider specific issues; he may attend any session of the Government and participate in deliberations (Article 102).

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<sup>11</sup> In 2001 the House of Counties was abolished; in 2010 the Constitution was amended in view of the requirements of the upcoming accession to the EU. None of these amendments significantly intervened in the position of the President of the Republic.

- The Government is now accountable exclusively to the Parliament (Article 115).
- With the counter-signature of the Prime Minister, the President may dissolve the Parliament (Article 78) if it passes a no confidence vote to the Government or if it fails to adopt the budget within 120 days (Article 104).
- The President may convene an emergency session of the Parliament (Article 79).
- The President promulgates laws enacted by the Parliament and may institute a constitutional review of laws before the Constitutional Court (Article 89). This provision, although it appears as a limited veto power, is in fact moot. The Constitutional Court has no obligation to give priority to the review initiated by the President, nor is there a special deadline in which the case needs to be resolved. This also does not affect the entry into force of the disputed law, which the president is obligated to promulgate regardless of the constitutional review proceedings.
- The President may with the counter-signature of the Prime Minister call a binding referendum on the proposal to amend the Constitution or on issues of importance to the Republic (Article 87).
- The President may also propose amendments to the Constitution (Article 147).
- During state of war, when the Parliament cannot convene, the President may restrict individual freedoms and right (Article 17). During state of war and other emergencies, the President may issue legislative decrees pursuant to an authorization by the Parliament, or the Prime Minister's counter-signature; during state of war and other emergencies the President may convene a session of the Government and preside over it (Article 101).

- The President is the commander-in-chief of the armed forces, and autonomously appoints military commanders and relieves them of duty (Article 100). Deployment of the armed forces at home or abroad requires the Prime Minister's counter-signature (Article 7, Article 100).
- The President calls elections for the Parliament, grants pardons, and confers decorations and awards (Article 98).
- The President cooperates with the Government in the formulation and implementation of foreign policy; he appoints ambassadors with the Prime Minister's counter-signature (Article 99).
- The President co-directs the work of security services, and appoints the heads of security services with the Prime Minister's counter-signature (Article 103).
- Depending on the nature and the content the President may conclude international treaties not subject to parliamentary ratification (Article 139, Article 140), and may initiate procedures for association with other states (Article 142).
- The 2010 amendments to the Constitution authorized the President to represent the state, alongside the Government, in the institutions of the European Union in accordance with the constitutional powers (Article 144).
- The President is forbidden from performing any other public or professional duty, including party-related duties. Once elected, the President must resign from membership in any political party (Article 96).

As we can observe in Table 1, the powers of the Presidents were substantially reduced although the President was left with some important powers in the process of government formation, in states of emergency, and in the formulation and implementation of foreign, defense and security policies.



Table 1. The Powers of the Croatian President under the Constitutions of 1990 and 2000

<b>Powers of the President</b>	<b>Constitution of 1990</b>	<b>Constitution of 2000</b>
Directly elected	YES	YES
Duration of term in office	5 years	5 years
Maximum number of terms in office	2	2
Appoints the Government	YES	NO, appoints <i>formateur</i>
Government accountable to the President	YES	NO
Autonomous right to dissolve Parliament	NO	NO
May issue legislative decrees	YES	Counter-signature required in most cases
Special powers during states of emergencies	YES	YES (limited)
Legislative initiative	NO, may propose constitutional amendments	NO, may propose constitutional amendments
Legislative veto	NO	NO, (may initiate constitutional review)
Autonomous right to call referendum	NO	NO
Autonomous appointment of ambassadors	YES	Counter-signature required
Commander-in-chief of the armed forces	YES	YES
Ratification of international treaties	YES, depending on content and nature of treaties	YES, depending on content and nature of treaties
Allowed to be a member of a political party	YES	NO

(Source: Adapted from Boban (2007, 9-10), Constitution of 1990. Constitution of 2000)

After the constitutional reform of 2000 we can no longer consider the Croatian system of government to be semi-presidential according to the concepts that require the existence of ‘quite considerable powers’. However, presidential powers are still far from ceremonial.

### **3.3. Croatian Semi-Presidentialism in Practice**

#### **3.3.1. Tuđman Presidency (1990-1999)**

One characteristic of the first two years of Tuđman's presidency needs to be pointed out. Tuđman had not been directly elected as President when the Constitution was enacted. In the 1990 elections Tuđman was elected to the assembly as a deputy and appointed by the Assembly to the collective Presidency of the Republic, of which he became the President. In July 1990 the old constitution was amended (Amendment LXXI) reforming the collective Presidency and renaming the function of the President of the Presidency to the President of the Republic. The remaining members of the Presidency became vice-presidents. This situation was only temporary as direct elections were planned for the first suitable moment.

However, this created an interesting theoretical dilemma. Can a system where the president is elected by the parliament be considered semi-presidential? Boban (2007, 5) believes it can. He uses this situation to demonstrate that the direct mandate was not necessary for a strong and decisive leadership. The two years before the first direct elections for the President were also the years of the most intense political and economic crisis. Croatia was since August 1990 engaged in a war, and was not internationally recognized as an independent state. Yet, the President managed to use his powers in full. However, this argument seems to be flawed since the situation was clearly temporary, and Franjo Tuđman did possess a *de facto* popular mandate, i.e. if direct presidential elections were held immediately after the adoption of the new Constitution, Franjo Tuđman would very probably won the elections. Furthermore, a similar situation existed for even a longer period in the German Weimar Republic, where the first president was elected by the Constituent Assembly, and the first direct presidential elections were held only in 1925 (Blais, Massicote and Dobrzynska 1997, 442).

Tuđman's presidency can be divided into two distinct stages. The first stage marks the time of war that lasted from 1990 until 1995. This was the period when a new constitution was adopted, the country was engaged in a war that it was unprepared for, and until 1992 it was still not internationally recognized as an independent country. In this period, the government was faced with multiple problems regarding economic stabilization, establishing a war economy, and resolving numerous social problems that arose due to transition, and the influx of refugees from the occupied parts of Croatia, and also from Bosnia-Herzegovina. When the war was at its peak, a National Unity Government was formed under Franjo Gregurić, which included several prominent oppositional leaders. This move further increased the position of President Tuđman who at the time did not have an active opposition to his rule. In 1992, soon after a ceasefire was agreed, the first parliamentary and presidential elections under the new constitution were held. Franjo Tuđman and HDZ were at the peak of their popularity at this point, and so they easily retained a large absolute majority of seats in the House of Representatives while Franjo Tuđman was elected president in the first round of the elections.

In 1995 during operation "Storm" most of the Croatian territory occupied by the Serb rebels was liberated. Only a small part of eastern-most Croatia was left under Serb control and returned to Croatia through a later agreed reintegration process. This turn of events also brought about the end of conflict in Bosnia-Herzegovina through a US sponsored Dayton Agreement of 1995.

Capitalizing on this victory the HDZ parliamentary majority called early elections which it also easily won, once again retaining a large absolute majority in the House of Representatives. At this point Tuđman's position within the political system became almost absolute. He was a war victor who fully controlled the government, and through the HDZ parliament majority also the parliament.

The second period of Tuđman's presidency starts after the end of the war. Now the issues of independence and territorial integrity were mostly resolved. However, in spite of post-war reconstruction and some economic successes, the general economic mismanagement and the dysfunctional judicial system brought about systemic corruption and high unemployment. Tuđman's personal popularity remained largely unaffected and in 1997 he won his second presidential elections, again in the first round, receiving over 60% of the votes. However, the popularity of HDZ government was weakening, and its rule will come to an end in 2000 after its first electoral defeat.

Tuđman's use of presidential power was characterized by several elements. Firstly, his power was based on his personal popularity and successes in attaining the independence for the country, and winning a war. The major element in maintaining this power was also his full control over his party. This enabled him to increase his powers beyond the ones that were stipulated in the Constitution. The large majority in the Parliament allowed Tuđman to extend his powers further e.g. through legislation that gave him the power of veto over elected county prefects and the mayor of the capital. These indirectly elected officials had to be confirmed by the President before assuming office (Zakošek 2002, 113). During 1995-1997 he used this veto to reject four mayors of Zagreb that the city assembly elected.

Secondly, this level of control over government enabled a strong hold over the public media, the police, the judiciary, and the state owned companies. The regime that had such power started to exhibit authoritarian tendencies early on, and these tendencies became more pronounced after 1995. This was also aided by an open support from the Catholic Church with which the HDZ was in a sort of an ideological coalition.

Thirdly, although HDZ was convincingly the most popular political party in the 1990s it never gained an absolute majority of the popular vote although it held a large majority of

the seats in the Parliament. The reason for this was disunity among the oppositional parties, and connected to this, regular and systematic manipulation with the electoral system that HDZ enforced throughout the 1990s.

The Croatian election system from 1990 until 2000 was characterized by a high level of instability and unpredictability (Vrcan 2003, 243). The electoral rules and procedures were often enacted using urgent parliamentary procedure and often just several days before the beginning of the election campaigns (Vrcan 2003, 243). These frequent changes were a deliberate tactics of Croatian Democratic Union (HDZ) in order to secure the absolute majority in the Parliament after each election (Čular 2001).

In 1992 a new mixed electoral system was introduced. The system combined the majoritarian elections where half of the deputies were elected in single-member districts by relative majority, while the other half was elected in a single national electoral district that employed proportional system using d'Hondt formula and an electoral threshold of 5%.

In 1995, new parliamentary elections were held again under a new electoral law. The electoral reform was adopted only five weeks before the elections of 1995 (Zakošek 2002, 22). The majority and the proportional segments were kept but the number of seats in each segment was changed. The proportional segment was increased to 80 seat (in 1992 it was 60), and the majority segment was reduced to 28 seats (in 1992 also 60). New electoral thresholds were introduced: 5% for a list of a single party, 8% for a list of a two-party coalition, and 11% for a list of a coalition of three or more parties. Additional 12 seats were introduced for the diaspora – Croatian citizens living abroad. A special three member district was introduced for the representatives of the Serb minority. As Zakošek notes, again the main rationale for this change in the election system was to ensure that the HDZ wins the absolute majority of the

seats in the parliament. They were held only a few months after the end of war to capitalize on this triumph.

In 1999 yet another reform of the election system for the House of Representatives was introduced. This is a period when HDZ is losing its popularity. Therefore, an introduction of a fully proportional election system was seen as the best option to maximize the number of seats for the HDZ. Under the new election system there were 12 electoral districts. 140 deputies were to be elected in 10 proportional electoral districts where each district had a magnitude of 14. The electoral threshold was set to 5%, and d'Hondt method was applied. The 11th district with a maximum of 12 seats was reserved for the diaspora. The 12th district with five seats was reserved for national minorities and here the number of seats reserved for the Serb minority was reduced from 3 to 1. This election system was supposed to maximize the number of seats for HDZ maintaining its position as the largest parliamentary party because at this point there was little hope that HDZ is going to retain the absolute majority in the House of Representatives (Zakošek 2002, 24-25). This system has been used for the parliamentary elections ever since, and the only changes were an increase in the number of minority representatives to eight (with Serbs having again three representatives). The 2010 amendment to the Constitution reduced and fixed the number of representatives of the diaspora to three.

As the new parliamentary elections were approaching in 1999, a new eventuality arose in the light of the expected electoral defeat of the HDZ. If the opposition wins a majority of seats in the parliament, will President Tudman accept this situation or will he block the opposition from forming a government. It was within his powers to appoint the prime-minister and the cabinet although the parliament could refuse to confirm the government. After an entire decade of consolidated majority rule according to Skach's model, the potential situation of divided minority rule, where the majority in the parliament is in opposition to the

President and the Cabinet, was likely. These expectations were based on the president's refusal to accept four elected mayors of Zagreb during the 1995-1997 Zagreb crisis.

However, in December 1999 Tuđman died in office, which announced the end of the HDZ rule.

### **3.3.2. Mesić Presidency (2000-2010)**

In January 2000 parliamentary elections were held, and HDZ, although retaining plurality in the Parliament, lost the majority to a coalition of six oppositional parties led by Ivica Račan, the leader of the ex-communist Social Democratic Party (SDP) which was the central party of the new ruling coalition and in which Račan became the first non-HDZ prime minister.

Following the parliamentary elections, presidential elections were held, and Stjepan Mesić became the second president of Croatia. The second round of presidential elections was held between the two candidates of the coalition that defeated the HDZ – Stjepan Mesić and Dražen Budiša. HDZ's candidate came in third in the first round.

The new Government and the new President did not wait for the constitution to be changed – they immediately started acting as if the system was parliamentary (Boban 2007, 7). This was due to several factors. First, Stjepan Mesić became a president as an outsider. He was not supported by any of the major parties, and he himself was a member of a minor party of the new ruling coalition. This meant that he did not have any support or a wide political base. As a former member of the HDZ who tried to organize a parliamentary coup against Tuđman in 1994 over disagreement regarding the Croatian policy towards Bosnia, he was not

liked within the membership of HDZ. So it was unrealistic for him to count on HDZ support even if he decided to use his considerable powers.

Second reason is that he also did not have a good standing in the coalition that he was a part of. He entered into the presidential race where SDP and their main partner Croatian Social Liberal Party (HSLP) had their own candidate – Dražen Budiša – the president of the HSLP. So he could not count on the support from the left-liberal bloc as well. The best course of action for Mesić was to accept his position as a President with limited powers. There is also no indication that Mesić ever wanted to govern in the manner of Franjo Tuđman.

The constitutional reform reducing the powers of the president was agreed between the members of the now ruling coalition before the elections. The announced constitutional changes took place in April 2000. The powers of the president were significantly reduced. Most of the situations where the President in the previous regime had significant powers where now either abolished or a requirement for the prime-minister's counter-signature was introduced. Vladimir Šeks<sup>12</sup> claims that the Coalition did not have a very clear plan on how to reform the constitution. The reduction of presidential powers without introducing a pure parliamentary system should be seen in this light, according to Šeks. The lack of a clear plan of reorganization of the political system is best exemplified by the new amendment to the Constitution in 2001 which abolished the House of Counties where the HDZ had a majority and started slowing down the legislative process by using the limited veto that the House of Counties had.

Mirjana Kasapović, who does not look favorably at Mesić's presidency, claims that The crucial move in Mesić's presidency was to swiftly retire several high officer of the Croatian Army who in September 2000 in several public statements announced a possible

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<sup>12</sup> Interview with Vladimir Šeks, 23 May 2013.



coup provoked by the Government's policy towards prosecuting war crimes committed by the Croatian side during the war (Kasapović 2010, 15). President Mesić also played an important role during the crisis of the governing coalition in 2002, and assisted in the formation of the second Račan government in July 2002 (Smerdel 2011, 311).

During his presidency Mesić extensively used his position of the President to comment on every major political issue and was constantly present in the media. He actively campaigned against Croatia joining the American led coalition in the military intervention in Iraq. Croatia in the end did not send troops to Iraq, although it is debatable whether this was a result of Mesić's activism or was it an independent decision made by the Račan government. Under Sanader's government (HDZ) which came to power in 2003, Croatia did agree to a limited participation in the American military efforts regarding Iraq.

In 2005 Mesić won his second term in office. His counter-candidate was Jadranka Kosor, a member of the HDZ. The fact that no leader of a major political party ran in the election indicated that the presidency was not perceived as an important institution. However, this may be misleading. Probably the main reason why no party leader ran for President is the duty of the President to resign from the membership in any political party. This requirement might be one of the main causes why the President is perceived as a weak institution after the constitutional reform in 2000.

In 2007 parliamentary elections HDZ won the plurality of the votes. Mesić, using his power to appoint the *formateur*, attempted for two weeks to form a government that excludes HDZ. Ivo Sanader, the leader of HDZ, eventually was appointed *formateur*, and subsequently formed his second government. He also announced the possibility of further reducing the President's discretionary power over appointment of *formateur* (Boban 2007, 11).

### 3.3.3. Josipović Presidency (2010-2015)

Ivo Josipović won the following presidential elections in the second round in January 2010 against Milan Bandić, the mayor of Zagreb. Josipović became a candidate in internal primary elections within SDP, the first of its kind in Croatia. Josipović started his mandate in cohabitation with the HDZ government led by Jadranka Kosor. In December of 2011 SDP-led coalition won the parliamentary elections and Zoran Milanović, leader of the SDP became the second non-HDZ prime minister in Croatian history. This ended the cohabitation as both the President and the Prime Minister came from the same party.

The new government soon became rather unpopular due to the difficult economic situation for which it was not able to find a solution.

On the other hand, throughout his term, Josipović enjoyed extremely high popularity among the electorate on both the left and the right. He led a proactive foreign policy in relation to the countries in the region, although the results were not substantial. His main program<sup>13</sup> during his term was the initiative to amend the Constitution that would clarify several unresolved problematic provisions within the text of the Constitution. Vladimir Šeks claims<sup>14</sup> that Josipović's real intention was to secure a limited veto of the President that would allow him to instigate constitutional review over laws and international treaties which would have priority before the Constitutional Court. Although the President has the power to propose constitutional amendments, Josipović's constitutional initiative was generally unsuccessful<sup>15</sup>. This was primarily due to the fact that he did not enjoy the support of his own party. Josipović presidency demonstrated that the President of the Republic is rather powerless even in situation of consolidated majority government.

<sup>13</sup> „Moramo smanjiti imunitet zastupnika, više jačati ljudska i socijalna prava, a predsjedničke ovlasti pojasniti“, *Jutarnji list* 30 December 2013 pages 2-3.

<sup>14</sup> Interview with Vladimir Šeks, 23 May 2013.

<sup>15</sup> „Predsjednik ima dobre namjere, ali na to još ne mislimo trošiti energiju“ *Jutarnji list* 31 December 2013/1 January 2014 page 11.

In 2015 presidential elections Josipović, supported by the governing SDP and several other smaller parties, narrowly lost to the HDZ candidate Kolinda Grabar Kitarović. Grabar Kitarović is the first woman to hold the office of the Croatian president. Her first months in office were spent heavily criticizing the governing SDP, and especially the Prime Minister Zoran Milanović.

### **3.4. Concluding Remarks**

The semi-presidential system of government was deliberately selected in 1990 to facilitate an efficient and decisive government in the light of perceived likelihood of war and instability. Croatian semi-presidentialism in 1990s was of the presidential-parliamentary subtype. This structure made it easier for the President to adopt authoritarian patterns of behavior while making it harder for the opposition to put a check on these tendencies.

The reduction of the powers of President following the death of Franjo Tuđman was aimed at removing the elements that may create authoritarian tendencies from the system while preserving some elements of semi-presidentialism. Few autonomous powers of the President were kept. Most of the remaining non-ceremonial powers were conditioned on the prime-ministerial counter-signature. As the presidencies of Stjepan Mesić and Ivo Josipović demonstrate, the President's ability to effectively use these powers is quite limited. Regarding the powers to co-operate with the government in foreign, defense and security matters, the President has some influence but far from being an autonomous actor in foreign, defense and security matters.

By looking at the constitutional provisions, it could be assumed that the largest potential of presidential powers lies in the right to appoint the *formateur* of the government. This is one of the few discretionary powers of the President alongside the state of emergency

powers. However, the attempt of President Mesić to use this power in order to influence the formation of the government after 2007 parliamentary elections proved unsuccessful. But so far there has only been one attempt at doing this. Future presidents might find themselves having a larger influence in the formation of the government.

Probably the main handicap of the President in Croatia after constitutional reform of presidential powers is the duty to resign the membership in a political party. The result of this is that no leader of any major political party wants to resign his party position and lose the real influence within the political system. If party membership was allowed we could expect to see more influential party leaders wanting to strengthen their position by being elected to the office of the President.

Since the President does not possess any strong autonomous constitutional powers that enable him to exercise strong influence on the political processes in regards to the Government or the Parliament, we can conclude that the Croatian system of government is parliamentary in practice. Therefore, Croatian system of government can be considered semi-presidential only under Elgie's minimalist criteria of semi-presidentialism.

## 4. The Role of President in Serbia 1990-2015

### 4.1. *Historical Context of the Transition and the New Constitution*

The transition in Serbia was fundamentally different than the one in Croatia or most other countries in the region. In Serbia the regime change that started in the late 1980s was a transformation away from democracy (Zakošek 2008, 593). The central figure of this transformation was Slobodan Milošević. The transformation of the regime started when Milošević as a hardliner within the League of Communists of Serbia (SKS) defeated his moderate opponents, and formed a populist movement that used the nationalist sentiments around the status of Kosovo to create a broad Serb nationalist movement whose goal was to establish Serb dominance within the Yugoslav federation, or, as a reserve goal, to establish control over territories of Yugoslavia with significant share of Serbs in the population (Zakošek 2008, 593).

After the other Yugoslav republics started preparing for their first multiparty elections, Milošević accepted that a façade of democracy is needed if only as a tactical concession (Zakošek 2008, 593). Thus parliamentary and presidential elections in Serbia were planned for December 1990. Milošević, who already in 1989 won the first direct (though non-multiparty) elections for the President of the Presidency of Serbia, decided to use a referendum to adopt a new, supposedly democratic, constitution (Molnar 2008, 194). The Assembly of Serbia, which was at the time still a single-party assembly, enacted the proposal of the new Constitution which was put on referendum in July 1990. The voter turnout was 78% and the new Constitution was adopted by nearly a 100% approval of the voters (Molnar 2008, 194). This result was most likely achieved through electoral fraud that was a constant characteristic of all elections held in Serbia between 1990 and 2000 (Goati, 2001). Molnar believes that the purpose of such an undemocratic constitution-making process was to act

preemptively in order to avoid that the (ex)-Communist party behind the new Constitution loses legitimacy in the democratization processes that were starting all over Eastern Europe (2008, 196). Therefore, the new Constitution seemingly is quite democratic and liberal, while in fact it was, just like the elections, a democratic façade of an undemocratic regime.

A question arises: why analyze the position of president in the Serbian system of government in the context of democratic systems? The main purpose of this analysis is to provide insight into the role of the president in the system of government of Serbia by analyzing the evolution of this system to its present-day form. The undemocratic regime of Serbia in the 1990s left a permanent mark on the evolution of the system of government in Serbia and so it is important to understand how it worked in order to understand the functioning of the today's political system of Serbia. Also, undemocratic and façade constitutions do have effects on the political system. In the following subchapter I will present the position of the President of the Republic as it was defined in the two Constitutions of Serbia. The subsequent chapter contains an analysis of the actual role of presidents of Serbia in different periods during the last 25 years.

#### ***4.2. Constitutional Powers of the President of Serbia***

The 1990 Constitution of Serbia, unlike the Croatian 1990 Constitution did not create an institution of a very powerful President of the Republic. However, as I will demonstrate in the following subchapter, the President of Serbia was in practice very powerful indeed and not much less than its Croatian counterpart.

This divergence between the formal and the material constitution in Serbia is one of the main differences between the functioning of the system of government in Serbia and Croatia. In Croatia the President's dominant position was firmly grounded in the Constitution, and the loss of this position was also followed by a constitutional reform that formalized this

change in position. Therefore, in Croatia the constitutional and the actual powers of the president were balanced under both constitutional regimes. In Serbia, however, the actual powers of the President always depended extensively on circumstances that were beyond the Constitution.

Before we move to the analysis of the actual role the President played in Serbia from 1990 until today, let us first examine how was the position of the President of Serbia defined in both Serbian constitutions. According to the relevant provisions of the 1990 Constitution the Serbian President has the following position:

- The President represents the Republic and symbolizes state unity (Article 9).
- The President does not appoint and dismiss the government; this power belongs to the unicameral National Assembly (Article 73(10)).
- The elections for the National Assembly are called by the President of the Assembly, and not the President (Article 78).
- The President proposes the candidate for Prime Minister (*formateur*) and justices of the Supreme Court; promulgates laws; conducts foreign affairs and commands the armed forces<sup>16</sup>; proclaims state of emergency if the Assembly cannot convene; issues legislative decrees when appropriate; grants pardons; confers decorations and awards (Article 83).
- The president has a limited legislative veto: may request that the Assembly votes again on the law it passed; if the Assembly passes the law again the President must promulgate it (Article 84).
- The President may request that the Government states its viewpoint concerning questions within its jurisdiction (Article 85).

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<sup>16</sup> In 1992 Serbia formed the Federal Republic of Yugoslavia with Montenegro, and the domains of foreign affairs and defense were (at least officially) elevated to the federal level.

- The President is elected in direct elections for a five year term and no more than twice; he may not perform any other function or professional activity (Article 86).
- The recall of the President is initiated by the Assembly with a 2/3 vote, and the voters decide in referendum; if voters do not recall the President, the Assembly shall be dissolved (Article 88).
- The President may dissolve the Assembly at the proposal of the Government containing justified grounds (Article 89).
- The President may propose amendments to the Constitution (Article 135).

As we can observe, the President's powers are very limited in comparison to the Croatian case at the time. In terms of Shugart's subtypes of semi-presidentialism (2005, 338) the case of Serbia under 1990 Constitution would fall under the premier-presidential type because (1) the Government is exclusively accountable to the Assembly, but (2) the President has a legislative veto and (3) the power to appoint the *formateur*.

In 2006 after Serbia became an independent state following the dissolution of the State Union with Montenegro, a new constitution was adopted. Marković (2006, 5) notes that the new Constitution cannot be considered new since in essence few provisions changed, and the sole purpose of the adoption of this constitution was to score political point by finally abandoning "Milošević's" Constitution of 1990, and to verbally (in the Preamble) "preserve" Kosovo as a part of Serbia.

In light of this it is understandable why the main constitutional provisions regarding the President changed so little (see Table 2). The Government is still elected by the Assembly (Article 99). The President may dissolve the Assembly upon the elaborated proposal of the Government (Article 109). The President appoints the *formateur* (Article 112). President appoints and dismisses ambassadors upon the proposal of the Government (Article 112). The



President commands the Army, and appoints military officers (Article 112). The legislative veto changed only insofar as it now requires that the President provides a written explanation before returning the law to the Assembly for reconsideration. The President may not perform another public function or professional duty (Article 115).

Table 2. The Powers of the Serbian President under the Constitutions of 1990 and 2006

<b>Powers of the President</b>	<b>Constitution of 1990</b>	<b>Constitution of 2006</b>
Directly elected	YES	YES
Duration of term in office	5 years	5 years
Maximum number of terms in office	2	2
Appoints the Government	NO, appoints <i>formateur</i>	NO, appoints <i>formateur</i>
Government accountable to the President	NO	NO
Autonomous right to dissolve Parliament	NO	NO
May issue legislative decrees	YES, conditions attached	YES, co-signs
Special powers during states of emergencies	YES	YES (limited)
Legislative initiative	NO, may propose constitutional amendments	NO, may propose constitutional amendments
Legislative veto	YES	YES
Autonomous right to call referendum	NO	NO
Autonomous appointment of ambassadors	“Conducts foreign affairs”	Upon proposal of government
Commander-in-chief of the armed forces	YES	YES
Allowed to be a member of a political party	<i>Disputable</i> <sup>17</sup>	<i>Disputable</i> <sup>18</sup>

(Source: 1990 Constitution of Serbia, 2006 Constitution of Serbia)

<sup>17</sup> Slobodan Milošević (President of Serbia, 1990-1997) was the president of the Socialist Party of Serbia from the founding of the party until his fall.

<sup>18</sup> Boris Tadić (President of Serbia, 2004-2012) interpreted the Article 115 in the sense that presiding over a political party is neither a public function nor a professional duty.

The recall procedure was replaced by dismissal which is initiated by the Assembly and decided upon by the Constitutional Court (Article 128). If the President resigns from office, the Government terminates (Article 128). The position of the President in state of emergency or war has not significantly changed (Articles 200-201). The President may propose amendments to the Constitution (Article 203).

The only significantly changed provision relates to the appointment of the justices of the Constitutional Court (Article 172). Under the old Constitution the President proposed the candidates for justices to the Assembly. Under the new Constitution the President makes a list of 10 candidates out of which the Assembly appoints 5, and the Assembly makes a list of 10 candidates out of which the President appoints 5. The remaining 5 are appointed by the judiciary.

### ***4.3. Serbian Semi-Presidentialism in Practice***

#### **4.3.1. Milošević Presidency (1990-2000)**

Milošević came to power in Serbia in 1987 as a leader of the League of Communists of Serbia. Molnar refers to this first period as post-totalitarian (2008, 123). During this period Milošević establishes his rule over Serbia by exploiting the nationalist sentiments that many Serbs had towards Kosovo, and on this sentiment Milošević builds his populist image. Unlike Franjo Tuđman in Croatia who came to power only in 1990, Milošević already established his rule in Serbia, and did not require democratization and transition but only a façade democratization to stave off real democratizing impulses. To this purpose a new Constitution, that was formally relatively democratic, was proposed on a referendum. Only after the adoption of the Constitution did Serbia hold its first multiparty elections. The period of Milošević rule after 1990 elections Molnar calls the period of democratic despotism (2008,

124). This period was marked by an introduction of some democratic elements into the state and society but the communist pattern of government and economic management was never fully abandoned. The regime was not extremely repressive, at least not until the final years of Milošević rule. Limited pluralism can be seen in several notable mass public protests (Molnar 2008, 168), especially in 1992 and 1996/97.

Milošević's legitimacy rested on nationalist rhetoric and policies and on wars that Serbia directly or indirectly waged in Croatia, Bosnia-Herzegovina, and later Kosovo. Molnar notes that Milošević constantly needed the perception of ongoing crisis that threaten the interest of the Serbian nation in order to legitimize his rule (2008, 125). After the defeat in Croatia, and a partial defeat in Bosnia in 1995, the regime became more defensive. Milošević at that time "was strong enough to maintain the crises that supported his legitimacy, but not strong enough to resolve them in his own favor and establish full control over the entire territory of the Federal Republic of Yugoslavia" (Molnar 2008, 125).

Why did Milošević choose a semi-presidential system? Dušan Pavlović<sup>19</sup> believes that it was all due to the need of getting popular legitimacy for his rule, and due to path dependence. Milošević was already elected as President of the Presidency of Serbia in direct although non-democratic elections in 1989. After gaining a position of a President there was no way back to the position of the Prime Minister.

Milošević's regime was characterized by several additional features. First, the electoral system was changed for almost every election. The first elections of 1990 were held under a majoritarian system similarly as in Croatia. It had a similar effect. Milošević's Socialist Party of Serbia (SPS) won more than three quarters of seats in the unicameral Assembly (Zakošek 2008, 596). However, the next (early) elections of 1992 were held under

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<sup>19</sup> Interview with Dušan Pavlović, 15 May 2013.

a proportional system. From then on, the system would remain proportional until present day. The d'Hondt formula and the 5% threshold remained a constant feature of the electoral system. The only thing that changed was the number of electoral districts. In 1992 and 1993 Serbia was divided in 9 districts, and in 1997 elections this was increased to 29. After the ousting of Milošević, Serbia became one single district which was first applied in 2000 elections which never changed afterwards. Last intervention in the electoral system was made in 2003 when a natural threshold was adopted for national minority parties (Orlović 2007, 96).

Connected with the electoral system is the second feature of the regime – the party system. Unlike Croatia where the manipulation with electoral system allowed the HDZ to become a predominant party, Milošević's SPS never again gained an absolute majority in the Assembly, and was forced to enter into coalition with other parties of which the most stable partner was the Serbian Radical Party (SRS) of Vojislav Šešelj, with which SPS first formed an informal coalition which in 1997 turned into a formal one (Zakošek 2008, 596). This was especially peculiar since the SPS was supposedly a party of the left and the SRS was a party of the (extreme) right, but similar goals kept them together.

The third feature was a thoroughly personalized regime where the institutions did not matter but the personal will of Slobodan Milošević<sup>20</sup>. This personalized regime was founded on the popular legitimacy that was extremely important to Milošević<sup>21</sup>. Várady claims that Milošević originally took the position of the President of Serbia, and not the President of Federal Republic of Yugoslavia, because he could not be a national(ist) leader as a President of Yugoslavia. However, Várady adds that Milošević also cared about keeping an image of a

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<sup>20</sup> Interview with Milan Podunavac, 15 May 2013.

<sup>21</sup> Interview with Tibor Várady, 27 May 2013.

democratic leader. Therefore, in 1997 after his second term as the President of Serbia expired, Milošević opted to become the President of Yugoslavia.

The Federal Republic of Yugoslavia was formed in 1992 between Serbia and Montenegro to replace the now defunct Socialist Federative Republic of Yugoslavia. Várady claims<sup>22</sup> that the Federal Republic of Yugoslavia was formed more as a provisional solution than a long-term project, and her fate depended on the outcome of the wars Milošević's regime was engaged in. The institution of the President of Yugoslavia was a very weak one under the provisions of the 1992 Constitution of FRY. Also, the President of Yugoslavia was elected by the Federal Assembly (Article 97 of the Constitution of FRY), so this system was not semi-presidential in design.

There were two reasons why Milošević opted for the federal presidency. (1) Amending the 1990 Serbian Constitution is very difficult since it requires a 2/3 vote in the Assembly and a mandatory referendum that requires a majority of more than half of the total number of voters (Articles 132, 133). (2) Montenegro was growing more independent and Milošević becoming the President of FRY would strengthen the Federation and keep Montenegro in it (Molnar 2008, 125). So, in 1997 Milošević became the President of Yugoslavia, and the President of Serbia became Milan Milutinović. Goati (2001, 120) points out that Milošević wanted to weaken the position of the President of Serbia to avoid having a potential competitor with significant powers as the President of Serbia is and getting Milutinović elected was a part of this plan.

The personalized character of Milošević's regime became once more evident when Milošević assumed the office of the President of Yugoslavia. Violeta Beširević<sup>23</sup> noted that as Milošević moved to the federal level, all the power moved with him, and the President of

<sup>22</sup> Interview with Tibor Várady, 27 May 2013.

<sup>23</sup> Interview with Violeta Beširević, 29 May 2013.

Serbia was no longer a powerful institution although his constitutional powers remained the same. Davor Boban<sup>24</sup> compared this to Vladimir Putin in 2008, when the power in Russia *de facto* moved from the President to the Prime Minister without changing the constitutional provisions.

After the NATO intervention in Serbia in 1999, Milošević's regime was losing support. In order to increase his personal legitimacy Milošević had the Yugoslav Constitution amended in July 2000 to allow for the direct election of the President of Yugoslavia. Although Milošević's term had not yet expired, early presidential elections were called. The elections were held on 24 September 2000. Milošević was defeated by Vojislav Koštunica, the candidate of the Democratic Opposition of Serbia (DOS). After an attempt to annul the elections mass protests broke out. On 6 October 2000 Milošević resigned, and Vojislav Koštunica took over the office of the President of Yugoslavia. In 2001 Milošević was transferred to The Hague to stand trial for war crimes. He died in The Hague prison in 2006.

#### **4.3.2. Presidency of Serbia between 2000 and 2004**

Following Milošević ousting in October 2000, new parliamentary elections for the Serbian Assembly were held in December and Democratic Opposition of Serbia (DOS) received almost 2/3 of votes. The new Prime Minister became Zoran Đinđić. Democratic Opposition of Serbia (DOS) was a wide coalition of numerous parties who were united over the goal of removing Milošević from power. However, internal differences between the individual parties of this coalition were significant. The two major parties of DOS were the left-liberal Democratic Party (DS) of the Prime Minister Đinđić, and the right-conservative Democratic Party of Serbia (DSS) of the President of Yugoslavia Koštunica.

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<sup>24</sup> Interview with Davor Boban, 23 May 2013.

While in opposition, DOS parties set as their first task the adoption of a completely new Constitution to replace the 1990 Constitution. However, once they became the government, DOS could not agree on the new Constitution<sup>25</sup>. Milan Podunavac<sup>26</sup> believes that the largest issue was the completely opposite relationship to the past between DS and DSS. While Koštunica's DSS advocated the policy of institutional continuity, Đinđić's DS was more in favor of radical solutions, and radical breakup with the past. Also, Đinđić as the Prime Minister had an interest in strengthening the position of the Prime Minister and his government and was not prone to constitutional reforms that would strengthen or even keep the same the powers of the President<sup>27</sup>. Molnar (2008, 189-190) believes that the new political elite found the old Constitution useful, and were not interested in changing it, especially given that the amendment procedure required a referendum.

Regarding the system of government in this period, the situation was complicated. The old Serbian President Milan Milutinović elected in 1997 was still in office and will remain there until the expiry of his term at the end of 2002. Since he had no support from any relevant party, and since he was expecting to be transferred to The Hague tribunal on the charges of war crimes, Milutinović was completely inactive during the rest of his term in office. On the other hand, Zoran Đinđić was using the powers of the government quite extensively. This period could therefore be marked as a period of *de facto* parliamentarism in Serbia was it not for Vojislav Koštunica. Koštunica as the federal President retained the control over the military and security apparatus, and as a leader of one of two main parties of the ruling coalition Koštunica had a large influence on the government. In a way we could say that Koštunica was *de facto* President of Serbia since Montenegro was not particularly

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<sup>25</sup> Interview with Violeta Beširević, 29 May 2013.

<sup>26</sup> Interview with Milan Podunavac, 15 May 2013.

<sup>27</sup> Interview with Dušan Pavlović, 15 May 2013.

interested in staying in such an arrangement, and the large discrepancy between the populations of the two Republic made FR Yugoslavia *de facto* an extended Serbia.

In 2003 Prime Minister Đinđić was assassinated by members of the state security apparatus. State of emergency was initiated and Serbia soon got a new Prime Minister, Zoran Živković, who was far less radical than his predecessor. Few months after the assassination of Đinđić DOS fell apart, although various parties that were part of DOS will continue to control the government for an entire decade.

After Milutinović's term in office of the President of Serbia expired in December 2002 the following year and a half Serbia was without a President. This was due to the legal requirement that presidential elections are valid only if the turnout is larger than 50 per cent. Three presidential elections were held in this period and none satisfied the required voter turnout condition. FR Yugoslavia was abolished in 2003 and replaced by a loose confederation between Serbia and Montenegro. Koštunica lost the office of the federal President. Thus, for about a year Serbia had neither its own President, nor the federal President as a 'substitute'. The duties of the President were taken over by the Presidents of the National Assembly who were acting Presidents of the Republic.

#### **4.3.3. Tadić Presidency (2004-2012)**

In 2004 Serbia finally elected a President. The new President became Boris Tadić – Đinđić's successor at the head of the Democratic Party. At the same time, Vojislav Koštunica became the Prime Minister. During Tadić's term as the President, in 2006 Montenegro proclaimed independence which also meant that Serbia became an independent state first time after 1918.



In 2006, a new Constitution was adopted. The main rationale in adopting the new Constitution was to constitutionalize the issue of Serbian sovereignty over Kosovo (Molnar 2008; Kozma 2011). The new Constitution as it was discussed above did not introduce a lot of changes into the institutional framework of the state. Dušan Pavlović believes<sup>28</sup> that Tadić and Koštunica (i.e. the President and the Prime Minister) made an arrangement not to significantly change the position of either the Government or the President, although the Prime Minister's position was strengthened.

Regarding Tadić's presidency, there are two major ways he used his powers. In his first term as the President (2004-2008) Tadić was relatively inactive due to the fact that cohabitation with Koštunica as Prime Minister did not leave much room for action. During this time President Tadić did not interfere in the affairs of the Government. This position radically changed in 2008 after Tadić had won his second term, and at the same time his party won the elections and became the main party of the government coalition. Tadić never quit his position of the president of the Democratic Party during his entire presidency, although the Article 115 forbids the President to perform a public function or any other professional duty. Tadić argued that party functions do not fall under these categories. Milosavljević (2012, 16) finds that political parties are not public bodies but are also not private associations. Beširević holds that a function in a political party is a public function, while Pavlović disagrees<sup>29</sup>. The Croatian constitution resolved this issue by explicitly stating that party functions and membership are allowed (1990) or not allowed (2000).

Tadić using his position as Party President appointed a relatively passive Prime Minister and during four years actively participated in all major affairs of the Government. The President does not have the power to appoint the Prime Minister and ministers but Tadić

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<sup>28</sup> Interview with Dušan Pavlović, 15 May 2013.

<sup>29</sup> Interviews with Dušan Pavlović, 15 May 2013, and Violeta Beširević, 19 May 2013.

effectively gained this power indirectly through the control over the main ruling party. Pavlović and Stanojević (2010, 65) see in this the proof that semi-presidentialism in Serbia functions according to the “principle of alternation”. In other words, if the President is supported by an assembly majority he is a powerful president (e.g. Milošević, Tadić (2008-2012)). If he does not enjoy such a support he is a ceremonial president (Milutinović, Tadić (2004-2008)).

The second major way Tadić used his Constitutional powers was in 2012 when he resigned from office before the expiration of his second term in order to have presidential elections held simultaneously with the parliamentary elections. This move was also contentious since Tadić was now running for his third term as the President. Tadić claimed that, since he was first elected before the new Constitution, and before the state became independent, this would actually be his second term under the new circumstances. Regardless of the validity of such an argument, Tadić found another way for a President to use his powers. In this case the move failed. In 2012 presidential elections Tadić lost to Tomislav Nikolić – the president of the Serbian Progressive Party (SNS), which was formed in 2008 out of a faction of the Serbian Radical Party.

#### **4.3.4. Nikolić Presidency (2012- )**

Tomislav Nikolić who previously was a counter-candidate to Tadić in both second rounds of presidential elections in 2004 and 2008 finally won the presidency. Like Tadić he was also a president of a major party. Unlike Tadić, Nikolić quit his position within his party, and uses his position of the President mostly in a ceremonial manner. Dušan Pavlović believes<sup>30</sup> that the election of Tomislav Nikolić showed the importance of presidents in the political system of Serbia. In 2012 when Nikolić won the elections, the parliamentary

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<sup>30</sup> Interview with Dušan Pavlović, 15 May 2013.

elections were already held. But the Socialist Party of Serbia waited for two weeks before deciding on its coalition partner. If Tadić won the elections SPS would form a coalition government with DS. Since Nikolić won the elections SPS formed a coalition government with SNS.

#### **4.4. Concluding Remarks**

The Serbian experience with semi-presidentialism is different from Croatian. The powers of the President according to the Serbian Constitution of 1990 were limited in comparison to the powers of the Croatian president. However, in practice there was little difference. President Milošević was just as powerful as President Tuđman which was the consequence of a high level of personalization of political decision making.

After the fall of Milošević the Serbian Constitution was not amended. Instead the position of the President remained the same until the new 2006 Serbian Constitution. However the position of the President in the new Constitution did not change significantly. Nevertheless, return to despotic rule alike Milošević's is unlikely because of the major and irreversible changes in the political and societal environment.

The main powers of the Serbian president are the right to appoint the government *formateur*, and a legislative veto which provides the president with an active role in the legislative process, although the veto in itself is quite limited in nature, since the Assembly can easily bypass it by passing the same law again. However, it is not always easy to gather the majority for passing some law. What was accomplishable one day may not be accomplishable the other. Therefore, effective use of the veto and the *formateur* powers always depends on other circumstances but in the right circumstances the president can make good use of these powers.

The third power is not really a power but an ambiguous provision on the President's right to perform political party functions. A President that controls a major party can become a central figure in the political system even if the Constitution does not confer many other significant powers on the President.

## 5. Conclusion

In this study I analyzed the evolution of the semi-presidential systems in Croatia and Serbia from 1990 until 2015. The main findings are the following: Both Croatia and Serbia introduced a semi-presidential system of government in 1990. In Croatia this choice was motivated by a need to have a decisive and efficient decision-making institution in light of the upcoming instability and war. In Serbia introduction of semi-presidentialism was motivated primarily by the need of Slobodan Milošević to be legitimized as a national leader. Also, this was a result of path dependence since Milošević was already a President when the Constitution was adopted, and it was difficult to conceive that he could be down-graded to a prime-ministerial level.

Croatian semi-presidentialism in 1990s was of a presidential-parliamentary subtype because the President had autonomous power to appoint and dismiss the Government. On the other hand, Serbian semi-presidentialism was of a premier-presidential subtype because the Government was accountable solely to the Assembly. However, in practice Milošević had much more extensive control over the institutions of the state than what the constitutional text would imply. In both countries tendencies towards authoritarianism emerged. In Serbia they were present from the beginning, while in Croatia they emerged as President Tuđman slowly consolidated his powers in the context of war and transition.

The death of Franjo Tuđman and the resignation of Slobodan Milošević ended the authoritarian rule but the two countries diverged in how they dealt with the institutional framework of semi-presidentialism. In Croatia, the Constitution was soon amended removing almost all of the autonomous powers of the President, and reducing the President to a position that was slightly stronger than pure ceremonial but without any considerable powers left. In Serbia, the two main parties of the ruling coalition could not agree on the course of

Constitutional reforms which were postponed until 2006 when the new Constitution was adopted for political reasons related to the legal struggle over the sovereignty over Kosovo. However, the new Constitution did not introduce any significant changes into the institutional framework, and so the Serbian President operates today according to a similar set of rules as before the new Constitution.

The experience of the Presidents that took office after 2000 is different in Croatia and Serbia. In Croatia, neither Mesić nor Josipović managed to exert a significant influence on the Government or the Parliament. In Serbia, Tadić managed to become the central political figure during the period of consolidated majority government when the party he was a president of controlled the parliament majority and the government. Tadić was able to establish such a position due to an ambiguous provision in the Constitution that does not explicitly forbid the President to be a member or a functionary of a political party. In Croatia, where such a rule is explicitly stated, the President does not have the same possibility. Therefore, the system of government in Croatia can be characterized as parliamentary while the Serbian system of government can be characterized as semi-presidential. My hypothesis stated in the introduction (that the political systems of Croatia and Serbia cannot be considered parliamentary because in both countries the Presidents of the Republic are not passive actors within the system since they have some non-ceremonial powers which give them an ability to influence political processes in a manner that the presidents in pure parliamentary systems do not have) is therefore rejected in the case of Croatia, and accepted in the case of Serbia.

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