

SPANISH CONSTITUTION – A MODEL OF CONSTITUTIONAL PARLAMENTARY MONARCHY (With a Review of Actuality of this Model in Serbia Today)

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CONTENTS

1. Constitutional Parliamentary Monarchy and Democracy.
2. Spanish Constitution - a Model of Constitutional Parliamentary Monarchy.
3. Current Interest for Reestablishment of the Constitutional Parliamentary Monarchy in Serbia.

The search for a perfect form of government has been the permanent effort of thinkers, scientists and statesmen, from the Ancient Greeks until the contemporary enthusiasts of democracy and a "better world".

Every age had offered its solutions to the problem and had its exponents of discovered systems and principles of government. This quest for the best model has never ended, not even today when humanity has already made the step into the twenty-first century. This resulted in awareness that there is no best and perfect model, at least not

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the one appropriate to all the times, all the societies and all the circumstances. However, this also gave rise to the awareness that certain forms of government are better, more democratic, while some are worse, less democratic, or even not democratic at all, and also that some are appropriate to one, and some to another situation.

1. Constitutional Parliamentary Monarchy and Democracy

I. Having their origin in the Antiquity, both the monarchy and the republic (being "equally ancient") were given various meanings during their long history.

However, while the republic is a form of government appearing both in autocratic and democratic systems during history (from aristocratic and democratic republics in the Ancient Greece, onwards), monarchy has for centuries been a part of autocratic systems, only changing in form - from the ancient, absolutist monarchies to the medieval, etc.

At the time of the rising of modern state, the ideals of the Great Revolutions taking place at the end of the eighteenth century, were associated to the idea of the republic, turning the republic into a symbol of freedom, the same as the monarchy (absolute) was the symbol of the hateful autocratic system.

However, by the emergence of modern state (earlier in England, even much earlier) monarchy started to change. At first, (earlier in England, later in other countries) the parliamentary system began to evolve under its patronage, and, following the Great French Revolution, also the first forms of constitutional monarchy. All this paved the road to democratisation of the entire political system in a series of countries. Abandoning of the principle *regis voluntas suprema lex este* (the king's will shall be the highest law), subjection of the monarch to the constitution, limitation of his authority, involvement of the parliament in the of law-making process, etc., were some of the main characteristics of this new form of monarchy, but also of the emerging democratic political system.

The increasingly consistent implementation of the great democratic idea "that in order to prevent the abuse of power, things have to be ordered in such a way that one power controls the other", originating in Montesquieu's writings, and inspired by the tendency to destroy, i.e. prevent the monopoly of power in the hands of the former absolute monarchs and various kinds of absolutists and dictators in the republican systems, as well as the passing of constitutions as superior laws (*lex superior*) in an increasing number of countries, resulted not only in widening and strengthening of the parliamentary monarchy, but also in the emergence and development of the constitutional monarchy, and not only the re-model of monarchy was created - the constitutional parliamentary monarchy.

So, the monarchy (constitutional parliamentary monarchy), and not only the republic (democratic), has proved to be a form of government appropriate to setting up and development of democratic political systems.

¹ Slobodan JOVANOVIĆ, *Država* (State), Ed. Geca Kon, Belgrade 1936, Book two, p. 222.
² MONTESQUIEU, *De l'esprit des lois*, Garnier Frères, Paris, p. 142.

II. So, nowadays, the issue of republic and monarchy as a question of democracy or autocracy, contrary to the still prevailing conformist opinion, cannot be raised at all. In other words, the belief that the republic has a democratic content and that it is the only form proper to the development of a democratic political system, i.e. the belief that monarchy has a non-democratic signification and that it is the form of government only of autocratic systems, does not correspond to the actual situation today.

Namely, it may easily be proved that in the modern state there are both republican democratic systems, but also clearly non-democratic, i.e. autocratic and even totalitarian systems (the fascist states, military and other dictatorships in Latin American, Arab and African countries, etc., as well as in all the former and nowadays socialist countries). On the other hand, in the modern there may be found monarchies in countries with autocratic systems (such as those in some of the Asian and African countries, particularly the Arab ones, where the traces of various forms of monarchical absolutism have not yet disappeared), but also in countries with obviously democratic systems. In the latter (countries of Western and Northern Europe), monarchy exists in the form of constitutional parliamentary monarchy.

Consequently, having in mind the current state of affairs, it may be concluded that nowadays democracy in the modern state is successfully developing in republics with parliamentary, presidential and assembly system, as well as in parliamentary monarchies.

2. Spanish Constitution - a Model of Constitutional Parliamentary Monarchy

Nowadays the constitutional parliamentary monarchy is a modern, democratically organised state. As has been said, it proved in practice to be a system beneficial to democracy and to everything democracy represents and means - rights and liberties of man and the citizen, free and fair elections, multi-party system, rule of law, etc. Therefore, constitutional parliamentary monarchy, in fact, is a proper basis and framework for functioning of democratic political life, both from the point of the process of government and relations of the executive and legislative power, and from the point of democratic elections and replacement of political parties in power, as well as from the point of functioning and mutual relation of political parties generally, and then also from the point of participation of citizens in political life and political process.

Democratic significance and value of constitutional parliamentary monarchy is confirmed by several of its characteristic features and qualities. Those features and qualities of constitutional parliamentary monarchy are put into practice particularly by the Spanish Constitution (of December 29, 1978), so that it may be said that, the model of constitutional parliamentary monarchy Spain today is a remarkable example of successful and exceptionally democratic constitutional parliamentary monarchy³.

³ The Spanish Constitution (Article 1, item 3): "The political form of the Spanish State is the parliamentary monarchy". See more on this, FRANCISCO FERNÁNDEZ SEGADO, *El sistema constitucional español*, Editorial Dykinson, Madrid 1997, p. 126 et seq.

I. In constitutional parliamentary monarchy the powers and prerogatives of the monarch are legally settled and regulated. This is done by means of the constitution, and possibly by means of laws pursuant to the constitution (exceptionally, as is the case in England, by means of customary and other kinds of rules). This means then, that the authority of the monarch is based on the constitution⁴, that it has its ground but also its limits in the constitution, so that monarch neither has nor can have any other authority but the one recognised by the constitution. There is a well-known Latin saying: *nihil aliud potest rex quam quod de iure potest* (the king may do only what the law permits).

In this respect, the provision of the Spanish Constitution is quite explicit: "The King... exercises the functions expressly attributed to him by the Constitution and the laws" (Article 56, item 1 in fine)⁵. It should be mentioned in passing that such a definition is a direct consequence of the one principal and fundamental characteristic of the constitutional parliamentary monarchy, formulated by the Spanish people from the following way: "National sovereignty belongs to the Spanish people, but is the representation of the powers of the state" (Article 1, item 2)⁶. This means then that in constitutional parliamentary monarchies the monarch is not sovereign, but is the representative of the nation⁷. So it was concluded (in case of Belgium, but this fully applies to every constitutional parliamentary monarchy) that "the King is the King owing to the Constitution"⁸, and also the following: "It is the Constitution that states who is the King, what is his status and which are his functions"⁹.

II. The second aspect of the legal regulation of the monarch's authority and prerogatives in constitutional parliamentary monarchy is the subjection of the monarch to the Constitution. The Spanish Constitution expressly establishes that "... public powers are subject to the Constitution and the legal order" (Article 9, item 1), which includes the General Cortes, the Government and the other state authorities, but, in the full meaning of the word, also the Spanish King. In this respect, there is a well-known phrase "... king does not act on his own will, but according to legal rule"¹⁰.

With this, the idea of the rule of law becomes the constitutive element of constitutional parliamentary monarchy. This then is also a barrier to potential abuse of power by state authorities, including the monarch himself. In Spain, the King takes oath before the General Cortes. This act, as well as the text of the oath, consistently

⁴ Slobodan JOVANOVIĆ, *Ustavno pravo* (Constitutional Law), Ed. Geca Kon, Belgrade 1924, p. 24.

⁵ See also the Constitution of Belgium (1831, 1994): "The King has no other powers save those formally vested in him by the Constitution and the special laws passed in accordance with the Constitution itself" (Article 105); see also, Francisco FERNÁNDEZ SEGADO, *El sistema constitucional español*, p. 107 et seq. This is somewhat differently, formulated by the Constitution of Belgium as well: "All powers stem from the nation. They are exercised in the manner laid down by the Constitution" (Article 33).

⁶ See also, P. LALUMIÈRE - A. DEMICHEL, *Les régimes parlementaires européens*, Ed. Presses universitaires de France, Paris 1978, p. 278; Jacques VELU, *Droit public*, Ed. Bruylant, Bruxelles 1986, Tome I, p. 80.

⁷ Robert SENELLE, *La Constitution belge commentée*, Ed. Ministère des affaires étrangères, Volume 3, extérieure et de la coopération au développement, Bruxelles 1974, p. 268.

⁸ Francis DELPÉRÉE, "La Couronne de Belgique", in journal *Revue Européenne de Droit Public*, Volume 3, No 2, hiver 1991, p. 348.

⁹ P. LALUMIÈRE - A. DEMICHEL, *Les régimes parlementaires européens*, p. 277.

points to his subjection to the Constitution, but also to his general position ("...loyally to perform his duty, to protect the Constitution and the laws and to respect the rights of citizens and autonomous communities", Article 61, item 1).

III. Further, the authority and prerogatives of the monarch in constitutional parliamentary monarchy are limited. The development of monarchy after the period of absolute monarchies was characterised by constant reduction of monarch's powers and the loss of numerous prerogatives, resulting in a constitutionally established (limited) body of his functions and powers in constitutional parliamentary monarchy. Compared to the absolute monarchy, this body of functions and powers is drastically reduced in the constitutional parliamentary monarchy, already by the mere fact of separation of powers and distribution of functions presumed by this principle, although, as Guizot said at one time, "the throne is not an empty chair"¹¹. In Spanish constitutional theory the authority of the Spanish King is distributed into three groups: symbolic function, function of moderation and function of arbitration, in addition to other competences provided by the Constitution¹².

From the legal point of view, in Spanish constitutional parliamentary monarchy the monarch is the head of the executive which, however, in no sense means that the whole executive lies in his hands, i.e. that he actually controls it. His executive powers are limited not only by certain competences of the Government and the ministers, but also by the fact that the Government and the ministers, as a part of the executive, are responsible to the Parliament. The Spanish Constitution particularly states that the King shall propose, after consulting the representatives nominated by political groups represented in Parliament and through the President of the Congress, the candidate for the Presidency of the Government; in case the proposed candidate has been granted confidence by the Congress, the King shall appoint him President of the Government (also dismiss him following the procedure provided by the Constitution); the King shall appoint and dismisses members of the Government upon proposal of the President of the Government; the King receives resignation of the Council of Ministers; appoints to civil office and awards honours and distinctions in accordance with the law; acquires information regarding affairs of the state and, for that purpose, presides over the sessions of the Council of Ministers when deems this appropriate at the request of the President of the Government (Article 62, items d, e, f, g, Article 99, items 1, 3, Article 100, Article 114).

In addition, the King of Spain is the supreme commander of the armed forces. He accredits ambassadors and other diplomatic representatives, and foreign representatives are accredited with him. He is authorised to express agreement of the state to international commitment by means of treaties according to the Constitution and statutory law, and upon previous consent of the General Cortes. The King is authorised to declare war and make peace (Article 62, item h, Article 63).

¹¹ Quoted from Maurice DUVERGER, *Institutions politiques et droit constitutionnel*, Ed. Presses universitaires de France, Paris 1965, p. 187.

¹² Francisco FERNÁNDEZ SEGADO, *El sistema constitucional español*, p. 556 et seq.

In several cases, the Constitution entrusts the King with the authority to elect or appoint: the members of the General Judicial Council, President of the Supreme Court (upon proposal of the General Judicial Council), President and the members of the Constitutional Court, etc. (Article 122, item 3, Article 123, item 2, Article 124, item 4, Article 159, item 1, Article 160).

In the legislative sphere the King has the power to sanction and promulgate laws. Namely, the King shall sanction, within fifteen days, all the laws adopted in the General Cortes, promulgate them and order their publication without delay (Article 62, item, a, Article 91)¹³. He also schedules referendum upon the proposal of the President of the Government previously empowered by the Congress of the Representatives. In addition, a political decision of special importance may be put on referendum. Referendum has advisory character (Article 62, item c, Article 92).

In two strictly listed cases, the King of Spain may dissolve the Parliament. Namely, the President of the Government, following the debate in the Council of Ministers and under his own responsibility, may propose dissolution of the Congress, Senate or the General Cortes, which the King shall carry out by his decree, also determining the date of the elections. The President of the Government may not submit this proposal in case of an on-going procedure for vote of non-confidence, and the new dissolution may not be undertaken within a period of one year since the previous dissolution, except in case of dissolution (of both the Chambers) the King undertakes because within two months since the first voting on formation of government no candidate had received confidence in the Congress (Article 115, item 1, Article 99, item 5).

The mentioned powers and prerogatives of the monarch in Spain (which is also essentially the case with other constitutional parliamentary monarchies in Europe) are thus considerably limited, even more restricted than the powers and functions of the president in many of the democratic republics, particularly those with the presidential system. However, it would be wrong to assume that the monarch in constitutional parliamentary monarchy has lost the essential constitutional position in the system of government, and that he only has a symbolic role in the political life of the country¹⁴. By losing his previous authority and prerogatives, monarch has acquired "the authority of another sort" (M. Prelot)¹⁵. This is

¹³ As regards contents, the Constitution of the Kingdom of Netherlands contains the same authority (duty) of the King: "A draft-law shall become a law when adopted by the Parliament and sanctioned by the King" (Article 87, item 1), also the Constitution of Belgium: "The King sanctions and approves the laws" (Article 109). In Belgian constitutional theory there is an opinion that "the King may refuse, in theory, to sanction a draft-law adopted by the Chambers", but it is "practically impossible that the King should use his right of veto by refusing to sanction a law adopted by the Parliament." Sanction and promulgation then are automatically subsequent to voting for a draft-law in Parliament (Robert SENELLE, *La Constitution belge commentée*, p. 246). In Great Britain the monarch is (formally) vested with the right to refuse to sanction a law adopted in Parliament, but in practice he never refuses his consent to adopted law. The last time the English monarch used this right was as long as in 1707.

¹⁴ See also opinions: Francis DELPÉRE, *La Couronne de Belgique*, Paris 1950, p. 284 et seq. Harold J. LASKI, *Le gouvernement parlementaire en Angleterre*, Ed. Presses universitaires de France, Paris 1950, p. 284 et seq.

¹⁵ According to Marcel Prelot's opinion this lead to reinforcement of monarchy, and he explains this by the fact that "the parliamentary regime allowed reconciliation of two theoretically opposite elements, monarchical form at the top, and democratic stimulation at the bottom", in book Raymond FUSILIER, *Les monarchies parlementaires*, Ed. Les éditions ouvrières, Paris 1960, p. 15.

a consequence of what Bagehot has long ago succinctly formulated as the three rights of the monarch: "The King has the right to know; the King has the right to encourage; the King has the right to warn"¹⁶.

IV. The Institution of Counter-Signature. Constitutional parliamentary monarchy is not a system of personal power. The structure of constitutional parliamentary monarchy is not and cannot be the ground for personalisation of power, i.e. for incarnation of power in a single person, and consequently also for instituting of any kind of personal power system-dictatorship, despotism, and the like.

Namely, in addition to the already mentioned factors (legal regulation of powers and prerogatives of the monarch, subjection of the monarch to the constitution, limitation of his powers and prerogatives), especially important factor, representing the barrier to establishing of any kind of personal order, lies in the fact that the monarch may only exercise his constitutional authority if all his acts are signed by the President of the Government or the ministers (the institution of counter-signature). As a consequence, it is their responsibility for such acts before the Parliament, before which they are responsible anyway¹⁷. Moreover, the opinion expressed in theory that the monarch may exercise his authority only "in accordance with the policy set up by the Cabinet" (R. Fusilier)¹⁸, seems to be acceptable. However, although it is the fact that the monarch may not act on his own, it is also the fact that his competences may not be performed by anybody else. This speaks then in favour of a conclusion that he neither is, nor may be a passive factor in the process of government and creation of policy, but an inevitable (and active) partner in such a process. It is even more so if we take into account the authority of his status and his role in general, particularly his relations to the Government and the ministers¹⁹.

Moreover, all this gives a completely different meaning to the rule on personal inviolability and irresponsibility of the monarch characteristic of constitutional parliamentary monarchy. In other words, the rule on personal inviolability and irresponsibility of a monarch has no effect upon his exercise of power. All this vindicates an old (but up-to-date) saying, according to which "The King reigns, but does not rule" (Rex regnat, sed non gubernat). It is here that the deeper meaning of the role of a monarch in the process of governing a country with constitutional parliamentary monarchy should be looked for.

Exactly in this sense the Spanish Constitution establishes the way (and meaning) of realisation of the prerogatives of the monarch. So, according to the Constitution, the King's personality is inviolable and he may not be held responsible. His acts have always to be counter-signed, and without counter-signature they have no validity (except in cases of appointment and relief of civilian and military members of his

¹⁶ Quoted from the book, Raymond FUSILIER, *Les monarchies parlementaires*, p. 15.

¹⁷ See also, P. LALUMIÈRE - A. DEMICHEL, *Les régimes parlementaires européens*, p. 293 et seq; Raymond FUSILIER, *Les monarchies parlementaires*, p. 40 et seq; Constantijn A.J.M. KORTMANN - Paul P.T. BOVEND'EERT, *The Kingdom of the Netherlands*, Ed. Kluner Law and Taxation Publishers, Deventer-Boston 1993, p. 5, 60 et seq.

¹⁸ Raymond FUSILIER, *Les monarchies parlementaires*, p. 41.

¹⁹ See also, Francis DELPÉRE, "La monarchie belge", in journal *Revue Internationale de Politique comparée* Volume 3, No 2, 1996, p. 283 et seq.

Household). The King's acts have to be counter-signed by the President of the Government and, in the given case, by the competent ministers, and in the case of nomination and appointment of the President of the Government, as well as in the case of dissolution of both the Chambers, his acts have to be counter-signed by the President of the Congress. The persons who have counter-signed King's acts shall be responsible for them (Article 56, item 3, Article 64, Article 99, item 5)²⁰.

V. In addition to the mentioned traditional elements (characteristics) of the constitutional parliamentary monarchy, what is characteristic of this system and what particularly contributes to securing and holding out of the balance between the legislative and executive power (which in fact is the essence of separation of powers as the basis of parliamentary system), is the true role and general position of the monarch in the system, as the symbol of unity and continuity of the state, particularly his position above the political parties.

In constitutional parliamentary monarchy the monarch is, factually, a person above the political parties. He does not incline to any of the political parties, and is consequently above the party interests. So, it may be assumed that the principle underlying his activity is "strict political neutrality"²¹, which is undoubtedly a requirement necessary for realisation of his function of representing and protecting of general interests of the citizens and the state.

As a person above the political parties, the monarch in constitutional parliamentary monarchy is a neutral (and objective) factor in relation to political parties, and in performing his constitutionally determined activities does not take party sides. This enables him to moderate the party conflicts in political and parliamentary life and secure implementation of the rules of parliamentary system in the domain of activity of the parties in the Government and the Parliament²². So in the process of forming the Government, the monarch shall respect the majority rule, and therefore follow the opinion of the parliamentary majority, in the same way as he shall respect the initiative of the Government in case of dissolution of the parliament, etc. The opportunity to accomplish his role of the mediator and even the arbitrator in the political process of the country is also supported by the opportunity of the monarch to make initiatives, to express his opinions, to warn, to give advice, etc. In addition to what has been said, this constitutes the basis of his active role in political life generally.

Due to his general status and the position above the political parties, to his manner of acting as well as to the general body of powers and prerogatives, the monarch

²⁰ See also, Francisco FERNÁNDEZ SEGADO, *El sistema constitucional español*, p. 549 et seq. The Constitution of Belgium provides: "The King's person is inviolable; his Ministers are responsible" (Article 88) and "No act of the King's is effective unless it is countersigned by a Minister who, doing so, renders himself responsible therefore" (Article 106). Almost identical provisions are contained in the Constitution of the Kingdom of Netherlands: "The King shall be inviolable; the ministers shall be responsible" (Article 42, item 2); "All the laws and royal decrees shall be signed by the King and one or several ministers or state secretaries" (Article 47); see also Article 48.

²¹ P. LALUMIÈRE - A. DEMICHEL, *Les régimes parlementaires européens*, p. 201.

²² See also, Slobodan JOVANOVIĆ, *Država (State)*, Book two, p. 213-214, 224; Francis DELPÉRÉE, "La fonction du Roi", in journal *Pouvoirs*, No 78/1996 p. 50 et seq.; Francis DELPÉRÉE, p. 345 et seq.

in constitutional parliamentary monarchy is the guarantor of the constitutionally established relations in the state. Essentially, he is the one who provides for the functioning of the mechanism of government instituted and secured by the constitution²³. Although in a sense he is himself a part (i.e. the head) of the bicephalous executive, the monarch is a safeguard of the constitutionally established relations between the legislative and executive power in the process of government, as well as the guarantor of legitimate and regular change of political parties in power in the parliament and in the government, according to the constitution and the rules of parliamentary system, and in accordance with the freely expressed will of the electorate. With this, he becomes a barrier to the possible negative effects of the changes taking part in the election cycles, particularly in situations of political crises, as well as in insufficiently developed political culture and absence of political tradition.

Therefore, there is truth in P^r Keith's words describing the constitutional parliamentary monarchy in England: "The Crown remains, in fact, the authority having a decisive role in defending the spirit of the Constitution"²⁴. Understandably, the qualification "the keeper of the Constitution"²⁵ has not been given in a sense of any kind of judicial review of constitutionality (protection of the constitution), but in a sense of preservation, as has been said, of constitutionally established relations and functioning of the mechanism of government. This gives rise to the important consequence of continuous implementation of the constitutional order and constitutionally established democratic political system.

In constitutional parliamentary monarchy this is possible since, as the matter of course, the monarch is the one who represents "tradition and continuity"²⁶. In favour of this speaks a very inspiring provision of the Spanish Constitution: "The King is the Head of State, the symbol of its unity and permanence. He arbitrates and moderates the regular functioning of the institutions, especially with the nations of its historical community, and exercises the functions expressly attributed to him by the Constitution and the laws" (Article 56, item 1). There is truth in an old view which, however, had not been at all realistic and adequate in its time (the sixteenth century), and which concerns the general role of the monarch (today in constitutional parliamentary monarchy): *Non honos, sed onus, non vacatio sed vocatio, non immunitas, sed minus* (Not honour, but burden, not leisure, but vocation, not benefit, but office)²⁷. The most prominent Serbian constitutionalist, Slobodan Jovanović, has even maintained that the monarch's power is a public service²⁸.

²³ FRANCIS DELPÉRÉE, *La Couronne de Belgique*, p. 335/336.

²⁴ Quoted from Harold J. LASKI, *Le gouvernement parlementaire en Angleterre*, p. 290.

²⁵ See more on the meaning of the view of a monarch as "the keeper of the Constitution" in a book by Harold J. LASKI *Le gouvernement parlementaire en Angleterre*, p. 290 et seq.

²⁶ Raymond FUSILIER, *Les monarchies parlementaires*, p. 52.

²⁷ Quoted from: Evgenije V. SPEKTORSKI, *Država i njen život*, (The State and its Life), Ed. Srpska književna zadnuga, Belgrade, 1933, p. 100.

²⁸ Slobodan JOVANOVIĆ, *Država (State)*, Book two, p. 207.

VI. All this speaks in favour of a democratic character and value of constitutional parliamentary monarchy, which, after all, can be maintained also with respect to democratically ordered republic. Hence, taking sides with constitutional parliamentary monarchy, or with democratic republic, in no way means disqualification (or degrading) of the other.

A combination of concrete political and other circumstances, the true interests of the people and the state, and the practical needs of the historical moment (period), tradition, in addition to principal, theoretical reasons, i.e. reasons of judgement of value, are the basis for taking sides with one or the other form of the system in each particular country. A successful example of today's Spain certainly has an important place within the mentioned factors determining such a choice.

3. Current Interest for Reestablishment of the Constitutional Parliamentary Monarchy in Serbia

Reestablishment of constitutional parliamentary monarchy in Serbia today is an expression of a historical imperative for establishing of true democracy and for the return to Serbian democratic tradition and democratic constitutionality.

I. The reasons lying at the roots of the mentioned imperative are manifold. They should be sought in the fatal consequences (destruction of Serbia, etc.) of almost half-a-century long communist dictatorship in the so-called second Yugoslavia (beginning in 1945), as well as in the authoritarian post-communist regime in Serbia following the dissolution of the socialist Yugoslavia and its incapacity to rescue the country from the threatening cataclysm. On the other hand, the reasons for reestablishment of the constitutional parliamentary monarchy in Serbia relate to the very values of this form of government and its suitability to the conditions and circumstances existing in Serbia.

The Serbian experience with the republican form of government is absolutely negative. Forceful abolishment of monarchy and the proclamation of a republic (1945) was carried out within the process of establishing of the communist rule, the same as the preserving of the republic was connected with the continuance of the same regime and, then, also to establishing of the mentioned post-communist regime. Leaving aside the economic, moral and other aspects of pauperisation and downfall of Serbia during the time of those regimes, the destruction of Serbia has especially been achieved at the national and state and legal level.

During the regime of Josip Broz Serbia had lost its long-standing statehood and developed democratic constitutionality. The Serbian nation had been fragmented within the artificial federal units of the federal Yugoslavia and their imposed and arbitrarily determined boundaries, practically loosing its national unity. Setting up of the two autonomous provinces (1945), particularly their transformation into quasi-states and quasi-federal units (1971-1974), has fragmented Serbia to an even greater

extent reducing it to a completely unequal status in relation to the other federal units (Croatia, Slovenia, Macedonia, etc.)²⁹.

The post-communist regime introduced by the 1990 Constitution had not, however, stopped the downfall of Serbia. Moreover, falling into greater and greater economic poverty, complete agony of the law, taking part in dirty inter-ethnic wars, being detested by Europe, and finally the air-strikes against Serbia, only increased the tragedy of Serbia. The Constitution of Serbia adopted in September 1990 by the single-party Assembly in the situation of the total monopoly of the former communists (converted into the new Socialist Party of Serbia), instead of becoming an instrument of transition and the basis for democratic transformation, became the ground for an increasingly authoritarian regime. Under this Constitution too, Serbia remained a republic having the institution of a very powerful president paving the road for instituting a regime of personal power³⁰.

The Constitution of the Federal Republic of Yugoslavia of April 1992, however, was adopted as the result of the common tendency of the power holders in Serbia and Montenegro (the former communists) to preserve the centres of factual power in the common state formed after the dissolution of the former Socialist Yugoslavia in the hands of the two member-republics, i.e. their rulers. This has conditioned the establishing, by means of the Constitution itself, of a semi-confederate system, as well as of a deformed, even fictitious, parliamentary system, which lead, influenced by other factors too, to further separation of Serbia and Montenegro. So, this Constitution too, stood no chance of becoming the ground of democratisation³¹.

II. The downfall of the up-to-then authoritarian regime in Serbia took place on October 5, 2000. On that day massive demonstrations of citizens against the regime were held, and prior to that (in September) the ruling party of president S. Milošević was defeated on the elections for the Federal Assembly, and he himself lost the presidential elections. Later (in December), his party was also unsuccessful on the elections for the National Assembly of Serbia. This meant the end of this authoritarian, even dictatorial, post-communist regime.

²⁹ See, Pavle NIKOLIĆ, *Ustavno pravo*, (Constitutional Law), Prosveta, Belgrade, 1995, p. 434 et seq. p. 532 et seq.; Pavle NIKOLIĆ, *Federacija i federalne jedinice*, (Federation and Federal Units), Službeni list SFRJ, Belgrade, 1989, p. 29-66, 181 et seq.

³⁰ Pavle NIKOLIĆ, *I sistemi costituzionali dei nuovi stati dell'ex-Jugoslavia*, G. Giappichelli Editore, Torino 2002, p. 37 et seq.; Pavle NIKOLIĆ, "L'institution du chef de l'Etat en Serbie et en Yougoslavie", in journal *Revue d'études comparatives Est-Ouest*, No 4/1992, p. 145 et seq.; Pavle NIKOLIĆ, "La Constitution de Serbie" (1990), in book *Federalismo e crisi dei regimi comunisti*, Ed. La Rosa editrice, Torino 1993, p. 69 et seq.

³¹ See also, Pavle NIKOLIĆ, "La République fédérative de Yougoslavie et ses états-membres (l'essai de l'issue du monde momuniste)", in book *System Transformation and Constitutional Developments in Central and Eastern Europe*, Ed. Károli Gáspár Reformed University, Kecskemet-Szeged 1995, p. 259 et seq.; Pavle NIKOLIĆ, "Le parlementarisme et régime du pouvoir dans la Yougoslavie d'aujourd'hui", in book *Developing Trends of Parliamentarism*, Ed. Kluwer Law International, Netherlands 1996, p. 249 et seq.; Pavle NIKOLIĆ, "Le cas de la nouvelle Yougoslavie - le parlementarisme déformé", in book *La démocratie constitutionnelle en Europe centrale et orientale - bilans et perspectives*, Ed. Bruylant, Bruxelles 1998, p. 577 et seq.; Pavle NIKOLIĆ, *I sistemi costituzionali dei nuovi stati dell'ex-Jugoslavia*, p. 37 et seq.

However, this political change did not result in a new constitution that would be the basis for radical democratisation of the country and the transformation of its legal order. Retaining the 1990 Constitution of Serbia in force (as well as the 1992 Constitution of Yugoslavia) has, naturally, caused numerous negative consequences that prevented or slowed down the bringing about of desired reforms which the "new" government (the opposition in the former regime) intended to introduce. Today, more than two years since October 5, 2000, the necessity and urgency for passing the new Constitution becomes a condition *sine qua non* for further functioning of the state and development of Serbia.

III. The only starting point that could give rise to a new democratic Serbia organised on civilised grounds, would be a completely new Constitution. That Constitution has to be based upon the principles of true democracy and authentic Serbian democratic tradition, making possible, as a result, the establishment of democratic, social state, based on the rule of law.

However, the essential and absolutely necessary condition for carrying out of radical transformations and the creation of a new democratic state of Serbia, is, generally, the reestablishment of constitutional parliamentary monarchy. The reasons in favour of this opinion are as numerous as they are clear and convincing.

First, during its almost eleven centuries long history Serbia has always been a monarchy, so that it belongs to a group of the oldest monarchies. Since the time of the Višeslavljević dynasty (in the ninth century) and then the Nemanjić dynasty, the Serbian state was always headed by a prince, king, emperor, prince and again the king, which has produced a long-lived tradition, only to be interrupted by the Turkish occupation. Following the first and the second uprising against the Turkish rule (the beginning of the nineteenth century), monarchy has been restored and its tradition continued. Serbia (i.e. Yugoslavia) has been a republic only during the after-war (the World War II) and the recent post-communist regime under the 1990 Constitution.

Second, Serbia reached the peaks of European constitutionality exactly in the times when it was a monarchy. The monarchical constitutions of 1888, i.e. 1903, may be labelled as the most democratic constitutions of their time. By reestablishment of the constitutional parliamentary monarchy, Serbia would regenerate its constitutionality, pave the road to the renewal of democratic tradition and thereby regain the chance of joining the countries with highly developed constitutionality.

Third, in the disastrous situation inherited from the former communist and the recent post-communist regime embodied, among else, in eradicated tradition of democratic political life, insufficient development of political culture, several decades long ideological anti-monarchic indoctrination and propaganda against the great achievements of Western democracy, but also in inadequate functioning of the multi-party system, the reestablishment of constitutional parliamentary monarchy would be a guarantee of the renewal of democratic political life and democratic institutions. The limited power of the monarch in the spirit of constitutionality of the multi-party monarchy (particularly in the tradition of the Spanish Constitution), unchallenged high authority of the monarch as the symbol of unity and stability of the state and his

position above the political parties enabled by his role of moderator and arbitrator in the whole political process and political life of the country in general, all lie at the roots of this guarantee.

Fourth, reestablishment of constitutional parliamentary monarchy as an antipode to the totalitarian communist regime would mean the instant and definite break with the former communist and the recent post-communist regime (in fact a disguised communist regime), as well as the final suppression of all their traces. This would be the starting-point of a complete recovery of the society, particularly at moral and spiritual level.

Fifth, the reestablishment of constitutional parliamentary monarchy would inevitably lead to bringing back of the international reputation and prestige Serbia already had, either as an independent state, or within the Kingdom of the Serbs, Croats and Slovenes, i.e. the Kingdom of Yugoslavia, to which Serbia had in fact conferred its statehood. With such a system Serbia would regain the lost friendship of many democratic countries.

Sixth, the reestablishment of constitutional parliamentary monarchy would also mean the correction of historical injustice inflicted upon Serbia by the act of illegitimate abolishing of the monarchy and illegal and brutal banishing of the members of the Karadordević dynasty from the country. In the situation of brutal liquidation of political parties, introduction of a single-party system, police terror and reign of terror in general, the Constituent Assembly elected on plebiscitary and non-democratic elections was absolutely illegitimate, so the proclaiming of the republic and abolishment of the monarchy on November 29, 1945 by the same Constituent Assembly was also absolutely illegitimate. Having this in mind, nowadays it is only possible to speak of reestablishment of constitutional parliamentary monarchy, not of its introduction, i.e. establishing as a new form of government.

So, after more than half a century, Serbia would continue its own and to its character the only distinctive national life-style. That would be a lawful, natural and necessary act - the act that would lead Serbia to democracy and prosperity³².

³² See, Pavle NIKOLIĆ, "Vizija budućee Srbije: parlamentarizam i ustavna monarhija", (A Vision of the Future Serbia: Parliamentarism and Constitutional Monarchy), in journal *Arhiv za pravne i društvene nauke*, No. 3/2000, p. 319 et seq.; Pavle NIKOLIĆ, *Ustav Kraljevine Srbije (nacrt)*, Self-published book, Belgrade, 2001