

THE CONSTITUTIONAL CONCEPT OF THE RESPONSIBILITY OF THE HEAD OF STATE

ABSTRACT: In addition to its primary jurisdiction, the Constitutional Court also exercises certain specific competences, one of which is its jurisdiction to adjudicate cases involving high-ranking state officials. In this paper, the author analyzes this very particular competence of the Constitutional Court, directed at determining the responsibility of the head of state. The subject of the research encompasses the constitutional and legal grounds for initiating proceedings concerning the responsibility of the head of state, the authorized entities, the required majority, and the procedure for adopting a decision on the indictment against the head of state. The research aims to identify, through the application of the positive-law and comparative-law methods, the similarities and differences in the existing normative solutions of certain European countries. In the final part of the paper, special attention will be devoted to how this issue has been addressed in the Republic of Serbia, as outlined in the 2006 Constitution. By examining existing solutions and their potential shortcomings, the author aims to highlight the need for possible constitutional reform in this matter in the Republic of Serbia.

Keywords: *constitutional court, head of state, responsibility of the head of state.*

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1. Introduction

The constitutional court is an independent body of state authority whose primary competence is the general normative review of law. Wherever a constitutional court exists, it exercises review of the constitutionality of normative acts, while the performance of its other functions depends on the specific constitutional system (Petrov & Simović, 2010, p. 116). It is generally considered that constitutional courts decide on normative acts and do not adjudicate individuals for unlawful conduct. But a closer examination of the competences of the Constitutional Court reveals that it, to a certain extent, departs from the fundamental rule that the Constitutional Court adjudicates norms rather than persons. This is its jurisdiction to try high-ranking state officials (Pajvančić, 2004, p. 121). The responsibility of holders of the highest public offices constitutes, in democratic legal systems, one of the most significant democratic principles and a defining feature of the rule of law and constitutional government (Radovanović, 2024, p. 78). Although it falls within the jurisdiction of constitutional courts with the longest tradition, such as those in Austria, Italy, and Germany, which will be discussed below, adjudicating charges against the highest state officials was, until the early 1990s, a characteristic of a relatively small number of states. It was only the process of adopting new constitutions, prompted by the wave of democratisation in former communist states, that significantly increased the number of constitutional courts empowered to decide on charges against the highest state officials¹ (Simović, 2010, p. 211).

Most frequently, the established responsibility concerns the head of state, i.e. the President of the Republic, then the Prime Minister, ministers, and other high-ranking state officials for serious criminal offences committed while exercising their official duties (Stojanović, 2016, p. 39). Therefore, it is often emphasised that, when deciding on charges against the highest state officials, the Constitutional Court acts as a specific form of criminal court (Simović, 2010, p. 211). Such competence of the Constitutional Court is seen as a special protection of the Constitution, that is, a direct protection of the constitutional order (Stojanović, 2016, p. 39). Holders of state or public office, particularly those exercising executive power, bear multiple forms of responsibility for

¹ Mikić (2025) points out that constitutional courts in Europe decide on the accountability of public office holders for unconstitutional conduct, while also indicating the public offices whose holders may be subject to such responsibility before constitutional courts in certain European states (p. 381).

their work and actions both within and outside the scope of their official duties. Being citizens of their state, holders of executive authority are subject to legal responsibility and may be held legally liable for acts they committed as private individuals outside the scope of their professional competences. On the other hand, guided by national as well as political interests, holders of executive authority are required to make important decisions for which they bear political responsibility (Jovanović, 2018, p. 75). At the core of political responsibility lies the trust granted to holders of political office at the beginning of their mandate. With regard to representatives of the executive branch, namely the head of state and the Government, this means that the head of state is politically accountable to the citizens who elected him directly in general elections (Jovanović, 2018, p. 72). Given that the majority of newly adopted constitutions have omitted the institution of countersignature, based on which the Government assumed political responsibility for acts of the head of state, it became necessary to establish the direct responsibility of the head of state, enabling the sanctioning of any abuse of power (Simović, 2010, p. 211).

The issue of the responsibility of the head of state, although a matter of primary constitutional importance, has been raised only rarely. The reason lies in the centuries-long irresponsibility of monarchs, justified both by theories of the “divine right” and by the functional positioning of the head of state within the constitutional system. It is therefore not surprising that, more than two centuries after the first republican head of state in the world was held accountable in the United States of America (Hereinafter USA) the question of such responsibility is raised only when required by practical necessity (Tripković, 2009, pp. 278–279). The criminal responsibility of the President of the Republic is regulated by the Constitution (2006) in all republics. As Pejić (2025) points out, it represents a form of legal responsibility indicating that the holder of this high office may commit specific criminal offences in the performance of official duties, for which a specific legal procedure and sanction in the form of removal from office are prescribed (pp. 23–24). Legal responsibility may be based either on a violation of legal rules or on a breach of moral obligations. According to Marković (2023), the responsibility of the head of state for a violation of the Constitution (and laws) constitutes a legal-political form of responsibility (p. 25). Therefore, it cannot be regarded as a purely legal or purely political form of responsibility, given that a political or constitutional adjudicative body imposes a political sanction for an unlawful act.

In the continuation of this paper, with the aim of examining the issue of the responsibility of the head of state, attention will be devoted to the most

frequently prescribed constitutional and legal grounds of responsibility, as the bases for initiating and conducting proceedings before the constitutional court.

2. Constitutional and Legal Grounds for the Responsibility of the Head of State

At first glance, comparative constitutional law reveals different grounds of legal responsibility of the President of the Republic. Simplified and viewed from a historical perspective, these may be divided into “criminal-law” and “constitutional-law” grounds. However, closer examination demonstrates that they in fact constitute *sui generis* constitutional categories, i.e. grounds of responsibility whose qualification derives from the competences of the President of the Republic and his duty of loyalty to the Constitution (Marinković, 2021, p. 4). The content of constitutional provisions concerning incriminated acts that may be committed by the President in the exercise of office is typically general and concise. Traditional offences mentioned in constitutions include betrayal of the people or high treason, whereas modern constitutions increasingly employ broader formulations such as violation or breach of the Constitution (Pejić, 2025, p. 24). Such is also the case with the constitutions of the former Yugoslav republics,² including Serbia, which will be analysed subsequently. These constitutions provide that an indictment against the head of state may be initiated if he has violated the Constitution in the performance of official duties. Similarly, the Constitution of Austria provides that a complaint may be filed before the Constitutional Court against the Federal President solely for a violation of the Constitution. (Stojanović, 2016, crp. 38). The term “violation” of the Constitution, as Petrov observes, represents a broad concept encompassing not only the explicit breach of a constitutional provision, but also the violation of what constitutional theory refers to as the “spirit” of the Constitution. Consequently, a distinctly legal question, such as whether the President of the Republic has violated the Constitution, raises the question of the political expediency of his work. It may lead to the issue of politicisation of the Constitutional Court (Petrov, 2008, p. 77, as cited in Simović, 2010, p. 214). Conversely, Stojanović (2016) argues that where the Constitution does not establish another legal ground of

² Among the states of the former Yugoslav republics, it is only the Constitution of Bosnia and Herzegovina that does not provide for the responsibility of high state officials before the Constitutional Court (Pilipović, 2025, p. 81).

responsibility beyond violation of the Constitution, and where such violation is not further qualified, the grounds of responsibility cannot be extended to encompass breaches of the “spirit” of the Constitution. Such an extension of responsibility would render the grounds entirely indeterminate and legally uncertain, ultimately resulting in a conflation of political and legal assessment (pp. 69–70).

In addition to the “classical” violation of the constitution, certain constitutions provide for a “qualified” violation as a condition for initiating proceedings against the head of state. This is the case in Germany, Hungary, and Slovakia, where intentional violation of the Constitution is required as a precondition for raising the issue of responsibility, while in Albania a serious violation of the Constitution is required (Simović, 2010, p. 213). The Constitutional Court of Italy is distinctive, among other things, in adjudicating charges brought against the President of the Republic for high treason or violation of the Constitution (Stojanović, 2016, p. 41). The offence of “high treason,” in its formal elements, may be treated as a ground of criminal responsibility. However, given that political history records no convictions for high treason, different interpretations suggest that this provision conceals an underlying idea of political responsibility of the head of state (Pejić, 2025, pp. 24–25).

The grounds of indictment encompass any violation of the Constitution committed by the head of state in the exercise of competences. In addition to constitutional violations, the Constitution of Macedonia (1991, Article 87, paragraph 1) and the Constitution of Slovenia (1991, Article 109) also provide that violation of the law in the performance of official duties constitutes grounds for indictment, with the Slovenian President being indictable only for a serious violation of the law (Simović, 2010, p. 213). “It means that the grounds of legal responsibility of the President of the Republic, whether framed in the terminology of criminal law or defined more broadly as responsibility for violation of the Constitution, lie in the failure to comply with peremptory constitutional norms, that is, with explicit constitutional obligations – prohibitions and commands – prescribed by the Constitution. These obligations may be divided into two alternative groups. One group arises from presidential competences that belong to the category of bound acts, while another group arises from other constitutional provisions whose observance constitutes an expression of loyalty to the Constitution. The concretisation of peremptory constitutional provisions in criminal and other legislation facilitates a proof of the content of such obligations, but is not alone necessary for their existence” (Marinković, 2021, p. 7).

3. The Role of the Constitutional Court in the Procedure for Determining the Responsibility of the Head of State in Comparative Law

With regard to the role that a constitutional court may assume in proceedings concerning the responsibility of the head of state, comparative constitutional law reveals two principal models. The first model confers the competence on the Constitutional Court to decide on charges against the head of state. The second model allows the Constitutional Court only to participate in the procedure of deciding on the charges against the head of state. Under the first model, the Constitutional Court decides (either independently or in an expanded composition) on an indictment filed by parliament (most frequently the lower house). Under the second model, the role of the Constitutional Court is narrower: it does not decide on the responsibility of the head of state, but merely renders an opinion on whether the head of state has violated the Constitution or the law and whether procedural requirements for initiating proceedings have been respected. The constitutional courts of the former Yugoslav republics may be classified within these two models. The Constitutional Court has full competence to decide on charges against the head of state in Slovenia, Macedonia, and Croatia. However, in Serbia and in Montenegro,³ the role of the Constitutional Court is limited to determining whether the head of state has violated the Constitution in the performance of official duties, while the final decision on the sanction is adopted by parliament – the National Assembly of Serbia or the Parliament of Montenegro (Dmičić & Pilipović, 2013, pp. 31–32). In Romania, for example, removal from office is decided by referendum following suspension by the Parliament and consultation with the Constitutional Court (Nikolić & Manojlović, 2022, p. 372). Specifically, after consulting the Constitutional Court (*The Constitution of Romania*, Article 95), the Chamber of Deputies and the Senate, in joint session and by a majority vote of their members, may suspend the President for serious acts violating constitutional provisions. There are also constitutional systems in which the constitutional court does not participate in proceedings

³ The procedure for determining whether the President of Montenegro has violated the Constitution may be initiated by the Parliament, upon the proposal of at least 25 Members of Parliament. The decision on the existence or non-existence of a violation of the Constitution is adopted by the Constitutional Court, which shall publish it without delay and submit it to the Parliament and the President of Montenegro. The President of Montenegro may be removed from office by the Parliament when the Constitutional Court determines that he or she has violated the Constitution (Constitution of Montenegro, 2007, Article 98, paragraphs 3, 5 and 6).

concerning charges against the head of state. Such was the case under the Constitution of Serbia of 1990, which provided that citizens would decide on the responsibility of the head of state by referendum, and under the Constitution of the Federal Republic of Yugoslavia of 1992, pursuant to which the President of the Republic could be removed from office once the Federal Assembly determined that he had violated the Constitution. Similarly, under the Constitution of the USA, impeachment proceedings against high-ranking state officials may fall within parliamentary competence, with the House of Representatives acting as prosecutor, the Senate as adjudicator, and the Chief Justice of the Supreme Court presiding over the trial (Dmičić & Pilipović, 2013, pp. 28, 31–32).

Given that determining the responsibility of the head of state is a sensitive issue, directly affecting the constitutional status of a key state authority, constitutional courts usually decide such matters by a qualified majority. In constitutional systems where the Constitutional Court does not render the final decision on the head of state's responsibility for a violation of the constitution and other charges, but performs merely an advisory function, no special majority is required beyond that prescribed for other decisions of the Constitutional Court (Pajvančić, 2004, p. 132). Regarding the countries with the longest tradition of the constitutional courts with the competence in determining the responsibility of the head of state, such as Austria, the Federal President may be charged with violation of the Constitution if the Federal Assembly adopts such a decision, upon the request of one of the parliamentary chambers – the Federal Council or the National Council. The decision must be taken in the presence of a majority of members of both representative bodies and by a two-thirds majority of votes cast. A conviction by the Austrian Constitutional Court results in loss of office and, in aggravating circumstances, loss of political rights. However, the Constitutional Court may also confine itself to establishing that a violation has occurred. The complaint may also extend to criminally punishable acts committed in office, in which case ordinary criminal courts are excluded, and exclusive jurisdiction lies with the Constitutional Court (Stojanović, 2016, p. 40). Besides Austria, the Federal Constitutional Court in Germany may adjudicate the case against the Federal President for intentional violation of the Basic Law or another federal law, upon impeachment adopted by a two-thirds majority of the members of the Bundestag or the Bundesrat (*Grundgesetz für die Bundesrepublik Deutschland*, Article 61 paragraph 1). If the Court establishes the Federal President's guilt, it may remove the President from office. The Court may also, before the final decision, issue an interim measure preventing the

Federal President from exercising official duties (Stojanović, 2016, p. 41). In Italy, proceedings for determining the responsibility of the head of state are initiated by Parliament and concluded by a decision of the Constitutional Court (Orlović & Rajić, 2020, pp. 124–125). The President is impeached by the Parliament in a joint session of both chambers, by an absolute majority of all members. A peculiarity of the Italian system is that, along with the 15 regular judges of the Constitutional Court, 16 additional members participate in the trial of the President. These members are elected at the beginning of the parliamentary term, in a joint session of the Houses of Parliament, from citizens eligible for election as senators (Constitution of the Italian Republic, 1947, Article 135). Given this composition of the Constitutional Court of Italy, it may be argued that the President is judged not only by constitutional judges as members of a state institution, but also by the people (Stojanović, 2016, p. 41).

In constitutional systems where the Constitutional Court has full adjudicative competence over the head of state, it renders the final decision. Certain constitutions explicitly regulate the legal effects of such a decision of the Constitutional Court: termination of the mandate of the head of state, cessation of office by virtue of the constitution, removal from office etc. Thus, a constitution may foresee that the mandate of the head of state ceases *ex constitutione* once the constitutional court establishes his responsibility, as in Croatia (Constitution of the Republic of Croatia, 2014, Article 105 paragraph 5) and Macedonia (the Constitution of Macedonia, 1991, Article 87, paragraph 4), or the Constitutional Court itself to impose the sanction, as in Slovenia. Under the Slovenian Constitution (1991), the Constitutional Court may remove the head of state from office if the charge is well-founded. In this system, the determination of the validity of the charge is procedurally distinct from the decision on removal. In contrast to the three specified states, in Serbia and in Montenegro, the Constitutional Court determines only whether a violation of the Constitution has occurred, while the decision on the sanction (removal from office) is adopted by the Parliament (Dmičić & Pilipović, 2013, pp. 35–36).

4. The Role of the Constitutional Court in the Procedure for Determining the Responsibility of the Head of State in Serbia

The 2006 Constitution introduced a new competence of the Constitutional Court concerning the removal of the President of the Republic⁴ (Marković, 2007, p. 37). If one raises the question as to why this competence was entrusted to the Constitutional Court, the answer lies in the very ground of presidential responsibility – violation of the Constitution,⁵ given that the Constitutional Court is the guardian of the Constitution, regardless of who commits the violation (Marković, 2007, pp. 37–38).

Proceedings for the removal of the President of the Republic may be initiated by the National Assembly, upon a proposal submitted by at least one-third of the Members of Parliament (Constitution of the Republic of Serbia, 2006, Article 118). The procedure begins when the Speaker of the National Assembly submits the act to the Constitutional Court, initiating proceedings to determine whether the President has violated the Constitution. Alternatively, if the procedure has been initiated in accordance with the Constitution and the law, the Court shall forward the act to the President of the Republic for a response within a time limit determined by the Court. Upon expiry of that time limit, the President of the Constitutional Court schedules a hearing, and both the President of the Republic and the Speaker of the National Assembly are invited to it. It should be emphasised that, in deciding on the alleged violation of the Constitution by the President of the Republic, the Constitutional Court is limited exclusively to those constitutional provisions specified in the act of

⁴ Under the previous Constitution, the concept of recall, rather than removal from office, was applied to the President of the Republic. Pursuant to the 1990 Constitution, the decision on recall was made by the National Assembly, having been competent to initiate the procedure if assessed that the President of the Republic had violated the Constitution, and also by the citizens, who were required to declare their position in a referendum. As Stojanović (2016) points out, the new Constitution abandons the recall procedure, which combined elements of political and legal responsibility, and establishes instead a procedure for the removal of the head of state that exclusively presupposes his legal responsibility (p. 69). Under the 1990 Constitution, the responsibility of the President of the Republic was characterised as political, since the National Assembly could easily qualify acts of the President with which it disagreed as a “violation” of the Constitution. Under the new Constitution, this responsibility is legal (criminal) in nature, and the sanction for such responsibility is precisely removal from office (Marković, 2022, p. 333).

⁵ In contrast to certain European constitutional arrangements, the Constitution of Serbia provides for a relatively broad and insufficiently precise basis for the removal of the President of the Republic, thereby potentially allowing greater scope for initiating removal proceedings, although such a possibility has remained largely hypothetical in Serbia’s recent constitutional practice (Mikić, 2018, p. 5).

the National Assembly initiating the proceedings. The Constitutional Court is required to render its decision within 45 days from the date of submission of the initiating act (Law on the Constitutional Court, 2007, Articles 93–96). Removal of the President of the Republic on the grounds of constitutional violation occurs if the National Assembly adopts a decision by a two-thirds majority of all Members of Parliament (Constitution of the Republic of Serbia, 2006, Article 118).

As previously noted, Article 118, paragraph 2 of the Constitution of the Republic of Serbia (2006) provides that the procedure for the dismissal of the President of the Republic “may be initiated by the National Assembly upon the proposal of at least one-third of all Members of Parliament.” Although this constitutional provision appears, at first sight, to be entirely clear, it leaves room for different interpretations. First, it could be concluded that a proposal submitted by one-third of all Members of Parliament is, in itself, sufficient to initiate the procedure for the dismissal of the President of the Republic. This interpretation was also adopted by the Venice Commission (2007), although with reservations owing to the lack of clarity of the constitutional provision in question.⁶ Second, the constitutional norm may be interpreted to mean that one-third of all Members of Parliament merely propose the initiation of presidential dismissal proceedings, while the decision on whether such proceedings will actually be initiated is to be taken by the National Assembly in accordance with the general constitutional rules governing decision-making within that body. Following the wording of the constitutional provision, the National Assembly is not obliged to initiate proceedings for presidential dismissal every time such a proposal is submitted by one-third of all Members of Parliament, since the formulation according to which it “may” initiate the procedure indicates that the proposal itself does not compel the Assembly to commence such proceedings. Given that the Constitution (2006) does not prescribe a special qualified majority for deciding this matter (Article 105), the decision to initiate proceedings for the dismissal of the President of the Republic is adopted by an ordinary quorum majority, that is, by a majority vote of the Members of Parliament present at a sitting attended by a majority

⁶ Commenting on Article 118 of the Constitution of the Republic of Serbia (2006), the Venice Commission observed that one-third of the Members of Parliament may request the initiation of impeachment proceedings on the grounds of a violation of the Constitution. The Commission further stated that “the Constitutional Court then decides, or at least this is how the Venice Commission understood this not entirely clearly worded provision, whether such a violation has occurred, and the National Assembly may thereafter dismiss the President by a two-thirds majority” (Venice Commission, 2007).

of the total number of Members of Parliament. In this way, the Constitution distinguishes between the initiative to commence proceedings for bringing charges against the Head of State and the adoption of a decision concerning a violation of the Constitution (Simović & Orlović, 2023, p. 631). In other words, only after the National Assembly has adopted a positive decision may a request be submitted to the Constitutional Court to determine whether a violation of the Constitution has occurred (Dmičić & Pilipović, 2013, p. 33).

However, the fact that the imprecision of the constitutional provision governing the initiation of proceedings for the dismissal of the President of the Republic may create practical difficulties is confirmed by the inconsistencies and errors committed by the National Assembly when elaborating this procedure through legislation (Simović & Orlović, 2023, p. 632). Namely, the Law on the Constitutional Court (2007, Article 93, paragraph 1) stipulates that “the procedure for deciding on a violation of the Constitution by the President of the Republic shall be initiated by the National Assembly upon the proposal of one-third of the total number of Members of Parliament.” The wording of this statutory provision therefore suggests that the National Assembly is obliged to initiate proceedings for the dismissal of the President of the Republic whenever such a proposal is submitted by at least one-third of all parliamentarians. It is noteworthy that the legislature did not reproduce verbatim the constitutional wording, which includes the term “may”. The legislature’s inconsistency is further evidenced by the subsequently enacted Law on the President of the Republic (2007), which provides that the dismissal of the President of the Republic may be proposed by at least one-third of all Members of Parliament if they consider that the President has violated the Constitution, while the procedure for dismissal is initiated by a majority vote of all Members of Parliament (Article 15, paragraph 1). Marković (2007) argues that even if the Law on the President of the Republic (2007) correctly interpreted the constitutional provision on removal of the President, it is inconsistent with the Constitution to require that proceedings are initiated by a “majority vote of all Members of Parliament,” since the Constitution prescribes such a majority only in cases explicitly stated therein⁷ (p. 33). As the initiation of removal proceedings is not listed among those cases, it is evident that the legislator exceeded the normative framework established by the Constitution (Simović, 2010, p. 215).

⁷ In all other cases, the National Assembly adopts decisions by a majority vote of the Members of Parliament present at a session attended by a majority of the total number of Members of Parliament (Constitution of the Republic of Serbia, 2006, Article 105).

The 2006 Constitution introduces the politically neutral Constitutional Court into a political issue arising from the relationship between the legislative and executive branches. The Constitutional Court is tasked with determining whether the President of the Republic has violated the Constitution, whereas the political sanction resulting from such a violation is to be imposed by the National Assembly. Marković (2007) claims that the authority to remove the President should belong to the body that elected him. Since the President is directly elected by citizens, they should likewise decide on his “recall” (pp. 37–38). A similar view is shared by Simović and Petrov, who argue that it is inconsistent with the logic of the institution of a directly elected head of state to be removed by the National Assembly. They raise the question of compatibility with the principle of separation of powers (Dmičić & Pilipović, 2013, pp. 37–38). However, given that the constitutional drafters had already opted to entrust the National Assembly with the political assessment concerning the removal of the President of the Republic, Simović (2010) argues that the entire procedure should have remained exclusively within its competence (p. 222). Marković (2007) further contends that, if such authority is to be entrusted to the Parliament, the entire procedure (initiation, determination of constitutional violation, and removal) should remain within its exclusive competence, as is the case with the responsibility of the President of the USA before the Congress (pp. 37–38).

Particular criticism has been directed at the possibility that, despite the decision of the Constitutional Court establishing that the President of the Republic has violated the Constitution, the National Assembly may fail to dismiss the President because the required two-thirds majority of all Members of Parliament cannot be secured (Marković, 2007, p. 39). Thus, even if the Constitutional Court were, hypothetically, to determine that the President bears legal responsibility for a constitutional violation, the parliamentary majority could still oppose his dismissal. This is why the constitutional mechanism may be regarded as a symbolic “cover” for a system of government that allows the President to act beyond the scope of his or her constitutional powers (Pejić, 2025, p. 30). It is hardly necessary to elaborate on how such an arrangement may undermine the authority of the Constitutional Court as the final and most competent arbiter in matters concerning violations of the principle of constitutionality. Rather than rendering a decision that is binding in practice, the Court effectively issues an opinion that does not formally oblige the National Assembly, which has the final say in the matter (Marković, 2007, p. 39). Furthermore, by declining to dismiss the President of the Republic, the National Assembly violates the constitutional provision stipulating that

decisions of the Constitutional Court are final, enforceable, and universally binding (Constitution of the Republic of Serbia, 2006, Article 166, paragraph 2). At the same time, such conduct weakens the authority and legitimacy of the President of the Republic, who continues to perform the duties of office despite the finding that compromises his constitutional standing (Simović & Orlović, 2023, p. 637). Moreover, given that the final decision rests with a two-thirds parliamentary majority, it may justifiably be argued that a form of political responsibility of the President of the Republic has been introduced through the back door. As Pejić (2019, p. 57) points out, this constitutes an additional argument in favour of restoring this aspect of the separation of powers to its proper legal dimension and entrusting either the Constitutional Court or the Supreme Court with jurisdiction to determine the legal (criminal) responsibility of the Head of State. Conversely, a different effect is produced by a decision of the Constitutional Court finding that the President of the Republic has not violated the Constitution. In such circumstances, the Court's decision is binding upon the National Assembly, since the President may not be removed from office (Simović & Orlović, 2023, p. 635). The proceedings thereby come to an end, as the National Assembly cannot dismiss the President contrary to the findings of the Constitutional Court (Dmičić & Pilipović, 2013, pp. 37–38).

Although the time limit granted to the Constitutional Court for rendering its decision is relatively short, the significance of charges brought against the President of the Republic, which may ultimately result in his or her removal from office, justifies the imposition of such a deadline in order to resolve expeditiously the question of whether the President has violated the Constitution. The Constitution merely requires the Constitutional Court to act within that period; however, it does not prescribe the consequences of the Court's failure to comply with this obligation. In insufficiently consolidated constitutional democracies, the work of constitutional courts is often susceptible to politicisation. In this regard, it should also be borne in mind that the President of the Republic participates in the appointment of ten out of the fifteen judges of the Constitutional Court. Consequently, the Constitutional Court may obstruct initiated dismissal proceedings against the President, since without its decision, the procedure cannot be continued (Simović & Orlović, 2023, p. 633). Therefore, two cumulative conditions are required for the removal of the President of the Republic: a decision of the Constitutional Court establishing a constitutional violation, and a decision of the National Assembly removing the President. Even greater uncertainty would arise if the Constitutional Court adopted a decision establishing a constitutional

violation after the expiry of the 45-day period. If one were to ask whether the National Assembly could then proceed with the removal of the President, the answer would undoubtedly be negative, since removal in such circumstances would be unconstitutional due to violation of the constitutionally prescribed procedure (Simović, 2010, p. 221).

Although the existing constitutional framework leaves room for the potential obstruction of the proceedings by the Constitutional Court, legal theory has pointed out that, given the importance of this institution within the legal system and the fact that it is already involved in the process of determining the responsibility of the President of the Republic, it would be justified to consider entrusting it with the final decision in proceedings concerning presidential responsibility. Such a solution would, of course, presuppose that the grounds for responsibility are defined with sufficient precision to permit adjudication within a procedure of a legal, rather than political, character. It may therefore be concluded that an opportunity was missed during the adoption of the new Constitution (2006) to regulate this issue in a more appropriate manner, taking into account comparative constitutional practice as well as the prevailing theoretical approaches to presidential responsibility (Tripković, 2009, p. 311).

5. Conclusion

Although rarely exercised in practice, one of the most significant competences of a constitutional court is its authority to decide on charges brought against the head of state. The constitutional and legal grounds for the responsibility of the head of state are, in almost all of the analysed countries, broadly formulated and insufficiently precise. It is therefore within the competences of the authorities to decide on such responsibility of the head of state, and to interpret these general provisions.

Comparative constitutional analysis demonstrates that European constitutional systems do not recognise a single, uniform model of constitutional court involvement in proceedings for determining the responsibility of the Head of State. Differences exist both concerning the very presence of a constitutional court in such proceedings and the scope of powers vested in it. It is precisely these powers that determine the extent to which the proceedings possess a legal, rather than political, character, as well as the degree to which they can be insulated from excessive political influence.

Concerning the constitutional framework of the Republic of Serbia, it may be concluded that, notwithstanding the constitution-maker's intention to

establish the legal responsibility of the President of the Republic, the existing mechanism ultimately reduces the issue to a political question. Although the Constitutional Court determines whether the Constitution has been violated, the political sanction of removal from office is imposed by the National Assembly. If the constitution-maker intended that the National Assembly should decide, based on its own political assessment, whether the President should be removed from office, then the entire procedure ought to have remained exclusively within the Assembly's jurisdiction. Such an arrangement gives rise to a normative inconsistency in the relationship between the National Assembly and the Constitutional Court. Instead of the Constitutional Court acting as the exclusive guardian of the Constitution, particularly given that it is entrusted with reviewing the activities of the National Assembly, it is the National Assembly that, in this instance, assumes the decisive supervisory role and has the final word in the dismissal proceedings, notwithstanding the Constitutional Court's prior determination regarding the President's responsibility for violating the Constitution. A positive aspect of the existing model may be found in the fact that an independent Constitutional Court, composed according to professional rather than political criteria, should serve to prevent what is fundamentally a form of legal responsibility from being transformed into a purely political one. Nevertheless, the most logical and legally coherent solution would be a binding decision of the Constitutional Court upon the National Assembly, so that a finding by the Court that the President of the Republic has violated the Constitution would necessarily result in his or her removal from office by the National Assembly. Alternatively, following the example of certain neighbouring states, the mandate of the Head of State could terminate automatically by operation of the Constitution (*ex constitutione*).

Although no proceedings to determine the responsibility of the President of the Republic have yet been initiated in Serbia, and thus the existing constitutional provisions have not been tested in practice, there remains an opportunity to remedy the identified normative shortcomings through a future constitutional revision. Such reform would contribute to the establishment of a more coherent and legally grounded model of presidential responsibility, within which the role of the Constitutional Court would be defined more clearly and exercised more effectively.

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USTAVNI KONCEPT ODGOVORNOSTI ŠEFA DRŽAVE

APSTRAKT: Pored svoje osnovne nadležnosti, ustavni sud raspolaže i određenim posebnim nadležnostima, među kojima je njegova nadležnost da sudi visokim državnim funkcionerima. Autor u radu analizira upravo ovu posebnu nadležnost ustavnog suda, usmerenu na utvrđivanje odgovornosti šefa države. Predmet istraživanja obuhvata ustavnopravne osnove za pokretanje pitanja odgovornosti šefa države, ovlašćene subjekte, potrebnu većinu i postupak donošenja odluke o optužbi protiv šefa države. Cilj istraživanja jeste da se primenom pozitivnopravnog i uporednopravnog metoda utvrde sličnosti i razlike u postojećim normativnim rešenjima pojedinih evropskih zemalja, kako bi se u poslednjem delu rada posebna pažnja posvetila rešavanju ovog pitanja u Republici Srbiji prema Ustavu

iz 2006. godine. Autor će nastojati da, proučavanjem postojećih rešenja i njihovih mogućih nedostataka, ukaže na potrebu za potencijalnom ustavnom reformom ovog pitanja u Republici Srbiji.

Ključne reči: *ustavni sud, šef države, odgovornost šefa države.*

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