The Relations between the President and Parliament in Semi-presidential Republics

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Abstract: *This paper is a comparative analysis of the relations between the President and Parliament in semi-presidential republics, such as France, Finland, Portugal, Austria and Ireland. Firstly, the specific features of a semi-presidential system are presented. Then, we focus on the relations between the head of state and legislature, appearing as a necessity of control and collaboration between public authorities, which are fundamental requirements of the principle of the separation of powers. The cooperation between the President and the Parliament is expressed by means of different procedures: addressing messages to Parliament, extending the President's mandate, convening and dissolving Parliament, promulgation of laws, collaboration on forming the Government, placing members of Government under criminal prosecution, initiating referendum, constitutional revision, establishing exceptional measures, impeachment of the head of state for high treason. The commented constitutional provisions show that in Finland, Portugal, Austria and Ireland, in the relations between the President and Parliament, the latter has a decisive role. The exception to this is represented by France, where the President is "the cornerstone" of the entire institutional system, as he has important attributions. The Parliament is subordinated to him, especially if the head of state has the support of the parliamentary majority in the National Assembly. The comparative analysis of the relation between President and Parliament in the examined states can be useful to both the constitutional legislator of the examined states, in order to improve the relevant legislation in the analyzed field and to redefining, in practice, the relations between the head of state and the legislature.*

Keywords*: President; Parliament; relations; semi-presidential republics.*

Introductory considerations

This study approaches the manner in which the relations between the President and Parliament have evolved in some semi-presidential republics - such as Finland, Portugal, Austria and Ireland -, starting from the French typical semi-presidential model.

The importance of this study consists in the clear description of the relations between the head of state and legislature in the above mentioned states, which determines the manner of exercising power between the two public authorities under debate. At the same time, knowing these types of relations allows the outline of the way in which control and cooperation between the two public authorities takes place, two activities that represent essential requirements of the separation and balance of powers.

The result of this research is the transposition manner of the characteristic elements of the semi-presidential system in France, in terms of theory and practice, into other European republican states. Furthermore, by means of this analysis we have noticed a transformation of the relations between the head of state and legislature in various examined countries, in comparison to the same relations existing in the French constitutional system taken as a model, as well as an adaption of these relations to the specific national elements.

The expected results of this analysis have been delivered by use of the comparative method.

1. The specific features of the semi-presidential system

In addition to the parliamentary and presidential traditional political systems, political scientist Maurice Duverger introduced a third type, namely *the semi-presidential,* which takes over certain distinctive features of both the presidential one (*direct election of the head of state*) and the parliamentary one (*the Government is politically and collectively responsible to the Parliament*).

According to doctrine [1], *the semi-presidential system* has certain defining features: a president of the republic, elected by universal suffrage and endowed with significant powers of his own, a prime minister

and a government accountable to the members of the Parliament, who may determine the Government to resign [2].

Therefore, the head of state is conferred "quite significant powers" [3], that is much broader attributions than in a parliamentary republic, especially in area of defense and in taking exceptional measures in crisis situations. But, as noted in legal literature, the existence of quite significant prerogatives attributed to the President is not a requirement without which a semi-presidential system cannot exist [4].

1.1. The direct election of the President

The direct election of the President gives him popular legitimacy, so, from this point of view, he has an equal position to that of the legislative body. This situation does not determine, however, an increase in the President's powers, but only allows him to plenarily exercise his attributions [5]. This point of view was not, however, shared by the former French President Charles de Gaulle, for whom election by direct universal suffrage was the source of all power [6].

As presented by doctrine, the dualism of legitimacy, characteristic to the semi-presidential system, "induces variations, which depend on the party system and the consensus regarding the political role of the head of state" [7]. Therefore, one has spoken of "the inherent potential for cohabitation" [8], which may occur in a semi-presidential system, where the parliamentary mandate does not coincide with the presidential one.

However, practice has shown - especially in France - that popular investiture is not just a simple matter of constitutional technique, but it can cause the President's transformation from a spectator of the political life into an active actor. However, in this context, the powers conferred upon him by the Constitution are of particular importance.

It is worth noting that some countries in Central and Eastern Europe have established a semi-presidential system, despite the fact that they had reservations in allowing the head of state to have an important role, given the way in which the previously existing communist regime had functioned.

After studying the causes for the establishment of a semi-presidential system, it was concluded that, on the one hand, legitimacy had to be conferred on an authority within the state and, on the other hand, "there is no system of political parties whose operation would automatically lead to a stable choice of leader" [9].

According to another opinion, the direct election of the President was considered necessary in order "to satisfy the immediate interest of the transition actors, that, in the climate of uncertainty of the era, regarded as absolutely necessary to 'neutralize' the various competing powers (the President and the Parliament)" by giving relative autonomy of one in relation with the other [10].

French legal literature highlights, in the same context, the effects that the direct election of the President determines: "partisan bipolarity, electoral nationalization, political personalization and government autonomization" [11]. In this regard, the election of the head of state based on a majority uninominal two-round electoral system leads to partisan bipolarity, consequence of the public opinion's bipolarity, where it reaches a tie vote. The election of a certain candidate - supported throughout the nation by a political party or an alliance of parties - by an absolute or relative majority of the voters in a state has the effect of both political personalization and electoral nationalization. Also, by direct election of the President, the head of state and the Government become autonomous, as they originate in different political wills: the popular will and the will of a parliamentary majority.

In Romania, the arguments of the majority of the members of the Constituent Assembly that drafted the Constitution of 1991 were based on the idea that the President personified the nation [12] and, therefore, he had to have democratic legitimacy.

Doctrine shows that a President of the republic appointed by and accountable to the Parliament does not have a formal relation with the citizens. Also, citizens lack any means of control over the President elected this way. By contrast, a President directly elected by the people enjoys wide support, if the majority of the electorate casts ballots [13].

On the same line, another opinion holds that the election of the President by the Parliament results in the former's positioning in the "magnetic field" of confrontation between political parties and, thus, the head of state is at their discretion. Consequently, the President designated by the legislative authority is "a President of the Nation, without the Nation having desired him". The election of the President by universal suffrage puts the head of state outside of political parties and "gives him legitimacy originating democracy, foundations for authority and impartiality" [14].

In supporting the direct election of the President, one considers it imperative for the fundamental state institutions to be formed by direct or indirect - but uncorrupted by exclusively partisan agreements - will of the electorate, since citizens are likely to be alienated from power, separated from the decision centers, which would, then, be exclusively reserved to political parties [15].

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We believe that popular legitimacy, in itself, resulting from the direct election of the president is just a reference point in defining the role of the head of state as well as his relations with the other public authorities.

The democratic legitimacy which the President acquires after elections does not ensure his major legal status in the institutional landscape of a state. It must always be accompanied by extensive prerogatives, which give the President a constitutional and legal framework, which would allow him to be an active character on the political stage, in all the essential circumstances occurring, at certain time, in the evolution of a state.

However, popular legitimacy offers more force to the head of state, who, according to his personality, can use it to increase his role in the institutional system. The achievement of this goal heavily depends on his support by a comfortable majority in Parliament [16].

1.2. Government's political and collective responsibility to Parliament

A specific feature of the parliamentary system within which it arose, *Government's political and collective responsibility to Parliament* is apparent with the adoption of a motion of censure by the Parliament or with the executive's engagement of responsibility before the legislature. The intention behind introducing such feature in the semi-presidential model was for the Government to have the support of the parliamentary majority throughout its entire mandate. Government leadership is performed by either the leader of the majority in Parliament (a majority government) or any other person that enjoys such support (a minority government). To ensure a balance in the exercise of power, within the mutual control, there is the possibility of the dissolution of Parliament by the head of state, under certain conditions specifically determined by the Constitution.

1.3. The President's much broader attributions in the semi-presidential system than in the parliamentary one

In *the semi-presidential system*, the President has *much broader attributions than in the parliamentary one*. Thus, in addition to the specific formal attributions of any head of state, the President has other powers of greater importance in governing the state, such as: the appointment and removal of the prime minister; chairing the Council of Ministers, as a rule (in France) or only under certain circumstances; dissolution of arliament; organization of a legislative referendum in certain areas of social relations, provided the Constitution; attributions regarding defense; taking measures in exceptional circumstances. However, the prerogatives listed above are not found in all analyzed semi-presidential republics and even their content varies to a large degree. Also, although in some states the Constitution confers certain important attributions (such as the revocation of the Chancellor by the President, in Austria), they are not actually exercised in practice. It is worse when, although the fundamental law does not provide for a specific attribution (eg. the revocation of the Prime Minister, in France), it is repeatedly applied, thus breaching the provisions of the Constitution. Therefore, the differences between the analyzed semi-presidential systems are determined by the constitutional regulation of the President's relations with other state authorities, the extent of the President's powers as well as by the effective implementation of the conferred responsibilities.

If in the parliamentary system, the rule is countersigning the documents originating from the head of state, in the semi-presidential regime, only certain documents issued by the President are subject to countersigning, the head of state enjoying, from this point of view, a certain autonomy in exercising his prerogatives. Hence the totally different role the President has in such a system.

While in parliamentary republics, executive power actually lies mostly with the head of government (prime minister, chancellor, president of the Council of Ministers) and the President plays an almost insignificant role, in semi-presidential republics "the President must share power with a prime minister, who,

in turn, must have continuous parliamentary support" [17]. As a result, semi-presidentialism allows, to a certain extent, the sharing of power between opposing political forces [18].

It is important to mention that this model, illustrated mostly by the French political regime, was taken over by other European Union Member States - Portugal, Finland, Austria, Ireland, Romania, Poland, Lithuania, Slovenia [19]. However, the manner of functioning of this system differs from state to state, depending on each one's distinctive features.

As there is variation in the practical implementation of semi-presidential systems, doctrine [20] presents the following classification: *semi-presidential systems with strong Presidents and weak Prime Ministers* [21], *semi-presidential systems with strong Prime Ministers and weak Presidents* [22] and *semi-presidential systems where there is a balance, a sharing of power between President and Prime Minister*. This classification depends mainly on the personality of the fix-term holders of these public offices, their support by the parliamentary majority and the effective exercise of their attributions.

Being supported by political doctrine, semi-presidentialism "enjoys some elements of articulation and flexibility, [...] allowing the prime minister and his government to function, with the support of Parliament, even if the presidential and the parliamentary majorities do no coincide". This way, the semi-presidential forms of government have guaranteed the stability of the executives and an even better functionality than that of the presidential government forms [23].

2. The collaboration between President and Parliament in semi-presidential republics

The cooperation between the legislature and the head of state, fundamental requirement of the separation of powers, is expressed by means of different procedures: addressing messages to Parliament, extending the President's mandate, convening and dissolving the legislature, promulgation of laws, collaboration on forming the Government, placing members of Government under criminal prosecution, initiating referendum, constitutional revision, establishing exceptional measures, impeachment of the head of state for high treason.

In **France**, **addressing messages to Parliament** was a subject of constitutional reform in 2008, after which the President was given the possibility to speak before both Chambers of Parliament, reunited in Congress for this purpose. Under the revised Constitution, the President's statement may determine, in his absence, a debate that is not subject to any vote (Article 18 amended) [24]. It is worth mentioning that, outside parliamentary session, the President may address a message to the legislature, which reunites especially for this occasion. The interpretation of these provisions leads to the conclusion that the President enjoys great authority in Parliament.

Also in **France**, the President addresses a message to the nation when declaring a state of emergency, action which takes place under the provisions of Article 16 of the Constitution.

Similarly, in **Portugal**, the President may cooperate with the Parliament or with the Legislative Assemblies of the Autonomous Regions by means of messages [25], unlike in **Finland** and **Austria**, where the head of state does not have such an attribution.

In **Ireland**, after previous consultation with the Council of State, the President may communicate with the two Houses, through messages or letters, on any important public or national issue. The Head of state also has the posibility, after consulting with the Council of State, to address a message to the nation at any time and on any matter. Each of these messages or letters must receive the consent of the Government [26]. Therefore, the constitutional legislator intended the Prime Minister to exercise some control over the messages of the Head of state.

In **France**, within the collaboration between the President and Parliament, it is listed **the prerogative conferred on the head of state to convene**, by decree, **both Chambers in extraordinary session**, at the request of the majority of members of the National Assembly or of the Prime Minister (Articles 29 and 30 of the Constitution). A special session may be convened only in case of special situations, requiring solutions from Parliament. The activity of such sessions must be precisely determined on the agenda of the parliamentary debates and should be limited to the special situation, which prompted the Parliament convening. The duration of the special session is mentioned in the convocation document, according to the seriousness of the situation.

The interpretation of the French Constitution does not make apparent the intention to enable the President to oppose the performing of this attribution, by refusing to issue a decree to this effect. The regulations cited above were aimed at avoiding abusively convening extraordinary sessions of the legislature. However, in practice, the President used this prerogative in a discretionary manner, even since 1960, when

Charles de Gaulle constantly raised a veto right on the exercise of this prerogative. Moreover, in a press release on the 16th of December 1987, François Mitterrand declared: convening an extraordinary session and determining its agenda "is the exclusive responsibility and at the sole discretion of the President of the Republic".

In **Finland**, the Head of state **convenes Parliament in extraordinary session, opens and declares closed the parliamentary sessions** [27].

In **Portugal**, the President may order the convening of an extraordinary session of the Assembly of the Republic [28].

In **Austria**, the Federal President must convene the newly elected National Council no later than the thirtieth day after the election (Article 27, paragraph 2 of the Constitution). The Head of state is also responsible for convening the inferior Chamber of the Austrian Parliament in ordinary session, which can only be active staring with September 15th until July 15th the next year. The Federal President may convene, on his own initiative, the National Council in an extraordinary session and is bound to do so at the request of the Federal Government, of at least one third of the members of the National Council or of the Federal Council. Based on the decision of the National Council, the Federal President declares closed the sessions of the inferior Chamber (Article 28, paragraphs 1, 2, 3 of the Constitution) [29]. Thus, the National Council convening in ordinary sessions is a more formal attribution.

While in **Austria**, the Head of state convenes the National Council in ordinary sessions without any restrictive condition, in **Ireland**, the legislature may be convened in ordinary sessions by the President only at the proposal of the Prime Minister (Article 13, paragraph 2, point 1 of the Constitution). Also, the Head of state may, at any time and after consulting the State Council, convene a meeting of either or both Houses of Parliament (Article 13, paragraph 2, point 3 of the Constitution).

With respect to **the dissolution of Parliament**, in **France**, after consulting with the Prime Minister and the two Chambers, **the President may dissolve the National Assembly**. The Head of state cannot use this prerogative during the year following parliamentary elections. This is the only limit in the exercise of the attribution provided by Article 12 of the Constitution, fact which allowed the President to use it arbitrarily. Thus, in France of the Fifth Republic, the dissolution of the National Assembly occurred five times: twice (1962 and 1968) during Charles de Gaulle's presidency; twice (1981, 1988) during the two terms of François Mitterand; once in 1997, while Jacques Chirac held the presidential office. In addition, the President cannot exercise this prerogative during the exercise of the exceptional attributions provided by Article 16 as well as when the interim of the presidential office is ensured by the president of the Senate (Article 7 of the Constitution).

In **Finland**, after consulting the president of the Parliament and the presidents of the parliamentary groups and at the motivated initiative of the Prime Minister, the Head of state may decide **to dissolve Parliament**. This measure is, however, conditional on the initiative of the Prime Minister, who will act in this manner in case of a major conflict between Government and Parliament.

In **Portugal**, the President has the power to dissolve the legislature, after consultation with the political parties represented in Parliament and with the Council of State. The dissolution of Parliament may not take place in the following situations: during the last six months or last semester of the presidential term; during a state of siege or of emergency. Also, the President may dissolve the Legislative Assemblies of the Autonomous Regions, at the Government's proposal and after consulting with the Assembly of the Republic (the Portuguese parliament) and the Council of State.

In **Austria**, the President may decide the dissolution of the inferior Chamber, without the consent of other public authority and only once for the same reason (Article 29 of the Constitution). Likewise, at the Government's proposal, the president may dissolve the legislative assembly of a province (Article 100 of the Fundamental law). Although the Constitution does not impose restrictive conditions regarding the dissolution of Parliament, this prerogative was exercised only twice: in 1971 and in 1995.

In **Ireland**, the House of Representatives (the inferior Chamber of the Parliament) may be dissolved by the President, at the Prime Minister's proposal. The Head of state can, however, refuse to dissolve the popular House at the request of a Prime Minister who no longer has the support of the parliamentary majority in the House of Representatives. The dissolution of the legislature occurs as a consequence of conflict between Government and Parliament and only at the proposal of the Prime Minister. Thus, the President action is more a formal one.

The promulgation of laws is a specific attribution of the Head of state, regardless of the form of government - republic or monarchy - of the state.

In **France**, **promulgation of laws** is done within fifteen days since their conveyance to the President (Article 10 of the Constitution). In case of refusal to promulgate a law passed by the Parliament (Article 10, paragraph 2 corroborated with Article 61, paragraph 2 of the Constitution), the President may request the Parliament to deliberate again on the law, in its entirety or only on certain articles. The requested deliberation cannot be refused. The legislature will consider the comments of the President, if the latter is supported by the parliamentary majority. Another means of approaching this kind of situation is for the President to refer the matter to the Constitutional Council that, following constitutional review, rules on the matter within a month or, in case of emergency, within eight days or at the request of the Government.

Thus, following the President's intervention, a law passed by the Parliament can be amended by the legislature or declared unconstitutional, in whole or in part, by the Constitutional Council, which shows that the action of the Head of state in this area is significant, aspect revealed also by practice.

In **Finland**, within the legislative process, following the adoption of laws by the Parliament, they must be promulgated by the President within three months of their referral. The Head of state may request an opinion on a law from the Supreme Court or the Supreme Administrative Court. If a law is not promulgated by the President, it is sent back to the Parliament for reconsideration. A law comes into force, even without being promulgated, if the legislature adopts it once again, without amendments, in its plenum, in a single reading, by majority vote. That same law may also be rejected. If the law is not passed again by the Parliament, it is considered obsolete (Article 77 corroborated with Article 78 of the Constitution). We, thus, notice the preeminence of the legislature in relation with the Head of state. Any law, which was promulgated by the President or which entered into force without being promulgated, must be signed by the President and countersigned by the competent minister. Also, any law which was adopted under the procedure provided for constitutional laws must have a mention of this aspect (Article 79).

An original element is represented by the aspect that, by means of an enabling law, the Parliament may assign to the Head of state the task of issuing *acts with normative character* in a certain time period and in the domains strictly delineated in the enabling law [30]. The latter condition limits, therefore, the President's frame of action.

In **Austria**, in the process of adopting laws, **the President authenticates laws** voted by the Parliament (Article 47, paragraph 1 of the Constitution). This prerogative has more a formal character, since all normative acts authenticated by the President must be countersigned by the Federal Chancellor.

In **Portugal**, **the President is responsible for the promulgation and publication of decree-laws and regulatory decrees**. Regarding this attribution, the Constitution gives the President a *right of suspensive veto*. When exercising this right, the President has two ways of action: to request - by a motivated message - a review of the law by the Parliament or to refer the law to the Constitutional Court, to check for its compliance with the Fundamental law [31]. In the first case, if the Parliament adopts again the law sent for review, by absolute majority of its Members, the President must promulgate it within eight days of its reception. The refusal of the President to promulgate a law can thus be removed.

In **Ireland**, within the legislative process, the President "must promulgate any law passed by the Parliament", this power being provided in an imperative form by the constitutional legislator [32]. However, by exception, another constitutional provision (Article 26) allows the President, after consulting with the Council of State, to refer a law to constitutional review, action performed by the Supreme Court. Laws regarding constitutional revision and those of a financial nature are exempted from this procedure. If the Supreme Court declares a law unconstitutional, the President refuses to promulgate it (Article 26, paragraph 3, point 1).

An original aspect in this respect is the fact that the majority of the Senate members or one-third of the deputies in the House of Representatives (the inferior chamber of the parliament) may address a joint petition to the President, by means of which they propose the Head of state to refuse to promulgate the law on the grounds that the law contains regulations of national importance, which require the expression of the will of the entire nation. If the President approves this petition, he shall inform the Prime Minister and the Chairmen of the two Houses that he refuses to promulgate the law until it was either approved by the people through a referendum or approved by a resolution of the existing inferior House - which is then dissolved - and by the newly elected House of Representatives (Article 27).

The investiture of the Government is the result of collaboration between Parliament, President and the political parties represented in Parliament.

In **France**, the President appoints the Prime Minister by a decree which does not require countersigning, however his freedom of action in this area "is not total, but always limited" [33], as he has to appoint as prime minister a person who has the support of the parliamentary majority.

In **Finland**, the President formally appoints the Prime Minister, who is actually chosen by the legislature, following the negotiations of the political groups represented in the Parliament (Article 61 of the Constitution).

In **Austria**, the appointment of the Chancellor and of the other members of the Federal Government belongs to the President, but his role is more a ceremonial one, since political parties represented in the Parliament have a decisive role in this procedure.

In **Portugal**, the President has the prerogative to appoint the Prime Minister based on the results of the election, after consulting with the parties represented in the Parliament (Article 133, letter f corroborated with Article 187, paragraph 1 of the Constitution).

In **Ireland**, at the proposal of the inferior House of the Parliament, the President appoints the Prime Minister (Article 13, paragraph 1, point 1 corroborated with Article 28, paragraph 1 of the Constitution). Thus, the legislature's intervention in the exercise of this prerogative by the President is overwhelming.

Hence, the primary role in the investiture procedure of the government rests with the legislative body, the president's influence being rather a formal one. In the absence of a parliamentary majority, the president, in the exercise of his mediation prerogative, may influence, to some extent, after consultation with the political parties, the proposal of a candidate for the office of prime minister.

Referendum, as form of semi-direct democracy, is the result of the collaboration between the President and Parliament.

In **France**, **the organization of a legislative referendum**, under Article 11 of the Constitution, is one of the most influential ways that President has in the legislative field. The above mentioned constitutional provision was amended by *the 2008 constitutional reform* in **France**. On the one hand, *the areas of social relations which can be the topic of a legislative referendum* have broadened. Thus, one can subject to referendum any bill on the organization of public authorities, the reforms on the nation's economic, social or *environmental* policy, and the public services involved or seeking authorization to ratify a treaty which, without being contrary to the Constitution, would have effects on the functioning of the institutions.

On the other hand, *the initiative of popular consultation has also undergone changes*. Thus, the President may organize a legislative referendum *at the Government's proposal, during parliamentary sessions or at the joint proposal of both Chambers*.

When the popular consultation is organized at the Government's proposal, the Government has to present a statement before each Chamber, followed by a debate.

The change that occurred in this matter refers to the fact that initiative may come from *one fifth of the members of Parliament, which must be supported by a tenth of the voters in the electoral register*. This initiative takes the form of a bill and cannot refer to the repeal of a legal provision promulgated less than a year before.

The conditions under which this proposal is subjected to referendum and those under which the Constitutional Council checks for compliance with the conditions imposed by the Constitution for the initiation of such a proposal are determined by organic law. If the bill has not been examined by the two Chambers within the term set by the organic law, the President shall submit it to referendum.

When the bill is not adopted by the French people, one cannot subject to referendum any other proposal on the same matter before two years from the date of the referendum.

When the referendum has led to the adoption of the bill, the President must promulgate the law within fifteen days after the publication of the results of the popular consultation.

Article 11 of the Constitution provides that *the conditions for holding a legislative referendum are established by organic law*. In this regard, a draft of organic law on the application of this article was developed, firstly, by the Council of Ministers, which was adopted in a first reading by the National Assembly [34] and then by the Senate. It was afterwards sent for amendments to the Commission on Constitutional Laws, Legislation and General Administration of the Republic. Finally, the law on the implementation of the above mentioned Article was adopted [35].

Under Article 11 of the Constitution, eight legislative referendums were organized: three were organized by President Charles de Gaulle (on the 8th of January 1961, the referendum on the validation of General de Gaulle's self-determination policy in Algeria; on the 8th of April 1962, the referendum on the authorization of the President of the Republic to negotiate a treaty with the future Government of Algeria; on the 28th of October 1962, the referendum on direct universal suffrage for the election of the President); on the 27th of April 1969, the referendum on the regionalization and reform of Senate; on the 23rd of April 1972, the referendum on the ratification of the enlargement of the European Economic Community; on the 6th of

November 1988, the referendum on the status of New Caledonia; on the 20th of September 1992, the referendum on the Maastricht Treaty; on the 29th of May 2005, the referendum on the approval of the Treaty establishing a Constitution for Europe.

Especially in times when the Head of state does not enjoy the support of a comfortable majority in the National Assembly, bypassing the normal legislative procedure of elaborating laws, he can initiate a bill, which is considered adopted if approved by the people, by means of referendum. In practice, this procedure was used, even in violation of the constitutional provisions, in October 1962, in the popular consultation on the direct election of the head of state.

Constitutional referendum, regulated by Article 89 of the Constitution, was organized only once, namely in 2000, when the mandate of the Head of state was reduced to five years.

In **Austria**, the President has the prerogative to organize a *legislative referendum* on a matter of fundamental importance for the state and whose regulation comes from the federal legislator, at the request of the members of the National Council and of the Federal Government, if the popular Chamber decides so (Article 46, paragraph 3 of the Constitution). Likewise, the Head of state is bound to organize a constitutional referendum in the event of a total or partial revision of the Federal Constitution, in the latter case at the behest of the Federal Council or a third of the members of the National Council (Article 46, paragraph 3 of the Constitution).

In **Portugal**, the President can organize *a referendum on important issues of national interest*, at the proposal of the Assembly of the Republic or of the Government, in cases provided by law (Article 134, letter c, Article 115 of the Constitution). There are not considered issues of national interest and therefore they do not fall within the scope of referendum, the following: the revision of the Constitution; the problems or documents on budgetary, fiscal or financial matters; the areas covered by Article 161 and Article 164 (with the exception of letter i) of the Constitution; important issues covered by an international convention, except concluding peace and changing frontiers.

As noted in legal literature, this type of referendum is neither consultative (according to the interpretation given by traditional doctrine), since its results clearly influence the representative bodies' freedom of decision, nor decisional, since the people do not adopt an act subject to its approval, but it obliges the competent body to do so [36].

While in **Ireland**, popular consultation may be initiated by the Head of state, in **Finland**, the Parliament decides on the organization of a consultative referendum (Article 53 of the Constitution).

In **Ireland**, the President may hold either a *constitutional referendum* or a *legislative* one, which must be validated by the people with majority of the validly cast votes (Article 46, paragraph 2 of the Constitution). The majority required for a legislative referendum must represent 33% of voters in the electoral register (Article 47, paragraph 2, point 1 of the Constitution).

In **the procedure of constitutional revision**, in **France**, according to Article 89, constitutional revision occurs either at the initiative of the President – at the Prime Minister's proposal -, or at the initiative of the Parliament. The law on constitutional revision shall be examined and adopted, in the same form, by both Chambers of the Parliament; the passed law shall be subject to the approval of the people, by means of a referendum, organized by the President. The Head of state cannot oppose a revision of the Constitution initiated by the Parliament, as, very clearly showed by Michel Debré, during a speech, delivered in the debates in the National Assembly in 1962: "The legislature has thus the possibility of revising the Constitution against the will of the executive and without its support, but provided that the people is notified" [37]. The President initiated the revision of the Constitution, according to Article 89, only once, namely in 2000, when the mandate of the Head of state was reduced to five years.

In the modification procedure of the Fundamental law, the President can decide only on the manner it is done – by organizing a referendum or by convening Parliament in Congress -, in order for the law on constitutional revision to have legal effect. In practice, however, the President rejected repeatedly to convene the members of Parliament in Congress, which shows the overwhelming influence of the Head of the state over the legislature.

The President has the prerogative to take exceptional measures in certain situations of internal or external crisis.

In **France**, **declaring a state of siege** is a measure taken in the Council of Ministers, whose meetings are chaired by the President. The extension of this measure for a period of more than twelve days can be authorized only by the Parliament, by means of a law (Article 36). Therefore, we identify here the presence of *cooperation between the President and the legislature*.

The exercise of the exceptional attributions provided by Article 16 of the Constitution, actually invests the French President with extensive legislative powers, which materialize in the issue of normative decrees. Thus, according to Article 16, when the institutions of the Republic, the nation's independence, territorial integrity or acting on international commitments are seriously and immediately threatened and when the normal functioning of public authorities is interrupted, the President shall take the measures required by these circumstances, after officially consulting with the Prime Minister, the presidents of both Chambers and the Constitutional Council. The imposed measures must ensure, within the shortest time, the ways for the constitutional public authorities to fulfill their mission. These measures shall be announced by the Head of state by a message addressed to the nation and shall materialize in normative acts. This attribution of the Head of state, proposed by General Charles de Gaulle, was applied by him only once, but in an absolutely discretionary and abusive manner, during April-September 1961, invoking, as a pretext, the uprising of some French military in Algiers, on the 21st of April 1961, rebellion which took place over several days. As noted in doctrine, the above cited Article 16 achieved "the institutionalization of exceptional circumstances", which were defined as "any serious disturbance of social life, involving, in particular, the public authorities' impossibility to respect the legal provisions which, in normal conditions, are imposed to them" [38].

In **Finland**, *with the consent of the legislature*, **the Head of state may declare war and conclude peace** and also he may order the mobilization of armed forces in the Council of Ministers, which will take all necessary measures to cover the costs involved by such measure. If Parliament is not in session when the measure was ordered, it will immediately be convened (Article 129 of the Constitution).

In **Austria**, *in case of an obvious and irreparable danger to society*, the Head of state can manifest a certain influence, when issuing *temporary ordinances*, with normative value, at the proposal of the Federal Government, if the National Council is not in session, cannot meet in due time or is unable to act because of the fortuitous event. The Federal Government will refer the enacted temporary ordinances to the National Council; the latter is to be convened by the President, if the inferior Chamber is not in session. The National Council will have to adopt, within four weeks, appropriate laws that will replace the ordinances (Article 18 of the Constitution). Although it confers the head of state certain power of action, this attribution has never been applied, being therefore devoid of the value enshrined in the Constitution.

In **Portugal**, *the President declares war* in case of actual or imminent aggression and concludes peace, at the Government's proposal, after consulting the Council of State and with the authorization of the Parliament (Article 135, letter c of the Constitution). In this situation, the initiative comes from with the Government and the measure ordered by the Head of state must be approved by the legislature. Also, the Portuguese President may declare *a state of siege or a state of emergency*, after consultation with the Government and with prior authorization from the legislative body (Article 134, letter d corroborated with Articles 138 and 18 of the Constitution).

As one can notice from the aspects presented above, the influence of the president in the exercise of certain exceptional attributions is quite reduced.

In **Ireland**, the President is not conferred any attributions in connection to exceptional situations. In such circumstances, the Prime Minister orders the required measures.

The conclusion of international treaties is the result of cooperation between President, Parliament and Government.

In **France**, the President establishes the main lines for foreign affairs, having the most important role in this field. According to the Constitution (Article 52), *the Head of state negotiates and concludes international treaties*. As appreciated by doctrine, usually, the President, mostly, participates in negotiations concerned with the conclusion of a political agreement and less with that of a treaty [39].

There are important categories of treaties that cannot enter into force without being ratified by the Parliament, through a law (Article 53 of the Constitution). This way, the action of the President in this domain is limited. We also emphasize the aspect that international agreements ratified by the legislature have, after their publication, superior value to that of laws, provided, for each agreement or treaty, that they are applied by the other party (Article 55 of the Fundamental law).

In **Finland**, **the Parliament approves treaties or other international obligations entered into by the Head of state**, if they contain provisions pertaining to the legislative domain or are of great significance or, under the Constitution, require - for other reasons - the consent of the legislature. The Parliament approves the international obligations entered into through treaties signed by the President as well as their termination and decides on their implementation, under the provisions of the Constitution. The approval of international obligations or their termination is made by a majority of parliamentary votes (Article 93,

corroborated with Article 94 of the Constitution). The legislative provisions of a treaty or of any other international obligations are implemented by means of a law. Regarding other kinds of provisions of a treaty or of international obligations, they are implemented through a decree issued by the President (Article 95 of the Fundamental law). Therefore, the international agreements concluded by the Head of state will not produce legal effects without approval by the legislature.

In **Austria**, based on the attribution that *the President represents the federation in foreign relations*, he formally concludes, on behalf of the state, the international treaties negotiated by the Federal Government.

Political international treaties and those which amend or supplement laws cannot be concluded without the consent of the National Council. Treaties regarding the areas of autonomous action of the provinces must be approved by the Federal Council.

The procedure on the conclusion of any international treaties is regulated through a law passed by the Parliament (Article 10, paragraph 1, point 1 of the Constitution).

Also in **Portugal**, the President has the duty to conclude international treaties, with prior approval from the Parliament (Article 135, letter b of the Fundamental law).

In **Ireland**, under the Constitution, international treaties are concluded by the Government.

Impeachment for high treason is the most serious sanction that can be taken by the Parliament against the President in office.

In **France**, there were radical changes with respect to the President's liability, changes that we have extensively commented in other studies [40].

The status of the President of the French Republic was the subject of a constitutional reform, approved by the two Chambers of Parliament, reunited on the 19th of February 2007.

According to Article 67, amended, "the President of the Republic is not liable for the acts performed in this capacity, under the provisions of Articles 53-2 and 68. He cannot, during his term and before any jurisdiction or French administrative authority, be called as a witness or be the subject of a criminal trial, act of information, investigation or prosecution. Any statute of limitation or revocation of rights is suspended. The proceedings he cannot be involved in and the courts before which he is not liable during his mandate will be resumed or directed against him within one month after the end of his term".

According to Article 68, amended, the President of the Republic can only be dismissed for "*a violation of his duties manifestly incompatible with the exercise of his mandate.* His removal is ruled by the Parliament, constituted in the High Court. The proposal for a meeting of the High Court, adopted by one of the two Chambers of the Parliament, is immediately transmitted to the other Chamber, which will decide on it within fifteen days. The High Court is chaired by the president of the National Assembly. It shall decide, within one month, by secret ballot, on the dismissal of the President. This decision has immediate effect. To be implemented, such decisions are to be taken by a majority of two thirds of the members of a Chamber or of the judges of the High Court. Any delegation of voting is prohibited. Only the votes in favor of the proposal for a meeting of the High Court or proposal for dismissal are taken into consideration. The conditions for the application of this Article are provided for by an organic law".

The draft of the organic law mentioned in the constitutional text was only placed on the agenda of the *Commission on Constitutional Laws, Legislation and General Administration of the Republic* in 2006, Philippe Houillon being appointed rapporteur. He thought that *it was important to protect the presidential office for the safeguard of the principle of separation of powers and the continuity of the state*.

The procedure of removal, as stated in the new constitutional framework established by the *French Constitutional Law of the 23rd of February 2007*, is not a penalty designed to punish a criminal act. In this regard, the established procedure moves away from the American one of impeachment, the members of the Parliament being tasked with defining what is "a violation manifestly incompatible" with the presidential office.

A part of doctrine considers the juridical regime of the president's liability "an empty shell" [41] or, at least, something very vague.

We emphasize that a *draft of organic law on the application of Article 68 of the Constitution* was elaborated by the Council of Ministers, adopted in a first reading by the Senate and then by the National Assembly [42] and sent for review to the *Commission on Constitutional Laws, Legislation and General Administration of the Republic*.

Therefore, criminal liability has been replaced by political liability.

In **Portugal**, Article 117 of the Constitution, entitled *The status of holders of political offices*, refers to both a political, civil liability and to a criminal one of the office holders: "The holders of political offices

are politically, civilly and criminally liable for acts and omissions they commit in the exercise of their offices". The President of the Republic, as *representative of the Republic and the guarantor of the essential values of the Portuguese State*, is also a holder of public office, which has at the same time, an obvious political nature. The above cited provisions must be corroborated with another regulation, which provides for an administrative-patrimonial liability: "the state and other public entities are civilly liable, jointly with the members of their bodies, servants or agents, for all actions or omissions in the exercise of their offices that led to a violation of another's rights, freedoms and guarantees or caused an injury" (Article 22) [43].

The Fundamental law does not expressly state a special procedure regarding the President's political liability, although this form of liability is established in the above mentioned regulation.

We believe that the President is politically liable towards the voters that appointed him in office and the natural consequence of sanctioning the arbitrary behavior of the Head of state is not being elected again in the next election.

In **Portugal**, the Fundamental law establishes *the criminal liability of the Head of state*. Thus, the President of the Republic is liable for criminal acts committed during the exercise of his office before the Supreme Court of Justice. The initiative to triggering this procedure lies with the Assembly of the Republic, at the proposal of a fifth of the deputies, the decision being passed with two thirds of the total number of members of Parliament. A conviction will result in the dismissal from office of the Head of state and his impossibility to be elected again (Article 130 corroborated with Article 163, letter c of the Constitution).

The President's liability for acts committed outside the exercise of his office is also regulated. Thus, the President of the Republic is liable for criminal acts committed outside the exercise of his office before regular courts and after the end of his term (Article 133).

In **Finland**, the Constitution contains express provisions on the criminal liability of the President of the Republic. The rule is that *the President of the Republic cannot be prosecuted for acts performed in the exercise of his office* (Article 113 of the Constitution).

As an exception to this rule, when the Chancellor of Justice [44], the Parliamentary Ombudsman or the Government considers that *the President of the Republic is guilty of high treason or a crime against humanity*, they must inform the Parliament. If the Parliament, with three-fourths majority of the votes cast, decides to indict the President, the State Prosecutor shall support this accusation before the High Court of Justice. This situation also requires the President to refrain from exercising the duties of his office [45], during this period of time. A final decision of conviction ruled by the High Court of Justice leads to the dismissal from office of the President.

In **Austria**, there are *three distinct procedures*, which involve *the legal liability of the President*: suspension and revocation, by referendum, of the Federal President; his investigation by public authorities; his indictment and trial by the Constitutional Court. Here we shall refer only to two procedures, which have a pronounced political character. Thus, according to Article 60, paragraph 6 of the Constitution, *the President may be removed before the end of the mandate, by means of a referendum*, which is held only at the request of the Federal Assembly (the two Chambers reunited) convened, for this purpose, by the Federal Chancellor, following the National Council's decision; the decision will be taken by the popular Chamber in the presence of at least half of its members and by a majority of two thirds of the votes cast. At this stage of the procedure, the Federal President can no longer exercise his attributions, being suspended from office. When the referendum is held, the people's refusal to dismiss the Federal President from office will result in the dissolution of the National Council and new elections.

A second procedure is *the indictment and trial of the Federal President by the Constitutional Court*. In this regard, the Federal President is liable, for the documents issued in the exercise of his functions, before the Federal Assembly (Article 68, paragraph 1 corroborated with Article 142 paragraph 1). The President's liability is triggered as a result of violation of the Federal Constitution and, based on the decision of the National Council or the Federal Council, the Federal Assembly is convened by the Federal Chancellor. The impeachment decision has to be taken in the presence of at least half the members of each Chamber, by a majority of two thirds of the votes cast. The President's judgment rests with the Constitutional Court as a result of the engagement of his constitutional liability for violation of the provisions of the Fundamental law. A conviction by the Court results in the removal of the President and, under "*especially serious circumstances*", also in the temporary banning of the exercise of his political rights.

In **Ireland**, as a general rule, the President is not liable towards any of the parliamentary Houses and to any court, for the exercise of his functions and performance of acts related to the powers granted to him (Article 13, paragraph 8, point 1). Departing from this principle, the Constitution establishes some exceptions, such as *the political liability of the Head of state*. Thus, the conduct of the President may,

however, be criticized either by one of the two Houses of Parliament or by a body appointed or designated by one of the Houses to examine allegations of the President's improper conduct in relation with the constitutional provisions. In this regard, it is expressly stated that the President may be impeached for a "*proven inappropriate conduct*" (Article 12, paragraph 10 of the Constitution). The accusation will be supported by one of the two Houses, at the request of at least thirty members; in this case, the request for impeachment is examined by the House to which the MPs, who have made the request, belong. If the request is approved by a majority of two thirds of the deputies, the President is formally indicted. The other House is tasked with examining the accusations brought against the Head of state or with referring this task to a commission or another body. The President shall have the right to appear and be represented during the examination of the accusation. If the House examining the accusation decides, by a majority of two thirds, that the allegations against the President are maintained and that his misconduct makes him incapable to perform his functions, the resolution will result in the suspension from office of the President [46].

In **Ireland**, at the proposal of the House of Representatives, the President appoints the Prime Minister as well as the institution called *The Comptroller and Auditor General*, which is in charge of checking the revenues and expenses within the popular Chamber.

Conclusions

All aspects presented above lead to the conclusion that, in **France**, the President represents the key public authority of the whole institutional system, as he has important prerogatives and the Parliament is completely subordinated to him, if he has the support of the parliamentary majority in the National Assembly. Moreover, reducing the Presidential term to five years, through the constitutional revision of 2000, was done for the purpose of the presidential elections to precede and, thus, to influence the election of the inferior Chamber, in order to eliminate the period of cohabitation. Since cohabitation has produced multiple tense situations between the Head of state and the National Assembly, the constitutional legislator has removed it.

The analyzed constitutional provisions show that in **Finland**, **Austria** and **Ireland**, in the relations between the President and Parliament, the latter has a decisive role.

In **Portugal**, although the Fundamental law confers the President important attributions, exercised in his relations with the Parliament, they must be submitted to the approval of the legislature in order for them to produce legal effects. One notices, in this case also, the superiority of the legislature compared to the head of state.

Therefore, even if the traditional French system was taken over by other European states, such as those subjected to our analysis, however, it was applied differently, depending on a number of existing features - tradition, political factors, historical or social aspects etc.

The utility of this approach is to understand the ways in which such a regime has been transposed into other countries, where this system has distinct features.

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