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THE FEATURES OF THE INSTITUTE OF PRESIDENCY IN THE SEMI-PRESIDENTIAL REPUBLIC

The article deals with the institute of presidency in the semi-presidential republics. The institute of presidency is an integral element of the political system of most states of the world. The author analyzes features of the semi-presidential form of government. Depending on the ratio of elements of the presidential and parliamentary republics in different countries, the presidential-parliamentary and the parliamentary-presidential varieties of the semi-presidential republic are singled out. The author systematizes the power of the president in the semi-presidential republics in accordance with the main spheres of the state activity – executive, legislative, judicial and foreign policy. The advantages and the disadvantages of the semi-presidential republic are outlined.

Keywords: president, president's institute, institute of presidency, semi-presidential republic.

Due to political changes in the world, the parliamentary and the presidential republics are gradually transformed into the semi-presidential republic. Although the semi-presidential republic has elements these two classical republics but this republic government has some features of the executive power's functioning. It is the duality of the executive power.

The functioning of the institute of presidency in the semi-presidential forms of government is studied by such foreign and domestic researchers as M. Dmytrenko, Yu. Koval, Y. Kolomyiets, N. Kononenko, S. Parechina, V. Sukhonos, and others.

The purpose of the article is to analyze the features of the institute of presidency in the semi-presidential republic.

The main features of the semi-presidential form of government are: the president is popularly elected therefore he has large powers; the forming of the government jointly by the president and the parliament; the dual political responsibility of the government before the president and the parliament; the dualism of the executive branch. It means the division of power between the president and the government; the independence of the president from the government (absence of the institute of counter-signature); the president's right to dissolve the parliament for special reasons; the president's right to legislative initiative¹.

Most countries in the world are the semi-presidential republics. In Europe, the semi-presidential republics are Austria, Bulgaria, Ireland, Iceland, Macedonia, Poland, Portugal, Romania, Slovenia, Finland, France, Croatia. From the former republics of the Soviet Union, this form of government has been introduced in Azerbaijan, Belarus, Kyrgyzstan, Lithuania, Russia, Ukraine.

The semi-presidential forms of government are similar to the parliamentary and the presidential republics. For instance, the many semi-presidential republics are similar to the parliamentary republics by the way of formation of the government. This republic government is similar to the presidential republic by the way of electing of the president by general elections (Austria, Iceland, Lithuania, Poland, Serbia, Slovenia, Finland).

The relation of the branches of the state power in the semi-presidential forms of government has some features. On the one hand, the head of state is the politically irresponsible person, who influences the government due to the participation in its formation, the presiding at the meetings, the dismissal of members of the government. Also, the president counteracts the parliament owing to the putting a veto on laws, the legislative initiative, the dissolution of the legislative. It means that the head of state protects the government as a politically responsible subject from the instability that comes from the parliament. On the

¹ Шляхтун, П.П. (2005). *Конституційне право: словник термінів*. Київ: Либідь, 457.

other hand, the parliament influences the president and the government. For instance, the legislative branch participates in the formation and the dismissal of the government. The parliament may express the vote of censure for the government and overcome the president's veto as well. The legislature does not allow the head of state to turn the government into its administrative apparatus. Such construction of power involves distancing the presidency from the executive.

The tendency of separating the president from the executive branch led to the formation of the concept of the president-arbitrator. It is explained by the logic of the division of state power into legislative, executive and judicial, as well as this is needed for their coordinated interaction. The president calls to coordinate the actions of state bodies, using conciliation procedures to resolve differences between them.

The semi-presidential republic versus the parliamentary republic, where the president is given little power in the executive branch, and in contradistinction to the presidential republic, where he is the head of the executive branch, there is a dualism of the executive power in the semi-presidential form of government, which consists in the constitutional division of the executive power between two centers of power by the president and the government with the prime minister. The duality of the executive may lead to the clash of relations between the head of state and the formed government on the basis of the parliamentary majority. The conflict exists here if the president and the government represent the opposition political forces. This clash of relations decides to obey one of the center of executive power to another: the government submits to the president or the head of state submits to the government, in fact, the prime minister.

It is expedient to systematize the power of the president in the semi-presidential republics in accordance with the main spheres of the state activity – executive, legislative, judicial and foreign policy.

In the sphere of the executive power, the head of state has the right to participate in the formation of the government, to chair its meetings, to dismiss members of the government. The depending on the kind of semi-presidential republic (the presidential-parliamentary and the parliamentary-presidential republics), the power of the president is different. In the presidential-parliamentary republics, the government is subordinated to the president, so the head of state has large powers. In the parliamentary-presidential republics, the president is subordinated to the government and his powers are formal. Apart from, the government is the instrument for realization of the power of the president in the Soviet semi-presidential republics. The government calls the “boy for beating” in these countries¹.

The constitutional powers of the presidents in the legislative sphere include the right to convene the parliament for regular and extraordinary sessions. In addition, in some countries with this form of government, there is a political tradition according to which the head of state opens the first session of the parliament. He has the right to convene the parliament for the first session within the deadline stipulated by the date of the previous parliamentary elections. For example, this term is 15 days in Lithuania, 20 days in Romania and Slovenia, 30 days in Austria, 1 month in Bulgaria, 10 weeks in Iceland, etc. In Russia, the president has the right to convene the parliament for the first session of a predetermined period (30 days). The president may interrupt and close a session of the parliament too when there are certain conditions.

The president has the right to send a message to the parliament or to the people in the legislative sphere. This right of the head of state is the main means of communication between the president and the parliament or between the president and the people. There are examples of presidential messages to the parliament or to the people in the constitutions of the semi-presidential republics, “The President of Romania shall address Parliament by messages on the main political issues of the nation” (Article 88 of the Constitution of Romania of 1991)²; “The President of the Republic of Belarus shall deliver messages to the people of the Republic of Belarus on the state of the nation and on the guidelines of the domestic and foreign policy” (Article 84 (13) of the Constitution of Belarus of 1994)³. In the constitutions, the presence of the corresponding presidential right confirms its significance as a state and political institute.

¹ Сухонос, В.В. (2011). *Институт главы держави в умовах республіки: конституційно-правовий та історико-теоретичний аспекти*: Монографія. Суми: Університетська книга, 215.

² *Constitution of Romania of 1991* (the Parliament of Romania). *The official website of the Parliament of Romania*. <http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=3#t3c6s3> (2018, October, 23).

³ *Constitution of the Republic of Belarus of 1994* (the National Assembly of Belarus). *The official website of the National Assembly of Belarus*. <<http://house.gov.by/en/section-ivthe-president-parliamentgovernment-the-courts-en/>> (2018, October, 23).

The constitutional powers of the president in the legislative sphere include the right to dissolve the parliament. In the semi-presidential forms of government, the president has only the right to dissolve the lower chamber and the unicameral parliament. In case of dissolution of the lower chamber, the powers of the upper chamber of parliament are usually terminated. This right expresses the arbitration function of the head of state. In other words, the president has a real opportunity to restrict the power of the parliament, which seeks to control the government, or which tries to destabilize the political situation in the state. The threat of dissolution of the legislature transforms this element of deterrence into a kind of political and legal blackmail from the side of the president. The French scientist J. Jacques said, that the dissolution of the parliament is an arbitration function of the executive branch. The president uses it when there is a conflict between the executive and the legislature¹.

The right to dissolve the parliament is a very effective means of influencing the executive branch on the legislative, so modern constitutions stipulate a number of conditions that allow the head of state to dissolve the parliament or, on the contrary, establish restrictions that prohibit him to do it. The president may exercise this right when: the parliament does not form the government, or the legislative does not express confidence in the newly formed government, or the parliament does not reject the candidacy of the prime minister repeatedly, or the legislative branch does not approve the government's program of activities and the state budget, or the body of power violates the constitution. In addition, the head of state does not dissolve the parliament during a state of emergency, martial law or war. The legislative body may not be dissolved within the last 6 months (as a rule) of the term of office of the president. The parliament may not be dissolved within a certain period after the beginning of the meeting of the newly elected legislative as well.

In the semi-presidential form of government, the head of state has certain powers, that are connected with the legislative process: signs and promulgations of laws, puts a veto on proposed laws, has the right of legislative initiative, issues acts, that is countersigned by the minister.

The legislative powers of the president include the right to veto on proposed laws. The veto means the head of state's refusal to sign and publish the law. However, in some states (Austria, Iceland, Slovenia, Croatia), the president does not have the right to veto. For example, in Iceland, the law adopted by the parliament is sent to the president for approval no later than 2 weeks. In case he turns down the law, this law will adopt or rebut by a referendum².

The president has the right to sign and publish laws adopted by the parliament (promulgation) too. This right is the final stage of the legislative process. The head of state has to either sign a law or put a veto during a certain period. This period is 8 days in Slovenia and Croatia, 10 days in Belarus and Lithuania, 14 days in Iceland and Russia, 15 days in Bulgaria and France, 20 days in Portugal and Romania, 21 days in Poland, 56 days in Azerbaijan, 3 months in Finland, etc. In Ireland, the president must sign the law not earlier than 5 days and not later than 7 days from the date of submission of the bill to him.

The publication of the law is carried out by the head of state by publishing the text of the law in special official editions. In Poland, for example, the president must sign and publish the law within 21 days in the Journal of Laws of the Republic of Poland. The President of Finland must sign and publish the law within 3 months in the Act in the Statutes of Finland. In Ireland, after signing the law, the head of state must publish it in the *Iris Oifigiúil*. In Bulgaria, after signing the law, he publishes the text of the law in the State Gazette.

In Iceland, Portugal, Finland, the act of promulgation requires counter-signature of the head of government or the corresponding minister, because the government is responsible for the decisions of the president. In Bulgaria, Belarus, Macedonia, Poland, Russia, Romania, France, the act of promulgation does not require counter-signature of the head of government or a member of the government designated by him.

The right of legislative initiative belongs to the constitutional powers of the head of state. Only the presidents of Belarus, Lithuania, Poland, and Russia have such powers. In most semi-presidential republics, presidents do not have this right. For instance, the President of France does not have the right of legislative

¹ Жакке, Ж.-П. (2002). *Конституционное право и политические институты: Учебное пособие*. Москва: Юрист, 295.

² *Constitution of the Republic of Iceland of 1944 (the Althing). The official website of the Government offices of Iceland*. <<https://www.government.is/Publications/Legislation/Lex/?newsid=89fc6038-fd28-11e7-9423-005056bc4d74>> (2018, October, 23).

initiative. Only the head of government and members of parliament have this right. In Kyrgyzstan, the right of legislative initiative is granted to parliamentarians, government, and groups of voters.

The president has the right to issue legal acts that are bylaw. However, such powers are exercised, as a rule, under the control of the government. The means of exercising such control, the actual subordination of the head of state to the government, is the institute of counter-signature. In the semi-presidential republic, the institute of counter-signature is used to a lesser extent, than a parliamentary one. In the presidential-parliamentary republic, the government is formed by the president and bears political responsibility before him. It has a formal character owing to the actual subordination of the government to the president. But in the parliamentary-presidential republic, where the government is formed by the parliament and does not directly depend on the president, the institute of counter-signature is the mean of influencing the government on the president.

In some states, the president has the right to issue acts, which have the force of law (decree-laws, legislative decrees). For example, in Lithuania, Belarus, Romania, the head of state issues decrees, which should be countersigned by the signature of the prime minister.

The constitutional powers of the president in the judicial sphere include the right of pardon, the right to mitigate and the right to abolish criminal punishments determined by the court. In most states, the head of state has the right to declare an amnesty. Thus, the President of France is vested with the power to grant individual pardons (Article 17 of the Constitution of France of 1958)¹. In Slovenia, the president decides on the granting of clemency (Article 107 of the Constitution of the Republic of Slovenia of 1991)².

In addition, the president has the right to appoint judges or to participate in the procedure of such appointments. In the semi-presidential forms of government, the head of state with the government or a special body appoints judges. There are different denominations of this body. For instance, in Romania, this body is called the Superior Council of Magistracy; in France, it is the High Council of the Judiciary; in Poland, it is the National Council of the Judiciary; in Bulgaria, Portugal, it is known under the denomination of the Supreme Judicial Council; in Macedonia, it is the Republican Judicial Council; in Slovenia, it is the Judicial Council; in Croatia, it is the National Judicial Council; in Kyrgyzstan, it is the Supreme Court.

The head of state has significant powers in the sphere of foreign policy. Besides representing the state in external relations, the president determines the direction of the foreign policy of the state. He appoints and recalls ambassadors and other diplomatic representatives from their post, he accredits diplomatic representatives of other states too. The president has the right to negotiate, to conclude, to ratify international treaties.

In the sphere of defense, the president is the commander-in-chief of the defense forces. The powers of the head of state in this area are the core of the authorities of the president as the guarantor of the independence of the nation and territorial integrity.

There are important powers of the presidents during the state of emergency, martial law or war. The head of state has the right to declare a state of emergency (military, siege, etc.) by the prior and immediate consultation with the parliament, the Supreme Court or other bodies. The authority of the president is large during a state of emergency. In particular, he is entitled to issue decrees, which have the force of law.

Among other powers of the president should also be allocated the right to initiate a referendum. For example, in Romania, after consultation with the parliament, the president may appoint a referendum on matters of national importance (Article 90 of the Constitution of Romania of 1991)³. In Belarus, the head of state appoints a referendum on his own initiative (Article 74 of the Constitution of Belarus of 1994)⁴. Also,

¹ *Constitution of France of 1958* (the National of Assembly of France). *The official website of the French National of Assembly*. <<http://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly#Title2>> (2018, October, 23).

² *Constitution of the Republic of Slovenia of 1991* (the National of Assembly of Slovenia). *The official website of the President of Republic of Slovenia*. <<http://www.up-rs.si/up-rs/uprs-eng.nsf/pages/Ustava-in-zakoni?OpenDocument>> (2018, October, 23).

³ *Constitution of Romania of 1991* (the Parliament of Romania). *The official website of the Parliament of Romania*. <http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=3#t3c6s3> (2018, October, 23).

⁴ *Constitution of the Republic of Belarus of 1994* (the National Assembly of Belarus). *The official website of the National Assembly of Belarus*. <<http://house.gov.by/en/section-iii-electoral-system-referendum-en/>>

the President of the Russian Federation may appoint a referendum on his own initiative (Article 84 (c) of the Constitution of the Russian Federation of 1993)¹.

The semi-presidential republics may allow avoiding some shortcomings of the presidential and parliamentary forms. But it may help to combine the shortcomings of both of these forms without their benefits. It happens in states with the ideological and political separation, where there are no persistent democratic traditions and power is exercised through the opposition of political forces.

In conclusion, the president is the head of state, but he is not the head of government in the semi-presidential republics. However, in this form of government, the president is given large powers, which allow him to influence the policy of the government. In the presidential-parliamentary republics, the government is subordinated to the president, so the head of state has large powers. In the parliamentary-presidential republics, the president is subordinated to the government and his powers are formal. In some countries (France, Russia, and Belarus) the power of the president is wider than the power of the parliament, in others (Austria, Ireland, Iceland) the power of the parliament is wider than the power of the president.

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