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The Power Balance Issues in the Semi-Presidential Republic

Creation of a semi-Presidential system is related to the second wave of rationalization of Parliamentarism. In this event, enhancement of the executive authority has gained far wider scale than implemented by the authors of the Bonn Constitution. Weakening of the legislative body at the account of strengthening of the executive authority is clearly evident in the system, which entails significant discourse in the context of checks and balances of power. The hereby article aims to analyze the hereof problem, to study and estimate the theoretical and practical aspects of the semi-Presidential Republic.

Key words: *scientific characteristic of the semi-presidential system, classification of semi-presidential republics, balance of power, intra-executive conflict.*

1. Introduction

Creation of a semi-Presidential system is related to the second wave of rationalization of Parliamentarism. In this event, enhancement of the executive authority has gained far wider scale than implemented by the authors of the Bonn Constitution. The Constitution of France of 1958 is the document providing the most distinct indication of enhancement of the executive authority.¹ The hereof Constitution did really change the then unstable political situation in France, thus becoming the model document for many countries.

The first scientific characteristic of the semi-Presidential system belongs to the French scientist, *Duverge*. *Maurice Duverge* has established the concept of the semi-Presidential Republic and predicted emergence of new political system to be the dominant Constitutional form for new democracies.² Indeed, the semi-Presidential form of administration became particularly actual after 90s of the previous century in the post-Communist countries and Africa. The specialists note that establishment of the flexible semi-Presidential system becomes particularly important in the countries of new democracy, characterized with the political and economic transitional period and unstable electoral and party system.³

The parallel executive structure in capacity of the President⁴ is created in the semi-Presidential system in view of provision of balance of the Government. The Constitutional arrangement creating

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¹ *Shaio A.*, Self-restriction of Authority, Introduction to the Constitutionalism, translated by *M. Maisuradze*, edited by *T. Ninidze*, Tbilisi, 2003, 123 (in Georgian).

² *Shugart M.*, Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns, 344, <<http://www.palgrave-journals.com/fp/journal/v3/n3/full/8200087a.html>>, [15.07.2014].

³ *Nakashidze M.*, Peculiarities of Relations of the President with the Governmental Branches in the semi-Presidential Systems (Based on the Example of Azerbaijan, Georgia and Armenia), 17, (in Georgian) see <http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf>, [15.05.2015].

⁴ *Krupavicius A.*, Semi-Presidentialism in Lithuania: Origins, Development and Challenges, *Semi-Presidentialism in Central and Eastern Europe*, edited by *Elgie R., Moestrup S.*, 2008, 83.

numerous hubs of authority and impeding to personalization of the regime, creates more favorable basis for protection of legitimation.⁵

However, the semi-Presidential system unifies various models, some of which with their negative consequences of system functioning exceeds the negative characteristics existent in the Presidential and Parliamentary systems. Most of the specialists consider the possible conflict within the dual executive power as the main disadvantage of the semi-Presidential system. Besides, weakening of the legislative body at the account of strengthening of the executive authority is clearly evident in the system, which entails significant discourse in the context of checks and balances of power. At that, the standard formula of the semi-Presidential Republic formulated by *Duverge* is as well problematic. The problem is absence of one of the criterion, “quite important competence” – clear definition, entailing aggregation of the states of various types within one category.

The hereby article aims to analyze the hereof problem, to study and estimate the theoretical and practical aspects of the semi-Presidential Republic. The article provides theoretical characteristics of this system, and system analysis reveals categorization of the semi-Presidential countries, outlining the common characteristics thereof. The article provides consideration of positive and negative trends of various models of the semi-Presidential Republic, the problem of checks and balances and diversity of solution ways of the problem in each of them. Emphasis is made on practice of Central and East European countries, which is conditioned with the fact that current Constitutional system in Georgia is closely related to the configuration between the Governmental branches in the hereof countries and hence, study of the practice of these countries is relevant for the legal space of Georgia.

2. Historical Overview

The fifth Republic of France headed by Mr. *de Gaulle*, in view of elimination of the negative sides of the Presidential and the Parliamentary systems and especially in view to overcome the Parliamentary crisis and to form the stabile Government, has created the mixed Republic unifying the characteristics of the Presidential and the Parliamentary Republic. The term “semi-Presidential” does not indicate to the intermediary state of the President between the Parliamentary and the Presidential Republics but on the contrary, the President holds the greatest authority in all the spheres of state administration. *Charles de Gaulle* has unified the concepts of the French Bonapartism, American Presidentialism and the powerful British Prime Minister in this form of administration.⁶

Within the period of 1870-1958, France had the democratic and viable but unstable Government. Lots of the parties were entitled to form the Government which could be easily substituted when failed to overcome the crisis. The Algerian war years of 1940-44 and 1954-58 convinced everyone in necessity of the powerful executive authority to ensure uninterrupted functionality of the

⁵ *Fisch S.*, Constitutional Development of Georgia in the perspective of the comparative Analysis, *Babek V., Fisch S., Reichenbergh Ts.*, Revision of the Constitution, Georgian Way to Europe, with the preface by *A. Demetrashvili*, Tbilisi, 2012, 66, (in Georgian), See <www.giz.de/law-caucasus>.

⁶ *Eremadze Q.*, Inter-Relation of the Legislative and Executive Authorities in the Mixed Republic (on the example of France), Magazine People and Constitution, №4, 2002, 36 (in Georgian)

state in crisis. Elimination of the political crisis without creation of the Governmental vacuum was the main aspiration of the authors of the “*Gaullist*” Constitution.⁷

As a result, after the Revolution of 1789, it is for the first time when no one in France argues which political institutions better fit the French society. The Governments are no longer changed upon confrontations of the political-institutional changes of the society. The Right-wing and Left-wing representatives do unanimously recognize that the Constitution of 1958 gained political stability that the third and the fourth Republics lacked. Some people in France even proved that the French Revolution taking start in 1789 at last ended and that the fights lasting for two centuries and seeking of viable institutional arrangement have achieved the logical culmination.⁸ As a result, “everyone today is *Gaullist*”, as criticism of the institutions established under the Constitution of 1958 is no longer admissible.⁹

The main author of the Constitution of 1958, *Michel Debré* has described the main principles of the Constitution as follows: for stability and power of the executive authority, I have used the idea of the Republican Monarch. At the same time, it was necessary to have the real Parliamentary system where the Cabinet administers the Governmental activity and the organized Parliament is as well functioning, the wills of which are not supreme.¹⁰

3. The Original, French Concept of the Semi-Presidential System

The French model of administration reveals the primacy of the President. It contains the authorities characterized for the Presidents of the Presidential and the Parliamentary Republic. The President is not only the Head of the State but he/she is equipped with wide range of executive authorities. The President is one of the parts of the executive authority. He/she is the milestone of the system and is not dependent on the Parliament. The Prime Minister and the Government are as well the parts of the executive authority but unlike the President, their authority is based on the Parliament. The hereof concept in aggregation creates the unique system and forms the bicephalous executive authority.¹¹

This very dual executive system attracts the particular attention of other countries. As *Charles de Gaulle* stated, the Governmental branch shall be divided but not unified. At that, the branches shall not have one and the same source. The President, in the hereof executive authority, is free from responsibility while the Government carries the political responsibility for its activities. The “responsibility” of the President towards the Parliament ensures primacy of the executive authority to the parties and the legislative body.¹²

⁷ *Suleiman E.*, *Presidentialism and Political Stability in France, The Failure of Presidential Democracy*, Vol. 1, Edited by *Linz J., Valenzuela A.*, Baltimore and London, 1994, 138.

⁸ *Ibid*, 139-140.

⁹ *Ibid*, 140.

¹⁰ *Ibid*, 143.

¹¹ *Sedelius T.*, *The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe*, 2006, 43, <<http://www.diva-portal.org/smash/get/diva2:136841/FULLTEXT01.pdf>>, [04.01.2015].

¹² *Suleiman E.*, *Presidentialism and Political Stability in France, The Failure of Presidential Democracy*, Vol. 1, Edited by *Linz J.*, and *Valenzuela A.*, Baltimore and London, 1994, 151.

The President is the Head of the political structure. He/she is elected with public voting and enjoys the Constitutional authority to nominate the Prime Minister and the Ministers with the recommendation of the Prime Minister. The President is responsible for uninterrupted functioning of the executive authority and the state and is logically equipped with the authority to dismiss the Assembly and to circumvent the Parliament by means of the Referendum.¹³

The main difference between the semi-Presidential and the Parliamentary systems lays in the fact that in the Parliamentary system the President is not attributed to the executive authority. His/her functions are purely of ceremonial nature. He/she is the Head of the State and represents the country in international relations while in the semi-Presidential system, the President, as being the Head of the State, enjoys the range of symbolic and personnel authorities such are: pardon and appointment of the high rank public servants and military persons, as well as hosting the Ambassadors and appointment of the missions abroad. Unlike the Head of the State with the Parliamentary system, the President of France also holds the powers having the direct impact on the executive authority, including the right to nominate the Prime Minister, Ministers with the recommendation of the Prime Minister, to return the bills to the Parliament for reconsideration, to dismiss the Parliament etc. Difference from the Presidential system is that the President of the Presidential Republic is the sole Executive Authority which implies non-formation of the dual executive structure. The President in the Presidential Republic pays for the sole administration of the executive authority at the account of disability to dismiss the legislative body.¹⁴

The norms of the Constitution stipulate that the Prime Minister is the person responsible for implementation of daily policy and is the hub of the political decision-making, however the President often dominates and is de facto political leader. The Prime Minister is the central figure but subordinated. French Presidentialism enjoys the expectations and the prestige created for the hereof position by the political leadership of *Charles de Gaulle*. The semi-Presidential system resembles old dissociation between the “reign” and “administration” in Monarchies. The Presidents often define policy but the Prime Minister shall ensure conversion of the hereof political ideas into the legislative initiatives. The President in France holds the predominant power while the Prime Minister plays supporting role. In some countries applying the French concept, the Prime Minister is relatively independent from the President. Despite of the fact that the President exercises important functions, his/her control over the Prime Minister is limited. In some other countries, the Prime Minister depends on the President and the Legislative Body.¹⁵

The President in this system plays a dominant role if supported by the Assembly. He/she exercises the executive authority but the responsibility towards the Parliament is imposed to the Government. In crisis, the Prime Minister plays the role of the “shield” protecting the President from the political attacks. If the economic policy of the executive authority fails, the President is entitled to sacrifice the Prime Minister to the Parliament.¹⁶

¹³ *Suleiman E.*, *Presidentialism and Political Stability in France, The Failure of Presidential Democracy*, Vol. 1, Edited by *Linz J.*, and *Valenzuela A.*, Baltimore and London, 143-144.

¹⁴ *Sedelius T.*, *The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe*, 2006, 31-42, <<http://www.diva-portal.org/smash/get/diva2:136841/FULLTEXT01.pdf>>, [04.01.2015].

¹⁵ *O'Neil P.*, *Essentials of Comparative Politics*, New York, London, 2013, 143-144.

¹⁶ *Ibid*, 53.

The text of the Constitution of 1958 allows existence of two rival powers with public legitimation – the President and the Parliament.¹⁷ As *C. de Gaulle* stated in his famous manifest, one Assembly does not necessarily imply its farsightedness. Thus, the Second Assembly is necessary to be elected and formed by different means.¹⁸

Strengthening of the executive power simultaneously restricts the competences of the Parliament. The Parliament is deprived of the part of its legislative authorities, putting the distrust institute and Parliament-Government relationship upended. The Constitution of France is a clear example of deviation from the classic model of responsibility of the Government. According to the famous Article 49 of the Constitution, issue of confidence can be related to some concrete bills. The bill, other than the events if rejected by 10% of MPs, is adopted without ballot. Ballot shall be held within 48 hours not taking the number of abstainers upon voting on vote of confidence into account. It requires absolute majority.¹⁹

The Weimar Republic also applied the similar model. The Weimar Constitution of Germany of 1919-33 is fairly considered as the first configuration of the semi-Presidential Republic.²⁰ The first justification on formation of the similar system belongs to *Max Weber*, stating that the Cabinet is better be elected by the Parliament implementing the oversight while the President elected with direct suffrage shall implement executive authority independently from the Parliament based on the Referendums. The leader of this type directly implements the people-approved politics.²¹ The author of the Weimar Constitution, *Hugo Preuss* used the concept of *Weber* to be based on although with slightly different accents. The President in Germany of Weimar had the authority to dismiss the Reichstag and the authority to appoint the Chancellor. The President was entitled to circumvent the Parliament and declare the referendum. The system of the current dual executive authority is much alike the construction formulated in then Germany of Weimar.²²

4. The Scientific Review and the Classification of the Semi-Presidential System

The semi-Presidential system in reference material is described with various terms: bipolar executive authority, divided executive authority, Parliamentarized Presidential system, quasi-Parliamentary and semi-Presidential Government. *Shugart* and *Carey* give definition Premier-Presidential system. This description indicates to the degree of difference between the systems as in theory so in practice.²³

¹⁷ *Suleiman E.*, *Presidentialism and Political Stability in France, The Failure of Presidential Democracy*, Vol. 1, Edited by *Linz J.* and *Valenzuela A.*, Baltimore and London, 1994, 145.

¹⁸ *Gaulle C.D.*, *The Bayeux Manifesto, The Failure of Presidential Democracy*, Vol. 1, Edited by *Linz J.*, and *Valenzuela A.*, Baltimore and London, 1994, 140.

¹⁹ *Shaio A.*, *Self-Restriction of Power, Introduction to the Constitutionalism*, translated by *M. Maisuradze*, edited by *T. Ninidze*, Tbilisi, 2003, 226 (in Georgian).

²⁰ *Sartori G.*, *Comparative Constitutional Engineering, An Inquiry into Structures, Incentives and Outcomes*, 2nd ed., New York, 1997, 125.

²¹ *Shaio A.*, *Self-Restriction of Authority, Introduction to the Constitutionalism*, translated by *M. Maisuradze*, edited by *T. Ninidze*, Tbilisi, 2003, 108 (in Georgian).

²² *Linz J.*, *Presidential or Parliamentary Democracy: Does It Make a Difference? The Failure of Presidential Democracy*, Vol. 1, Edited by *Linz J.*, and *Valenzuela A.*, Baltimore and London, 1994, 48-49.

²³ *Ibid*, 48.

4.1. Definition by Duverge

The French scientist *Duverge* was the first who gave the scientific analysis of the semi-Presidential Republic. He was the first to use this term in his book in 1970s. In 1980, the definition used in the article became the standard formula of the semi-Presidential system.²⁴ As *Duverge* elucidated, the semi-Presidential Republic can be characterized with three signs: a) the President is elected by the people; b) the President holds significant power; c) there are the Prime Minister and the Cabinet requiring confidence of the majority of the Parliament.²⁵

The concept by *Duverge* is quite problematic, especially the criterion of “significant power” of the President. The problem lays in the type of the competence to be attributed as “significant”. It is considered that “significant” competence exists if the President holds one of the hereof authorities: dismissal of the Parliament, right of veto, appointment of the Government. Even in the event if the President holds no discretion to form the Cabinet or authority to dismiss the Parliament, the power of the President still can be considered as “quite significant” according to the concept by *Duverge* if the President is entitled to veto the Law adopted by the Parliament. Such power is particularly important if the Parliament needs qualified authority to overcome the veto. If the Government fails to pass the bill initiated thereby, it implies obligation of the Government to negotiate with the President.²⁶

According to the criterion provided by *Duverge*, quite different systems can be grouped as the form of the semi-Presidential governance. According to the competences of the President, *Duverge* classifies sundry types of the Presidential system: 1. the system with “symbolic President” (Austria, Ireland and Iceland); 2. the system with the “fully authorized President” (France); 3. the system with the balance between the President and the Government (Weimar Germany, Finland and Portugal).²⁷

Duverge considered the following countries as semi-Presidential: Austria, Finland, France, Iceland, Ireland and Portugal – despite that Austria, Iceland and Ireland have symbolic Presidents. Many researchers argue that these countries shall not be attributed to the list of the semi-Presidential systems. *Stephen and Skach* considered France and Portugal only as the semi-Presidential Republics and attributed Austria, Ireland and Iceland to the Parliamentary system inasmuch as these countries have the directly elected, though weak President.²⁸

4.2. Classification by Shugart and Carey

The initial original definition by *Duverge* was further extended and sub-categorized by the professors, *Shugart* and *Carey*. The criteria provided by *Shugart* and *Carey* are being used for classification of the semi-Presidential system in the modern scientific literature at most extent. They classified two types of the semi-Presidential system: Premier-presidential, and the Presidential-Parliamentary.

²⁴ *Sedelius T.*, The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe, 2006, 33, see <<http://www.diva-portal.org/smash/get/diva2:136841/FULLTEXT01.pdf>>, [04.01.2015].

²⁵ *Shugart M.*, Semi-presidential Systems: Dual Executive and Mixed Authority Patterns, 324, <<http://www.palgrave-journals.com/fp/journal/v3/n3/full/8200087a.html>>, [15.07.2014].

²⁶ *Ibid.*, 339.

²⁷ *Nakashidze M.*, Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems (Based on the Example of Azerbaijan, Georgia and Armenia), , 19, (in Georgian), see <http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf>, [15.07.2014].

²⁸ *Elgie R.*, A Fresh Look at Semipresidentialism Variations on a Theme, 99-100, <<http://www.stevendroper.com/elgie.pdf>>, [20.05.2015].

The main difference between the Premier-presidential and the Presidential-Parliamentary systems according to *Shugart* and *Carey* lays in the fact that in the Premier-presidential system, the President plays his/her role in formation of the Government but the Prime Minister and the Cabinet carry exclusive accountability towards the Parliamentary Majority (it means that the Parliament instead of the President is entitled to dismiss the Government) while in the Presidential-Parliamentary system, the Prime Minister and the Cabinet carry double responsibility towards the President and the Parliamentary Majority (the President and the Parliament enjoy the authority to dismiss the Government).²⁹

In the Parliamentary system, the legislative body elects and dismisses the Cabinet while in the Presidential system, it is President who elects and dismisses the Cabinet. In the semi-Presidential system, the institution electing the Government is not entitled to dismiss it. In the Premier-presidential system, the President elects the Prime Minister but the authority to dismiss the Cabinet is granted to the Parliament only. The fact that the President is deprived of possibility to ensure maintenance of desired Cabinet restricts the real power of the President upon election of the Prime Minister. After appointment, the Cabinet is subordinated to the Parliament and not to the President. However, in practice the Cabinet is subordinated to the President when the President and the Parliamentary Majority have one and the same party affiliation. In the Presidential-Parliamentary system, the President elects the Cabinet and is as well entitled to dismiss it. In this system the Cabinet is responsible as to the President so to the Parliament.³⁰

We deal with the Premier-presidential system when: 1) the President is elected by people; 2) the President holds significant competences; 3) the Prime Minister and the Cabinet depend on the Parliamentary confidence. We deal with the Presidential-Parliamentary system when: 1) the President is elected by people; 2) the President appoints and dismisses the Prime Minister and the Cabinet members; 3) the Prime Minister and the Cabinet members are subordinated to the dual Parliamentary and the Presidential confidence; 4) the President at usual extent holds some legislative authorities and the right to dismiss the Parliament.³¹

In the Presidential-Parliamentary system, the President holds far powerful position than in the Premier-presidential systems. The term “Prime Minister-President” indicates to supremacy of the Prime Minister and the term “Presidential-Parliamentary” indicates to supremacy of the President.³²

It is noteworthy that the modern scientific system uses the criterions by *Shugart* and *Carey* for classification of the semi-Presidential system most of all. Correspondingly, the countries of the semi-Presidential system are categorized in two main types: Premier-presidential and the Presidential-Parliamentary.³³

²⁹ *Elgie R.*, A Fresh Look at Semipresidentialism Variations on a Theme, 22-24, <<http://www.stevendroper.com/elgie.pdf>>, [20.05.2015].

³⁰ *Shugart M.*, Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns, 333-340, <<http://www.palgrave-journals.com/fp/journal/v3/n3/full/8200087a.html>>, [15.07.2014].

³¹ *Sedelius T.*, The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe, 2006, 39, <<http://www.diva-portal.org/smash/get/diva2:136841/FULLTEXT01.pdf>>, [04.01.2015].

³² *Sedelius T.*, The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe, 2006, 38, <<http://www.diva-portal.org/smash/get/diva2:136841/FULLTEXT01.pdf>>, [04.01.2015].

³³ *Nakashidze M.*, Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems, 24, (in Georgian), see <http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf>, [15.05.2015].

4.3. The Concept by Sartori

Sartori also does not agree with the definition by *Duverge*. He describes the semi-Presidential Republic as follows:

The current semi-Presidential systems can be described as:

- a) The Head of the State is elected by people – directly or indirectly – with the fixed term;
- b) The Head of the State shares the executive power with the Prime Minister. Hence, it implies the dual executive authority specified with the following three characteristics:
 - a. The President is independent from the Parliament but he/she is not authorized on sole or direct administration of the executive power. Thus, will of the President shall be fulfilled through the Government;
 - b. The Prime Minister and the Cabinet are independent from the President but depend on the Parliament: they are the subject of the Parliamentary confidence or distrust. They need support of the Parliamentary Majority in any case;
 - c. The dual executive system of the semi-Presidential system allows establishment of various balances in the executive authority and alternation of superiority of the power.³⁴

Sartori considers that mistaken inclusion of the examples will inevitably distort perception of this model. He considers that the Presidents of Austria and Ireland hold power only on the papers while the vivid Constitution declines their role. In his opinion, the semi-Presidential system is better than others. However, it leaves unsolved problems as it is the fragile system at some extent. The problem of divided Majority does not disappear regardless of its less quality herein than in the Presidential Republic.³⁵

4.4. Classification by Elgie

Robert Elgie considers that the problem is entailed with absence of clear definition of “quite significant competence”. In his opinion, in case of strict definition of the hereof element, only the countries with the powerful Presidents shall be attributed to the semi-Presidential system and hence, the internal executive conflict shall be considered as a peculiarity for the semi-Presidential Republic. In case of less strict definition, where Austria, Ireland and Iceland will be classified into this model, it means that internal conflict is no longer a necessary characteristic for the hereof model.³⁶

Elgie presumes that extraction of the second criterion and simplification of the definition is a solution, namely, the directly elected President and the Prime Minister responsible towards the legislative body. 55 countries in the world can be attributed to the semi-Presidential system according to this definition.³⁷

Elgie himself sub-classifies the semi-Presidential system into three types: highly Presidentialized, ceremonial and balanced systems. In the highly Presidentialized semi-Presidential system

³⁴ *Sartori G.*, *Comparative Constitutional Engineering, An Inquiry into Structures, Incentives and Outcomes*, 2nd ed., New York, 1997, 131-132.

³⁵ *Ibid*, 125-137.

³⁶ *Elgie R.*, *A Fresh Look at Semipresidentialism Variations on a Theme*, 100, <<http://www.stevendroper.com/elgie.pdf>>, [20.05.2015].

³⁷ *Ibid*, 100-101.

where the “winner takes all” the high quality personalized system is being created. As *Elgie* supposes, this state is harmful for democracy. It is recommended for the developing countries to prevent adoption of this system. As *Elgie* considers, many post-Soviet countries, such as Armenia, Azerbaijan, Kazakhstan, Tajikistan and Uzbekistan, have established highly Presidentialized semi-Presidential system.³⁸

According to the classification by *Elgie*, the second sub-stage – semi-Presidential system with the ceremonial President functions as the Parliamentary system. The President holds small Constitutional powers and is the more symbolic Head than the active decision-maker. Real authority is exercised by the Prime Minister. The political practice in the countries of this system is similar to the practice of the Parliamentary countries such are Germany and Greece.³⁹

As *Elgie* elucidates, the balanced semi-Presidential system is extremely ambiguous. Bulgaria, Croatia, Finland, Lithuania, Poland and France are attributed to this system by *Elgie*. Criticism of the semi-Presidential Republic is related to this balanced model and division of the executive authority against self. According to *Elgie*, this is the very model criticized by *Linz*. *Linz* states that the semi-Presidential system is associated with politics and intrigue that may delay decision-making and entail contradictory politics due to confrontation between the President and the Prime Minister. *Stephen and Skach* also states that the semi-Presidential system embodies deadlock and conflict in dual executive authority. These problems can be entailed when the President and the Prime Minister are affiliated to one and the same party and co-habitation further exacerbates the situation. All these systems comprise “co-habitation” period. In Poland, the President *Lech Wałęsa* and the Prime Minister were under constant confrontation. In France, the Constitutional reform of 2003 resulted in reduction of the Presidential term to 5 years to minimize probability of co-habitation entailed on the basis of coincidence of the Presidential and the Parliamentary terms. Inasmuch as these countries managed to consolidate democracy, *Elgie* considers that the balanced semi-Presidential system is not necessarily of the problematic governance form including in developing democracies and upon co-habitation as well.⁴⁰

4.5. Opinions by Georgian Scientists

The hereof issue attracted attention of Georgian scientists as well. According to *Avtandil Demetrashvili*, if the President and the Parliamentary Majority (and correspondingly the Government) represent one political spectrum, then governance is semi-Presidential and if these authorities represent different political powers – then governance is semi-Parliamentary.⁴¹ *Zaza Rukhadze* also subcategorizes the semi-Presidential and semi-Parliamentary Republic within the mixed form of governance.⁴² According to *Levan Izoria*, direct election of the President does not mean that the form of governance is semi-Presidential even if the President holds the authority of the suspensive veto, legi-

³⁸ *Elgie R.*, A Fresh Look at Semipresidentialism Variations on a Theme, 100, <<http://www.stevendroper.com/elgie.pdf>>, [20.05.2015].

³⁹ *Ibid*, 105.

⁴⁰ *Ibid*, 107-108.

⁴¹ *Demetrashvili A., Kobakhidze I.*, Constitutional Law, Manual for the BA Students, Tbilisi, 2008, 109 (in Georgian).

⁴² *Rukhadze Z.*, Constitutional Law of Georgia, Manual for the Students of Law Faculty, edited by *V. Loria*, Batumi, 1999, 181 (in Georgian).

slative initiative and dismissal of the Parliament in capacity of the Arbiter. Hence, *Levan Izoria* attributes most of the Eastern European countries to the Parliamentary system.⁴³

4.6. Conclusion on Classification of the Semi-Presidential System

Deriving from unification of the countries with the diverse systems into the semi-Presidential system, I hereby suppose that at least four categories can be outlined in the initial original definition by *Duverge*: 1. The first category may conclude so-called super-Presidential Republics. The countries of the semi-Presidential system attributed to the Presidential-Parliamentary system by *Shugart and Carey*, where the President holds the authority to form and dismiss the Government, as well as wide discretion to dismiss the Parliament, are: Russia, Armenia, Azerbaijan etc. 2. The system with the powerful President where the President holds the authority to form the Government, however is restricted in dismissal of the Government, and holds the discretion to dismiss the Parliament. At the same time, he/she holds the significant prerogatives in the executive sphere and if supported by the Parliamentary Majority, manages to dominate over the system. The fifth Republic of France can be named as an example of the hereof mode. 3. The third category may conclude the balanced semi-Presidential system where the President holds some prerogatives in formation of the Government, holds fragmented competences in the executive sphere still failing to authorize the President to dominate over the system even if equipped with support of the Parliamentary Majority. The President is a significant figure; the person to hold negotiations with, though he/she shall not become the main actor in any case. Competences of the President serve for balance of the Government at most extent; let's take for instance Lithuania and Poland. This model can be called semi-Parliamentary as well. 4. The semi-Presidential system also comprises the models where the directly elected ceremonial figures head the State, the system with no different functioning from the Parliamentary practice. Such countries are Austria, Iceland, Bulgaria, Macedonia, Slovenia and Romania. We presume that this category shall not be classified as semi-Presidential. It is the sub-category of the Parliamentary system, namely with the Parliamentary system with directly elected President. The President fails to incur any impact on the executive authority and hence, we do not deal with the dual bicephalous executive authority. The hereof fact excludes the basis to classify it as the semi-Presidential Republic.

5. Peculiarities of the Mixed Republic

5.1. Internal executive conflict

Most of the specialists consider the possible internal conflict within the dual executive authority to be the reason for major turmoil of the semi-Presidential system.⁴⁴

In general, internal executive conflict is defined as the political fight between the President and the Prime Minister in view of control of the executive branch.⁴⁵

⁴³ *Izoria L.*, Presidential, Parliamentary of semi-Presidential? Road to Democratic Consolidation, Tbilisi, 2010, 38-39 (in Georgian).

⁴⁴ *Nakashidze M.*, Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems, 62, (in Georgian), see <[http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz% 20 Nakashidze.pdf](http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf)>, [15.05.2015].

The President, in the semi-Presidential system, is the branch of the executive power and shares the political authority. Despite the President and the Prime Minister are aspired to exercise different functions, they have to co-exist and partially collaborate as in the process of reforming and political activity so upon appointment of the high officials and the Ministers. Any conflict in this cohabitation is considered as a threat in terms of efficiency of executive activity. Dual legitimacy of the semi-Presidential system further exacerbates conflicts. Both, the President and the Prime Minister are entitled to claim the public mandate. Existence of two legitimate leaders even if they have one and the same political affiliation – due to personal ambitions or different opinions – entails threat of stir of the conflict.⁴⁶

In Intra-executive conflict the president and the prime-minister compete with each other for interpretation of constitutional norms, as the text of constitution is vague in the context of separation of competencies between the president and the government. In addition, neither legal act can perfectly regulate all details of relationship of governmental institutions.⁴⁷

5.2. Cohabitation

Semi-presidential political system is characterized by interaction of three distinct majority – presidential, parliamentary and governmental. Presidential power is executed efficiently and unequivocally, when that three majorities are the same.⁴⁸ In this case, the prime minister is an alter ego of the president.⁴⁹ But if there is a conflict between the president and the parliament, the president plays a subordinate role.

Despite of the fact that president forms government, the president has to take into account the results of parliamentary elections in the process of nominating the prime-minister, whether it is formally regulated in constitution. If after parliamentary election, opposed political party gains majority, the president has to nominate opposed candidate of the prime minister, in another case the president pose a threat not to receive the confidence.⁵⁰

If the president is supported by the parliamentary majority, system generally works with the president's leading. The president leads government de jure and de facto. The president, who enjoys the support of the parliamentary majority, appoints loyal prime minister. In light of the president's significant constitutional powers, this enables him/her to acquire even more competences and man-

⁴⁵ *Sedelius T.*, The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe, 2006, 18, <<http://www.diva-portal.org/smash/get/diva2:136841/FULLTEXT01.pdf>>, [04.01.2015].

⁴⁶ *Ibid.*, 20.

⁴⁷ *Nakashidze M.*, Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems, (In Georgian), 62 see <http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf>, [15.05.2015].

⁴⁸ *Suleiman E.*, Presidentialism and Political Stability in France, The Failure of Presidential Democracy, Vol. 1, Edited by *Linz J.* and *Valenzuela A.*, Baltimore and London, 1994, 148.

⁴⁹ *Linz J.*, Presidential or Parliamentary Democracy: Does It Make a Difference?, The Failure of Presidential Democracy, Vol. 1, Edited by *Linz J.* and *Valenzuela A.*, Baltimore and London, 1994, 52.

⁵⁰ *Nakashidze M.*, Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems, (In Georgian), 161, see <http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf> [15.07.2014]

ages executive power at the expense of the prime minister's concessions. The prime minister controls administration and leads technical management of cabinet.⁵¹

In the second case, when the president faces opposed parliamentary majority, he has to appoint as a prime minister the leader of the parliamentary majority. In this case, the political powers transfers to prime minister.⁵² In the case when the president has formed government by opposed political party, the system is established, which is often called "cohabitation" in French literature. It reflects the idea that the two incompatible people are forced to live with each other.⁵³

Splitting of the executive body into opposition segments – on the one hand – the president and on the other hand – the cabinet supported by assembly, may cause crisis, if one or both sides ignore each other's rights. Cohabitation is often defined as "executive divided against himself".⁵⁴ The president does not have sufficient powers to carry out the executive power independently, but he/she has enough authority to cause a crisis by using his powers against the prime minister. As a rule, in such a case the president retreats and the system is functioning as a parliamentary. Due to this Duverger to the semi-presidential republic called a system, which alters between presidential and parliamentary systems. When the president and the parliamentary majority are from the same party, system is presidential and when it does not, the system works as a parliamentary.⁵⁵ However, Sartori doesn't agree with this opinion. He states that in the case of cohabitation, system does not become a pure parliamentary system, as the president retains certain competences and independent legitimacy. There is the president, who has his own legitimacy and is entitled by competencies, which to the presidents elected by the parliaments nearly do not have.⁵⁶ The president without the support of national assembly is more than a figurehead, but is much more less than it was de Gaulle's idea.⁵⁷

It should be noted that cohabitation is more likely in premier-presidential than in president-parliamentary systems. In France the cases of cohabitation were three times: 1986-1988 years – between the Socialist president Mitterrand and conservative Prime Minister Jacques Chirac, 1993-1995 years – between president Mitterrand and the second conservative prime minister Edouard Balladur, 1997-2002 years – between president Chirac and socialist prime minister Leon Jospin.⁵⁸

Cohabitation depends on the outcome of the election. In France in order to reduce cohabitation carried out constitutional reform in 2000. The term of the president's office was equalized to the term of French national assembly and it was limited by 5 years. Simultaneous election of the president and the parliament promotes similar electoral results.⁵⁹

⁵¹ Ibid, 57-59.

⁵² Ibid, 59.

⁵³ Ibid, 161

⁵⁴ *Shugart M, Carey J*, Presidents and Assemblies Constitutional Design and Electoral Dynamics, New York, 1992, 57.

⁵⁵ Ibid, 23.

⁵⁶ *Sartori G.*, Comparative Constitutional Engineering, An Inquiry into Structures, Incentives and Outcomes, Second Edition, New York, 1997, 124.

⁵⁷ *Suleiman E.*, Presidentialism and Political Stability in France, The Failure of Presidential Democracy, Vol. 1, Edited by *Linz J. and Valenzuela A.*, Baltimore and London, 1994, 140, 157.

⁵⁸ *Nakashidze M.*, Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems, (In Georgian), 60, see http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf [15.05.2015].

⁵⁹ *Pakte P., Melen – Sukramanian F.*, Constitutional Law, Translated by *Kalatozishvili G.*, Edited by *Demetrashvili A.*, 2012, 851, (In Georgian).

The president has some powers even during the cohabitation. He can dissolve the parliament by any reason. In France the only prohibition for the dissolution of the parliament is not to dissolve it within a year after the parliamentary election. In other cases, he/she can freely dissolve parliament in order to restore supporting majority. However, the president has to dissolve the parliament only when he/she is sure in voters' support, otherwise, such decision is dangerous for the president. If the voters support the president's opposition party, he has to put up with the opposed government.

In the process of cohabitation prime minister emerges as a major political person, and he/she is responsible for determining the policy of the executive branch. In practice, the prime minister dominates in all aspects of domestic policy, and he/she also has some influence on foreign policy. Contrary to this the president's role is limited. The president manages to keep control over some areas, mainly in the field of foreign policy and national defense, and also can linger the reforms in the domestic policy.⁶⁰ During cohabitation the president's powers are mostly negative. He/she can refuse a countersignature and nominating candidates.⁶¹

According to Suleiman, French executive system is a flexible dual executive structure, the bi-cephalous executive body, where the "first head" alters in accordance with the changes of the parliamentary majority.⁶² The Constitution contains a safe valve, which avoids the conflict between two legitimate leader elected by people's vote, as far as from time to time it operates as a presidential or parliamentary system.⁶³

It should be noted that in the literature cohabitation is not considered only in a negative context, somewhat it is regarded as a tool of balance of political power.

6. Semi-Presidential System in the New Democracies

As Duverger noted, semi-presidential system became the most efficient way for moving from dictatorship to democracy in Eastern Europe and the former Soviet Union. In these countries (Slovakia, Slovenia, Bulgaria, Macedonia, Romania, Lithuania, Croatia, Poland, Serbia) premier-presidential system were established. It also should be noted that in this countries different semi-presidential systems were set up. For example, if in Slovenia system is similar to the parliamentary, in Poland the power of the president and the parliament are balanced.⁶⁴

It is noteworthy that the government formation rule has a significant impact on the balance of power between the president and the prime minister.

Almost in all abovementioned countries there is written in the text of constitution that the president appoints the prime minister. This does not indicate the president's real power. In certain

⁶⁰ *Sedelius T.*, The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe, 2006, 45, <<http://www.diva-portal.org/smash/get/diva2:136841/FULLTEXT01.pdf>>, [04. 01. 2015].

⁶¹ *Suleiman E.*, Presidentialism and Political Stability in France, The Failure of Presidential Democracy, Vol. 1, Edited by *Linz J., Valenzuela A.*, Baltimore and London, 1994,159.

⁶² *Sartori G.*, Comparative Constitutional Engineering, An Inquiry into Structures, Incentives and Outcomes, second edition, New York, 1997,125.

⁶³ *Suleiman E.*, Presidentialism and Political Stability in France, The Failure of Presidential Democracy, Vol. 1, Edited by *Linz J., Valenzuela A.*, Baltimore and London, 1994, 151.

⁶⁴ *Ibid*, 6.

cases it could mean that the president is the main figure in the government formation process, or it might indicate that the president is acting in accordance with the will of Parliament or the party leaders and performs the function of a public notary.⁶⁵

6.1. Models of government formation

The president's involvement in the process of government formation can be different options:

- 1) President has a exclusive right to select the prime-minister;
- 2) The legislature has the power to appoint the prime minister. In this process the president performs the ceremonial role.
- 3) The president and the legislature jointly appoint the prime minister.⁶⁶

6.1.1. The First Model

A clear example of the first model is France, the president has broad competence in the government formation process. The President selects and appoints the prime minister. The prime minister, for his/her part, selects the candidates of ministers and proposes to the president for approval. In France investiture of parliament is neither necessary nor legally established. The constitution of France entitles the president to nominate the prime minister's candidate without confidence of parliament. The president proposes to parliament the prime minister and government by his/her own decision accordingly to how the president and the prime minister want to express their respect to the institution of parliament.⁶⁷ However, in practice the procedure of voting confidence was introduced, because the author of the Constitution so wanted. But in the 1988-1993 years this procedure was avoided, as the government was supported by the minority of the national assembly. In parliament only the basic issues have been declared.⁶⁸

In this model, the president has the exclusive authority to form a government, however, the president is not absolute in this respect, since it takes into account the balance of power in the legislative body.

6.1.2. The Second Model

In the second case, the government is formed like parliamentary system. In this model the legislature directly appoints the prime minister and the president plays a ceremonial role. Typically to the president's competence belongs formal approval of prime minister appointed by the legislature. However, in the case when there is no clear-cut parliamentary majority, as it is in many countries of new democracy, the government formation process becomes complicated and it may require a dif-

⁶⁵ *Bahro H.*, *Virtues and Vices of Semi-presidential Government*, 1998, 17, see <http://www.rcss.sinica.edu.tw/app/ebook/journal/11-01-1999/11_1_1.pdf>, [25.05.2015].

⁶⁶ *Choudhry S., Stacey R.*, *Semi-Presidentialism as Power Sharing: Constitutional Reform after the Arab Spring*, Center for Constitutional Transitions and International IDEA, 2014, 45, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/04/Semi-Presidentialism-as-Power-Sharing.pdf>> [25.05.2015].

⁶⁷ *Sapran U.*, *The Principles of Governing: Executive Power, The Republic: Parliamentary or Presidential*, edited by *Melkadze O.*, Tbilisi, 1996, 184, (In Georgian).

⁶⁸ *Lovo P.*, *Parliamentarism*, Tbilisi, 2005, 89-90, (In Georgian).

ferent role of the president.⁶⁹ This model is close to parliamentary system. Such models include Bulgaria, Macedonia, Romania, Slovenia.

6.1.3. The Third Model

The third model, which means the president and the legislature jointly appoint the prime minister, includes central and eastern European countries: Lithuania, Croatia, Serbia, Poland. Cooperation between the president and the parliament are different.⁷⁰

The procedures provided by the third model is not radically different from the second model in regard with that in both cases role of Parliament is determinant, without approval of parliament government cannot start functioning. However, in the second model the president's role is weaker. The word "proposal" indicates that the decision is made by the parliament, not the president. In this case the president has to contact with the parties, before proposal. In the third model coordination with the parties is reasonable. However, the appointment of the prime minister contrast with nominating "candidate", entitles the president a certain influential power.⁷¹ Due to this the president plays an important role in the election of the prime minister. In Croatia and Lithuania the refusal to investiture is like to pass a vote of no confidence;⁷² In Poland, if government proposed by the president is refused, the parliament has possibility to choose the candidate nominated by the parliament. It should be noted that the Polish parliament has more powers in the process of the prime minister's dismissal than appointment.⁷³ at the time of government dismissal parliament functions completely independently and the president's powers are limited by approving the choice of the parliament, in the case of a successful constructive vote of no-confidence.

In regard with the third model it should be noted that when the candidate proposed by the president needs approval from parliament and the president has no right to dismiss the prime minister, the president has two choices: a) to appoint a candidate acceptable to the parliament; b) to appoint its chosen candidate, who will be dismissed by the parliament.⁷⁴ At the same time, it should be considered the political party system. Where there are strong political parties, the president obeys to the will of the legislature, as it is in France. If the parties are disorganized and institutionally weak, therefore, legislature is fragmented, in this case the approval of the parliament becomes meaningless and the president dominates in the process of the appointment of prime minister.⁷⁵

⁶⁹ Bahro H., *Virtues and Vices of Semi-presidential Government*, 1998, 18, see <http://www.rchss.sinica.edu.tw/app/ebook/journal/11-01-1999/11_1_1.pdf>, [25.05.2015].

⁷⁰ Choudhry S., Stacey R., *Semi-Presidentialism as Power Sharing: Constitutional Reform after the Arab Spring*, Center for Constitutional Transitions and International IDEA, 2014, 48, see: <<http://constitutionaltransitions.org/wp-content/uploads/2014/04/Semi-Presidentialism-as-Power-Sharing.pdf>> [25.05.2015].

⁷¹ Bahro H., *Virtues and Vices of Semi-presidential Government*, 1998, 17, see <http://www.rchss.sinica.edu.tw/app/ebook/journal/11-01-1999/11_1_1.pdf>, [25.05.2015].

⁷² Ibid.

⁷³ McMenamin I., *Semi-presidentialism and Democratization in Poland*, *Semi-presidentialism in Central and Eastern Europe*, edited by Elgie R., Moestrup S., 2008, 130.

⁷⁴ Choudhry S., Stacey R., *Semi-Presidentialism as Power Sharing: Constitutional Reform after the Arab Spring*, Center for Constitutional Transitions and International IDEA, 2014, 50, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/04/Semi-Presidentialism-as-Power-Sharing.pdf>> [25.05.2015].

⁷⁵ Ibid, 48.

6.2. Government Formation

Appointment of members of governments is also important. Nomination and appointment of members of government can have a significant impact on the role of the president and the balance of power among the branches. The president is depends on the prime minister's proposal, who will become minister. Such decision is not unreasonable, as the prime minister has to rely on that people in his/her policy implementation process.⁷⁶

This helps to strengthen the power of the prime minister against the power of the president. The prime minister, who appoints the members of the cabinet, can much more effectively control the cabinet and creates a bastion against the president's power. Control of cabinet by the prime minister is not only the way to prevent autocracy of president, but it also strengthens the stability of the government. The prime minister, who is able to select his own cabinet, has much more opportunity to create a unified and effective government. However, even when the prime minister has the sole right to select the members of the government, its power is not absolute. The prime minister is an agent of the legislative body and he must select a cabinet, which can retain the confidence of Parliament. Due to this, He/she must take into account the will of the coalition.⁷⁷

The Constitution of many countries require the approval of the whole cabinet by the legislature, for example, Croatia, Poland, Lithuania, Slovakia, Romania, Bulgaria, Macedonia, Serbia.

It should be noted that in the Ukraine and Poland, there were such a model, which considered the separation of power between the prime minister and the president in the process of the appointment of members of cabinet. In the Ukraine (2006-2010), the president was entitled to appoint the ministries of defense and foreign affairs. However, the whole cabinet is approved by the parliament. Also in Poland in 1992-1997, in the conditions of small constitution, the prime minister has to consult with the president in the context of appointment of ministries of interior and security sphere.⁷⁸

6.3. The Dismissal of the Government

The right to dismiss the government is significant criterion of semi-presidential regime. It is not included in the definition of Duverger, but exactly the right to dismiss defines the relationship between president and prime minister. In the semi-presidential system the authority to dissolve the cabinet is a key element to determine the relationship between the three institutional players – the president, the parliament and the cabinet.⁷⁹ The power-sharing system can't be without careful regulation of the right to dismiss the cabinet. Entitling that right to the president makes prime minister a doll in the hands of the president, that right consolidates the power of the president. If the president

⁷⁶ *Bahro H.*, *Virtues and Vices of Semi-presidential Government*, 1998, 19, see <http://www.rcss.sinica.edu.tw/app/ebook/journal/11-01-1999/11_1_1.pdf>, [25.05.2015].

⁷⁷ *Choudhry S., Stacey R.*, *Semi-Presidentialism as Power Sharing: Constitutional Reform after the Arab Spring*, Center for Constitutional Transitions and International IDEA, 2014, 52-53, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/04/Semi-Presidentialism-as-Power-Sharing.pdf>> [25.05.2015].

⁷⁸ *Ibid*, 53.

⁷⁹ *Nakashidze M.*, *Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems*, (In Georgian), 64, see <http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf>, [15.05.2015].

doesn't have the right to dismiss the cabinet, the president and prime minister are equally strong executives.⁸⁰

In the premier-presidential system only the legislature can resign the prime minister. Due to this, the president is in weaker role.⁸¹ In that system the way to dismiss the government is a vote of no confidence.

7. Dissolution of the Parliament

In the premier-presidential system the president does not have unilateral right to dismiss government, however, the exclusive right of government dismissal of parliament is balanced by the president's right to dissolve the parliament. The legislature's vote of no confidence to the government makes president forced to select parliament's chosen prime minister. However, the president's right to dissolve Parliament, in turn, makes the legislature take into account the president's choice.

The abuse of the president's right to dissolve the parliament can infringe the separation of powers. The legislature, which is under the permanent threat of dissolution, is unlikely to perform balancing mechanism against the president's power. The president's right of dissolution of parliament has a chilling effect, even if it is not used.⁸² On the other hand, when the legislature is divided and there is endless rivalry between parties, adopting the legislative acts, for example, the budget law, are unable, due to this, the dissolution of the ineffective parliament might be necessary.⁸³

In above mentioned countries the president's discretionary powers not to become a basis of abuse of power, the right to dissolve the parliament is entitled to the president in specific constitutional circumstances.

Three types of limiting the right of the dissolution exist: 1) substantive triggers, when the president can dissolve parliament only if certain specified constitutional circumstances occur; 2) the prohibition of dismissal in certain periods; 3) procedural requirements.⁸⁴

8. The Forms of Limiting Presidential Power

The president is free from political responsibility. However, some mechanisms to restrict his/her power still exists. First of all, it's the prohibition of president's election in two consecutive terms. Also basic form of president's responsibility is impeachment, which is connected to commit-

⁸⁰ Choudhry S., Stacey R., *Semi-Presidentialism as Power Sharing: Constitutional Reform after the Arab Spring*, Center for Constitutional Transitions and International IDEA, 2014, 56, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/04/Semi-Presidentialism-as-Power-Sharing.pdf>> [25.05.2015].

⁸¹ Ibid.

⁸² Choudhry S., Stacey R., *Semi-Presidentialism as Power Sharing: Constitutional Reform after the Arab Spring*, Center for Constitutional Transitions and International IDEA, 2014, 30, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/04/Semi-Presidentialism-as-Power-Sharing.pdf>>, [25.05.2015].

⁸³ Stacey R., Choudhry S., *Semi-presidential Government in the Post-authoritarian Context*, Center for Constitutional Transitions at NYU Law, 2014, 7, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/06/SEMI-PRESIDENTIAL-GOVERNMENT1.pdf>>, [25.05.2015].

⁸⁴ Choudhry S., Stacey R., *Semi-Presidentialism as Power Sharing: Constitutional Reform after the Arab Spring*, Center for Constitutional Transitions and International IDEA, 2014, 66, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/04/Semi-Presidentialism-as-Power-Sharing.pdf>> [25.05.2015].

ting an offense, and involves many formal procedure, including the conclusion of the court about the president's guilty.

It should be noted that there are also other forms of responsibility. Such a form is removal from the office of the president without court trials and the official charge. Removing procedure is relatively simple, as far as it does not include the court proceedings, however, the quorum of removal is a quite high. This rule exists in Lithuania, where the majority of 3/5 is needed to decide this issue successfully.⁸⁵ This is connected to circumstances specified in constitution of Lithuania. In particular, president has a right to dissolve parliament after voting no confidence to the government, if government applies to him/her to set new election. In order to balance this situation, the newly elected parliament can appoint early presidential election by three-fifth majority.⁸⁶ In Lithuania at the same time also exists the Institute of the president's impeachment, where the president can be removed from office for violating the Constitution, breaching of oath or committing a criminal offense.

9. Responsibility in Presidential-parliamentary System

In Presidential-parliamentary system, the president elects the cabinet and also holds the power to dismiss it. In Presidential-parliamentary system government is responsible to the president and the whole cabinet can be dismissed by the president. At the same time the government is responsible not only to the president, but also to the parliament and the parliament, through the vote of no confidence, can dismiss it. In contrast, the president has the right to dissolve parliament. It minimizes the principle of separation of powers.

When the president has the right to dismiss the prime minister (presidential-parliamentary system), he has the possibility to coerce the prime minister to support the president politically. As a result, the relationship between the president and the prime minister is hierarchical.⁸⁷ The president has little incentive to accommodate different political interests in the parliament, because the president can simply dismiss opposed government. In this case, the president can easily centralize political power.⁸⁸

Presidential-parliamentary model is common in post-Soviet countries. Sometimes it is called super presidential model due to the president's excessive competences. A notable example of this model is Russia.⁸⁹ Presidential-parliamentary system entitles the president more powers than the premier-presidential system, such as the law-making powers. In Russia the president has broad com-

⁸⁵ *Stacey R., Choudhry S.*, *Semi-presidential Government in the Post-authoritarian Context*, Center for Constitutional Transitions at NYU Law, 2014, 8, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/06/SEMI-PRESIDENTIAL-GOVERNMENT1.pdf>>, [25.05.2015].

⁸⁶ *Krupavicius A.*, *Semi-presidentialism in Lithuania: Origins, Development and Challenges*, *Semi-presidentialism in Central and Eastern Europe*, edited by *Elgie R., Moestrup S.*, 2008, 70.

⁸⁷ *Nakashidze M.*, *Peculiarities of the Relations of the President with the Governmental Branches in the semi-Presidential Systems*, 57, (in Georgian), see <http://www.tsu.edu.ge/data/file_db/faculty-law-public/Malkhaz%20Nakashidze.pdf>, [15.05.2015].

⁸⁸ *Stacey R., Choudhry S.*, *Semi-presidential Government in the Post-authoritarian Context*, Center for Constitutional Transitions at NYU Law, 2014, 5, see <<http://constitutionaltransitions.org/wp-content/uploads/2014/06/SEMI-PRESIDENTIAL-GOVERNMENT1.pdf>>, [25.05.2015]

⁸⁹ *Izoria L.*, *Presidential, Parliamentary or Semi-presidential? The Way to Consolidation of Democracy*, Tbilisi, 2010, 39 (In Georgian).

petence of adopting decrees. In premier-presidential system, the president does not have a right to veto or have weak veto, which increases the competences of the parliament.⁹⁰

The president of Russia appoints and dismisses the prime minister and ministers. If the Duma rejects proposed government composition three times, the president can dissolve the lower house and calls for new elections. The same applies to a vote of no confidence. If the parliament passes a vote of no confidence to the government, the president has possibility to dismiss the prime minister. As a result, the prime minister is mainly dependent on the president.⁹¹ Between the lines of constitution, what can be read, is that the president should be win in any case. The formula of effectiveness of French constitution – variable diarchy – is lost in the Russian model. French executive system is a flexible dual executive structure, the bicephalous executive authority, where the "first head" changes according to the parliamentary majority. The Constitution of Russia is basically monocratic.⁹²

This creates an autocratic system, the threat of powerful president, especially when the president has the right to dismiss the government, therefore, the government has to follow or agree with the president. The threat of removal does not give the opportunity to the prime minister to really contend for executive authority.⁹³

Shugart and Carey questioning the democracy of presidential-parliamentary system. Such a system was in Germany, the so-called Weimar Republic (1919-1933), which ended with the coming of fascism. Today it is in the Republic of Russian Federation and other countries. It is believed that in this system the mechanisms of checks and balances are infringed.

10. Analyze of Semi-presidential System

In Semi-presidential system in order to balance the government it is designed the parallel executive structure – the president.⁹⁴ The advantages of the semi-presidential republic are ensuring the check and balance system within the executive branch, the president ensures the replacement of the periods existing without the governments and plays the same role when the government is weak.⁹⁵ Constitutional design, which creates poly center of power and prevents the personalization of the regime, is more favorable basis for protected legitimacy.⁹⁶ However, the semi-presidential system

⁹⁰ *Shugart M.*, Semi-presidential Systems: Dual Executive and Mixed Authority Patterns, 341, see <<http://www.palgrave-journals.com/fp/journal/v3/n3/full/8200087a.html>>, [15.07.2014]

⁹¹ *Izoria L.*, Presidential, Parliamentary of Semi-presidential? The Way to Consolidation of Democracy, Tb., 2010, 39 (In Georgian).

⁹² *Sartori G.*, Comparative Constitutional Engineering, An Inquiry into Structures, Incentives and Outcomes, second edition, New York, 1997, 138.

⁹³ *Stacey R., Choudhry S.*, Semi-presidential Government in the Post-authoritarian Context, Center for Constitutional Transitions at NYU Law, 2014, 9, ix. <<http://constitutionaltransitions.org/wp-content/uploads/2014/06/SEMI-PRESIDENTIAL-GOVERNMENT1.pdf>>, [25.05.2015].

⁹⁴ *Krupavicius A.*, Semi-presidentialism in Lithuania: Origins, Development and Challenges, Semi-presidentialism in Central and Eastern Europe, edited by *Elgie R., Moestrup S.*, 2008, 83.

⁹⁵ *McMenamin I.*, Semi-presidentialism and Democratisation in Poland, Semi-presidentialism in Central and Eastern Europe, edited by *Elgie R., Moestrup S.*, 2008, 132.

⁹⁶ *Fish S.*, The Constitutional Development of Georgia in the Perspective of Comparative Analysis, *Babek V., Fish S., Raihenbeher Ts.*, The Revision of the Constitution – The way of Georgia to Europe, with preface of *Demet-rashvili A.*, Tb., 2012, 66, (In Georgian) see: <www.giz.de/law-caucasus>.

combines a variety of models, some of them exceeds the both above-mentioned (presidential and parliamentary systems) models by its negative result of the system functioning. For example, presidential-parliamentary model strengthens the head of state's absolutism and also the instruments of balance of power are rejected.

In French model government responsibility is more effective, as parliamentary majority has the right to dismiss the prime minister and the whole government, however, "this competence loses its classical purpose, when the president formally non-accountable to the parliament effectively absorbs the government functions and retains the right to dissolve parliament".⁹⁷ French model at the expense of weakening of the legislature strengthens the executive branch. The given construction does not create a problem in regard with functioning the state institutions in a democratic way, moreover, that configuration promoted the stability and efficiency of the government. However, this is due to the experience of centuries of French democracy, which does not exist in the new democracies. As a result, the powerful president manages to dominate the state bodies at the expense of neglecting their powers.

In the new democracies the attractiveness of the semi-presidential system is the dual executive system, which reduces the risk of centralization of political power in the hands of the president or the prime minister, that system separates the executive powers between the president and the prime minister. Also it is weakened the threat connected rapidly shifting into parliamentary system, as it ensures existing the executive authority even, if the legislature is less effective.

However, the establishment of semi-presidential system is not enough to ensure preventing as the centralization of power, as fragmented legislature in new democracies. The special caution is needed to regulate the relationship between president, prime minister and the legislative body and to determine which constitutional decision provides two named results:

1. effective, but limited, responsible executive branch;
2. Effective and efficient legislature, where the president leads executive branch, when the legislature can not carry out its functions.

It is necessary to determine the appropriate constitutional guarantees to protect the country from the presidential autocracy, such guarantees may be considered the restriction of president's unilateral right to appoint the government. This should be the issue of joint decision of the president and the legislature, as far as there is the two bodies of people's legitimation, will of both of them should be taken into account. As well as the right to dissolve the parliament should be limited by the cases specified in constitution, this should not be a form of punishment for passing a vote of no confidence. In case of proper regulation of that issues there is balanced semi-presidential system, where neither the president nor the prime minister is "an elected monarch". This system is able to protect the country from the risks of pure parliamentary system. In the new democracies, where there is the weakness of the political parties and the lack of experiences of pure parliamentary life, there is created the threat of fragmentation and separation of parliament. At the same time, the executive power

⁹⁷ *Gezenava D., Kantaria B., Tsanava L., Tevzadze T., Macharadze Z., Javakhishvili P., Erkvania T., Papashvili T., The Constitution Law of Georgia, edited by Gezenava D., The second edition, Tbilisi, 2014, 249, (In Georgian).*

is balanced inside, the president and the premier are balancing each other. However, as noted above, this exists if powers are distributed proportionally.

Balanced semi-presidential system gives such a solution, where the president is not the exclusive holder of the executive branch, at the same time the president has given the possibility to exercise executive power, when the legislature refuses to support the prime minister and the government. At the same time, it prevents exercising any extreme policy, as far as it forces many political institutions and groups to compromise and coexist peacefully.

The negative factor of this system is the inner-executive conflict which always may arise semi-presidential system. The reason of this can be that the president is not the leader of the parliamentary majority, or the prime minister is not supported by the majority, or the text of the Constitution is vague and is not established adequate constitutional practice.⁹⁸ However, cohabitation should not be always considered in a negative context. Cohabitation can provide a power-sharing. In case of moderate distribution of power between the president and the prime minister, the negative consequences of cohabitation can be reduced, moreover, may have positive impact in the context of the government's control.

⁹⁸ *McMenamin I.*, *Semi-presidentialism and Democratisation in Poland, Semi-presidentialism in Central and Eastern Europe*, edited by *Elgie R., Moestrup S.*, 2008, 132.