

## Presidents

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### ABSTRACT

Comparing heads of states theoretically is a rather difficult task.<sup>1</sup> The comparative method is useful only if the institutions set together are comparable. In general, several institutional solutions exist for the status and competences of heads of states; nevertheless, there is a significant difference between the queen (or king) of the United Kingdom, the president of the United States and the German federal president, even though they all function as head of states.

This chapter focuses on the presidents of Central Eastern Europe. Firstly, it examines the role of presidents of the region; secondly, it analyses the ways of elections; thirdly, it addresses the competences of the presidents; and finally, it deals with the termination of office. This chapter does not deal with the crucial question of the extent to which the president is involved in daily politics or how they affect governance; this issue, which concerns the form of government, is the topic of a separate chapter. However, the form of government is inseparable from the president, and this chapter necessarily reflects on the president's role in state power.

### KEYWORDS

election of presidents, competences of presidents, parliamentarism, separation of powers.

### 1. Presidents of Central Eastern Europe

For centuries, most of Central Eastern Europe had belonged to the Hapsburg Empire or constituted independent monarchies. Like many countries, monarchical institutions changed in the twentieth century; some countries became republics either after World War I (Germany, Poland, Austria) or World War II (Italy, Hungary, Romania). Still, the reputation of the Hapsburg Empire – and especially of Franz Joseph – had an impact on the countries, e.g. president Tomáš Masaryk and prime minister Karel Kamár of Czechoslovakia first thought of forming a monarchy and later on turned to democratic republicanism.<sup>2</sup>

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2 Halász, 2013, p. 217.

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After the transition, all countries of the region decided between parliamentary and semi-presidential republics, even though Brunner reckons that parliamentary monarchies combine the advantages of semi-presidential and parliamentary governments.<sup>3</sup> In many countries of transition, restoring the monarchy was not only a romantic conception but a real political ambition. Although no country in the region did do so, in Bulgaria, former king Simeon II gained the majority in 2001 elections and served as prime minister between 2001 and 2005. Albania was even closer, with Leka Zogu, son of the last Albanian king Zogu I, intending to return to political life and a referendum on the restoration of the monarchy held in 1997. Although the initiative was rejected, the 30% result of the royalists is still remarkable.

In the countries where constitutional continuity was unbroken, state organisation was being shaped by smaller modifications and long-term reforms. On the contrary, the countries of political transformation had to break with the former regime's heritage and set up a new basis of constitutional order, and the creation of the model was influenced not only by legal expectations but also by political bargains. After the transition, the countries of the region decided to follow either the German model of parliamentary or the French semi-presidential system. The two systems are outcomes of different historical and political circumstances. In the mid-twentieth century, France needed a strong leader; therefore, the Constitution of the Fifth Republic instituted a strong presidency to balance the parliament. Conversely, due to the sad experience of the totalitarian regime, Germany emphasised the dominance of the legislature (and the government's accountability to it) in the 1949 Basic Law (*Grundgesetz*). The models of the Fifth Republic and the *Grundgesetz* symbolised the main differences, advantages and disadvantages of semi-presidential and parliamentary systems, providing assistance to Central European States in finding their way of governance.

In the first years of transition, Czechoslovakia and Hungary became parliamentary, while Poland and Romania combined a semi-presidential system with strong elements of parliamentarism. Referencing historical experience, Shugart reckons that the power of presidents is inversely proportional to that of parties. In countries where the 'people's bloc' took control, presidency became strong; on the contrary, where the parliament created the new regime, governments gained power.<sup>4</sup> Holmes adds that if the society is not organised enough to create a parliament through elections, a strong presidency emerges. He considers that in case of grave crisis, society is more likely to give power to a strong leader (a president), while it rather trusts in parliaments if the problems are smaller.<sup>5</sup> As for governance, Kukorelli differentiates two aspects that constitutions must consider: social and political pluralism in the parliament on the one hand and stability on the other.<sup>6</sup> The two aspects compete; the more fragmented the parliament is, the less likely anyone could achieve stable governance. Experience

3 Brunner, 1993, p. 136.

4 Shugart, 1993, p. 32.

5 Holmes, 1993–1994, p. 37.

6 Kukorelli, 1992, p. 162.

shows that countries which emphasised the first aspect became parliamentary, while those that focused on stable governance became semi-presidential.

In addition, the time of adoption of the constitution is also relevant. Hungary stabilised its state organisation soon after the first free elections (May 1990), and the Fundamental Law of 2011 did not make any change in this regard. The Czech Republic and Slovakia adopted their constitutions in 1992 (before Czechoslovakia terminated), while Poland adopted a constitution in 1997 (replacing the Little Constitution of 1992).

When defining the role of presidents, it is also important to examine who is in office. The role of a president according to the wording of the constitution does not necessarily show their actual influence on governments.<sup>7</sup> Tomáš Masaryk, Eduard Beneš of Czechoslovakia or László Sólyom of Hungary did not have too much power according to the constitution, but they had a greater role in society due to their popularity. Gepl and Gillis presume that “a line-by-line analysis of the formal powers of president inscribe in a written constitution is not sufficient. An alternative approach can be described as constitutional realism”. They argue that factors such as prevailing public opinion, political circumstances and political culture, personalities of the main political actors, and traditions surrounding the institution are critically important to the president’s real power.<sup>8</sup>

According to Duverger, the real power of presidents relies not only on the content of the constitution but also on other factors, such as history and political circumstances, the composition of the parliamentary majority and the president’s relation to it.<sup>9</sup> All in all, describing presidential power is more complicated than interpreting the text of the constitution as it requires a broader analysis and comparison.

The president’s relation to the governing majority raises the question of cohabitation. Elgie describes cohabitation as a situation where a president from one party holds power at the same time as the prime minister from an opposing party and where the president’s party is not represented in the government.<sup>10</sup> He argues with the mainstream view that cohabitation may disrupt the stability of governance and states that the collapse of the political system occurs only under certain circumstances and that these circumstances are unlikely to combine very frequently.<sup>11</sup> Both direct and indirect elections can result in cohabitation. If the president is elected directly, it is possible for the general opinion on the president to be different from the view on political parties (e.g. the general public supports a conservative president while voting for a socialist party). In the case of indirect elections, the president’s term of office does not coincide with that of the parliament, and there emerges a situation in which the newly elected parliament’s ideology is different from the president’s. One

7 Paczolay, 1992, p. 173.

8 Gepl and Gillis, 1993, p. 64.

9 Duverger, 1978.

10 Elgie, 2010, p. 29.

11 Elgie, 2010, p. 30.

may observe that cohabitation is not a constitutional system but a political reality, and it depends on the actors in power.

Perhaps because of the experience of the Fifth Republic of France, cohabitation is generally linked to semi-presidential systems, which I presume to be a mistake. Cohabitation is also possible in parliamentary systems, even if the president's possibilities are weaker. The CEE region has experience in cohabitation with Michal Kováč and Vladimír Mečiar in Slovakia; Traian Băsescu and Victor Ponta, Klaus Iohannis and social democratic prime ministers in Romania; László Sólyom<sup>12</sup> and Ferenc Gyurcsány in Hungary; or Borut Pahor and Janez Janša in Slovenia.<sup>13</sup> Experience shows that presidents in cohabitation are more active if they belong to different parties, or, if the president and the prime minister are from the same party, they handle their disagreements behind closed doors.

I conclude that the role of a president is different in cohabitation, even in parliamentary states. Using their competences, they act as political balances with which they have a major influence on governance. If the president belongs to the same party, they have a smaller effect on politics.

## 2. Election and term of office

### 2.1. *Direct or indirect elections?*

One major difference between presidents and monarchs is that the former have a fixed term of office, and the constitutions of republics determine the way of electing presidents. The two major ways of electing a president are direct election and election by the parliament. A third possibility exists, namely the establishment of an electoral body, which is how Germany and Italy elect their presidents. In both countries, an electoral body composed of the representatives of the parliament and of the regions elects the president.<sup>14</sup>

Previously, the mainstream view was that the way of election corresponded with the form of government: semi-presidential states elected their presidents directly, and in parliamentary states, the parliament elected the president.<sup>15</sup> The reason might be that if the people elect both the parliament and the president, there is a 'dual

12 Interestingly, Sólyom filled his entire term of office in cohabitation; he was elected in 2005 with the support of Fidesz minority (as certain MPs of the government side implicitly supported him by abstaining from voting), and he was in cohabitation with two socialist governments. A couple of months before his term ended, Fidesz formed a government, but Sólyom disagreed with it with regards to several issues.

13 In many countries, the president must terminate their political party membership; therefore, it is not a cohabitation in a formal sense. However, the existence or the lack of party membership does not have a drastic influence.

14 How the United States of America elect their president is entirely different. They emphasise that the mandate of the president derives from the states (and not from the people), and such an election is neither direct nor indirect.

15 Kopecky, Meer Krok-Paszowska and Muyzenberg, 1995, p. 77.

legitimacy' in the country. According to Juan J. Linz, in a parliamentary system, in line with its plain meaning, the parliament is the only institution with democratic legitimacy,<sup>16</sup> and the entire government depends on its confidence.<sup>16</sup>

However, in the last few decades, an increasing number of parliamentary states have turned to direct elections. In 2003, Ray Toras said that there was "a slight preference in post-communist countries to elect the president directly"<sup>17</sup> and that all countries of the region elect their president directly, except for Hungary. Zdeněk Koudelka even concludes that direct election is a "civilisation trend".<sup>18</sup> Indeed, no clear link exists between the power of the president and the way of election; however, the question of direct or indirect elections influences the characters of the candidates, the campaign and the president's relation to the parliament.

## ***2.2. Regulation of elections***

Hungary opted for indirect elections, i.e. the parliament elects the president. In the first round, the candidate is elected if they receive the votes of two-thirds of all MPs. If none of the candidates receive such a majority, a simple majority is enough for the second round. Moreover, the Hungarian regulation is unique in the sense that it does not require a quorum for the second round; consequently, the president can be elected with one single vote if all other MPs abstain from casting votes.

Where there are direct elections (all countries except for Hungary, as mentioned), the system is absolute majoritarian. The candidate who receives the majority of all votes (more than 50% of the votes cast) is elected president in the first round. The regulation is even stricter in Romania: the candidate needs to receive the majority of votes of the electors entered on the electoral lists to be elected in the first round.<sup>19</sup> If none of the candidates receive such a majority, there is a second round in which the candidate receiving the most votes becomes the elected president.

However, the regulation has certain differences and peculiarities. In Poland, it is the right of the people to nominate candidates: people who are supported by 100,000 signatures can stand in elections.<sup>20</sup> In the Czech Republic and in Slovakia, both the parliament and the people have the right to nominate candidates. In the Czech Republic, either 50,000 citizens or 20 deputies or 10 senators can nominate a candidate,<sup>21</sup> and in Slovakia, either 15 MPs or 15,000 citizens can do so.<sup>22</sup>

Another issue is eligibility. Several countries of Europe require special (additional) criteria for presidency, which can be either ancestry (Greece, Portugal), citizenship by birth (Finland, Bulgaria, Lithuania) or no dual citizenship (Latvia). The countries of the region analysed here do not stipulate such circumstances. However, certain

<sup>16</sup> Linz, 1992, p. 143.

<sup>17</sup> Taras, 2003, p. 120.

<sup>18</sup> Koudelka, 2014, p. 21.

<sup>19</sup> Art. 81(2).

<sup>20</sup> Art. 127(3).

<sup>21</sup> Art. 56(5).

<sup>22</sup> Art. 101(3).

countries have a special age limit, which is 35 in Hungary,<sup>23</sup> Poland<sup>24</sup> and Romania<sup>25</sup> and 40 in the Czech Republic<sup>26</sup> and Slovakia.<sup>27</sup>

Certain constitutions also stipulate when to hold elections. The most common regulation is 60 to 30 days prior to the termination of office of the previous president. This is the regulation of Croatia,<sup>28</sup> the Czech Republic<sup>29</sup> and Hungary.<sup>30</sup> The Constitution of Slovenia defines the end term of the election only: 15 days before the expiry of the term of the incumbent president.<sup>31</sup> Serbia and Poland opt for an earlier election: in Serbia the election must be held between 90 and 30 days<sup>32</sup> and in Poland between 100 and 75 days<sup>33</sup> from the expiry of the term of the president in office. Obviously, in all countries the regulation pertains only to situations where the president's office ends due to the termination of the fixed term. In case of an extraordinary situation (death, resignation, etc.) different regulations pertain to the election.

The regulation on elections is summarised as follows:

	Way of election	Special eligibility requirement	Nomination of candidates	Time of election
Croatia	direct (majoritarian)	NO (18 yrs.)		60–30 days
Czech Republic	direct (majoritarian)	YES (40 yrs.)	50,000 voters or 20 deputies or 10 senators	60–30 days
Hungary	indirect (by parliament)	YES (35 yrs.)	1/5 of MPs	60–30 days
Poland	direct (majoritarian)	YES (35 yrs.)	100,000 voters	100–75 days
Romania	direct (majoritarian)	YES (35 yrs.)		
Serbia	direct (majoritarian)	NO (18 yrs.)		90–30 days
Slovakia	direct (majoritarian)	YES (35 yrs.)	15,000 voters or 15 deputies	
Slovenia	direct (majoritarian)	NO (18 yrs.)		more than 15 days

23 Art. 10(2).

24 Art. 127(3).

25 Art. 37(2).

26 Art. 57(1) Reference to Art. 19(2), eligibility for election to the Senate.

27 Art. 103(1).

28 Art. 95.

29 Art. 56(7).

30 Art. 11(1).

31 Art. 103.

32 Art. 114.

33 Art. 128(2).

### 2.3. *Term of office*

The term of office does not have too many peculiarities. All presidents are elected for 5 years and can be re-elected once. They have to take an oath before taking office, and its words are either in the constitution (the Czech Republic, Poland, Romania) or in a piece of legislation.<sup>34</sup>

There are slight differences in when exactly the president takes office. Slovakia prescribes that the office begins at noon of the day of the termination of the previous president,<sup>35</sup> while other constitutions define midnight or consider the oath as a starting point.

## 3. Competences

### 3.1. *Representation*

Despite the great variety of presidential powers, the wordings of different constitutions prove to be very similar. Nearly all presidents have ‘classic’ functions (representing the state, granting pardons and decorations, deciding on citizenship, etc.) and competences relating to state organisation.

Yet a great difference exists if one considers the content of presidential competences. For instance, all constitutions declare that the president represents the state. This power has a dual interpretation. On the one hand, representation may mean a competence of foreign politics; the president may act on behalf of the state when negotiating with other states, signing international agreements, hosting members of international diplomacy etc. This is the meaning of representation in Germany; according to Art. 59 (1) of the Grundgesetz, “Der Bundespräsident vertritt den Bund völkerrechtlich” (“the Federal President represents the Federation under international law”). The situation is much the same in Slovakia: the president represents the Slovak Republic *externally*, negotiating and ratifying international treaties.<sup>36</sup> External representation appears in the Czech constitution,<sup>37</sup> and the Romanian constitution also mentions powers in matters of foreign policy.<sup>38</sup>

On the other hand, representation may mean the symbolic representation of the state. In this regard, representation is not a competence but part of the president’s status. The president, as head of state, may act in the name of the state not only externally but also domestically. When the president gives decorations, they represent the acknowledgement of the whole country; when they grant pardon, they spare from punishment and ‘forgive’ in the name of the state.

34 In Hungary, the Constitutional Court found it unconstitutional that the wording of the presidential oath be stipulated in the standing orders of the Parliament and not in an act of Parliament, concluding that standing orders cannot pertain to presidents [Decision 9/2008. (I. 31.) CC].

35 Art. 101(7).

36 Art. 102(1) a).

37 Art. 63(1) a).

38 Art. 91.

The two interpretations are not mutually exclusive. The Serbian constitution explicitly declares that the president represents Serbia in the country and abroad.<sup>39</sup> The Hungarian constitution does not have an explicit declaration, but the mainstream academic view is that representation covers both international and symbolic representation.<sup>40</sup>

The symbolic role of the president is not equal in the countries. Historical heritage and constitutional and political background all influence how the president symbolises the state and the country.<sup>41</sup> Unlike the Polish and Hungarian constitutions, the Czech and the Slovak ones do not mention the symbolic role of the president, even though these are the states with the greatest cult of presidents. The Czech castle of Hradšchin (the Prague Castle) symbolises presidential power, and the Czech president is the only one who has their own flag.<sup>42</sup>

Another explanation for the president's symbolic role might be that presidents of parliamentary states are usually out of daily politics. According to Benjamin Constant's model, heads of states are out of governance, and they are to represent the unity of the nation; therefore, they can be more accepted than members of the parliament and government.

### **3.2. Countersignature**

In cases of countersignature, a presidential act is valid only if the pertaining member of the government signs it. The refusal of consent results in the president's decision being null and void. The key issue concerning countersignature is political responsibility. As the president is not accountable to the parliament for their actions (except for breaching the law, which I discuss later), the minister or prime minister bears responsibility for the action taken.

Countersignature does not only link to the parliamentary system, but it is also common in semi-presidential states. However, the list of competences that require countersignature is various. In certain countries of the CEE region, countersignature is the general rule: all presidential decisions must be countersigned, unless there is a constitutional reason for the opposite. Examples of the exceptions include the nomination of judges or the signing of statutes because constitutions do not wish the government to be involved in such issues. In other countries, countersignature is exceptional, and it is required only if the president would have too much influence on governance.

In the CEE region, the constitutions of Slovenia and Serbia do not mention countersignature at all. The Slovak constitution requires countersignature only to receive, appoint and recall diplomatic missions as well as for amnesty and decisions that the president makes as commander-in-chief. Countersignature is more common in the

39 Art. 112(1).

40 Petrétei, 2008, p. 229.

41 Halász, 2013, p. 216.

42 Halász, 2013, p. 230.



Czech Republic. Art. 63 (1) gives a long list of competences requiring countersignature. Apparently, the representation of the state requires countersignature, which logically pertains only to diplomatic representation. It is even more interesting that the appointment of judges also needs countersignature as most countries do not want the executive branch to be involved in the personnel of the judiciary. Further, it is noteworthy that judges of the constitutional court are appointed with the consent of the Senate.<sup>43</sup> As for the Constitution of Poland, Art. 144 (2) sets that the actions of the president are valid only with the signature of the prime minister. However, a long list of exceptions covers competences of appointments, proclaiming elections, granting citizenship and pardon, signing laws, conferring orders and decorations etc. Hungary formally has no general rule, but the requirement of countersignature is more common. Exceptions are the ones where the government's influence is unwanted, such as when proclaiming elections, signing bills, appointing judges etc.

On the contrary, the Constitution of Romania requires countersignature only exceptionally; it pertains only to foreign policy, defence and emergency issues, conferring decorations, appointing military leaders and granting individual pardon. Similarly, the Constitution of Croatia declares that countersignature is necessary only in cases of emergency and diplomatic measures and in certain issues stipulated in the constitution.

### ***3.3. Signing acts of parliaments, veto powers***

For centuries, it had been the king's prerogative to verify bills, and no statute was promulgated without the king's consent. In parliamentary republics, presidents continued the tradition of signing bills that the parliament adopted, with a very different meaning. On the one hand, the president's signature has a symbolic meaning, and the act of parliament is 'ready for promulgation'. It may also stipulate that the bill is 'in order', i.e. the legislative procedure was in accordance with the standing orders. The time frame for signature varies; in Hungary it is five days, in Poland it is 21 (7 days in the case of budget law), and in between in other countries.

Interestingly, the Constitution of Slovakia declares that laws can be promulgated even without the signature of the president: if the president refuses to sign the bill, even if they are obliged to do so, the act is promulgated without the signature.<sup>44</sup>

It is various if the president has any possibility to refuse giving their consent, i.e. if the president can veto a bill that the parliament already adopted. In general, constitutional law acknowledges two kinds of veto. Constitutional veto is the one with which the president questions the constitutionality of the law and challenges it at the constitutional court. It is a further question if the veto can be based on formal grounds only (namely that the procedural rules were not fulfilled, the parliament did not adopt the law with the required majority etc.) or the president can raise substantial constitutional issues.

43 Art. 84.

44 Art. 88(3).

On the contrary, with political veto, the president expresses their disagreement with the law.<sup>45</sup> Generally, presidents do not have absolute veto power, i.e. they cannot hinder legislation. Certain political vetoes require only the reconsideration of the law, and the parliament's only task is to re-debate the bill with regard to the president's remarks. However, in some countries the parliament can re-adopt a vetoed statute with a greater majority.

Countries of the CEE region are various if they grant the power of veto to their presidents, and if they do, what kind of veto does the president have? Hungary, Poland and Romania ensure both constitutional and political veto. In all countries, the constitutional veto can be based on substantial grounds, too. Hungary is special in this regard as there is an exception: constitutional amendments can be based only on formal (procedural) grounds.

The Romanian regulation is remarkable in the sense that it is not the president's exclusive competence to initiate ex-ante review; this can also be initiated by one of the presidents of the two chambers, the government, the High Court of Cassation and Justice, the Advocate of the People and a number of at least 50 deputies or at least 25 senators.<sup>46</sup> For this purpose, the draft is sent to the individuals and bodies mentioned above 5 days before it is sent to the president for promulgation. If any of the lists are initiated ex-ante review, the president cannot promulgate the law until the Constitutional Court has made a decision.

Slovenia does not grant veto power to their presidents at all; neither does Croatia, yet the president can initiate ex-post review at the Constitutional Court. The constitutions of Serbia, Slovakia and the Czech Republic only stipulate political veto.

As for the Czech Republic, although the president has no power to initiate ex-ante review at the Constitutional Court, according to the Act on the Constitutional Court, they can challenge the constitutionality of the law with posterior law review. One remarkable case was when President Havel challenged the Act on Court and Judges.<sup>47</sup>

The following chart summarises the veto powers of presidents:

	<b>Political veto for reconsideration (same majority)</b>	<b>Political veto for greater majority</b>	<b>Constitutional veto (substantial)</b>	<b>Constitutional veto (formal)</b>
Croatia	NO	NO	NO (but the president can initiate ex-post review, after promulgation)	NO (but the president can initiate ex-post review, after promulgation)

45 I find the most important distinction between constitutional and political veto if it is a judicial (the constitutional court) or a political body (the parliament) that decides on the vetoed bill. It is entirely possible that the president refuses to return a bill to the parliament because of constitutional concerns (as it happens quite frequently in Serbia and also several times in Hungary); I still find it a political veto as the decision-making process is political.

46 Art. 146 a).

47 Gillis, 2003, p. 4.

	Political veto for reconsideration (same majority)	Political veto for greater majority	Constitutional veto (substantial)	Constitutional veto (formal)
Czech Republic	NO	YES (absolute majority required, the Parliament cannot amend the proposal)	NO	NO
Hungary	YES	NO	YES (except for constitutional amendments)	YES
Poland	NO	YES (three-fifths majority required, budget law cannot be vetoed)	YES	YES
Romania	YES	NO	YES (others can also initiate review)	YES (others can also initiate review)
Serbia	NO	YES (absolute majority)	NO	NO
Slovakia	YES	NO	NO	NO
Slovenia	NO (the National Council has veto power instead of the president)	NO	NO	NO

### 3.4. Pardons and amnesties

Granting pardons and amnesties are also usually competences of presidents. Presidents may grant pardon in individual cases for persons who are under trial or already convicted; conversely, an amnesty means that the perpetrator of a certain offence is acquitted from criminal procedure or their sentence is released.

The president's possibility to grant pardon is rather general. It is a major difference if the decision on pardon needs countersignature. Hungary and Romania require the consent of the government for such an action, while it is not necessary in other countries.

There are major differences in providing amnesty. This is a legislative task in Croatia, Hungary, Romania, Serbia and Slovenia.<sup>48</sup> In the Czech Republic and in Slovakia, the president has the right to grant amnesty; however, this action needs countersignature (unlike in the case of individual pardons). In the Czech Republic, the fact

48 In Slovenia, while there is no constitutional provision pertaining to the subject, the right to grant amnesty is vested to the legislative branch and has been exercised before (See: Smailagić, 2020, pp. 80–81).

that ministerial approval is required perhaps stems from bad memories of President Havel's hasty decision to empty the prisons soon after the Velvet Revolution.<sup>49</sup>

In Slovakia, the constitution delegates the competence to the government in case of offences and to the president in case of crimes.<sup>50</sup>

Pardons and amnesties are summarised in the following chart:

	<b>Pardon</b>	<b>Amnesty</b>
Croatia	YES	NO (right of the parliament)
Czech Republic	YES	YES (needs countersignature)
Hungary	YES (needs countersignature)	NO (right of the parliament)
Poland	YES (may not relate to individuals convicted by the Tribunal of State)	NO (no constitutional regulation on amnesty)
Romania	YES (needs countersignature)	NO
Serbia	YES	NO
Slovakia	YES	YES (needs countersignature)
Slovenia	YES	NO (right of the parliament)

### **3.5. Dissolution of parliaments**

Perhaps the most significant borderline between parliamentary and semi-presidential systems is the issue of dissolution. If the president can dissolve the parliament for merely political reasons, the system is semi-presidential, and if there are only legal grounds for dissolution, the system is parliamentary. In the French constitutional system, dissolution is the 'appeal to the people' in the debate between the president and the parliament, with the sole limit that parliament cannot be dissolved in the year of election. However, in Central Eastern Europe, there are narrowly tailored possibilities for the president to dissolve the parliament.

In the constitutions of the region, one may observe that serious malfunctioning might be a cause for dissolution. According to the Constitution of the Czech Republic, the parliament can be dissolved if it cannot concord in vote of confidence or simply does not function due to lack of quorum or it is adjourned longer than permitted.<sup>51</sup> In formal constitutional terms, the Czech House of Deputies (first chamber of Parliament) cannot dissolve itself; however, if they ask the president to dissolve it with three-fifths of votes, the president is obliged to do so. Seemingly, the president has very little discretion in exercising this power.<sup>52</sup>

49 Gepl and Gillis, 2003, p. 66.

50 The English translation of the Slovakian constitution might be misleading; Art. 119 l) 'offence' is not a high crime but an administrative misdemeanour.

51 Art. 35.

52 Gepl and Gillis, 1993, p. 65.

The Constitution of Slovakia regulates dissolution in a rather similar way. Art. 102 (1) e) says that the president

may dissolve the National Council of the Slovak Republic if the National Council of the Slovak Republic, within a period of six months from the nomination of a Government of the Slovak Republic, has not passed its Programme Proclamation, if the National Council of the Slovak Republic has not passed within three months of the formation of a Government a draft law with which the Government has combined a vote of confidence, if the National Council of the Slovak Republic has not managed to hold a session for longer than three months although its sitting has not been adjourned and it has during this time been repeatedly called for a meeting, or if a session of the National Council of the Slovak Republic has been adjourned for a longer time than is allowed by the Constitution.

In Hungary, dissolution also links to the malfunctioning of the parliament, yet it is slightly different. The president may dissolve the parliament if it does not elect the prime minister in 40 days or if it does not adopt the central budget until the end of March.<sup>53</sup> The situation is much the same in Slovenia: the National Assembly can be dissolved if it does not elect the prime minister (president of the government) on time. Similarly, in the Constitution of Romania, the president may dissolve Parliament if no vote of confidence has been obtained to form a government within 60 days after the first request was made and only after rejection of at least two requests for investiture.<sup>54</sup>

Serbia also allows the president to dissolve parliament if it cannot form a government. Apparently, the government may also propose the dissolution of parliament. The proposal must be elaborated and does not oblige the president to do so.<sup>55</sup> The Croatian president may also dissolve parliament if it passes a vote of no confidence in the government or fails to adopt the state budget within 120 days after the date on which it was proposed. This action requires the proposal of the government, countersignature of the prime minister, and the president must consult with the representatives of parliamentary parties.<sup>56</sup> The situation is much the same in Poland: if the three constitutional procedures for forming a government fail, the president is obliged to dissolve parliament.<sup>57</sup> Further, there is another possibility to reduce the term of the parliament (albeit not obligatory): if, within 4 months of the submission of the draft budget bill to the Sejm, this is not presented to the president of the republic

53 Art. 3(3).

54 Art. 89(1).

55 Art. 109.

56 Art. 104.

57 Art. 155(2).

for signature, the president of the republic may, within 14 days, order the shortening of the term of the Sejm.<sup>58</sup>

To sum up the possible reasons for dissolution, one may conclude that in every country of the region, the president's power for dissolution is narrowly tailored. Dissolution is admitted if there is a grave disfunction in the government (lack of budget, no government etc.), which is practically possible only without a solid majority in parliament. The key principle of parliamentarism is that majority governs: without a majority, the parliament cannot stand. The reason for the president's power for dissolution is closely connected to the parliamentary system: the president calls a new election if the current parliament does not operate.

In certain countries, the president is the only actor who can help the parliament through the crisis. In certain countries, the parliament can dissolve itself (Hungary), in some others it cannot but ask the president (Czech Republic), and in some others the government can propose the dissolution (Romania). This latter might be interesting in cases if the government loses majority in parliament, but the new majority could govern.

Finally, it is interesting to consider the Hungarian draft on presidential powers. When working on the new Hungarian constitution in 2011, the drafting committee suggested that the president should have the power to dissolve the parliament in major political crises. This possibility was out of the final draft as such a political reason for dissolution would have easily led to semi-presidentialism.

#### 4. Replacement of presidents

Instituting a vice president as in presidential systems is not common in parliamentary countries. Therefore, constitutions must find someone to replace the president when they are temporarily unable to fulfil presidential duties, or the office becomes vacant.

The general solution is that the president of the parliament (the Speaker) replaces the president. Slovakia and the Czech Republic are exceptions. In Slovakia, presidential powers are delegated to the government and the prime minister if the office is vacant or the president is unable to perform their tasks.<sup>59</sup> If the obstacle lasts more than 6 months, the Constitutional Court declares the office vacant. In the Czech Republic the prime minister replaces the president in certain competences if the office is vacant and the president of the House of Deputies if the president is unable to discharge duties of the office.<sup>60</sup> All other constitutions delegate the competence of replacement to the Speaker; however, the regulations have certain differences.

According to the Constitution of Poland, the Speaker can replace the president only if either the president informs them about the incapacitation or the Constitutional

58 Art. 225.

59 Art. 105.

60 Art. 66.

Tribunal decides that the president is unable to discharge the duties of office.<sup>61</sup> The Speaker replaces the president in Romania,<sup>62</sup> Hungary,<sup>63</sup> Slovenia<sup>64</sup> and Serbia.<sup>65</sup> The Constitution of Croatia is the most sophisticated as it differentiates among short-term and long-term absence and vacancy of office.<sup>66</sup>

There is also a difference if the replacement is full or limited. In the latter case, the person replacing the president can exercise certain competences but not all of them. Replacement pertains only to certain competences in Romania, Serbia, Slovakia and the Czech Republic; in Croatia, the countersignature of the prime minister is required for signing the bills if the president is replaced.

Another difference might be found in who promulgates that the president cannot discharge the duties of office. For instance, it is the decision of the parliament in Hungary and the decision of the Constitutional Tribunal in Poland, while in Croatia, short-term replacement is parliamentary, and long-term replacement is a decision of the Constitutional Court.

## 5. Termination of office, responsibility

The causes of termination of office are rather typical. Some of them are matters of fact: the expiry of the term and the death of the president. Unlike monarchs, presidents have a fixed mandate, and the expiration automatically results in its end. Even if the president is re-elected, it is a new mandate and not the extension of the previous one. Needless to say, death also results in the end of mandate.

How constitutions regulate incapacity is more various. Incapacity means a situation when the president is unable to fulfil the duties of office; if it is temporary, the president is replaced, as it was discussed in the previous part of this paper. Yet, according to most constitutions, it results in the termination of office after a while. In certain countries, incapacity is a matter of fact, while in some others it is a matter of law. In the first case, incapacity itself terminates office, while in the latter, the declaration of incapacity is the cause of termination.

In Poland, the National Assembly votes on the president's permanent incapacity with a two-thirds majority. The parliament can deliver such decision only if the president cannot discharge the duties of office due to their state.<sup>67</sup> In the Czech Republic, the two houses of the parliament declare incapability.<sup>68</sup> In Slovakia, it is not the par-

61 Art. 131.

62 Art. 98.

63 Art. 14.

64 Art. 106.

65 Art. 120.

66 Art. 97.

67 Art. 131 2(4).

68 Art. 66.

liament but the Constitutional Court which decides on incapability, delivering such a decision if the president cannot discharge the duties of office for 6 months.<sup>69</sup>

On the contrary, incapacity is a matter of fact in Hungary, Romania and Slovenia. In Hungary, office terminates after 90 days of incapacity,<sup>70</sup> and ‘permanent incapacity’ ends office in Romania<sup>71</sup> and Slovenia.<sup>72</sup> The parliament’s declaration of the vacancy of office is a different issue, but office terminates because of the fact of incapacity rather than the declaration.

Certain grounds for termination of office are matters of law: resignation, incompatibility and removal. The first two are rather obvious: in all countries, the president can resign; in certain countries, although they need the parliament’s approval, this is a formal decision, and the parliament cannot stop the president from resigning.

Removal closely connects to the president’s responsibility. Unlike governments, presidents are not accountable to parliaments, and parliaments cannot withdraw the president’s mandate due to lack of confidence.

In the region, only one country – Romania – established an impeachment procedure, like in the US. In case of impeachment, there is legal ground to initiate the procedure (mostly treason, infringing the constitution) and finally the legislative body (the Congress) decides whether to remove the president or not. According to the Constitution of Romania, the two Chambers of parliament decide on impeachment by two-thirds majorities of votes.<sup>73</sup> In contrast, in other countries, it is not the parliament but a judicial body that can remove the president. In all countries, the parliament can initiate the procedure against the president. The parliament’s decision requires a two-thirds majority in Poland, Hungary and Croatia. The required majority is three-fifths in the Czech Republic<sup>74</sup> and Slovakia, and the constitution does not stipulate a special majority requirement in Slovenia. In Serbia, the procedure is initiated with the proposal of one-third of all MPs and confirmed (after the Constitutional Court’s decision) with two-thirds.

Most countries delegate the power of removal to the Constitutional Court, which decides with a single majority in Hungary, Serbia, the Czech Republic and Slovakia and with a two-thirds majority in Croatia and Slovenia. It is not the Constitutional Court but the Tribunal of State that decides on the removal of the president in Poland. The Tribunal of State is composed of a chairperson, two deputy chairpersons and 16 members chosen by the Sejm for its current term of office from amongst those who are not deputies or senators,<sup>75</sup> and its task is to decide on the constitutional responsibility of high officers.

69 Art. 105(2).

70 Art. 12(3) c).

71 Art. 98(1).

72 Art. 106.

73 Art. 96.

74 In the Czech Republic, both chambers must pass the initiative separately by a three-fifths majority.

75 Art. 199(1).



Romania and in Slovakia adopt special ways to remove the president. Both countries institute recall elections, involving the people in the president's removal; however, the procedures are different. In Romania, the two chambers can suspend the president by a majority vote in case of grave constitutional infringement.<sup>76</sup> If the proposal of suspension from office has been approved, a referendum shall be held within 30 days to remove the president from office.

In Slovakia, the president may be recalled from their post before the end of their term of office by a plebiscite, which can be initiated by the National Council and adopted by at least a three-fifths majority of all members. The president is recalled if an absolute majority of all legitimate voters votes for their recall in a plebiscite. If the president is not recalled in a plebiscite, the president dissolves the National Council, and a new presidential electoral term begins.<sup>77</sup> One apparent case of such a recall occurred in Slovakia; however, it dates back to before the amendment of Art. 106, when the National Council could remove the president. The National Council initiated a no-confidence motion against president Kovac, receiving 80 votes in favour, 40 against and 30 abstentions; despite the clear majority, it did not receive the support of three-fifths of all deputies.<sup>78</sup>

Seemingly, the Romanian constitution mixes political and legal responsibility and appeals to the people to decide a constitutional issue, namely if the president infringed the constitution. As the Slovakian procedure is a purely political one, there is no need to stipulate the causes of removal.

## 6. Concluding remarks

At first glance, the positions of presidents in our region are much the same. All constitutions delegate 'policy-making' to the prime minister and the government, who are accountable to the parliament; yet, if presidents are observed in a closer look, one may find crucial differences. On the one hand, their position is not unified in that they politically balance (or at least influence) governance. On the other hand, they have a variety of competences, especially in the fields of veto powers, countersignature, dissolution of parliament, granting amnesties and pardons and representation.

However, it is hardly possible to provide an institutional comparison without a proper analysis on how the constitutions work in practice. Presidential status is closely connected to factors other than the constitution, which may explain why the president's power changes even if the constitutional text remains unchanged.

76 Art. 95.

77 Art. 106.

78 Zifcak, 1995, p. 61.

## Bibliography

- Brunner, G. (1993) 'Az új demokráciák Kelet-Európában (New Democracies in Eastern Europe)', *Politikatudományi Szemle*, 2(1), pp. 131–136.
- Duverger, M. (1978) *Échec au Roi*. Paris: Albin Michel.
- Elgie, R. (2010) 'Semi-presidentialism, Cohabitation and the Collapse of Electoral Democracies 1990–2008', *Government and Opposition*, 45(1), pp. 29–49; <https://doi.org/10.1111/j.1477-7053.2009.01303.x>.
- Gepl, V., and Gillis, M. (1994) 'Czech Republic', *East European Constitutional Review*, 2(4)–3(1), pp. 64–68.
- Gillis, M. (2003) 'Judicial or Parliamentary Supremacy in the Czech Republic? The Czech Constitutional Court's decision on the Act on Court and Judges', *The Journal of East European Law*, 10(1). pp. 1–52.
- Halász, I. (2013) 'A köztársasági elnöki tisztség szimbolikus jelentősége a közép-európai Államokban (The Symbolic Role of Presidents in Central European Countries)' in Cserny, Á. (ed.): *Ünnepi tanulmányok Rácz Attila 75. születésnapja tiszteletére*. Budapest: Nemzeti Közszerzői és Tankönyv Kiadó Zrt., pp. 215–232.
- Holmes, S. (1994) 'A Forum on Presidential Powers', *East European Constitutional Review*, 2(4)–3(1), pp. 36–39.
- Kopecky, P., Meer Krok Paszkowska, A., Muyzenberg, M. (1995) 'Hatalom és stabilitás, az elnöki intézmény négy közép-európai országban (Power and Stability, Presidents of Four Central European Countries)' *Társadalmi Szemle*, 50(7), pp. 78–87.
- Koudelka, Z. (2014) 'A közvetlen államfőválasztás kérdése a Cseh Köztársaságban (The Problem of Direct Presidential Elections in the Czech Republic)', *Közjogi Szemle*, 7(1), pp. 17–25.
- Kukorelli, I. (1992) 'Melyik kormányforma veszélyesebb az Elbától Keletre? (Which Governance Is More Dangerous East to the Elbe?)', *Politikatudományi Szemle*, 1(2), pp. 161–165.
- Lewis P. G. (eds.) *Developments in Central and East European Politics*. New York: Palgrave Macmillan, Houndmills.
- Linz, J. J. (1992) 'Az elnöki rendszer veszélyei (Dangers of Presidential Systems)', *Politikatudományi Szemle*, 1(1), pp. 142–159.
- Paczolay, P. (1992) 'Prezidenciális vagy parlamentáris demokrácia – választhat-e Közép-Európa? (Presidential or Parliamentary Democracy – Can Central Europe Choose?)', *Politikatudományi Szemle*, 1(2), pp. 166–176.
- Petrétei, J. (2008) 'A köztársasági elnöki tisztségről (On the Institution of President)' in Dezső, M., Kukorelli, I. (eds.) *Ünnepi kötet Sári János egyetemi tanár 70. születésnapja tiszteletére*. Budapest: Rejtjel, pp. 226–237.
- Shugart, M. (1993) 'Of Presidents and Parliaments', *East European Constitutional Review*, 2(1) pp. 30–32.

- Smailagić, N. (2020) 'Rethinking Amnesty and Clemency in Countries in Transition: A Comparative Analysis of Laws and Practices in Countries of the Former Yugoslavia' in Pascoe, D., Novak, A. (eds.) *Executive Clemency: Comparative and Empirical Perspectives*. New York: Routledge, pp. 76–95.
- Taras, R. (2003) 'Executive Leadership: Presidents and Governments' in White, S., Batt, J., Lewis, G. A. (eds.): *Developments in Central and East European Politics*. 3rd edn. New York: Palgrave Macmillan, pp. 115–132.
- Zifcak, S. 'The Battle over Presidential Power in Slovakia', *East European Constitutional Review*, (4)3, pp. 61–65.

### **Legal Sources**

Hungarian Constitutional Court Decision 9/2008. (I. 31.)