

# FORMULAS OF COHABITATION IN RATIONALISED PARLIAMENTARY SYSTEMS OF GOVERNMENT. THE CASES OF FRANCE AND POLAND

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*The paper is devoted to the functioning of politically divided executive power in France and Poland. The author concentrates on constitutional determinants of this phenomenon in contemporary rationalised parliamentary systems of government. He argues that the constitutional structure of dualistic executives and relationships within them influence the emergence of significantly different forms of cohabitation. An important factor is the phenomenon of constitutional flexibility, which is understood as the ability to differentiate the interpretation of the basic law according to existing political contexts. Cohabitation in a strict sense of the word is thus not limited to a political competition for influence, but it also leads to a real change in the functioning of the system of government (the transition from double to single responsibility of the government and at least partial neutralisation of presidential power). The application of the criterion gives rise to strong and weak cohabitation formulas, indicating the basic difference between the two countries.*

**Key words:** cohabitation; dualistic executive power; rationalisation; parliamentary system; France; Poland.

## 1 INTRODUCTORY REMARKS

The phenomenon of cohabitation (also known as constitutional coexistence – *coexistence constitutionnelle*) is most generally understood as a political configuration in which the dualistic executive branch of government is politically divided (the head of state and the government come from different

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political camps). Hence, the president and the prime minister intend to implement their own electoral promises, which causes open conflicts between them to be very likely. A multifaceted approach to the problem of cohabitation cannot, however, leave aside the constitutional background of the functioning of politically heterogeneous executives. Essential differences in this respect can be seen on the example of countries such as France and Poland. Both states have adopted a model of executive power in which the head of state has not been marginalised. The scope of the strengthening of the French and Polish presidencies in comparison to presidential powers in a pure parliamentary system is not the same, which contributes to the diversity of the phenomenon of cohabitation itself. Thus, the purpose of this paper is to indicate constitutional determinants of politically divided executive power in France and Poland as well as their impact on the existence of two different variants of cohabitation. It can be argued that their distinction is based not only on the dynamic political conditioning of this phenomenon, but also on the scale of its rooting in constitutional provisions. This assumes that the existence of the dualistic executive power linked to the principle of political responsibility of ministers before the parliament only determine the basic structure in which the president and the government come from different political camps, but that is not enough. Such a configuration may, though not necessarily, bring about serious problems with the interpretation of the constitution. Moreover, the problem of cohabitation also requires analysing the phenomenon of constitutional flexibility, understood as the particular vulnerability of the text of the basic law to existing political configurations. If it occurs, the appearance of cohabitation can be regarded as a complete change of the constitutional paradigm, which implies a profound revision of the system of government that is applied in practice. Otherwise, the emergence of such a politically divided executive would consist only in more or less visible rivalry for political influence and, therefore, is not firmly embedded in the institutional structure of the state. In order to use the term 'cohabitation' with regard to its constitutional background, these fundamental structural differences must not be neglected. If such factors are omitted, the functioning of politically heterogeneous executives becomes, despite some typical similarities, in principle incomparable. The solution to this problem may be the aforementioned distinction between the two formulas of cohabitation (a stronger and a weaker one), for which not only the letter of the constitution, but also flexibility of the system of government that results from its provisions is a point of reference.

In the light of the above, a detailed comparative analysis of this issue requires two different research approaches. The first one is based on the premise that the starting point should be the constitutional structure of public authorities. This is the basic component of any system of government, without which dynamic political phenomena taking place in the relations between the most important state organs cannot be properly understood. The impact of non-legal factors, however, is no less important (for example, the relationship between the head of state and the political formation that supports one or both of the executive organs at the parliamentary level). Such a methodological assumption makes it possible to distinguish between a literally interpreted text of the basic law and its significant distortions (if occurs) caused by specific political factors. This in turn affects the flexibility or rigidity of the system of government as seen through the prism of political practice. Taking into consideration the aforementioned types of cohabitation, the existence of such distortions is of crucial importance. Legal and non-legal aspects concerning systems of government are therefore closely linked, so they cannot be discussed separately

from one another.

## 2 THE PARLIAMENTARY ROOTS OF THE FRENCH SEMI-PRESIDENTIAL SYSTEM

The occurrence of cohabitation is most often associated with the construction of a semi-presidential system of government. One of the characteristics of semi-presidentialism is the existence of two segments of the executive power (the president and the government), as well as the assumption that each of them has the capacity to influence, at least to some extent, the policy of the state. In such a model, the body that by definition needs to have a proper field of action is the government, because the prime minister and other ministers come from a concrete parliamentary majority and are politically responsible to the legislature (the government may be dismissed by a motion of censure). In this respect, the semi-presidential design is similar to that on which each parliamentary system has been built. This cannot be particularly surprising, because semi-presidentialism, as shown by its French variant, came into being as a result of the process of rationalising a parliamentary model. This phenomenon (in its mature form) took place after the Second World War, when the need for a profound reform of parliamentarianism to ensure political stability of the executive became of particular importance. The most burning problem to solve was an answer to the question of creation of a coherent constitutional structure that would stabilise the executive (primarily the government that is politically dependent on the parliament) when there is no stable majority in the legislature to support the cabinet in the long run (Gicquel 1992, 695–696).

Despite the indicated parallel with a parliamentary model, there is, however, a significant difference between semi-presidentialism and parliamentarianism. The first of the regimes does not provide for political neutralisation of the head of state, which is typical for the monistic version of parliamentarianism (*régime parlementaire moniste*) (Turpin 1997, 41–42). In France, its emergence was preceded by the existence of a dualistic parliamentary structure (*régime parlementaire dualiste*) in which the head of state retains a relatively strong position and thus is able to have a permanent impact on ministers. Such a system was formed during the period of the July Monarchy (1830–1848) (Pactet and Mélin-Soucramanien 2007, 271). In turn, the best example of the monistic parliamentarianism was the Third Republic (1875–1940). Despite some attempts at rationalisation, the monistic parliamentarianism was also a point of reference for the system of government adopted in the Fourth Republic (1946–1958). In both cases, the heads of state were elected by the then parliaments, not in universal elections. In addition, the presidents had insufficient powers to exert a significant influence on the direction of state policy. According to the logic of a parliamentary model, they could only serve as political arbitrators interfering in relations between other executive and legislative bodies exclusively in extraordinary situations. In this regard, the presidents had at their disposal mainly soft power (for example, informal influence on the process of government formation after parliamentary elections). As demonstrated by the practice of the Third Republic, this was also due to deliberate abandonment of the application of appropriate constitutional measures. At the beginning of the Third Republic the then president Jules Grévy announced that he would not take any action against the parliament as a representative of a sovereign nation. This statement led to the occurrence of the

so-called *constitution Grévy* (Chagnollaud 2002, 191–192). As a result, the possibility of the dissolution of parliament was completely neglected, even though it belonged to the set of constitutional powers of the head of state.<sup>2</sup> Thus, the presidency of that time was weaker in practice than on the basis of the constitution. This meant even further neutralisation of the head of state that could not benefit from this basic tool of arbitration between the parliament and the government. In this way, the French system of government began to function in a state of permanent imbalance manifested by unusually frequent falls of cabinets (there were over a hundred governments over a period of almost 70 years before 1940) (Ardant and Mathieu 2014, 315). It is worth noting that from the point of view of the degree of political instability, the situation after 1946 was very similar. In practice of governance, the differences between the Third and the Fourth Republic were hardly visible.<sup>3</sup>

### 3 THE PHENOMENON OF CONSTITUTIONAL FLEXIBILITY UNDER THE FRENCH FIFTH REPUBLIC

One of the main objectives of the rationalisation of parliamentarism in France in the late 1950s was a considerable strengthening of the presidency, for example by granting the head of state the right to dissolve the National Assembly without almost any restrictions. In addition, the position of the government in relations with the parliament was then enhanced, which significantly limited the possibility of its overthrow by the legislature.<sup>4</sup> The wide scope of French rationalisation favoured the treatment of the renewed parliamentary system as a new model of government – a semi-presidential one, in which the head of state is elected by popular suffrage and possesses quite significant powers (Duverger 1986, 7). Hence, nowadays the French system is commonly regarded as a starting point of a semi-presidential construction, although its genetic link to a parliamentary model is particularly prominent. In terms of normative design, some other states seem to better implement the constitutional requirements of semi-presidentialism. This applies especially to those, which explicitly assume double political responsibility of the government – before both the president and the parliament. Such a construction combines some fundamental components of parliamentarism and presidentialism, leading to the creation of a hybrid model.<sup>5</sup>

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<sup>2</sup> This presidential power was regulated in the article 5 of the Act of 25 February 1875 related to the organisation of government (*Loi du 25 février 1875 relative à l'organisation des pouvoirs publics*) (Godechot, Faupin 2006, 332)

<sup>3</sup> It is legitimate to believe that the Fourth Republic was a failed attempt to stabilise parliamentarism by introducing some mechanisms for its rationalisation. The head of state was still politically marginalised, so the rationalisation process concerned only links between the government and the parliament (Chantebout 2004, 4–5).

<sup>4</sup> The simultaneous strengthening of both parts of the executive (the president in relations with the government and the parliament as well as the government in relations with the legislature) has made the range of rationalisation in France much wider than in Germany. In the latter state, the presidency is, as in a monistic model, neutralised. Only relations between the government and the parliament have been rebuilt (the most important element of the German formula of rationalised parliamentarism is a constructive vote of no confidence). The chancellor system of government in Germany is thus much closer to a pure parliamentary model.

<sup>5</sup> It is worth noting, however, that some approaches to semi-presidentialism do not relate at all to powers of the head of state. For Robert Elgie (2011, 6), the most important structural element that concerns the body comes down to popular presidential elections. The responsibility of the cabinet before the parliament is also taken into consideration. Such a definition can be regarded as exceptionally broad. This in particular may contribute to the blurring of boundaries between semi-presidentialism and parliamentarism.

The relative remoteness of the French system from parliamentarianism was to a much greater extent noticeable in political practice under the constitution of the Fifth Republic adopted in 1958 (Constitution du 4 octobre...). During the political uniformity of the executive (especially after 1962) supported by a stable majority in the National Assembly (and most often in the Senate) the position of the president was much stronger than in the light of the basic law itself. This resulted in the determination of policy by the head of state, which had little to do with the article 20 of the constitution. According to the indicated provision, defining and pursuing state policy is a government task. The president is rather a keystone (*clef de voûte*) of the entire constitutional structure.<sup>6</sup> Both bodies should function on different levels, which does not necessarily mean that there is a hierarchy between them. For this reason, the actual role of the head of state has begun to go far beyond the letter of the basic law. Under such conditions, the president dominates the whole constitutional system (Ardant and Mathieu 2014, 376). In the case of France, the constitutional factor which may be treated as a starting point for strengthening the position of the president was, firstly, the introduction of universal presidential elections and, secondly, the exemption of some of the head of state's powers from the requirement of countersignature. One of them is the aforementioned right to dissolve the National Assembly (the first chamber) at almost any moment (article 12 of the 1958 constitution), which allows the head of state to influence significantly the electoral calendar.<sup>7</sup> What is more, according to article 9 of the basic law the head of state chairs the Council of Ministers. The prime minister can only perform this function by way of exception and on the basis of presidential authorisation. It is worth highlighting, however, that these components of the French presidency remain fully consistent with rationalisation of a parliamentary system, without undermining its basic constitutional designs.

What deserves special attention is that shortly after the entry into force of the constitution of the Fifth Republic the principle of responsibility before the parliament was in practice supplemented by responsibility before the president. This has resulted in the creation of double responsibility of ministers, which emphasizes the mixed nature of the French system of government. What is more, during the so-called majority effect (*fait majoritaire*) – the situation in which the two-headed executive and a parliamentary majority represent the same political option – responsibility before the head of state is even more important than responsibility before the parliament, although only the latter is explicitly regulated in the constitution. The limitation of the role of ministerial parliamentary responsibility became visible in the mid-1960s. The then prime minister Georges Pompidou from the Gaullist political camp was the first head of government who deliberately opted out of applying for a vote of confidence in the National Assembly on the basis of article 49 paragraph 1 of the basic law. Although since then other prime ministers have implemented different strategies in this field, it has been held that the support of the parliament does not need to be checked directly after the formation of the government. This leads to the conclusion that although the confidence of the first chamber was

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<sup>6</sup> Such a view was expressed in 1958 by Michel Debré, one of the main authors of the current constitution, during his speech before the Council of State (*Conseil d'État*) delivered a few weeks before the basic law was adopted (Maus 1998, 5).

<sup>7</sup> For example, in 1981 and 1988 François Mitterrand dissolved the National Assembly to bring forward early parliamentary elections and to avoid having to coexist with the government from opposite political camp (Jakubiak 2013a, 62–64).

treated as a necessary condition for the functioning of the government (otherwise a motion of censure could be passed under article 49 paragraph 2 of the constitution), it did not have to be verified in a formal way, by voting. In practice this point of view has diminished the importance of the primary axis of each parliamentary system of government, which is shaped by the relationship between the cabinet and the legislature (no parliamentary regime exists without the principle of political responsibility of the ministers before the legislative body). At least partial marginalisation of article 49 paragraph 1, which regulates a vote of confidence for the government, has led to the weakening of those features of the French system of government which are directly based on a parliamentary model.

The majority effect, which appeared in 1962 and existed uninterruptedly until 1986, was thus based on two main pillars. These are a constitutional reinforcement of the presidency followed by the logic of rationalisation of a parliamentary system as well as a partisan configuration in the parliament, which ensures the politically homogeneous executive power of consistent majority support in the first chamber (possibly also in the second chamber, although this is not a prerequisite for the existence of majority effect). Hence, under the conditions of such a political variant the actual presidential dominance over the government stemmed primarily from the Gaullist vision of the presidency as well as from the presidential party support for the entire executive branch of that time, rather than from the text of the constitution that has been embedded, at least to a large extent, in a parliamentary model. All this leads to the conclusion that such a situation meant a reversed *constitution Grévy*. As noted above, in the case of the Third Republic, the presidency was weaker than it could be in the light of the letter of the constitution of 1875. This lay at the root of the monistic version of parliamentarism. After 1958 there was a real return to the earlier version of the system that is to dualistic parliamentarism, which should be regarded as the original variant of a parliamentary regime. As in the case of the system of government existing before 1940, a departure from the parliamentary architecture became visible. However, its modification in political practice of the first decades of the Fifth Republic went in a completely different direction. The real position of the head of state started to exceed the standard of the presidency based on the concept of a political arbitration resulting directly from the article 5 of the constitution (the president of the Republic as an organ that through his arbitration ensures the proper functioning of public authorities, as well as the continuity of the state).<sup>8</sup>

In view of the above, it can be considered that the emergence of cohabitation (1986–1988, 1993–1995, 1997–2002)<sup>9</sup> was a kind of political shift within the so-constructed executive power.<sup>10</sup> It should be borne in mind that the current

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<sup>8</sup> Such a constitutional model of the presidential power assumes a strong formula of political arbitration (the president as an active arbitrator that is involved in the activities of other state organs). This vision is reflected in the structure of competencies of the head of state. Arbitrary properties can be attributed to the powers whose implementation does not require countersignature.

<sup>9</sup> The function of the prime minister during the periods of cohabitation was fulfilled, respectively, by Jacques Chirac, Édouard Balladur (both representing the centre-right camp) and Lionel Jospin (the left-wing camp), who had to co-exist with presidents François Mitterrand (twice) and Chirac. It is worth noting that Chirac is the only French politician who experienced cohabitation as both the head of government and the head of state.

<sup>10</sup> It is worth mentioning that all three periods of cohabitation began in France after parliamentary elections, not after presidential ones. The heads of state had to adjust to the outcome of the elections held during presidential terms. As von Beyme (2000, 111) noted

French constitution creates two strong segments of the executive power, which are entrusted with distinctly different roles. However, due to the fact that both parts of the executive branch are relatively balanced at the constitutional level, it is possible to create different political configurations that influenced the real position of the president and the government. What is more, the radical change that was linked to the occurrence of cohabitation also stemmed from the aforementioned reversed *constitution Grévy*. The phenomenon of cohabitation was supposed to be a 'return to the letter of the constitution' (*un retour à la lettre de la constitution*). Since this was not fully applied in practice before 1986, when the first two-year rivalry within the executive began, the political transformation had to affect the interpretation of the basic law. First and foremost, this relates to article 5 and article 20, which regained – due to the emergence of politically divided executive – their literal meaning (Conac and Luchaire 1989, 9–10). The basis for activity of the head of state in such conditions is primarily the content of the constitution. However, the return to its letter was not complete. Despite the existence of cohabitation, the president could still significantly influence foreign affairs and defence matters, although the task of defining and pursuing state policy as such has been entrusted solely to the government (Cohendet 1999, 46–49; Jakubiak 2013b, 203–208). Thus, the occurrence of cohabitation led to a new division of powers within the executive. It can be said that the analysed phenomenon is very firmly rooted in the constitutional provisions concerning the system of government. This kind of political coexistence had an essential impact on the interpretation of the constitution itself. What is important is that the constitutional provisions shaping the French regime were used before 1986 in line with the strongly pro-presidential interpretation of the basic law that had to be fundamentally changed due to political circumstances.

As a result, majority effect perceived through the prism of its implications for relations within the executive power constituted the basis of cohabitation understood as a radical change of the governance model. The appearance of a politically heterogeneous executive meant thus at least temporary reparliamentarisation of the Fifth Republic. As demonstrated by political practice, each of the three periods of cohabitation, irrespective of its sharper or milder course, led to the same result, namely the reduction of double responsibility of the government to solely parliamentary one, as stated by the constitution itself. What needs to be emphasized is that article 49 paragraph 1 gained much more importance than in the conditions of majority effect. Each of the three prime ministers in the periods of cohabitation decided to verify the confidence of the first chamber (and of the second chamber, but only on condition that there existed a pro-governmental majority in the body) (Debbasch 2004, 289–291). Such a strategy should not be surprising because the specificity of reparliamentarisation under cohabitation consisted in the fact that the prime ministers gained real political autonomy, which the organ had been deprived of under the conditions of majority effect. It turned out that the president could not force the head of government to resign, and the latter used parliamentary support to improve his position vis-a-vis the head of state. Despite only temporary effects of cohabitation, the coexistence of presidents and prime ministers from various political camps has greatly altered the true face of the French system of government. *Summa summarum*, the constitution could finally be applied in practice, because its pro-parliamentary (and thus

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„different electoral cycles for presidents and parliaments can thus reinforce structurally in built conflicts in a hybrid system. The longer the term of a president the more likely it is that the American 'mid-term election effect' will happen”.

pro-governmental) interpretation was much closer to the letter of the act. It also proves that the constitution itself is exceptionally flexible, which means not only the ability to function in various political configurations, but also the ability of the executive organs to perform different political roles: either the president as a political leader and the prime minister as his subordinate, or the president as an arbitrator and the prime minister as the head of government that defines, at least to a large extent, state policy.

#### 4 THE SPECIFICS OF THE EXECUTIVE POWER IN THE POLISH PARLIAMENTARY SYSTEM

Taking into consideration the current constitution of Poland, which has been applied since 1997 (Konstytucja Rzeczypospolitej...), it can be stated that the head of state has no significant opportunities to influence the government on a permanent basis. This problem is best seen if the chairmanship of the Council of Ministers is taken into account. In Poland, a standard design has been adopted, according to which the prime minister, not the head of state, directs government meetings. In the light of article 141 paragraph 1 of the constitution, the president has only the right to convene the Cabinet Council (*Rada Gabinetowa*) and preside over its deliberations. The body consists of members of the Council of Ministers (*Rada Ministrów*) but does not have the powers that have been granted to the latter body. It shows that the head of state does not possess a channel of direct influence on the government, which could be used constantly. The prime minister and ministers are thus quite distant from the president. In addition, the Polish president does not have many competencies to enable active political arbitration. In this context, the dissolution of parliament deserves special attention. Although the use of this power does not require countersignature of a member of the cabinet, the president may dissolve the Sejm (the first chamber) only in certain strictly defined situations (article 98 paragraph 4, article 144, article 155 paragraph 2, article 225). Similar limitations of the presidential role within the entire institutional structure applies to other competencies of this body. As a result, although the scope of exemptions from countersignature is large (the so-called prerogatives), it is not a factor that would actually strengthen the position of the presidency under the basic law.<sup>11</sup> All this can be regarded as one of the factors that cause the principle of political responsibility in Poland to be limited, in accordance with the letter of the 1997 constitution, to responsibility before the parliament. Regardless of political configuration, the head of state is not in a position to change the prime minister and other ministers in line with his own expectations. The president, even though this body is elected by universal suffrage, is simply too weak for responsibility of the government before the president to be formed informally. This results in a relatively small vulnerability of the constitutional text to distortions caused by various political contexts.

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<sup>11</sup> In accordance with the rules of each parliamentary system, countersignature is rather designed as an instrument that restricts the head of state. Therefore, the president cannot act without taking into account the point of view of government members. On the other hand, the Polish example demonstrates that the head of state can also be limited in a manner that results from pure procedural nature of the competencies that do not require such a cooperation of the prime minister or ministers. Regardless of the scope and importance of countersignature, its existence proves that the adopted system of government is based, at least to some extent, on a parliamentary model. It also points to the need to coordinate activities of the president and of the prime minister (Grzybowski 2005, 27).

There is no doubt that in the light of the 1997 constitution the government headed by the prime minister is the central component within the executive branch. It should be noted that in comparison with the current constitution of Poland, more similarities to a semi-presidential architecture were demonstrated by the previous constitutional act, the Small Constitution of 1992 (Ustawa Konstytucyjna...). The main goal of the basic law was to define the rules and more specific provisions concerning the system of government. The influence of the president on the course of work of the Council of Ministers was then greater than at present (Grzybowski 1999, 145–146). The stronger position of the head of state was also demonstrated by his direct impact on the appointment of some ministers (foreign affairs, home affairs and national defence). This was, however, mainly a result of the president's activism. The letter of the constitution (according to the act, the presidential influence was only non-binding) did not play a key role in it. Anyway, this shows that the head of state was not politically marginalised (Grzybowski 1999, 145; Glajcar 2006, 119–121). The basic law adopted five years later has resigned from earlier references to a semi-presidential construction. This was achieved by strengthening the head of government. On the basis of the 1997 constitution the prime minister is able to change the composition of the government in an independent manner, thus without taking into account the point of view of the president (Nikolenyi 2014, 168). The head of government is also more powerful in relations with the parliament, as evidenced by the fact that, like in the German chancellor system, the constructive vote of no confidence (article 158 of the 1997 basic law) is the only mechanism that allows the legislature to overthrow the whole cabinet (however, there is still individual political responsibility of ministers before the parliament regulated in article 159). At present, the Polish system of government can thus be defined as a parliamentary one with a strengthened position of the prime minister. The latter component can be regarded as one of the most characteristic manifestations of the Polish structure of rationalised parliamentarianism (Szymanek 2012, 150–152). It even resembles, to a large extent, a prime-ministerial model as a subtype of a parliamentary regime. Despite the fact that some elements of enhanced presidency (first of all, popular presidential elections) have been maintained, this does not change the fundamental constitutional structure, which is based on the most important mechanism of each parliamentary system of government, that is political responsibility of ministers to at least one chamber of the legislature, whereas the head of state has no direct influence on the day-to-day functioning of the cabinet.

## 5 THE RELATIVE RIGIDITY OF THE SYSTEM OF GOVERNMENT UNDER THE POLISH BASIC LAW

It can be stated that in the Polish political practice the phenomenon of majority effect which is based on the significantly reinforced presidency resulting from the configuration of politically homogeneous executive power does not occur. In particular, the current constitution does not create sufficient institutional conditions for the implementation, alternately, of completely different systemic variants. The practice of applying the 1997 basic law seems to confirm this view. The situation in which the president, the government and a parliamentary majority come from the same political camp does not lead in Poland to considerable enhancement of the role of the president, which would mean his dominance over the prime minister and other ministers. This is demonstrated by the relatively passive presidency of Bronisław Komorowski during the

period of the Civic Platform (*Platforma Obywatelska*, PO) government in 2010–2015. The same applies to Andrzej Duda in the period after the parliamentary elections of 2015, in which the Law and Justice (*Prawo i Sprawiedliwość*, PiS) and its smaller allies won an absolute majority of seats in the Sejm. In both cases, the dependence of the head of state on the political party, which helped to win the presidential elections in the years 2010 and 2015, may be described as a characteristic feature of the Polish political practice. Thus, the ruling party, which provides political support to the president, is not subordinated to him (the latter is much weaker than the party leadership). It can be stated that, generally speaking, the role of such a political formation does not have much in common with contributing to the implementation of the electoral programme formulated by the head of state. It is rather expected from the president to facilitate, for example by signing laws coming from the legislature, the implementation of policies determined within the ruling camp concentrated around the government as the body with the most effective legal tools for political action.

The absence, during periods of political homogeneity of the executive branch, of the definitely reinforced presidency, which goes far beyond the letter of the constitution, causes that in Poland there is also no political shift within the executive after the change of political configuration. Such rigidity of the constitution means that there are no remarkable departures from the constitution and, therefore, no returns to its letter. It should be stressed that, regardless of political circumstances, the Polish basic law is applied in a relatively homogeneous way. Obviously, differences between various periods of application of the constitution occur, but they relate rather to secondary issues like the style of presidency than to such fundamental problems as the emergence of actual political responsibility of the government before the head of state. The lack of radical changes in the functioning of the system of government was observed when the executive power became, as a result of electoral procedures, politically divided. Under the 1997 constitution, such a situation occurred in Poland three times (1997–2001, 2007–2010, 2015) during the term of office of such presidents as Aleksander Kwaśniewski, Lech Kaczyński and Andrzej Duda.<sup>12</sup> In the first two cases, the political division of the executive was caused by parliamentary elections that took place in the middle of five-year presidential terms. The last such period lasted a very short time. It began after the presidential election in which the then head of state Bronisław Komorowski (supported by PO) was defeated in the second round. In turn, according to the electoral calendar, parliamentary elections were to take place only in the autumn of 2015. In the latter case, the emergence of cohabitation was linked, inter alia, to the lack of a possibility of dissolving the legislature as an instrument allowing for a quick adjustment of the existing political configuration to the expectations of the political camp represented by the newly elected head of state.

It should be stressed that each of the aforementioned periods was accompanied by some political tension. As regards the interpretation of constitutional provisions, the years 2007–2010 were the most important. The then president

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<sup>12</sup> A transitional period in 2005 should also be mentioned. The PiS won the parliamentary elections in September, and Aleksander Kwaśniewski from the left-wing camp was still holding the office of the president (only for a few weeks after the establishment of the cabinet because in December Lech Kaczyński, who won the presidential elections in October, took over the presidency). However, at the end of the second term (2000–2005) Kwaśniewski no longer had social legitimacy to compete with a new centre-right government.

Kaczyński sought to increase the activism of the head of state in certain areas, primarily in foreign policy. The division of powers in this field between the two segments of the executive power was even considered by the Constitutional Tribunal. The dispute concerned the Polish representation in the European Council. The pro-presidential interpretation of the relevant provisions of the basic law was then generally questioned, but as for the relationship between the president and the prime minister the court stressed the obligation of these authorities to cooperate with each other (Chorażewska 2010, 48–49). Also, other periods in which the head of state came from an opposition party were characterized by more or less visible conflicts within the executive branch. In turn, under conditions of politically homogeneous executive power such situations are rare. This can be explained, at least to some extent, by the aforementioned dependence of the presidents on their own political parties, as illustrated by Komorowski's presidency. Maintaining the support of the camp which contributed significantly to the taking over of the presidential office is particularly important for heads of state seeking re-election. The presidents holding office during political uniformity of the executive do not even choose to attempt to dominate the government. Anyway, it all comes down to the fact that there is no sufficient constitutional basis for an offensive presidential strategy (however, some heads of state try to build their own position based on at least partial political autonomy within the executive power). On the other hand, the scale of political rivalry does not have to be particularly high even in the conditions of politically divided executive power. This is illustrated by the period 1997–2001 and the coexistence of the left-wing president Kwaśniewski and the centre-right prime minister Jerzy Buzek (Glajcar 2015, 462; Sula, Szumigalska 2013, 115–116).

In light of the above, it can be concluded that relations within the executive branch in Poland contain an important element of internal dynamics, which is conditioned mainly by specific political issues and personality factors including the style of presidency (Dziemidok-Olszewska 2010, 84–85). What needs to be pointed out is that the emergence of politically divided executive power and its return to homogeneity has never led to a radical redesign of the institutional links within the entire system of government. Political responsibility of the government should be a key point in this respect. The principle according to which the government is politically responsible exclusively to the parliament has been applied without exception. The practice of governance under the 1997 constitution has thus failed to provide examples of the transition from double responsibility to individual one and vice versa. It should be noted that the Polish system of government has still functioned within the framework of a traditional parliamentary model, which assumes a more or less restricted position of the head of state. The occurrence in Poland of majority effect and cohabitation does not therefore result in evident presidentialisation or parliamentarisation of the mechanisms of exercising power which would mean far-reaching, though temporary, redevelopment of the system of government, depending on a variety of political factors. It turns out that each of the executive organs operates within relatively stable systemic roles, and a change of political configuration does not exert a significant influence on them.

## 6 FINAL REMARKS

The most important common denominator of the French and Polish fundamental laws is that both systems of government have been based on a

broadly understood parliamentary model. The executive power is therefore dualistic, and the constitutional role of the head of state remains closely linked to the notion of political arbitration. In accordance with the requirements of parliamentarism, in both states the government bear political responsibility before the parliament (both in France and in Poland only before the first chamber). The authors of these constitutions have referred to parliamentarism in its rationalised formula, which is, in fact, a typical feature of any contemporary application of this model. However, the most significant difference between the French and the Polish variant of the rationalisation is that in Poland the process has been carried out in a moderate way, which has led to only slight deviation from the patterns of a pure parliamentary model and thus blocked the possibility of far-reaching presidentialisation of the regime. In turn, the French version of this process was much more advanced, which (combined with non-constitutional factors) has contributed to the creation of a semi-presidential system based on a variable institutional logic. This difference can be seen primarily through the prism of the constitutional status of the president. The Polish head of state does not have the most important tools to interfere with the activities of other bodies (for example, the right to dissolve the legislature regardless of political circumstances). This prevents him from controlling the electoral calendar. Although the position of the head of state in Poland is strengthened in comparison with the fully neutralised presidency in monistic parliamentarism, it is still clearly limited and does not go far beyond a conventional parliamentary model. This certainly affects the relationship with the government. The 1997 basic law does not establish such a field for permanent conflicts between the head of state and the head of government as the French constitution does (for example, due to differences in leadership during Council of Ministers meetings). Of course, such conflicts can always occur within the framework of the dualistic executive branch in which the head of state has not been completely deprived of the influence on the process of governance, but in Poland this is not (contrary to the opinions expressed by some Polish politicians or commentators on political events) a basic structural problem of the present constitution. All of this affects the level and scale of political rivalry within the system of government.

Hence, the head of state in Poland, although in practice the organ may be politically active, cannot be easily compared to the president of France. It should be borne in mind that the principle of double political responsibility of the government is one of the most important components of the French formula of semi-presidentialism (formal responsibility to the parliament irrespective of existing political configurations and informal responsibility to the president under conditions of majority effect). In Poland, this mechanism does not exist, which proves that there are, despite some basic similarities such as the structure of the executive power, fundamental differences relating to practical application of both constitutional systems. Under the constitution of the French Fifth Republic cohabitation and its opposite, that is majority effect, have thus a much richer content than in Poland. Apart from purely political and personality factors, far-reaching reinterpretation of the basic law also counts. This is the best proof of the lability of the French semi-presidential constitutional architecture. Due to the far-reaching strengthening of the presidency, which does not have clear foundations in the constitution (it is even contrary to its letter), the phenomenon of cohabitation can be seen as an alternative political model in which some of the principles adopted in practice cease to exist. All this gives rise to the conclusion that in France there is a strong version of cohabitation (cohabitation *sensu stricto*), which is not restricted to political

rivalry within the executive branch. In turn, in the case of Poland cohabitation is of a limited character and cannot be treated in the same way as the French formula of this phenomenon. Under such circumstances, it is only justified to regard politically heterogeneous executive power through the prism of cohabitation in a weak version (cohabitation *sensu largo*). For its existence no particular constitutional basis is required. In fact, only the dualistic construction of the executive branch is sufficient to create such an institutional framework. Universal and direct presidential elections are an important but rather complementary component of the required institutional structure. This electoral procedure allows the head of state to function fully independently of the parliament and thereby to maintain – at least from a formal point of view – a certain degree of autonomy vis-à-vis other organs.

Cohabitation *sensu largo*, which occasionally emerges in the Polish political system, need not be susceptible to varying effects depending on political configurations. The phenomenon is then very superficial. There may even be doubts whether the use of the notion ‘cohabitation’ is in this case indeed justified. It seems that this can only be accepted if the coexistence of the president and the government from various political camps is analysed in a way that takes into account the two forms of cohabitation between which there are significant differences. A criterion that distinguishes them is linked directly to admissibility (or not) of a principal reinterpretation of the constitutional text. It deserves to be emphasized that the French version of cohabitation can be regarded as a full form of this phenomenon. In this case, there is a factor that in the Polish model of rationalised parliamentarism under the 1997 constitution has never played an important role, that is profound presidentialisation of the system of government which can be quite effectively neutralised due to the occurrence of cohabitation. The lack of similar reinforcement of the presidential power and, as a result, of its neutralisation after the emergence of politically divided executive branch is clearly visible. It should be highlighted that such neutralisation of the presidentialised variant of semi-presidentialism means much more than the existence of situational political disputes, even those whose background is determined – as in the case of the conflict between the president and the prime minister in Poland concerning the representation in the European Council – by the interpretation of certain constitutional provisions. Taking it into consideration, it is legitimate to believe that the Polish system of government remains much more rigid than its French counterpart. If, therefore, in the case of Poland after 1997 the term cohabitation can be used in a right way, it must be borne in mind that its formula was completely different from the French one. All this demonstrates that the very existence of dualistic executives consisting of the president chosen in universal elections and the government which is politically responsible before the parliament is not enough to ensure the emergence of such a formula of cohabitation that would cause a fundamental reconstruction of relations between the legislative and executive organs, as well as within the latter branch of government.

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