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Evolution of Forms of Government in Armenia: Outcome and Outlook*

VARDAN POGHOSYAN

GIZ

The article discusses the issue covering the choice of constitutional form of government. Special attention is drawn to semi-presidential form of government and its subtypes. As an efficient way of choosing particular government form the article proposes to reveal the advantages and disadvantages of chosen form subtypes, their manifestation background as well as to combine the result with the peculiarities of that state and society in which the chosen form is intended to be implemented. The article proposes to choose that subtype of a particular government form which, in combination with the peculiarities of corresponding state and society, will produce minimum negative outcomes. This will enable to minimize the difficulties arising from the implementation of chosen government form. The implementation of semi-presidential government form is observed taking into consideration the case of Armenia. The article proposes to adapt a parliamentary system of government as a possibility to solve a series of problems in the country and as a logical continuation to 20-year constitutional process.

Keywords

Constitution, Constitutional reforms, democratization, form of government, parliamentary government, presidential government.

Introduction

The “form of government” concept describes how the political power is organised between and attributed to the legislature and the executive in both substantive and institutional terms. Its core is *the*

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formation of and relationship between the parliament, the president, and the government from a standpoint of the separation of powers. The following are essential to the division of political power between the parliament, the president, and the government:

- a) The relationship between the bodies of legislative and executive power; and
- b) The way in which the bodies of executive power are selected and their role within the executive power.

Contemporary constitutional law and political science tend to distinguish between three forms of democratic government - parliamentary, presidential and semi-presidential. Clearly, these are not the only forms of government. However, virtually all democratic countries in the modern world would fall under this classification (Switzerland being the only important exception).

Each one of these forms of government contains various models, which are at times so different that doubt can be cast on the pertinence of a particular model to a specific form of government. When choosing an appropriate form of government for a country, it is necessary, among other things:

- a) To clearly outline the characteristic features and logic of and the differences between the various forms of government; and
- b) To point out the models possible under a particular form of government, including the relationship between such models.

Once the institutional advantages and disadvantages of various government forms and their models have been identified, they need to be checked against the specific reality of an individual country with a view to finding the most favourable option. Whenever a government form is designed for a country, its *political culture* and *party system* need to be primarily taken into consideration. In the case of Armenia, its underdeveloped *political culture* makes it even more important for the constitution to prescribe detailed and clear “rules of the game,” so as to make it of utmost difficulty for the various political forces to circumvent them. As to the *party system*, it is necessary to start off with due consideration of the current development stage of political parties and the number of relevant parties (according to the eminent Italian political

scientist Giovanni Sartori, “a relevant party” is one that is capable of acting as a partner in coalition government or, by virtue of its blackmail potential, undermine the formation or activities of coalition government¹). While Armenia’s party system is certainly far from being fully-formed, a number of parties have formed during the years of independence, which hold a rather stable position in the country’s political system. The number of Armenia’s relevant parties has so far fluctuated at around five or six, which is not a bad indicator for a newly-independent state, creating important possibilities for the formation of a government based on the parliamentary majority.

Semi-Presidential Form of Government

When the form of government is semi-presidential, *the president of the country is elected by the people and shares the executive power with the government, while the government is responsible to the parliament.*

The concept of semi-presidential government is relatively new and is not universally recognized in either France or other countries with this form of government. The systematic theory for this form of government was developed by the eminent French political scientist and constitutional lawyer Maurice Duverger.²

In addition to the dichotomic classification of government forms (parliamentary and presidential), Duverger suggested recognising also the semi-presidential form of government. Duverger’s proposal was based primarily on the peculiarities of France’s 1958-1962 Constitution. While emphasising the *mixed* nature of the semi-presidential regime, Duverger still decided to refer to it as “*semi-presidential*”, rather than “*semi-parliamentary*”, because it is closer to the presidential form in view of the *dualist nature* of the expression of popular sovereignty (by the people

¹ **Sartori G.**, Parties and Party Systems, Vol. 1, Cambridge 1976, pp. 121-125 (new edition, Cambridge 2005, pp. 107-110).

² For additional details on Duverger’s theory and the elaboration phases, see **Poghosyan V.**, Peculiarities of the Semi-Presidential Form of Government in Armenia, *Collection of Reference Materials*, OSCE, Yerevan 2004, pp. 41-54 (in Armenian).

electing both the parliament and the president), contrary to the monism that characterises the parliamentary form of government, where popular sovereignty is exercised exclusively through the parliament. Moreover, under the semi-presidential form of government, the dualism is more pronounced than in the American system, because here, it exists within the very executive power. Unlike the president of a country with the presidential form of government, the president of a country with a semi-presidential government has only some of the powers of their American peer. Although he or she is, similar to the American president, elected by universal suffrage, they do not have the whole executive power, which the American president does. A considerable part of the executive power remains in the hands of the prime minister and his team.

Whenever the terms “semi-presidential form of government” or “semi-presidential regime” are used, one should bear in mind its potential to cause confusion, unless accompanied with Duverger’s aforementioned comments regarding the use of the term “semi-presidential.” In the case of France, the use of the term “*semi-presidential regime*” should not be understood literally, because the President of France is in practice stronger than the President of the USA: the French system is *strictu sensu* more *super-presidential* than *semi-presidential*, with the exception of the “cohabitation” period. Hence, the term “*semi-presidential*” should under no circumstance *be understood as a weakened presidential system*; as mentioned above, it simply reflects the fact that people’s power is, similar to the presidential form of government, expressed by electing both the parliament and the president, as well as the fact that, contrary to the presidential form of government, the president does not have the whole executive power under the semi-presidential form of government.

In 1970, Duverger added a new element to his definition of the semi-presidential form of government, which prior to it included the criterion of the people electing the president and the government being responsible to the parliament: “The president has certain powers that exceed the powers of the head of state in a normal parliamentary country,” or “autonomous” or “considerable” powers of the president. In the latest - 21st edition of his textbook in 1996, Duverger defined this new element by stating that “the president has own powers that enable him to

act independently of the government.”³ The vague nature of this criterion subsequently stirred up much debate and interpretation: as a consequence, many researchers that recognize “the semi-presidential form of government” as a category, are not unanimous on whether or not a particular country has the semi-presidential form of government. This paper suggests replacing the criterion of the “autonomous or considerable powers of the president” with the “*dualism of the executive power*” criterion, which actually emphasises the most characteristic constitutional-legal feature of this form of government, i.e. *the sharing, in certain proportions, of the executive power between the president and the prime minister*. If the executive power is fully concentrated in the hands of the president, then, despite the existence of the post of a prime minister who is responsible to the parliament, this form of government should be characterised as presidential. On the other hand, if the executive power is fully concentrated in the hands of the government, then, despite the existence of a president elected by the people, this form of government should be characterised as parliamentary.

Whatever the form of government, there is divergence between the Constitution and the political practice. The parliamentary government forms of Italy and Germany are legally much alike, but practically very different. The semi-presidential form of government is not the exception and implies a far greater divergence between the rules and the practice.

The main argument against the theory of the semi-presidential form of government is that the “parliamentary and presidential forms of government” dichotomic classification is fully sufficient to classify political regimes.⁴ In spite of all of its weaknesses,⁵ this argument contains

³ **Duverger M.**, Le système politique français. Droit constitutionnel et Science politique, 21. éd., 1996, pp. 187-188, 465-587.

⁴ **Steffani W.**, Parlamentarische und präsidentielle Demokratie - Strukturelle Aspekte westlicher Demokratien, Köln und Opladen 1979, pp. 38-39; **Steffani W.**, Parlamentarisch-präsidentielle "Mischsysteme"? *Luchterhandt, Otto (Hrsg.): Neue Regierungssysteme in Osteuropa und der GUS. Probleme der Ausbildung stabiler Machtinstitutionen*, 2. Akt. Auflage, Berlin 2002, pp. 49-51; **Lijphart A.**, Nomination: Trichotomy or dichotomy?, *European Journal of Political Research*, 1997, 31, 122-136; **Lijphart A.**, *Patterns of democracy:*

a rational element. The semi-presidential form of government mostly operates in practice under the logic of either a parliamentary or presidential form of government, i.e. the executive power relies on either the *parliament-government nexus* or *the president*. However, it does not turn the semi-presidential form into either a parliamentary or presidential one.

One of the arguments against the concept of the semi-presidential form of government is that this form of government includes a range of countries the presidents of which have greatly varying powers. However, such heterogeneity could be argued equally against the parliamentary and presidential forms. What is crucial is that *the semi-presidential form of government is only a constitutional-legal category* defining the rules of exercising the power, but not the practical application of such rules. Following the suggestion by the French constitutional lawyer Duhamer, Duverger strictly differentiates the “*political regime*” (form of government) from the “*political system*,” despite his earlier interchangeable use of those terms. “*Regime*” henceforth connotes *the structure of the power under the constitution and the laws*, while “*system*” refers to the configurations that are or may be practiced under a particular regime. The aim of the concept of the semi-presidential regime is to outline and foresee such existing or potential practice. The political regime is nothing but an heuristic model, while the concept of the semi-presidential regime enables more profound research of political practice than what would have been possible on the basis of the categories of parliamentary and presidential regimes.

Government forms and performance in thirty-six countries. New Haven: Yale Univ. Press, 1999, pp. 121-123.

- ⁵ **Pogosjan W.**, *Die verfassungspolitische Entwicklung in der Republik Armenien (1990 - 1995)*, unveröf. Magisterarbeit, Bonn 1995, pp. 146 - 151, **Pogosjan W.**, Für ein neues Regierungssystem in Armenien, *Armenien. Geschichte und Gegenwart in schwierigem Umfeld*, Frankfurt am Main 1998, pp. 255 – 258; **Harutyunyan G. and Poghosyan V.**, Preface, *Commentary to the Constitution of the Republic of Armenia* (ed. G. Harutyunyan and A. Vagharshyan), Yerevan 2010, pp. 28-29 (in Armenian); **Rüb, F.**, Schach dem Parlament! Regierungssysteme und Staatspräsidenten in den Demokratisierungsprozessen Osteuropas, Wiesbaden 2001, pp. 98-103.

There is no direct and determined link between the government form (the “political regime”) and the political system. Their differentiation is merely a starting point for future research aimed at determining why relatively similar constitutional constructs create divergent political practices in reality. The political regime and the political institutions are not the only constants used to explain political practice. On the one hand, Duverger underlines that a structured party system and stable majority in the parliament heavily influence the functioning of the form of government. Other important factors are the political culture and traditions, which affect the president’s image. On the other hand, political institutions make *per se* impositions on the political actors, such as the two-stage majoritarian electoral system and the direct election of the president in France, which largely facilitated the emergence of a parliamentary majority. Thus, political institutions may be viewed as both dependent and independent variables. *The form of government, the electoral system, and the party system* should be discussed in conjunction and in the context of the relevant *political culture*. “The semi-presidential regime is inseparable from the *three sub-systems* that surround it - *the political culture, the party system, and the electoral system*. It thus becomes understandable why the same regime defined under the legal institutions can operate under different political systems.”⁶

By attributing greater significance to the role of the president and the prime minister, Duverger mostly overcomes the greatest shortcoming of his initial concept - the underestimation of the president’s constitutional powers. The constitution can often explain why the president or the prime minister becomes the leader of the governing majority in different situations. It is highly unlikely, for instance, that the leader of the governing majority would try to become the president, if the constitution concentrates the most important leverages of the executive power in the hands of the government (as in Ireland, for instance). Hence, it is crucial, in the context of a country’s political culture, to clearly determine how much power the constitution gives to the president and how

⁶ **Duverger M.**, Régime semi-présidentiel, *Duhamel O., et Mény Y. (éd.), Dictionnaire constitutionnel*, Paris 1992, p. 903.

much to the government. Countries with the semi-presidential form of government need to be *sub-classified* on the basis of *the proportions of the executive power sharing between the president and the government*. The *government's dual responsibility criterion* proposed by Shugart and Carey could provide a sound basis for such sub-classification:⁷ according to them, a semi-presidential form can be classified further into two models - "*parliamentary-presidential*" and "*presidential-parliamentary*."⁸

The institutional success of the French Fifth Republic (elimination of chronic government crises, emergence of political majorities, and formation of a bipolar party system) drew the attention of many scholars and political scientists on the French model as an alternative to both the presidential and parliamentary systems.⁹ From the standpoint of proponents of a semi-presidential form of government, it provides sufficient solutions to the two main problems of the presidential system (the deadlock caused by the confrontation between the executive and legislative powers and the rigidity of the presidential system) and mitigates the governmental instability typical of the parliamentary system, which is particularly important for newly-independent countries in transition. These alleged advantages are mostly imputed to the French experience. Considering that the semi-presidential form of government *per se* is not homogenous and can be divided into at least two subcategories and give rise to numerous political practices, the discussion of any of its advantages should always take into consideration the model that provides a particular advantage under the respective configuration of political forces.

a) *The Semi-Presidential System Flexibility Argument*

Some researchers claim that flexibility is the main advantage of the semi-presidential system. Sartori states that its main advantage is that

⁷ **Shugart M. S., and M. Carey J. M.,** Presidents and Assemblies. Constitutional Design and Electoral Dynamics, Cambridge 1992, p. 24.

⁸ **Poghosyan V.,** p. 54.

⁹ **Poghosyan V.,** Problems of the Choice of the Forms of Government: Overview, *Collection of Reference Materials*, OSCE Yerevan 2004, pp. 76-80 (in Armenian).

it has “two engines” - the president and the parliament-based prime minister.¹⁰ If the president enjoys the support of the parliamentary majority, he ensures the strong leadership of the government. If the government is led by a prime minister who enjoys the parliament’s support, then the president is the safeguard against excessive concentration of power. The reality, however, is too remote from such idyll. To date, the power in France has normally concentrated in the president’s hands more than in any other democratic country. The president, who enjoys the support of the parliamentary majority, is different from both the prime ministers of parliamentary countries and the American-type president. In the parliamentary system, the prime minister depends on the majority that supports him, but not in France. Unlike the USA, the French president always enjoys the support of the parliamentary majority in these situations. According to the eminent French constitutional lawyer Vedel, the president of France will, in case of being the leader of the majority power, concentrate in his hands all the powers and authority of the US president and the British Prime Minister, causing the system to become “ultra-presidential.”¹¹ In case of “cohabitation,” the president becomes not the guarantor of the democratic “rules of the game,” but rather the troublemaker and the opposition leader. As the experience of the former USSR and Eastern European countries (Lithuania, Poland, Romania, Moldova, Georgia, and the like) has shown, “cohabitation” is a serious test for countries with limited experience of democracy. Much depends on the country’s political culture and the willingness of the actors to respect the constitution and the democratic “rules of the game.” Thus, the semi-presidential form does not sufficiently solve the problem of the conflict between different majorities created because of the dual democratic legitimacy. As Vedel once said, “cohabitation is a crutch that one may need in case of an

¹⁰ **Sartori G.**, Audizione nel Comitato Forma di Governo della Commissione bicamerale per le riforme costituzionali, seduta del 18 marzo 1997, in: *Nomos. Le attualità nel diritto*, 1997, n. 1, p. 120.

¹¹ **Vedel G.**, Cinquième République, *Duhamel O. et Mény Y., (éd.), Dictionnaire constitutionnel*, Paris 1992, pp. 138-139.

incident, but it does not mean that accidents are beneficial and should be encouraged.”¹²

b) *Stability of the Executive Power?*

The argument of executive power stability is unfounded, too. The stability of French governments is no greater than that of majoritarian parliamentary democracies. Government stability is even weaker in Finland (45 governments in 54 years from 1944 to 1998)¹³ and Portugal (14 governments in 22 years from 1976 to 1998).¹⁴ Frequent changes of the government in France are the result of parliamentary elections and the president’s calculations. Eastern European semi-presidential countries, too, do not have remarkable stability of governments.

c) *A President without a Majority*

Proponents of the semi-presidential form of government claim that the stability of the executive power is due primarily not to the stability of governments, but to stability resulting from the president’s fixed term and his ability to “take the steering wheel in his hands” in the absence of the required majority in the parliament. However, as Duverger points out, the president may play the role of either the regulator or the troublemaker in those situations¹⁵. In any event, the president’s influence cannot be such as to fully make up for the absence of a parliamentary majority. In Finland, the president was managing for quite a long time to contribute to a certain stability of governments, while in Portugal, the president was more a troublemaker, as in 1978, when he dismissed a prime minister that was still able to govern on the basis of the different majorities.

The experience of the last years of the Weimar Republic showed that, despite his discretionary power to dismiss the prime minister and to dissolve the parliament, the country’s president was unable to stabilize

¹² **Vedel G.**, Voter oui et comprendre, in: *Le Monde*, 16 Septembre 2000.

¹³ Wolfgang Ismayr (Hrsg.), *Die politischen Systeme Westeuropas*, 2. Aufl., Opladen 1999, p. 196.

¹⁴ *Ibid.*, p. 615.

¹⁵ **Duverger**, *Le systeme...*, pp. 585-587.

the country's political system in the absence of a parliamentary majority. On the contrary, the president's attempts to govern through governments enjoying only his confidence and through legislative decrees further deepened the political crisis in Germany and eventually led to the national socialists adopting the power Responsibility in a legal manner.¹⁶

d) Targeted of the Executive Power?

Proponents of a semi-presidential form of government view the president's direct election as an opportunity for the people to directly determine the head of the executive power. However, the direct election does not automatically turn the president into the leader of either the executive power or the parliamentary majority. The semi-presidential form is a system in which both parliamentary and presidential elections separately influence the formation of the government. It primarily concerns France: through the presidential election, a person with an important role in the executive power is directly elected, but unlike the presidential form of government, he is not the executive, hence the political orientation of the parliamentary majority has to be reckoned with. Under "cohabitation," not only is the executive power not elected directly, but also the public opinion is marred with doubt and uncertainty as to the specific roles of the two separate heads of the executive power. However, even when the majorities overlap, the prime minister and his team are not clearly identified because of their frequent changes.

In terms of political responsibility, the semi-presidential form of government has a fundamental deficiency: despite his or her considerable political powers, the president does not bear any political responsibility during their term in office. There is no possibility to express a vote of no

¹⁶ **Kaltefleiter W.**, Die Funktionen des Staatsoberhauptes in der parlamentarischen Demokratie, Köln und Opladen 1970, p. 153-167; **Haungs P.**, Reichspräsident und parlamentarische Kabinettsregierung - Eine Studie zum Regierungssystem der Weimarer Republik in den Jahren 1924 bis 1929, Köln und Opladen 1968; **Scach S.**, Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic, Princeton, NJ: Princeton University Press 2005.

confidence in the president for political reasons, and his term in office is fixed. The prime minister plays the role of the “scapegoat.” *The dilemma of the semi-presidential form of government is that it works well only when there is a majority in the parliament. However, when the parliament is able to create a stable parliamentary majority, then there may often be no need for a directly-elected president.* When there is no stable parliamentary majority, which is often the case in countries aspiring to become democratic, then, as stated above, the directly-elected president does not solve the problem of the power vacuum. The government does not enjoy stable support from the parliament, and the parliament only has a strong ability for blockade. The president who does not enjoy the government’s support is not strong enough to act in lieu of the government. Under such circumstances, the rivalry between the president and the prime minister in the field of executive power has negative effects, too.

Some deficiencies of the presidential system are found in the semi-presidential form of government, as well, including *the problem of political outsiders* and *the rigidity due to the fixed terms in office*, when there is no possibility to dissolve the parliament. On the other hand, the power to liquidate does not guarantee that the newly-elected parliament will support the president.

The semi-presidential form of government increases the temptation for the president to concentrate all power in their own hands. As a rule, they feel themselves as having greater legitimation than the parliament. Charles de Gaulle made an interesting comment regarding the president’s role: “It should be self-evident that the indivisible authority of the state is vested in the president by popular vote and that there is none else, nor ministerial or civil or military or judiciary, which is conferred and maintained by the president.”¹⁷ *Excessive concentration of the power* in the president’s hands is especially dangerous for countries lacking democratic traditions when the president is also the majority leader. Even in Italy, the main argument for rejecting this system of government is that Italy lacks the counterweights of France, which has strong governance,

¹⁷ La Constitution de la République française - Analyses et commentaires, (direction) avec Gérard Conac, 2e éd., Paris, Economica, 1987, p. 277.

an economy that is less concentrated in the hands of the state, pluralism in television, the media being less dependent on the centres of political power, and reasonably strong local self-government. Even in France, excessive concentration of power in the president's hands causes much concern. Many esteemed representatives of the French constitutional doctrine (Vedel,¹⁸ Duhamel,¹⁹ Gicquel,²⁰ and others) characterise the French government system (i.e. the one in practice) as "ultra-presidential," "super-presidential," or "presidentialist." In 2008, Duhamel sharply characterised the French political system in the following way: "French presidentialism ... does not mean appropriation of all the powers by the president. It corresponds more to the pyramidal conception and practice, where the president is at the peak of the pyramid and directly subordinates to him the prime minister, the government, and the majority party, while those three organize and implement the subordination of the parliament. The powers are hierarchical, rather than balanced. Being at the peak of this hierarchy, the president determines not everything, but only what he wishes and is able to determine." Clarifying that he is not referring to the African or Latin-American-type presidentialism, which has a vividly authoritarian nature, and that French presidentialism is democratic, Duhamel nonetheless highlights that it is less democratic than the political systems of Great Britain or Germany.²¹

The semi-presidential system exacerbates *the uncertainties of the legal system*. Semi-presidential constitutions contain many more vague provisions than parliamentary ones, which often cause disagreements between various bodies, especially within the executive power. They especially relate to the division of powers in key areas such as foreign policy, national security, and defence. The text of the constitution is too often fundamentally different from the political practices. For example, under Article 20 of the French Constitution, the government determines

¹⁸ Vedel G., *Cinquième ...*, pp. 138-139.

¹⁹ Duhamel O., *Une démocratie à part*, *Pouvoirs*, 2008/3 n.126, p. 22; Duhamel O., *Le pouvoir politique en France*, Seuil, Paris 1993, pp. 72-73.

²⁰ Gicquel J., *Droit constitutionnel et institutions politiques*, 19. éd., Paris 2003, p. 454.

²¹ Duhamel O., *Une démocratie ...*, p. 26.

and carries out the country's policy, but during the 55 years of the French Fifth Republic, the government had this possibility, albeit not fully-fledged, during only nine years (under the "cohabitation"). According to the second sentence of Part 1 of Article 8 of the French Constitution, the president terminates the prime minister's powers when the latter presents the government's resignation; in practice, however, with the exception of the "cohabitation" situations, the president never had any trouble removing a prime minister and appointing a new one.

Adoption of the Semi-Presidential Form of Government: Armenia's 1995 Constitution

During 1991 to 1995, Armenia adopted a semi-presidential form of government, which was different from the classical presidential form in that there was, in addition to the president of the Republic, who was the head of the executive power, also a prime minister who led a government that was institutionally and organisationally separate from the president.

The adoption of the semi-presidential model in the 1995 Constitution²² of Armenia had a number of reasons: from 1991, there was already the position of a directly-elected president, and the incumbent administration, led by the President, were keen on maintaining and fortifying this position. The ruling majority were only focused on choosing a model that would fortify the President's strong position. The opposition, mostly proponents of the parliamentary form of government, was a minority in the parliament and could not have a decisive influence. The ruling majority made its constitutional perceptions evident in the draft approved by the constitutional committee on 20 April 1994, which contemplated an absolutely dominant position for the president, who would have the power of appointing and dismissing the prime minister without any involvement of the parliament (Paragraph 6 of Article 74), dissolving the parliament (Paragraph 5 of Article 74), and imposing a veto that could only be overcome by two-thirds majority (Paragraph 3 of

²² Pogosjan W., *Die verfassungspolitische Entwicklung in der Republik Armenien (1990 - 1995)*, unveröff. Magisterarbeit, Bonn 1995, pp. 57-102.

Article 74). The only concession to the parliament was that the latter could pass a motion of no confidence in the government by a majority vote of the total number of the parliament members, rather than two-thirds majority, which had been the case under Paragraph 6 of Article 8 of the Republic of Armenia Law on the President of the Republic of Armenia (adopted on 1 August 1991).

The ruling majority chose this very model, as it allowed for resolving any crisis-situation conflict in favour of the president by dissolving the parliament—a power that the president did not have under the 1 August 1991 law, and a power that President Levon Ter-Petrossian direly needed from 1992 on. Another argument for the semi-presidential model was that the president was no longer the direct head of the executive power, but rather, played the role of a supra-partisan arbiter.

Despite the fact that the constitutional referendum presented the Draft Constitution to the public as “the French model,” having benefited from considerable engagement of French constitutional lawyers, the 1995 Constitution model of Armenia was very different from the French one, as it was driven by a desire to maximise the president’s power and a realisation of the fact that the president should have a dominant position in the system of bodies of power. The most remarkable differences from the French Constitution concerned the president’s position vis-à-vis the government, specifically:

1. The hugely significant power to dismiss the prime minister.
2. The procedure of government formation was formally the same, but the situation was changing drastically in view of the president’s unilateral power to dismiss the prime minister. Considering that the prime minister’s tenure depended not only on the will of the parliamentary majority, but also, and much more so, the president’s will, the parliament was forced to reckon with the president’s preferences when forming the government, especially in light of the president’s power to dissolve the parliament.

A combination of these two powers created an institutionally-dominant position of the president over the government. The following two powers, too, were favourable for controlling the government’s activities.

3. Paragraph 3 of Article 85 gave the president the power to define the government structure and procedure of activities, by proposal of the prime minister. In other words, it was impossible, without the president's involvement, to define the ministries or the relationships between various bodies of the executive power.
4. Under Paragraph 2 of Article 86 of the Constitution, the president ratified all decisions of the government. Unlike this power of the Armenian president, the French president ratifies only ordinances and decrees adopted in the council of ministers (Article 13).
5. The Armenian Constitution prescribed the president's dominant position in fields of foreign policy, defence, and security.
6. The president's power to issue decrees, prescribed in Article 56 of the Armenian Constitution, was subject to only one limitation, according to which presidential decrees could not contradict the Constitution and laws. This was absolutely inadequate, because the article gave the president the primary law-making power, on the one hand, and defined the supremacy of any presidential decree over the decisions and other normative legal acts of the government, on the other. Unlike France, Armenia completely lacked the concept of countersignature.
7. In France, any presidential appointment to civil and military positions is subject to countersignature (Article 13 in conjunction with Article 19), and the appointment of some categories (ambassadors, generals, heads of central departments, and prefects) is made only in the council of ministers (Paragraph 3 of Article 13). In Armenia, the president, without any proposal or nomination or countersignature, appointed the supreme command of the armed forces (Paragraph 12 of Article 55) and made appointments to civil positions in cases provided by law (Paragraph 5 of Article 55). By proposal of the prime minister, he appointed and dismissed the prosecutor general and the Mayor of Yerevan (Paragraph 9 of Article 55 and Paragraph 2 of Article 108). Considering that the president of Armenia, unlike the French president, had the discretionary right to dismiss the prime minister, it was clear that his influence over the appointment of the prosecutor general and

the Mayor of Yerevan was very strong. The president of Armenia formally was not involved with the appointment of the regional governors, because they were appointed and dismissed by the government through government decision, which were legally subject to ratification by the president, as well.

This brief comparison of the powers of the Armenian and French presidents clearly demonstrates the untruthfulness of the claim that Armenia was replicating the French model. From a legal standpoint, the position of the Armenian president was far stronger than that of the French president. To this end, Armenia's Constitution resembled only the constitutions of a number of African countries, such as Angola, Burkina Faso, the Central African Republic, Gabon, Madagascar, Mauritania, and Niger, where the president unilaterally appoints and dismisses the prime minister and has the discretion to dissolve the parliament. In terms of constitutional law, the Armenian president had much greater power than the French president. The difference was even greater in political practice.

The Transition to a Parliamentary-Presidential Model of the Semi-Presidential Form of Government

After the 2005 constitutional reform, the form of government in Armenia mostly corresponded to the "parliamentary-presidential" model. As a result of the reform, the president of the Republic no longer has the discretionary power to dissolve the parliament, and the formation and tenure of the government mostly depends on the will of the parliamentary majority. The constitutional-legal "power" of the Armenian president is essentially tied to his significant powers in matters of foreign policy, defence, and national security. Thus, having transitioned from the initial 1995 model of a president with super-strong powers to a "parliamentary-presidential" model, Armenia broadly walked in the footsteps of the Eastern European countries that have a semi-presidential form of government. Nonetheless, the current form of government remains imperfect and contains numerous potential threats that, in our opinion, necessitate a transition to the parliamentary form of government.

The form of government in Armenia does not address the danger inherent to the semi-presidential form of government, which exists in case of *a conflict between the president and the parliament*—two bodies enjoying democratic legitimacy. There is no institutional solution for situations in which a president opposed to the parliamentary majority is elected, or when the newly-elected parliament is opposed to the incumbent president. In the former scenario, the newly-elected president has no constitutional-legal leverage to exercise his fresh mandate from the people. He cannot form a new government without reckoning with the will of the parliamentary majority. He cannot dissolve the parliament, either, because the National Assembly of Armenia can easily avoid the emergence of preconditions for its dissolution under Article 74.1 of the Constitution.

The newly-elected parliament and the government of its choice, in turn, may encounter serious difficulties in the policy areas in which the president of the Republic has crucial constitutional-legal powers.

The “cohabitation” that withstood the challenges of time in France and some Eastern European countries, albeit with difficulty, may face insurmountable obstacles in Armenia because of the country’s political culture and traditions. In Georgia, which has a somewhat comparable political culture and tradition, the severe political confrontation that arose after the 2012 parliamentary election would have been more dangerous, had the president’s term not been so close to ending.

The “cohabitation” problem in principle has no solution, because giving the president the power to dissolve the parliament and increasing his role in the formation of the government would reinstate the institution of the super-powerful president enshrined in the initial text of the 1995 Constitution.

The current form of government in Armenia, where the president of the Republic plays a dominant role, functions without institutional obstacles not because of the president having great constitutional-legal powers, but because there is *a political majority* in the National Assembly, of which *the incumbent President is the leader*. If the political system is capable of delivering a political majority, then there is no need to maintain a system that would drive the country into a deadlock in case of opposing majorities.

Main Shortcomings of the Semi-Presidential Form of Government

The semi-presidential form of government functions in practice in three basic modes, each one of which has certain shortcomings.

a) The president being the majority of the parliamentary majority:

- *Excessive concentration* of the power in the hands of the president;
- *Governance contrary to the letter of the Constitution* (undermining the constitutional role of the government, and replication of government).

b) The president and the parliamentary majority being opposed to one another (*"cohabitation"*):

- Confrontation without institutional solutions when the president of the Republic tries to assume functions of the government.

c) No majority in the parliament:

- *Bipolarity of the executive power*, especially in essential sectors such as foreign policy, defence, and national security;
- *Instability*, where the president can even be a troublemaker (the Weimar Republic).

In addition to the shortcomings typical of certain modes of operation of the semi-presidential form of government, the semi-presidential form of government can also have the following shortcomings:

- The president *not having political responsibility*, regardless of the existence or absence of a parliamentary majority;
- The problem of *political outsiders*—"random" individuals.

Reform of the Semi-Presidential Form of Government?

Some of the shortcomings listed above can be mitigated, but not fully eliminated within the scope of the semi-presidential form of

government. For instance, the likelihood of “cohabitation” can be reduced by conducting the presidential and parliamentary elections concurrently or shortly after one another. However, such an electoral cycle cannot be constantly maintained (in view of possible dissolution, death of president, resignation, and the like). Moreover, it would be important to consider that the concurrent election of the president and the parliament would bring to the forefront the other shortcomings of the semi-presidential form of government, such as the excessive concentration of the power in the president’s hands, without the president bearing any political responsibility for his activities. The 2000-2001 reforms in France (reduction of the term of the president and making it equal to the term of the National Assembly, and conducting the presidential election before the parliamentary election) have made the French government system even more super-presidential. Starting from 2002, the result of the parliamentary election has been the same as that of the presidential election, with falling voter turnout in the parliamentary election. In the second round of the presidential election in 2012, voter turnout was 80.35 percent, almost twice greater than the 44.6 percent turnout in the second round of the National Assembly election. These numbers vividly illustrate the depreciation of the National Assembly’s role in the eyes of the public.

Although a more clear constitutional-legal separation of executive powers between the president and the government (especially in the areas of foreign policy, defence, and national security) is important, it would not change much in the constitutional practice as long as there is a dynamic figure (president or prime minister) within the executive power. The Constitutional Reform Committee created in 2007 by the French President Sarkozy, led by former Prime Minister Balladur, proposed eliminating the dualism of the executive power in favour of the president of the Republic. The Committee recommended that the president of the Republic should determine the country’s policies, and the government should carry them out.²³ Had this recommendation not been

²³ Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la V^e République, *Une Ve République plus démocratique*, p. 10.

turned down by Sarkozy, it would essentially eliminate the semi-presidential form of government, because the government would become a mere implementer of the policies elaborated by the president of the Republic.

The problem of political outsiders can potentially be solved by trying to prescribe more stringent requirements for the presidential candidates (for example, by requiring nomination exclusively by the parliamentary factions), which would not be too compatible with the notion of direct election.

The constitutions of countries that adopted the semi-presidential form of government and subsequently tried to improve it (for example, Poland, Romania, Croatia, the Ukraine) do not provide comprehensive solutions for addressing the shortcomings of the semi-presidential form of government, either. Semi-presidential countries of Eastern Europe have now adopted the “parliamentary-presidential” model, and their experience shows that, unlike France, the *de-facto* head of the government is the prime minister, rather than the president (as is prescribed in the constitution). The position of the prime minister, rather than that of the president, is important in those countries. The system operates like a parliamentary system of government, but the president’s role is usually greater than in purely parliamentary countries.

Transition to a Form of Parliamentary Government Securing the Stability and Effectiveness of the Government

When adopting the 1995 Constitution, the need for a “strong president” was substantiated by the Karabakh conflict, the profound economic crisis, the underdevelopment of the party system, and other factors (setting aside questions regarding the extent to which they were genuine reasons versus a pretext for authoritarian governance). The main goal of adopting the semi-presidential form of government was to secure strong power for the president. “Strong president” firstly implied the president’s discretionary power to dissolve the parliament and to appoint and dismiss the prime minister. The forced resignation of the President of the Republic in 1998 clearly demonstrated that excessive constitutional powers are not sufficient for their realisation in practice.

After the constitutional reform in 2005, which implied the transition from a “presidential-parliamentary” model to a “parliamentary-presidential” one, there is no longer an institutional justification for maintaining the current form of government. There is no longer a “strong president” in a constitutional-legal sense, because, unlike the initial text of the 1995 Constitution, the president now cannot govern contrary to the will of the parliamentary majority. The most that the president can now do is to obstruct the work of the government. The President is currently “strong” in practice owing not to his constitutional powers, but to the fact that *there is a majority in the parliament, which supports the President, and the President is the leader of that majority.*

It can thus be concluded that there cannot be a “strong president” without a parliamentary majority. Considering that *the existence of a parliamentary majority* is an institutional precondition for the effective functioning of the semi-presidential form of government, just as it is for the effectiveness of a parliamentary form of government, *the parliamentary form of government can be adopted, avoiding fundamental changes to the semi-presidential form of government, the danger of opposed majorities, and the excessive concentration of power in the hands of a president who bears no political responsibility.*

In the Concept Paper of Constitutional Reforms adopted in 2013,²⁴ the Expert Committee for Constitutional Reform, which was created by the President of the Republic on 4 September 2013, recommends a transition from a semi-presidential form of government to a parliamentary one.²⁵ The Concept Paper underlines that such transition involves important issues related to the stability of the government, the oversight powers of the parliament, the rights of parliamentary minorities, and the functions and election procedure of the President of the Republic. According to the Concept Paper, the following factors will be important when transitioning to a parliamentary form of government:

- a) The possibility of achieving unified executive power, without the danger of dualist executive power, especially in areas that are

²⁴ Concept Paper of Constitutional Reforms of the Republic of Armenia, Yerevan, 2014.

²⁵ Ibid, pp. 47-52.

- vital for the country, such as foreign policy, national security, and defence;
- b) The preclusion of confrontation between the parliament and the president, which is possible under a semi-presidential form of government;
 - c) The significantly lower danger of “random” individuals coming to power;
 - d) The preclusion of excessive concentration of power in the hands of the head of the executive power, who would not be politically responsible to the parliament;
 - e) Political responsibility contributing to the collegiality of government;
 - f) Increased political role of the parliament; and
 - g) Increased political role of the parliament facilitating the parties’ performance of their essential functions.

Conclusion

A comparative study of three forms of government and their subtypes demonstrates that their implementation results in a particular country depend not only on the constitutional and legal provisions but, on implementing country’s specificities related to political culture as well as to electoral and party systems. The view that semi-presidential form of government has solutions for two basic problems (the deadlock caused by the conflict between the executive and the legislative and the “rigidity” of presidential system) arising in a significant number of countries having adopted presidential form of government and that it reduces the instability typical to parliamentary forms of government, can solely result from the studies devoted to the implementation of French model of semi-presidential form of government. Therefore, the choice of specific form of government and its subtype can be efficient only after disclosing the implementing country’s specificities and combining them with the advantages and disadvantages of each form of government. To have minimum difficulties arising from the implementation of chosen form of government the article proposes to choose that subtype of a particular

form, which in combination with the specificities of implementing state and society, will produce minimum negative outcomes.

In case of Armenia once in every ten years after restoration of independence, the attempts have been made to improve the existing form of government to ensure legal and political bases for further development. There is a common view that, by adopting the Constitution of 1995, Armenia made a choice in favor of the French model of government. However, only a single comparison between the presidential powers enshrined in the Constitutions of two countries demonstrates that the claim made above cannot be objective. The powers vested in the President of Armenia by the Constitution of 1995 were much broader than those vested in the President of France. Moreover, in Armenia that gap has actually been growing under the absence of appropriate political culture. Due to the Constitutional reforms of 2005 Armenia stepped from president-parliamentary model of semi-presidential form of government to premier-presidential model. The super powers vested in the President by the Constitution of 1995 were reduced and Armenia adopted semi-presidential form of government typical to Eastern European countries. Nevertheless, the President of a country has a big impact on political processes. This is not conditioned by a wide scope of powers he is endowed with but his being a leader of parliamentary majority as well as by the weakness of multi-party system and the lack of political culture. The logical continuation of two-decade-lasting constitutional processes in Armenia will be the step from semi-presidential form of government to parliamentary form. This will enable to solve a series of problems in the country providing the bases for more balanced state governance.