



**COMPARISON OF APPOINTMENT AND DISMISSAL POWERS  
OF THE EXECUTIVE BRANCH  
IN  
GERMANY, FRANCE AND GEORGIA**

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## **Abstract**

The present paper concerns one of the main aspects of the separation of powers: appointment and dismissal powers of the executive branch. The abovementioned powers are defined on examples of Germany, France, and Georgia. Each of these countries has different government structures and different power-sharing between the institutions (Head of State, Head of the Government, and the Parliament), which are concerned with these powers.

The aim of the paper is to describe and compare the powers of the abovementioned institutions, which influence the formation and termination of the executive branch in each selected country.

# Introduction

According to the principle of separation of powers, the government shall be divided into the separate branches, which are the legislative, the executive and the judicial. This division of power is necessary to ensure democracy, protection of human rights and freedoms and stabile, harmonized functioning of the country. But it does not mean that these branches must be totally separated or unconnected with each other<sup>1</sup>. The system of checks and balances provides for the control which each branch exercises over the other. A 'pure doctrine' of the separation of powers can be formulated in the following way:

It is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments, the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch. In this way each of the branches will be a check to the others and no single group of people will be able to control the machinery of the state<sup>2</sup>.

The executive branch is one of the strongest branches of the government since it executes and supervises the execution of the laws passed by the legislatures, participates in law-making process, has emergency and war powers and encompasses a huge staff or bureaucracy, which assists the chief executives in discharging their duties. Therefore, concentration of certain kinds of power within the executive branch "may be 'inevitable', given certain assumptions about the military, social, and economic needs of modern societies, but which powers, how

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<sup>1</sup> James Madison, The Federalist Papers: No. 48, February 1, 1788, The Avalon Project at Yale Law School

<sup>2</sup> M.J.C. Vile, "Constitutionalism and the Separation of Powers", Clarendon Press, Oxford, 1969, at p. 13

much of them, and how they can be effectively limited, are the questions we should be asking”<sup>3</sup>.

The aim of the present paper is to describe and compare the process of formation and termination of the executive branches in Germany, France and Georgia within the context of appointment and dismissal powers. Three different countries with different constitutional models have been selected in order to better point out the distinctions and similarities of the abovementioned powers. Germany is a parliamentary republic<sup>4</sup>, with the strong and powerful institutions of parliament and chancellor, whereas France and Georgia are semi-presidential<sup>5</sup> republics, which have especially strong presidential institutions.

In terms of the present paper the executive branch will include presidents, prime ministers, cabinet<sup>6</sup>, members of the cabinet (ministers), senior departmental officials<sup>7</sup>, civil servants, military officials.

“All governments derive their fundamental legitimacy...and their legal recognition under the constitution...from somewhere”<sup>8</sup>. In the executive branch there is “always a person, typically

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<sup>3</sup> Ibid, at p. 11

<sup>4</sup> *Parliamentary democracy is a type of democracy “essentially characterized by the fact that the ultimate power of the state to decide, act, appoint, etc. rests with parliament. Hence,...a parliamentary system is characterized by how the relationship between the executive and legislative has been prescribed in its constitution...parliament and government are characterized by power-sharing. From this it follows that parliamentary government can be considered as a mode of democratic government in which co-operation between representatives (of parties) in parliament and government is almost compulsory”* - Jaap Woldendorp, Hans Keman, and Ian Budge, “Party Government in 48 Democracies (1945-1998)”, published by Kluwer Academic Publishers, 2000, at p. 3-4

<sup>5</sup> *The French political scientist, Maurice Duverger, describes semi-presidentialism as government system, which shall meet three conditions: “1) the president is elected by universal suffrage, 2) opposite him, there is a prime minister and ministers who can only govern with the confidence of parliament, and 3) the president can dissolve parliament”. These two latter conditions, which are also characteristic to the parliamentary systems, distinguish semi-presidential system from the presidential system* - Robert Elgie, “Semi-Presidentialism in Europe”, Oxford Scholarship Online, Print Publication date: 1999, Published to Oxford Scholarship Online: November 2003, at p. 3

<sup>6</sup> *Walter Bagehot defined the “cabinet” as “the most senior constitutional body, politically responsible (to parliament or president) for the activities of the state bureaucracy”* - Jack Hayward, Anand Menon, “Governing Europe”, Print publication date: 2003, Published to Oxford Scholarship Online: November 2003, at p. 40-41

<sup>7</sup> Ibid, at p. 40

the head of state, with the job of “investing” each new government with its formal constitutional authority”<sup>9</sup>. He may be a “relatively powerful figure, as in France, or much more of a purely ceremonial figure, as in Germany”<sup>10</sup>. In both cases, in the process of formation or termination of government (the executive branch) the role of parliament (legislative branch) is considerable and sometimes crucial. Therefore, in this paper the legislative-executive relations and the power of the legislative branch to institute or to terminate the executive branch will also be broadly discussed. Appointment and dismissal powers within executive branch are shared between crucial functionaries: the Head of State, Head of Government, and Parliament<sup>11</sup>. So, the main goal of the paper is to compare the shares of the abovementioned institutions in the formation and termination of governments in the selected states.

*The First Chapter* will concern the appointment of the Head of Government and the formation of the Cabinet, the role of the Head of State and the role of Parliament in the selection, nomination, and appointment of the Head of Government and the Cabinet. *The Second Chapter* will focus on the dismissal of the Head of the Government, as well as on the termination of the Cabinet and the dissolution of Parliament since the power of the Head of State to dissolve Parliament is essentially connected to the power of the Head of State to interfere in the process of the dissolution of the Cabinet itself and instituting a new one. *The Third Chapter* will concentrate on the selection, recruitment, appointment and dismissal powers of the Head of State and the Head of the Government concerning individual members of the cabinet, civil servants, other high and military officials.

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<sup>8</sup> Michael Gallagher, Michael Javer, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 177-178

<sup>9</sup> Ibid, at p. 178

<sup>10</sup> Ibid

<sup>11</sup> Jaap Woldendorp, Hans Keman, and Ian Budge, “Party Government in 48 Democracies (1945-1998)”, published by Kluwer Academic Publishers, 2000, at p. 4

# Chapter 1 – Appointment of Prime Ministers and formation of Cabinets

## 1.1 Introduction

The formation of government differs in semi-presidential and parliamentary republics. As it was mentioned before, parliament plays a crucial role in government formation, particularly, in parliamentary democracy. The formation of government is the first and foremost parliamentary business after a legislative election, which is accomplished by selection of a senior legislator (in parliamentary republic) to be nominated as prime minister and the selection of others to be nominated as members of the cabinet. Each member, once nominated, acts as the political head of a ministry, a major government department<sup>12</sup>. It means, that in countries with a system of parliamentary government “the legislature is the main recruiting ground for members of the executive”<sup>13</sup>. “Related to this is the fact that the head of state is not, in most cases, the chief executive but rather a figure who is intended to be above day-to-day politics, with a number of significant symbolic, procedural, and diplomatic functions”<sup>14</sup>.

According to abovementioned, the parliamentary elections and namely, the electoral system is determinative who will be the Head of the Government and who will compose the Cabinet. The possible variations of the government are: “party government, coalition government, and parliamentary government”<sup>15</sup> depending on the electoral system. Majority system of elections tends to generate single-party governments, whereas “PR (proportional representation)

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<sup>12</sup> Michael Gallagher, Michael Javer, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 19

<sup>13</sup> Ibid, at p. 31

<sup>14</sup> Ibid, at p. 14

<sup>15</sup> Jack Hayward, Anand Menon, “Governing Europe”, Print publication date: 2003, Published to Oxford Scholarship Online: November 2003, at p.79

generates multiparty systems, which generate coalition governments”<sup>16</sup>. Nevertheless, “in a broader sense, even single-party governments can also be seen as coalitions: coalitions of factions within the ruling party”<sup>17</sup>. Coalition government is formed after “a continuous process of bargaining and negotiation between party leaders”<sup>18</sup>. Therefore, election results, in this case, settle relatively little in the process of government formation and bargaining power becomes decisive<sup>19</sup>.

Moreover, “political parties play a key role in both elections and governments, shaping the actual process of democratic decision-making”<sup>20</sup>. “Political parties contest elections in order to gain access to government. In the process of government formation parties put forward nominees to participate in government. This goes for every type of government: be it majoritarian or coalition”<sup>21</sup>.

According to abovementioned, the relationship between executive and legislative is essential in any parliamentary democracy<sup>22</sup> since the “political executive derives its mandate from, and is politically responsible to, the legislature”<sup>23</sup>.

As regards the semi-presidential system of government, there is a powerful Head of State, who nominates the Head of the Government by his own will, and appoints him after the subsequent approval from the legislature. Therefore, there is “an institutionally weak

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<sup>16</sup> Michael Gallagher, Michael Laver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 174

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid, at p. 182

<sup>20</sup> Jaap Woldendorp, Hans Keman, and Ian Budge, “Party Government in 48 Democracies (1945-1998)”, published by Kluwer Academic Publishers, 2000, at p. 3

<sup>21</sup> Ibid, at p. 9

<sup>22</sup> Ibid, at p. 50

<sup>23</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 3



Parliament”<sup>24</sup>, which is subordinated to the Head of State in formation process of the Government.

## 1.2 Germany

The Federal President of Germany, which is only the Head of State and is separated from the Cabinet (i.e. from the executive), has one of the weakest powers in Western Europe<sup>25</sup>. As regards the Federal President’s power to appoint the Federal Chancellor, he formally appoints him after the Chancellor has been already elected by the *Bundestag*, a lower house of German Parliament, following general elections of the *Bundestag*. The Basic Law in Article 63 sets forth the rules of election of the Federal Chancellor. The Federal Chancellor shall be elected without debate by the *Bundestag* upon the formal proposal of the Federal President<sup>26</sup>, since in the selection of the candidate for the office of chancellor the decisive are the parliamentary election outcome and the bargaining results between the parties which won the seats in the *Bundestag*. “To be elected, a candidate must be supported by an absolute majority of all Members of the Bundestag, that is, there is an explicit support requirement of 50 per cent plus one vote of all members. ...The Federal President must appoint the chancellor-candidate elected by an absolute majority of the chamber”<sup>27</sup>.

It may happen that no candidate to the position of the Federal Chancellor receives an absolute majority in the first ballot. In such case an unspecified number of further ballots can be held

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<sup>24</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 325

<sup>25</sup> Michael Gallagher, Michael Laver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 182

<sup>26</sup> Article 63 (1) of the Basic Law of the Federal Republic of Germany, adopted on May 23, 1949; Second Edition: A. Tschentscher, Jurisprudencia Bern Würzburg, 2008  
[http://www.servat.unibe.ch/law/lit/the\\_basic\\_law.pdf](http://www.servat.unibe.ch/law/lit/the_basic_law.pdf)

<sup>27</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 355

within 14 days<sup>28</sup>. If no candidate has been elected within this period, the constitution demands a new ballot without delay. In this ballot the candidate obtaining the largest number of votes shall be elected. If the candidate elected has obtained the votes of the chancellor majority, the Federal President must appoint him. However, if the person elected does not obtain the chancellor majority, the Federal President has a choice to either appoint the person elected without chancellor majority or dissolve parliament<sup>29</sup>. If the Federal President dissolves the *Bundestag*, he calls for new elections.

This is the only case, when the Federal President has the discretion to decide by his judgment alone whether to appoint the person elected without chancellor majority or to dissolve the *Bundestag*. “This case most visibly manifests the Federal President’s role as a reserve crisis manager”<sup>30</sup> in a parliamentary crisis, when there is no agreement between parties in the *Bundestag* upon the common candidate. However, there was no such occasion so far in Federal Republic’s history that the Federal President acted as “crisis mediator”<sup>31</sup> or conciliator: all of the seventeen investiture votes between 1949 and 2000 were successful<sup>32</sup>. Therefore, in the process of selection and nomination of the Federal Chancellor, the Federal President “finds himself...restrained to a subordinate position *vis-à-vis* parliament”<sup>33</sup>.

According to abovementioned, in selection and nomination of the Federal Chancellor the elections of the *Bundestag* and bargaining between the parties play a crucial role. Under the

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<sup>28</sup> Ibid

<sup>29</sup> Article 63 (4) of the Basic Law of the Federal Republic of Germany, adopted on May 23, 1949; Second Edition: A. Tschentscher, Jurisprudencia Bern Würzburg, 2008

<sup>30</sup> Manfred G. Schmidt, “Political Institutions in the Federal Republic of Germany”, Oxford: Oxford University Press, 2003, at p. 35

<sup>31</sup> Ibid

<sup>32</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 357

<sup>33</sup> Manfred G. Schmidt, “Political Institutions in the Federal Republic of Germany”, Oxford: Oxford University Press, 2003, at p. 33

Federal Electoral Law, enacted pursuant to Article 38 (3) of the Basic Law, the members of the *Bundestag* are elected by a system which combines majority and proportional voting based on constituencies and *Land* lists<sup>34</sup>. Such electoral system and the system of political parties ensure the fact, that “in Germany...coalition governments have been the norm”<sup>35</sup>. “Coalition government is a constant bargaining process”<sup>36</sup>:

The election of a Chancellor is only the formal completion of the process of government and, in particular, coalition formation. Leading members of the parliamentary majority parties are closely involved in this bargaining process, as are leaders and relevant experts from the extra-parliamentary party organizations. These actors work out the future government's policies as well as the allocation of cabinet portfolios to particular parties and politicians. The government's policy programme is formally summarized in a coalition agreement and the Federal Chancellor's first government declaration to Parliament. In effect this means that the majority parties agree on a formal contract before the government is elected<sup>37</sup>.

As we see, the process of recruiting and selecting the Federal Chancellor is not influenced only by constitutional rules<sup>38</sup>. “Coalition agreement is necessary between the parties who won the elections to select a candidate for the position of the Federal Chancellor and to form the Cabinet. For example, after unconvincing elections of the *Bundestag* on 18 September, 2005 Germany's three major political parties signed the agreement to set up a "grand coalition": leader of Christian Democratic Union (CDU), Angela Merkel, became first woman chancellor of Germany after she signed<sup>39</sup> “the deal along with her Christian Social

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<sup>34</sup> Article 4 of the Federal Electoral Law <http://www.iuscomp.org/gla/statutes/BWG.htm#ToC2>

<sup>35</sup> Michael Gallagher, Michael Laver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 41

<sup>36</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 365

<sup>37</sup> Ibid, at p. 355-356

<sup>38</sup> Manfred G. Schmidt, “Political Institutions in the Federal Republic of Germany”, Oxford: Oxford University Press, 2003, at p. 35

<sup>39</sup> BBC News: “German coalition agreement signed”, <http://news.bbc.co.uk/2/hi/europe/4449662.stm>

Union (CSU) ally Edmund Stoiber and Social Democrat (SPD) leader Matthias Platzeck. The coalition agreement was reached...after weeks of bargaining”<sup>40</sup>.

It should also be pointed out that “Chancellor Democracy”<sup>41</sup>, in many respects, “seems to be an early version of a presidentialized parliamentary system, particularly because the selection of the chief executive tends to directly involve the public at large through the nomination of chancellor candidates”<sup>42</sup>, who “increasingly seek a personalized mandate bypassing their parties and appealing directly to the public at large, just like Gerhard Schröder secured his position as chancellor candidate in 1998”<sup>43</sup>.

### 1.3 France

In France the process of selection and appointment of the Head of the Government and the formation of the Cabinet drastically differs from that of in Germany. “The powers of the French president are much greater, and more politicized, than those of other Western European heads of state”<sup>44</sup>. The President of the Republic is the Head of State, as well as the Head of the Government. According to Article 9 of the 1958 French Constitution, the President presides over the Council of Ministers. According to Article 8, the president appoints the Prime Minister. “Typically, the president asks a senior legislator in his own party to head a cabinet, which may be a single-party administration or a coalition”<sup>45</sup>. However, the

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<sup>40</sup> Ibid

<sup>41</sup> “‘Chancellor Democracy’ means that the Federal Chancellor is at the centre of the formal and the informal decision-making process and that he plays a central role both in domestic politics and foreign affairs” - Manfred G. Schmidt, “Political Institutions in the Federal Republic of Germany”, Oxford: Oxford University Press, 2003, at p. 30

<sup>42</sup> Thomas Poguntke, “3 A Presidentializing Party State? The Federal Republic of Germany”; Thomas Poguntke, Paul Webb, “The Presidentialization of Politics: A Comparative Study of Modern Democracies”, Print publication date: 2005, Published to Oxford Scholarship Online: April 2005, at p. 65

<sup>43</sup> Ibid

<sup>44</sup> Michael Gallagher, Michael Iaver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 182

<sup>45</sup> Ibid

power of the President is still dependent upon two factors: “the nature of the parliamentary majority and the relationship between the president and that majority”<sup>46</sup>.

In case of consolidated majority the president and the Prime Minister have same majority in legislature<sup>47</sup>.

[It is an ordinary, *non-cohabitation* situation, in which] the French President is the dominant figure with regard to the rules and conventions governing the formation, inauguration, and resignation of cabinets. The Constitution clearly gives the President the right to appoint the Prime Minister. The President's practice of selecting as Prime Minister people who have no independent political power base—the notable exceptions being Chaban-Delmas, Chirac, Mauroy, and Rocard—tends to emphasize his dominance over the appointment process<sup>48</sup>.

“Since 1958 France has experienced periods of both unified and divided government”<sup>49</sup>.

Mostly, the Fifth Republic has been typified by consolidated majority government. During this time the president has been backed by the parliamentary majority. Accordingly, the president has also been able to appoint a loyal prime minister<sup>50</sup>. However, this does not mean, of course, that there has not been conflict between “the president and the prime minister, between the president and the parliamentary majority and between the prime minister and the parliamentary majority”<sup>51</sup>. But, still, when the “president's party”<sup>52</sup> holds the majority of seats in the National Assembly, a lower house of French Parliament, the formal leader of this party is effectively appointed as prime minister “by the president himself with the formal methods

<sup>46</sup> Robert Elgie, “Semi-Presidentialism in Europe”, Oxford Scholarship Online, Print Publication date: 1999, Published to Oxford Scholarship Online: November 2003, at p. 80-81

<sup>47</sup> Cindy Skach, “The “newest” separation of powers: Semipresidentialism”, published by Oxford University Press and New York University School of Law, 2007, at p. 101

<sup>48</sup> Jean-Louis Thiébaud, 9 France: Delegation and Accountability in the Fifth Republic; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 333

<sup>49</sup> Robert Elgie, “6 ‘Cohabitation’: Divided Government French-Style”; Robert Elgie, “Divided Government in Comparative Perspective”, Print publication date: 2001, Published to Oxford Scholarship Online: November 2003, at p. 110

<sup>50</sup> Ibid

<sup>51</sup> Ibid, at p. 111

<sup>52</sup> Ben Clift, “10 Dyarchic Presidentialization in a Presidentialized Polity: The French Fifth Republic”; Thomas Poguntke, Paul Webb, “The Presidentialization of Politics: A Comparative Study of Modern Democracies”, Print publication date: 2005, Published to Oxford Scholarship Online: April 2005, at p. 225

of selection only serving to ratify the president's choice. The formal leader's authority and legitimacy depends on the president"<sup>53</sup>. In such case, "the parliamentary majority, the PM, the cabinet, and the administration act under the leadership of the President"<sup>54</sup>.

The situation is rather different when there is a "minority government and split-executive government, or '*cohabitation*'"<sup>55</sup>. In France '*cohabitation*'<sup>56</sup> takes place "when the president is faced with an opposition majority in the National Assembly and thus is obliged to appoint a prime minister who has the support of that majority"<sup>57</sup>. Therefore, "both the president and the prime minister are significant political actors"<sup>58</sup>. "This situation, popularly known as *cohabitation*, occurred as a result of legislative elections in 1986, 1993, and 1997. In each case the President lost his supporting majority in Parliament"<sup>59</sup>.

[For example,] in 1986, five years into the president's then seven-year term, the right-wing coalition won a National Assembly majority. This obliged the socialist president, François Mitterrand, to appoint a political opponent as prime minister. He chose the leader of the Gaullist party, Jacques Chirac. This period of '*cohabitation*' ended in 1995 when Mitterrand was re-elected as president and immediately dissolved the National Assembly, resulting in the election of a minority Socialist administration<sup>60</sup>.

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<sup>53</sup> Ibid

<sup>54</sup> Jean-Louis Thiébault, "9 France: Delegation and Accountability in the Fifth Republic"; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, "Delegation and Accountability in Parliamentary Democracies", Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 325

<sup>55</sup> Robert Elgie, "6 'Cohabitation': Divided Government French-Style"; Robert Elgie, "Divided Government in Comparative Perspective", Print publication date: 2001, Published to Oxford Scholarship Online: November 2003, at p. 110

<sup>56</sup> "In a political sense the term '*cohabitation*' was first employed in France in the mid-1970s" - Ibid, at p. 106

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Jean-Louis Thiébault, "9 France: Delegation and Accountability in the Fifth Republic"; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, "Delegation and Accountability in Parliamentary Democracies", Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 326

<sup>60</sup> Robert Elgie, "6 'Cohabitation': Divided Government French-Style"; Robert Elgie, "Divided Government in Comparative Perspective", Print publication date: 2001, Published to Oxford Scholarship Online: November 2003, at p. 112

Nevertheless, due to the fact that the President's power is limited during periods of *cohabitation* and particularly the power to appoint Prime Minister, Presidents still “have symbolically insisted that the appointment remains their prerogative”<sup>61</sup>.

In the process of appointment of the Prime Minister and formation of the Cabinet, the role of National Assembly is not as crucial as that of the *Bundestag* in Germany, but, nevertheless, it is still considerable, especially in times of *cohabitation*. The first paragraph of the Article 49 of the 1958 French Constitution reads as follows: “the Prime Minister, after deliberation by the Council of Ministers, may make the Government’s programme or possibly a general policy statement an issue of a vote of confidence before the National Assembly”. So, as we see, formal vote of investiture is not constitutionally required, it is the Prime Minister and the Cabinet who decide whether to submit government’s programme to the National Assembly for a vote of confidence.

At the beginning of the Fifth Republic, a newly formed government immediately presented itself to the assembly to ask for its program to be approved. The third Pompidou government (1966) did not conform with this requirement, however. The prime minister argued that at any time, opposition parties in Parliament were able to test support for the government by introducing a censure motion. He also stressed that the government is formed, and exists, the moment it has been appointed by the president, and does not need any preliminary investiture by Parliament<sup>62</sup>.

“Most of Pompidou's successors have followed this precedent and refused to present their programmes and cabinets to Parliament for approval”<sup>63</sup>. However, in periods of *cohabitation* “the cabinets led by PMs Chirac (1986), Balladur (1993), and Jospin (1997) used the

<sup>61</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 333

<sup>62</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 147

<sup>63</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, p. 334

parliamentary vote in order to demonstrate that they had the support of the parliamentary majority”<sup>64</sup>.

## 1.4 Georgia

The Constitution of Georgia provides for the strong president, which is the head of the state<sup>65</sup> and of the government<sup>66</sup>. According to the Article 78 of the Constitution, the government is responsible before the President and the Parliament, and the President is authorized “to convene and preside over the sittings of the Government”<sup>67</sup>.

The role of the President in selection and appointment of the Prime Minister and formation of government is very significant. According to the Article 73 (1, “b”) of the Constitution, the President appoints the Prime Minister and gives him consent to appoint other members of government. The procedure of selecting candidate for the office of Prime Minister is determined by the Article 80 (2), according to which the President chooses a candidate of the Prime Minister after the consultations with the Parliamentary Factions. So, even in selection of the candidate of the Prime Minister the role of the President is crucial, since a candidate is selected by the President’s own will irrespective of the composition of the Parliament.

Nevertheless, the candidate selected by the President, the composition of government, and the Governmental program shall obtain the confidence from the Parliament of Georgia<sup>68</sup>. “The confidence of the Parliament shall be gained by the majority of the total number of the

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<sup>64</sup> Ibid, p. 335

<sup>65</sup> Article 69 (1) of the Constitution of Georgia  
[http://www.parliament.ge/files/68\\_1944\\_951190\\_CONSTIT\\_27\\_12.06.pdf](http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf)

<sup>66</sup> Ibid, First and fourth paragraphs of the Article 78

<sup>67</sup> Ibid, Article 78 (4)

<sup>68</sup> Ibid, Article 80 (3)



members of the Parliament”<sup>69</sup>. However, if the Parliament does not express the confidence to the government, the denial of vote of investiture can be ignored by the President<sup>70</sup>. The President is authorized to ignore the denial of confidence for two times. Even if the Parliament does not give the confidence to the government submitted to its approval by the President for the third time, the President has the option either to nominate a new candidate of the Prime Minister or to appoint the Prime Minister without consent of the Parliament, to dissolve the Parliament and to call for extraordinary elections<sup>71</sup>.

Article 51<sup>1</sup> of the Constitution sets limits to the President’s power to dissolve the Parliament in certain circumstances. But, still, if these circumstances exist and the President is not empowered to dissolve the Parliament, according to the Article 73 (1, “r”) he is authorized to appoint the Prime Minister and give him consent for the appointment of other members of government without the approval of the Parliament. After the expiration of the abovementioned circumstances, the President re-submits “the composition of the government to the Parliament for confidence”<sup>72</sup>.

According to abovementioned, the President of Georgia is constitutionally empowered to appoint as Prime Minister a person never approved by the Parliament, instead of asking “the outgoing Prime Minister to stay in office to deal with day-to-day matters until the election of a new Parliament”<sup>73</sup>.

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<sup>69</sup> Ibid

<sup>70</sup> Ibid, Article 80 (4)

<sup>71</sup> Ibid, Article 80 (5)

<sup>72</sup> Ibid, Article 73 (1, “r”)

<sup>73</sup> Paragraph 29 of the Opinion on the draft amendments to the Constitution of Georgia adopted by the Venice Commission at its 58th Plenary (Venice, 12-13 March 2004) Session; European Commission for Democracy Through Law (Venice Commission) [http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)008-e.asp](http://www.venice.coe.int/docs/2004/CDL-AD(2004)008-e.asp)

## 1.5 Conclusion

The following conclusions can be pointed out from the *First Chapter*:

1. In Germany, the elections of the *Bundestag* and, especially, the bargaining process (coalition agreement) after the elections between the parties determine the selection and appointment of the Federal Chancellor. The role of the Federal President in the formation of the Cabinet is formal and thus, negligible. Only in times of parliamentary crisis, when the majority of the *Bundestag* is not eligible to agree upon a common candidate of the Federal Chancellor, does the Federal President have discretion to influence and intervene in the process of formation of the Cabinet.

2. In France, the President is the most powerful institution in formation of the government. The President appoints the Prime Minister and the vote of investiture is not constitutionally required from the National Assembly for the legitimacy of the government composition. Nevertheless, there have been several occasions in the history of the Fifth Republic, when the President did not enjoy the majority in the National Assembly and he was forced to appoint a person as Prime Minister against his will.

3. In Georgia, the selection and appointment of the Prime Minister and the formation of the government is determined by the President, like in France. Unlike France, it is required, that the Prime Minister selected by the President and the government shall obtain the confidence of the Parliament. However, the President is entitled to ignore the confidence vote two times, and dissolve the Parliament and appoint his candidate as Prime Minister in case of the third denial of the confidence vote. It has never happened so far that the President lacked the majority support in the Parliament.

## Chapter 2 – Dismissal of Prime Ministers, dissolution of Cabinets, and dissolution of Parliament

### 2.1 Introduction

In the present chapter the powers of heads of state and legislatures to dismiss the heads of government or governments in whole will be discussed together with the power of the head of state to dissolve the legislature since “the power of the legislature to end the life of a government is balanced...by the power of the government to end the life of the legislature. In this sense, the legislature and executive hold a gun to each other’s head”<sup>74</sup>.

The term of Parliament is usually fixed and the decision to hold elections earlier, i.e. the right to dissolve Parliament, is significant in relation to the duration of government<sup>75</sup>. “This decision is regulated by the constitution in most cases and...it always involves the Head of State in co-operation (or after consultation) with government (in most cases the Prime Minister) or Parliament”<sup>76</sup>. Therefore, “the President...can dissolve parliament and interfere in the process of government formation...the Head of State is crucial in establishing a balance between parliament and government”<sup>77</sup>.

The fundamental principle of representative democracy is that the executive is responsible to the legislature. The main constitutional tool by which this principle is usually guaranteed is<sup>78</sup>

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<sup>74</sup> Michael Gallagher, Michael Iaver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 22

<sup>75</sup> Jaap Woldendorp, Hans Keman, and Ian Budge, “Party Government in 48 Democracies (1945-1998)”, published by Kluwer Academic Publishers, 2000, at p. 44

<sup>76</sup> Ibid

<sup>77</sup> Ibid, at p.55

<sup>78</sup> Michael Gallagher, Michael Iaver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 175

“the legislative vote of confidence in the government. This allows the legislature to replace the executive whenever a majority of legislators choose to do so”<sup>79</sup>.

Another determinative factor of the duration of government is the electoral system. For example, in countries using proportional system it is common that the legislatures will be composed of more than one party, thus, of legislative coalitions, which then will form coalition governments<sup>80</sup>. “This means that if the legislative coalition backing the government should collapse for any reason, an executive can fall quite suddenly”<sup>81</sup>. On the contrary, “single-party governments are more stable than coalition governments”<sup>82</sup> and “do indeed last longer”<sup>83</sup>.

## 2.2 Germany

There are two possibilities of pre-term termination of the office of Federal Chancellor and the Federal Government. In the first case the *Bundestag* removes the incumbent government by electing a new one, and in the second case the Federal Chancellor himself makes the way toward the dissolution of the *Bundestag* and consequently to the new elections with the purpose of gaining more support in the *Bundestag* as well as more confidence from the public, thus risking not to be elected after the upcoming elections. In the second case, the Head of State, the Federal President, intervenes in the process of dissolution of the *Bundestag* and the pre-term termination of the Federal Government.

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<sup>79</sup> Ibid

<sup>80</sup> Ibid, at p. 20

<sup>81</sup> Ibid

<sup>82</sup> Jack Hayward, Anand Menon, “Governing Europe”, Print publication date: 2003, Published to Oxford Scholarship Online: November 2003, at p. 57-58

<sup>83</sup> Jaap Woldendorp, Hans Keman, and Ian Budge, “Party Government in 48 Democracies (1945-1998)”, published by Kluwer Academic Publishers, 2000, at p. 86

“Once elected, the Federal Chancellor and his cabinet are relatively well protected from early dismissal. The President cannot dismiss them unilaterally”<sup>84</sup>. According to the Article 67 of the Basic Law, The Federal Chancellor and the government in whole can be dismissed only by a constructive vote of no confidence by the *Bundestag* by simultaneously electing the alternative Federal Chancellor with the majority vote of all its members. In such case, the *Bundestag*, after electing the new Federal Chancellor, asks the Federal President to dismiss the incumbent Chancellor and to appoint the person elected as the new Federal Chancellor. The Federal President is obliged to comply with this request from the *Bundestag*. So, “the ability of the legislature to remove the executive is constrained by the need for a “constructive vote of no confidence”, which means that the legislature can bring down a government only if it can also agree on a replacement”<sup>85</sup>, thus “the obstacles for the use of the *Bundestag's* ultimate ex-post accountability device, removal from office, are relatively high”<sup>86</sup>. The difficulty to dismiss the incumbent Federal Chancellor and respectively the whole Cabinet is clearly evident from the past experience:

In the Federal Republic, the vote of no confidence has been attempted twice: in April 1972 against Chancellor Willy Brandt (the motion failed); and in October 1982, when an absolute majority of members of Parliament voted against Chancellor Helmut Schmidt and replaced him with Helmut Kohl<sup>87</sup>. No Chancellor has resigned in order to pre-empt a constructive vote of no confidence<sup>88</sup>.

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<sup>84</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 356

<sup>85</sup> Michael Gallagher, Michael Laver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 182

<sup>86</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 356

<sup>87</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 151

<sup>88</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 357

As we see, there was only one successful constructive vote against the incumbent Federal Chancellor in Federal Republic's history since it is very difficult procedure to gather the majority votes in the Bundestag necessary for the election of the new Federal Chancellor while simultaneously declaring no confidence to incumbent Federal Chancellor.

As regards the second case of pre-term termination of the office of Federal Chancellor and the Federal Government, according to the Article 68 of the Basic Law, the Federal Chancellor has the right to propose confidence vote in the *Bundestag*. "If the Chancellor fails to achieve a majority of all *Bundestag* Members in a vote of confidence, he may ask the Federal President to dissolve the *Bundestag*. The Federal President may then dissolve the *Bundestag* within 21 days"<sup>89</sup>. "The rules for an early dissolution of the *Bundestag* are relatively restrictive and require agreement between the Federal Chancellor, the parliamentary majority, and the Federal President"<sup>90</sup>. The Federal President can only dissolve the *Bundestag* when the Chancellor, losing a confidence vote, addresses him to do so, but, nevertheless, he is not compelled to do so<sup>91</sup>. On the other hand, the dissolution is conditioned by the rejection of a confidence vote by the parliamentary majority.

There were three dissolutions of the Bundestag in Federal Republic's history, each during Willy Brandt's<sup>92</sup>, Helmut Koll's<sup>93</sup> and Gerhard Schroeder's<sup>94</sup> chancellorship. In each case, there was not clear who actually dissolved the Bundestag. For instance, in 2005 incumbent chancellor Gerhard Schroeder, after a "bitter"<sup>95</sup> defeat of his party in the elections of the

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<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid, at p. 356-357

<sup>93</sup> Ibid, at p. 360

<sup>94</sup> Spiegel Online International: "Bundestag Clears Way for New Elections"

<http://www.spiegel.de/international/0,1518,363234,00.html>

<sup>95</sup> Ibid

legislature of the most populous *Land*, decided to put his government up for a confidence vote in order to reaffirm his and his party's positions by manufacturing a defeat in confidence vote and subsequently clearing his way to a dissolution of the Bundestag and to early elections. On the other hand, the opposition parties were also ready for the early elections and they supported no-confidence vote. Finally, there was a poll which showed that 59 percent of all Germans wanted President Koehler to approve the dissolution, so new elections can take place. As we see, the government defeat was engineered to make early elections possible<sup>96</sup>.

According to abovementioned, neither the cabinet nor the parliamentary majority and the Federal President have any right to initiate an early dissolution unilaterally. Therefore, the Federal President's intervention in the process of dissolution of the *Bundestag* and the pre-term termination of the Federal Government is not considerable.

It should be also mentioned, that the constructive vote of no confidence and a vote of confidence, in some cases, can be interconnected. As we have already seen, the 'constructive vote of no-confidence' requires that the incumbent Chancellor can only be removed by the *Bundestag* through the election of a successor<sup>97</sup>, "and the chancellor's right to ask for a vote of confidence equips him or her with a powerful instrument for disciplining his or her own political camp because it can be used to call an early election"<sup>98</sup>.

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<sup>96</sup> Ibid

<sup>97</sup> Thomas Poguntke, "3 A Presidentializing Party State? The Federal Republic of Germany"; Thomas Poguntke, Paul Webb, "The Presidentialization of Politics: A Comparative Study of Modern Democracies", Print publication date: 2005, Published to Oxford Scholarship Online: April 2005, at p. 66

<sup>98</sup> Ibid

## 2.3 France

The President is not constitutionally entitled to dismiss the Prime Minister<sup>99</sup>. According to the first paragraph of the Article 8 of 1958 French Constitution, President only terminates the appointment of the Prime Minister if “the latter tenders the resignation of the Government”<sup>100</sup>.

However, there is a difference between the constitutional rules of the Fifth Republic and practice<sup>101</sup>:

The dismissals of PM Pompidou (1968), Chaban-Delmas (1972), and Rocard (1991) all confirm the Presidents’ assumption of the right of dismissal. Moreover, PMs have always accepted this right. The constitutional convention that PMs offer their resignation to a newly elected President has allowed Presidents Mitterrand and Chirac to appoint new PMs after their victories in the presidential elections of 1981, 1988, and 2002, before parliamentary elections were held<sup>102</sup>.

“However, the President's authority with regard to the dismissal of PMs is limited during *cohabitation*”<sup>103</sup>. As it was already mentioned in the *First Chapter*, “if the President and National Assembly majority are of different partisan loyalties, *cohabitation* is conducive to the emergence of the PM as the dominant executive power. In this case the President's power is limited to that given him in the Constitution”<sup>104</sup>. Therefore, in times of *cohabitation* the government is “collectively accountable to the Parliament rather than to the President”<sup>105</sup>.

According to the paragraph two and paragraph three of the Article 49 of 1958 French Constitution, “the cabinet can be held collectively accountable to the Parliament via a vote of

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<sup>99</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 333

<sup>100</sup> First paragraph of the Article 8 of 1958 French Constitution

<http://www.assemblee-nationale.fr/english/8ab.asp>

<sup>101</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 333

<sup>102</sup> Ibid

<sup>103</sup> Ibid

<sup>104</sup> Ibid, at p. 345

<sup>105</sup> Ibid



no confidence. The National Assembly cannot censure an individual minister”<sup>106</sup>. In case if the National Assembly expresses no confidence to the Prime Minister and the government, according to the Article 50 of the Constitution, “the Prime Minister must tender the resignation of the Government to the President of the Republic”<sup>107</sup>. But it does not mean, that, if government loses the vote of confidence it shall unconditionally resign since the President has the power to decide not to dismiss the Prime Minister against whom the motion of censure has been tabled and thus, ignore no confidence vote<sup>108</sup>. Therefore, there is a great possibility that the Head of State will intervene and “a vote of censure is likely to lead to the dissolution of the Assembly”<sup>109</sup>.

[A censure motion] can be initiated by opposition parties<sup>110</sup>, who choose the best opportunity to do it. The censure motion must gain an absolute majority of votes to be passed, a procedure that favors the government. Only once has such a vote succeeded: in October 1962, when the first Pompidou government was defeated. The procedure can also be initiated by the government<sup>111</sup>. After deliberation within the Council of Ministers, the prime minister can test general legislative support for the government with a motion of censure when a bill is being passed, if this has great importance in his eyes. If no censure motion is introduced or if the censure motion does not get an absolute majority of votes, then the associated bill is said to be passed<sup>112</sup>.

As it was indicated before, the power of the French President to dissolve national legislature plays a crucial role in the process of dismissal of the Prime Minister and respectively, the government in whole. Unlike German Federal President, the French President has the discretionary power to dissolve the National Assembly. First paragraph of the Article 12 of 1958 French Constitution authorizes the President of the Republic to dissolve the National

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<sup>106</sup> Ibid, at p. 335

<sup>107</sup> Article 50 of 1958 French Constitution

<sup>108</sup> Jaap Woldendorp, Hans Keman, and Ian Budge, “Party Government in 48 Democracies (1945-1998)”, published by Kluwer Academic Publishers, 2000, at p. 56-57

<sup>109</sup> Jean-Louis Thiébaut, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 338

<sup>110</sup> Second paragraph of the Article 49 of 1958 French Constitution

<sup>111</sup> Ibid, Third paragraph of the Article 49

<sup>112</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 147-148

Assembly unilaterally at any time after only formal consultations with the Prime Minister and the Speakers of the Houses of Parliament. The only restriction to this power is that after dissolution of the National Assembly the President does not have the power to dissolve the newly elected National Assembly within a year following this election<sup>113</sup>.

[So,] the power to dissolve the National Assembly is a key aspect of presidential leadership in France. The threat of dissolution alone affects the political and policy process. It can be used to renew a president's legitimacy. And, finally, it suggests that the president is both head of state and head of the executive<sup>114</sup>.

In the history of the Fifth Republic the dissolution power was used only five times: “twice by de Gaulle (1962 and 1968), twice by Mitterrand (1981 and 1988), and...once by Chirac (1997)”<sup>115</sup>.

According to historical experience, it is most supposed that the French President dissolves the National Assembly in two circumstances: when the National Assembly expresses a vote of censure to the Prime Minister who is the President's favorite, and during *cohabitation*, when the Prime Minister is the member of the President's opposite party which has the majority in the National Assembly. In the second case, when there is a *cohabitation* period, the Prime Minister is as strong and powerful if not more than the President. So the President can use his discretionary power to dissolve the National Assembly and thus, get rid of the unwanted Prime Minister “on the assumption that his party, having just won the presidential election, will win the subsequent legislative election so that he can then nominate a senior party

<sup>113</sup> Fourth paragraph of the Article 12 of 1958 French Constitution

<sup>114</sup> Alfred Stepan, with Ezra N. Suleiman: “The French Fifth Republic: A Model for Import? Reflections on Poland and Brazil”; Alfred Stepan, “Arguing Comparative Politics”, Publisher: Oxford University Press, USA, Pub. Date: September 2001, at p. 278

<sup>115</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 335

member to form a government”<sup>116</sup>. After dissolution of the National Assembly the President calls for new elections.

## 2.4 Georgia

The President of Georgia under the Article 73 (1, “c”) of the Constitution of Georgia has a discretionary power to dismiss the Government, and respectively the Prime Minister (the termination of the office of the Prime Minister automatically results in the resignation of the government<sup>117</sup>) on his/her own initiative and pleasure. Moreover, according to the Article 78 (2) and Article 80 (1) of the Constitution, the Government, as well as the Prime Minister, withdraws its authority before the President in general and after the inauguration of the new President, and according to the Article 73 (1, “d”), the President “accepts the resignation of the Government”<sup>118</sup>. Therefore, the role of the President in the process of dismissing the Prime Minister and dissolving the government is very significant.

Furthermore, under the Article 73 (1, “o”) of the Constitution the President is constitutionally entitled to dissolve the Parliament unilaterally and thus, intervene in the process of the dissolution of government by the national legislature. The circumstances and procedures of the dissolution of the Parliament of Georgia by the President of Georgia are different from that of Germany’s and France’s. According to the Article 51<sup>1</sup> of the Constitution of Georgia, the President can dissolve the Parliament only in cases determined by the Constitution. The same article also provides for the circumstances when the President is not authorized to dissolve the Parliament. The President cannot dissolve the parliament:

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<sup>116</sup> Michael Gallagher, Michael Iaver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 182

<sup>117</sup> Article 79 (7) of the Constitution of Georgia

<sup>118</sup> Ibid, Article 73 (1, “d”)

- “a. within six months from the holding of the elections of the Parliament”<sup>119</sup>;
- b. when the Parliament impeaches the President<sup>120</sup>;
- “c. in time of a state of emergency or martial law”<sup>121</sup>;
- “d. within the last 6 months of the term of office of the President of Georgia”<sup>122</sup>.

There are two occasions defined by the Constitution when the President is entitled to intervene in the process of dismissal of the government by dissolving the Parliament:

1. When the Parliament under the Article 81 (1) expresses the non-confidence by majority vote to the government for two times, the President either dismisses the government (the Prime Minister) or dissolves the Parliament and schedules extraordinary elections;

2. When the Parliament fails to adopt the Budget submitted by the government within three months, under the Article 93 (6) the President is authorized either to dismiss the government or dissolve the Parliament and schedule extraordinary elections. “In case of dissolution of the Parliament due to unapproved State Budget the President shall approve the State Budget by a decree and submit to the Parliament within a month from the recognition of the authority of the newly elected Parliament”<sup>123</sup>.

However, according to the Article 81 (2) of the Constitution, the Parliament of Georgia is empowered to declare unconditional non-confidence to the government by qualified, three-fifth majority vote and the President is not authorized to intervene. After dismissal of the Prime Minister and the government by unconditional non-confidence vote, the President is not empowered “to appoint the same person as a Prime Minister in the next composition of

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<sup>119</sup> Ibid, Article 51<sup>1</sup>

<sup>120</sup> Ibid, Article 51<sup>1</sup> and Article 63

<sup>121</sup> Ibid, Article 51<sup>1</sup>

<sup>122</sup> Ibid

<sup>123</sup> Ibid, Article 93 (7)

the Government or nominate the same candidate of the Prime Minister”<sup>124</sup>. As we see, an unconditional non-confidence vote is the only decisive tool in the hand of the Parliament by which it is authorized to decide the fate of the Prime Minister and the government unilaterally without President’s interference. However, it shall also be noted, that it is very difficult to gather qualified majority vote in Parliament against incumbent government and respectively, the barrier for the Parliament to dismiss the government still remains very high.

According to abovementioned, as we see, in Georgia the government is accountable both to the President and to the Parliament. When there is a conflict between the government and the Parliament, the President has the discretion to decide by his will alone either to dismiss the government or to dissolve the Parliament. Also there is a possibility for the President “to keep a government other than in a caretaker function although Parliament has expressed its lack of confidence in the government”<sup>125</sup>. Furthermore, in case of dissolution of the Parliament by the President the government may remain in office to deal with day-to-day matters until the elections<sup>126</sup>.

## 2.5 Conclusion

In conclusion of the *Second Chapter*, I would like to summarize the dissolution powers of abovementioned presidents. The Federal President is rather constrained in dissolution powers than his French and Georgian counterparts. His power is conditioned by other governmental institutions, and the only thing he does by his own is the resolution of parliamentary crisis. The French President has discretionary dissolution power, but, nevertheless, he cannot always

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<sup>124</sup> Ibid, Article 81 (3)

<sup>125</sup> Paragraph 7 of the Opinion on the draft amendments to the Constitution of Georgia adopted by the Venice Commission at its 58th Plenary (Venice, 12-13 March 2004) Session; European Commission for Democracy Through Law (Venice Commission) [http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)008-e.asp](http://www.venice.coe.int/docs/2004/CDL-AD(2004)008-e.asp)

<sup>126</sup> Ibid, Paragraph 6

decide alone who shall be the Prime Minister, since he is not able to dismiss the Prime Minister or to dissolve the National Assembly within a year following the election after the first dissolution. So, if opposition party wins the elections, the President will be forced to nominate and appoint as Prime Minister the person, who is the member (presumably the leader) of the opposition party. The President of Georgia also has discretionary dissolution power and unlike his French counterpart he is more capable to decide upon the candidate of the Prime Minister.

## Chapter 3 – Appointment and dismissal of Ministers, Civil Servants, and Other Public or Military Officials

### 3.1 Introduction

The *Third Chapter* will concern the appointment and dismissal of members of the government and other public officials by the Head of State and the Head of the Government, and also will point out the share of the legislature in their appointment and dismissal. Nevertheless, the main concern of the chapter will be the comparison of the powers of the presidents and prime ministers in appointment and dismissal issues of abovementioned officials.

It is, indeed, important to define in the present paper the process of appointment and dismissal, first of all, of the individual members of the government, the ministers, since, after the offices of the Head of State and Head of the Government, cabinet ministries are the most powerful political offices in the country<sup>127</sup>. Ministers are usually, though not always, senior party legislators, particularly in parliamentary republics, where “a party leader can turn a colleague into a senior politician by successfully imposing him or her as a cabinet minister”<sup>128</sup>.

Once the Head of the Government “has been officially chosen, the next item of business is to select a cabinet”<sup>129</sup>. The recruitment, selection, and appointment process of the members of the Cabinet differs greatly in parliamentary and semipresidential republics: in parliamentary republic cabinet is typically “a collection of senior politicians, appointed formally by the head

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<sup>127</sup> Michael Gallagher, Michael Iaver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 185

<sup>128</sup> Ibid

<sup>129</sup> Ibid, at p. 179

of state but in practice selected by the prime minister in consultation with the leaders of the other government parties”<sup>130</sup>, while in semipresidential republic the ministers are usually chosen by the Heads of State together with the Heads of the Government.

Both in parliamentary and semi-presidential democracies government consists of ministers “who are individually responsible to parliament and are collectively responsible for governmental action at the same time”<sup>131</sup>. As regards the individual responsibility of a minister, it is rather difficult for the legislature to remove the minister from the office than to declare a motion of censure to the whole Cabinet since “only the very greatest scandals and administrative blunders are likely to lead to the dismissal or resignation of a minister”<sup>132</sup>. Therefore, in matters of dismissal of a particular minister the role of either Head of State or Head of the Government is much greater.

### 3.2 Germany

In Germany the process of selection, appointment and dismissal of the members of the Cabinet is determined by “the Constitution, the federal government's rules of procedure, and the coalition agreement”<sup>133</sup>, if there is a coalition government, which is quite common in German reality.

Once elected, according to the Article 64 (1) of the Basic Law, “the Chancellor nominates the members of his cabinet, who are subsequently appointed by the Federal President without

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<sup>130</sup> Ibid

<sup>131</sup> Jaap Woldendorp, Hans Keman, and Ian Budge, “Party Government in 48 Democracies (1945-1998)”, published by Kluwer Academic Publishers, 2000, at p. 4

<sup>132</sup> Michael Gallagher, Michael Javer, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 27-28

<sup>133</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 364



separate *Bundestag* approval. The cabinet ministers' tenure in office ends with the Chancellor's"<sup>134</sup>. Here, shall be also mentioned, that according to the Article 58 of the Basic Law, all orders and directions of the Federal President, except those concerning the appointment and dismissal of the Federal Chancellor and the dissolution of the *Bundestag* under Article 63, require countersignature of the Federal Chancellor for their validity, including, respectively, the orders and directions concerning the appointment and dismissal of federal ministers. Therefore, the chief and leading executive powers, including the government formation power, rest with the chancellor who has significant discretion over the recruitment, appointment or dismissal of cabinet members who are only formally appointed or dismissed by the president upon the chancellor's proposal<sup>135</sup>.

Furthermore, "the leadership style of a chancellor is determined by the operating style of the cabinet and by the support he receives from his party, parliamentary group, and coalition partner(s), as well as by public image"<sup>136</sup>. Public image is especially important when the Chancellor comes to office, "whereas support from the party and coalition partners is more significant for staying in office"<sup>137</sup>. Although cabinet ministers are individually accountable to the *Bundestag* in parliamentary questions, they mostly depend on the Chancellor's confidence<sup>138</sup> and "serve at his pleasure and not that of the Parliament's"<sup>139</sup>.

Despite the abovementioned, the Federal Chancellor's appointment and dismissal powers are largely constrained in case when he has been elected by multiparty, coalition majority in the

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<sup>134</sup> Ibid, at p. 355

<sup>135</sup> Thomas Poguntke, "3 A Presidentializing Party State? The Federal Republic of Germany"; Thomas Poguntke, Paul Webb, "The Presidentialization of Politics: A Comparative Study of Modern Democracies", Print publication date: 2005, Published to Oxford Scholarship Online: April 2005, at p. 66

<sup>136</sup> Michael Laver, Kenneth A. Shepsle, "Cabinet Ministers and Parliamentary Government", published by Cambridge University Press, 1994, at p. 162

<sup>137</sup> Ibid

<sup>138</sup> Thomas Saalfeld, "10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action", Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, "Delegation and Accountability in Parliamentary Democracies", Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 364

<sup>139</sup> Ibid

*Bundestag*. In such case, “Cabinet portfolios tend to be distributed among government parties in strict proportion to the number of seats that each party contributes to the government’s legislative majority”<sup>140</sup>, thus, forming a coalition government. As it was mentioned in *the First Chapter*, the bargaining between the party leaders and the coalition agreement between the parties are decisive in selection of the members of the government and in formation of a coalition government. For example, according to the Article 69 (1), the Chancellor appoints one of the ministers as the Vice-Chancellor. Constitutionally the Federal Chancellor is unconstrained in appointment of his deputy, but in practice, in coalition government, this position “is normally taken by the leading politician of the junior coalition partner. In the case of the Schröder government this was Joschka Fischer, the Minister for Foreign Affairs, a leading politician of the Green Party”<sup>141</sup>.

On the other hand, when one party has a majority of seats in the *Bundestag*, “the government in the Federal Republic is drawn from a parliamentary majority”<sup>142</sup> and the Federal Chancellor has a wide discretion to select and submit to the Federal president for appointment ministers at his/her own will.

Besides the Federal Chancellor and the cabinet ministers, “the state and parliamentary secretaries to the chancellor’s office and the head of the federal press office”<sup>143</sup> also belong to the cabinet. An office of “a so-called parliamentary state secretary”<sup>144</sup> was established and imposed on each ministry in 1969 by Chancellor Willy Brandt<sup>145</sup>. The secretary of state<sup>146</sup> is

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<sup>140</sup> Michael Gallagher, Michael Laver, Peter Mair, “Representative Government in Western Europe”, published by McGraw-Hill, 1992, at p. 200

<sup>141</sup> Manfred G. Schmidt, “Political Institutions in the Federal Republic of Germany”, Oxford: Oxford University Press, 2003, at p. 29

<sup>142</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p.152

<sup>143</sup> Ibid

<sup>144</sup> Ibid, at p. 160

<sup>145</sup> Ibid

a civil servant in each ministry who is responsible for the “continuity of departmental administration”<sup>147</sup>, whereas “the parliamentary state secretary is also a Member of Parliament and is concerned with relations and communications between the ministries on the one hand and between Parliament and party groups on the other”<sup>148</sup>. Parliamentary State Secretaries and Ministers of State are nominated by the federal ministers at their respective federal ministries<sup>149</sup>, and are subsequently appointed by the Federal President upon the submission of the Federal Chancellor<sup>150</sup>.

According to the Article 60 (1) of the Basic Law, the Federal President appoints and dismisses “the federal civil servants, the officers and noncommissioned officers”, but, as it was mentioned above, under the Article 58 of the Basic Law, all orders and directions, except those mentioned in this Article, are countersigned by the Federal Chancellor or the respective federal minister. Moreover, according to the Article 65a, Commander-in-Chief of the armed forces in peacetime is the Minister of Defense, and according to the Article 115b, the Federal Chancellor becomes the Commander-in-Chief of the armed forces during a state of defense. Therefore, the powers of the Federal President over appointment or dismissal of civil servants or especially, military personnel is rather formal than that of the Federal Chancellor’s or Federal Minister’s, since the Federal President does not participate in selection process of civil servants and exercises no control over the armed forces.

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<sup>146</sup> “The German Staatssekretär is a Beamter (civil servant) who is second only to the minister in a state or federal ministry. The office of Staatssekretär is similar that of vice minister or deputy minister in other countries. It is a political office, meaning that it is assigned by appointment based on political criteria such as party affiliation, rather than by career progression as a civil servant, although he is the administrative head of the ministry” – “Secretary of State”: Germany; [http://www.absoluteastronomy.com/topics/Secretary\\_of\\_State](http://www.absoluteastronomy.com/topics/Secretary_of_State)

<sup>147</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 160

<sup>148</sup> Ibid

<sup>149</sup> 3. Distribution of ministries; III. Federal Government; C. The working methods of the coalition; Coalition Agreement; [http://www.bundesregierung.de/nn\\_12890/Content/EN/StatistischeSeiten/breg/koalitionsvertrag-arbeitsweise-der-koalition.html](http://www.bundesregierung.de/nn_12890/Content/EN/StatistischeSeiten/breg/koalitionsvertrag-arbeitsweise-der-koalition.html)

<sup>150</sup> Eugene K. Keefe, “Area handbook for the Federal republic of Germany”, American University (Washington, D.C.). Foreign Area Studies, 1977, at p. 211

The power and discretionary authority of the Federal Chancellor is also determined by the fact that, “according to the rules of procedure of the federal government”<sup>151</sup>, the Federal Chancellor is “largely unconstrained in defining the total number, scope, and jurisdiction of the various departments of federal government”<sup>152</sup>. However, according to the Article 36 of the Basic Law, “in the top federal positions, the civil servants are to be employed in an equitable ratio from all the *Länder* and persons employed in other Federal Offices normally are to be selected from the *Länder* in which they are employed”<sup>153</sup> due to the federal character of the Federal Republic. Therefore, during recruitment of civil servants the Federal Chancellor shall also consider the interests of the *Länder*.

### 3.3 France

The 1958 French Constitution sets forth a list of presidential powers, prime ministerial powers, and powers shared between the two institutions, including the appointment and dismissal powers<sup>154</sup>. As it was mentioned before, France has a semi-presidential regime, in which “a popularly elected fixed-term president exists alongside a prime minister and cabinet responsible to parliament”<sup>155</sup>. So, “the basic characteristic of such a regime is the dual executive”<sup>156</sup>, which have two sources of popular legitimacy: the president has a legitimacy deriving directly from the electorate, and the prime minister has an indirect legitimacy

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<sup>151</sup> Thomas Saalfeld, “10 Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 365

<sup>152</sup> Manfred G. Schmidt, “Political Institutions in the Federal Republic of Germany”, Oxford: Oxford University Press, 2003, at p. 28

<sup>153</sup> J. Zekoll, M. Reimann, “Introduction to German Law”, Second Edition, Kluwer Law International, at p. 62

<sup>154</sup> Robert Elgie, “6 ‘Cohabitation’: Divided Government French-Style”; Robert Elgie, “Divided Government in Comparative Perspective”, Print publication date: 2001, Published to Oxford Scholarship Online: November 2003, at p. 107

<sup>155</sup> Ibid

<sup>156</sup> Ibid

originated through the legislature<sup>157</sup>. Such “coexistence of a fixed-term president and a prime minister responsible to a parliament”<sup>158</sup> and “closer cooperation between the ‘two heads’ of the French executive”<sup>159</sup> “creates a ‘finely balanced constitutional dyarchy’ at the core of the French executive”<sup>160</sup> “necessary for effective government”<sup>161</sup>.

According to the second paragraph of the Article 8 of 1958 French Constitution, the President appoints and dismisses the members of the Cabinet upon the proposal of the Prime Minister. However, “whatever the constitution says, the president has the final say in the choice of ministers”<sup>162</sup>, especially in times of *non-cohabitation*. “Although ministers are collectively responsible to Parliament, they are personally responsible to the president”<sup>163</sup> and “every successive head of state has reinforced this dependence”<sup>164</sup>. So, “the main characteristic of the regime is presidential supremacy – government dominated by the president”<sup>165</sup>. “French government has thus become presidential government rather than prime-ministerial or cabinet government. Ministers are in effect ministers of the president, except during the period of *cohabitation*”<sup>166</sup>. President even has the power to recruit his political and personal friends from his/her staff and place them in ministerial posts<sup>167</sup>. For example, the following amount of civilians and military personnel has been appointed by the Presidents in ministerial, military and other high public posts from their personal staff: “twenty-three civilian and

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<sup>157</sup> Ibid

<sup>158</sup> Ben Clift, “10 Dyarchic Presidentialization in a Presidentialized Polity: The French Fifth Republic”; Thomas Poguntke, Paul Webb, “The Presidentialization of Politics: A Comparative Study of Modern Democracies”, Print publication date: 2005, Published to Oxford Scholarship Online: April 2005, at p. 222

<sup>159</sup> Ibid, at p. 241

<sup>160</sup> Ibid, at p. 222

<sup>161</sup> Ibid, at p. 241

<sup>162</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 144

<sup>163</sup> Ibid

<sup>164</sup> Ibid

<sup>165</sup> Ibid, at p. 148

<sup>166</sup> Ibid, at p. 144

<sup>167</sup> Jean-Louis Thiébaut, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 341

thirteen military staff under de Gaulle, forty civilians and six military staff under Pompidou, twenty-four civilians and seven military staff under Giscard d'Estaing, and forty civilians and seven military staff under Mitterrand”<sup>168</sup>.

1958 French Constitution also grants considerable powers to the Prime Minister. According to the Article 19 of the Constitution, all acts of the President, except the acts concerning the appointment of the Prime Minister, dissolution of the National Assembly, emergency and some other powers, shall be countersigned by the Prime Minister. So, the President’s power to appoint and dismiss cabinet members, civil servants and military officials is shared with the Prime Minister. For instance, the PM can force an individual minister to resign without bringing about a cabinet crisis by asking the President to dismiss the minister<sup>169</sup>. Here, it is also important to “note that the President can only dismiss ministers if the PM asks him to do so”<sup>170</sup>. Moreover, although “the President of the Republic appoints the members of the cabinet on the proposal of the PM”<sup>171</sup>, “in practice, the cabinet composition is negotiated between the two”<sup>172</sup>. Nevertheless, “no prime minister in the Fifth Republic...has sought to challenge the primacy of the president...with the exception of the period of *cohabitation*”<sup>173</sup>. “The Prime Minister cannot act against the wishes of the president”<sup>174</sup>.

As it was already mentioned in preceding chapters, the period of *cohabitation* is very determinative for the shifting of powers from the President to the Prime Minister. “The institutional framework of the Fifth Republic provides the setting within which ‘*cohabitation*’

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<sup>168</sup> Ibid, at p. 334

<sup>169</sup> Ibid, at p. 335

<sup>170</sup> Ibid

<sup>171</sup> Ibid, at p. 333

<sup>172</sup> Ibid

<sup>173</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 146

<sup>174</sup> Ibid

can easily occur”<sup>175</sup>. It can be said, that *cohabitation* “marks the revenge of the prime ministership”<sup>176</sup> “by installing the prime minister as the main political actor in the policy-making process and by greatly restricting, although not totally effacing, the role of the president”<sup>177</sup>. Therefore, the period of *cohabitation* establishes a system, which is characterized by both conflict and compromise<sup>178</sup>:

The two main actors try to maximize their own influence over the political process, but they are also obliged to co-operate with each other, partly because the constitution forces them to do so and partly because co-operation has worked to the mutual advantage of both<sup>179</sup>.

The abovementioned co-operation during *cohabitation* between the president and prime minister mostly concerns public-sector appointments<sup>180</sup>. “Because many of these appointments need the formal approval of both the president and prime minister, both actors have been obliged to negotiate and deal with each other”<sup>181</sup>. In practice, public-sector appointments during ‘cohabitation’ are made “according to the principle of ‘*donnant-donnant*’ ...or one-for-me and one-for-you”<sup>182</sup>.

However, as regards the foreign affairs and defense issues, in these spheres the President exercises unlimited, exclusive power regardless of the period of *cohabitation*. 1958 French Constitution clearly gives the President the power to be dominant in abovementioned areas: According to the Article 52 of the Constitution, the president negotiates and ratifies treaties;

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<sup>175</sup> Robert Elgie, “6 ‘Cohabitation’: Divided Government French-Style”; Robert Elgie, “Divided Government in Comparative Perspective”, Print publication date: 2001, Published to Oxford Scholarship Online: November 2003, at p. 113

<sup>176</sup> Ben Clift, “10 Dyarchic Presidentialization in a Presidentialized Polity: The French Fifth Republic”; Thomas Poguntke, Paul Webb, “The Presidentialization of Politics: A Comparative Study of Modern Democracies”, Print publication date: 2005, Published to Oxford Scholarship Online: April 2005, at p. 223

<sup>177</sup> Robert Elgie, “6 ‘Cohabitation’: Divided Government French-Style”; Robert Elgie, “Divided Government in Comparative Perspective”, Print publication date: 2001, Published to Oxford Scholarship Online: November 2003, at p. 118

<sup>178</sup> Ibid

<sup>179</sup> Ibid

<sup>180</sup> Ibid, at p. 125

<sup>181</sup> Ibid

<sup>182</sup> Ibid

according to the second paragraph of the Article 5, the President is “the guarantor of national independence, territorial integrity and observance of treaties”<sup>183</sup>; according to the third paragraph of the Article 13, the President appoints ambassadors, general army officers; and according to the Article 15, the President is a Commander-in-Chief of the armed forces and presides over the higher national defense council. Furthermore, the President “engages in direct diplomacy with the leaders of foreign countries”<sup>184</sup> and is the highest representative of France in foreign relations. Therefore, “the President has great freedom over the appointment of the ministers of foreign affairs and defence”<sup>185</sup> and “even the practice of power sharing during the period of *cohabitation*”<sup>186</sup> does not prevent him from intervening in the appointment of these ministers. “Presidents have [usually] used their authority to appoint either politically friendly experts (such as diplomats) or personal friends”<sup>187</sup> at the abovementioned posts.

As regards the appointment and dismissal of military officers, these powers are constitutionally shared between the President and the Prime Minister. According to the first paragraph of the Article 21 of the Constitution, the Prime Minister is responsible for national defense and appoints those military officers, who are not appointed by the President under the Article 13. According to the third paragraph of the Article 21, the Prime Minister deputizes for the President as chairman of the higher national defense council.

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<sup>183</sup> Second paragraph of the Article 5 of 1958 French Constitution

<sup>184</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 144

<sup>185</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 340

<sup>186</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p.144

<sup>187</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 340



As we see, “in this ‘semi-presidential’ regime, neither political parties nor parliament plays a key role in the process of choosing ministers”<sup>188</sup>. Ministers, as civil servants, “tend to relate to the president and the prime minister”<sup>189</sup>, and “this is reinforced by the requirement that cabinet ministers must relinquish their parliamentary seats when they come to office”<sup>190</sup>. It has to be also noted, that a larger proportion of ministers are recruited from the higher civil service than from the legislature.<sup>191</sup> Therefore, a government is rather an administrative body than a political one<sup>192</sup>.

Political parties have no way of screening potential ministerial candidates. Party leaders do not nominate ministers and secretaries of state, nor do parties have any decisive voice with regard to the selection of their cabinet members. The President, at the proposal of the PM, has a role in the screening of potential cabinet members<sup>193</sup>.

The national legislature also lacks the power to dismiss individual ministers. “Any attempt to demand a ministerial resignation tends to be translated into a general issue of confidence in the government<sup>194</sup>”, which, as it was already defined in the *Second Chapter*, can be ignored by the Head of State.

### 3.4 Georgia

According to the Article 73 (1, “b”) and Article 79 (5) of the Constitution of Georgia, the members of the Cabinet are appointed by the Prime Minister with the consent of the President and dismissed by the Prime Minister. The Article 73 (1, “c”) directly gives the President power to dismiss the Ministers of Internal Affairs and Defence. Therefore, the Constitution

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<sup>188</sup> Ibid, at p. 334

<sup>189</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 148

<sup>190</sup> Ibid

<sup>191</sup> Ibid

<sup>192</sup> Ibid

<sup>193</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 334

<sup>194</sup> Michael Laver, Kenneth A. Shepsle, “Cabinet Ministers and Parliamentary Government”, published by Cambridge University Press, 1994, at p. 140

does not clearly define the borders of the appointment and dismissal powers of the President and the Prime minister since the Article 79 (5) “entitles the Prime Minister to dismiss ministers without any distinction”<sup>195</sup>, whereas the sub-section “c” of the Article 73 establishes that the ministers of Internal Affairs and Defence “may be dismissed by the President (although the President has no special role in their appointment)”<sup>196</sup>. However, in practice, the President has the discretionary powers to appoint and dismiss the ministers of Internal Affairs, Defence, and Foreign Affairs, deriving these exclusive powers from other provisions of the Constitution: according to the Article 69 (3), the President is “the higher representative of Georgia in foreign relations”<sup>197</sup>; according to the Article 69 (2), the President ensures “the unity and integrity of the country”<sup>198</sup>; according to the Article 73 (1, “a”), the President shall “conclude international agreements and treaties, negotiate with foreign states, appoint and dismiss ambassadors and other diplomatic representatives of Georgia with the consent of the Parliament”<sup>199</sup>; and according to the Article 73 (4), the President is “the Supreme Commander-in-Chief of the Armed Forces of Georgia, [and] he/she appoints and dismisses the Chief of the General Staff of the Armed Forces of Georgia, [and] other commanders”<sup>200</sup>.

According to abovementioned, it can be said, that the President controls power ministries and is responsible for internal security and foreign relations, whereas the prime minister is responsible for economic policy and controls the other ministries with the overall control of the President.

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<sup>195</sup> Paragraph 20 of the Opinion on the draft amendments to the Constitution of Georgia adopted by the Venice Commission at its 58th Plenary (Venice, 12-13 March 2004) Session; European Commission for Democracy Through Law (Venice Commission) [http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)008-e.asp](http://www.venice.coe.int/docs/2004/CDL-AD(2004)008-e.asp)

<sup>196</sup> Ibid

<sup>197</sup> Article 69 (3) of the Constitution of Georgia

<sup>198</sup> Ibid, Article 69 (2)

<sup>199</sup> Ibid, Article 73 (1, “a”)

<sup>200</sup> Ibid, Article 73 (4)

The parliament of Georgia also is constitutionally entitled to have a control on individual ministers. According to the Article 59 (3), the Parliament is “authorized to raise a question of liability of a particular member of the Government before the Prime Minister, and under the Article 64 (1), the Parliament is empowered to dismiss individual ministers by the impeachment procedure.

As regards the appointment and dismissal of the military officers, the Constitution gives the exclusive powers to the President in appointment or dismissal of aforementioned officials, and the Prime Minister or the Parliament does not interfere in these discretionary powers of the President<sup>201</sup>.

### 3.5 Conclusion

In Germany, the Federal Chancellor and the *Bundestag* and coalition parties (in case when there is a coalition government) have considerable powers in recruitment, appointment and dismissal process of the members of the Cabinet, and the appointment and dismissal powers of the Federal President are rather formal.

In France, the President and the Prime Minister share the appointment and dismissal powers. If “the President and majority in the National Assembly come from the same political party/group”,<sup>202</sup> the powers of the President, including the appointment and dismissal powers, are at their highest level, and, “if the President and the majority in the National Assembly have different partisan loyalties, then the PM is an important holder of executive power and

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<sup>201</sup> Ibid

<sup>202</sup> Jean-Louis Thiébault, “9 France: Delegation and Accountability in the Fifth Republic”; Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, “Delegation and Accountability in Parliamentary Democracies”, Print publication date: 2003, Published to Oxford Scholarship Online: January 2005, at p. 344-345

the President's power is more limited than the authority granted him by the Constitution”<sup>203</sup>. However, the President retains the power to have the last word in the selection, appointment and dismissal of foreign and defence ministers.

In Georgia, the President has exclusive powers in selection, appointment and dismissal of the Ministers of Internal Affairs, Defence and Foreign Affairs, whereas the Prime Minister has the power to decide upon the appointment and dismissal of the other members of the government with the consent of the President. It shall be also noted, that the acts of the President of Georgia (including the acts governing the appointment and dismissal of the ministers or other public officials), unlike his French and German counterparts, are not countersigned by the Prime Minister or any other minister. The Parliament can only dismiss the individual minister by the procedure of impeachment.

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<sup>203</sup> Ibid, at p. 326

## Conclusion

The appointment and dismissal powers of the executive branch are the important aspects of the separation of powers since they encompass the formation and the termination of the executive branch, the appointment and dismissal of the individual members of the executive, the power of the Head of State to dissolve the legislative branch (thus interfering in the process of the formation and the termination of the government), and, at most, the shares of powers of the Head of State, Head of the Government, and the legislative branch in the formation and the termination of the executive branch.

The aim of the present paper was to describe and compare appointment and dismissal powers of the executive branch in three different countries with different constitutional models. For this reason, Germany, France and Georgia have been selected: one country with the parliamentary system of government, and the other two with the semipresidential system of government.

The reader of this paper will find out that:

1. In Germany, the Federal Chancellor, the *Bundestag* (a lower house of the German Parliament), and political parties play a crucial role in formation and termination process of the executive branch, and the powers of the Federal President are negligible. However, the Head of State retains a crisis-solving, reserve powers.
2. In France, the appointment and dismissal powers of the executive branch are shared between the President and the Prime Minister, and the National Assembly (a lower house of the French Parliament) is considerably weak to influence the formation and termination of the executive branch.

3. Georgia is characterized with very powerful President, weak Parliament, and considerably weak Prime Minister. The President has almost unconstrained powers to determine the formation and termination of the executive branch.

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