



**EXECUTIVE APPOINTMENT AND DISMISSAL
POWERS IN KYRGYZSTAN,
THE COMPARATIVE ANALYSIS WITH FRANCE AND
RUSSIA**

By

Chingiz Aidarov

LL.M. SHORT THESIS

COURSE: Russian Constitutional Law

PROFESSOR: Alexander Blankenagel

Central European University

1051 Budapest, Nador utca 9.

Hungary

Table of Contents

ABSTRACT	II
INTRODUCTION	1
CHAPTER I - CONSTITUTIONAL POWERS AND THE ADMINISTRATIVE RESOURCES OF THE PRESIDENT AND PRIME-MINISTER.	6
1. The Constitutional Powers and Administrative Resources of the Executive in France	6
2. The Constitutional Powers and Administrative Resources of the Executive in Russia	12
3. The Constitutional Powers and Administrative Resources of the Executive in Kyrgyzstan	15
CHAPTER II - APPOINTMENT OF THE PRIME-MINISTER AND FORMATION OF THE CABINET	22
1. Appointment of the French Prime-Minister and his Council of Ministers	23
2. Appointment of the Russian Chairman of the Government and his Government	27
3. Appointment of the Prime-Minister and his Cabinet in Kyrgyzstan	31
CHAPTER III - DISMISSAL OF THE PRIME-MINISTER AND HIS CABINET	35
1. The Dismissal Procedures in France	35
2. Executive Dismissal Procedures in Russia	38
3. Executive Dismissal Procedures in Kyrgyzstan	39
CONCLUSION	42
BIBLIOGRAPHY	45

Abstract

The present paper concerns one of the main aspects of the separation of powers i.e. appointment and dismissal of the executive branch in Kyrgyzstan. In doing so this paper will describe and compare Kyrgyz approach with similar, but not identical systems of France and Russia.

In particular this paper touches upon issues of the division of powers between the main actors of the dual executive – the President (Head of State) and Prime-Minister (Head of Government), and also directly the issue of the appointment and dismissal of the executive branch. The aim of this paper is to show that although evaluated as positive, the Kyrgyz system still has room to improve in aspects of the division of powers between executive and in exercising dismissal power by Parliament.

Introduction

In 1991 after the collapse of USSR, five Central Asian states (Kyrgyzstan, Kazakhstan, Uzbekistan, Turkmenistan and Tajikistan) received it independence and sovereignty. All five states drafted started drafting their first constitutions. All five states in their constitutions adopted presidential form of government. Important to note that although all constitutions were stating that new states are democratic in form, and concluded provisions that president can not be elected more then two successive terms, the presidents that were elected in early 1990, were still holding their posts for nearly two decades. This usually happened through constitutional amendments, like for example in Kazakhstan, where constitution states that one person (like Mr. Nazarbaev) can be re-elected as many successive terms as he wishes.¹ In other countries amendments were made to prolong the term from 5 to 7 years or by decisions of the constitutional courts of those republics that first term did not count, because presidents were elected before the constitution entered into power (like Mr. Karimov).² This is brief historical introduction which purpose is to acknowledge on political culture of those states. However, judging those acts is not the aim of this paper and falls out of the borders of my thesis.

In my thesis will specifically deal with current constitutional situation in Kyrgyzstan with comparative analysis from France and Russian jurisdiction. Kyrgyzstan was in many aspects

¹ Los Angeles Times: Kazakhstan lifts term limits on long-ruling leader. Available at <http://articles.latimes.com/2007/may/19/world/fg-kazakh19>) Last accessed on March 22, 2010

² Radio Free Europe: Uzbek Election Watchdog Clears Karimov For Third Term. Available at (<http://www.rferl.org/content/article/1079156.html>) Last accessed on March 22, 2010

different from other Central Asian states, Kyrgyzstan did well in areas of human rights, freedom of speech. By many westerners it was referred as “island of democracy”.³

The constitution of Kyrgyz republic entered into power in 1993, and established similar system of constitutional institutions (except aspects of federalism) as Russia. The constitution was amended in 1996 and 2003, and mostly changes concerned the legislative assembly, which changed from unicameral to bicameral and back, in addition with some other minor changes concerning powers of president.

However as a result of the so called tulip revolution of 2005, the President Akaev left both his post and country.⁴ The new President Bakiev was elected same year. After short period of time, the supporters of Bakiev lost confidence in him, and confrontation had started between political groups of president and new opposition. As a result new constitutions were adopted in November 2006 and shortly after in January 2007. The next constitution the one that exists today is the one adopted by referendum in October 2007.⁵ The main point of changes in constitution was the control over the cabinet of ministers. During the Akayev's period the provision of Kyrgyz constitution concerning appointment and dismissal of Prime-Minister and his cabinet of ministers was identical to the one in Russian Constitution. In other words Parliament had little power to exercise over government, and the prime-minister de facto did not need support of the

³ US Democracy Promotion Policy in the Central Asian Republics Available at (<http://isq.sagepub.com/cgi/reprint/44/2/141.pdf>) Last accessed on March 21, 2010

⁴ 25. Radio Free Europe: Ousted Leader Says Kyrgyzstan Now 'Island Of Criminality,' Not Democracy. Available at (http://www.rferl.org/content/Akaev_Kyrgyzstan_Now_Island_Of_Criminals_Not_Democracy/1992681.html?page=1&x=1#relatedInfoContainer)

Last accessed on March 27, 2010

⁵ European Commission for Democracy through Law. Opinion on the Constitutional Situation in the Kyrgyz Republic. Adopted 14-15 December 2007. page 3

Parliament. The 2007 Constitution changed the system of the appointment of the executive (lead by Prime-Minister and his cabinet).⁶ However the Constitution was drafted in very short period of time⁷, and because was intended to make compromise between President and Parliamentarians, the Constitution established the system which provides both directly elected President and Prime-Minister nominated by Parliament with strong executive power.

In other words the main criticism of semi-presidentialism established under Kyrgyz Constitution is that the dual executive creates the opportunity for tension between executive players, the President and the Prime Minister that can lead to political gridlock or worse. Some scholars, such as Elgie suggests that this criticism is valid when both actors have significant constitutional powers and when the party system enables the president and the Prime-Minister to establish themselves as major political figures.⁸ This seems to be the exact situation which exists under the Kyrgyz Republics Constitution.

The main part of my thesis is concerned with Kyrgyzstan, however the throughout the paper the Kyrgyzstan will be looked through systems of France and Russia. Main reason is that current Kyrgyz constitutional order exists for only three years, while France and Russia provides with analysis for longer period of time, 50 and 20 years respectively. So there is a good example of practice and solid number of research conducted by French and Russian scholars.

⁶ European Commission for Democracy through Law. Opinion on the Constitutional Situation in the Kyrgyz Republic. Adopted 14-15 December 2007. page 9

⁷ Ibid page 4

⁸ Elgie, Robert. Political Institutions in Contemporary France. Oxford University Press, 2003.

In contrast, there is a general lack of legal scholarly works in Kyrgyzstan. For various reasons Kyrgyzstan does not have much scholars in this area. Even if conducted before, such research is outdated, while Kyrgyzstan is providing with more and more sources for analyze. So I hope that my work will be a first little step that will contribute to the future research of the constitutional system of Kyrgyzstan.

In my thesis I will try to show that current constitutional order of Kyrgyz Republic creates for tension between political branches that can lead to political gridlock, and comparing to the similar systems of France and Russia, creates much greater chances for such conflict. I did not select parliamentary form of state to compare with Kyrgyzstan, it for the reason that I am not going to touch upon debates over what form of government is better, but rather how the current system answers to the principle of the separation of branches and checks and balance. In doing this, I will most importantly analyze the constitutions of three States, other legal acts, and academic works conducted in this area.

The first chapter of the thesis will discuss the powers of the main political players i.e. Presidents and Prime-Ministers. In particular I will discuss the important constitutional powers of the actors and the administrative recourse that they possess. In case of Kyrgyzstan, I will also show that current understanding of the executive (cabinet of ministers) in Kyrgyzstan has been changed since the 2009 administrative reform of the President, by which he abolished his Administration, instead created new set of organs responsible directly to him.

The second chapter of the thesis will discuss the process of the formation of the executive branch (Prime-Minister and his cabinet). In particular it will define what is refereed as executive,

and how the formation of the executive in semi-presidential systems differs in periods of so called “cohabitations”.

Similarly the third chapter of the thesis will discuss how the Prime-Minister can be dismissed, and how the Cabinet as whole can be terminated, in particular Parliament’s rights to issue vote of no-confidence.

Chapter I - Constitutional Powers and the Administrative Resources of the President and Prime-Minister.

In order to fulfill the goals of this thesis one has to start with the answering question what are the main constitutional political actors and what are their powers. In particular the aim of this chapter is to show that Kyrgyz President possesses more strong powers then their counterparts in France and Russia. By that I will compare not only constitutional powers but also administrative resources that Presidents have at their disposals.

All three jurisdictions can be referred as semi-presidential. Such system exists when popularly elected for a fixed term President exists alongside a Prime-Minister and cabinet who are responsible to Parliament.⁹ All three jurisdictions comply with this requirement, however with own specifics which will be described in this chapter.

1. The Constitutional Powers and Administrative Resources of the Executive in France

First in line is France (often referred as Fifth Republic), which's current constitution was adopted in 1958.¹⁰ The Fifth Republic emerged from the collapse of the French Fourth Republic, replacing a parliamentary government with a semi-presidential system. One of the main ideas behind new constitution was to strengthen the role of the Prime-minister and the government at

⁹ Elgie, Robert. "France". In *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999. page 68

¹⁰ Theen, Rolf H. and Wilson Frank L. *Comparative Politics an Introduction to Seven Countries*. Prentice Hall, 1999. page 109

the expense of parliament. So in order to achieve these goal and several others both the President and Prime-Minister were given certain independent powers.¹¹

Constitutional Powers of the President and Prime-Minister

President is Head of State, and according to the article 5 of the Constitution: “Shall ensure due respect for the Constitution. He shall ensure, by his arbitration, the proper functioning of the public authorities and the continuity of the State. He shall be the guarantor of national independence, territorial integrity and due respect for Treaties. Originally President was elected indirectly by an “electoral college” for 7 year term. However this was changed by 1962 referendum and now President is elected by direct popular election.¹² By this he received direct legitimacy from people, which strengthens the Presidents authority allowing setting political agenda. The other changed occurred more recently, by 2002 amendment, by which the presidential term was decreased from 7 to 5 years.

1958 Constitution provides the President with certain discretionary powers. Although there is a perception that France has a presidentialized system of government, the discretionary powers of the head of State are in fact relatively restricted. Indeed Article 19 of the 1958 Constitution outlines just eight areas where the President can act independently. In this respect Presidents most important powers include the appointment of Prime-minister¹³; the ability to dissolve the National Assembly (but not more than once in any 12 month period)¹⁴; the freedom

¹¹ Elgie, Robert. *Political Institutions in Contemporary France*. Oxford University Press, 2003. page 14

¹² Ibid 112

¹³ Article 8 of the Constitution of the France (1958)

¹⁴ Ibid Article 12

to resign and hence, to provoke a Presidential election at which President may stand again¹⁵; the right to chair the Council of Minister¹⁶, the right to have message read out in the national Assembly and Senate¹⁷; the power to ask the Constitutional Council to scrutinize a piece of legislation¹⁸; the opportunity to appoint three out of nine member of Constitutional Council¹⁹; and the right to assume emergency powers, but only when there is serious and immediate threat to the system²⁰.

One can see that although Presidents discretionary powers are limited in range and in case of article 5 rather nebulous in meaning, there is no doubt that these powers may be very significant. However important to note about Presidents constitutional powers is that, with the main exception of the right to chair the Council of Ministers and send bills before promulgation to the Constitutional Council, those powers are either one-off powers (the right to resign), or ones that can only be exercised either at pre-programmed intervals (appointment to the Constitutional Council), in exceptional circumstances (the dissolution of the National Assembly) or a loyal parliamentary majority (appointment of Prime-Minister). This leads to conclusion that Constitution does not guarantee that the President will be directly involved in the day-to-day running of the country.

The powers of Prime-minister in some ways are similar. Like the president, the head of government has the power to send bill to the Constitutional Council²¹. Similarly Prime-Minister

¹⁵ Article 7 of the Constitution of the France (1958)

¹⁶ Ibid Article 9

¹⁷ Ibid Article 18

¹⁸ Ibid Article 61

¹⁹ Ibid Article 56

²⁰ Ibid Article 16

²¹ Ibid Article 61

chairs the Council of Ministers should President be absent²². More importantly though, and in stark contrast to the role of the President, constitution establishes the Prime-Minster as the key day-to-day policy-making actor within the executive. In this respect Prime-Minister enjoys two general powers. First the Prime-Minister leads the government²³, while the government is officially charged with determining and conducting the nation's policies and has the administration at its disposal²⁴. Secondly, the Prime-Minister is responsible for the governments dealing with parliament²⁵.

Government-parliament relations

Here one of the major differences between respective roles of the President and Prime-Minister. The President is not even allowed to set foot in parliamentary process. Instead the President can merely request that a message be read out in the two houses²⁶. By contrast, the Prime-Minister plays full role in parliamentary process. The government is responsible to parliament²⁷ and as head of government the Prime-Minister assumes the role as the administration's main spokesperson, most notably during the weekly session of questions to the government in the National Assembly. In addition the Prime-Minister is closely involved in setting the parliamentary timetable²⁸. More generally, the head of government is explicitly given the right to initiate the legislation.

Powers shared by President and Prime-Minister.

²² Article 21 of the Constitution of the France (1958)

²³ Ibid Article 21

²⁴ Ibid Article 20

²⁵ Ibid implicit or explicit in most of Articles 34-50

²⁶ Ibid Article 18

²⁷ Ibid Articles 20, 49, 50

²⁸ Ibid Article 48

In addition to discretionary powers of the President and Prime-Minister, both institutions possess two sets of shared constitutional powers. The first set comprises three policy areas (defense, foreign policy, and the independence of judiciary) in which there are joint responsibilities, but ordinarily President is the most important political figure. The Constitution establishes that President is commander in chief of the armed force²⁹ and the guarantor of national independence and integrity of the national territory. The other power is to negotiation and ratification of treaties³⁰. At the same time however, the Constitution states that the Prime-Minister is responsible for national defense. It also implies that the government is involved in process of drawing up certain forms of treaties³¹. In these areas therefore, the President, the Prime-Minister, and other members of the government share certain constitutional powers. Therefore a lot of scholars such as Elgie states that in such situations there is conflict between the President and Prime-Minister. Indeed during cohabitation low-level skirmishes between President and Prime-Minister have been relatively commonplace. Outside cohabitation, though, examples of conflict have been rare.

Administrative resources

The President of the France is assisted by set of hand-picked personal advisers, collectively known as the General Secretariat of the Presidency (GSP). The GSP is headed by the General Secretary of the Presidency who is Presidents closest personal adviser and whose influence can at times be decisive.³² Usually the GSP will consist of diplomatic section, strategic

²⁹ Article 15 21 of the Constitution of the France (1958)

³⁰ Ibid Article 52

³¹ Ibid

³² Elgie, Robert. *Political Institutions in Contemporary France*. Oxford University Press, 2003. page 107

defense section, an economic and society section and communication section. Overall basic role of the GSP is to support all aspects of President's work.

The Prime-Minister at same time has his own set of advisers known as "cabinet" (not to tangle with Cabinet of Ministers). Prime-Ministers "cabinet" is similarly to Presidents GSP is set of political advisers and other staff members whose main role is to support all aspects of Prime-Ministers work.³³ Although in terms of personal staff the President and the Prime-Minister have approximately equal resources. The same point does not apply, however to the situation with regard to the various administrative organizations within State system. In this area President has very few formal responsibilities. By contrast the Prime-Minister is head of a large number of committees, commissions, delegations, councils and so forth. Indeed in 1979, a grand total of 5,000 people were associated with these organizations.³⁴

So overall in France both the President and Prime-Minister have constitutional powers and administrative resources. Although the President is directly elected, the Prime-Ministers especially in periods of cohabitation have their own domain in which they have upper hand. Although scholars believed that such situation creates opportunity for political gridlock, the experience of the France shows that both President and Prime-Minister were able to avoid major political conflicts.

³³ Elgie, Robert. *Political Institutions in Contemporary France*. Oxford University Press, 2003. page 109

³⁴ *ibid*

2. The Constitutional Powers and Administrative Resources of the Executive in Russia

The Russian Federation (“Russia”) was “founded” following the dissolution of the Soviet Union in 1991, but is recognized as the continuing legal personality of the Soviet state³⁵. The current constitution adopted in 1993 establishes Russia as democratic, federal law-bound State with a republican form of government. Although the System of Russian is presidentialised, the state exists under the semi-presidential form of government. The main political constitutional institutions are the President, Chairman of the Government (Prime-Minister and his Cabinet), and bicameral Parliament (Federal Council and State Duma).

Constitutional Powers of the President and Prime-Minister

By the constitution the President is “guarantor of constitution” and is supposed to “ensure the constitutional functioning and interaction of the bodies of state power”. Under the Article 85 (1) of the Constitution the President may use informal conciliation to resolve disputes between the federal government and governments of the subjects of the Federation and disputes the between the various subjects of the Federation.

The more specific powers of the President include the following:

- Appointment of the Chairman of the Government of the Russia with the consent of State Duma
- The right to chair sittings of the Government
- Dismissal of the Government
- Dissolution of the State Duma

³⁵ Theen, Rolf H. and Wilson Frank L. Comparative Politics an Introduction to Seven Countries. Prentice Hall, 1999. page 283

- Power to propose, sign, promulgate and veto legislation
- Power to issue edicts and directives whose implementation is mandatory throughout the territory of the Russia
- President also Commander in Chief of the Armed Forces, the President appoints and removes the commanders of the armed forces without the consent of the State Duma³⁶

In comparison, the rights of the PM are rather limited. The Prime-Minister or in Russian case the Chairmen of the Government is head of the executive. The Prime-Minister is the one who defines the general policy of the Government and organizes its activity. This the only article in the Constitution which explicitly states the powers of the Prime-Minister, in the rest Constitutions always states the word Government, for example government conducts actions to defense and security of the state and conducts external affairs of the state.

The main legal document which stipulates the powers of the Prime-Minister is Constitutional Law on Government. In particular the law states that Prime-Minister chairs the meetings of the Government, and has the final word in all the matters.

Relation between President and Government

The President appoints the members of the Government, though appointment of the Prime-Minister requires approval by the State Duma.³⁷ The President presides over meetings of

³⁶ Theen, Rolf H. and Wilson Frank L. Comparative Politics an Introduction to Seven Countries. Prentice Hall, 1999. page 297

³⁷ Article 112 of the Russian Constitution

the Government and determines “the basic direction of the states domestic and foreign policy.”³⁸

In directing the activities of the Government, the President has the constitutional authority to rescind any governmental regulations that “contravene the Constitution” and to dissolve or reconstitute the Government at any time³⁹.

And in addition to this general power, the President has special authority over the ministries dealing with defense, security, internal and foreign affairs. Under the 1997 Constitutional Law “on the Government”⁴⁰ the President directly controls the activities of these ministries, while the Government, on the other hand, merely “coordinates” their activities.

Administrative resources

Important thing to mention is administrative staff of the President. The main administrative unit under the President is his Administration. The legal status of the Administration is regulated by the decree of the President, and not the federal law. This lead to tensions between President and State Duma in 1996’s, and resulted in decreasing some powers of the Administration.⁴¹ President appoints the Head of the Administration, who is only responsible to him. The legislature has no role in appointing or dismissing officers of the Administration of the President. The Administration has wide-ranging responsibilities, some of which complement and duplicate the functions of governmental agencies and ministries. The main function is providing the President with administrative support and enabling him to carry out his duties as

³⁸ Theen, Rolf H. and Wilson Frank L. Comparative Politics an Introduction to Seven Countries. Prentice Hall, 1999. 296

³⁹ Ibid

⁴⁰ Article 32 of the Federal Constitutional Law of the Russian Federation on “Government”, from December 17, 1997. N 2-FKZ (N 2-ΦK3)

⁴¹ White, Stephen “Russia” in Semi-presidentialism in Europe edited by Elgie Robert, Oxford University Press, 1999. page 222

head of state. One of the separate departments in Administration is Security Council⁴². The President chairs the Council and appoints its members. The Security Council is directly lead by its Secretary, who oversees the Council's work and answers directly to the President.

Even more importantly Russian Constitution and constitutional laws provide the President with a power to directly regulate the activities of the several federal ministries and federal agencies, such as:

- Ministry of Foreign Affairs
- Ministry of Internal Affairs
- Ministry of Defense
- Ministry of Justice
- Ministry of Emergency Situations
- Federal Security Service (partly successor of KGB)
- Foreign Intelligence Service (partly successor of KGB)
- Some other federal agencies and services⁴³

The works of all of those agencies are directly subordinate to the President of the Russian Federation. This means that Russian President has strong set of administrative powers to exercise.

3. The Constitutional Powers and Administrative Resources of the Executive in Kyrgyzstan

Kyrgyz Republic is similarly to the Russia was “founded” as a result of dissolution of the Soviet Union in 1991. The first constitution was adopted in 1993. However the 1993 constitution had been amended several times: first on 10 February 1996, then on 2 February 2003, and finally

⁴² President of Russia, Official Website: Security Council Available at (<http://eng.kremlin.ru/articles/institut04.shtml>) Last accessed on March 25, 2010

⁴³ Decree of the Russian President “On System and Structure of the Government”, from May 12, 2008 #724

twice in quick succession on 9 November 2006 and 15 January 2007 after the Tulip Revolution of March 2005⁴⁴. The last two amendments were adopted under pressure from protracted public protests in the capital Bishkek, but they were annulled in September 2007 by the Constitutional Court, which restored the 2003 constitution and paved the way for another constitutional referendum in October 2007⁴⁵. The constitution currently in force was passed by referendum on 21 October 2007. Under the current constitution Kyrgyz republic is considered a sovereign, unitary, democratic, legal, secular, and social state⁴⁶. The main political institutions are President, Prime-Minister and unicameral Parliament.

Constitutional Powers of the President and Prime-Minister

The President is head of state and the symbol of unity of the people and state authority, the guarantor of the Constitution, and freedoms and rights of a man and citizen. President is elected by direct election for a 5 year term⁴⁷ and most dominant political figure under the Constitution. Similarly as French and Russian, Kyrgyz President defines the general internal and external policy⁴⁸. Similarly to the Russian, President has long list of explicit powers. But the most important difference from the French and Russian Constitutions, under the Kyrgyz constitution the President does not have choice of the Prime-Minister. As a result of the constitutional amendments, under the current constitution it is the majority party in Parliament chooses and

⁴⁴ European Commission for Democracy through Law. Opinion on the Constitutional Situation in the Kyrgyz Republic. Adopted 14-15 December 2007. page 4

⁴⁵ Ibid

⁴⁶ Article 1 of the Kyrgyz Republic Constitution 2007

⁴⁷ Ibid Article 43

⁴⁸ Ibid Article 42 (3)

proposes the candidate for the Prime-Minister, and the President has no choice over the candidate (of course if it is presidents majority party then he can effect through internal party affairs)⁴⁹.

Although the President does not choose Prime-Minister, the President exercises certain executive powers similar to his Russian and French counterparts. Similar to the French and Russian, Kyrgyz President can preside over the meeting, and similar to the Russian, Kyrgyz President has power to issue decrees which are binding source of law, and the decrees of the president can cancel the decrees of the government⁵⁰. Another similarity to the Russia is that Kyrgyz President has special authority over the ministries dealing with defense, security, internal and foreign affairs⁵¹. So those several ministers in the cabinet are subordinate to the President.

Prime-Minister

As noted previously, under the current constitution candidacy of the PM is proposed by the majority party in Parliament, and the President has to appoint the candidacy. Therefore the PM is responsible to both the President and Parliament. PM is head of the government (cabinet of ministers), and as such coordinates work of the government and determines basis policy of the government⁵².

Administrative resources

Now the next point is crucial for the thesis statement. Originally the Presidents Administration was an example of shadow cabinet responsible to President. After the 2009 re-

⁴⁹ Article 69 of the Kyrgyz Republic Constitution

⁵⁰ Ibid 47

⁵¹ Article 7 of the Constitutional Law of the Kyrgyz Republic on "Government", from October 19, 2005 #155

⁵² Article 71 of the Kyrgyz Republic Constitution

election President Bakiev made the administrative reform⁵³. The reform was initiated by the President himself and in legal terms was passed by Presidents majority party through Parliament⁵⁴. As a result of the reform, speaking in legal terms President abolished his Administration which was similar to the Russian Presidents Administration, however instead created the so called Institute of the President, even more powerful set of organs under his control. The Institute of the President consists of:

- Apparatus of the President (main successor of the Administration),
- Secretariat of the President (successor of the Administration in area of Presidents relations with people mainly through mass-media; controls state mass-media),
- Central Agency on Development and Investment (newly created organ that duplicates many functions of the ministries of finance and economic development), headed by Presidents son,
- State Ministry on Foreign Affairs (the regular Ministry of Foreign Affairs; previously under the Cabinet of Ministers)
- State Councilor on Security and Defense (successor of the Security Council; one Councilor instead of State Security Council)⁵⁵

Each of the last three organs, need to be discussed in detail.

First the creation of State Ministry of Foreign Affairs, or in other words pulling out the Ministry from the Cabinet, and putting it under direct control of the President. Such change was justified for the reason that under the Constitution President is given right to determine the main

⁵³ Neweuroasia.net: Will Bakiev become a great reformist? Available at (<http://www.neweurasia.net/politics-and-society/will-bakiev-become-a-great-reformist/>) Last accessed on March 27, 2010

⁵⁴ Law of the Kyrgyz Republic on "Structure of the Government", from October 22, 2009 #283

⁵⁵ Official Web-site of the President: Institute of the President Available at (<http://www.president.kg/ru/institut/>) Last accessed on March 26, 2010

functions of foreign policy. Almost in every state, the directly elected President is responsible for representing state in foreign visits, this is well established principle.

In Russia, although the Foreign Ministry is in structure of the Government, the minister is highly responsible to the President⁵⁶. However the Kyrgyz President took it one step further. President has taken the ministry of Foreign Affairs out of the structure of the Government, and made ministry (very important one) responsible directly to the President himself by putting ministry under the Institute of the President.

The other organ established by reform is post of the State Councilor on defense, security and the law and order⁵⁷. Its main aim is maintaining of realization of decisions of the President of the Kyrgyz Republic in sphere of defense, security and the law and order. In doing so State Councilor is responsible and reports only to the President. Such State Councilor is the successor of the State Security Council, which was collegiate organ in areas of national security and defense consisting of prime-minister, governmental minister and speaker of the Parliament. Now instead of collegial organ President has only State Councilor.

The last but not least is the Central Agency on Development and Investments⁵⁸. If previous two organs provide the President with power to exercise over the issues of high politics (foreign affairs and national defense), the CADI provides President with power to intervene to the domain of economy and finance. Again the head of the CADI is responsible and subordinate only to President. The legal act which regulates the powers of CADI is regulation (signed by

⁵⁶ Federal Constitutional Law of the Russian Federation on “Government”, from December 17, 1997. N 2-FKZ (N 2-ΦK3)

⁵⁷ Official Web-site of the President: Institute of the President Available at (<http://www.president.kg/ru/institut/>)
Last accessed on March 26, 2010

⁵⁸ Ibid

President)⁵⁹. This regulation provides CADI with rights and powers over the government and ministers responsible for economy and finance. Just to mention few:

Aim one of several

- Coordination of all state bodies and institution on realization economic policy determined by President

Functions

- conducting policy of the budget development and coordination of its realization
- coordination of realization of a policy of management of the state resources, including public finances and the development of the budget
- coordination of a monetary and credit and taxation policies
- conducting the interaction of the President of the Kyrgyz Republic with the ministries and departments of the social and economic block

Rights

- to request and receive the necessary information, including secret from all state bodies
- to make offers on cancellation of decisions of prime-ministers and government to the President

This short example shows the strength of this agency, and subordinate only to the President. In some terms it may even violate the Constitution, because provided powers intervenes to the constitutional domain of the cabinet. In particular by the constitution it is the

⁵⁹ Regulation of the “Central Agency on Development and Investments”, from October 26, 2009

cabinet of minister which is responsible for conducting states financial, investment, monetary and taxation policies⁶⁰, which is exactly what CADI is provided to do by Presidents regulation.

Overall it is seen that Kyrgyz President posses both quite strong constitutional powers in areas of executive and supported by administrative resources. By comparing power of the President, and comparing the instruments which Presidents have on their disposal I tried to show that Kyrgyz President possesses quite powers, which in future will be difficult in future to coexist with Prime-Minister. The next chapter will discuss the formation of executive, and how in Kyrgyzstan will contribute to the possibility of future conflicts. So this situation leads us to the next chapter how the procedure of appointment of the Prime-Ministers and Cabinet is conducted in these three States.

⁶⁰ Article 73 of the Kyrgyz Republic Constitution

Chapter II - Appointment of the Prime-Minister and Formation of the Cabinet

The process of formation of government can be divided into two stages. First appointment of the head of the government, second the formation of the cabinet. Concerning the appointment of the Prime-Minister, all three semi-presidential systems have different procedures of appointment of the Prime-Minister. The French constitution for example does not describe in detail the process. Instead it only state that President appoints Prime-Minister. It is more of the convention (unwritten rule) that during cohabitations President appoints Prime-Minister from the majority opposition in National Assembly⁶¹.

In contrast under the Russian Constitution the process of the appointment is more detailed. The President proposes candidacy, while State Duma gives consent for the candidacy or has a right to reject. However the role of State Duma is limited, for the reason that if rejects three times the candidacy, President dissolves State Duma⁶².

In Kyrgyzstan, originally the process of the appointment of the Prime-Minister was identical to the Russian one. However the 2007 Constitution established new system similar to parliamentary government model, when the majority political party proposes candidacy of the Prime-Minister, and the President has to appoint the candidacy.

⁶¹ Elgie, Robert. "France". In *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999. page 68

⁶² Article 112 of the Russian Constitution

1. Appointment of the French Prime-Minister and his Council of Ministers (Cabinet)

Appointment of the Prime-Minister

The Constitution of the France, directly states that President appoints Prime-Minister. There is no direct explicit text requiring the Prime-Minister to have the support in National Assembly. So in times where the President enjoys majority in National Assembly, he chooses the Prime-Minister solely. That was the case early in history, when typically, the President asks a senior legislator in his own party to head a cabinet, which may be a single-party administration or a coalition⁶³. In other words President exercises full power to appoint a person he wants.

However according to Elgie the power of the President is dependent on two factors: “the nature of the parliamentary majority and the relationship between the president and that majority”⁶⁴.

In ordinary, non-cohabitation situation 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 Presidents practice of selecting as Prime-Minister people who have no independent political power base tends to emphasize his dominance over the appointment process⁶⁵. From 1959 till 1986, Presidents De Gaulle, Pompidou, Giscard d’Estaning and Mitterrand (from 1981-1986) enjoyed different levels of parliamentary majority support, i.e. France existed under unified

⁶³ Gallaher, Michael., Laver, Michael., and Mair, Peter. Representative Government in Western Europe. McGraw-Hill, 1992. page 182

⁶⁴ Elgie, Robert. “France”. In Semi-presidentialism in Europe edited by Elgie Robert, Oxford University Press, 1999. page 82

⁶⁵ *ibid*

government. During this time, four Presidents had nine Prime-Ministers (average time in office 3 years), with each President having at least two PM during their presidency⁶⁶.

The situation is different, when the President is faced with an opposition majority in National Assembly (cohabitation) and thus obliged to appoint a Prime Minister who has the support of that majority. The first period of cohabitation occurred from 1986 till 1988. The President of the Republic was Francois Mitterrand, elected in 1981 for a 7 year term, as Socialist Party candidate and leader. However in 1986 legislative election the Rally for the Republic (RPR) and Union for French Democracy (UDP) coalition has won the majority of seats in National Assembly.⁶⁷ Similarly cohabitation occurred two more times from 1992 till 1995 and from 1997 till 2002. In next two cohabitation periods similarly to the first one, Presidents appointed their political rivals from majority (or coalition) party in National Assembly as Heads of the government⁶⁸.

Later facts from cohabitation periods shows that Presidents as practice concentrated on foreign affairs and national defense issues, while Prime-Ministers and his Cabinet handled domestic issues. However still several conflicts arose between two. For example during first cohabitation, PM Chirac began to reverse many of Mitterrand early reforms by lowering taxes and privatizing national enterprises. In reverse Mitterrand refused to sign Chirac's ordinances,

⁶⁶ Elgie, Robert. *Political Institutions in Contemporary France*. Oxford University Press, 2003. page 98

⁶⁷ Official website "La Documentation Francaise", , <http://www.ladocumentationfrancaise.fr/dossiers/cohabitation/index.shtml> (last accessed on February 10th 2009)

⁶⁸ Elgie, Robert. "France". In *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999. page 75

slowing down his policy, so he had to pass his bills through Parliament⁶⁹. However such examples were rare.

Cabinet formation

Under the French constitution the structure of the Council of Ministers (Cabinet) is not fixed and may vary from time to time. The Cabinet usually consists of several classes of ministers. The lowest rank is comprised of junior ministers – Secretary d’Etat. Above those junior ministers are three classes of ministers; Ministre d’Etat, Ministre delegues and Ministers. The first of these titles – Ministre d’Etat is an honorific reserved for prominent or long-serving politicians, and its usage has declined over the time. The second Ministre delegues are ministers who are responsible for a specific policy or function, often within larger portfolio (European Affairs within Foreign Affairs portfolio). And finally the Ministre is more typical title, identifying the holder as responsible for a specific portfolio. French cabinets averaged 36 ministers (all ranks) between 1968 and 2002 (in average 16,5 Ministers, 4,5 Ministers delegues, 2,4 Ministers d’Etat and 12,5 Secretaries d’Etat)⁷⁰.

The appointment of the cabinet ministers like the appointment of the Prime-Minister is also differs in non-cohabitation and cohabitation periods. A strict reading of the Constitution suggests that Prime-Minister controls management and direction of the cabinet. The President after all, cannot appoint or remove minister without the Prime-Minister initiative and moreover

⁶⁹ Elgie, Robert. “France”. In *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999. page 72

⁷⁰ Kam, Cristopher and Indriadson Indridi. “Cabinet Dynamics and Ministerial Careers in the French Fifth Republic”. In *The selection of ministers in Europe. Hiring and Firing*, edited by Dowding Keith, and Dumont Patrick. Routledge, 2009. page 42-44

the President is required to do so upon recommendation of PM⁷¹. This work is differently in practice. Again the crucial variable is whether the Presidents party controls National Assembly. A president who enjoys the support of a parliamentary majority is the cabinet's dominant political figure, in charge of its composition, membership, and political direction. For example in 1976, President d'Estaing created a post of junior minister of industrial affairs without informing the PM. Ministers also have been appointed by President against the advice of the PM⁷². However such situation is rare, because both are from same political party, they will share common view on certain issues, and the President always has last word.

In cohabitation the situation is little different. PM still does not have untrammelled power to appoint, dismiss or reshuffle ministers. Rather as Stevens suggests in cohabitation ministerial appointment will take from of bargain between the two executives⁷³. In other words membership of the cabinet is typically the result of consultation and compromise between the President and Prime-Minister.

Although there were a tensions during all three cohabitations, both Presidents Mitterrand and Chirac and their opposing PM, displayed enough flexibility, patience and tolerance to avoid major crisis or governmental deadlock. The usual practices was that during cohabitation President focused on foreign affairs, national defense, EU issues, while PM focused on domestic economic and social issues. Such division worked well during cohabitation.

⁷¹ Kam, Cristopher and Indriadson Indridi. "Cabinet Dynamics and Ministerial Careers in the French Fifth Republic". In *The selection of ministers in Europe. Hiring and Firing*, edited by Dowding Keith, and Dumont Patrick. Routledge, 2009.page 43

⁷² Ibid

⁷³ ibid

2. Appointment of the Russian Chairman of the Government and his Government (Cabinet of Ministers)

Appointment of the Prime-Minister

Under the Russian Constitution the head of the executive (Prime-Minister) is referred as Chairman of the Government. Concerning the appointment of the Prime Minister the text of the Russian Constitution directly states that

The Chairman of the Government of the Russian Federation shall be appointed by the President of the Russian Federation with the consent of the State Duma.⁷⁴

In contrast to the French constitution, the Russian constitution directly states that Prime-Minister appointed by the President only with consent of the State Duma. So logically, one will come to conclusion that Russian Prime-Minister is responsible to Parliament, even more then the French one. De-jure the President's proposed candidate will not be appointed if Duma's majority does not wants to. However the paragraph 4 of the Article 111 makes it clear that both de-jure and de facto State Dumas involvement in appointment of Prime-Minister is restricted; in particular it directly states that:

“In case the State Duma rejects three times the candidates for the post of the Chairman of the Government of the Russian Federation, President appoints Chairman, dissolves the State Duma and calls new elections.”

So, this means that State Duma does not enjoy the full right of to give the consent for the appointment or not to give. If the consent will not be achieved (rejected three times), State Duma is automatically subject to dissolution. Even more interestingly, although the direct text of the

⁷⁴ Article 111 of the Russian Constitution

article does not make it clear, however the decision of the Constitutional Court⁷⁵ made it clear, that Presidents can propose the same person for the post of the Prime-Minister after the rejection by State Duma. This leads to the situation where the legal consent of the State Duma, does not mean de-facto the support of the Duma. For example in 1998, President Eltsin sacked then Prime-Minister Chernomyrdin and nominated Kirienko to the State Duma. Kirienko was rejected on the first vote on April 10th and by larger majority on April 17th, but was finally approved a week later⁷⁶. The reason was that the parliamentarians believed that third rejection of Kirienko's candidacy would result in dissolution of the Duma.

This will not change much even during the cohabitation. In fact during the 1990's the President Eltsin never enjoyed State Duma majority. However during those cohabitation periods President Eltsin was successful in appointing the candidacies that he preferred⁷⁷. Although one time State Duma majority opposition did went to direct confrontation with President, which resulted in President Eltsin choosing more moderate candidate Primakov for the Prime-Minister post⁷⁸.

Such situation when Cabinet does not de-facto has support of the State Duma often led to conflicts with executive and Parliament. As a result the later often used its option to effect the work of President or government through adoption of legislation entirely odds with President's or Cabinet's policies. One of the examples would be the 1994 law, by which parliamentary leaders

⁷⁵ Resolution of the Russian Constitutional Court from December 11, 1998 #28-P(II)

⁷⁶ White, Stephen "Russia" in *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999, page 224

⁷⁷ Ibid 225

⁷⁸ Ibid 226

of September/October 1993 (i.e. Eltsin's rivals) were amnestied by State Duma⁷⁹. The other choice was legislative inactiveness. This meant that communist and liberal democrats (main opponents of Eltsin in Duma) constantly used to refuse to vote for bills initiated by government⁸⁰. However most of the time it did not affect the functioning of the executive; because Constitution provides both President and government with power to legislate through regulations and decrees.

Cabinet formation

After the Prime-Minister has been appointed, he starts the formation of the cabinet of ministers. According to the article 112 of the Constitution:

1. Not later than a week after appointment Chairmen of the Government shall submit to the President of the Russian Federation proposals on the structure of the federal bodies of executive power.
2. The Chairman of the Government of the Russian Federation shall propose to the President of the Russian Federation candidates for the posts of Deputy Chairmen of the Government of the Russian Federation and federal ministries.

First point, although the Constitution states that Government consists of the Chairman, Deputy Chairmen and Federal Ministers, the exact structure is not fixed. Like in most of the jurisdictions, each prime-Minister is free to form the structure he wishes, which means he can decide how many deputy Prime-Ministers to have, decides to merge ministries, create new or terminate others. In doing so, he must submit the structure of the cabinet to the President for the

⁷⁹ White, Stephen "Russia" in *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999, page 226

⁸⁰ Ibid

approval. For example the current government consists of the Prime-Minister himself, 2 First Deputy Prime-Ministers, 7 Deputy Prime-Ministers and 17 Federal Ministers⁸¹.

The second part, concerned with candidates for ministerial posts. The provision is not clear whether recommendation of the PM is binding upon the President. The strict reading of the article may lead to the assumption that PM recommendation is binding upon President. In addition some scholars in their commentaries to the Constitution believe that paragraph second of the Article 112 requires both actors to be involved, i.e. President cannot appoint anyone without recommendation of the PM.

However in reality similar to France in non-cohabitation periods, it is usually the President who has the last word in appointment of the ministers. However it may also depend on personal relations between President and PM. The example is the current government, where in many aspects President Medvedev may concede in certain questions to the Prime-Minister Putin.

Also to note, that some organs which exercise important functions do not fall into the structure of the Government. The examples noted in previous chapter include Federal Security Service, Foreign Intelligence Service and others. The heads of these services are appointed by President, therefore not much responsible to the popularly elected Parliament⁸².

Overall under the Russian Constitution, similarly to many semi-presidentialized states, there is chance of the political tensions between the Head of State and Head of the Government. However specifics of the Russian system of the semi-presidentialism, is that even during

⁸¹ Decree of the Russian President "On System and Structure of the Government", from May 12, 2008 #724

⁸² Decree of the Russian President "On System and Structure of the Government", from May 12, 2008 #724

cohabitation the President still exercises strong powers and possess strong administrative resources to have the upper hand in relations to the Prime-Minister and his Cabinet.

3. Appointment of the Prime-Minister and his Cabinet in Kyrgyzstan

Appointment of the Prime-Minister

Until the 2007 constitution, the system of appointment was identical to the Russian. However as a result of political confrontations, the 2007 Constitution introduced new system. According to the Article 69 (1) of the Constitution:

Deputies belonging to a political party which has received during the elections to the Jogorku Kenesh (Parliament) over 50 percent of mandates of deputies of the Jogorku Kenesh propose the President a candidate for the office of Prime Minister.

A candidate for the office of the Prime-Minister is submitted not later than five working days after the first session of the newly elected Jogorku Kenesh.

The President appoints the Prime-Minister not later than three days after submission.

So the text explicitly provides the Parliament with the right to choose the candidacy of the person who will lead the Government, and President has no choice but to appoint. This de-jure puts Prime-Minister as directly receiving his mandate from Parliament, those responsible to the majority of parliament. Important to note, that all 90 representatives of the Kyrgyz unicameral Parliament are elected through proportional party list election system. In order to pass the political party must pass the 5% state-wide threshold and 0,5 % regional threshold⁸³. Thus there is no room for individual representative, and electoral system intends to eliminate small number parties to enter the Parliament therefore to reduce chances for weak coalition majority in Parliament.

⁸³ 29. European Commission for Democracy through Law. Opinion on the Constitutional Situation in the Kyrgyz Republic. Adopted 14-15 December 2007.page 4

Cabinet formation

After the Prime-Minister is officially appointed by the President, he starts formation of his cabinet. The cabinet will consist of Prime-Minister himself, deputy Prime-Ministers and regular ministers. In particular the second paragraph of the same Article 69 of the Constitution states that:

Appointed Prime-Minister determines the structure of the Government and candidates for Government members.

The Prime Minister submits for the approval of the Jogorku Kenesh (Parliament) the structure of the Government within 7 working days from the day of his/her appointment.

Candidacies for Government members, excluding Government members responsible for defense, security, internal and international affairs are submitted to the President within 5 working days from the approval of the Government structure.

The President appoints Government members not later than 3 days from the submission of candidates.

Second part of the article has two interesting points. First unlike the Russian and French, the Kyrgyz Prime-Minister has to submit the structure of the Government (Cabinet) for the approval to the Parliament. Thus it is Parliament which will decide the questions how many deputy Prime-Ministers to have or how many ministerial positions to have.

The second part of the paragraph states that the ministerial candidates are determined by Prime-Minister and submitted to the President for the approval. The exception is the ministers responsible for defense, security, internal and international affairs who are appointed solely by President himself, without the participation of the Prime-Minister. Such division raises concerns that for example Minister of Internal Affairs although formally will be under the structure of the

Government, however is appointed solely by President. This leads to a situation when during cohabitation or even in non-cohabitation periods the Prime-Minister has to deal with certain ministers in important ministries who will be from political opposition, and have opposite view on Prime-Ministers policy. Therefore making difficult to the Prime-Minister to exercise his right to determine the policy of the Cabinet.

Overall the process of the formation of the executive receives positive evaluation, and tends to support the notion that in near future Kyrgyzstan will move in direction of reducing authoritarian tendencies. However the recent administrative reform (fall 2009) conducted by President Bakiev after the re-election for the second term diminished positives of such procedure of formation of the executive established by 2007 Constitution.

The problem is that by that reform, President reduced the number of state organs which fall under the term government provided by law. The examples of such very important organs such as National Security Service (ex KGB), Finance Police (exclusive competence in all economic crime investigation), Finance Intelligence and Ministry on Foreign Affairs are taken away from government⁸⁴ therefore they are not responsible neither to Prime-Minister, nor to Parliament. The Ministry of Foreign Affairs has been put under the Institute of the President (de-facto became department of the Presidents Administration), while the other service mentioned above are neither under the Institute of the President, nor in structure of government. They form list of services which exercise important public functions with strong powers, but being responsible only to the President.

⁸⁴ Law of the Kyrgyz Republic on "Structure of the Government", from October 22, 2009 #283

The process of formation of the executive (without Presidential reform) overall receives positive evaluation, however to see the full picture and has to discuss the process of the executive dismissal, which will be discussed in next chapter.

Chapter III - Dismissal of the Prime-Minister and his Cabinet

The procedure of the appointment of the head of government and his cabinet is important, however to see the whole picture one has to mention how this institutions are dismissed. Usually the legal ways to dismiss the Prime-Minister are the self-resignation of Prime-Minister, the dismissing of the Prime-Minister by the President, and the vote of no-confidence issued by Parliament.

1. The Dismissal Procedures in France

The strict reading of the text of the French Constitution directly states that the Prime-Minister can be dismissed by the President when former tenders resignation of Government. So in other words Prime-Minister can lose his office only if he tenders resignation of the cabinet. However the practice is quite different. The practice shows that when President enjoyed support of the National Assembly he freely exercised his right to dismiss the Prime-Minister. First President de Gaulle set the precedent early sacking his first two Prime-Ministers, Debre and Pompidou. Pompidou's case is especially illustrative in that he was sacked after just having led the Gaullists to a landslide victory at the legislative elections of 1968⁸⁵. Pompidou' sacking reveals an important maxim of French politics under unified government, namely that Presidents dismiss Prime-Ministers who are either too unpopular or too popular. As Elgie notes:

⁸⁵ Kam, Cristopher and Indriadson Indridi. "Cabinet Dynamics and Ministerial Careers in the French Fifth Republic". In *The selection of ministers in Europe. Hiring and Firing*, edited by Dowding Keith, and Dumont Patrick. Routledge, 2009. page 48

When things go well, the President often receives the credit. When things go badly, the PM usually takes the blame. If things go very badly, and the President starts to be criticized, then the PM is replaced. If things go very well and the PM starts to be praised, then the PM is also replaced⁸⁶.

This phrase perfectly describes the whole nature of the relations between President and Prime-Minister during unified government. The later practice from periods of unified government shows that Presidents had no problem with dismissing the PM; President de Gaulle had 3 PM in 10 years, President Pompidou had 2 PM in 5 years, President Giscard had 2 PM in 7 years, President Mitterrand in 14 years had 7 PM (2 opposition PM that he had to appoint and 5 own party PM), and finally Chirac had 4 PM.⁸⁷ The reason for sacking of Prime-Minister again was always one of two, either Prime-Minister was unpopular or he was getting too popular.

During cohabitation of course, Presidents' power to dismiss is restricted. The main reason for dismissing the Prime-Minister would be if his party loses majority in National Assembly or coalition breaks. However in practice of the cohabitation the Presidential term used to come to an end earlier than the term of National Assembly. So all three cohabitations ended with Presidential election, when two opponents ran against each other, and one ultimately loses the election.

The other option to get rid of the Prime-Minister and his cabinet is vote of no-confidence. In particular Article 49(2) of the Constitution provides National Assembly with a power to pass motion of censure or in other words vote of no-confidence. In order to be passed the vote of no-confidence must gain an absolute majority of votes. In history only once such voting had been

⁸⁶ Kam, Christopher and Indriadson Indridi. "Cabinet Dynamics and Ministerial Careers in the French Fifth Republic". In *The selection of ministers in Europe. Hiring and Firing*, edited by Dowding Keith, and Dumont Patrick. Routledge, 2009. page 42

⁸⁷ Elgie, R. "France", in *"Semi-Presidentialism in Europe"* R. Elgie (ed.), Oxford University Press 1999 p. 69, fig. 4.1.

successful. Such situation occurred on October 1962, when PM Pompidou's government was defeated by National Assembly⁸⁸. However even if successful, the vote of no-confidence is not absolute, meaning that President still will have right to decide to dismiss or not the PM. In addition the President has discretionary power to dissolve the National Assembly instead. Article 12 of the Constitution authorizes the President to dissolve National Assembly at any time after formal consultations with the Prime-Minister and Presidents of the Houses of National Assembly and Senate. The only restriction to this power is that President does not have power to dissolve the National Assembly within a year following this election. The history shows that such power was exercised more often than National Assemblies power to issue vote of no-confidence. In particular dissolution of National Assembly occurred 5 times, twice under De Gaulle, twice under Mitterrand, and once by Chirac⁸⁹.

So dismissal of the government in France falls into logic, and does not show much possibility for gridlock or political crisis. If President backed up by majority in National Assembly, he may sack the PM and the government, although it may result in catastrophic outcome. That was the case in 1997, when President Chirac (enjoying support of the coalition majority) decided to dissolve National Assembly to gain majority for his party. However the result of the election was catastrophic for Chirac, the rival Socialist party received majority of seats in Assembly (third cohabitation)⁹⁰, and therefore Chirac had to appoint the Socialist Prime-Minister.

⁸⁸ Kam, Cristopher and Indriadson Indridi. "Cabinet Dynamics and Ministerial Careers in the French Fifth Republic". In *The selection of ministers in Europe. Hiring and Firing*, edited by Dowding Keith, and Dumont Patrick. Routledge, 2009. page 44

⁸⁹ Elgie, Robert. *Political Institutions in Contemporary France*. Oxford University Press, 2003. page 112

⁹⁰ Ibid. page 119

2. Executive Dismissal Procedures in Russia

Comparing to the France, Russia has shorter period of President-PM relations. Starting from 1993 Russian government was led by nine Prime-Ministers. Again as noted by Elgie the reason for dismissing Prime-Minister is always one of two; either he is too popular, or too unpopular. The former was the case with PM Chernomyrdin. According to sources, President Eltsin was apparently jealous of the prominent role that Chernomyrdin had been playing in domestic and international affairs, making president “almost redundant”. After 6 years of Premiership in 1998 Chernomyrdin was unexpectedly dismissed⁹¹. In doing so President exercised his constitutional power to dismiss the PM and his government.

On the opposite side, State Duma provided with a right to initiate and pass vote of no-confidence. However according to the constitution even if State Duma will passes the vote by majority, the President is still provided with choice either dismiss the PM and government or reject. If during next three months State Duma will also successfully exercise vote of no-confidence the President may dismiss the PM and his cabinet or dissolve the State Duma⁹². So such situation restricts State Duma’s right to effect the PM and his cabinet. So far in two decades not a single government in Russia was dismissed by vote of no-confidence.

⁹¹ White, Stephen “Russia” in *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999, page 224

⁹² Article 117 of the Russian Constitution

3. Executive Dismissal Procedures in Kyrgyzstan

In previous chapter, I showed that although constitution provides President with strong set of powers, it is Parliamentary majority that proposes PM candidacy to President, and President has no choice but to appoint PM. This is directly written in constitution (not form of convention), and will mean that PM and his cabinet politically linked to Parliament and those responsible to them. However when one looks at how the government is dismissed one can see that there is a little off balance of the powers.

First option is the self-resignation. Article 72 of the Constitution provides the PM or his ministers a right to request the President to his/her own resignation. In cases when PM asks to resign the whole government will be dismissed. Important to note, that in case the PM will decide to resign, the Parliamentary majority party still will have a right to propose the candidacy for the Premiership to the President. In other words if Prime-Minister because of personal motivation will decide to leave the position, it does not effects the majority parties right to nominate the next candidacy, as long as it still majority party.

Second option is when President upon his own initiative can dismiss PM or individual cabinet member. This power of the President seems provocative, during the cohabitation when the Prime-Minister and government is nominated by opposition majority, President still will have power to dismiss the Prime-Minister and the government⁹³. The logic would be not to allow the President to have such discretionary power. Unfortunately it is not safe to hope, that President

⁹³ Article 46 of the Kyrgyz Republic Constitution

will not use his power during the cohabitation. Exactly for the reason that Kyrgyz politicians lack respect for unwritten conventions, the procedure of the appointment was written into constitution in such details, unlike the French constitution.

The third option is vote of no-confidence by Parliament. Kyrgyz Constitution unlike Russian and France provides with two types of vote of no-confidence. First one is regular vote of no-confidence⁹⁴, which means the vote to the whole government to resign. For this Parliament needs a simple majority out of all members of Parliament to pass the vote. However, similarly to the Russia, Kyrgyz President still has a choice to accept the will of Parliament or to reject⁹⁵. If in next three months Parliament again will exercise its vote of no-confidence, President may dissolve the Parliament. So similarly to Russia, Kyrgyz Parliaments vote of no confidence is not binding upon President, and may result in dissolution of Parliament itself⁹⁶. It is strange, taking into account that it is the Parliament which chooses Prime-Minister.

However unlike the Russian or French, Kyrgyz Constitution provides Parliamentarians with a right of individual vote of no-confidence⁹⁷. In other words they can vote on individual minister with whose policy they not pleased. The simple majority is needed in order to pass successful vote of no-confidence. President still has a right to reject the successful vote, however more importantly if in next three month period the Parliament will again successfully pass vote of no confidence in same minister, then President has no choice but to dismiss the minister. So this

⁹⁴ Ibid Article 71 (3)

⁹⁵ ibid

⁹⁶ ibid

⁹⁷ Ibid Article 71 (8)

strengthens the responsibility of the cabinet members to Parliament, by providing later with a right of individual vote of no-confidence.

So overall, Kyrgyz constitution comparing to the French and Russian provide the Parliament with a little more chances to effect the work of the executive in terms that it provides with a right to pass an individual vote of no-confidence which will not put its own work in danger of dissolution by President. However, in future further amendments can be made in order to make relations between government and parliament more closely. For example to eliminate Presidents power to dissolve the Parliament, if later passes vote of no-confidence in government. Another further change might be introduction of the so called constructive vote of no-confidence.

Conclusion

As was noted in introduction the main criticism of the semi-presidential system is that tends to create situation of political gridlock and confrontation when both President (Head of the State) and Prime-Minister (Head of the Government supported by Parliament majority) enjoy powerful set of powers and administrative resources to carry out their policies. Especially such danger exists during the cohabitation when popularly elected President has to deal with opposition majority in Parliament.

In such periods one of the most important questions is how effective government will work? How it will be formed and dismissed, to whom it may be responsible? In this paper I describe the practice of France and Russia. Although they both semi-presidential, they have different approaches to formation of the government. For most of its short history Kyrgyzstan used to copy the system of Russia, where President always has the upper hand in appointment and formation of the Cabinet. This did not worked well for Kyrgyzstan, in particular in 16 year span from 1991 till 2007; Kyrgyzstan executive was lead by 13 Prime-Ministers (average of just above one year). President (Head of State) always was free to dismiss the Prime-Minister, who was a type of a scapegoat for all the failures of the executive.

However the 2007 Constitution, has changed this system, and introduced with the one where majority party chooses candidacy of the Prime-Minister, who leads the Government, and forms his Cabinet. However the procedure of formation has few questionable points. One of them is the situation with so called Presidents Institute, although established only in October 2009; this Institute immediately raises concerns regarding its functions, purpose and powers. This Institute

seems be even more powerful the Russian Presidents Administration. This together with the situation when President directly appoints certain key Ministers in Cabinet may lead in future cohabitations to the conflicts and gridlock in executive work.

Similarly, the provision concerning the Parliaments right to issue vote of no-confidence raises certain issues. First is that although provision regulating formation of the government was introduced, the provision regulating vote of no-confidence has left from previous Constitution and similar to the Russian provision. Where even if successful the vote of no-confidence can be rejected by President, and if repeated in next three months, the President may dissolve the Parliament. Although if it is the Parliament who plays the major role in appointing Prime-Minister, it's also has same right to dismiss him.

The biggest negative element of the Kyrgyz Constitution is however not the above mentioned vote of no-confidence procedure, but is the recent reform conducted by the President. By which he was able to directly control the work of the organs which traditionally would fall under the domain of the Cabinet, the example is Central Agency on Development and Investment under the Institute of the President. Such division of the executive into two Cabinets, one responsible directly to President, and the other responsible to the Prime-Minister may lead to serious conflicts between two.

However even though negative elements may prevail, there are also positive elements which are welcomed in Kyrgyzstan, and may be an example for other Central Asian State. In particular current Constitution provides Parliament with more active role in forming and dismissing the Cabinet. Other then nomination of the Prime-Minister, it also include approval of

the structure of the Cabinet submitted by Prime-Minister, and the right to exercise individual vote of no-confidence, by Parliament, which will not result in its dissolution.

Overall, the current constitution is kind of caught in the middle. The current constitution itself is a result of political tension between President and opposition. For the reason that it was adopted in short period of time, and was tend to please both President and opposition, it contains some aspects that in future might lead to conflicts.

Bibliography

I. Books and monographs

1. Bell, John. *French Constitutional Law*, Clarendon Press Oxford, 1992.
2. Elgie Robert, *Divided Government in Comparative Perspective*. Oxford University Press, 2001.
3. Elgie, Robert. *Political Institutions in Contemporary France*. Oxford University Press, 2003.
4. Elgie, Robert. *The Role of the Prime Minister in France, 1981-91*. St. Martin's Press 1993
5. Elgie, Robert. "France". In *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999.
6. Gallaher, Michael., Laver, Michael., and Mair, Peter. *Representative Government in Western Europe*. McGraw-Hill, 1992.
7. Kam, Cristopher and Indriadson Indridi. "Cabinet Dynamics and Ministerial Careers in the French Fifth Republic". In *The selection of ministers in Europe. Hiring and Firing*, edited by Dowding Keith, and Dumont Patrick. Routledge, 2009.
8. Okunkov, L.A. *President of the Russian Federation, Constitution and Political Practice (Prezident Rossiyskoy Federassii, Konstitutsiya i Politicheskaya Praktika)*. Infra M Norma ,1996
9. Sajo, Andras. *Limiting Government, an Introduction to Constitutionalism*. Central European University Press, 1999.
10. Theen, Rolf H. and Wilson Frank L. *Comparative Politics an Introduction to Seven Countries*. Prentice Hall, 1999.
11. White, Stephen "Russia" in *Semi-presidentialism in Europe* edited by Elgie Robert, Oxford University Press, 1999.

II. Constitution and Legal Acts

12. Constitution of the France (1958)
Available online in English at <http://www.assembleenationale.fr/english/8ab.asp#V>
(Official Website of the National Assembly www.assemblee-nationale.fr)
Last accessed on March 28, 2010.

13. Constitution of the Russian Federation
Available online in Russian at <http://www.constitution.ru/index.htm>
(Official Website of the Russian Constitution www.constitution.ru)
Last accessed on March 28, 2010
14. Constitution of the Kyrgyz Republic
Available online in Russian at <http://www.president.kg/ru/president/constitution/>
(Official website the President of Kyrgyz Republic www.president.kg/ru/)
Last accessed on March 28, 2010
15. Federal Constitutional Law of the Russian Federation on “Government”, from December 17, 1997. N 2-FKZ (N 2-ΦK3)
16. Decree of the Russian President “On System and Structure of the Government”, from May 12, 2008 #724
17. Constitutional Law of the Kyrgyz Republic on “Government”, from October 19, 2005 #155
18. Law of the Kyrgyz Republic on “Structure of the Government”, from October 22, 2009 #283
19. Regulation of the “Central Agency on Development and Investments”, from October 26, 2009
20. Resolution of the Russian Constitutional Court from December 11, 1998 #28-P(II)

III. Internet Materials

21. StateMaster.Com Encyclopedia: “List of the Prime-Ministers of the Kyrgyz Republic.
Available at (<http://www.statemaster.com/encyclopedia/Prime-Minister-of-Kyrgyzstan>)
Last accessed on March 24, 2010
22. Los Angeles Times: Kazakhstan lifts term limits on long-ruling leader.
Available at <http://articles.latimes.com/2007/may/19/world/fg-kazakh19>)
Last accessed on March 22, 2010
23. Radio Free Europe: Uzbek Election Watchdog Clears Karimov For Third Term.
Available at (<http://www.rferl.org/content/article/1079156.html>)
Last accessed on March 22, 2010
24. US Democracy Promotion Policy in the Central Asian Republics
Available at (<http://isq.sagepub.com/cgi/reprint/44/2/141.pdf>)
Last accessed on March 21, 2010

25. Radio Free Europe: Ousted Leader Says Kyrgyzstan Now 'Island Of Criminality,' Not Democracy. Available at (http://www.rferl.org/content/Akaev_Kyrgyzstan_Now_Island_Of_Criminals_Not_Democracy/1992681.html?page=1&x=1#relatedInfoContainer)
Last accessed on March 27, 2010
26. President of Russia, Official Website: Security Council
Available at (<http://eng.kremlin.ru/articles/institut04.shtml>)
Last accessed on March 25, 2010
27. Neweuroasia.net: Will Bakiev become a great reformist?
Available at (<http://www.neweurasia.net/politics-and-society/will-bakiev-become-a-great-reformist/>)
Last accessed on March 27, 2010
28. Official Web-site of the President: Institute of the President
Available at (<http://www.president.kg/ru/institut/>)
Last accessed on March 26, 2010

IV. Venice Commission Reports

29. European Commission for Democracy through Law. Opinion on the Constitutional Situation in the Kyrgyz Republic. Adopted 14-15 December 2007.
30. Fogelklou, Anders. Comments on the Constitutional Situation in the Kyrgyz Republic. European Commission for Democracy through Law.
31. Tanchev, Evgeny. Comments on the Constitutional Situation in the Kyrgyz Republic. European Commission for Democracy through Law.