

Formation and Dismissal of Executive Branch:
Comparative Analysis of France, Georgia and Germany

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Abstract

Present thesis examines separation of powers between the executive and legislative branches in France, Georgia and Germany. This is made on the example of formation and dismissal of cabinets and prime ministers. The paper illustrates scope of powers accorded to each branch and their position in relation with each other. It also determines some of the factors which beyond constitutional norms influence extent of powers of these political branches. This comparison demonstrates existing similarities and differences among the political systems of the three countries. The idea of this comparison is to identify what can be shared by Georgia from the practice of the two countries. At the end there will be made some recommendations for Georgia.

Introduction

One of the main requirements of democratic state is a separation of powers between different branches of government in order to prevent concentration of power in one of the political branches that would lead to tyranny. Why separation of powers is considered so important? As it was emphasized the aim of separation of powers is to protect freedom of each individual.¹ When the absolute power is in the hands of one branch “arbitrary government results, freedom suffers, and real democracy does not exist”.² As it is considered democracy does not exist without separation of powers and the latter presents “the backbone of democracy”.³

Separation of powers implies the existence of three branches executive, legislature and judiciary. But separation of powers does not mean that the branches are isolated from each other but contrary to this they are in constant relation with each other through a system of checks and balances.⁴ The idea of this reciprocal relation is to enable each branch to protect itself from the encroachment of other branches and not to permit any of the branches to become dictator in its sphere of competence.

The aim of the paper is not to discuss generally separation of powers between the three branches. The purpose of the work is to examine how the power is divided between two political branches executive and legislature and in what way they influence and balance each other. But due to the lack of space this will be done only on the example of formation and dismissal of executive branch.

Why was chosen this topic? After democratization many countries in Central and Easter Europe and former USSR were faced with the problem how to arrange different

¹ H.C. 3267/97, *Rubinstein v Minister of Def.*, 52(5) P.D. 481, 512 [1998-9] IsrLR 139 in “The Judge in a Democracy”, Aharon Barak, Princeton University Press, 2006, p.35.

² “The Judge in a Democracy”, Aharon Barak, Princeton University Press, 2006, p.35

³ Ibid, p.36

⁴ Ibid, p.36

branches of government and what is the best distribution of powers among them.⁵ Georgia isn't exception. Though certain time passed after adopting constitution of Georgia as of independent state and since that country changed two political systems presidential and semi-presidential there are still debates about how powers should be distributed between different branches. This concerns primarily relations between executive and legislature. The necessity of changes is caused by the fact that current separation of powers between the executive and legislature is considered as one of the reasons of recent political crisis. It is even suggested that the country should shift to parliamentary system of governance. There was even created special State Constitutional Commission for drafting amendments to the constitution. So the importance of the principle of separation of powers is not the only reason of choosing this topic. But this also coupled with the real necessity of searching new ways of distribution of powers between executive and legislature which would work better in Georgia in other words which would establish more balances powers of two branches as the current system is criticized for the concentration of too much power in one branch.

Semi-presidential system to which belong France and Georgia is characterized by Sartori as having directly elected president who is independent from parliament and shares power with the prime minister while the latter together with the cabinet is accountable before the parliament.⁶ Parliamentary government to which belongs Germany is characterized not by separation of powers but by power-sharing between the parliament and the executive where the appointment, dismissal of government and its activities depend on the support of parliament.⁷

The purpose of the paper is not to say which system is good or bad. There is not ideal model of separation of powers. Contrary to this there are different possibilities to arrange

⁵ "Semi-Presidentialism in Europe", R. Elgie (ed.), Oxford University Press, Oxford 1999, p.281

⁶ "Comparative Constitutional Engineering: An inquiry into Structures, Incentives and Outcomes" Giovanni Sartori, New York University Press, 1994, p.132

⁷ Ibid, p.101

government branches and any of it is acceptable as long as it can protect individual freedom.⁸ There are also different opinions in respect of the same system. So each system has its supporters and opponents. For example in respect of semi-presidential system Duverger asserted that it has “become the most effective means of transition from dictatorship towards democracy”.⁹ While according to other writers this system is more fragile and inclined to conflicts due to its nature of dual executive.¹⁰

As regards parliamentary system it is also criticized. This is caused by the way of formation of government which minimizes any opposition between executive and legislature and consequently reduces possibility of balance of power.¹¹

The aim of the work is to compare relations between president, government and parliament in the process of formation and dismissal of cabinet in France, Georgia and Germany, to see how powers are distributed among them and who has the leading role in it. This will be done in order to show in what way Georgia is different from these two countries and if there is anything what can be shared from their experience. The work will try to demonstrate also which factors beyond constitutional norms stipulate the dominant role of any of the mentioned three political actors. This is also important in understanding more precisely scope and reasons of their real powers.

France was chosen because it is semi-presidential country like Georgia where this system operates for rather long time than in Georgia and it will be interesting to see in what way they are different. Germany was chosen because its parliamentary system is absolutely different from semi-presidential system of Georgia and this comparison will better demonstrate their differences. This comparison shall in turn facilitate making certain

⁸ “Limiting Government: An Introduction to Constitutionalism”, Andras Sajó, Central European University Press, 1999, p.73

⁹ Supra note 5, p.282

¹⁰ Ibid, p.282

¹¹ Supra note 8, p. 84

recommendations for Georgia in its endeavor to establish more balanced distribution of powers between the two political branches.

Present paper is divided in two chapters. The first chapter will focus on the role of president and parliament in the formation of cabinet and appointment of prime ministers. The second chapter respectively will illustrate the role of president and parliament in the dismissal of cabinet and prime minister and also dissolution of parliament. The division of chapters in that way and discussion of the issue in terms of the respective roles of president and parliament must make it easier to see similarities and differences among the countries.

Chapter I. Formation of Cabinets and Appointment of Prime Ministers

1.1. Role of President in the formation of Cabinet and Appointment of Prime Minister

This chapter will describe the roles of the president and parliament in the formation of government and appointment of prime minister in order to demonstrate how powers are distributed among them. It will shed light on those factors which contribute to strengthening the position of any of these actors in the given process.

Constitution of the Fifth Republic was adopted in 1958. The text of the Constitution gave possibility of its interpretation in two different ways which was either presidential or parliamentary regime.¹² This new constitution was drafted under the supervision and control of General de Gaulle who was more in favor of the presidential reading of the document.¹³ After the referendum of 1962 Constitution was amended and direct election of the president introduced. Based on this the Fifth Republic was transformed into a semi-presidential regime.

In France executive branch is headed by president and prime minister. According to article 8 of the Constitution Prime Minister (PM) is appointed by the president. Functions are

¹² "Principles of French Law", Second Edition, J.Bell, S. Boyron, S. Whittaker, Oxford University Press, Oxford, 2008, pp. 145-146

¹³ Ibid, p.146

divided between these two political figures. This presents the “amalgamation of both presidential and prime ministerial responsibilities”.¹⁴ This is the reason why France has dual executive or executive dyarchy. Each of them is invested with certain powers and they “govern France together”¹⁵. But the question arises whether they are equal in this power-sharing situation. The answer is no. Though this semi-presidential system is executive dyarchy there is hierarchy between the two. One political actor usually has more power than another.¹⁶

Based on textual reading of the Constitution it seems that the prime minister is a dominant figure as he is the head of government responsible for national policy, while the president has defined but limited powers and for carrying out most of its powers president needs the countersignature of the prime minister that “curtails their autonomous manipulation by the president”.¹⁷ On the other hand it can be said that constitution clearly divides powers between the two charging one with responsibility for “high” politics and the other for domestic affairs.¹⁸ Besides that there is also certain overlap of powers in some fields. So only this textual analysis cannot create the real picture of who is a leading figure in the executive. In fact Constitution provides certain resources for either presidential or prime ministerial dominance.¹⁹

For the most part of the history president was the leading figure and prime minister acted under his leadership. The most powerful presidents were in the early years of the Fifth Republic. What are the reasons that determine who will be leading actor in relations between president and prime minister? This can be explained by three elements: 1. Constitutional

¹⁴ Supra note 5, p.70

¹⁵ Ibid,

¹⁶ Ibid, p. 71

¹⁷ “Dyarchic Presidentialization in a Presidentialized Polity: The French Fifth Republic”, Ben Clift, Book title “Presidentialization of Politics: A Comparative Study of Modern Democracies”, edited by Thomas Poguntke and Paul Webb, Print publication date 2005, Published to Oxford Scholarship Online April 2005, p. 222

¹⁸ Supra note 5, p.77

¹⁹ Supra note 5, p.75

powers of the President; 2. Popular legitimacy; 3. His position as a leader of parliamentary majority.²⁰

As it was mentioned above since 1962 president is directly elected by the population. This guarantees his legitimacy and strengthens his position as a leader. De Gaulle applied his historical legitimacy in order to raise the role of the president and render this institution more powerful. As far as it was supposed that future presidents will not have enough personal legitimacy to maintain the presidential reading of the Constitution de Gaulle initiated reform rendering president directly elected, because as it was believed only strong legitimacy could contribute to the strengthening of the president's position as a powerful leader.²¹ This is one of the important differences between the president and the prime minister, the former is the public's favorite while the latter is appointed by the president.²² So one of the factors which determines the leadership of the president is his mandate received directly from the public. Besides that as it was shown the personal authority of the first president of the Fifth Republic played an important role in the formation of the strong presidency and creation of the vision that the president should be the principle source of leadership.²³ Due to this it can be said that the personal authority also determines the contours of the president's powers. One more factor which makes the position of president stronger is the fact that according to the Constitution he is not accountable before any of the political branches.

Among the above mentioned factors determining the scope of president's dominant position the third element can be considered as one of the most important because support of

²⁰ "Cabinets in Western Europe", Jean Blondel and Ferdinand Muller-Rommel, Second Edition, 1997, p. 100

²¹ Supra note 12, p.149

²² "The Government and Politics of France", Andrew Knapp and Vincent Wright, Fifth Edition, First published 2006, p.96

²³ "Cohabitation: Divided Government French-Style", Robert Elgie, book title "Divided Government in Comparative Perspective", print publication date 2001, published to Oxford Scholarship Online November 2003, p.109

the majority is a pre-condition for the effective application of all other powers.²⁴ As Duverger stated powers of the president depend on the nature of the parliamentary majority and also on the relation of the president with that majority.²⁵ When president has single-party majority or he leads a coalition in which his party is stronger than other coalition partners then he enjoys the maximum power. There may be also another distribution of powers within the coalition. President's party can be the weaker partner or of equal strength in the coalition. But even in that case president still has the support of the majority, though he probably will have to take into account the position of coalition partners to a larger extent than when he has majority in the coalition or single-party majority without coalition.

Having of majority underlines the importance of political parties. At the beginning of the Fifth Republic the role of the parties was diminished. The first president De Gaulle refused to rely on any of the existing parties and even prohibited for political parties to use his name in the election campaign. During the first years of the republic there was no stable legislative majority.²⁶ The turning point in raising the importance of political parties was the 1962 parliamentary election when president de Gaulle expressed hope that he would be able to get parliamentary majority in the election which was the acknowledgment of importance of parliamentary majority and with it raised the importance of parties in political life of the republic.²⁷ Gradually political parties became more stable and the approach of president de Gaulle to rely on party support was followed also by successive presidents.²⁸ Presidential party became a characteristic party type for the Fifth Republic whose primary function is to provide support for the president. The interdependence between the president and the party will increase even more in future when as a result of the reform presidential and parliamentary

²⁴ Supra note 22, p.100

²⁵ Supra note 5, p.80

²⁶ "The "Newest" Separation of Powers: Semipresidentialism", Cindy Skach, International Journal of Constitutional law, published by Oxford University Press and New York University School of Law, January 2007, from Westlaw

²⁷ Supra note 17, p.222-223

²⁸ Supra note 26

elections will be held with short intervals.²⁹ So in order to ensure the support of the majority it is essential for a future president to be a “party man”.³⁰

Support of majority in the parliament allows president to choose prime minister according to his will.³¹ This in turn enables president to be the real leader and govern without any opposition from the prime minister. He may appoint prime minister belonging to the same majority. Usually prime ministers are selected exactly because of their own political authority in order to strengthen the position of the president in the president’s party or with the coalition partners.³² In case when president has the majority the scope of political leadership of the prime minister is determined by the will of the president who can either restrict it or expand it.³³ This situation renders prime minister dependent on the president and accordingly puts him more in a subordinated position. As a result of this we receive hierarchical relationship where the president is pre-eminent.

For the first period of the existence of the Fifth Republic there was unified or consolidated government when parliamentary majority supports president. Consequently the presidents enjoying this support were more powerful. But the power may be shifted also in favor of prime minister. This occurs when the majority in the National Assembly (NA) is in opposition to the president and president has to appoint prime minister from the majority opposing him.³⁴ Then the prime minister becomes the choice of the public not the president’s.³⁵ This means decrease of the authority of the president because his party was not able to acquire people’s support. This situation is called as “cohabitation” or “divided political majorities”.³⁶ There were three cases of cohabitation in the history of the Fifth Republic. First

²⁹ Supra note 17, p.225

³⁰ Supra note 26

³¹ Supra note 5, p.73

³² Supra note 22, p.106

³³ Supra note 20, p. 109

³⁴ Supra note 23, p.106

³⁵ Supra note 22, p.96

³⁶ Supra note 26

two took place during the presidency of François Mitterrand and the third during the presidency of Jacques Chirac. In all three cases presidents were not able to get majority in the parliament. In the period of cohabitation though the president retains its constitutional functions his real power is limited as far as prime minister becomes the principle holder of the executive power.³⁷ This shift of power is more likely to lead to conflicts between the two if both of them strive to hold the leading position in the domestic policy.³⁸ Though presidents asserted that appointment of PM is their prerogative³⁹ that is undisputed based on the Constitution still cohabitation deprives them of any real authority in this procedure. One issue that must be mentioned in respect of cohabitation is that though the political power is in the hands of the PM his position is still weak, because he has to face resistance on the one hand from the president and on the other hand from his own majority camp, whom he has to persuade continuously that “he is their best electoral asset”.⁴⁰ Even during the cohabitation president still maintains significant powers.⁴¹

One of the reasons producing cohabitation in France was regarded existing interval between the elections of the president and the National Assembly.⁴² President was elected for seven years term and the National Assembly for five years term. During the presidents’ term of office new election of parliament was inevitable. It is a test for the president to check if he still enjoys support of electorate. There is high chance that electorate dissatisfied with the policies of the president/government could give priority to the opposition party which would lead to cohabitation. The aim of the reform carried out in 2000 which reduced the presidential term to five years in order to connect it with five-year parliamentary term was to eliminate

³⁷“France: Delegation and Accountability in the Fifth Republic”, Jean-Louis Thiebault, book title “Delegation and Accountability in Parliamentary Democracies”, edited by Kaare Strom, Wolfgang G. Muller, Torbjorn Bergman, First published in 2003, Oxford University Press, p.326

³⁸ Supra note 26

³⁹ Supra note 37, p. 333

⁴⁰ Supra note 22, p.107

⁴¹ Ibid, p.129

⁴² Supra note 23, p.114

possibility of any future cohabitation.⁴³ Due to its aim the reform is reasonable because as history showed cohabitations always occurred during the mid of president's term rather than at the beginning of it. This amendment confirms importance of the time of presidential election as one of the factors which determines shift of power within the executive and as it was considered the aim of the amendment was to underpin the presidential character of the Fifth Republic.⁴⁴

As it was said power of the president depends on the support of the majority in the National Assembly. In respect of this important factor is the "majority-building capacity of the country's electoral system".⁴⁵ During the Fifth Republic in the elections of the National Assembly was applied two-ballot majority system which is able of creating larger parliamentary majorities. This system gives priority to the small parties in the first ballot, but in the second one big parties or coalitions of parties prevail.⁴⁶ In case when the electoral system produces many small parties in the parliament it is still possible to gain support of majority but it will be connected with more difficulties as far as this requires conduct of negotiations and creating alliance from several small parties. Besides that this kind of alliance will be more tended to quick dissolution. Single-party majority or two party coalitions is more stable and presents better force for reliance. In other words electoral system presents one of the relevant pre-conditions for obtaining larger majority in the National Assembly and accordingly determining the strength of the position of president.

As regards the appointment of the ministers according to article 8 of the Constitution president appoints them on the proposal of prime minister. Due to its role in the formation of

⁴³ Supra note 17, p.224

⁴⁴ Ibid,

⁴⁵ Supra note 26

⁴⁶ Supra note 23, pp.114-115

cabinet, in other words his power to nominate them, PM stands above the ministers. So here we have vertical relationship between the prime minister and the ministers.⁴⁷

Though the candidates must be selected by the prime minister in practice it is negotiated with the president.⁴⁸ This negotiation seems logical as far as the president takes final decision in the approval of the candidates. Due to this fact ministers are personally responsible to the president that makes government of the Fifth Republic more presidential government.⁴⁹ So outside cohabitation cabinet members will be closer to the president who will have real influence on their selection. Contrary to this during cohabitation period actual role of the president in the formation of cabinet will be minimized as well as dependence of the ministers on him.⁵⁰ But even at times of cohabitation due to importance of the presidents constitutional functions in foreign affairs he was actively intervening in the selection of minister for foreign affairs.⁵¹

Another factor which makes ministers more related to the president is the requirement that minister portfolio is not reconcilable with the parliamentary seat.⁵² The Fifth Republic is characterized by the separation of government and political parties. This approach comes from de Gaulle who refused the idea of government based on parties. Because of this separation usually ministers rarely have any leading positions in the party.⁵³ President has legal power to appoint technocrats who are loyal to him and who have no party base.⁵⁴ Mostly they are appointed for their expertise and receive their legitimacy directly from the president. Consequently this renders them dependent on the president. The aim of this separation was to

⁴⁷ Supra note 20, p.102

⁴⁸ Supra note 37, p.333

⁴⁹ "Cabinet Ministers and Parliamentary Government", edited by Michael Laver and Kenneth A. Shepsle, Cambridge University Press, First published 1994, p.144

⁵⁰ Ibid, p.144

⁵¹ Ibid, p. 144

⁵² Ibid, p.148

⁵³ Ibid, p.141

⁵⁴ Supra note 26

isolate ministers from party politics⁵⁵ and in that way probably to increase their dependence on the president and prime minister. Due to this governments became more administrative bodies not concentrating any serious political power.⁵⁶

This separation between government and political parties is considered as problematic by Skach as far as according to him exactly parties provide the connection between the citizens and the government in a democratic state.⁵⁷ Probably in the importance of the connection between the citizens and government he means the ability of parties to control activities of its members in order not to give them possibility to overstep certain boundaries which can work against the prestige of the party. So the party will be more interested to have tighter control on its members in order to secure its popularity in the electorate. In case the government acts against the interests of the citizens and the state the parliament can raise the vote of no confidence and dismiss it. But as we will see later this procedure is not easy to carry out. Due to this it is likely that the control of parties on its individual members can be more effective tool rather than vote of no-confidence against the whole government.

Constitution of Georgia was adopted in 1995 after acquiring independence from Soviet regime. In contrast to the Fifth Republic, Constitution of Georgia from the very beginning clearly opted for creating strong president. In February 2004 amendments were made in the Constitution and the system of government was transformed to semi-presidential in accordance with the French model.⁵⁸ These amendments granted to the president more powers. But as it was indicated in the Opinion of Venice Commission establishment of president with such powers does not entirely correspond to the chosen model.⁵⁹

⁵⁵ Supra note 22, p.129

⁵⁶ Supra note 49, p.148

⁵⁷ Supra note 26

⁵⁸ English version of the Constitution is available at www.parliament.ge

⁵⁹ “Opinion on the Draft Amendments to the Constitution of Georgia”, Adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004), paragraph 7, available at: [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)

Adoption of these amendments was possible due to the high popularity of a new president. After Rose Revolution of 2003 President Saakashvili was elected with overwhelming majority and subsequently enjoyed strong personal authority and legitimacy. He was considered as an unconditional leader of the country. His influential position was a determining factor in the adoption of amendments. The argument in favor of strengthening constitutional powers of the president was necessity of resolving problems faced by the state which could be achieved only in case of powerful president. So the existing situation contributed to the establishment of current system where personality of the president played determinative role as in France.

As a result of carried out amendments was created position of prime minister who is a head of government. So here we also have double-headed executive. Contrary to France in Georgia text of the Constitution unambiguously determines who between these two political figures has dominant position. The functions are clearly divided between them with no overlapping powers. Though the prime minister has an important role of leading government according to the constitution president seems to be a pre-eminent figure.

According to Article 80(2) president selects the candidate for prime minister after consultations with parliamentary factions. This requirement should ensure participation of all political forces including parliamentary minority groups in the selection procedure. It will present a good pre-condition that later government will have more chances to receive support of parliament. Though this consultation is constitutional requirement it is less likely that president who has majority support in the parliament and enjoys high popularity will conduct it with minority factions. So probably prime minister will be his independent choice.

Until now none of the prime ministers possessed any personal authority or influence. They were not political figures having any popularity within the electorate. Though prime minister is a second person in the political life of the country the lack of personal popularity

renders them more as administrators who are absolutely subordinated to the president. Probably in the selection of candidates the lack of political popularity was one of the determinative factors as it prevents prime minister to become a rival of the president and makes him subordinated to the president that in turn strengthens the position of president.

If president's popularity will be decreased and he will not be able to get majority probably like the president of France he will be restricted in selecting candidate. The precondition for this possibility exists in the constitution as far as president is elected for five years term and the parliament for four years. But still one year should not make much difference. It is less likely that in one year president's prestige will be so deteriorated that he will not be able to get majority. Until now there was no such practice and president always had majority in the parliament. So it remains to see it in future if this interval between elections will produce any "cohabitation" and how it will influence president's powers.

Here as in France in addition to constitutional powers position of president will be stronger if his party has majority in the parliament. Constitution permits president to hold position in the party.⁶⁰ Until now presidents were always leaders of the party and in fact success of the party was usually connected with the popularity of its leader. In Georgia presidents were always integrated in party politics and their popularity presented the principle factor for the party to win elections. So the importance of relation between the two was recognized and established from the very beginning.

As regards ministers Article 70 (1,b) of the Constitution says that president gives consent to the prime minister to appoint minister while article 80(2) enhances the power of the president by stating directly that prime minister shall negotiate candidates with the president. Involvement of the president in this process is probably inevitable in the situation where the prime minister is also chosen by the president according to his free will and where

⁶⁰ Article 72 of the Constitution of Georgia

president enjoys full powers. But as it can be seen it is also his constitutional power to be consulted by the prime minister in the selection process.

In contrast to France ministers are allowed to be members of the political parties.⁶¹ But this is not a requirement and most of the ministers are not members of political parties. In case there is a single-party majority and president with his chosen prime minister plays a leading role in the selection of ministers their membership of the political party will not make them less dependent on the president and will not increase role of parties in controlling formation and also activities of the cabinet. Role of political parties will become important when president will have to form coalition government, which was not practice until now and it is difficult to say to what extent this will restrict constitutional powers of president.

The German Basic Law was adopted in 1949. One of the main aims of its drafters was to shape such a political system which could avoid in future those problems characteristic for the Weimer Republic. The Basic Law must have created a system of clear authorities and responsibilities and also checks and balances in order to prevent emergence of a new totalitarian regime.⁶² So this principle document of the state is a result of its historical experience and distribution of powers among political institutions is motivated by that history.

Executive branch in Germany is also headed by two political figures. These are the Federal Chancellor and the Federal President. But here the Federal Chancellor is equipped with more legal and political powers than the president.

Let's start from examining the powers of president. Federal president is more a figurehead who does not play any significant role in everyday political decision-making process.⁶³ He has more ceremonial and representative functions. Contrary to the above discussed two countries president in Germany is not directly elected by the population.

⁶¹ Ibid, Article 81² (4)

⁶² "Politics in Germany", Second Edition, Russell J. Dalton, 1993, Harper Collins College Publishers, p. 46

⁶³ "Presidents and Prime Ministers", Edited by Richard Rose and Ezra N. Suleiman, American Enterprise Institute, 1980, p.141

According to Article 54 he is elected by the Federal Convention for five years. So he does not enjoy popular legitimacy which is a first indication that he is not a strong political actor. The purpose of this regulation was to prevent emergence of any new “charismatic leader”.⁶⁴

Usually presidents belong to the most powerful parties in the Bundestag and many of them even occupied senior positions in the party. But after election they are not involved in the party politics.⁶⁵ A link with the political party in majority supposedly does not contribute to the strengthening of the president’s institution even politically. Indirect election renders him dependent on the party as far as membership of the party and his position in it are probably pre-conditions for his election. Though the party may be interested in having a president popular in the electorate in order to increase its own authority it is still depended upon the party to decide who shall be elected to the post. Some presidents were able by addressing problematic and sensitive issues of the nation to gain popularity and accord some political significance to the post of president.⁶⁶ But constitutional powers of the president still remain limited which will prevent him to become the leading political figure even in case of his popularity. Besides that raising the importance of the presidents’ office and at least to some extent influencing the formation of political climate as it was done by president Heuss depends also on the personal abilities of the president. So though there is some possibility of making the office more influential this is limited by the constitution on the one hand and depends on the characteristics of the president on the other hand.

In respect of appointment of chancellor according to Article 63(1) president proposes a candidate for Federal Chancellor to the Bundestag. He must appoint the person who receives the majority of votes. So he does not have any power to go against the will of the Bundestag and reject the appointment of the elected person. As far as president must propose candidate

⁶⁴ “Political Institutions In The Federal Republic of Germany”, Manfred G. Schmidt, First published 2003, Oxford University Press, p.38

⁶⁵ Supra note 62, p.66

⁶⁶ Supra note 62, p.67

for chancellor does it mean that he can propose according to his personal choice? Though according to the text of the Basic Law a conclusion can be that it belongs to the discretion of the president to choose a candidate in fact this process is not regulated only by constitutional norms. Usually parties nominate their candidate for chancellor before elections.⁶⁷ They choose candidate who is popular among the electorate in order to receive more votes. If the party wins election and that candidate becomes chancellor he will enjoy more autonomy based on his popular support.⁶⁸ So the popular support is one of the factors which will help chancellor to come to office and strengthen his position as a leader. In case the party will not get majority in coalition there may be need for negotiation about the candidacy of chancellor with coalition partners. As a rule candidates are chosen by the political parties long before his election in the legislature and the principle factor in the selection is the allocation of parliamentary seats to the parties after the election to the Bundestag.⁶⁹ Candidate does not always belong to the largest party because candidate is also selected by the fact if he can receive support of majority and due to this there were cases when chancellors belonged to the second largest party.⁷⁰ So president is restricted in the selection of a candidate and generally in the fulfillment of this function he is subordinated to the parliament.⁷¹

According to Article 64 of the Basic Law federal ministers are appointed by the president at the proposal of the chancellor. Here arises a question whether president can reject the candidate proposed by the chancellor. According to the text this is possible. But probably that kind of rejection will not strengthen his position and may have adverse effect on his relation with the chancellor which must not be in his interests especially if the chancellor has majority in the parliament. Besides that in most of the cases partisan affiliation of the

⁶⁷ Supra note 6, p.105

⁶⁸ Supra note 63, p. 149

⁶⁹ Supra note 64, p.35

⁷⁰ Ibid,

⁷¹ Ibid,

president and government were the same.⁷² Taking this into account if the president and candidate for the post of the minister belong to the same party it is less likely that president will be against his/her appointment.

The second political figure in the executive is the chancellor. Drafters of the constitution opted for the strong chancellor as a chief executive of the country. The chancellor usually has a support of the majority in the parliament. This coupled with his position as a head of cabinet and his constitutional functions makes him a powerful political figure. Due to his role in the political life of the nation the existing system is referred to as a Chancellor Democracy. It means that the 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”.⁷³ On the one hand it is regarded that this predominance of the position came from the way how the first chancellor, Konrad Adenauer, applied his constitutional powers and the influence he had based on his personality and popular support.⁷⁴ On the other hand it is regarded that predominance of the position is rooted in the constitution itself.⁷⁵ Probably the strength of the position is guaranteed by combination of all these factors. As it was mentioned above popularity of the chancellor determines level of his independence and contributes to becoming powerful leader. Besides that personal abilities to be leader and to apply the granted powers fully are also very important conditions. But alone only these factors cannot create a powerful office if in addition to these there is not certain basis given for it in the constitution.

As history showed there were some chancellors who were more powerful and others who were weaker as far as they did not use all the available powers of the office.⁷⁶ But this can be explained not only by the fact that they did not possess necessary personal characteristics for becoming influential leaders. One other factor which also determines the

⁷² Ibid, p.38

⁷³ Ibid, p.30

⁷⁴ Supra note 63, p 144

⁷⁵ Ibid,

⁷⁶ Supra note 64, p.30

scope of real powers exercised by the chancellor is the support he has from his party and also from the members of the coalition.⁷⁷ As it is considered in order to preserve power decisive is not the popularity in the electorate but the party support.⁷⁸ Though party support is very important for the chancellor in order to become a real leader and govern effectively losing this support can be caused exactly by disability of chancellor to govern in other words lack of necessary personal characters for a leader or by losing popularity among the electorate. Accordingly all these factors may be in close connection with each other. So the presence of all of them can be considered as important for being strong chancellor.

Despite the fact that the Basic Law created the chancellor as an influential position his powers are still limited in case of selecting federal ministers. He cannot rely only on his personal opinion but he should take into account the position of coalition partners and also requests from his own party.⁷⁹ Even the most powerful chancellor Adenauer had to form his cabinet according to the party demands. This underlines the dependence of the chancellor on the party and importance of having its support.

As a rule government is formed by the parties having majority in Bundestag. A precondition for becoming a minister is to be a member of a party and there were rare cases when appointed minister was not affiliated with a party. Even if they are appointed by the chancellor from outside the party usually they try to have good relations with parties forming the government and also become a member of the Bundestag.⁸⁰ The chancellor and ministers come from majority party⁸¹ and accordingly their real power will be determined by the extent of support from their parties. Besides that they are usually members of the parliament which is characteristic for parliamentary states.

⁷⁷ Supra note 63, p.147

⁷⁸ Ibid, p.149

⁷⁹ "The German Polity", David P. Conradt, Fourth Edition, Longman, 1989, p.153

⁸⁰ "Germany: Multiple Veto Points, Informal Coordination, and Problems of Hidden Action", Thomas Saalfeld in "Delegation and Accountability in Parliamentary Democracies", edited by Kaare Strom, Wolfgang G. Muller, Torbjorn Bergman, First published in 2003, Oxford University Press, p.356

⁸¹ Supra note 49, p.152

Because of this link between the executive and legislature the separation between them is not strong. In this system parties play the central role. Due to their role in political life of the country Germany is often called as a “party state” or a “party democracy”.⁸² Definition of this term is that all political decisions are prepared and made by political parties.⁸³ The involvement of parties in the formation of government must contribute to the existence of more stable government because it will have majority support to carry out its program. On the other hand it can be said that there may be less chances of calling government accountable. But this negative possibility can be reduced by the fact that parties provide a link between the society and the government. Electors vote for party according to the efficiency of government. So the public can have indirect influence on the government activities through the election of the parties.⁸⁴ In that situation parties have more interest to control government activities and in case of necessity hold it accountable.

1.2. Role of Parliament in the formation of cabinet and Appointment of Prime Minister

In France constitution accords no power to the parliament in the selection of either PM or the ministers. A newly created cabinet is not obliged to appear before the National Assembly and receive its support. As set forth in article 49(1) only after deliberation with the Council of Ministers prime minister may present government’s program or a general policy statement for the vote of confidence. Parliament does not have the possibility to take part in the formation of the cabinet. Cabinet can start functioning without any approval from the parliament. It was declared by PM Pompidou that cabinet exists when it is appointed by the president without need of any approval from the parliament and opposition parties can always

⁸² Supra note 80, p.349

⁸³ Supra note 79, p.82

⁸⁴ Supra note 62, p.280

initiate a censure motion in order to check cabinet's support.⁸⁵ This approach was followed also by other prime ministers.⁸⁶ So whether government's program will be presented before the parliament immediately after its formation for receiving its support depends on the decision of prime minister and cabinet. In practice probably more on the will of the prime minister because as we have seen he stands above the ministers and any consultation with them in this regard may have more formal character. When president has majority or there is cohabitation with prime minister as a leader of the executive it is less likely that government will not be able to get necessary support from the parliament. Even when there is a coalition majority the probability of failing government is low. Notwithstanding this fact the non-obligatory nature of article 49(1) indicates that parliament is not a powerful political body.

Usually the prime ministers in cohabitation initiated this procedure of confidence before the parliament in order to show that they enjoyed support of parliamentary majority.⁸⁷ Probably the aim of this was to strengthen their position in relation with the president. This procedure is also referred to by the government when there is mistrust towards it in the public.⁸⁸ This is done probably to raise the confidence of the latter in the government.

In contrast to the Constitution of the Fifth Republic Constitution of Georgia includes in the formation of government also parliament. After the selection of prime minister and ministers president shall introduce to the parliament new composition of government for vote of confidence.⁸⁹ Parliament shall vote on the composition and program of the government. It is necessary to receive the majority of votes of total number deputies. Parliament can declare no-confidence to the government. It can also object to individual ministers. In case the president shares the objection of parliament the same person cannot be appointed in the same

⁸⁵ Supra note 37, p.334

⁸⁶ Supra note 37, p.334

⁸⁷ Ibid, p.335

⁸⁸ Supra note 8, p. 186

⁸⁹ Article 80(2) of the Constitution of Georgia

composition of government instead of dismissed or resigned member. So it is within the discretion of president whether to approve the position of parliament or not.

In case the government does not receive confidence of parliament within one week president shall introduce to the parliament a new or the same composition.⁹⁰ If the government will not gain confidence of parliament for three consecutive times president can either introduce new candidate for prime minister or appoint him without the consent of the parliament. In the latter case he will dissolve the parliament and appoint new election.

According to this procedure president has a possibility to introduce to the parliament one and the same composition of government three times. The purpose of such provision is not reasonable. If parliament rejected to approve certain composition of government it is less likely that it will change position in one week. Though nothing is excluded in politics and after consultations executive branch can obtain necessary number of votes still introduction of the same composition after two rejections seems not to be in line with the purpose to receive support of the parliament. If the aim of the vote of confidence is to ensure support of parliament in order to facilitate co-operation between two branches then at least after second rejection shall be submitted new composition. Otherwise it seems that the aim of the provision is to create a tool for the president for the dissolution of parliament. This can also impose some constrain on parliament in voting against presented government. Because deputies know that this may lead to the dissolution of parliament. Besides this president in case he decides to dissolve the parliament can appoint prime minister without any approval from the parliament and the prime minister can appoint ministers with the consent of the president. This excludes participation of parliament in the formation of government. It is not stated in the Constitution that government appointed in that way should be presented to the newly elected parliament. It was emphasized in the Opinion of Venice Commission that

⁹⁰ Ibid, Article 80(4)

president should not have power to appoint prime minister who was not approved by the parliament and if he dissolves the parliament he should ask incumbent prime minister to fulfill his duties only until the election of a new parliament.⁹¹ Besides that I think president should have dissolution power of the parliament only in case he presents different composition of government at least for two times.

In case of existence of certain circumstances⁹² when government will not be able to obtain confidence of the parliament, president can appoint prime minister and give him consent to appoint ministers.⁹³ President shall submit government to the parliament for receiving its confidence within one month after the exhaustion of these circumstances. Appointment of prime minister and ministers without the confidence of parliament in time of state of emergency and martial law seems reasonable but it is not clear why president has this power in other cases. Besides that if in that case he must still introduce government to the parliament for its confidence the same rule should be established in case president dissolves the parliament and appoints prime minister after three rejection by the parliament discussed in previous paragraph. The idea is that there should apply same standard in all situations and the cabinet shall be legitimate only in case it receives confidence of the parliament.

As it can be seen from here though parliament participates in the formation of government president has wide powers of interference in this process. Final decision in the formation of cabinet still depends on president.

In Germany the Bundestag is also involved in the formation of cabinet and election of chancellor. As it was demonstrated above in Germany political parties are at the core of the political life of nation. As far as electoral system is one of the factors which plays an

⁹¹ Supra note 59, paragraph 29

⁹² These circumstances are determined by Article 51¹: “within six month from the holding of elections of the Parliament; b) discharging of an authority determined by Article 63 of the Constitution by the Parliament; c) in time of state of emergency or martial law; d) within last six months of the term of office of the President”

⁹³ Article 73(1,r) of the Constitution of Georgia

important role in the formation of political climate in the country I will also concern it here. In Germany there is personalized proportional system which combines the plurality vote in single-member districts and proportional representation from party lists.⁹⁴ Proportional system enables not only big parties but also small parties to get access to parliamentary seats.

Another requirement of the electoral system is that parties should acquire 5 percent of votes nationwide in order to receive seats in the parliament. On the one hand this prevents smaller parties to gain seats in Bundestag⁹⁵ but on the other hand it may contribute to creating more workable parliament. This can be explained by the fact that coalitions will be based only on two or three parties which were able to overcome 5 percent barrier rather than on five or six parties which will make more difficult to reach agreements and maintain stable majority. This electoral system created three or as it is also called a two-and-a-half party system and there were usually two party coalitions.⁹⁶

Under this system usually one party cannot get majority that requires creation of coalitions. Because of this there were mostly coalition governments. This may be considered as a positive factor because parties within the coalition will have to take each other's positions into account and balance each other. Probably the government will also be submitted to a tighter control than in case of single-party majority. Besides that as we have seen above the existence of coalition majority places some constraints on the power of chancellor in decision-making. It prevents him of becoming unconditional leader.

As regards the election of chancellor he must be elected without debate by the majority of votes of the Bundestag.⁹⁷ If the Bundestag does not elect chancellor proposed by the president then it must elect alternative candidate proposed by itself within fourteen days by more than one half of its members. If the chancellor is not elected again in this period then

⁹⁴ Supra note 79, p.117

⁹⁵ Supra note 62, p.315

⁹⁶ Supra note 6, p.105

⁹⁷ Article 63 of the Basic Law

new election shall take place without delay and person who obtains the majority of votes shall be elected. If the person elected does not get necessary majority then president must either appoint elected candidate or dissolve the parliament within seven days. This is discretionary power of the president embedded in the constitution. In that case president becomes as a “crisis manager”.⁹⁸ This gives certain importance to the president’s post and at the same time it can be one of the justifying arguments for the existence of the post at all. Because quite naturally there can be certain opposition and doubt about the necessity of creating political position with no political significance. It must be mentioned also that until now there was no single case when Bundestag could not elect the chancellor. This means that usually coalition partners are cooperative in choosing candidate and adhere to their agreements. So the Bundestag has several chances to vote for different candidates. This reduces the probability of not electing the chancellor and the necessity of president’s involvement.

In respect of appointment of ministers Bundestag has no constitutional power. In this process are involved majority parties in the Bundestag that was already mentioned above.

As it can be seen from this chapter constitutionally president in Georgia has broad powers in the selection of prime minister and formation of government. In this respect constitutionally and practically he is a dominant figure in the executive who never faced any opposition from any prime minister. As it was identified in France also president plays leading role in the formation of government. Though in case of cohabitation this can be changed but even at that time prime minister is not as powerful as president outside cohabitation. Though in Georgia parliament is accorded certain role in the formation of government its position is not to the same extent strong as that of president. In contrast to these two countries in Germany parliament has more substantial powers in the election of chancellor. Besides that due to the central role of parties and necessity of coalition

⁹⁸ Supra note 64, p.35

governments dependence of chancellor is greater on political parties that places some limits on his powers in the formation of cabinet.

Chapter II. Dismissal of Cabinets, Prime Ministers and Dissolution of Parliaments

2.1. Role of President in the dismissal of Cabinet and Prime Minister

In this chapter will be discussed dismissal of government and prime minister and also dissolution of parliament in order to see how powers are distributed among the two branches in this process and who plays leading role here.

In France constitutionally president can dismiss prime minister only when he presents the resignation of the government. So president is not empowered to dismiss him at any time. But except constitutional norms there is constitutional convention that is accepted by prime ministers and according to which prime ministers offer their resignation to a newly elected president.⁹⁹ This practice enabled presidents Mitterrand and Chirac to have new prime ministers after they won presidential elections. Though it is established practice it is less likely that prime minister will offer resignation to the president if the latter did not get majority in the election. It can be supposed that the exercise of this conventional power by the president depends on the fact whether he has majority in parliament or not.

As we have seen above presidents usually appoint prime ministers with certain purposes for example to strengthen the position of president. Accordingly they are dismissed by the president when no longer can serve this purpose or are suspected to become a rival of the president¹⁰⁰ or they can be dismissed in order to protect president from the hostile position of the public.¹⁰¹ This proves that not only their appointment is dependent on the president but also their term of office. Though according to the Constitution prime minister has

⁹⁹ Supra note 37, p.333

¹⁰⁰ Supra note 22, p. 106-107

¹⁰¹ Ibid, p.100

considerable powers even outside cohabitation and is the second political figure in the country this resource does not protect him from the decision of the president.

As regards ministers president terminates their office on the recommendation of prime minister. Individual minister can be made by the prime minister to resign without causing the dissolution of a whole cabinet.¹⁰² In cases when the president enjoys support of the majority and is a leading figure in the executive it is likely that he will be more involved in the dismissal of the ministers rather than decide it only based on the recommendation of the prime minister. Especially taking into account the fact that ministers are appointed by the consent of the president. Due to their position ministers are absolutely dependent on the president and prime minister.¹⁰³ So president takes final decision in dismissing prime minister and ministers but outside cohabitation he will have wider possibility of influencing this process rather than participating in it only at the proposal of prime minister.

Contrary to France in Georgia according to article 73(1,c) president can dismiss the government and also prime minister at any time on his own initiative. This provision clearly indicates subordination of government and prime minister to the president. Termination of office of prime minister or his resignation causes the termination of authority of the whole government. Possibility of dismissal of government is very useful tool for the president. He can refer to it in order to protect his personal prestige. In case of any dissatisfaction among the electorate with the activities and policy of the government he can dismiss prime minister as a main responsible person and by that way protect his own popularity.

Prime minister can also dismiss individual ministers.¹⁰⁴ It is not specified if this requires the consent of the president. But it can be supposed that as far as selection of ministers is agreed with the president prime minister will not dismiss them without the involvement and consent of president. Besides that, only president can dismiss ministers of

¹⁰² Supra note 37, p.335

¹⁰³ Supra note 20, p.102

¹⁰⁴ Article 79(5) of the Constitution of Georgia

defense, internal affairs and justice.¹⁰⁵ It must be indicated that president has no such special role in the appointment of these ministers. According to the constitution role of prime minister in their selection is the same as in case of other ministers. But constitution does not accord any role to prime minister in the dismissal of these ministers. It seems that purpose of this provision is to render these ministers even more dependent on the president than other ministers. But as it was said in the Opinion of Venice Commission there should not be such distinction between the ministers and all of them should be dismissed by the president at the proposal of prime minister.¹⁰⁶

Due to his role in the selection of ministers and their dismissal prime minister must be considered as standing above the ministers. But notwithstanding this as far as president plays more determinative role in the fate of ministers they will be more dependent on the president rather than prime minister. This concerns especially those three ministers who can be dismissed only by the president. This in turn restricts the authority and influence of the prime minister over the cabinet.

Besides that in Georgia government is constitutionally accountable not only before the parliament as in France but before the parliament and also the president.¹⁰⁷ This is one more factor which constitutionally strengthens position of president in relation to government. According to Article 79(2) prime minister is similarly accountable for the activities of the government before the parliament and the president.

In Germany according to the constitution president cannot dismiss the chancellor. The position of chancellor in relation to president is strong even in that respect. Based on article 64 of the constitution president can dismiss ministers, as in case of appointment, only at the proposal of chancellor. Individual ministers can be dismissed without the changing the whole

¹⁰⁵ Ibid, Article 73(1,c)

¹⁰⁶ Supra note 59, paragraph 20

¹⁰⁷ Article 78(1) of the Constitution of Georgia

cabinet. There were only few cases when chancellor made proposition for dismissal.¹⁰⁸ Probably this can be explained by the same constraints which exist also in the case of appointment of ministers.

It can be said that due to his function in the appointment and dismissal of ministers they are subordinated to the chancellor. Sartori characterized position of chancellor as *primus* among unequals.¹⁰⁹ When government is formed by one party it is more hierarchical.¹¹⁰ This means that position of ministers in relation to chancellor is more subordinate. This type of cabinet existed during chancellorship of Schmidt and Adenauer. Though the personality of chancellor is considered as important element in forming this type of cabinet the representation of the chancellor's party in the cabinet is also determinative factor.¹¹¹ In case of Adenauer and Schmidt cabinet was composed of their party majority while in case of Kohl, Erhard and Kissinger representation of their party in the cabinet was low.¹¹² So though the chancellor stands above the ministers his position of a leader depends on the strength of his party in the cabinet. This is one more case which indicates importance of parties in creating strong chancellor.

So in Germany president has minimal powers in the dismissal of ministers. Here decisive role belongs to the chancellor whose decision-making power can be restricted only by position of his political party or coalition partners. In France, though constitution places restriction on the power of president to dismiss prime minister in practice outside cohabitation he has wider powers in the dismissal of prime minister and ministers. While in Georgia president has also substantial constitutional powers in the dismissal of the government and prime minister. Even based on the text of the constitution he can be identified as a leading person in this process.

¹⁰⁸ Supra note 63, p.152

¹⁰⁹ Supra note 6, p.103

¹¹⁰ Supra note 49, p. 153

¹¹¹ Ibid,

¹¹² Ibid,

2.2. Role of Parliament in the dismissal of Cabinet, Prime Minister and dissolution of Parliament

In France according to Article 20 of the Constitution government is accountable to parliament. National Assembly cannot raise vote of no confidence against individual member of cabinet rather it must censure a whole government. Procedure for making government accountable is determined by Article 49 of the Constitution. One of the ways of raising accountability of government is article 49(1) which was mentioned above and the initiation of which presents the prerogative of prime minister.

A second way is envisaged by article 49(2) and can be initiated by the National Assembly. A resolution for initiating a motion of censure will be passed if it is supported by no less than one-tenth of the members of the National Assembly. Voting on no-confidence cannot take place within 48 hours after the adoption of the resolution. This period is in favor of the government which can conduct in case of necessity appropriate negotiations with parliamentary groups for securing support at the time of voting. Motion of censure is passed only if it is supported by the majority of the National Assembly. The strictness of the procedure can present a barrier to its frequent application. Besides that its application has sense only in case government does not enjoy support of the majority. Otherwise, introduction of the motion will be destined for defeat, because minorities may not be able to get enough votes for passing the motion. This is also proved by the history as motion of censure was successful only once to dismiss the first Pompidou government in 1962.¹¹³

Another device for making government accountable is given in article 49(3) when PM can make the passing of a bill an issue of vote of confidence. In case the NA could not pass the motion of censure the bill is considered as adopted. This is very effective tool in favor of the government when it desires to pass the bill for which there is no majority support but

¹¹³ Supra note 37, p.338

when the majority does not want to defeat government.¹¹⁴ It can be applied by the government also when it wants to discipline its party members who try not to be associated with unpopular policies of the government but at the same time do not support change of government.¹¹⁵ Initiation of this mechanism is also prerogatives of prime minister and it cannot be considered as effective method for making government accountable by the parliament.

One of the reasons of not passing the motion of censure by the parliament is the fact that this may lead to its dissolution.¹¹⁶ According to Article 12 president has the discretionary power to dissolve the National Assembly after consultation with the PM and presidents of both Houses. There is no pre-condition on the application of this power and president may exercise it whenever he considers it necessary. It is quite likely that if NA passes the motion of censure president may dissolve it if PM and government have his support. This possibility will most likely force the NA to abstain from passing motion of censure.

Another situation when president may dissolve NA is the case of cohabitation. This will be carried out by the president in the hope that in the newly elected NA he will gain majority which will enable him to appoint PM subordinated to him.¹¹⁷ For example president Chirac dissolved NA in 1997 with the aim to get majority and avoid cohabitation, but his party was defeated in the election. Similarly, de Gaulle after having won referendum in 1962 dissolved a hostile NA on the one hand for retaliating for passing a motion of censure against the government and on the other hand for getting supportive majority in the election.

So President enjoys wide powers of dissolving NA which he can use in order to strengthen his position. The only limitation of this power is that he cannot use it within the year after election of NA following dissolution and when NA exercises emergency powers according to Article 16 of the Constitution. Except constitutional restriction president may

¹¹⁴ Ibid,

¹¹⁵ Supra note 8, p.187

¹¹⁶ Supra note 37, p.338

¹¹⁷ Supra note 37, p.332

avoid dissolution of NA more from political considerations. For example if there is a chance that due to his deteriorated popularity he will not be able to get majority in a new election.

The result of passing a motion of censure is that according to Article 50 of the Constitution PM shall submit to the president resignation of the government.

As we have seen the role of parliament is very weak in the dissolution of government. The exercise of this power depends to a large extent on the will of the government. It is less likely that government will resort to this procedure when there is serious threat that parliament will be able to pass vote of no confidence. On the other hand probably National Assembly itself will be less willing to refer to this procedure if it will not have enough guarantees from the president that this will not cause its dissolution. One of the reasons of granting such limited powers to the parliament was the experience of the Forth Republic. It was characterized by high governmental instability caused by its frequent dissolutions. The aim of the drafters of a new constitution for the Fifth Republic was to make government more stable which could be achieved by making it less subordinated to the parliament.¹¹⁸

As I mentioned above in Georgia government and prime minister are accountable before parliament. According to Article 80(1) one third of the members of parliament can call government accountable by vote of no-confidence. If government will receive vote of no-confidence president can either dismiss the government or ignore the decision of the parliament. If not earlier of 90 days and no later of 100 days parliament will again declare no confidence to government president will either dismiss government or dissolve the parliament and appoint new elections. Though parliament is given the authority to raise accountability of government this is less effective tool in its hands because final decision depends on the president not the parliament. The fact that president can either disregard this decision or in

¹¹⁸ Supra note 5, p.75

second case at all dissolve the parliament makes it less possible that parliament will apply it actively. Interference of the president in this process renders it largely ineffective.

The second way of raising accountability of the government is the vote of unconditional no-confidence which requires support of three-fifth of the total number of members of parliament. Voting shall take place not earlier 15 days and not later of 20 days after raising it which gives to the government certain time to try to acquire necessary support in the parliament. In case the parliament passes the vote of unconditional no-confidence president shall dismiss the government. It is the only case when parliament by declaring no-confidence will be able to dismiss the government directly. But the requirement of three-fifth majority makes its application difficult.

Prime minister can raise before the parliament the issue of declaration of confidence to the government on the draft laws on state budget, taxes and on the structure, authority and activity of the government.¹¹⁹ Vote of confidence requires support of the majority of deputies. If government will not receive confidence of the parliament president will either dismiss the government or dissolve the parliament. If voting will not take place within 15 days it will be considered that government received confidence. In case of declaration of confidence the draft law is regarded adopted. Like in France this procedure is more a tool for the government to make parliament adopt laws which otherwise may not receive necessary support. Parliament which is not willing to dismiss the government or does not want to submit itself to the risk of dissolution will be more inclined to declare confidence. Here again president can ignore the decision of the parliament and opt for maintaining government in office.

As it can be deducted from here powers of the parliament in the dismissal of government like in France is weaker than that of the president. It can even lead to the dissolution of the parliament itself according to the will of the president.

¹¹⁹ Article 80(4) of the Constitution of Georgia

Though Germany is characterized by the fusion of executive and legislature at the same time there is certain limits on this fusion. In order to avoid previous practice of Weimer Republic where chancellors could be dismissed without any restriction and there was continuous problem of government instability the Basic Law placed some restriction on the power of Bundestag in the dissolution of government. To that end was created the constructive vote of no-confidence. According to article 67 Bundestag can ask president to dismiss the chancellor only after electing his successor by the majority vote. The president must dismiss the chancellor and appoint the elected person. This device though does not make dismissal of the chancellor impossible but definitely makes it more difficult because usually it is easier to collect necessary number of votes for dismissing the chancellor rather than necessary number of votes for appointing new chancellor.¹²⁰ This condition contributes to the existence of stable governments. This is also proved by the history because vote of no-confidence was used only twice.¹²¹ In 1972 it was brought against the chancellor Brandt but failed and in another case it was successful by replacing Helmut Schmidt with Helmut Kohl.

In accordance with Article 68 the chancellor can initiate a motion for a vote of confidence and if he is not supported by the majority of the Bundestag upon his proposal president may dissolve the Bundestag within twenty-one days. According to the text of the constitution the president here too has discretionary power to take decision as far as he is not obliged to dissolve the parliament on the proposal of the chancellor.

Usually when chancellor has support of the majority it will not be in his interest to use this procedure. Its use has only sense when the chancellor is interested to have new elections for the Bundestag. Probably by this is explained a fact that it was applied infrequently. In 1972 the vote of confidence was initiated by the chancellor Brandt in order to cause an early dissolution of Bundestag because he lost majority support. But this was possible only after the

¹²⁰ Supra note 6, p.107

¹²¹ Supra note 79, p.152

agreement between the government and opposition about the necessity of new election.¹²² He did not get vote of confidence and new election was held in which his party won. The controversies were raised around the application of this procedure by chancellor Kohl who at that time had support of majority. Vote of confidence was asked by him with the clear aim to be defeated and to dissolve the Bundestag in order to form government with new coalition partners. As far as he had majority the realization of the purpose required consent of the majority without which he would not have been able to lose vote of confidence.

This last decision to dissolve the parliament was appealed before the Constitutional Court. The main issues raised were whether the chancellor can initiate vote of confidence when he has majority support and whether the president may dissolve the parliament based on his request in that case.¹²³ As it was said by the Court it is chancellor who must consider when requesting the dissolution of parliament whether it is still possible to receive support for his program and when president decides if chancellor's decision is constitutional he must respect his right to assess political necessity unless there are more convincing arguments against the dissolution of parliament.¹²⁴ The court did not say directly that chancellor cannot initiate vote of no-confidence because he has majority support.¹²⁵ This decision probably even more enhances the authority of the chancellor in referring to the procedure of confidence vote. Besides that as it seems it restricts the discretion of president by saying that he must respect the authority of the chancellor in evaluating the political situation which indirectly means that he must satisfy his request if he does not have strong arguments against dissolution. But as far as constitution does not place any restriction on the discretion of the president it depends on the scope of political authority of the president and existing political situation whether he will

¹²² Supra note 80, p.357

¹²³ German Constitutional Court decision, 1984, 62 BVerfGE 1, in "The Constitutional Jurisprudence of the Federal Republic of Germany", Donald P. Kommers, Second Edition, Duke University Press, 1997, p.118

¹²⁴ Ibid, p.120

¹²⁵ Ibid, p.121

approve dissolution or not. At least possibility of not approving the chancellor's request is given in the constitution.

On the one hand constitution enables the chancellor to use the vote of confidence in order to dissolve the parliament for strengthening his and his party's position. On the other hand as it was demonstrated early dissolution of Bundestag has its restrictions because it usually requires agreement among several political actors.¹²⁶ So the power of chancellor to dissolve the parliament is balanced by the necessity of participation in this process of other political actors. This can also explain rare use of this tool by the chancellor. Similarly as we have seen the right of Bundestag to dismiss the chancellor is also restricted. So in Germany dissolution powers of two branches are more balanced rather than in France and Georgia.

Conclusion

As we have seen beyond constitutional norms there are some other factors which contribute to the strength of particular political figure. Their position as of a leader depends to some extent on the existence of certain circumstances. When designing political system and determining how the powers should be distributed the influence of these factors, for example electoral law, shall be also taken into account and appropriate regulations drafted.

Due to the above discussions there can be made general characterizations of each country. In France parliament is the weakest political branch. It does not participate in the formation of cabinet and has no control on the government and prime minister. In the executive branch though there is not determined leader the Fifth Republic is inclined to the creation of more strong presidential system.¹²⁷ There were cases of cohabitation but amendment in the president's term of office will make probably this practice less possible. So

¹²⁶ Supra note 80, p.357

¹²⁷ Supra note 17, p.224

there are established all the conditions in order to render the president as the most powerful figure and ensure his dominance.

In contrast to this in Germany powers are distributed between two principle political institutions which are parliament and chancellor. At the same time Basic Law creates system of checks and balances that limits power of each institution.¹²⁸ As a result of this none of the institutions can dominate over the other. There is more separation of powers between the executive and legislature than it is usually characterized for parliamentary states.¹²⁹ Here these two institutions are more of equal importance while president has minimal powers.

In Georgia president is the most powerful political figure. There is more resemblance with France which makes it less useful as a pattern of distribution of powers. Dominance of president stems directly from the constitution. Failing to get majority in the parliament may restrict application of his powers fully but still due to his constitutional powers he would still have wide discretion in decision-making process.

This comparison does not mean that any of these models is good or bad. I think it largely depends on how it works in particular country. For example in France and Germany existing political systems operate for long time. They are well established there with no major problems and requirements to change them. Contrary to this as it was already mentioned in Georgia established system of strong president is considered as one of the reasons of political crisis in the country. The best way to prevent this in future is considered the strengthening of the powers of the parliament.

At this stage this can be achieved by certain amendments to the constitution within the existing political system. It will be reasonable if president will not have power to present one and the same composition of government to the parliament after it was rejected by the parliament. Only after rejecting several times different composition of government president

¹²⁸ Supra note 62, p.72

¹²⁹ Ibid, p.73

shall have the right to dissolve the parliament. Parliament can be given right in case of rejecting candidate of prime minister proposed by the president to vote for alternative one nominated by itself.

If government fails to get the confidence of parliament its dismissal should not belong to the discretion of president. He may dissolve the parliament in that case but government shall stay in office only until the election of new parliament and shall resign after that. Government shall be responsible only before the parliament. All the ministers shall be appointed and dismissed by the president at the proposal of prime minister. In other words there shall not be ministers directly subordinated to the president.

These will curtail powers of the president to some extent. But more detailed distribution of powers between the two political branches will require more profound analysis. Especially this concerns the case if the existing political system will be changed with parliamentary. This will raise necessity of more extensive study of not only Germany but also other parliamentary states because there is different distribution of powers in the states operating even within the same political system. A lot depends on the one hand what kind of amendments will be suggested by the State Constitutional Commission and on the other hand what will be accepted by the president. Proposed amendments should strengthen the position of parliament. This will ensure more balanced relation between the two political branches.

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