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CONFLICTING REVISIONS TO ROMANIAN CONSTITUTION GIVE RISE TO QUESTIONS ABOUT SEMI-PRESIDENTIALISM

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Abstract

The Romanian Constitution, adopted through a referendum on December 8th, 1991, had the goal of balancing the powers of a head of state elected directly by the people and a strong Parliament. However, the living Constitution twisted normative intentions into a different political reality. In order to deal with this issue two almost parallel and quite opposite processes for the revision of the Romanian constitution have been undertaken recently, one is favourable to hyper-presidentialism, while the other calls for a rebalancing of the Romanian political system rather towards parliamentarism. This confrontation at the level of Romanian institutional and normative practices raises once again the ontological and conceptual ambiguities of the said semi-presidential political system, and poses even more sharply the theoretical question of its appropriateness to the context of countries in democratic transition.

Keywords: *political regime, semi-presidential, constitutional revision*

Résumé

La Constitution roumaine adoptée le 8 décembre 1991 s'était donné comme but de mettre en équilibre un chef de l'Etat élu directement par le peuple avec un Parlement stable et relativement fort de ses nombreuses compétences. La pratique institutionnelle a mis en évidence surtout l'impossibilité d'atteindre un tel objectif. Afin de contrecarrer cette réalité deux projets de révision constitutionnelle s'affrontent, l'un favorable à la présidentialisation accrue du régime institutionnel roumain, alors que l'autre plaide pour un rééquilibrage plutôt favorable au parlementarisme. Cette confrontation au niveau de la pratique roumaine en l'occurrence soulève d'une manière éclatante les ambiguïtés ontologiques et

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conceptuelles du dit régime politique semi-présidentiel, et pose avec acuité la question théorique de son adaptation aux pays qui se trouvent en pleine transition démocratique.

Mots-clés: *régime politique, semi-présidentiel, révision*

1. On Words and Epitomes: Semi-presidentialism

Semi-presidentialism is a word which came into existence later than the political system it has come to designate.¹ On January, 1959, the journalist Hubert Beuve-Méry² referred to the political system created by the French Constitution of 1958 “semi-presidential.” This designation was to become ubiquitous in academia through the works of Maurice Duverger, who used the term first in French in his treaty on political institutions in 1970,³ and later in English in his seminal paper “A New Political System Model: Semi-presidential Government”⁴. Hereafter, the term became widely used.

However, before 1959, and even for some time after, the main actors involved in the political system itself referred to it as to “parliamentary.” Thus, Michel Debré, the Minister of Justice and one of the main architects of 1958 French Constitution, explained that the main goal of French constitutional reform was “to give France a parliamentary system, (...) a renewed parliamentary system” and declared the new parliamentary regime required a keystone in a speech he delivered in front of the *Conseil d’Etat* general assembly on August 27th 1958. That keystone is the President of the Republic. Raymond Janot, who was the *Conseil d’Etat* General Secretary and served as a liaison between the technical working group in charge of drafting the Constitution and the President of the *Conseil d’Etat*, wrote down in a daily note to General de Gaulle: “for those shaped by the

¹ For a different opinion see Robert Elgie, *Is this the first reference to semi-presidentialism?*, 2009 (6). Retrieved July 15, 2014, from <http://www.semi-presidentialism.com/?p=717>.

² Hubert Beuve-Méry founded in 1944, upon request of General Charles de Gaulle, the French “quotidien” *Le Monde* that he managed until his retirement in 1969. In 1954 he also created the “hebdomadaire” *Le Monde diplomatique*.

³ Maurice Duverger, *Institutions et droit constitutionnel* (11^{ème} éd.) (Paris: Presses Universitaires de France, 1970), pp. 277-282.

⁴ Maurice Duverger, *A New Political System Model: Semi-presidential Government*, in (1980) 8:2 *European Journal of Political Research*, pp. 165-187

French parliamentary tradition, the President of the Republic is an arbiter".⁵

The same goes for academia. In his initial analyses, Maurice Duverger saw the French Fifth Republic as a "parliamentary political system",⁶ while nevertheless suggesting that the head of the state should be elected directly. It was only after this became a constitutional reality (through a revision of the Constitution in 1962 following a successful referendum initiated for that purpose by then President de Gaulle) that he started to refer to it as semi-presidential.⁷ Duverger reasoned that, unlike in parliamentary systems, it was only in this (intermediary) political system that both parliament and president⁸ had direct legitimacy.⁹ In 1964 George Vedel believed the political system was just about to transform from a rationalized parliamentary system into a presidential one because of the revision of the 1962 Constitution.¹⁰ As late as 1988, authors believed popular elections were a necessary but not sufficient prerequisite for the strong position the president enjoyed in France. They thought it would be more appropriate to use the term *correctif présidentiel* instead of *semi-présidentiel*.¹¹ Even in the third millennium, French authors still argue that "the political system of the Fifth French Republic is part of the family of parliamentary systems"¹² and that the rationalisation of Parliament has led to a considerable reinforcement of the executive "as happens in France

⁵ Raymond Janot, *Note du 16 juin 1958 pour le général de Gaulle*, in *Documents pour servir à l'histoire de l'élaboration de la Constitution du 4 octobre 1958*. (Paris: La documentation française, 1987), pp. 257-258.

⁶ Maurice Duverger, *Institutions et droit constitutionnel*, 5^{ème} éd. (Paris: Presses Universitaires de France, 1960), pp. 633, 679.

⁷ *Ibid.*, pp. 277-282.

⁸ As a matter of fact he later even considered that France was a "monarchie républicaine" (Paris: Laffont, 1974), hence his idea of *Echec au Roi* (Paris: Albin Michel, 1978).

⁹ Maurice Duverger, *Le concept de régime semi-présidentiel*, in Maurice Duverger (ed.), *Les régimes semi-présidentiels* (Paris: Presses Universitaires de France, 1986), pp. 7-17.

¹⁰ Georges Vedel, *Vers un régime présidentiel ?* In (1964) 14: 1 *Revue française de science politique*, pp. 20-32.

¹¹ Jean-Claude Colliard, *Les régimes parlementaires contemporains* (Paris: Presses de la Fondation Nationale des Sciences Politiques, 1978), p. 280.

¹² Armin Le Divellec, *Vers la fin du parlementarisme négative à la française?* In (2011) 6 *Jus Politicum*, p. 3. Retrieved July 15, 2014 from http://juspoliticum.com/IMG/pdf/JP6_LeDivellec_161211.pdf.

outside periods of cohabitation".¹³ Although the doctrine is mainly a semantic exercise, it is significant that the concept is still debated.

2. The Head of State in the French Constitution of 1958

In fact, the French Republic's 1958 Constitution managed to put in place an institutional design aimed at creating a rationalized parliamentary political system able to guarantee stability for the executive by borrowing some characteristics from presidential systems. Indeed, all important features of parliamentary political systems (an executive with powers vested by the legislative branch, responsible in front of it, with the potential for close collaboration between the two branches) were present. The considerable own powers granted to a president, who was portrayed as an arbiter set above political fights, were supposed to compensate for the lack (in France) of a bi-partisan system in the first past post electoral system. In fact, the rationalization of the parliamentary political system went further than the mere creation of a powerful head of state (the possibility for the executive to engage its responsibility in front of Parliament, incompatibility between MPs and members of government, a Prime Minister conceived as a steward of the head of the state). However, the most prominent feature was the definition provided for the role of President by Article 5 of the 1958 French Constitution:

The President of the Republic shall respect the Constitution. He ensures, by his arbitration, the proper functioning of public authorities and the continuity of the State authorities. He is the guarantor of national independence, territorial integrity and observance of treaties.

Already announced in his discourse of Bayeux¹⁴ the idea of a president acting as arbitrator seems to have been inspired by the institutional design of monarchies functioning in parliamentary political systems, although it was quite differently conceived in the mind of General de Gaulle. As he confessed in his memoirs: "Yet, what is written, even on parchment, is only validated through application. Once the new Constitution has been passed,

¹³ Michel Verpeaux, *Droit constitutionnel français* (Paris: Presses Universitaires de France, 2013), p.125.

¹⁴ Charles De Gaulle, Discours de Bayeux (16 June 1946). Retrieved July 15, 2014, from <http://www.charles-de-gaulle.org/pages/espace-pedagogique/le-point-sur/les-textes-a-connaître/discours-de-bayeux-16-juin-1946.php>

it will be applied. (...) Because the head of state is an arbitrator, he is expected to abandon his political choices in favour of political parties. Many will learn without pleasure my intention to fully take charge. When this occurs, they will see me play the role as it is and as I am. As I undertake the resolution of other issues they will cry infringement upon the Constitution, because the meaning it will take will not meet their expectations.”¹⁵

Indeed, the cornerstone of the French political system is the head of the state.¹⁶ The major novelty created by the drafters of the 1958 French Constitution consists in the ambiguity of the concept of arbitration there instilled.¹⁷ In the French constitutional tradition, “arbitrator” is an ambivalent word; it may refer to an impartial third party, as well as to a leader or master of the situation. In democratic, majoritarian and parliamentary political systems such an arbitrator is supposed to be neutral, much in agreement with ideas developed by Benjamin Constant in the eighteenth century on the neutral power of the monarch. That is, he should be above political games, preserve the equilibrium of powers in the state, and facilitate the continuity of the nation. However, the Fifth French Republic’s first President conceived of this position as non-partisan, but not as an “observer,” but rather as an “actor,” with powers to make his own decisions.

The text of the French Constitution lends itself to both interpretations, and it is only in practice that it may allow for a determination of the inner nature of the arbitration that the president fulfils and, therefore, the inner nature of the political system thus defined. As many commentators¹⁸ have

¹⁵ Charles De Gaulle, *Mémoires d'espoir. Le renouveau. 1958-1962*. (Paris: Plon, 1970), p. 37.

¹⁶ According to Maurice Duverger, the decisive factor in the concept of ‘semi-presidential’ is the direct election of the president by universal suffrage which provides him with the same kind of legitimacy as Parliament, although the functions of political institutions in semi-presidential systems would also admit the term “semiparliamentary” (Duverger, *op. cit.*, *supra*, note 9, pp. 7-17). However, this only holds truth - even with regard to France - for the political system existing after the constitutional revision of 1962.

¹⁷ Vlad Constantinesco, Stéphane Pierré-Caps, *Droit constitutionnel* (4ème éd.). (Paris: Presses Universitaires de France, coll. Thémis, 2009), pp. 376-377.

¹⁸ Verpeaux, *op. cit.*, *supra*, note 13, pp. 384-394; Pascal Jan, *Le Président de la République au centre du pouvoir*. (Paris: La documentation française, 2011) *passim*; Philippe Ardant, Olivier Duhamel, *La dyarchie*, in (1999) 91 *Pouvoirs*, pp. 5-24; Dominique Rousseau, *L'invention de la*

noticed since, the French semi-presidential system allows for a stronger presidential feature every time the majority in Parliament supports presidential action, while it favours a more parliamentary action when the president enjoys only minority support in parliament. In other words, French semi-presidentialism is not a synthesis of parliamentary and presidential political systems, although some authors have continuously described it in this way.¹⁹ Rather, it is a system of continuous swings between the two. It can be described as a composite structure that leans towards a parliamentary system when the President is politically weak and toward a presidential system when the head of the state is charismatic and powerful.

3. Semi-presidentialism and Processes of Transition

Maurice Duverger had already put forward the main elements of this analysis in 1970 when he contemplated political systems other than the French one in light of this new category. According to Duverger, three cumulated features distinguish semi-presidentialism from other political systems: (i) a president elected by universal suffrage, (ii) who enjoys considerable own powers (but not all executive powers) and (iii) co-exists within a dualistic executive with a prime minister and a cabinet who are collectively vested by and responsible to Parliament. If the first characteristic is also encountered in presidential regimes, and the last characteristic is found in parliamentary ones, the combination of all three, and particularly the way in which the executive power is shared between the president and a prime minister, who enjoys the confidence of the majority in Parliament, represents the distinctive mark of semi-presidential political systems. For Maurice Duverger, “own powers” referred to those that the president was free to exercise without the constitutional need for a countersignature from the prime minister; therefore, the quantitative criterion of “considerable own powers” was not an entirely discretionary one. However, in practice, it is

Ve République, in Genoveva Vrabie (dir.), *Les régimes politiques des pays de l'UE*. (Bucuresti: R.A. Monitorul Oficial, 2002), pp.143-144; Olivier Duhamel, *Remarques sur la notion du régime semi-présidentiel*, in Dominique Colas, Claude Emeri (dir.), *Droit, institutions et systèmes politiques – Mélanges en hommage à Maurice Duverger* (Paris: Presses Universitaires de France, 1988), pp. 581-590.

¹⁹ Giovanni Sartori, *Comparative Constitutional Engineering – An Inquiry Into Structures, Incentives and Outcomes* (London, Houndsmill: New York University Press, MacMillan, 1994), p. 124.

obvious that some constitutional provisions can be interpreted broadly and their interpretation depends more on the main political actor than on other potential participants. From this perspective, it is the president who frames the system (framed as s/he is in France in particular by Article 5 of the Constitution). The president may choose to act either symbolically, as a neutral arbiter or head of the state, or as a decision-maker, and head of the majority in Parliament, or as an onlooker granted veto powers, and the head of the opposition in Parliament. All three options are available within the limits set by the text of the French Constitution. Does the same situation exist in other semi-presidential systems?

The analysis undertaken in the '70 by Maurice Duverger reflected, to a great extent, the situation prior to the wave of democratisation that swept through Latin America and Eastern Europe towards the end of the eighties and the beginning of the nineties. It must be mentioned that, taking stock of these events, he included East European countries in his research.²⁰ However, he could not make them an operational part of his analysis since the outcome of those transformations could not be foreseen in the early '90s. However, these democratisation waves significantly altered the empirical situation and offered new theoretical perspectives with regard to semi-presidential systems.²¹

In particular, the situation in Eastern Europe has allowed for a new approach since most countries²² which opted for an institutional design that corresponds to semi-presidentialism also provided important checks on presidential powers in order to allow for the vigorous development of

²⁰ Maurice Duverger, *Régime semi-présidentiel*, in O. Duhamel, Y. Mény (Eds.), *Dictionnaire constitutionnel*. (Paris: Presses Universitaires de France, 1993), pp. 901-904.

²¹ Robert Elgie, Sophie Moestrup, *Semi-presidentialism in Central and Eastern Europe* (Manchester: Manchester University Press, 2008); François Frison-Roche, *Le modèle semi-présidentiel comme instrument de la transition en Europe post-communiste* (Bulgarie, Lituanie, Macédoine, Pologne, Roumanie, Slovénie) (Bruxelles: Bruylant, 2004); Robert Elgie, *Semi-presidentialism in Europe* (Oxford: Oxford University Press, 1999) etc.

²² Bulgaria, Croatia, Lithuania, Macedonia, Montenegro, Poland, Romania, Serbia, Slovenia, Slovakia have all preferred the semi-presidential political system to a clear parliamentary one. The particular case of the Czech Republic has to be mentioned a part since, following the constitution reform undertaken in 2012, there as well the President is elected directly by the citizens although, in itself, this is not enough to transform the political system into a semi-presidential one.

pluralist democracies and to prevent potential authoritarian drifts. In fact, East European countries attempted to achieve an institutional design close to cohabitation in France, Shared executive power would allow for reciprocal limitations on power,²³ although practice has allowed for (sometimes substantial) deviations from this ideal. It was precisely the ontological ambiguity built into semi-presidentialism that attracted East European countries.²⁴ In most of these cases, the notion of the head of state as neutral, as opposed to the other two conceptualizations advanced by Duverger in his analysis of the seventies, was adopted. Thus, the neutrality and function of arbiter that a directly elected president would have to embody became crucial for new democracies, and one of the main motivations for importing this political system.

4. The Head of State in the Romanian Constitution of 1991

Despite such political *desiderata*, none of the constitutions drafted to that purpose in Eastern Europe have mimicked so eagerly the provisions of article 5 of French Fundamental Law, particularly those provisions pertaining to the arbitral attributions of the head of the state, as the Romanian one.²⁵ Indeed, article 80 of the Romanian Constitution reads:

(1) The President of Romania shall represent the Romanian State and is the safeguard of the national independence, unity and territorial integrity of the country.

(2) The President of Romania shall guard the observance of the Constitution and the proper functioning of the public authorities. To this effect, he shall act as a mediator between the Powers in the State as well as between the State and society.

The representation of the state, the guarantee of national independence and territorial integrity are almost identical to the provisions in the Fifth Article

²³ Frison-Roche, *op. cit.*, *supra*, note 21; François Frison-Roche, *Dissiper les ambiguïtés. Un Président élu au suffrage universel pour quoi faire ?* (2013) *Revue Est-Europa*, p. 174; Miroslaw Novak, *Election directe du Chef de l'Etat: tour d'horizon sur une question d'actualité.* (2013) *Revue Est-Europa*, pp. 177-195.

²⁴ François Frison-Roche, *La transition en Europe postcommuniste: de l'utilité du modèle semi-présidentiel.* In *Démocratie et liberté: tensions, dialogue, confrontation - Mélanges en l'honneur de Slobodan Milacic.* (Bruxelles: Bruylant, 2008), p. 476.

²⁵ Save, maybe, for Article 126 paragraph 2 of the Polish Constitution of 1997 which reads "The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory."

of French fundamental law. The 1991 Romanian Constitution also ensures the proper functioning of state authority through the President's personal arbitration becomes a translatable attribution. Note that, unlike his French counterpart, who is bound to "respect the Constitution," the Romanian President has only to "safeguard the respect of the Constitution"; however, he is also obliged to obey the Constitution in another provision of the same fundamental law (Article 1).²⁶

But the actual meaning of this constitutional text cannot be understood by pure exegesis of this provision alone. The entire text of the Constitution needs to be read systematically if a full understanding of the role and powers of the Romanian president is to be attained. Even more importantly, the living Constitution has to be taken into account.

Thus, despite the fact that the role and the responsibility²⁷ of the president are defined in quite similar terms,²⁸ the actual powers of the French and Romanian presidents are far from identical. Soon after the text has been drafted, a well-informed commentator has noticed that "All features that

²⁶ Article 1 paragraph 5 of the Romanian Constitution reads "In Romania, the observance of the Constitution, of its supremacy and of laws shall be mandatory".

²⁷ The framers of the Romanian Constitution have provided two types of responsibility for the Head of State: a political one (impeachment) which has as final stage a vote of the electorate on the dismissal of the President (article 95) and a legal (criminal) one, which supposes a jurisdictional procedure under which Parliament acts as prosecutor and the High Court of Justice and Cassation as judge (article 96). The impeachment has been initiated three times (in 1994, 2007 and 2012) over more than twenty years of application of the Constitution; none of these procedures ended-up with the dismissal of the president by the people, although in 2012 Parliament approved his suspension of office (just as in 2007) and the advisory opinion n°1/2012 of the Constitutional Court found that the president had accomplished some "serious deeds that ignored the Constitution". The criminal responsibility of the president has never been used as of yet. Also see Elena-Simina Tănăsescu, *The impossible dismissal of a president: Romanian political design*, in (2013) 3 *Revue turque de droit constitutionnel*, pp. 65-100.

²⁸ Prior to the 2007 revision of the French Constitution, article 68 provided for a criminal responsibility of the president for 'high treason' in terms which had inspired the similar provision of the Romanian Constitution. Following judicial procedures pertaining to the financing of political parties and the ratification by France of the 1998 Rome Convention on the statute of the International Criminal Court article 68 of the French Constitution has been revised in order to provide for an impeachment procedure 'à l'américaine', quite similar with the impeachment procedure provided by article 95 of the Romanian Constitution. Also see Constantinesco, Pierré-Caps, *op. cit., supra*, note 17, p. 368.

make up the peculiarity of the French political regime are absent or considerably diminished in the Romanian Constitution's text. Thus, the Romanian president lacks the essential prerogatives of his French counterpart, such as the adoption of laws through referenda and exceptional powers in time of crisis. Other functions are provided for in a different way; this makes the Romanian president much weaker than his French counterpart: the appointment and dismissal of prime ministers is dependent on a parliamentary vote; the dissolution of the parliamentary assembly is a problem without any solution; participation in governmental meetings is completely different; the signature of legal documents is constantly subject to endorsement etc."²⁹ In a nutshell, the powers he has to share with other state authorities are numerous. He enjoys a very limited number of discretionary powers and fulfils attributions void of any legal effect.³⁰ In other words, the Romanian president is a colossus (according to article 80 of the Romanian Constitution) with clay feet (according to the attributions he enjoys according to the Constitution).

5. Practice of Semi-presidentialism

Notwithstanding these differences, the practise of the semi-presidential system has not been completely divergent in France and in Romania. During the periods in which the president's party held a majority in the legislature strong presidents emerged,³¹ while during the rare times when the legislative majority was of a different party, presidents had to struggle with hostile representative assemblies.

Whether or not the president's party held a legislative majority had a greater effect in Romania than in France. This was due to the fact that the

²⁹ Tudor Drăganu, *Drept constituțional și instituții politice. Tratat elementar*, vol.II (București: Lumina LEX, 1998), p. 230.

³⁰ Elena-Simina Tănăsescu, *The President of Romania or the Slippery Slope of A Political System*. In (2008) 4: I *European Constitutional Law Review*, pp. 74-82.

³¹ With the notable exception of the parliamentary and presidential mandate of 2000-2004 when a strong prime minister managed to overshadow a president of the same political colour and enjoying not only consistent support in Parliament but also a high moral authority over party members, but who was already in his second mandate and, due to his age, ended his political career at the end of his presidential functions. For a similar opinion, see Bogdan Dima, *Conflictul dintre palate. Raporturile de putere dintre Parlament, Guvern și Președinție în România postcomunistă* (București, Hamangiu 2014).

presidential and parliamentary mandates ran parallel and both lasted four years until the 2003 constitutional revision. Even after the presidential terms were amended from 4 to 5 years, presidential and parliamentary elections initially were sufficiently close, and periods of cohabitation would not last long.

Still, the 'trailblazer' role of the president for the political party that supported him has been remarkable both in the 2004 and in the 2008 parliamentary elections. In fact, on both occasions, through political manoeuvring,³² and sometimes questionable use of the Constitution,³³ the president has successfully ensured his party a majority in Parliament. However, each time the presidential majority was based on a coalition of parties and coalitions tend to be fragile. In time, the president's "trailblazer" effect diminished; coupled with the fact that presidential and parliamentary elections are now held further apart, the potential for longer cohabitations, with serious consequences to political actors' interactions, as well as to the global functioning of the political system has increased. This is one possible explanation for the events of summer 2012 in Romania. At that time a relative majority in Parliament, opposing the president but barred from government during the 2009 political negotiations, decided to take the initiative and reverse this course of action. What started as merely a political crisis was transformed into a system crisis, as occurs in presidential

³² Parliamentary elections in 2004 ended with a relative majority of seats for the electoral coalition which grouped the Social Democratic Party (centre-left) and the tiny Humanist Party (left), but the executive was formed by a coalition of centre-right political parties, which brought together the National Liberal Party (liberal) and the Democratic Party (popular), in alliance with the Democratic Union of Hungarians in Romania (ethnic quasi-political party). Thus both president and executive were supported by a coalition that barely had the majority in both houses of Parliament and faced fierce opposition from the parties placed at the left of the political spectrum.

³³ Parliamentary elections in 2008 ended again with a relative majority of votes for the Social Democratic Party (centre-left), but since - together with the Democratic Party (popular) - they had more than three fourths of the seats in Parliament, despite the political rivalry existing between them, they agreed to create a governing coalition. However, the success of the candidate endorsed by the Democratic Party in the 2009 presidential elections triggered a political crisis in the Government and offered the opportunity for the creation of a new executive towards the end of 2009, supported by a new coalition made up the Democratic Party, the Democratic Union of Hungarians in Romania and the representatives of national minorities in the Chamber of Deputies. In order to achieve this result article 85 and 103 of the Constitution have been interpreted creatively.

systems.³⁴ Not long before this crisis was the impeachment in 2007 referendum to impeach President Traian Băsescu, which took place at a time of cohabitation between a strong and active president and a hostile prime minister supported by a significant number of MPs. The slippery slope of a semi-presidential political system drifting toward presidentialism, and of a presidential political system towards hyper-presidentialism, is not unheard of at the global level. Hyperpresidentialism is but one possible evolution within presidential and semi-presidential political systems.³⁵ In fact, such an ‘adjustment’ was sought by General de Gaulle and used by many presidents throughout the world. Despite the wishful thinking of Romanian Constitution’s authors, what as a legal document seemed to be a semi-parliamentarian political system³⁶ has proven to be quite different in practice.³⁷ No Romanian President has managed to be neutral in the sense that Benjamin Constant intended. Rather, they have all been “true army commanders”³⁸ irrespective of the relevant provisions of the Constitution. Indeed, no president under such circumstances can be “neutral,” as s/he has to participate in elections and be supported by a political party in order to be elected. Furthermore, due to the limited period of presidential terms, coupled with the constitutionally granted possibility of re-election, the incumbent wishes to continue to be the president needs strong partisan backing in order to be re-elected. Finally, if semi-presidentialism is defined,

³⁴ According to Jean-Louis Thiébault, who quotes Juan J. Linz for being the first one to sketch this idea, the structural characteristics of presidential systems implicate difficulties which, under specific circumstances, might contribute to the fall of democracy that otherwise, within an appropriate parliamentary environment, could have had better chances of survival. In parliamentary systems crises are governmental in nature, whereas in presidential systems, crises have all chances to become system crisis. See Jean-Louis Thiébault, *Juan J. Linz et le présidentielisme sud-américain*, 2006. Retrieved July 15, 2014 from <http://www.afsp.msh-paris.fr/activite/2006/collinz06/txtlinz/thiebault2.pdf>, p. 2.

³⁵ Carlos Bernal Pulido, *Droits fondamentaux, juristocratie et hyperprésidentialisme en Amérique Latine*. In Arnaud Martin, (dir.), *La glaive et la balance – Droits de l’homme, justice constitutionnelle et démocratie en Amérique Latine* (Paris: L’Harmattan, 2012), p. 27 et seq.

³⁶ Antonie Iorgovan, *Comentariu la art.102*, in Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu (eds.), *Constituția României revizuită – comentarii și explicații*. (București: ALL Beck, 2004), pp. 157-158.

³⁷ “Experts have decided to opt for an attenuated semi-presidential political system. Of course, this refers to the text of the Constitution and not to the status quo, which is contrary to the Constitution.” (Antonie Iorgovan, *Tratat de drept administrativ*, vol.I. (București: ALL Beck, 2005), p. 295).

³⁸ Drăganu, *op.cit*, *supra*, note 29, p. 234.

among other things, by a sharing of powers which endows the President with “considerable own powers” such a president has to be an important player in the political game. Therefore, s/he cannot simply be neutral from a political perspective. In practice, the Romanian and French political systems are not entirely different in how the office of the presidency is shaped by the incumbent resident’s personality. General de Gaulle, with his strong personality, left an indelible mark on France’s entire political system, while Georges Pompidou and Valéry Giscard d’Estaing were much more neutral in Benjamin Constant’s sense of the term. François Mitterrand’s strong presidency came to an end in 1986 when electoral system changes forced him to confront a much stronger opposition in Parliament, and thus obliged him to concede some power. Jacques Chirac was largely perceived as wavering in his opinions, while Nicolas Sarkozy enjoyed a public image of as being excessively opulent and “hyperactive,” which triggered a change in the constitutional rules pertaining to presidential responsibility (impeachment).³⁹ For many French people, François Hollande embodied a return to normalcy, although this is difficult to discern in the complex French semi-presidential system.⁴⁰ In Romania, Ion Iliescu’s first term (1992-1996) was perceived as more activist than his second (2000-2004),⁴¹ while Emil Constantinescu (1996-2000) did not succeed in stamping his name on the political system. In contrast, Traian Băsescu (2004-2009 and 2009-2014) is considered to have abused the presidential office to the greatest extent possible. It is precisely due to his hyper-presidential stance that Traian Băsescu was subject to impeachment procedures in each of his two terms (in 2007 and 2012 respectively). It was only his popularity which borders populism that allowed him to avoid being dismissed, although he was suspended twice by Parliament.

³⁹ Initiated by the Report drafted in 2001 by an expert commission presided by professor Pierre Avril and created in order to examine the provisions pertaining to the criminal responsibility of the President of the French Republic (*Commission de réflexion sur le statut pénal du Président de la République*, 2002), the revision of the French Constitution with regard to the responsibility of the head of the state has been a recurrent issue over the past decade (2002, 2007, 2011). For an evaluation of all these constitutional revisions. See Jean-Baptiste Collomb, *Du projet de loi organique relatif à l’article 68 C. ou En attendant Godot: Retour sur une révision à retardement...* Retrieved July 15, 2014, from <http://www.droitconstitutionnel.org/congresNancy/comN6/collombT6.pdf>.

⁴⁰ Rousseau, *op. cit.*, *supra*, note 18, pp. 157-166; Jan, *op. cit.*, *supra*, note 18, pp. 167-211; Verpeaux, *op. cit.*, *supra*, note 14, pp. 384-394.

⁴¹ Dima, *op. cit.*, *supra*, note 31; Vrabie, *op. cit.*, *supra*, note 18, p. 398.

It may not be a coincidence that (in both countries) impeachment procedures (Romania) or mere discussions (France) appeared on the political scene and have only been used during the terms of those presidents which were perceived as highly activist and sought to expand executive power. It is also significant that impeachment procedures have been initiated in Romania only during periods of cohabitation. This may be a confirmation that, in fact, semi-presidentialism is a composite mixture, which leans more towards a parliamentary system than a presidential one. In this context, it worth mentioning that only General de Gaulle did not share this fate, although he is the one who actually shaped the French semi-presidential system by adding, in an almost discretionary way, the distinctive feature of direct presidential legitimacy. The defeat of those supporting indirect presidential elections in 1962 equated with the rejection of the parliamentary system in France despite the fact that all characteristics of the parliamentary system remained valid and functional thereafter.⁴² Besides, de Gaulle preferred in 1969 to withdraw from political life when confronted with popular opposition to his wishes to reform the second house of the French parliament (the Senate), therefore avoiding any possible dissonance which would lead to true cohabitation.

From a broader perspective the slide towards presidentialism and even hyper-presidentialism was not exclusive to France and Romania between 2007 and 2012. This is a tendency which could be seen in other Eastern European countries that took French semi-presidentialism as a model. However, semi-presidentialism has not been well received in the countries of Latin America, which opted rather for the presidential model.

Personalization of politics in general,⁴³ and the presidentialisation of the political system in particular, are common nowadays due to factors outside of the institutional and normative framework of political systems. However, these still have a significant impact on political systems, including partisan de-alignment and weakening of the link between

⁴² Rousseau, *op. cit.*, *supra*, note 19, p. 141.

⁴³ Maurice Duverger, *Institutions politiques et personnalisation du pouvoir*, in L. Hamon, A. Mabileau (dir.), *La personnalisation du pouvoir* (Paris: Presses Universitaires de France, 1964), pp. 423-443.

political parties and electorates.⁴⁴ In some cases hostility towards the 'rule of the parties',⁴⁵ the role that television and other media play in society,⁴⁶ the role of modern tools of communication (internet, twitter etc.), and other factors play a role as well. All of these elements reinforce the image of the executive power as characterised by efficiency. This seems consistent with a view that portrays deliberative authority as relaxed or even sluggish; this facilitates the personalisation of politics and may also create the image of a president who is a focal point and vital axis of the political system. This ultimately brings a greater likelihood of presidentialisation, which is always in danger of sliding toward authoritarianism.⁴⁷ Such a development is not unavoidable, but is greatly encouraged by the legitimacy offered to presidents who are directly elected by the people and enjoy relatively large own powers.⁴⁸

6. Two Attempted Revisions of the Romanian Constitution

The two recent attempts to revise the Romanian Constitution do not deserve attention *per se*, but should be examined from a comparative perspective, as they are diametrically opposed with regard to the solution envisaged for the future of Romanian political system. Revisions commenced in 2008-2009 with the creation of the presidential administration's expert commission⁴⁹ and a

⁴⁴ R. J. Dalton, M. P. Wattenberg (eds.), *Parties without partisans: political change in advanced industrial democracies* (New York: Oxford University Press, 2002), *passim*.

⁴⁵ Guy Hermet, *Bonapartisme*, in G. Hermet, B. Badie, P. Birnbaum, Ph. Braud (dir.), *Dictionnaire de la science politique et des institutions politiques*, 6^{me} éd. (Paris: Armand Colin, 2005), pp. 36-37.

⁴⁶ Giovanni Sartori, *Homo videns. Imbecilizarea prin televiziune și post-gândire* (București: Humanitas, 2006), *passim*.

⁴⁷ To the point where *The Economist*, a weekly newspaper, sub-titled one of its articles "Putinisation in Eastern Europe" and explained the concept: "A fondness for short cuts among politicians and resignation among voters may have helped return the region's economy to rights, but they do not bode well for its democratic health. There is a worrying trend in Eastern Europe towards what, with only some exaggeration, might be called "Putinisation": a noxious cocktail of cronyism and authoritarianism (...). Political and economic power fuse, undermining independent institutions and silencing criticism." (*The Economist*, 16 December 2010).

⁴⁸ Novak, *op. cit.*, *supra*, note 23, p. 191.

⁴⁹ The Presidential Commission for the Analysis of the Constitutional and Political system of Romania, <http://cparpc.presidency.ro/?pag=29> (last consulted 17.07.2014). The report of that commission is available at http://cparpc.presidency.ro/upload/Raport_CPAPCR.pdf (last consulted 17.07.2014).

consultative referendum.⁵⁰ A draft law for the revision of the Constitution⁵¹ was put forward by the president, allegedly upon an initiative stemming from the executive.⁵² After the compositional change brought about by the elections of December 2012, as well as the events of summer 2012,⁵³ 334 Deputies and Senators initiated another draft law for the revision of the Constitution.⁵⁴

A. A draft of presidential origin for a presidential political system

Although it was never fully debated in Parliament, this draft of presidential origin was examined by the Constitutional Court⁵⁵ and rejected by the House of Deputies on May 21st, 2013. The draft was justified by the “lack of clarity of inter-institutional relations [...] which demonstrated, at practical level, the inefficiency of some provisions of the fundamental law” (Explanatory memorandum, 2011). Parliament’s rejection of this document was motivated by the president’s decision to submit a draft law for the revision of the Constitution identical to the one which had been examined by the Constitutional Court and found partly unconstitutional without

⁵⁰ Scheduled simultaneously with European elections in order to increase the turnout and thus make sure the validation of the popular consultation, a referendum initiated by the President of Romania asked the electorate if it agrees with a reduction of the number of MPs to maximum 300 and the transformation of Parliament from a bicameral into a unicameral assembly. Official results recorded 83.31% of votes casted as favourable to a reduction in number of MPs and 72.31% of votes casted backing the unicameral solution. According to the Central Electoral Bureau, participation in this referendum was 9.320.240 voters out of 18.293.277 enrolled, representing 50.95% of the voting population, which is above the legal threshold (absolute majority of the population with voting rights) for the validation of a referendum.

⁵¹ Available in Romanian at http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12163, (last consulted 17.07.2014).

⁵² As specifically required by article 150 paragraph 1 of the Constitution: “*Revision of the Constitution may be initiated by the President of Romania upon proposal from the Government, by at least one quarter of the number of deputies or senators, as well as by at least 500.000 citizens with voting rights.*”

⁵³ Available in Romanian under the number B429 at <http://www.senat.ro/legis/lista.aspx#> (last consulted 17.07.2014).

⁵⁴ http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=1&idp=17422, (last consulted 17.07.2014).

⁵⁵ Decision n°799/2011 of the Constitutional Court found that all revisions suggested were compliant with the ‘eternity clauses’ of the existing Constitution save one, pertaining to the protection of property rights.

attempting to review the provisions about which constitutional judges had reservations (albeit, they did not consider them formally unconstitutional). In fact, the draft simply illustrated a rather presidentialist vision of the Romanian political system's future that Parliament did not want to examine. In summation, this draft revision envisaged:

- a unicameral Parliament with a maximum of 300 MPs that retained all deliberative, legislative and control functions;
- a reinforced President who appointed the Prime-minister after his investiture by Parliament, but who was compulsorily consulted by the prime minister upon any expressed intention to replace a minister and who could appoint interim ministers upon a proposal by the prime minister. The President could also take part in all meetings of the executive, freely decide on the content, date and manner of referendums, and freely appoint heads of intelligence and other special services. The Parliament only retained control over their activity. In addition, the president could only be impeached by a two thirds vote in Parliament. If he was not dismissed by the population in the subsequent referendum, Parliament would be dissolved.
- the Government would be responsible to Parliament but had to closely cooperate with the President in day-to-day business.

This would have deliberately and significantly moved Romania toward a more presidential system while not completely removing all vestiges of parliamentarism, including government's collective responsibility to Parliament based on the political program that was the foundation of the investiture vote. Except for the transformation of Parliament into a unicameral assembly, for which justification was sought via a referendum organized by the Presidency in 2009, all other changes were merely codification of political gains the President had made in past political battles with the prime minister or Parliament. The dissolution of Parliament upon the re-election of a president after an impeachment procedure in Austria was presented as a success in order to justify advocacy for these constitutional changes.

However, the proposed amendment was merely a means of reinforcing the presidency after large conflicts with Parliament. After two impeachment procedures, one in which he emerged victorious, and another in which he lost the plebiscite while technically winning the referendum, President Traian Băsescu wanted to create a clear solution for potential future

deadlocks. Băsescu desired a clear constitutional rule because of opposition from Parliament or the prime minister to attempted government reshuffles and nominations of interim government ministers. He also desired a constitutional pathway for his actions as a result of the fierce defence he had been forced to mount.

There was little which could be considered visionary in the constitutional draft. It was more a clarification of the president's relationship with the executive and legislative powers. All clarifications provided by these amendments reinforced presidential power while paying little attention to other members of the executive or political competitors in the legislative branch. This was consistent with the attitude President Traian Băsescu displayed all along his two presidential terms,⁵⁶ and could very well fit into the constitutional framework already in place. In fact, the Constitutional Court confirmed this approach both in 2007 and in 2012, stating that "the constitutional powers and democratic legitimacy that stems from his direct election by the people imposes on the President of Romania an active role. Therefore, his presence in politics cannot be reduced to a mere symbolic or protocol function." (Advisory Opinion No. 1/2007) The court further stated that "in any case, the President's active role in the country's political and social life cannot be characterised as behaviour contrary to the Constitution" (Advisory Opinion No. 1/2012). However, the president wanted more than mere confirmation by the guardian of the Constitution and therefore attempted to achieve constitutional legitimisation.

B. A draft of parliamentary origin for a parliamentary political system

Checked by the Constitutional Court,⁵⁷ as well as by the Venice Commission,⁵⁸ and not yet entered into parliamentary debate, the draft law constitutional

⁵⁶ Since the beginning of his electoral campaign in 2004 and long after the campaign meant to uphold him in the position of President of Romania during 2012 M.Traian Băsescu has constantly used in his public speech the descriptors of "actor" or "player" for himself as opposite to "neutral arbiter".

⁵⁷ Decision n°80/2014 found this draft partly constitutional, save for an impressive number of provisions (25) and some debatable issues which have been formally submitted to the attention of Parliament.

⁵⁸ Venice Commission. (2014). *Opinion on the draft law on the review of the Constitution of Romania*, (adopted at the 98th Plenary Meeting on 21-22 March 201). Retrieved July 17, 2014 from [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)010-e).

revision stemming from Parliament is in stark contrast to the presidential one. First, Parliament is supposed to remain a bicameral assembly mainly because the 2009 referendum had only consultative value. However, the number of deputies was limited to 300 because of the popular support this measure received. The unicameral option was not as popular. Secondly, the Romanian president is officially named "head of the state." This provision, which was previously absent from the Constitution, is now appended to article 80, which defines the role of president. All other presidential powers remain the same or are accompanied by additional checks and balances:

- the Prime-minister would be nominated only after Parliament vested him with confidence.
- Government reshuffles could occur only after Parliament heard all candidates, and reshuffles which affected the political composition of government automatically led to a new vote of confidence.
- dissolution of Parliament was possible only after it has had failed three times to vest confidence in a government and two thirds of members of each house of Parliament agreed (meaning it is becomes practically impossible).
- consultative referendums could be initiated by both the president and minimum of 250.000 citizens, while their validation needed a minimum of 30% of the electorate to turn out.
- the President would represent Romania at the EU level, but only with regard to the external action of the supranational organisation (attributed power). Government is empowered to make all other EU related decisions (general powers).
- the Government would be conceived as a working committee of Parliament which faithfully mirrored its political composition and will.

In summation, and unsurprisingly, the draft originating in Parliament simply provides a majoritarian approach towards the political system of Romania, and further stresses the distinctive characteristics of any parliamentary regime. This draft also lacks any visionary elements, as it is construed in opposition to the presidential one. Like the presidential draft, it merely attempts to codify, at the constitutional level, specific solutions to

past political conflicts between the president and Prime Minister or Parliament. More importantly, this draft simply emphasizes parliamentary majorities, and forgets that, if a parliamentary majority can lead to governmental efficiency in a confirmed parliamentary democracy, it may just as well open the door to authoritarian manifestations in countries with which lack democratic traditions.⁵⁹ It remains to be seen whether this draft law for the revision of the Constitution will have a better fate than the presidential one.

In this context it worth mentioning that the issue of Romania's representation in the European Council (by the president, as has been the practice since Romania joined the EU in 2007) or by the Prime Minister (as is the practise in most EU countries except France,⁶⁰ Cyprus⁶¹ and Lithuania⁶²) is considered the spark that ignited the fire which consumed the Romanian politics in the summer of 2012. Three Constitutional Court decisions⁶³ did not manage to sort out this problem, since the issue at stake was not a legal or constitutional one, but simply political, in content and nature as the Venice Commission implicitly stated when it advised the constituent power to settle the question in the Constitution itself.⁶⁴ However, the issue

⁵⁹ Frison-Roche, *op. cit.*, *supra*, note 23, p.479

⁶⁰ Due to its semi-presidential political system and the specific clout that General de Gaulle had on the European agenda in the early beginnings of the European construction.

⁶¹ Due to its presidential political system.

⁶² Due to a specific arrangement between the main political actors who agreed that the current presidential incumbent is better suited to represent the state at the EU level because of his previous function in the European Commission.

⁶³ Decision n°683/2012 used as norms of reference not articles of the Constitution, but articles written by Maurice Duverger and Robert Elgie in order to reach the conclusion that the political system of Romania is semi-presidential and claimed that the Constitution (in general, and not a specific provision) only allows for a "vertical and not horizontal" sharing of powers in matters related to foreign policy, so that the guidelines are established by the president whereas the prime minister is only in charge with their implementation and cannot participate in the decision-making process. Decision n°784/2012 used the same line of argumentation, while decision n°449/2013 reached an opposite conclusion with regard to the law at stake but based on the same arguments.

⁶⁴ Venice Commission. (2012). Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other state institutions and on the Government emergency ordinance on amendment to the law n°47/1992 regarding the organisation and functioning of the Constitutional Court on the Government emergency ordinance on amending and completing the law n°3/2000 regarding the organisation of a referendum of Romania

had the merit of revealing once more the ambiguous nature of the political system chosen by Romania and the inherent difficulties that arise in the practise of such a composite arrangement.

C. Semi-presidentialism – what for?

The Romanian Constitution adopted in 1991, even after its revision in 2003, remained fairly semi-presidential and open to different interpretations and methods of implementations. It could either accommodate a semi-parliamentary system, as it did once the required conditions for a true cohabitation had been met, or a political system with presidentialist characteristics, as happened whenever the majority in Parliament coincided with the presidential one.

As Maurice Duverger dully noted, the concept he created in political science was not a panacea, but simply a tool better adapted to describe new realities that could not be placed in any of the previous categories. Irrespective of whether or not one conceptually places oneself on the side of those who do not consider semi-presidentialism a new political system⁶⁵ or on the side of those who appreciate it as an innovation,⁶⁶ the category is surely an attempt to describe practical situations which could not be properly analysed in the absence of such a tool due to the numerous discrepancies between existing political systems and their differing institutional and constitutional configurations. But like any concept applied to reality, semi-presidentialism also came to a point where practice took dramatically different path from the theoretical construct.

Maurice Duverger made it clear that semi-presidential systems could be theoretically organized into three distinct types:

(adopted at the 93rd Plenary Session on 14-15 December 2012). Retrieved July 15, 2014 from <http://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD%282012%29026-e>, p.18, para. 84.

⁶⁵ Verpeaux, *op. cit.*, *supra*, note 13, pp. 384-394; Jan, *op. cit.*, *supra*, note 18, *passim*; Rousseau, *op. cit.*, *supra*, note 18, pp. 143-144; Vernon Bogdanor, *Semi-presidential systems*, in V. Bogdanor, (ed.), *The Blackwell Encyclopedia of Political Institutions* (Oxford: Blackwell Publishers, 1987), pp. 561-562.

⁶⁶ Matthew S. Shugart, John M. Carey, *Presidents and Assemblies. Constitutional design and electoral dynamics* (Cambridge: Cambridge University Press, 1992), p.122; Sartori, *op. cit.*, *supra*, note 19, p. 124.

- One type in which the president is the head of state, enjoys a neutral position and symbolic functions (directly by citizens or not), has to cooperate with both Parliament and the prime minister who is chosen by parliamentary majority regardless of his or her designation.
- Another type in which the president is the head of the executive, and therefore enjoys the status of an involved actor with own decision-making powers and, due to his direct legitimacy, can act as the head of a parliamentary majority while the prime minister is subordinate to him or her rather than parliament.
- A third type in which the president is the head of the opposition and therefore enjoys the role of an arbiter with mainly veto powers. His direct legitimacy allows him to directly confront parliamentary opposition and withstand a hostile prime minister in a position of relative strength.

In practice, however, the choice between these options depends on more than constitutional provisions alone, or the framers' intentions for a political system (or, indeed, the subjective position of the external observer). Exogenous factors, such as historical traditions, and contingent circumstances, have a great impact on the actual outcome of semi-presidentialism, while endogenous ones, such as the composition parliamentary majorities, and the president's position in relation to this majority, bring about huge variations with the original models or plans. Under these circumstances, it is even more legitimate to ask what purpose the semi-presidential system serves⁶⁷ since all difficulties noted with regard to the classical dichotomy between parliamentary and presidential political systems are present in semi-presidentialism as well. Hence, what is the utility of the concept? In addition, why have so many countries in democratic transition chosen semi-presidentialism rather than the more traditional choice between parliamentary and presidential political systems?

Although more than ten East European countries in post-communist transition adopted semi-presidentialism, there are not two displaying the

⁶⁷ A *clin d'œil* to Slobodan Milacic, *L'Etat de droit, pour quoi faire ?* in *Constitutions et pouvoirs – Mélanges en l'honneur de Jean Gicquel*. (Paris: Montchrestien, 2008), pp. 375-390.

same practice of this political system, and none seems to have succeeded in the common goal of designing a system balancing the powers of the executive and legislative branches. Observers consider it “a concept which is more apparent than real”.⁶⁸ Despite the fact that almost all of these East European countries compared themselves with what was perceived as the “model” offered by the French political system (as it was conceived in 1962 rather than 1958) none actually intended to end up with a president that subordinated parliament, the prime minister and the electorate (through referendums) in the manner General de Gaulle did immediately after 1962. In fact, most of them started to evaluate the semi-presidential system at the beginning of the nineties when France was just recovering from “the most interesting period in constitutional terms”.⁶⁹ During this period, the president had to appoint a prime minister designated *de facto* by the parliamentary majority. He could not interfere in relations between the executive and the legislative branches and was confined to merely implementing the Constitution. In all likelihood, these countries’ wished for a moderate version of semi-presidentialism in which a true diarchy at the top of the political system (between the president and prime minister) could effectively exist, contrary to the specific words General de Gaulle pronounced soon after he invented what others would refer to as semi-presidentialism.⁷⁰ In other words, the semi-presidentialism sought by East European countries in transition was a chimera, which contradicted the very model it tried to emulate.

The reality of the assertion that semi-presidentialism was a political chimera could be confirmed by the fact that, in some East European countries, the very same legal prerequisites did not result in the same political “end-product”. That is, head of the state directly elected by the people who co-exists with a dualistic executive and is endowed with relatively considerable own powers with practices closer to parliamentary

⁶⁸ Brigitte Vincent, *La typologie classique des régimes politiques à l'épreuve du constitutionalisme est-européen*, in G. Vrabie (ed.), *L'évolution des concepts de la doctrine classique de droit constitutionnel*. (Iași: Institutul European, 2008), p. 76.

⁶⁹ Verpeaux, *op. cit.*, *supra*, note 13, p. 388.

⁷⁰ In a famous speech given on the 31st of January 1964 General de Gaulle declared “Oh, naturally, there should not be a diarchy at the top, but there isn’t any” and continued by describing how the president is an arbiter but not an observer (De Gaulle, 1964).

political regimes. This has been the situation in Bulgaria⁷¹ ever since the adoption of the Bulgarian Constitution in 1991. In its first article this constitution clearly states that “Bulgaria is a republic with a parliamentary form of government.” This was also the case in the Czech Republic both before and, not surprisingly, after the country decided to revert to direct presidential elections in 2012.⁷² Direct head of state elections in such countries has more to do with the legacy of communist regimes and their tendency toward secrecy and manipulation of Parliament than with the definition of a political regime. Therefore, the direct legitimacy of post-communist presidents alone may not be sufficient to effectively qualify such polities as semi-presidential, as Elgie implies in his narrow definition (http://www.semi-presidentialism.com/?page_id=2).

At least in the Romanian case, the wish of the Constitution’s framers was to avoid the possibility of another authoritarian political system as the country had happened towards the end of the twentieth century communist rule. At the same time, they wished to elude the weaknesses of the parliamentary system experienced by the country towards the beginning of the twentieth century, particularly during the politically difficult but economically prosperous years between the two world wars. Hence, direct head of state elections were meant to avoid non-transparent selection of the president by colluding majorities in Parliament, as under communism, whereas the near impossibility of the executive dissolving the assembly was meant to ensure a certain institutional stability and avoid the volatility experienced during the ‘20s and ‘30s. All these fears created a mixed political system in which a directly elected head of the state needed to be balanced by a stable and powerful Parliament.

Alas, this did not happen. Semi-presidentialism is a composite reality, and may lean either towards a majoritarian system, in which Parliament dominates the political scene, or towards presidentialism with a reinforced executive. Romania is no exception to this rule. The country has not yet

⁷¹ Martin Belov, *The Separation of Powers and the Veto Players in the Contemporary Constitutionalism. Essay on the Current Issues of the Institutionalization of the Power Dynamics*, in P. Kirov (ed.) *National and European Dimensions of the Contemporary Constitutionalism*. Vol. I. (Sofia: “St.Kliment Ohridski” University Press, 2010), *passim*.

⁷² Novak, *op. cit.*, *supra*, note 23, pp. 177-195.

succeeded in implementing a fully semi-presidential political system with a two headed configuration of its executive power. To be sure, the Romanian political system has leaned towards parliamentarism for some time, as long as the personality of the president was not an important factor. However, this operational mode was at least facilitated, if not enhanced by, the ambiguity built into its Constitution's text. The two options for further development of the semi-presidential system, which were tested in the political laboratory conditions of Romania (with the two draft revisions of the Constitution) point in two opposite directions. No clear-cut decision can be made yet. However, the mere fact that such contrasting options are possible under the same general framework testifies once more to the ontological ambiguity of the semi-presidential political system and, raises even more sharply the question of its appropriateness to the context of democratic transition.