ROMANIA AND THE EUROPEAN SEMI-PRESIDENTIALISMS[1]

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Abstract. *This article aims to present the European extension of the semi-presidential regimes on the basis of a conceptual intension comprehensively recognized. It also aims to situate – constitutionally and practically – the Romanian semi-presidentialism in its* differentia specifica *in the* genus proximum *of the* "*dual executive regimes*", *which are widespread in the former Communist countries. It is circumscribed to the thesis that Romania's constitutional option for semi-presidentialism, for a radical model of balance of powers*, *has been motivated decisively by the need to substantiate from a dispositional point of view the democratic functioning of the Romanian state through a distribution or sharing of power and*, *by implication*, *to eliminate the risk of authoritarian tendencies and autocratic presidential behaviors. The paper points out the imbalance generated by certain Romanian presidential leadership styles in the diarchic functioning of the executive power – specific for the* premier-presidential *type of semi-presidentialism adopted by Romania –*, *and in the democratic functioning of the power as a whole.*

Keywords: *semi-presidentialism*, *president-parliamentary*, *premier-presidential*, *weak semi-presidentialism*, *hypertrophy of the presidential powers*, *balance of power*.

Genus proximum *of the semi-presidentialism in Europe*

One of the reference formulations of the specificity of semi-presidentialism as political regime belongs to Giovanni Sartori, the most philosophical among the contemporary comparativist political scientists: "semi-presidentialism is 'semi' precisely in that it halves presidentialism by substituting a dual authority structure to a monocentric authority structure" or "a two-headed configuration", by the constitution being established, "in some manner, a diarchy between a president, the head of state, and a prime minister that heads the government"[2]. Thus, relative to presidentialism,

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[1] This study is part of my postdoctoral work devoted to the political leadership in the post-communist Romanian political system after 1990, which is a continuation of the research on the Romanian semi-presidentialism (*Semiprezidențialismul din România. Considerații actuale*, 2015).

[2] Giovanni Sartori, "Semi-Presidentialism", *Comparative Constitutional Engineering. An Inquiry into Structures*, *Incentives and Outcomes*, second edition, New York University Press, New York, 1997, pp. 121-122.

in which the president is protected from parliamentary interference by the division of power principle, in semi-presidentialism – in the *dual executive* regime, according to Jean Blondel – the president shares power with a prime minister who must obtain continuous parliamentary support. The construction of the "new political system model" has been realized by Maurice Duverger by giving a theoretical outline – *régime semi-présidentiel* – to the constitutional and political reality of the French Fifth Republic[3]. According to Duverger, the three formal elements of the semi-presidential regimes are: (1) the president of the republic is elected by universal suffrage, (2) he possesses quite considerable powers, (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental powers and can stay in office only if parliament does not show its opposition to them[4]. The evolution of the concept of semi-presidentialism, which also drew a lot of criticism,[5] has been market by the important specification due to Giovanni Sartori. The illustrious Italian political scientist considered that the semi-presidential regime has the following characteristics: (1) the head of state (president) is elected by popular vote – either directly or indirectly – for a fixed term of office, (2) the head of state shares the executive power with a prime minister, thus entering a dual authority structure whose three defining criteria are: (3) the president is independent from parliament, but is not entitled to govern alone or directly and therefore his will must be conveyed and processed via his government, (4) conversely, the prime minister and his cabinet are president-independent in that they are parliament-dependent: they are subject to either parliamentary confidence or no-confidence (or both), and in either case need the support of a parliamentary majority, (5) the dual authority structure of semi-presidentialism allows for different balances and also for shifting prevalences of power within the executive, under the strict condition that the 'autonomy potential' of each component unit of the executive does subsist.[6] Among the authors who proposed a rewording of the duvergerian concept of semi-presidentialism (reworded several times even by the famous French author), by attempting both to use his analytical model and to explain the variability of semi-presidential systems – and simultaneously to exclude "subjective classifications of semi-presidential countries and establish a clear-cut list of semi-presidential regimes" – was Robert Elgie, who proposed "a slight reformulation of the standard definition of the term". According to Elgie, "A semi-presidential regime may be defined as the situation where a popularly elected fixed-term president exists alongside a prime minister and cabinet who are responsible to parliament". This "purely constitutional definition of the concept" has the advantage of indicating "the ways in which the head of state and head of government come to office and how they remain in office"[7].

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[3] Maurice Duverger, "A New Political System Model: Semi-Presidential Government", *European Journal of Political Research*, Vol. 8, No. 2, 1980, pp. 165-187.

[4] See *Ibidem*, p. 166.

[5] See in this regard Robert Elgie, "The Politics of Semi-Presidentialism", in Robert Elgie (ed.), *Semi-Presidentialism in Europe*. *Comparative European Politics*, Oxford and New York, Oxford University Press, 2004 (1999), pp. 1-22.

[6] Giovanni Sartori, *op. cit*., pp. 131-132.

[7] Robert Elgie, *op. cit*., pp. 12-13.

On this conceptual basis and on that of constitutional provisions, in some taxonomies appear as semi-presidential regimes most of the Central and Eastern European countries, including Bulgaria, Croatia, the Czech Republic, Lithuania, Macedonia, the Republic of Moldova (until 2000[8]), Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia and Ukraine, which added themselves to the Western ones – Austria, Finland, France, Iceland, Ireland and Portugal. According to Shugart, among fourteen former Communist countries, in the present democracies, twelve are semi-presidential in some form[9]. A second important influence of the semi-presidentialism, outside the European Union, was manifested in the former Soviet Union, a space wherein nine of the fifteen former republics have adopted constitutions containing the basic features of the semi-presidentialism: Armenia, Azerbaijan, Belarus (since 1996[10]), Georgia, Kazakhstan, Kyrgyzstan, Russia and Ukraine. According to Robert Elgie, "In total, over half of all the countries that currently have semi-presidential constitutions can be found in Francophone countries, Lusophone countries, and countries of the former Soviet Union and the former Yugoslavia, while nearly two-thirds of all countries in these regions/ contexts have adopted semi-presidentialism as their basic constitutional form"[11].

Semi-presidential regimes[12] *in the new European democracies*

Albania		
Bulgaria		Semi-presidential
Czechoslovakia	Czech Republic	Semi-presidential
	Slovak Republic	Semi-presidential
East Germany		

[8] There is currently a return to semi-presidentialism and there will be popular elections of the president in the fall of 2016, on October 30, 2016. The Constitutional Court of the Republic of Moldova – ascertaining that the constitutional reform of 2000 created a system of government containing the premises for a potential conflict between the state authorities –, declared unconstitutional the law adopted on July 5, 2000 that revisited the Constitution as regards the procedure of electing the President by the vote of 3/5 of the deputies. By the Decision no. 7 adopted on March 4, 2016 the Constitutional Court of the Republic of Moldova revived the provisions regarding the election of the President by direct, secret and freely expressed ballot. http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=558&l=en, http://www.constcourt.md/libview.php?l=en&idc=7&id=759&t=/Overview/Press-Service/News/Constitutional-Court-of-Moldova-has-restored-the-right-ocitizens-to-elect-the-President.

[9] Matthew S. Shugart, "Semi-Presidential Systems. Dual Executive and Mixed Authority Patterns", *French Politics*, 2005, 3 (3), p. 344. I consider here the minimal concept of democracy, of liberal democracy, namely the recognition and respect of the democratic rights and freedoms, the rule of law, the selection of the rulers for executive and legislative powers through competitive, free, and fair elections, of the candidates of several political parties.

[10] According to Robert Elgie. See http://www.semipresidentialism.com/?cat=74.

[11] Robert Elgie, "Semi-Presidentialism: An Increasingly Common Constitutional Choice", in Robert Elgie, Sophia Moestrup, Yu-Shan Wu (eds.), *Semi-Presidentialism and Democracy*, Palgrave Macmillan, Basingstoke, New York, 2011, p. 12.

[12] The expressions *political regime* and *political system* are not considered in this paper as interchangeable, but is followed the conceptual differentiation proposed by Olivier Duhamel: *political regime* as institutional structure or "constitutional configuration of political system" – which in other authors appear under the denotation "constitutional design" or "amount of constitutional power", *political system* as the actual

Hungary		
Poland		Semi-presidential
Romania		Semi-presidential
Soviet Union	Russian Federation	Semi-presidential
	Ukraine	Semi-presidential
	Moldova	Semi-presidential
	Lithuania	Semi-presidential
	Latvia	
	Estonia	
Yugoslavia	Serbia	Semi-presidential
	Croatia	Semi-presidential
	Slovenia	Semi-presidential
	Macedonia	Semi-presidential
	Montenegro	Semi-presidential
	Bosnia and Herzegovina	

The semi-presidential European regimes

Current			Historic cases	
1.	Austria	1945	Austria	1929-1933
2.	Bulgaria	1991	Germany – Weimar Republic	1919-1933
3.	Croatia	1991	Moldova	1994-2000
4.	Czech Republic	2012	Yugoslavia	2000-2003
5.	Finland	1919		
6.	France	1962		
7.	Iceland	1944		
8.	Ireland	1937		
9.	Lithuania	1992		
10.	Macedonia	1991		
11.	Moldova	2006		

functioning of the political institutions – in relation to the "constitutional configuration", to extra-constitutional factors or major conjunctural variables such as the nature of the parliamentary majority, the relationship between the president and the parliamentary majority, the leadership style and political behaviour dynamic, the evolution of the party system and others. See in this regard Olivier Duhamel, "Remarques sur la notion de régime semi-présidentiel", in *Droit, institutions et systémes politiques. Mélanges en hommage à Maurice Duverger*, publié sous la direction de Dominique Colas et Claude Emeri, Paris, Presses universitaires de France, 1987, p. 587, footnote 3.

12.	Montenegro	2016
13.	Poland	1990
14.	Portugal	1976
15.	Romania	1990
16.	Russian Federation	1993
17.	Serbia	2006
18.	Slovakia	1999
19.	Slovenia	1992
20.	Ukraine	1996

See also Robert Elgie, http://www.semipresidentialism.com/?p=1053

The list includes the year when the country most recently adopted a semi-presidential constitution. See also for the Historic cases of semi-presidentialism, Robert Elgie.

http://www.semipresidentialism.com/?p=451

List of European political regimes considered on the basis of their current Constitutions

SEMI-PRESIDENTIAL REPUBLICS	PARLIAMENTARY REPUBLICS	PARLIAMENTARY MONARCHIES	PRESIDENTIAL REPUBLICS
Austria	Albania	Andorra	
Bulgaria	Bosnia and Herzegovina	Belgium	
Croatia	Estonia	Denmark	
Czech Republic	Germany	Liechtenstein	
Finland	Greece	Luxembourg	
France	Hungary	Monaco	
Iceland	Italy	Netherlands	
Ireland	Latvia	Norway	
Lithuania	Malta	Spain	
Macedonia	Switzerland (Federal directorial republic with elements of direct democracy)	Sweden	
		United Kingdom	

Moldova			
Montenegro			
Poland			
Portugal			
Romania			
Russian Federation			
Serbia			
Slovak Republic			
Slovenia			
Ukraine			

See also Robert Elgie, http://presidential-power.com/?p=1740

The extensive adoption of "the new political system model" – practically the establishment of semi-presidentialism as "the most prevalent regime type found in Europe"[13] and its "dissemination" as "pan-European model"[14] –, by "constitutional arrangements" consonant with certain particular political and social circumstances, involved various systemic transpositions. But these various transpositions are reducible to two major classes ("subdivision of the concept") proposed by Matthew S. Shugart and John M. Carey in 1992: *premier-presidential* and *president-parliamentary* subtypes: Under *premier-presidentialism*, the prime minister and cabinet are exclusively accountable to the assembly majority, while under *president-parliamentarism*, the prime minister and cabinet are dually accountable to the president and the assembly majority. This classification was meant, and has the great merit of distinguishing regimes with a "primacy of the premier as well as the presence of a president with significant powers" (*premier-presidential*) from regimes with a "primacy of the president, plus the dependence of the cabinet on parliament" (*president-parliamentary*)[15].

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[13] Roper cited in this respect Kaare Strom and Octavio Amorim Neto, "Duverger Revisited: Presidential Power in European Parliamentary Democracies", paper presented at the annual meetings of the American Political Science Association, Atlanta, 1999. See Steven D. Roper, "Are All Semipresidential Regimes the Same? A Comparison of Premier-Presidential Regimes", *Comparative Politics*, Vol. 34, No 3, April 2002, p. 254.

[14] Adriano Giovannelli, "Semipresidentialism: an emerging pan-European model", Sussex European Institute (SEI) Working Paper No. 58, 2002, pp. 3-4, www.sussex.ac.uk/.../sei-working-paper-no.

[15] Matthew Søberg Shugart, John M. Carey, *Presidents and Assemblies. Constitutional Design and Electoral Dynamics*, Cambridge MA., Cambridge University Press, 2003 (1992), p. 24.

Subtypes of semi-presidential political regimes in Europe

President-parliamentary	*Premier-presidential*
Austria (1949-)	Bulgaria (1990-)
Iceland (1944-)	Croatia (2000-)
Portugal 1 (1976-80)	Czech Republic (2012-)
Russian Federation (1992-)	Finland (1945-)
Ukraine 1 (1992-2005)	France 2 (1962-)
	Ireland (1952-)
	Lithuania (1991-)
	Macedonia (1991-)
	Moldova (1994-2000; 2016-)
	Montenegro (2006-)
	Poland (1989-)
	Portugal 2 (1980-)
	Romania (1990-)
	Serbia (2006-)
	Slovak Republic 2 (1998-)
	Slovenia (1991-)
	Ukraine 2 (2005-)

The subtypes of the semi-presidential regimes according to Matthew Søberg Shugart's and John M. Carey's criteria (1992).

www.congresafsp2009.fr/.../st48samuelsshugart.

David J. Samuels' and Matthew S. Shugart's systematization ("The 'Semi-presidential' model and its subtypes: Party presidentialization and the selection and de-selection of prime ministers") includes countries that have adopted semi-presidential regimes until 2007, but not Iceland. The present list is supplemented with Czech Republic, Montenegro and Serbia.

The dispositional features contained in the constitutions of the new European democracies, nuanced with respect to the equilibrium or balance of executive power – Presidential and Prime Ministerial –, and the diversity of the conventions and "*material* constitutions", as well as of the presidential leadership styles, have generated various concretizations of the model or various forms of semi-

presidentialism. Consequently, in the debate subsequent to initiation of the process of democratic transition in the former socialist countries, the efficiency of semi-presidentialism was examined in relation to the capacity of different forms of semi-presidentialism to constitute themselves in favourable factors for the process of democratization and democratic consolidation. The premise of these approaches was that the various forms of semi-presidentialism generate different effects in the sphere of political system democratization[16], mainly regarding the democratic governance, the power sharing on the basis of uncontestable constitutional provisions, the behavioral factors. The special interest for the capability of different forms of semi-presidentialism to ensure the democratic consolidation and the appropriate institutional selection[17] was and is determined by the major significance of the implications of these processes at the societal level. There were and are targeted, of course, the limitation and annihilation of autocratism, authoritarianism and personalization of power; the capacity of "all the protagonists, institutional (e.g. the presidency, the government, parliament) as well as political (e.g. parties and the party system), to achieve significant political stability" and effectiveness in decision-making; the capacity of the institutions and civil society to monitor the political behavior and to shape the selections of the political and social actors; the possibility of creating a "fair amount of agreement among the political elites" on "the democratic arrangements" and decisions of major public interest[18].

It has been often remarked that does not exists "a watertight explanation" on the reasons why the Constituent Assembly of Romania – resulted from the first free elections organized by the post-revolutionary regime in Bucharest – has opted for a semi-presidential regime. A possible element of an explanation was often identified in the close, "special", relations between Romania and France and, by virtue of these, in the taking over of the French semi-presidentialism as a model[19]. Robert Elgie considered in this regard that "in Romania the motivation for semi-presidentialism seems quite confused as if decision-makers wanted to maximize the legitimacy of the country's political institutions but stumbled upon the French model, or at least a particular view of it, rather by accident. In this case, too, there was ample opportunity for different patterns of governmental relations to emerge"[20]. The French model has constitutes, by all (formal) "appearances",

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[16] Robert Elgie, "Varieties of Semi-Presidentialism and Their Impact on Nascent Democracies", *Taiwan Journal of Democracy*, Vol. 3, No. 2, 2007, p. 53.

[17] *Idem*, "What is semi-presidentialism and where is it found?", in Robert Elgie, Sophia Moestrup (eds.), *Semi-presidentialism outside Europe*. *A comparative study*, Routledge Taylor & Francis Group, London and New York, 2007, p 1.

[18] Gianfranco Pasquino, "The advantages and disadvantages of semi-presidentialism. A West European perspective", in Robert Elgie, Sophia Moestrup (eds.), *Semi-presidentialism outside Europe*. *A comparative study*, *ed.cit*., pp. 23-24.

[19] Giovanni Sartori, „Despre sistemul constituțional românesc" (On the Romanian constitutional system, translation by Alexandru Gabor), in Giovanni Sartori, *Ingineria constituțională comparată*. *Structuri*, *stimulente și rezultate* (*Comparative Constitutional Engineering: An Inquiry into Structures*, *Incentives and Outcomes*), translation by Gabriela Tănăsescu and Irina Mihaela Stoica, Iași, Institutul European, 2008, p. 313; Tony Verheijen, "Romania", in Robert Elgie (ed.), *Semi-Presidentialism in Europe*. *Comparative European Politics*, Oxford and New York, Oxford University Press, 2004, pp. 196-197.

[20] Robert Elgie, "Semi-Presidentialism and Comparative Institutional Engineering", in Robert Elgie (ed.), *Semi-Presidentialism in Europe*. *Comparative European Politics*, *ed. cit*., 288-289.

an important source of inspiration for the numerous countries of the former "Soviet bloc" which have had "similar motivations" and, as a result, which have retained "a certain homogeneity" in their option for a flexible constitutional mechanism and, especially, for the principle of power sharing "in the context of mutual fear and suspicion between opposing political forces"[21]. The punctual motivations of each country were certainly more nuanced by the local circumstances, by the way in which the relevant political actors "channelled the change" to democracy "in the context of the uncertain future" and "the fear of the reversibility of totalitarianism". I think it is rigorous correct the assessment that "The 'semi-presidential model' appeared in a sense as *deus ex machina*, given that it accommodated both the principles and the concerns of ex-communists as well as anti-communists: it appeared to concomitantly guarantee democracy and political efficacy, while ensuring the political survival of each of the chief actors"[22]. To this has to be added, as a factor of influence between the states that were in a new historical cycle, the gained confidence in a model of regime that became prevalent in Central and Eastern Europe and that was taken over[23] by the countries found "in the same point of the history". With special reference to the semi-presidentialism in many ex-Soviet and ex-Yugoslavian countries, as well as Francophone and Lusophone, Robert Elgie showed that the presence of semi-presidentialism "is more associated with an extremely convenient process of institutional mimetism at a time when countries needed to democratize quickly and/or when there was constitutional chaos as a result of unexpected independence/ statehood. In other words, the adoption of semi-presidentialism was the result of a particular constitutional contagion effect in the early 1990s"[24]. I think this form of "mimetism" and "contagion" has functioned also in the case of Central and Eastern European countries, mainly in the case of Romania and Poland, the first former Communist countries that have adopted semi-presidential constitutions. As such, at the beginning of the 1990s the semi-presidential model was perceived as being the "most effective means of transition from dictatorship towards democracy"[25] in Eastern Europe and former Soviet Union.

Romanian semi-presidentialism's differentia specifica – *constitutional design*

In the case of Romania, the most important motivation was, in my perspective, the fear of the risk of authoritarian drifts and autocratic presidential behaviors and this explains, in the main, the particular type – "weak" or "attenuated", "rationalized" – of semi-presidential regime in Romania and, of course, in the area of Central

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[21] François Frison-Roche, "Semi-presidentialism in a post-communist Context", in Robert Elgie, Sophia Moestrup (eds.), *Semi-presidentialism outside Europe*. *A comparative study*, *ed. cit*., pp. 56-57.

[22] *Ibidem*, p. 59.

[23] Giovanelli shows that, after the fall of the Berlin wall, the adoption of the semi-presidential regime was "often preceded, in several capitals, by the dedication to Charles De Gaulle of a big square (usually the former Stalin square)..." See Adriano Giovannelli, *loc. cit*., p. 4.

[24] Robert Elgie, "Semi-Presidentialism. An Increasingly Common Constitutional Choice", *op. cit*., p. 13.

[25] Maurice Duverger, "The Political System of the European Union", *European Journal of Political Research,* Volume 31, Issue 1, 1997, p. 137.

and Eastern Europe. In support of this thesis comes the observation that in almost the whole space of post-communist Europe the description of the role and function of the presidency often lack clarity, is elusive and even ambiguous and, also, the finding that in this area "the presidents play a symbolic or regulating role, rather than being political decision-makers or even 'diarchs'"[26], in contradistinction to the President of the Russian Federation, for instance, who plays the role of "the most important political actor" or of the "strategic actor"[27]. From a constitutional point of view, the presidents in the new European democracies "were placed at a point of political equilibrium". From that point they "have been able to adapt themselves incrementally to the process of political stabilization. From the decision-making role played by some of these latter presidents in the initial transition, most of them have come to play a regulating role in response to the gradual consolidation of the democratic process, and some have even come to exercise mainly symbolic functions"[28]. But constitutionally, the reducing of the role of president was made, therefore, in the Central and Eastern European semi-presidential countries to the extent that the President was not to play "an active role in the political system", or at least that to exist "an institution to balance the power of the presidency"[29]. Besides this determinative motivation, in the case of Romania it should be considered also the desire of its governors "to demonstrate their democratic credentials to the outside world"[30]. But, essentially, the political regime established through the post-communist Constitution of Romania has been subsumed to the systemic logic of the powers balance model or of the balanced relation between the executive and legislative, a model which circumscribes as institutional structure of government the dual executive or the two-headed authority structure: president and prime minister. Compared with the provisions of the French Constitution of the Fifth Republic, the main source of inspiration of the regime in Romania, the Romanian Constitution circumscribed, since 1991 – in the context in which the country just put an end to the oppressive system, "probably the toughest in Eastern Europe" –, a "presidential centre", "not very strong", characteristic, as Sartori has shown, for a "weak", "alleviated" or "parliamentary-like" semi-presidentialism, an "impure" two-headed executive. Thus, constitutionally, the Romanian president has the role of *guarantor* of the proper functioning of the public authorities and *mediator* between the powers in the state and the prime minister and government as authority which ensures the implementation of the domestic and foreign policy of the country, and exercises the general management of public administration. The supreme representative body of the people is the Parliament.[31] The model of balance of powers, which circumscribes this type of constitutional disposing of the public authorities contains three types of formal institutional relationships: (1) a hierarchical "vertical relationship" between

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[26] François Frison-Roche, "Semi-presidentialism in a post-communist Context", *op. cit*., p. 68.
[27] Robert Elgie, "Semi-Presidentialism and Comparative Institutional Engineering", *op. cit*., p. 288.
[28] François Frison-Roche, "Semi-presidentialism in a post-communist Context", *op. cit*., p. 65.
[29] Robert Elgie, "Semi-Presidentialism. An Increasingly Common Constitutional Choice", *op. cit*., p. 14.
[30] *Ibidem*, p. 13.
[31] *Romania's Constitution of 1991 with Amendments through 2003*, Art. 80 (2), Art. 102 (1), Art. 61 (1), https://www.constituteproject.org/constitution/R...

parliament and government or the government subordination to parliament – "the prime minister (and cabinet) – has its survival fused with the assembly majority"[32], (2) a hierarchical "diagonal" relationship between president and government by virtue of the president's right to have some initiative in the prime ministerial nomination, and concomitantly (3) a "transactional" relationship between the president and the government, because the government, once appointed, does not depend on the president but on the parliamentary confidence, so that the president and the government are "co-equals" because they have different sources of authority and must cooperate to accomplish some task ("horizontal juxtaposition of co-equals"[33] or *inter pares* of the Executive). Also, this constitutional disposing is possible since the President and the Parliament have each "an autonomous source of legitimacy". Maurice Duverger classified this pattern of authority, already since 1992, in the category of the semi-presidential political regimes[34], Matthew S. Shugart considered it as being of the *premier-presidential* type[35], and Giovanni Sartori named it a "weak", "rationalized" or of "parliamentary" type[36]. Actually, the specified role of *supervisor* of the Constitution observance, which places him in the political game not in a position of *pares* ("co-equal") but in that of *supra partes*, removes the president from the "active" role of "player" or of part in the act of governing. Furthermore, according to the Constitution, the elected President is not established as chief of the Executive or as chief of the State. As a consequence, this "constitutional division of power", in which "neither the president nor the prime minister is in a dominant position"[37], but the parliament has an important role, falls within a pattern "shaped in presidential scenery but within a parliamentary logic", a pattern within which "the elected president never even tries to take part in every day governing", since the governing "entirely belongs to government which is exclusively accountable to parliament"[38].

Romanian semi-presidentialism's differentia specifica – *practical practice*

It also has been remarked that in Romania there was not a significant "constitutional tradition"[39], that there was "no historical precedent for the establishment of a semi-presidential system of government" and nor "a suitable

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[32] Matthew S. Shugart, "Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns", *ed. cit.*, p. 327.

[33] *Ibidem*, p. 328.

[34] Maurice Duverger, Régime semi-présidentiel. In Olivier Duhamel, Yves Mény (Eds.), *Dictionnaire constitutionnel*, Paris: Presses universitaires de France, 1992, p. 902.

[35] Matthew S. Shugart, "Semi-Presidential Systems. Dual Executive and Mixed Authority Patterns", *ed. cit.*, p. 332.

[36] Giovanni Sartori, "Despre sistemul constituțional românesc", *op. cit*., pp. 313, 316.

[37] Robert Elgie, "Semi-Presidentialism and Comparative Institutional Engineering", *ed. cit*, p. 290.

[38] Bartlomiej Nowotarski, "How to Build new Democracies and Protect Them against Erosion: What Can Really Mean the Recent Worldwide Transitional Experiences for a New Post-revolutionary Countries?", 2012, p. 4, www.ue.wroc.pl/.../nowotarski/how_to_build_n...

[39] Renate Weber, "Constitutionalism as a Vehicle for Democratic Consolidation in Romania", in Jan Zielonka (ed.), *Democratic Consolidation in Eastern Europe*, vol. I *Institutional Engineering*, Oxford and New York, Oxford University Press, 2001, p. 212.

basis for the development of a democratic system of government"[40]. Romania was a principality until 1881, a kingdom between 1881 and 1947 – with a liberal constitution on the Belgian model (1866-1923), a constitution updated on the basis of the same principles (until 1938) and had a constitution that stipulated a personal authoritarian monarchic regime. Romania had three periods of dictatorship between 1938 and 1989 – "the royal dictatorship" (1938-1940), the fascist "national-Legionary state" (1940-1941), the Antonescu military dictatorship, and the Communist "dictatorship of the proletariat". It had a "popular" (Communist) republic starting in 1947 – with three fundamental laws which, in order, have institutionalized the Communist regime, according to the Stalinist model (until 1952), "the dictatorship of the proletariat" (until 1965) and "the socialist Republic with the single-party as leading force" (until 1989). Besides, "Romania's unfortunate political history", with its "serious precedents" – authoritarian, totalitarian, "sultanistic" and the "cult of personality" – sent "to fall asleep" an extremely narrow and delicate body of constitutional conventions, customs and political practices, of (tacitly) "accepted modes to do things" so that "the government to function smoothly", "fluently", "well", and to be concomitantly "consistent with the wishes of the majority of the electorate". Besides, the new constitutional configuration of the political regime has questioned the appropriateness and necessity of their updating. As such, the conventions "awakened from sleeping" entered into a process of agglutination with those taken from the Western political practice, especially the French one. Applied to the post-Communist mechanism of government, these agglutinated practices and conventions have involved not only the control and containment of the attempts to manifest a discretionary power, but also the gradual resuscitation and/or transplantation – after a decade and a half since the regime changed – of the tradition of strong government, with an executive dominated by the president.

The complex historical and political context of the beginning of Romania's transition from dictatorship to a genuine constitutional system was but what determined the "perfectly explainable and, furthermore, wise" motivation[41] of the authors of the Romanian Constitution not to aim, excepting through a popular election, a De Gaulle type of president. The violent changing of the political regime and the highlighting of a political sharing – dominated by the ideological adversity against the "communism" ("neo-communism"), the "cult of leader personality" and the "nomenklature" loyal to him – reflected more prominent than in other former socialist countries the extent to which the new regime was requested as a democratic one in letter and spirit, with a mechanism of power functioning on the basis of rule of law. In this regard, necessarily the President's power requested at dispositional level not only circumscribing or delimitation, but also counterbalancing within the executive and power as a whole. As a result, the post-1989 constitutional design imposed, through "the corrective" of direct election

[40] Tony Verheijen, "Romania", *op. cit*., pp. 193-194.
[41] Giovanni Sartori, "Despre sistemul constituțional românesc", *op. cit*., p. 317.

or democratic legitimating of the President and through "the corrective" of his non-involvement in the act of governing, the stipulation of the president's role of supervisor and guarantor of the democratic game. Consequently, in the post-revolutionary Romania's case, an immediate primacy of the *material* Constitution – as in the France case, in the sense of potentiating or "adding" ("usurpation" of) power to the presidential constitutional prerogatives, as in General de Gaulle's case – was certainly undesirable. Therefore, the constitutional and/or the material promoting of a *forte* presidential institution, of a "pure" president was considered after 1990 in the Romanian context structurally unacceptable.

Given that, as Gianfranco Pasquino shows, "so far contemporary political science has not devised shared criteria to evaluate the performance of institutional regimes and the quality of democracy"[42], the findings on the various forms of semi-presidentialism are conclusive in only one respect: the functioning and "the performance of semi-presidentialism seems strongly influenced by noninstitutional factors"[43]. The risk of hyper-presidentialism, or of cumulating legislative and executive power in terms of recognition of the president as the leader of the parliamentary majority, and the risk of institutional conflicts between prime minister and president and, by degeneration, the risk of constitutional crises or the paralysis of decisions-making process, are mainly assigned to non-constitutional factors, primarily to "the interpretation of constitution", "political behavior", "leadership dynamics" and the leadership style of presidents who try "frequently and constantly" to intervene "with the parliamentary decision-making process and the powers of the prime minister"[44].

The evolution of semi-presidentialism in Romania[45] and its capability to maintain the standards of democratic functioning of the political system, if not to facilitate the democratic consolidation, have to be analyzed through this prism of the trials to presidentialize the executive power and the power as a whole, given that Romania is the only case of semi-presidentialism which has faced in the last two consecutive presidential terms – 2004-2009 and 2009-2014 – with two suspensions of the President by the Romanian Parliament, several terms of intense, even ferocious, intra-executive conflicts in the cohabitation periods, and the replacement of a government appointed by a net winning coalition in 2012 elections and which has obtained positive economic results with a government of technocrats which revived the austerity policy interrupted in 2012.

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[42] Gianfranco Pasquino, "The advantages and disadvantages of semi-presidentialism", *op. cit*., p. 28.

[43] Robert Elgie, "Varieties of Semi-Presidentialism and Their Impact on Nascent Democracies", *loc. cit*., p. 53.

[44] Gianfranco Pasquino, *op. cit*., p. 24.

[45] As I configured in Gabriela Tănăsescu, *Semiprezidențialismul din România. Considerații actuale*, Bucuharest, Editura Institutului de Științe Politice și Relații Internaționale, 2015.

List of cohabitation periods

Period	President – Prime Minister
1) April 2007- December 2008	President – Traian Băsescu (PD/PD-L); PM – Călin Popescu-Tăriceanu (PNL); Coalition – PNL, UDMR
2) May 2012-December 2014	President – Traian Băsescu (PD/PD-L); PM – Victor Ponta (PSD); Coalition – PSD, PNL until March 2014, then PSD, UDMR
3) December 2014-November 2015	President – Klaus Werner Johannis (PNL); PM – Victor Ponta (PSD); Coalition – PSD, LRP, PC, UNPR

Level of conflict between Romanian Presidents and Governments, 1995-2015

PRESIDENT – GOVERNMENT	DURATION OF GOVERNMENT	LEVEL OF CONFLICT
Iliescu – Văcăroiu	1994-08-18 – 1996-09-02	low (no conflict)
Constantinescu – Ciorbea	1996-12-11 – 1998-04-15	low (no conflict)
Constantinescu – Vasile	1998-04-15 – 1999-12-21	medium-high
Constantinescu – Isărescu	1999-12-21 – 2000-12-20	low (no conflict)
Iliescu – Năstase	2000-12-20 – 2003-06-19	low-medium
Iliescu – Năstase	2003-06-19 – 2004-12-29	low-medium
Băsescu – Popescu-Tăriceanu	2004-12-29 – 2006-12-07	high
Băsescu – Popescu-Tăriceanu	2006-12-07 – 2007-04-05	high
Băsescu – Popescu-Tăriceanu	2007-04-05 – 2008-12-22	high
Băsescu – Boc	2008-12-22 – 2009-12-23	low (no conflict)
Băsescu – Boc	2009-12-23 – 2010-05-19	low (no conflict)
Băsescu – Boc	2010-05-19 – 2012-02-09	low (no conflict)
Băsescu – Ponta	2012-05-07 – 2012-12-21	high
Băsescu – Ponta	2012-12-21 – 2014-03-04	high
Băsescu – Ponta	2014-03-04 – 2014-12-15	high
Iohannis – Ponta	2014-12-15 – 2015-11-04	high

Sources: Robert Elgie, The level of conflict between presidents and governments on a four-point ordinal scale; Gabriela Tănăsescu, The evaluation of the level of conflict.

Levels of conflict:

– *high* – the situation where there is persistent and severe conflict between the president and the cabinet;

– l*ow* – the situation where there is no significant conflict between the president and the cabinet;

– two intermediate levels – a *low-medium* and a *medium-high*.

Essentially, the first term in the democratic political evolution of Romania, that of President Ion Iliescu and of the PSD governments (1992-1996), configured "the strong presidency", involved in governance, but one which has not "dismantled the features of the constitutional governance". On the contrary, the presidential term until 1996 was considered as pointing, in a complex period, to a functional pluralism, an encouragement of the constitutionalism "as a vehicle for democratic consolidation in Romania"[46]. This term can be considered as a supplement of the "development phase of a new institutional system in Romania"[47]. The second term, that of President Emil Constantinescu and of the CDR coalition governments (1996-2000), marking "a complete change in political style", illustrated only a "weak" and hesitant presidency, a tense and counterproductive coalition and an evolution of the party system. The presidential democratic style of leadership was obvious in respecting the decision-making autonomy of government and other state public authorities, the media independence, and the freedom of opinion in general, in respecting and non-interfering in the free configurations of the party system, in initiating "a phase of political stabilization" and of "gradual normalization"[48]. The third post-Communist presidential term and the second one of Ion Iliescu and of the single party, minority government of Adrian Năstase marked a period of political stability and economic growth. Adrian Năstase's influence was significantly increased compared to the former Prime Ministers, due not only to its quality as leader of the strongest party in Parliament, but also to the change of President Iliescu's leadership style, more "opened" to a transactional perspective, less "involved" in government and less inflexible, more relaxed in ideological terms and conciliatory in respect of the past, of the interwar personalities and institutions and, at the same time, more responsive to promote the democratic methods and the decentralization of decision-making. Within the executive, this transactional type of leadership was mainly based on the recognition of "clear chains of command", namely of certain "clear structures" or authorities with clear attributions which allocates the duties of their direct subordinates, these being considered to be fully responsible of them. The following two terms, that of President Traian Băsescu (2004-2009, 2009-2014) and of Călin Popescu Tăriceanu (2004-2008), Emil Boc (2008-2012) and Victor Ponta (2012-2015) materialized six year of severe intra-executive conflict (2004-2008 and 2012-2014), a period of presidentialization of executive power (2008-2012), party-presidentialization

46 Renate Weber, "Constitutionalism as a Vehicle for Democratic Consolidation in Romania", *op. cit*., p. 218.
47 Sabina Fati, "Modele prezidențiale în România", *Sfera politicii*, no. 86, year VIII, 2000, p. 2.
48 Tony Verheijen, "Romania", *op. cit*., p. 212.

and *hypertrophying the presidential powers* (2004-2014). Traian Băsescu's second term especially has proved to be a plentifully illustration of a "player president" role – i.e. *partes* of government and of the political "game", – a very active presidential policy of appointment on political criteria, of the non-compliance with the minimum requirement of *impartiality* in the leading positions of public institutions appointment and in the exercise of public power, namely clientelistic politics, favouritism, discrimination, and undue support to special interest groups, a period of strong *colonization* and *partinization* of many important institutional segments. The account of this double presidential term is not only a substantial debt contracted on behalf of the state, but a strongly antagonized political life.

The political practice of the last decade – 2004-2014 – has demonstrated that the fear and the reserve of the Romanian Constitution authors to establish "an authentic semi-presidentialism" of French inspiration, with a *forte* President, have proved to be founded. Given that the current Romanian constitutional design has not prevented the President's interference in the powers that, according to the Constitution, are allocated to the government, the manifestation of his party belonging and, thereby, the refusing of the constitutional role of equidistant mediator in state and society, a revision of the Constitution – as the President has requested since 2005, although in 2003 there had been a "major constitutional revision" – in the sense of consolidating or strengthening the presidential powers in order to gain some "levers" whereby "the president can provide an output from the situations of constitutional crisis" – would only increase the risk of presidentializing the system, of "hypertrophying the presidential powers" and of "imbalancing the power in favour of the president, who is thus able to resolve in his favor of any obstacle or conflict with other political body"[49].

The evolution of the semi-presidentialism in Romania until 2004 has been was rated as "uncontroversial"[50], and "with an improved or no decline in democratic performance"[51], as being maintained "balanced"[52], as the authors of the Romanian Constitution since 1991 expected. The exceptions were: a case of unconstitutional decision of the President to dismiss the Prime Minister (1999) – which caused the introduction in the Constitution of Romania in 2003 of the express provision that the President cannot dismiss the Prime Minister[53] – and two cases of intra-executive tension (1991 and 2002). In spite of the scores recorded "for at least three indicators of democracy" [Freedom House's classification (FH F & PF), estimations of Polity IV framework (Polity ≥ 1 and Polity ≥ 6) and ACLP/DD methodology], in the last two successive presidential terms – 2005-2009, 2010-2014 – Romania was the only semi-presidential country that has faced with two

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[49] Vitalino Canas, "The Semi-Presidential System", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 64, No. 1, p. 98, 2004, http://www.zaoerv.de.

[50] Robert Elgie, "What is semi-presidentialism and where is it found?", *op. cit*., p. 5.

[51] *Idem*, *Semi-presidentialism. Sub-Types and Democratic Performances*. Oxford and New York, Oxford University Press, p. 162.

[52] *Idem*, "A Fresh Look at Semipresidentialism. Variations on a Theme", *Journal of Democracy*, Vol. 16, No. 3, 2005, p. 108.

[53] *Romania's Constitution of 1991 with Amendments through 2003*, Title III, Chap. III, Art. 107 (2) https://www.constituteproject.org/constitution/R...

suspensions of the President by the Romanian Parliament (in 2007 and 2012). Given the trends to "hypertrophy the presidential power", mainly to the presidentialization of executive power, the institutional political practice in Romania has experienced a period dominated by intra-executive conflicts (2004-2008 and 2012-2014) and by presidential attempts to obtain the modification of the Constitution in order to reconfigure in dispositional terms the "amount of constitutional power" granted to the president (2008-2012). During the last governmental term (2008-2012), the results of what was considered "a systematically chaotic government" were: a contracting economy, austerity measures without precedent in post-war Europe even in the context of European austerity policy, a strongly antagonized political life. Finally, in the last two years, 2014-2016, Romania had experienced a problematic cohabitation due to the repeated ("frequent and constant") presidential decisions to reject the governmental initiatives which were supported by a new parliamentary majority and by a political environment expressed as very combative and hostile with the President. The "dynamics" of presidential political leadership style and public behaviour which generated, especially in the last decade, strong institutional conflicts, dysfunctions in the "horizontal accountability" of the executive power, and a regress in terms of democratic consolidation during the middle and last part of the terms in office (2007-2014), demonstrates that the aetiology of the Romanian semi-presidential practice dysfunctions was mainly non-institutional and extra-constitutional.

From this perspective, Romania is not a solitary case in the *genus proximus* of European Union semi-presidential systems, but it is probably the most obvious case in which the functionality and the democratic performance of the semi-presidentialism was encumbered by non-constitutional and non-institutional factors, especially by president's strong political influence on other political actors, by a hypertrophied role of the president specific for an "accentuated" or presidentialized semi-presidentalism, and even for an autocratic type of political power.

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