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**SEMI-PRESIDENTIAL REPUBLIC – COMPARATIVE
LAW STUDY**

- Doctoral Thesis -

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CRAIOVA

2014

SUMMARY

1. Introduction.

There has been a constant concern in the specialized literature for enclosing political regimes in various categories, and the typology based on the separation of powers is a pertinent example of this. Considering that classical models of separation of powers are insufficient to describe the new political regime of the Fifth French Republic, Maurice Duverger created the concept of “semi-presidentialism”. The new notion has aroused sharp controversy in France, and with the publication of the first English paper on this topic¹, the concept became the subject of public international debate, and no later than 1983, the first international conference on “semi-presidentialism” took place. The concept came to be of even an increased concern in the 90’, after the removal of dictatorial regimes in the Eastern Europe, and, in the year of 1997, Maurice Duverger’s article was nominated as being one of the most influential articles published in the first 25 years of the European Journal of Political Research existence.

The concept was and still is widely criticized, but in the opinion of many specialists, the “semi-presidential” regime is the third category in the typology of separation of powers regimes, added to the classical presidential and parliamentary regimes.

The present work is the result of an endeavor to deepen the “semi-presidential” regime, that involved a thorough study of relevant bibliographical sources consisting of political, juridical and historical studies, formal constitutions of the four states proposed for consideration, statistics and press articles and also the jurisprudence of national constitutional courts. Having the fact that the

¹ Maurice Duverger, *A New Political System Model: Semi-presidential Government*, *European Journal of Political Research*, vol. 8, Nr. 2 (1980)

comparative law study was essential to fulfill the proposed objective, the thesis includes the analysis of political regimes in Finland, France, Portugal and Romania both in terms of political practice and constitutional provisions.

By this scientific research we intend to answer the question "*What does semi-presidentialism mean?*" Question asked Mr. Ionel Ardelean , deputy NSF in discussions dated 16 April 1991 on the draft Constitution of Romania. In his speech, Mr. Ionel Ardeleanu did not answer the question, but this didn't stop him to appreciate on the utility of the "semi-presidential system", stating that "*[...] I do not think that in the end the semi-presidential institution, that should not be confused with the presidency institution, as was attempted here to accredit the idea, can be a balancing factor in the separation of power system.*"²

The term "semi - presidential republic" was used by some members of the Constituent Assembly to characterize the political regime established by the Constitution of 1991. Even the Romanian Constitutional Court considers that "*political regime enshrined in the Constitution must be qualified as a semi-presidential one.*"³

Currently, numerous proposals for revision of the Romanian Constitution invariably include changes in the existing political regime. There are proposals to adopt a parliamentary system and proposals to strengthen presidential prerogatives, all based on the idea of the inadequacy of the current political regime. In our opinion, the current gap between formal and material constitution is due to insufficient knowledge of the Constituent regarding the "semi - presidential" system and thus its inability to predict the evolution and the application of this constitutional system. Choosing a new model of power separation must be imperatively accompanied by its deep knowledge and long-term evaluation of the

² *Geneza Constitutiei Romaniei 1991. Lucrarile Adunarii Constituante*, Regia Autonoma "Monitorul Oficial", p. 505-506

³ Decizia CCR nr. 683 din 27 iunie 2012, publicata in Monitorul Oficial, Partea I nr. 479 sin 12.07.2012

impact of such changes in relation to the peculiarities of the social, historical, political and cultural environment in which it will be implemented.

The use of the term “semi-presidentialism” in academic spheres, in the public debate on the need to revise the Constitution and in the Romanian Constitutional Court argumentation proves not only how topical this scientific research is but also the need for its realization. Also we must acknowledge that "not the republic type ensures the democratic value of political regime, but the way the constitutional norms are performed and the how the control of their exercise is provided"⁴. This phrase captures not only the theoretical aspects of the concept of semi-presidential regime but also the reality of the applied political regimes. In this context, our approach was motivated by getting answers to the following questions: Is semi - presidential regime a viable political system ? What are the defining features of semi - presidential political system? What are the features of this regime in Romania? It is necessary to change the existing romanian political regime?

2. Structure.

The thesis is divided into two parts, the scientific research being designed so that it starts from the theoretical foundation of the concept of political regime related to the principle of power separation, in order to finally provide a complete and thorough review of the semi-presidential political design and political practice.

In the first part of the paper, the scientific approach analyses the concept of "political regime" based on the principle of separation of powers. There are summarized both the evolution of the theory of separation of powers and its criticism, as well as the explicit and implicit ways of reception of this principle in constitutional systems of the four countries classified by some experts as semi -

⁴ F. Vasilescu in *Geneza Constitutiei Romaniei 1991. Lucrarile Adunarii Constituante*, Regia Autonoma “Monitorul Oficial”, p. 489

presidential republics. Subsequently, the classical separation of powers regimes are inventoried, with particular attention paid to the parliamentary regime especially to dual parliamentary regime, plus an analysis focused on defining features of semi - presidential regime.

Part II contains a comparative analysis of political regimes in Romania, Portugal, France and Finland, with the set of normative and constitutional elements regarding the Executive bipolar structure and the power relations between the President, Parliament and Government being first presented. Later is examined the determining influence of the electoral system, party system and constitutional courts on the functioning of the semi - presidential regimes.

The conclusions section presents the final assessments on existing political regimes in France, Finland, Portugal and Romania, as well as considerations on possible changes to the political regime in Romania.

3. Overview of the scientific research results on the "semi - presidential" political regime.

3.1. The typology of the separation of powers political regimes.

Analyzing the classical separation of powers political regimes (the parliamentary and presidential regimes), both the legal concepts and the concrete political regimes, we find that the prospect of separation of powers does not allow us to capture the essence of these regimes. The transformation of parliamentary and American presidential regimes in archetypes of separation of powers regimes is harmful for this typology. The identity created between the regime of strict separation of powers and the presidential one and between the regime of powers cooperation (also called supple separation of powers regimes) and the parliamentary ones is forced, with the effect of creating confusion like regimes of collaboration of powers can only be parliamentary. Or, at least in theory, supple

separation of powers can support multiple patterns of power relations organization, being incorrect to assume that the parliamentary model is the only possible pattern of collaboration between powers. Neither presidential regime does require absolute separation of powers, as otherwise noted by the Supreme Court of the United States which, in July 24 1974, stated that "... was not their intention (of the US Constitution founders) that the separate powers operate in absolute independence"⁵. So both presidential and parliamentary regimes are regimes of separate powers that collaborate⁶.

So, what are the defining elements according to which we can characterize a political regime as parliamentary or presidential? Is it sufficient and accurate the characterization of regimes in terms of supple or rigid separation of powers? According to Juan Linz, "All presidential and parliamentary systems have a common essence allowing their differentiation and some systematic comparisons"⁷.

The specific of the above mentioned regimes can be identified by analyzing the political regime in terms of political responsibility of the government, presidential regimes being characterized by the fact that the President is assigned the executive power and the parliamentary regimes (in the broad sense of the concept, including the dualistic and the monistic ones) being characterized by the liability of the Government to Parliament. The hypothesis of a double governmental responsibility in Parliament and in front of the head of state was known in the evolution of the parliamentary regime as dualistic parliamentary system. Since most current parliamentary regimes are reinforced in their monistic

⁵ Olivier Gohin, *Droit constitutionnel*, LITEC, Paris, 2010, p. 217

⁶ Ibidem. Potrivit lui Olivier Gohin, regimul parlamentar este un „regim discontinuu de colaborare voluntara intre puterile legislativa si executiva”, iar regimul prezidential este un „regim continuu de colaborare fortata intre puterea executiva si cea legislativa”.

⁷ Juan Linz, Arturo Valenzuela, *Esecul democratiei prezidentiale, Perspective comparative*, The Johns Hopkins University Press, 1994, CA Publishing, 2010, pentru versiunea in limba romana, p. 14

form, the appearance of the regimes with a dual power structure, without the Constituent intention to revive the dualist parliamentary regime, naturally caused much controversy about including them in the typology of separation powers regimes.

From the intention of the French Constituent Assembly to rationalize the parliamentary regime of the Fourth French Republic was created the dualistic structure of classic parliamentary regime and a number of variables, such as the electoral system, the party system and charisma of the political leaders have made their mark on the French Fifth Republic regime, which Duverger called "semi - presidential". Further defining of the semi- presidential regime had the effect of widening this category by including the political regimes with Presidents to which are assigned less significant decision-making powers, which we have called parliamentary regimes with presidential corrective⁸.

3.1.1. The renewed dualistic parliamentary regime

The constitutional theory of parliamentary regime is characterized by the diversity of ideas and concepts arising from long history of the regime. History of parliamentarism started with the dualist parliamentary regime (also called classic parliamentary system) .

The classical form of parliamentary regime is the expression of the formula "two powers and three organs"⁹. Also called dualist parliamentary system, it was governed by the principles of equality and cooperation of the two powers

⁸ Notiunea de „regim parlamentar cu corectiv prezidential” a fost utilizata de Jean-Claude Colliard in *Les regimes parlementaires contemporains*, Paris, Presses de la Fondation nationale des sciences politiques, 1978, p. 280, inasa pentru a caracteriza regimurile parlamentare in care Presedintele era ales prin sufragiu universal si care isi exercita puterile constitutionale acordate. Potrivit acestui autor, Finlanda de dupa 1919 si pana in 2000, precum si Republica a V-a Franceza puteau fi calificate ca regimuri parlamentare cu „corectiv prezidential”; Pierre Avril, *Quel equilibre entre executif et legislatif*, in RDP numar special „La VI^e Republique?”, 2002, p. 25, considera ca „Republica a V-a franceza, fie ca este „cu corectiv prezidential” sau „de captatie prezidentiala”, ramane din punct de vedere structural un regim parlamentar.”

⁹ Georges Burdeau, *Le regime parlementaire dans les constitutions europeennes d'apres guerre*, Paris, 1932, p. 84 apud Philippe Lauvaux, *Les grandes democraties contemporaines*, 3^e edition, PUF, Paris, 2004, p. 190

(executive and legislative). The parity translates into a parity between Parliament and the President in front of which a government was responsible¹⁰. The Monarch was granted the right to dissolve Parliament and of the latter the right to call out the Government responsibility. Government must gain, for it to exist, a double vote of confidence from King and Parliament. Between the two powers were reports of collaboration or interference in the exercise of one another, like veto rights and legislative initiative belonging to the monarch and Parliament's right to supervise and control the work of the Government.

Classical parliamentary regime (dual regime) implied the coexistence of two authorities, each with its own legitimacy (democratic and monarchy). The dualism reinvented and applied in a republic replaced the monarchy legitimacy with the popular legitimacy of a president elected by universal suffrage.

From a historical perspective, the dualist parliamentary regime, in its traditional form, was perceived as a regime of transition "between two conceptions of sovereignty and, accordingly, between two eras, that of the sovereignty of divine right to the sovereignty of the people."¹¹

The qualification of the dualist parliamentary regime as a phase of the parliamentary regime is due to the historical context in which successive electoral reforms, political games and the pressure of the people resulted in strengthening the parliamentary supremacy and the removal more or less progressive of the competing monarchical authority from the exercise of power. The dual power structure framed in a regime of collaboration of powers is not inherently a transient and unstable structure, but rather a flexible structure that allows different equilibrium of power.

¹⁰ Philippe Lauvaux, *Les grandes démocraties contemporaines*, op. cit., p. 189

¹¹ Constance Grewe, Hélène Fabri Ruiz, *Droits constitutionnels européens*, P.U.F., Paris, 1995, p. 370

Reinvented by its application in a republic, the dualist parliamentary regime was originally reconstructed in the interwar period in Finland, Germany (period known as the Weimar Republic), Iceland and Ireland, and later of the Second World War in France (French Vth Republic) and Portugal. These regimens were called in literature semi- presidential regimes considered by many authors as free-standing regimes.

The political regime of the French Republic was born from a new attempt to rationalize the parliamentary regime, enshrined in the Constitution of 1958, to which was added, in 1962, Charles de Gaulle's success in imposing the appointment of the President by direct universal suffrage¹². This regime, appeared with no intention of the Constituent to revive the dualist parliamentary regime, have been attributed by the doctrine many names such as bi-representative monist system¹³, dual executive system, bipolar¹⁴, presidential - parliamentary system¹⁵, dual presidential regime¹⁶, personal or impersonal presidentialist regime¹⁷, regime

¹² Prin organizarea referendumului din 1962 in care populatia era chemata la urne pentru a se pronunta in favoarea sau deavafoarea alegerii Presedintelui republicii prin vot universal direct, Presedintele Charles de Gaulle a fortat limitele Constitutiei din 1958 in materie de revizuire, organizand referendumul fara ca propunerea de revizuire a Constitutiei sa fie in prealabil votata si aprobata in cele doua Camere.

¹³ Marie-Anne Cohendet, *Droit constitutionnel*, 3^e edition, Montchrestien, Paris, 2006, p. 334

¹⁴ Juan Linz, *Democratie prezidentiala sau parlamentara: Are vreo importanta?* in Juan Linz, Arturo Valenzuela, *Esecul democratiei prezidentiale, Perspective comparative*, The Johns Hopkins University Press, 1994, CA Publishing, 2010, pentru versiunea in limba romana, pp. 81, 87

¹⁵ Matthew Soberg Shugart si John M. Carey, *Presidents and assemblies. Constitutional design and electoral dynamics*, Cambridge University Press, Cambridge, 2009 [1992], p. 24. Alaturi de regimul prezidential-parlamentar (care se caracterizeaza prin preeminenta Presedintelui in cadrul Executivului), autorii au introdus si conceptul de regim politic premier-prezidential pentru descrierea regimurilor politice in care premierul are intaietate in conducerea Executivului. Mentionam faptul ca cele doua concepte juridice descriu subtipuri ale unui regim politic mixt, care se caracterizeaza prin prezenta a doi agenti ai electoratului (Presedinte si Parlament) si a unui Guvern dependent de increderea Parlamentului.

¹⁶Jean –Louis Quermonne, *Les regimes politiques occidentaux*, Cinquieme edition mise ia jour, Editions du Seuil, ianuarie 2006, p. 165

¹⁷ Jean Giquel, *Droit constitutionnel*, 19^e edition, Montchrestien, Paris, 2003, p. 469

"sui generis"¹⁸, majority presidentialism¹⁹, parliamentary system with a presidential corrective²⁰, but the most famous is the name „semi- presidential” regime²¹.

After the fall of communism, most countries in Eastern Europe have oriented themselves to the regime of the Fifth French Republic, considering that the dualistic institutional structure will prevent the hegemony of one authority in relation to the others. The strategy consists in the division and balance of power to ensure stability of democracy. To prevent the concentration of legislative and executive powers within a single authority, the President of the Republic was removed from the influence of Parliament, ensuring his independence by universal suffrage election²². But the distrust in the presidency institution is a feature of post-communist political regimes, which led to a decrease in the presidential prerogatives compared to those of the President of France. Political regimes built in these countries has been attributed the name „semi – presidential” regimes.

For a correct classification of such regimes, and to clarify, at the conceptual level, the relationship between the dualist parliamentary regime and the semi-

¹⁸ Olivier Duhamel, *Le pouvoir politique en France*, 5^e edition, Editions du Seuil, Paris, 2003, p.62

¹⁹ Philippe Lauvaux, *Les grandes democraties contemporaines*, op. cit.,p. 193

²⁰ Jean-Claude Colliard, *Les regimes parlementaires contemporains*, Paris, Presses de la Fondation nationale des sciences politiques, 1978, p. 280

²¹ Termenul a fost definit pentru prima oara de Maurice Duverger in volumul *Institutions politiques et droit constitutionnel IIe édition*, Presses Universitaires de France, Paris, 1970, insa acesta a fost folosit mai intai de Hubert Beauve-Mery, ca titlu al unui articol publicat in *Le Monde* la 8 ianuarie 1959, pentru a desemna sistemul de guvernare al Republicii a V-a franceze.

²² Michel Lasage explica optiunea acestor tari pentru un Presedinte ales prin sufragiu universal prin necesitatea construirii unei legitimitati pentru o autoritate statala, mai ales ca aceste tari nu dispuneau de sisteme de partide politice a caror functionare sa conduca automat la alegerea stabila a unui lider, in Milacic, Slobodan, (dir.), *La democratie constitutionnelle en Europe Centrale et Orientale Bilans et perspectives:Colloque international, Bordeaux, 28-30 novembre 1996*, Bruylant, Bruxelles, 1998, pp. 92-93, apud Snejana Sulima, *L'influence de la modalite de suffrage aux presidentielles sur les rapports entre les pouvoirs etatiques*, pp. 5-6. François Frison-Roche, in articolul sau, *The political influence od presidents elected by universal suffrage in post-communist Europe*, publicat in studiul Comisiei de la Venetia, *Evaluation of fifteen years of constitutional practice in central and eastern Europe*, Council Of Europe Publishing, decembrie 2005, p. 11, considera ca prin modalitatea de alegere a Presedintelui prin sufragiu universal se urmarea mai putin stabilirea unei legitimitati a presedintilor ci, mai degraba, prevenirea alegerii acestora de catre Parlament. In lucrarea sa *La democratie constitutionnelle en Europe Centrale et Orientale Bilans et perspectives:Colloque international, Bordeaux, 28-30 novembre 1996*, Bruylant, Bruxelles, 1998, p.93, acelasi autor aprecia ca aceasta modalitate de alegerea presedintelui satisfacea necesitatea “neutralizarii” diferitelor puteri aflate in competitie, acordandu-le acestora o relativa autonomie in raporturile reciproce.

presidential regime, is necessary to fix the defining features of dualist parliamentarism. Dualistic form a parliamentary regime is characterized by the following elements:

- The Chief of State is the head of the Executive;
- The Government is politically responsible to the Parliament and the Chief of State;
- The Parliament can be dissolved by the Chief of State.

These features are specific to both forms of dualist parliamentarism both the classical and the renewed ones (whose innovation consists in particular in the new legitimacy granted to the President). Therefore, the political regime of the French Fifth Republic whose qualification occasioned extensive debate in the specialized literature, caused mainly by the writings of Maurice Duverger, is essentially, in our opinion, a renewed dualist parliamentary system. In the same category we can include political regimes in Finland (between 1919-2000), Germany (period known as the Weimar Republic), Iceland (after 1944), Austria (since 1944), Ireland (1937) and Portugal (1976) analyzed solely in terms of institutional norms.

From the perspective of political practice, the renewed dual parliamentary regime meet these following subtypes: apparently dualistic regimes, which are regimes that, despite the executive prerogatives granted to the head of state, the later has remained in the shadow, his role in the Executive reducing to a purely formal one (Iceland, Austria , Ireland) ²³; pure dualistic regimes, being those in which the head of state is also the head of the Executive (until 2000 Finland, France, Portugal)²⁴.

²³ Acestor regimuri, literaturade specialitate le-a dat diferite denumiri precum: regimuri semi-parlamentare, de aparenta semi-prezidentiale.

²⁴ Aceste regimuri politice au fost denumite si regimuri de practica semi-prezidentiale sau efectiv semi-prezidentiale.

A similar classification, created according to constitutional custom, is common in monist parliamentary regimes that can be of two types: facade dualistic regimes (such as the British parliamentary regime type) and the pure monist ones.²⁵

The fact that in renewed dualistic regimes, the powers of the head of state depend on political circumstances, which causes alternation between different regime phases, do not constitute an element of novelty, because this could be observed also in the operation of the classical regime. As Maurice Duverger said, "a constitution does not designate a single scheme of government, but more so their application depends on the status of forces at a time"²⁶.

For qualifying political regimes built by post- communist constitutions, we mention that "the election (of the President) does not weigh heavily in the balance"²⁷. So even if the Presidents of most post-communist republics gained a legitimacy based on direct universal suffrage, leaving them without major powers (or "significant powers" according to Maurice Duverger) does not allow framing these political regimes in the category of parliamentary dualistic regimes. They may constitute a parliamentary regime with presidential corrective which involves the heads of state being awarded meaningful prerogatives, but not enough to attract their qualification as dualistic parliamentary regimes. The popular legitimacy confers the President extra power which, combined with his personality and the politic conjecture, can lead to a significant increase of the role of the President in its relations with other authorities.

In the current political context in which political parties are the main political force, the dual parliamentary republic regime implemented in a republic will work differently from the traditional one (in pre victorian England or France

²⁵ Philippe Lauvaux, *Les grandes democraties contemporaines*, op. cit., p. 197

²⁶ Maurice Duverger, *Echec au roi*, Albin Michel, Paris, 1978, p. 10

²⁷ Ibidem, p. 58

between the years 1830 to 1848), which however cannot be regarded as a justification for the new name of the system, as the abstract legal concept is essentially the same. But regardless of the controversies about its authenticity, important is the fact that however named, the political regime described by Maurice Duverger is a identifiable and reproducible pattern in constitutions and the political practice of states.

3.1.2. The “semi-presidential” political regime.

According to Maurice Duverger²⁸, semi-presidential political regime is characterized by the following three elements: (1) The President of the Republic is elected by universal suffrage; (2) The President has considerable powers; (3) before the President is a Prime minister and ministers who possess executive and governmental power and can stay in service only if Parliament did not express its disbelief.

It is important to note that the definition mentioned above was preceded by Maurice Duverger's other attempts to define semi-presidentialism, the differences between them being significant. The definitions differ in terms of powers recognized to the President, which are the Achilles heel of the "semi-presidentialism".

The concept of "semi-presidentialism" has been the subject of numerous doctrinal controversy concerning its validity and authenticity. The different definitions of the concept and the diversity of semi-presidential political regimes have born strong criticism on the subject. Even some of Maurice Duverger arguments in support of the "new" regime were likely to call into question its

²⁸ Maurice Duverger, *A New Political System Model: Semi-presidential Government*, European Journal of Political Research, vol. 8, Nr. 2 (1980), p. 166

authenticity. In this regard was Maurice Duverger's statement according to which semi-presidential regime "is an intermediate between presidential and parliamentary systems"²⁹. Moreover, due to the same problem, Matthew Shugart and John Carey Soberg³⁰ objected to Duverger's use of term, the authors considering that the term "semi - presidential" is "tricky" because the term "semi" can induce the idea that the regime "is located in the middle, amid a continuous oscillation from parliamentary to presidential regime" , so they chose to use the term "presidential - parliamentary regime."

Linz³¹ found that dual executive system shows significant differences concerning the powers conferred to the President by the Constitution. Moreover, constitutional diversity in terms of Presidents powers from regimes described as semi-presidential is one of the concept's vulnerability.

Undoubtedly, the fiercest criticism targeted the mixed, amalgamated nature of the regime named by Duverger as "semi - presidential". For example, Pactet³² states that "mixed regimes combine elements borrowed from the presidential and parliamentary regimes, which raise the issues of consistent functioning." The concept of semi- presidentialism was considered an impure system, hybrid or "bastard"³³. Responding to this criticism, Duverger said in 1978³⁴ that although seems to combine two conflicting logics (that of parliamentary and presidential regimes), the contradiction is only apparent within the regime. Thus, if a

²⁹ *A new political system model: semi-presidential government*, European Journal of Political Research, vol. 8, p. 165

³⁰ Mathew Soberg Shugart, John M. Carey, *Presidents and Assemblies. Constitutional Design and Electoral Dynamics*, op. cit., p. 23

³¹ Juan J. Linz, Arturo Valenzuela (coord.), *The Failure of Presidential Democracy. Comparative Perspectives*, op. cit., p. 81

³² Pierre Pactet, *Institutions politiques. Droit constitutionnel*, 13^e édition, Masson, Paris, 1995, p. 153, apud Robert Elgie, *The politics of semi-presidentialism*, op. cit., pp. 6-7

³³ Termenul este folosit de Rene Capitant, *Election ou plebiscite*, Nouvelle Frontiere, noiembrie –decembrie 1965, p. 9 apud Francois Frison –Roche, *Le "modele semi-presidential" comme instrument de la transition en Europe post-communiste. Bulgarie, Lituanie, Macedoine, Pologne, Roumanie et Slovenie*, Bruylant, Bruxelles, 2005, p. 11.

³⁴ *Echec au roi*, op. cit., pp. 26 - 28

presidential regime appears as "a marriage without divorce" which requires a permanent compromise and mutual restraint between two separate branches (legislative and executive), effectiveness of parliamentary regime "depending more on the relationship between political forces than by legal regulations", the semi-presidential regime appears not as an amalgam of the two regimes, but as a combination " of two fundamental principles that allow the distribution of powers between each of the two heads of the eagle: the Prime minister is responsible to the deputies and the President is elected by universal suffrage."

In conclusion, we show that it is undeniable that the notion of semi-presidential system was built by Maurice Duverger by observing the French Fifth Republic regime. This is why the concept is tributary to the system that wants to explain. Moreover, the author's fascination for the new political regime appears explicable if we refer to its performance. After a long period in which France has oscillated between constitutional monarchy, republic, dictatorship, monarchy and "assembly" parliamentary system, the new regime meets both criteria of efficiency and of representativeness in a democratic framework³⁵.

Ambiguous notions used in the definition of semi-presidentialism such as the "considerable powers" term) prevents the delimitation of the concept from the described political regime. It can be considered a concrete example of a notion constrained by the reality which it describes. Or, "legal concepts constrain reality, do not follow it" ³⁶. The definition of semi-presidentialism is empirical, restricted and descriptive, although it claims to introduce into the doctrine a new concept of political regime with an innovative institutional structure. In fact, the French political regime which Duverger called „semi-presidential regime”” meets the elements of a dualist parliamentary system.

³⁵ Maurice Duverger, *Les régimes sémi-présidentiels*, Presses Universitaires de France, Paris, 1986, p. 50, „*In forma aparuta dupa 1962, regimul semi-prezidential i-a daruit Frantei un sistem politic eficace si democratic*”.

³⁶ Dan Claudiu Danisor, *Disfunctionalitati ale sistemului constitutional*, opera nepublicata, p. 57

The operation of this system by alternating between presidential and parliamentary phases depending on the three variables identified by Duverger (President's constitutional powers, the presence or absence of the parliamentary majority and the President's position in relation to the majority³⁷) is specific to a dualist parliamentary system in which the three centers of political momentum (President, Parliament and Government) have the vocation to become pre-eminent. The value of Maurice Duverger studies is undeniable and lies in the pertinent analysis of the functioning of political regimes he termed "semi - presidential", but these studies are not likely to support the validity of the concept of semi - presidentialism.

3.1.3. The semi-presidential republic from a comparative view

By creating the category of "semi - presidential" regimes, Maurice Duverger added to the French Fifth Republic regime other regimes. After he attributed to the French Fifth Republic the name "semi - presidential", in 1974³⁸ the author introduced in this category yet five "republican monarchies", namely Finland (after 1919), Germany (also called period Weimar Republic between 1919 and 1933), Iceland (after 1944), Austria (since 1944) and Ireland (1937). The political regime built by the Portuguese constitution of 1976 was assimilated to "semi - presidentialism" in 1978³⁹, and Romania was among the countries of Eastern Europe which Duverger nominated in 1992⁴⁰ as semi - presidential.

Their analysis revealed that political regimes are, in a first phase, the consequence of the existing political forces from the Constituent Assembly and the result of the historical context that created the opportunity of adopting a new constitution or a constitutional review. Subsequently, regimes owe its form to a

³⁷ Maurice Duverger, *Les regimes semi-presidentiels*, op. cit., p. 14

³⁸ Maurice Duverger, *La monarchie republicaine*, Edition Robert Laffont, Paris, 1974, pp. 121-123

³⁹ Maurice Duverger, *Echec au roi*, op. cit., p. 17.

⁴⁰ Olivier Duhamel, Yves Meny, *Dictionnaire Constitutionnel*, PUF, Paris, 1992, p. 901

different causal elements as personality and willingness of political leaders, the Constitutional Court jurisprudence, the existing cleavages in society, to the exiting political forces, the ideology, the degree of structuring and its representative base, to the electoral system, to the voters and political leaders political culture etc.

The political regime of the Fifth French Republic is in fact a successful form of classic dual parliamentarism transposed in a republic, a form applied to the expression "two powers and three organs"⁴¹. The regime owes its performance not so much to the institutional structure but to the electoral and party systems capacity to generate stable parliamentary majority. The consolidated majorities that French political regime enjoyed since 1962 so far have allowed the President of the Republic to acquire a preeminent role in all constitutional institutions, contributing more to the common opinion according to which France is a presidential republic⁴².

It is important to mention a few factual circumstances whose influence in the evolution of French political regime is not to be ignored. The controversial amendment to the French Constitution by referendum in 1962, the result of early parliamentary elections in November 1962, the application of the Constitution of the first two elected President of France that ensured their pre-eminence within the Executive⁴³, the success of President François Mitterand in using his the constitutional prerogative to dissolve the National Assembly in order to obtain a

⁴¹ Georges Burdeau, *Le regime parlementaire dans les constitutions europeennes d'apres guerre*, Paris, 1932, p. 84 apud Philippe Lauvaux, *Les grandes democraties contemporaines*, op. cit., p. 190

⁴² Arend Lijphart aprecia ca „In Franta [...] nu doar puterea prezidentiala ci insusi sistemul prezidential depinde de conditia ca presedintele sa aiba sustinerea majoritatii in Adunarea Nationala.” in Arend Lijphart, op. cit, p. 128

⁴³ Charles de Gaulle afirma in 31 ianuarie 1964 faptul ca „autoritatea indivizibila a statului este incredintata in intregime presedintelui de catre poporul care l-a ales...”, iar, in cartea sa „Nodul Gordian”, publicata in 1974, Georges Pompidou scria urmatoarele: „Constitutia noastra, modificata prin referendumul care a instituit alegerea presedintelui Republicii prin sufragiu universal, a instituit clar principiul prioritatii sefului statului... Seful de stat, investit direct cu increderea natiunii, este si trebuie sa fie seful incontestabil al executivului...Primul ministru, asa cum indica numele sau, nu este decat primul dintre ministri. Rolul de coordonare pe care acesta il joaca in cadrul guvernului si responsabilitatea pe care o poarta si o angajeaza fata de Adunare nu pot ascunde aceasta subordonare fundamentala”, in Maurice Duverger, *Echec au roi*, op. cit., pp. 143-144.

parliamentary majority and thus to avoid cohabitation with a hostile parliamentary majority, the reduction of the presidential term from seven years to five years and placing legislative elections a month after the presidential elections⁴⁴ since 2000 constitutional reform.

As for the Finnish political system based on the 1919 Constitution, Maurice Duverger characterized it as semi - presidential⁴⁵ one, with a strong president, according to a ranking of the Presidents in semi-presidential republics⁴⁶. From our point of view, the Finnish political system until 2000 belongs to the category of dualistic parliamentary regimes. Changes in the 1999 Constitution are significantly mitigating the powers of the President (both legislative and executive) for the benefit of Parliament which gains increased power of control over the government, and this dynamic is typical to the transition from dual to the monist parliamentary regime⁴⁷. The current state of governance structures of Finland is an intermediate one, which we can call parliamentary regime with a presidential corrective. The regime is parliamentary because the government is politically accountable to Parliament, but the President cannot be assimilated to a head of state from classical monist parliamentary regimes. In Finland, the President competes with Prime Minister for getting the first position in the state. This is due to proportional electoral system and fragmented party system of Finland that make it almost impossible for a party to obtain absolute parliamentary majority.

⁴⁴ Aceasta modificare l-a determinat pe [Nicolas Sarkozy](#) sa sustina faptul ca alegerile prezidentiale au patru tururi de scrutin.

⁴⁵ Maurice Duverger, *Les regimes semi-presidentiels*, op. cit., p.7

⁴⁶ Idem, *Echec au roi*, op. cit., p.23

⁴⁷ Potrivit lui Carre de Malberg, regimul parlamentar nu este un sistem dualist al puterilor, intrucat toata activitatea Executivului depinde, in definitiv, de vointa superioara a Parlamentului. Potrivit acestui autor, regimul parlamentar este un sistem al unitatii puterii de stat in beneficiul Parlamentului; *Contribution a la theorie generale de l'Etat*, Paris, Sirey, 1922, p. 638, apud Jean-Claude Colliard, *op. cit.*, p. 274

Portugal is considered one of the oldest and most successful semi-presidential democracies⁴⁸, but for many authors, semi - presidential regime lasted only six years (1976-1982) until the constitutional revision in 1982. From our point of view, Portuguese political regime established by the 1976 Constitution is a renewed dualist parliamentary system, characterized by dual democratic legitimacy of the President and of the legislative Assembly and by the Government double responsibility in front of them. Since 1987, with the formation of a stable parliamentary majority in fact, and as a result of crystallization of a two majority party system, the President of the Portuguese republic became a moderating power par excellence, its active intervention in the political process being justified only in governmental instability situations in order to adjust the institutional imbalances.

In Romania, from the discussion of the Constituent Assembly on the 1991 Constitution draft emerges the concern of the "new" political class to develop a constitutional edifice favorable to democracy and resistant to any attempt to restore a new dictatorship. The prudence in building a constitutional structure along with the will of the majority party⁴⁹ of that time to impose its vision has generated some of the features of the political regime established by the 1991 Constitution.

Some authors have considered that the way the constituent legislator intended separation of powers may be referred to as "constitutionalism of aversion"⁵⁰, meaning that its options for a particular constitutional construction

⁴⁸ Octavio Amorim Neto si Marina Costa Lobo, *Portugal's Semi-Presidentialism (Re)Considered: An assessment of the President's Role in the Policy Process, 1976-2006*, articol publicat initial in European Journal of Political Research 48, nr. 2, martie 2009 si ulterior introdus in volumul *Portugal in the Twenty-First Century. Politics, Society and Economics*, editat de Sebastian Royo, Lexington Books, 2012, p. 49

⁴⁹ Urmare a alegerilor din 20 mai 1990, Frontul Salvării Nationale (FSN) a obtinut 66,42% din mandate in Camera Deputatilor si 76,48% in Senat, UDMR si PNL au obtinut fiecare cate 7,32% mandate in Camera Deputatilor si 10,08% mandate UDMR in Senat, respectiv 8,40% mandate ale PNL in Senat, iar partidele clasate imediat dupa acestea nu au depasit fiecare 3% din mandate in Camera Deputatilor si 2% in Senat (precum PNTCD si Miscarea Ecologista din Romania care au obtinut cate 3,03% mandate in Camera Deputatilor si 0,84% mandate in Senat, Partidul Democrat Agrar din Romania cu 2,27% in Camera Deputatilor si fara mandate in Senat etc.).

⁵⁰ Manuel Gutan, *Raporturile dintre autoritatile statului. Rolul constitutional al Presedintelui Romaniei*, p. 1, lucrare prezentat cu ocazia dezbaterii stiintifice nationale cu titlul „Revizuirea Constitutiei: necesitate, oportunitate,

were influenced by the aversion to dictatorial systems. The logic of the Romanian Constitution is instead revealed to be a little different in the sense that the choices made by the Constituent do not constitute simple adverse reactions to previous constitutional forms. For a constituent which was supposed to be dominated by the aversion to the country's communist past and thus to an authoritarian president, the choice for keeping the President institution in the heart of the constitutional structure of the republic would be unexplainable. Analyzing how the design of the presidency and the relationship between state powers is designed, we could qualify the drafting of the Constitutional as a "constitutionalism of moderate prudence" , justified by historical and national and international political context and by the requirements of building a democratic state.

Moreover, caution in the new constitutional construction is typical for post-communist regimes. The distrust in the presidency, reflected in decreased presidential powers compared with those of the French President, caused the framing of the Romanian political regime in the category of parliamentary regimes with a presidential corrective, which involves meaningful prerogatives awarded to the heads of state, but not enough to attract their qualification as dualistic parliamentary regimes.

4. Conclusions

Whichever model of political regime identified in doctrine there is not a pure political regime existing in practice. Equally true is the assertion that there are no two countries where political regimes are identical, even if they belong to the same category because concrete ways of distributing public powers and relations of power may not be reproduced from a country to another. Moreover, between the Constituent Assembly will to create a certain political regime and how the regime

actually works are major discrepancies, being more than simple differences between the spirit of laws and their application. Constitutional engineering allows reducing the gap between formal constitution and the political practice, but it cannot claim to create an ideal type of political regime, only to identify viable solutions to the problems of state governance.

In Romania, given the gap between formal and material constitution, we can assume that the constituent has not previously deepened semi - presidential model, so he could not predict the evolution and application of the regime set in place. Although the Constituent attempt to detach by the French model, in order to adapt to the realities of our country's institutions, approach which " clearly shows that the role of (the President) in the state has been designed to new parameters in order to reduce the edge of those reviews who see in French semi - presidential system some sort of constitutional monarchy"⁵¹, is laudable we cannot observe that the Constituent failed to harmonize the entire system.

The 1991 constitutional work was dedicated to the constitutional political momentum when it has been created, it being appreciated for its democratic value at that time, but its continuity was provided subsequently by various factors such the force of political parties to support governments, the coincidence of the legislative and presidential elections, the personality and authority of the Presidents, the constitutional control exercised by the Constitutional Court etc.

Since no work is perfect, every constitution showing their imperfections in time, in Romania the political crises have highlighted the need to modify some of the constitutional texts such the ones regarding the presidency and the relationship between state powers, but not in the sense of a radical change of the political regime but for the better "arrangement" of the semi - presidential regime. We

⁵¹ Tudor Draganu, *Drept constitutional si institutii politice. Tratat elementar. Vol II*, Editura Lumina Lex, Bucuresti, 1998

consider necessary to correct constitutional texts, in order to remove any ambiguity of expression and any mismatches. But the "correct" original texts certainly requires knowledge of the intention and will of the constituent and the deduction method of constitutional text does not guarantee the correctness of the result because any attempt to interpret the text collides with two insurmountable obstacles : the fundamental ambiguity of language and the subjectivity inherent in any action of interpretation. In this respect, we consider relevant the question asked by former Prime Minister Petre Roman to the audience at national scientific debate entitled "Revision of the Constitution: necessity, opportunity, possible targets", organized by the Romanian Academy Research Institute "Acad. Andrei Radulescu" in collaboration with the Romanian Association of Constitutional Law, namely "How to do so that the constitutional text will be put in practice according to our thought of the text, so that the text will no longer be later reinterpreted?"⁵²

This work was funded by the contract POSDRU / 159 / 1.5 / S / 133255 , strategic project ID 133 255 (2014), co-financed by the European Social Fund through Sectorial Operational Programme Human Resources Development 2007-2013.

⁵² <http://video.juridice.ro/petre-roman-alocutiune-revizuirea-constitutiei-necesitate-oportunitate-obiective-posibile.html>