

RELATIONSHIPS BETWEEN THE PRESIDENT AND THE GOVERNMENT IN THE VISEGRAD GROUP STATES

The relationships within the usually dual executive of democratic countries may in the abbreviated form define the concept of the political system adopted in the given state. The powers of the head of state (including the prerogatives), the institution of countersignature, the mode of appointing and most frequently correlated with it range of political responsibilities of government, or finally the functioning of government enables to decide whether we are dealing with the presidential, half-presidential, mixed or parliamentary-cabinet system of government, even without the need to analyze the constitutional provisions devoted to other bodies of state authority, including the parliament. Of course, it has to be remembered that the tasks imposed on the executive are regulated by the legislative authority under the acts passed by it, while having at the same time the power to control the way in which they are performed².

With the increasing role of the media a factor frequently met in connection with the relationship of our interest is a factor of differentiation, i.e. diminishing or exaggerating the actual position of the executive, inconsistently with the constitutional shape of the institution of the president or the head of government. This is due to personalization policy and constitutional institutions, as well as the growing importance of various conferences and international summits.

As a result of geopolitical changes of the late 80s and early 90s of the last century, the members of the Visegrad Group faced the choice of a new political system, and thus one of the models of executive power. A number of factors such as constitutional traditions, historical experiences, political culture or ideas of society and politicians about the advantages and disadvantages of a particular system of government have influence on the adopted solutions of state systems³. Out of

1 Artur Olechno, University of Białystok.

2 B. Banaszak, *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*, Warszawa 2007, p. 435 and the following pages.

3 *Ibidem*, p. 468.

two main systems of governance, i.e. the classical presidential system and parliamentary cabinet system there was created a series of intermediate solutions having a far-reaching autonomy, that does not fall within the basic models, and which are called mixed systems due to the fact of combining the characteristics of both of these forms of government. The existing trend towards individualization of specific forms of political systems is also noticeable⁴. The above-mentioned factors that affect the choice of the system of governance make at the same time that it is only the starting point of the political system, giving an approximate picture of the principles of the constitution functioning in the system of government in the given country. A further analysis of the constitutional provisions, or sometimes the practice itself may indicate significant discrepancies and thus give specific shape to the adopted system.

Bearing in mind mentioned above individual features a legislator could choose from several basic models of organization of the executive power⁵. Firstly – a monocratic model, characteristic for the presidential system of governance where executive power is concentrated in the hands of a single authority (president, monarch), but there is lack of independent collegiate executive – the government. Secondly, the department system with the collegiate Government that is appointed but cannot be revoked by the parliament, where the chairman is, on rotation of equal periods, one of the members of the cabinet. The third available model was a directorial model characterized by the existence of two collective bodies of the executive in the form of a superior directorate appointed by the parliament and the government subordinate to this directorate. Finally, the most popular, the most diversified and as it turned out chosen and restored in the Visegrad Group states in the 90s of the last century, namely the dualistic system, where the executive power consists of two bodies – one-man head of the State and collegiate government.

In different ways may look the relationships between these bodies, what makes a possibility of a more detailed distinction of a dualistic model into the cabinet, chancellor's, departmental and a presidential one⁶. In the modern cabinet system, most of the competences are implemented by the government, headed by the Prime Minister. The Head of the Government is a management body, determining policies, indicating the ministers who, just as he himself, are appointed and accountable to parliament. The second executive authority fulfils mainly representative functions, performing them in accordance with the proposals of parliament or government, however, bears no political responsibility. A variant of cabinet chancellor's system is characterized by strengthening the position of The Head of Government

4 E. Zwierzchowski, *Wprowadzenie do nauki prawa konstytucyjnego państw demokratycznych*, Katowice 1992, p. 116.

5 After B. Banaszak, *Prawo konstytucyjne*, Warszawa 2008, p. 603 and the following pages.

6 *Ibidem*

– the Chancellor, thanks to the institution of constructive vote of no confidence. Contrary to this, there is a departmental system with the Prime Minister being *primus inter pares* among the ministers. Appropriate ministers direct a specific field of national administration themselves, and only the issues beyond the jurisdiction of the one minister are decided through a collective by the whole government. The role of Head of State in the chancellor's and the departmental system does not differ from the cabinet model. It is just presidential system that proposes significant differences. The Prime Minister still directs the daily activities of the government but the Head of State (President) shall chair the meetings and actively participate in its work. The government is politically responsible to both parliament and the Head of State. A stronger position of the Head of State is also confirmed by the scope of the powers provided to him.

Some of his acts require a countersignature of the Prime Minister and (or) the appropriate minister, who are responsible for them before the parliament, while others are the so-called prerogatives. For those acts either any other person – in the absence of co-signatory – or the President is not politically responsible. Under the term of countersignature we understand the constitutional requirement of signing an official act by a head of state or a prime minister, who take the political and legal responsibility upon them for the act. Comparison of the scope of acts subject to countersignature to the scope of acts exempted from this requirement is an important factor in determining the actual systemic-political position of a head of state and, indirectly, the prime minister. The control of this institution is largely determined by the relations on the line the president – the government, as well as it affects on the position of other organs of state power. It is on one hand a reflection of the constitutional mechanism for the exercise of power which was intended by the legislator, and on the other, a primary determinant of the President's constitutional position assuming: parliamentary irresponsibility and politically non-aligned president, taking over responsibility for the countersigned act by the prime minister and (or) the ministers, the legal dependence of the president's act from the participation of the government factor, and often issuing an act as a result of the government presentation, which would mean even a passive position of the president.

It should also be noted that normally constitutions in the chapter devoted to a head of state competences conferred on him are preceded by an indication of political-systemic functions, for the implementation of which this office has been established. Bearing in mind those responsibilities, a president is to perform his duties and to use the constitutional powers conferred on him. We should have here in mind the principle of legitimacy, assuming that a state organ should be granted authority to act solely on the basis of the law, in other words requiring or permitting actions. This means non-recognition of provisions of the constitution as gen-

eral competence rules, which a certain organ can independently draw their powers in specific cases.

The date which was created to determine the relationships within two chief executive bodies namely called cohabitation is also worth mentioning, because cohabitation determines in politics the situation of institutional coexistence in the scope of executive power vested in the hands of a president and prime minister from opposed political parties. A president, coming from the general election is able to nominate a head of government, must take into account the candidate supported by a parliamentary majority. In the case of so-called 'majority effect' or the parliamentary majority who are loyal to a head of state, a president has a full freedom of action. He may pursue his own policy or by means of subordinate prime minister. In the situation where the parliamentary majority forms an opposition to a president, an indicated candidate for a prime minister must be accepted by this majority⁷. An appointment of a head of government from a different political party by a president Marks the beginning of cohabitation.

Cohabitation in pure form occurs in semi-presidential systems of governing, and, therefore, we can possibly trace it among the countries of the Visegrad Group, in Poland at best. The presidential elections, however, in Slovakia and the lack of political responsibility of presidents of the Czech Republic and Hungary towards the parliament enable the occurrence of political differences within the executive power. The term cohabitation, as I have already mentioned, is characteristic for semi-presidential systems of governing, and it is used more often in opposition to any 'institutional co-existences'. Although, we can hardly talk about cohabitation in the event of classic parliamentary-cabinet government and a standard presidential system occurring in the United States, we now, irrespective of the scope of powers of a president and a government, would determine and give its name to every political situation in which a president and a prime minister come from opposite political parties. This trend also noticed in the region of interest to us: especially in Poland and recently in the Czech Republic⁸.

Returning to the above standard relations regulating cooperation of the executive, all countries of the Visegrad Group decided to adopt two-tier model of executive power, and despite some differences, they were in favour of the cabinet system.

In the case of the Czech Republic, the cabinet model of the executive is in harmony with the adopted parliamentary cabinet system of governance. There are

7 See for example R. Ludwikowski, *Prawo konstytucyjne porównawcze*, Toruń 2000, p. 248.

8 However, we must remember that the time of cohabitation is not just a 'dry' execution of possessed competences it is also sometimes a show of personality and ambition of rulers, the ability to use their authority and non-legal arguments.

also clear references to the constitutional traditions of the interwar period⁹. The Constitution of the Czech Republic of 16 December 1992 qualifies the President of Czech as the Head of State (Art. 54, paragraph 1 of the Constitution), including him simultaneously into the bodies of executive power. The President is elected by the parliament at a joint session of both chambers for a 5-year term. Czech President performs typically representative functions characteristic of a parliamentary cabinet system of government. The President does not bear political responsibility, only the constitutional one for treason.

The supreme body of the executive power is the Government, for whom the principle of presumption is compulsory¹⁰. The Government organizes and coordinates the activities of various ministries and public administration. The government is formed in three stages. In the first one, the President nominates the Prime Minister. The regulations do not specify any terms or conditions which could be treated as guidelines for a head of state in this matter. From a formal point of view it is, therefore, a free decision of a president. However, it is clear that in its adoption, he takes into consideration the political balance of power in the Chamber of Deputies, as otherwise, he may endanger both a government and himself on the conflict with the representative body¹¹. Next, the President appoints the other members of the government at the request of the Prime Minister and entrusts them with managing the ministries or other offices. The constitution does not specify any conditions to be met by candidates for such posts. From a formal point of view, a prime minister does it at his sole discretion when he makes decisions. In practice, he takes into account the political criteria, such as arrangements of the members of a coalition forming a cabinet coalition, etc. The constitution does not confer on the president at this stage any legal possibility to exert influence on the composition of the government. The third and the last stage is the Prime Minister's duty to present a program of his government to the House of Deputies in order to obtain a vote of confidence. When a government fails to secure such a trust in accordance with Article 73 of the constitution, the prime minister submits his resignation to hands of the President of the Republic. Other members of the government resign on the hands of the president through the prime minister. The government is also forced to resign if the Chamber of Deputies rejected its request for an expression of confidence, or it has been given a vote of no confidence. If the government resigns in accordance with paragraph 2, the President of the Republic formally deposes the government¹². In the event of the firstly mentioned option to form a govern-

9 W. Sokół, *System polityczny Czech*, (in:) *Systemy polityczne państw Europy Środkowej i Wschodniej*, ed. W. Sokół, M. Żmigrodzki, Lublin 2005, p. 279.

10 See E. Gdulewicz, *Republika Czeska*, (in:) *Ustroje państw współczesnych 2*, ed. E. Gdulewicz, Lublin 2002, p. 90 and the following pages.

11 W. Sokół, *System...*, *op. cit.*, p. 280.

12 M. Kruk, *Konstytucja Czech, introduction*, Warszawa 1992, p. 53 and the following pages.

ment has not been finalized, then a head of state repeats the whole procedure from the beginning of the appointment of government. If the President's candidate fails to obtain a vote of confidence twice, the third candidate to the post of the Prime Minister is proposed by a chairman of the House of Deputies. The role of a president comes down in this case, only to complying with formal actions. Once appointed government also needs to apply for the vote of confidence in the Chamber of Deputies. However, In this case, a lack of a vote of confidence may result in the possibility of dissolution of the Chamber of Deputies executed ahead of the time of elections. This is an optional power because a president may try to continue to avert a political crisis by finding a candidate capable of creating a government who is supported by the chamber. During the period of operation of a government, a president can make changes in it on the motion of a prime minister. A prime minister, not only makes a request for the appointment and dismissal of members of a government, but organizes the work of a government, heads or chairs its meetings, appears on its behalf, signs resolutions and performs a number of other activities provided for by the law.

The adopted cabinet–parliamentary system of governing bears some modifications to empower a government to the detriment of the presidential power, although limited responsibility of a head of state, and especially the lack of possibility to revoke him by a parliament are to enhance systemic position of this office¹³. Competences of a president in relation to a government are limited to procedures for the appointment of a government, or to entrusting the outgoing cabinet some temporary functions until the appointment of a new government. Some of the powers of a president relating to the representation of a state outside, ratification of international agreements, welcoming the heads of diplomatic missions, calling out the parliamentary elections, an authority over the armed forces and awarding state decorations requires a prime minister of a government or an authorized by him minister to countersign them.

With the existing dualism of executive power, apart from the Polish solutions the strongest political position for a head of state is provided by the Slovakian constitution from September 1, 1992. A president elected as a result of constitutional amendment in 1999 in general elections, although is classified to the executive power where the highest organ is a government, he was granted some powers traditionally belonging to a government¹⁴. The government consists of a prime minister, who directs its work, ministers and deputy prime ministers. A prime minister is appointed by a president, and on the motion of a prime minister a head of state appoints the other members of a government. The prime minister is obliged to sub-

13 K. Skotnicki, *System konstytucyjny Czech*, Warszawa 2000, pp. 40–41.

14 *Konstytucja Republiki Słowackiej z 1 września 1992 r.*, Translation and introduction. K. Skotnicki, Warszawa 2003. *Ústava Slovenskej Republiky č. 460/1992 Zb.*, Bratislava 2004, Article 101 and the following pages.

mit within 30 days from the date of the appointment a programme declaration to the National Council, which gives a government a vote of confidence. If, within 6 months since the elections a parliament does not adopt the program declaration of a government, a president can solve the National Council. The members of a government are politically responsible individually and solidarily in front of a parliament. An application for revocation of a member of a government may be notified to a president by a prime minister. Then, a president decides to temporarily entrust the function of the revoked minister to one of the other members of a government.

The competences of the Slovak head of state are somewhat similar to the „stronger constitutionally” President of the Republic of Poland who is elected through general elections. However, being a stabilizing factor of the Slovak political system, the provisions of the constitution reflect the previous, indirect mode of election of a head of state. For example, a president has the right to legislative veto, while not having the right of legislative initiative. Among the powers related to the functioning of a government, apart from participation in the procedure of his appointment, the president of Slovakia under Article 102 of the constitution: accepts the resignation of the cabinet’s members, entrusts the prime minister and other members of the government to manage over the ministries up to the appointment of a new government, at the request of the government declares military mobilization, martial law and a state of emergency and their completion, as well as has the right to demand from the government and its individual members information needed to carry out its functions.

The classic parliamentary and cabinet system was also adopted in Hungary. What is interesting, Hungary formally still continues to have a constitution from 1949, at the turn of the 80s and 90s it was only thoroughly amended. Needless to say, the provisions with regard to the president and his relationship with the government appeared only in the revision of the constitution of 18 October 1989. The executive power consists of a president elected by a parliament and a government with a prime minister at the head. However, the constitution does not say explicitly about including a president to executive bodies¹⁵. Besides, there is also a lack of a clear declaration of the principle of separation of powers, the principle of separation or balance of powers. Taking into consideration the scope of the president’s competences, the president of Hungary is considered to be the weakest president in the central European countries¹⁶. He is elected by the National Assembly for five

15 It seems to be interesting in this regard, the overall scheme of the constitution. According to chapter III, the President of the Republic is located just behind the chapter which deals with the National Assembly. Whereas, the Constitution devotes for the government only Chapter VII, before discussing such bodies as the Constitutional Court, the Parliamentary Ombudsman, the Parliamentary Ombudsman for National and Ethnic Minorities, the State Board of Accounts and the Hungarian National Bank. See more W. Brodziński, *System konstytucyjny Węgier*, Warszawa 2003.

16 W. Orłowski, *Republika Węgierska*, (in:) *Ustroje...*, op. cit., p. 304.

year term¹⁷. Where necessary, three rounds of voting are held; in the first round the person who obtained the two thirds of the votes is chosen. The whole procedure must be held within three days.

The president is the head of state, he expresses the unity of the nation and safeguards the democratic organization of the state¹⁸. He is also the supreme commander of the armed forces. With few exceptions, acts issued by the president require countersigning by the prime minister or the competent minister. This rule does not cover acts, which are issued by him when he represents a country outside, declares elections, or acts by which he participates in the meetings of the chamber, or acts which use legislative initiative, and by which he declares a referendum. The various presidential powers are in line with his position among the supreme organs of state power. And so, in relation to the government the president has the right to move for a choice of a prime minister, to appoint and dismiss – on the motion of the prime minister – ministers and to appoint and dismiss the secretaries of state and representatives of the republic.

The above presented constitutional position of the president allows to presume that the second member of the executive would be strengthened. The government consists of ministers and the prime minister. Although the constitution does not mention the institution of a deputy prime minister, it is usually the prime minister who indicates his deputy from among the ministers¹⁹. The National Assembly on the motion of the president chooses the prime minister by a majority of its members. The rest of the composition of the government is appointed by the president on the motion of the prime minister, then this composition does not need any parliamentary approval. The tasks of the government here are more developed when compared to other countries in this region. The tasks include the protection of the constitutional system of a state, security and ensuring the protection of civil rights, as well as the execution of laws, leading and management of the work of ministries and other bodies subordinate to him directly and coordination of their activities. The government bears political responsibility before the National Assembly, except that the legislator has decided to adopt only rules for a constructive vote of no confidence. Minimum number of deputies in one fifth of the chamber submit a motion along with the candidacy of a new prime minister, their motion is ac-

17 The appointment of the institution of the president in place of the current Presidential Council was one of the most contentious issues during the talks of the Hungarian „round table”. A process of selecting a head of state aroused the greatest discrepancies. What is interesting is the fact that the ruling party opted for a universal and direct elections. The winner, however, was the vision of the opposition, which believed that the parliament elected in free elections, would have sufficient legitimacy to decide on the terms of electing a president. At that time accepted form of a weak presidency coming from the indirect election functions to this day. *Ibidem*, p. 302.

18 § 29 p. 1 and 2 of the Constitution. *Konstytucja Republik Węgierskiej*, translation and introduction H. Donath, Warszawa 1992.

19 B. Dziemidok–Olszewska, *System polityczny Węgier*, (in:) *Systemy...*, *op. cit.*, p. 599 and the following pages.

cepted by a simple majority. Therefore, there is a lack of individual responsibility of ministers.

These relations were described quite differently by the Polish legislator. In the light of Article 10 the constitution makes the president of one of the two bodies of executive power, organized on the basis of the principle of duality of the executive. However, in accordance with Article 146 paragraph 1 and 2, a dominant position in the sphere of executive power the constitution assigns to the Council of Ministers, reserving among its rights pursuing internal and external policies of the state and introducing for its benefit the principle of the presumption of competence.

The scope of the relationship on the line president–prime minister can be defined by analyzing the constitutional and statutory powers of the President of the Republic of Poland in relation towards the Council of Ministers and government administration. The President appoints the Council of Ministers in accordance with the procedure laid down in Article 154 and 155 of the Constitution, and as a result of a constructive vote of no confidence in any case on condition of obtaining a vote of confidence from the Sejm²⁰. At the request of the prime minister or by giving a minister a vote of no confidence by the Sejm, the president makes changes in the composition of the Council of Ministers. The president's competences connected with accepting resignation of the Council of Ministers applies in three circumstances: 1) the resignation of the government at the first meeting of the newly elected Sejm, 2) as a result of giving a vote of non-confidence or not giving a vote of confidence – the participation of the President of purely formal, 3) when a prime minister submits the resignation of the Council of Ministers following the resignation from the post – but then the president can refuse to accept the resignation. After accepting the resignation of the Council of Ministers, the President obliges it to continue to exercise duties until a new government will be created. The competence of the president is also receiving the oath from a newly selected prime minister, the vice-ministers and members of the Council of Ministers. The president also has the option to submit a motion to the Sejm to bring the Council of Ministers to responsibility before the State Tribunal (see below). Finally, the president shall convene the Cabinet Council, which is created by the Council of Ministers chaired by the President of the Republic of Poland. The Cabinet Council lacks the competence of

20 Proposing to set up the Council of Ministers its appointed President follows the agreements of political parties aspiring to the role of the Sejm background formed by the Council of Ministers. He is not legally obliged to discuss with the President the proposed nominations or to consult the President. Also the President of the Republic of Poland is not legally constrained in the selection of a candidate nominated for a Prime Minister. Practically, however, he must take into account the alignment of political forces in the Sejm, by the requirement to obtain a vote of confidence. That provision requires at the same time that a vote of confidence was given by an absolute majority of votes in the presence of at least half the statutory number of deputies. This means that the establishment of the Council of Ministers shall take effect prospectively, provided that the composition and its program has had the support of most members, in the first place – an absolute majority. See for example M. Grzybowski, *Rada Ministrów*, (in:) *Prawo konstytucyjne*, ed. M. Grzybowski, Białystok 2009, p. 271 and the following pages.

the Council of Ministers or any other special powers. The Cabinet Council meeting allows for the exchange of the positions of the two supreme organs of executive power, and especially allows the president to draw government's attention to issues relevant from the point of view of the head of state.

In Poland, the introduction of the two of three states of emergency under the constitution requires cooperation within the executive, too. Well, according to the Article 229 dedicated to martial law and Article 230 mentioning a state of emergency decisions to declare two states of emergency are taken by the President of the Republic of Poland by virtue of a resolution, on the motion of the Council of Ministers²¹. The third of the states of emergency, state of natural disaster is implemented independently by the Council of Ministers (Article 232).

Another tangent line can be found in scope of supervision of the president over the armed forces. It is largely symbolic supervision, exercised by the person who represents the state. Any further commanding competences cannot be derived from it related to, for example with the possibility of issuing orders to combat forces. This is a civil and non-political supervision. In times of peace, the President exercises his supervision over the army through the Minister of National Defence, and during the war on the motion of the prime minister he appoints the Supreme Commander of the Armed Forces. It should be noted that under Article 146 paragraph 4 point 11 of the Constitution the overall leadership in field of defence of a country is performed by the Council of Ministers. An entitlement requiring cooperation of the head of state with the prime minister is connected with the above mentioned function of the president, namely the declaring on the motion of the Prime Minister the general or partial mobilization and use of the Armed Forces to defend a country. The resolution of the President of the Republic of Poland on the use of Polish troops abroad in order to participate in armed conflict, or to strengthen the forces of a country or countries allied, in a peacekeeping mission or in actions to prevent acts of terror is also important here.

Like in Hungary, the Polish system of government strengthens the position of a prime minister making him the main executive body, by taken from the chancellor's system the concept of a constructive vote of no confidence.

Politically, the Council of Ministers functions depending on the Sejm in the sense that it must have a trust of the current parliamentary majority. The constitution allows for the possibility of combining a parliamentary mandate (or senatorial), and thus participating in the exercise of legislative power, with being a member of the Council of Ministers.

21 Within 48 hours after issuing the relevant regulation the President of the Republic of Poland must submit it to the Sejm, which after an immediate consideration may by an absolute majority of votes in the presence of half of the statutory number of deputies repeal the president's decision.

The Council of Ministers and its individual members are politically (parliamentarily) responsible in front of the Sejm (Article 157 paragraphs 1 and 2). This relationship – which is an expression of the form of alleged trust of the parliamentary majority to the functioning Council of Ministers – is also expressed in the requirement for a newly formed Council to receive a vote of confidence of the Sejm's majority – an absolute or at least, relative, and – in an obligation to submit to the Sejm annual reports on implementation of a state budget, also in the control of the Council of Ministers by the Sejm, and in the opportunity to express the so-called constructive vote of no confidence by the Sejm to the Council of Ministers.

Accessorily mentioned relationship may appear in the form of the expression of the vote of no confidence by the Sejm towards individual ministers. The minister, who was given a vote of no confidence in the Sejm must be cancelled by the President of the Republic of Poland which indirectly points to the decisive importance of trust in the parliamentary majority.

A little off the beaten track of cooperation between two segments of the executive is the question of the constitutional responsibility of these bodies. From the standpoint of the relationships which are of special interest for us, we find interesting points of contact on two levels. Firstly, the issue of representation in case of the presidential vacancy in the office and a possible entry of a prime minister into the competences of the head of state. Secondly, the presidential participation in the procedure of constitutional responsibility borne by the government.

The narrowest range of responsibilities, includes only high treason, was adopted in the Constitution of the Czech Republic²². In accordance with Article 54 paragraph 3, the President of the Czech Republic does not bear any responsibility, what is understood as not being subject to political, civil and criminal liability. Interestingly, the constitution excludes for ever the criminal liability for acts committed during the tenure. For high treason the legislator understands „actions of the President of the Republic directed against the sovereignty and unity of the Republic, and against its democratic order²³. ‘The prosecution in this case is instituted by the Senate and the Constitutional Court’.

In case of vacancy in the office of the president some of his powers are transferred to a prime minister, a part to the chairman of the Chamber of Deputies, others are not performed at all is²⁴. In the past, a replacement of the president be-

22 See more B. Dziedzic–Olszewska *Instytucja prezydenta w państwach Europy Środkowo–Wschodniej*, Lublin 2003, p. 318.

23 Article 96 of the Act on The Constitutional Court of 16 June 1993, No. 182/1993 Sb.

24 There are also two other situations when the vacancy in the office of president may occur: natural, not mentioned in the constitution, namely death, and a renunciation by the head of state their office (Article 61 of the Constitution). The form of a renunciation is not specified, but clearly it is inevitable that this should be done at the hands of the chairman of the Chamber of Deputies. The reasons for emptying the office are clear. Much more difficult seems the answer to the question of the temporary impossibility to hold an office. The constitution

longed to the government that could give particular competences to a prime minister. Currently, a prime minister is immediately given certain powers, as listed in the constitution. The chairman of the Chamber of Deputies (or in his absence the chairman of the Senate) acquire powers that do not require countersignature. A prime minister of a government shall exercise the president's powers requiring the countersignature, with the exception of elections to the Chamber of Deputies and the Senate, signing and vetoing laws, appointing a chairman and vice-chairman of the Supreme Court and the Audit Office, the appointment and promotion of generals, and applying the law of grace which vested to anyone and during this period are not executed. Therefore, it is the prime minister who takes over presidential powers such as those related with the representation of a state outside, the conclusion and ratification of international agreements, welcoming the heads of diplomatic missions (Article 63 paragraph 3 of the constitution).

A characteristic feature of the Czech Government is a joint and several political liability before the House of Deputies (individual only to the Prime Minister) with a simultaneous absence of the constitutional responsibility of the members of the government and thus the lack of powers of the head of state related to this sphere of the functioning of a government.

The responsibility of the President of Slovakia has a broader range²⁵ from 1992. The president shall be responsible for the treason of the Motherland, and culpable violation of the constitution (Article 107 of the Constitution). A majority of three fifths of the votes (90) of the Slovak Parliament – the National Council, the president may be committed for trial; the case is examined by the Constitutional Court, which, if the president is found guilty may order the removal from office. As in the Czech Republic, a part of the competences of the president is taken over in this case by the executive body (the rest are transferred to the chairman of the National Council). In accordance with Article 105 of the constitution, those competences are transferred to the Government of the Republic of Slovakia, which may entrust their exercise to the prime minister. These competences include: representing a country outside, concluding and ratifying international agreements, directing a law or an international agreement to the Constitutional Court, the reception

is in fact in this case, highly imprecise. It merely mentions the so-called 'important reasons'. Similarly, it is not a defined period, in which he cannot perform his functions. Decisions are taken by the Chamber of Deputies and the Senate; the construction of the provision seems to point out that there should be one resolution. The problem is further complicated by the fact that, according to Article 87 paragraph 1 letter h of the Constitution, the President shall have, in such case, the right to request the Constitutional Court to annul such a resolution.

- 25 An interesting solution was introduced in 1999 by a law regulating the process of popular voting of a resident. On the motion of 3/5 members of the National Council the chairman of the chamber shall convene a plebiscite in order to revoke the head of state. (Article 106). If case of opting for the motion by the majority of eligible voters the president is impeached. But otherwise, the National Council is dissolved. The office is empty, also in the case, if the president cannot perform his duties for more than six months, says the Constitutional Court. See W. Sokół, R. Serej, *System polityczny Słowacji*, (in:) *Systemy...*, *op. cit.*, p. 495.

and dismissal of ambassadors, declaring a referendum and the right to a suspensory veto. The constitution does not provide for the constitutional responsibility of government members.

The Constitution of the Republic of Poland of 1997, referring partly to the pre-war solutions and to its predecessor, i.e. the Small Constitution of 1992, set out in Article 145 constitutional responsibility of the President in front of the Tribunal of State for committing a constitutional tort²⁶ or crime. The initial proposal to charge the president may be submitted by a group of at least 140 members of the National Assembly, i.e. the Sejm and Senate deliberating together (1/4 of the statutory composition). In order to bring the president in the indictment a decision of the National Assembly is required taken by the majority of votes of the statutory three-quarters of the members (i.e., 374). From the date of the resolution, the holding of an office by the president shall be suspended; his duties are taken by the Marshal of the Sejm. The Tribunal of State can decide on his guilt, which is composed of members elected by the Sejm from outside the parliament, with the chairman, which by the office is the First President of the Supreme Court²⁷. It is difficult to consider the functioning of the concept of a constitutional responsibility in Poland as particularly effective. Since 1982 the State Tribunal only dealt with several cases proving guilt in only one of them. In 1989, two civil servants were sentenced to five years loss of passive voting rights.

Article 131 paragraph 1 of the Constitution provides for the situation of replacement of the president in executing his office. Among previously encountered contemporary models of replacement, namely the vice president, prime minister or the chairman of one of the Houses of Parliament, the Constitution of 1997 opted for the latter, consistent with the Polish constitutional tradition. If the President of the Republic of Poland is temporarily unable to exercise the office (*sede plena*), or when the office of President is vacated (*sede vacante*), he is replaced by the Marshal of the Sejm, or if he could not perform these functions – by the Speaker of the Senate.

However, the president may be involved in the process of bringing to the constitutional responsibility the members of the Polish Council of Ministers. Apart from the political responsibility, the Prime Minister and its other members shall be liable for breach of the Constitution or laws in connection with the duties of the possessed offices. It is a liability for so-called constitutional tort, as well as

26 Understood as a fault, not constituting a crime involving breach of the Constitution or laws, committed in connection with the duties of his office or in the office of the person. See more R. Mojak, *Instytucja Prezydenta Rzeczypospolitej Polskiej w okresie przekształceń ustrojowych*, Lublin 1995.

27 Thus, in contrast to other countries in the region, the body, the Constitutional Tribunal – the equivalent of the Polish constitutional court has no power to prosecute senior government officials. This role is accounted for a separate entity in the form of the State Tribunal for which the adjudication of liability of the officials is the sole competence.

for acts constituting a crime in connection with the duties of occupied office. It has a purely individual character and is assessed by the Tribunal of State. The proposal to the parliament for putting the member of the Council of Ministers in front of the Tribunal of State may be lodged by a group of at least 115 members or the President of the Republic of Poland²⁸.

A similar solution to the Polish one appears in the Constitution of Hungary amended several times from 1949 where the president is responsible for violation of the Constitution or other law (Article 31 paragraph 4). The initiation of legal proceedings and bringing the indictment against the president is vested in the competence of the one-chamber National Assembly (respectively 1/5 and 2/3 of the votes). The adjudicating body on the matter of responsibility of the president is the Constitutional Court. Also, as in Poland in the event of vacancy in the office of the president, he shall be replaced by the chairman of the National Assembly; no powers pass on the second part of the executive.

As you can see the constitutional arrangements of the countries of the Visegrad Group have many common characteristics, which mainly results from the unanimous choice of cabinet executive model. For example, in the sphere of creation of the government, its major contribution have all the presidents of the discussed area. In case of Poland, Czech and Slovakia the procedure itself shows considerable similarity (three stages of forming a government, appointing the prime minister by the president or alternatively the parliament). We see some differences in case of possible dissolution of the parliament in the absence of a stable majority able to appoint the cabinet, a constructive vote of no confidence strengthening the government and prime minister in Hungary and Poland, or acquiring certain powers of the president in the event of vacancy in the office by the prime minister in the Czech Republic and Slovakia. Visible differences are caused by the adoption of a parliamentary model of governance in its pure form as in (the Czech Republic, Hungary, Slovakia), or attempts of its rationalization (Poland). Possessing its own democratic past has also had some importance and more or less apparent desire to appeal to this democratic past during work on constitutions (revisions) in the 90's. An emerging willingness to discuss solutions to constitutional amendments also draws attention, perhaps it is quite characteristic for the young democracies, to a large extent in terms of the relationship between supreme state bodies, and thus modification of the functioning models of executive.

28 The Sejm takes a resolution in this issue by a qualified majority of three fifths of the statutory number of deputies (Article 156 of the Constitution). Following the adoption of such resolution, the issue is passed the Tribunal of State.