

THE CONSTITUTIONAL AND STRUCTURAL POSITION OF THE PRESIDENT OF THE FRENCH FIFTH REPUBLIC AND THE RUSSIAN FEDERATION. THE ATTEMPT AT THE COMPARATIVE ANALYSIS

1. Introduction

The political system of the French Fifth Republic, with a powerful position of the President at the forefront, developed in the late 50s of the twentieth century. Its founder was the first president of the French Fifth Republic General Charles de Gaulle. The political system of the Russian Federation (also emphasizing a powerful position of the president) was created in the early 90s of the twentieth century, basing on the solutions adopted in the French political system.

Political regimes of the Fifth Republic and the Russian Federation differ considerably from both the classic presidential as well as parliamentary and cabinet systems. Literature provides for numerous terms defining here above mentioned specific system solutions, among which the semi-presidential system is dominant. Despite the fact that the French Fifth Republic is contemporarily classified as consolidated democracy, whereas the Russian Federation teeters on the edge of „the political grey zone” (from where it is close to authoritarian solutions), formation of the French Fifth Republic and the role played by General Charles de Gaulle at that time, allow to identify significant similarities in the creation and functioning of the Russian Federation established on the ruins of the Soviet Union and Boris Yeltsin’s role in the construction of the Russian constitution, and especially the position of the president. Both political regimes (French and Russian) show a number of different features, nevertheless, several striking similarities can be found as well.

The purpose of this article is to examine and compare the constitutional and legal position of the presidents in the political systems of Russia and France. At first, it should be noted that overall, politological definition of the position of the presi-

1 Elżbieta Kuźelewska, Adam R. Bartnicki, University of Białystok.

dent in herein discussed systems would require extending the research study context, that is normative aspects, personality and situational (contextual) factors. The normative factors included in constitutional law of the countries in question, determine the rights and powers of the head of state towards other organs of state power and are among the most constant elements which determine the institution of the president. Among the personality factors we define: social background of presidents, education, career, political experience, etc. By the situational context we should understand alignment of political forces in the country, relationship between the president and other authorities, the opinions and feelings of society, etc.

The need for a wider – not only normative – depiction of the president's role, can be noticed by examining the present-day situation in Russia. It should be pointed out that some of the signposts of a democratic state – above all formal and legal nature of power – have been significantly replaced here by non-legislative standards, sometimes due to specific political culture, or sometimes moral or social life. The current position of the president of the French Republic is as much as the function of the institutions' legal status and the effect of the ability to manage different political interest groups or moving in a complicated system of rules, economic and political relationships. This informal institutionalization has been slowly changing from a periodic regime „defect” into its natural characteristics. This problem became fully evident in 2008 when Vladimir Putin left the Kremlin, and his place was taken by a highly trusted Putin's protégé, Dmitry Medvedev. As a result there was an expected transfer of real political power from the institution of the president to the prime minister. The crux of the matter of the Russian political system crystallization has become the leader's and associated elites' strong power – in the sphere of real politics – not necessarily having adequate constitutional and legal legitimacy. Despite the fact that Putin is now „only” the prime minister, he still controls the state and the regime is built around his person. The Prime Minister undoubtedly remains the number one person in the eyes of society². He impersonates the fullness of the majesty and power, the real state „hyperpower” – indispensable, independent from the rules of law, political pressure and the will of voters. While taking into account the constitutional and legal position of the president of the Russian Federation we must, therefore, bear in mind this anomaly.

There are several terms describing the French system present in literature: malformed parliamentarism, defective parliamentarism, presidential arbitrage, presidential-parliamentary system and the term most commonly used – a semi-presidential system. The French semi-presidential system was, according to its creators' intentions, a political regime in which the head of state, not related to any political party, can effectively act as a mediator in disputes between parties. In

2 Б. Дубин, *Режим разобщения*, „Pro et Contra” 2009, vol. 13, no 1, p. 11.

that way de Gaulle perceived himself. However, all successive presidents (starting with G. Pompidou and ending on N. Sarkozy) were the leaders of certain political parties. This fact has significantly changed the logic of the system, leading to the existence of previously unknown phenomenon of cohabitation, which considerably narrowed the opportunity for the president to be an active political entity, and forced the evolution towards a rationalized parliamentary system. Repeated elections (presidential and parliamentary), were the effect of returning to a situation of political unity. Experiences from the years 1986–2002 show the simplicity of transition from the Fifth Republic into a parliamentary system while keeping in mind that the return to semi-presidential system is relatively simple. It would therefore be ascertained that the French system after 1958 is not a synthesis between presidentialism and parliamentarism, but rather the alternation of power between presidential and parliamentary phase of political development.

Even more controversies on the ground of political science are evoked by defining properly the contemporary Russia's political regime. In this case there is a considerable confusion that arises as much out of fear against the use of explicit terms in relation to the system, which is not only ambiguous but also very dynamic – and by that, variable, and due to multiplicity of research structures looking for a new definition or even a new concept of setting out reality of post-communist Russia, where the relationships between the state authorities do not always correspond to their formal prerogatives. Definitions functioning in academic and journalistic circle sometimes take the form of surprisingly daring compound and multiclausal terminological constructions: „a hybrid of authoritarianism and democracy,” „democratically legitimized authoritarianism”, „immature democracy,” „authoritarian democracy,” „authoritarian kleptocracy”, „elected autocracy” „democratically legitimized monarchy,” „liberal meritocracy”, „malformed democracy”, a quasi-democracy, „defective democracy”, etc. This problem concerns not only Russia but also many states defined by Fareed Zakaria as „illiberal democracies”³. Henry E. Hale tried to reduce the post-Soviet states to a common denominator defining their system of government as „patronal presidentialism”. The heart of the matter here is more powerful position of the elected president by general election than any other state institutions. This is the result of both formal (law, constitution) and informal entitlements – resulting from the patron – client relations⁴.

At present, in Russia itself (but also outside) concepts of “guided democracy” and „sovereign democracy” are summoned. The „sovereign democracy” is presented as a struggle against disorder, corruption and chaos, painfully experienced in

3 F. Zakaria, *The Rise of Illiberal Democracy*, „Foreign Affairs”, Volume 76, Number 6, November/December 1997.

4 H.E. Hale, *Regime Cycles: Democracy, Autocracy, and Revolution in Post-Soviet Eurasia*, „World Politics” 2005, vol. 58, no 1, Oct., pp. 133–165.

the past several years in Russia. However, it is difficult to guess whether the fight against chaos is a battle for social and political stability of the country (with respect to internal and external matters), or rather for the stability of the interests of the cartel in power and its „vassals”. Russian political regime can also be defined as the bureaucratic–oligarchic authoritarianism because it represents the interests of the ruling bureaucracy and the business leaders, i.e. groups close to and sometimes identical with the ruling elite of the country. Formally, it is a presidential–parliamentary republic, but in fact, the state with very unclear rules of the political system. British political scientist Matthew Shugart distinguished two types of presidential system: semi–presidential system and super presidential system⁵. In the semi–presidential system, the role of parliament is relatively large. The parliament contributes to government’s creation, replacing ministers. It controls the organs of executive power. The system in question inevitably creates a series of conflicts due to the fact that legislative and executive powers remain vague and not fully delimited. In the super presidential system very strong presidential power coexists with respectively weak legislative. The president possesses broad constitutional–legal powers and extensive legal apparatus of bureaucracy, being a back–up of his power. He has the ability to issue decrees, determine the composition of the government, while at the same time depriving the parliament of the right to control it. In the super presidential system the winner „takes all”, so a victory or a defeat could mean full power or political death. After 1993 the Russian system of political power gradually began to evolve towards a “super presidential” and authoritarian model. The French model had its own distinct „super presidential” feature since the beginning of the Fifth Republic.

2. Evolution of the institution of the president in Russia

In the Russian reality, regardless of the current ideology, the absolute sovereign state is understood as a formation, which a citizen is obliged to identify himself with⁶. Its emanation is invariably political power. In the past its trappings could have been diverse – tsar, party, the general secretary, political office, in more contemporary form it is centred around the person of the president. The observer and active participant in the political life of Russia, Gavril Popov, analyzing the reform of the 90s, wrote: „There were masses, parties, movements. There was a country and abroad. The centre and regions. Federation and autonomy. But the most important person was one man – the President”⁷. Vitalij Tretjakov noticed that one word exists in Russia which covers all the concepts of state power, and it is „the

5 M. Shugart, *Of Presidents and Parliaments*, „East European Constitutional Review” 1993, no. 1, vol. 2, pp. 30–32.

6 The state is not only a sovereign political and territorial community; it’s the mythical “Mother Russia”.

7 Г. Попов, *Будет ли у России второе тысячелетие*, Москва 1998, p. 188.

Kremlin”⁸. It was the president who carried out the majority of functions of political power. He consolidated and coordinated activities of political entities around defined values. He ensured functional continuity of political power and thus – security of social system. He had a decisive influence on the shape and direction of political transformation. He formulated national policy objectives and controlled their implementation. He also remained, apart from constitution, the most stable element of the whole political system.

The president office appeared in Russia, together with the reforms undertaken by Gorbachev. His idea was not new. Even Stalin and Khrushchev considered the adoption of this function, but ultimately, any plans for this were discontinued. The implementation of the office of the president did not correspond with the logic of the single party state and its Bolshevik tradition of choosing a leader by a narrow clique⁹. It also carried a potential threat of desacralization of power. Gorbachev had no choice. „Perestroika” violated many taboos, including the possibility of undermining the authority of the General Secretary. Voices questioning the legitimacy of the state and the form of leadership were raised. Klamkin Igor and Lilia Shevtsova wrote that the implementation into the political system the president’s office was not only completely innovative, but even revolutionary. However, it was typical of the Russian nature, where the authority is fully embodied in one person¹⁰. Why did Gorbachev become president? It seems that to a large extent psychological factors contributed to it. The General Secretary was aware of a meagre social support and popularity of his person; he must have also felt a growing discomfort due to a fairly narrow regime’s legitimacy, especially in contacts with representatives of the Western world. However, he did not decide on totally free presidential elections, leaving the election for deputies connected with the regime. In spite of all, for the first time in Russian history, power was legitimized by at least apparent democratic choice. Gorbachev became the president on 15 March 1990.

The presidential system was imposed on the political system of the Soviet Union, at the assumption that systemic forms of the state were not changed. The functioning and scope of power of the regime were not altered as well. The transformations were supposed to deal only with the names of individual system elements. The General Secretary became the president, work collective councils – the parliament, and in the near future the Soviet Union would become some unspecified in the name, a new union structure. Gorbachev’s presidency was only a form of regime authorisation, rather than a newly emerging system of power of a transi-

8 В. Третьяков, *Ловушка для России*, „Независимая газета” 9.09.1999.

9 В. Кувалдин, *Президентство в контексте российской трансформации*, (in:) *Россия политическая*, ред. Л. Шевцова М.: Моск. Центр Карнеги, 1998, p. 17.

10 I. Klyamkin, L. Shevtsova, *This Omnipotent and Impotent Government: The Evolution of the Political System in Post-Communist Russia*, Moscow 1999, p. 11.

tion period. It appeared without publicity as a new organ of national authority, as if unnoticed by the public. The president's office seemed quite grotesque when compared to the pillars of the political system such as: the CPSU, the Supreme Council, and Congress of People's Deputies. The opportunity given by the presidency was noticed by those who Gorbachev tried to refrain from— the leaders of the republics demanding loosening relations with the Soviet Union.

Gorbachev's presidency lasted less than two years; two years full of drama of collapsing state and power. There was no time for consolidation and hardening. Inside a newly created Russian country some negative voices criticising this form of authority appeared. It was not until the last period of the USSR functioning that Yeltsin began to look for a new model of power, which would be adequate to the needs and expectations of the society. Yeltsin became a leading figure in democratic reforms¹¹. He (as well as his admirers) was a supporter of a radical strengthening of presidential power in such a way that it would combine the elements of totalitarian rule of the general secretaries of the USSR and democracy. It was not an easy task. Democrats feared that a strong presidential power would mean a secondary—authoritarianism, the old nomenclature decided to move to the parliament, from where it wanted to continue to control the country, the central bureaucracy did not still treated seriously the office created by Gorbachev¹², and a liberal public opinion and intellectuals dreamed of nothing else but a new regime took the form of a civilized, liberal autocracy¹³. Finally, Yeltsin concept started dominating. Presidential system in Russia was a natural product of transformation of the communist authoritarianism. The President took upon himself the burden of creating a new structure of political system, replacing the Communist Party. Transfer of ideological and cultural assumptions of the CPSU role onto the presidency, in the social impression, allowed the functional continuity of the state and authority. Yeltsin's presidency emerged as a tool against the ancient regime as an instrument for further westernization and modernization. In this regard, it linked both democrats and nationalists¹⁴. Presidential system in Russia was based largely not on the western democracy models, but on assumptions of Gorbachev's presidency. To some extent, when it comes to understanding a presidential power and its role in the country, it was indeed a carbon copy. This concept of the president's office involved on one hand a number of integration problems, as Gorbachev ruled in a different era over a different society and in a different country, and on the other – an adaptation affecting the functional stability of the state and power. The Russians wanted limited changes, but they were afraid of such. These desires seemed to be

11 E. Zieliński, *System konstytucyjny Federacji Rosyjskiej*, Warszawa 2005, p. 9.

12 В. Кувалдин, *op. cit.*, p. 19.

13 Г. Попов, Август девяносто первого года, „Известия” 24.08.1992.

14 В. Кувалдин, *op. cit.*, p. 20.

mutually contradictory, however, they showed the expected directions of the evolution of the state. Yeltsin had an ace up his sleeve: in the collapsing post-communist world he remained the guarantor of state stability and consolidation, he was a point of reference and support. He had a genuine and widespread legitimacy.

The president's office appeared in Russia (RFSRR) as a result of a law enacted by the Third Congress of People's Deputies. 17 March 1991 the Congress decision was confirmed by the citizens' will expressed in a referendum, in which 76.6% of voters supported the idea of creating this office. The Russian president with regard to legislator's assumptions was supposed to strengthen the central authority in a newly emerging country, also he had to guarantee to maintain the integrity of the multinational state and the effective conduct of political and constitutional reforms. Enacting a law on *The President of the Russian Federation*, the legislator could make use of both models and experiences brought by the law of 14 March 1990 on *The Establishment of the President's Office of the USSR and bringing amendments and additions to the Constitution of the USSR*¹⁵. Undoubtedly, constitutional solutions derived from countries with splendid democratic traditions were implemented as well¹⁶. In spring 1991 the Fourth Congress of People's Deputies passed constitutional amendments that enabled the choice of president, specifying the scope of his competence. A particularly important role in the evolution of presidential powers of direction had special statutory power of attorney granted by the Fifth Congress of People's Deputies to Yeltsin for a period of thirteen months (11.01.1991–01.12.1992). From today's perspective, being aware of the consecutive sequence of events, it's hard to understand why the parliament leaders placed weapons into the president's hands. Fear of communism and enthusiastic waiting for the reforms are not a sufficient explanation for short-sightedness of the Congress leaders. What was true, though, in the autumn of 1991 in the existing state of law, the parliament seemed to be the main centre of power; a compromise with Yeltsin on the division of competence and joint responsibility for the state violated this arrangement, however, it also showed the president a desired direction for change in the ratio of forces. The rights received by Yeltsin were serious indeed. The President received the right to appoint members of the government without the approval of the parliament and the right to unimpeded creation of the state's structures for the purpose of economic reforms. He could issue decrees with the priority enforcement clause (to be approved by the Supreme Council within 7 days) and to evade the operation of other acts of law which could hinder the implementation of economic reforms. The scope of interpretation of these powers was the

15 W. Brodziński, *Pozycja ustrojowa prezydenta Federacji Rosyjskiej*, (in:) *Instytucja prezydenta we współczesnym świecie. Materiały na konferencję, Warszawa–Senat RP 21–23 February 1993*, Warszawa 1993, p. 56.

16 Compare: M. Wyrzykowski, *Recepcja w prawie publicznym – tendencje rozwojowe konstytucjonalizmu w Europie Środkowej i Wschodniej*, „Państwo i Prawo” 1992, no 11.

cause of subsequent confrontation between legislature and executive, which resulted in dissolution of the Congress by the president.

3. Evolution of the institution of the president in the French Fifth Republic

The system of the French Fifth Republic was created on the ruins and systemic insufficiency of the Fourth Republic, in which excessive competencies of the National Assembly, the weak position of the president and government, the inappropriate electoral system that resulted in political fragmentation of the parliament and excessive political division of the society were dominating. Political and social crises in France which contributed to the fall of the Fourth Republic are also worth mentioning. France unnecessarily engaged in an „independence” war against Indochina. The war ended in a shameful defeat of France and the emergence in place of the French colony three independent states: Vietnam, Laos and Cambodia. In the meantime, a new and difficult problem appeared on the horizon – Algerian. In the spring of 1958, the French colonels who stationed in Algeria, refused obedience to the government in Paris, which was hesitant in granting independence for Algeria¹⁷. In response to the rebellion in Algeria the French government resigned, and France faced the threat of civil war. The only person able to control this alarming situation in France was General Charles de Gaulle, who suggested that he might consider taking the power over if appropriate conditions were met – and he would receive an investiture and a vote of confidence for the government without appearing personally before the National Assembly. The terms of appointment of the new Cabinet were agreed, and on 1 June 1958 the National Assembly by 329 to 553 votes of the present appointed de Gaulle the head of government, giving him all the necessary powers of attorney¹⁸. The last government of the Fourth French Republic was formed to eradicate this Fourth Republic¹⁹. Charles de Gaulle, after almost twelve years of government initiated by the biggest political upheaval since the proclamation of the republic after Napoleon III abdication, introduced a strong presidential power and restored the status of great–power state to a country which from World War II came out so weak that even the Allies hesitated whether to admit it to their circle²⁰. A strong French Fifth Republic was created under conditions which could hardly be regarded as fully democratic. The concept of the unity of power and created system of government is usually discarded in democratic countries, but the French model of political system is a system of extremely mobile and

17 W. Skrzydło, *Ustrój polityczny Republiki Francuskiej*, (in:) E. Gdulewicz, W. Kręcisz, W. Orłowski, W. Skrzydło, W. Zakrzewski, *Ustroje państw współczesnych*, Lublin 1997, p. 137.

18 E. Gdulewicz, *System konstytucyjny Francji*, Warszawa 2000, p. 14.

19 A. Bilik, *Charles de Gaulle, czyli mit współczesny*, Warszawa 1990, p. 90.

20 S. Brodzki, *Autokraci, technokraci, demokraci*, Warszawa 1979, p. 10.

highly pragmatic one²¹. Political convergence of the president, government and parliamentary majority places the president of France in a stronger position than a president in a typical presidential model. The President, in this event not only unifies the executive power, making it a politically unified, but also – which is not present in the presidential system – has the anti-parliamentary powers vested with him.

General Charles de Gaulle took power on condition that he could obtain the right to draft a constitution launching a new political system. De Gaulle as a head of a government acquired full powers for a one-year-period as well as he could refer to a referendum in order to change the constitution. At the same time, he admitted that it was highly probable that nothing could be done with the system which did not aim at anything²². General de Gaulle (as a head of a government) by virtue of the act of 3 June 1958 gained special powers basing *de facto* on possibilities of drafting a new constitution. The draft of the constitution of the French Fifth Republic was drawn up to de Gaulle's ambitions and political plans. The parliament by virtue of the act from June 1958 was totally excluded from work on the constitution draft²³. The author of the French Fifth Republic's constitution was a prominent lawyer and Minister of Justice Michel Debré – the first Prime Minister of the president de Gaulle²⁴. After initial talks between Debré and de Gaulle (presenting main thesis of his political concept) the minister of justice prepared a document's layout consisting essential provisions, which was then accepted by the general or, if necessary, amended in accordance with de Gaulle's suggestions. The general aimed at gaining a powerful position of the president and government at the cost of weakening the parliament's position.

The constitution of the French Fifth Republic contains anti-parliamentary features. Firstly, Members of the Parliament did not participate in the project draft. Secondly, the content determines the system. Legal solutions specified in the constitution diminish the role of the political system and the importance of the parliament. It is especially evident in the constitution's structure and content, which sets forth resolutions regarding a president, next a government and then a parliament. Thirdly, we may quote Maurice Duverger words that it is the worst, in the legal sense, text drawn up in the French constitutional history; we shall pay attention to the fact that the constitutional provisions are often vague and laconic, which allows for any interpretation of the basic law. It should be emphasised that the lack of precision and laconism of the constitution text did not result from a poor preparation of Debré, but

21 J. Szymanek, M. Kaczorowska, A. Rothert, *Ewolucja, dewolucja, emergencja w systemach politycznych*, Warszawa 2007, p. 84.

22 A. Bilik, *Charles de Gaulle...*, *op. cit.*, p. 90.

23 W. Skrzydło, *Ustrój...*, *op. cit.*, p. 138.

24 M. Ostrowski, *Dyplomacja i dąsy*, „Polityka” 2007, no. 49.

it was done on purpose, which allowed for interpretation of legal norms depending on the current political needs. In the fourth place, at last, the power of the president and the concurrent weakness of the parliament were determined by adoption of the constitution of the French Fifth Republic. The constitution draft of 28 September 1958 was put to the vote in a referendum. The constitution was adopted firstly by the nation (by the majority of 80% votes), not by the parliament.

The system of the French Fifth Republic differs significantly from the previous constitutional arrangements in operation in former French Republics. It also shows considerable differences when compared to the classical presidential system by on one hand, increasing the powers of the head of state compared to the latter (if only by the opportunity to summon a referendum by the president or the ability to dissolve the National Assembly), on the other hand, through the depletion of its powers, for example: sharing executive powers with the Prime Minister and the Council of Ministers²⁵. Systemic solutions of the Fifth Republic also go beyond classic characteristics of parliamentary and cabinet system, with respect to exclusion of many acts of law from the requirement to be countersigned by the president or from the possibility for the government to act without the parliamentary investiture. Undoubtedly, the political system of the French Fifth Republic strengthens the position of the president at the cost of the parliament's powers. Legislative function of the parliament has been significantly reduced (Article 34 of the constitution). The *incompatibilitas* principle forbidding to hold the mandate of a deputy as well as the position in the government was introduced. The president was granted a wide range of competencies, while preserving the principle of his irresponsibility in front of the parliament.

The first presidential elections were held on 21 December 1958. They were not general elections, but it was not the parliament which elected the head of state. Under the original constitutional regulation of 1958 the president was elected by a special electoral college gathering more than 80 thousand people. It was composed of members of the general councils and the overseas assemblies, the members of the French Parliament, deputy mayors and city council members according to strict proportions to the number of residents and representatives of the Member States of the French Community. The only problem with the composition of the electoral college was ignorance and lack of faithful representation of the nation and giving advantage and priorities to rural population²⁶. Most numerously represented in the college were delegates of local government units of up to 1,500 residents, amounting to 50% of that body.²⁷ Three candidates participated in the first presidential elections which were held in the French Fifth Republic: Charles de

25 P. Sarnecki, *Ustroje konstytucyjne państw współczesnych*, Kraków 2005, p. 260.

26 K. Tomaszewski, *Republika Francuska w Unii Europejskiej*, Warszawa 2008, p. 21.

27 *Wiesław Skrzydło o ustroju politycznym Francji. Prace wybrane*, ed. E. Gdulewicz, Lublin 2009, p. 310.

Gaulle, Georges Marr of the Communist Party and Albert Chatelet from the Union of Democratic Forces. Attendance in the elections was 99.4%, and the winner was General de Gaulle who gained over 78% of votes. The first president of the French Fifth Republic was its founder General Charles de Gaulle.

4. The constitutional and legal position of the president of the Russian Federation

The present systemic position of the Russian president is defined by the Constitution's regulations of 1993 and federal act *On the election of the President of the Russian Federation*²⁸. The legal provisions of a new political system in Russia were created as a result of a conflict between institutions aspiring to take over the monopoly of power. This conflict was not solved by means of compromise which meant a renunciation of claims by the parties to that monopoly, but by confirming the integrity of the Kremlin's power. The new Basic Law explicitly rejected the model of parliamentary sovereignty, the role was embodied in the person of the president. Formally, the constitution retained the separation of power and functions of public authority, however, the power of the president as a head of state absorbed individual, the most important functions of other institutions of state power. It also allowed to neutralize the adverse trends in legislative, government and judiciary power. In this context, it seems understandable why the Russian president was often described as a tsar²⁹.

The constitution of 1993 placed the president very highly in the hierarchy of state power. He has executive powers (which he shares with the federal government) and extensive prerogatives with regard to domestic and foreign policy.

The president of the Russian Federation is a head of state and a guarantor of the Constitution of the Russian Federation as well as the rights and freedoms of a man and a citizen³⁰. In the procedures established by the constitution he shall take steps to protect the sovereignty of the Russian Federation, its independence and state integrity, he ensures coordination and cooperation of the bodies of state power³¹. The president of the Russian Federation in accordance with the constitution and federal laws

28 O wyborach Prezydenta Rosyjskiej Federacji, „Российская газета” 23.05.1995. The Federal Act adopted by Duma on 21.04.95, passed by the Federal Council on 4.05.1995 and the federal act of 10 January 2003. № 19–ФЗ О выборах Президента Российской Федерации, „Российская газета” 16 January 2003 (amended on 21 June 2005, 30 December 2006; 26 April and 24 July 2007).

29 I. Klyamkin, L. Shevtsova, *This Omnipotent...*, *op. cit.*, p. 14.

30 *Constitution of Russian Federation*, article 80, paragraph 1.

31 *CRF*, article 80, paragraph 2.

determines the basic directions of domestic and foreign policy³², and represents the state in the state and in international relations³³.

The systemic position of a president in relation to other authorities is very powerful. A wide range of powers arising from the status of a head of state fully secures him an opportunity to perform the functions of confirmed standards of legal and political system. Above all, the president possesses powers related to the formation of federal bodies of state power. Their wide range is conditioned by the following prerequisite: in view of the fact that the president obtained a social mandate through nation-wide general elections, the president should have substantial legal powers in forming the federal government.

The principle of division of competencies formed in Russia does not allow for any authorities to owe their appointment to only one political force. The constitution sets forth the principle that in the formation of federal bodies of power both the president and the Federal Assembly are involved. This is achieved in two ways: the president can appoint certain officials, and the parliament approves the appointment or, in the second scenario, the parliament appoints officials and the president approves the nomination. The President shall appoint in such a way, namely with the consent of the State Duma, the president of the Council of Ministers³⁴, and also deputy prime ministers and ministers designated by the Prime Minister³⁵. So, legal foundations of the constitutional system indicate the participation of the president and the State Duma in the formation of the Government of the Federation. The practice, however, shows that the indisputable advantage in this matter has the president. He can, in principle, freely appoint and dismiss prime ministers, at the most exposing himself to verbal opposition from the Duma, constantly threatened by the prospect of dissolution by the president in the event of opposition expressed three times. Such a legitimacy of the prime minister's office can condemn a government on the role of passive performer of commands coming from the Kremlin³⁶. But we can not say that he is only a sort of extension of the presidential administration. In practice, a lot depended on the authority of a prime minister in a given political configuration. The example of Viktor Chernomyrdin shows that strong, having public (or interest groups) support, the prime minister could easily mark the government policies. Nevertheless, it is also true that majority of the previous

32 CRF, article 80, paragraph 3.

33 CRF, article 80, paragraph 4.

34 CRF, article 83, paragraph 1, point a.

35 CRF, article 83, paragraph 1, point e.

36 The Constitution and the act concerning the government of the Russian Federation (O rządzie Federacji Rosyjskiej) gives to the executive branch a very wide range of competencies. General powers of the Government of the Russian Federation are defined by article 114 of the Constitution: the Government of the Russian Federation. More detailed enumerations of the Federal Government's powers are regulated by chapter II of the Federal Constitutional Act About the government of the Russian Federation, which lists 12 groups of competences of the Council of Ministers.

prime ministers of the Russian Federation were very much dependent on the president. For a greater independence could not even afford Yevgeny Primakov even in spite of a high social support and having a strong (but politically hesitant) parliamentary background. Relatively large government powers were often limited by the president's decrees infringing on powers of a cabinet. The government of the Russian Federation, despite the legal appearance of independence, was mostly a passive executor of the Kremlin policy. Its weakness, in view of the president was absolutely intentional action³⁷. The increase in political importance of a prime minister carried the risk of undermining the dominant position of the president, usually it also resulted in strengthening the role of the parliament, political parties and various interest groups.

Within the domain of the judicial power duality of competence is achieved by the fact that the president proposes the judges of the Supreme Court, Constitutional Court, the Court of Arbitration and the Attorney General, and these proposals are approved by the Federation Council³⁸.

The powers related to the functioning of the State Duma are vested in the president's hands³⁹. In accordance with the constitution and federal law *On elections of deputies of the State Duma of Federal Assembly in the Russian Federation*, the president designates the elections to the Duma, and he also has power to dissolve it. This law substantially strengthens the powers of the president in relation to the Act of April 1991, which deprived him of any possibility of termination or suspension of the powers of both the Congress of People's Deputies and the Supreme Council⁴⁰. Privileged president's position in relations with the legislative authority is the result of the parliament's defeat in the constitutional dispute in 1992–1993, as well as on a procedure of impeachment of the president in 1999. They caused that the legislature has begun to move towards ostentation and become another fig leaf covering up presidential authoritarianism. Presidential regime *de facto* deprived the parliament of independence, allowing the president to act, but rather in unconflictual for the Kremlin areas. The Duma retained its true legislative function, but a real transfer of legislative initiative to the president and a government caused that the independence of the parliament in this issue is at least open to question. In an even greater extent this applies to legislative and creative function of a parliament which was actually lost after 1993 in favour of the president. It is difficult to imagine other than just a formal participation of the parliament in this issue⁴¹. It also seems that the Russian parliament did not integrate and did not

37 See: L. Shevtsova, *Putin's Russia*, Carnegie Endowment for International Peace, Washington 2003. p. 20.

38 CRF, article 83, paragraph 1, point f.

39 CRF, article 84, points a–b.

40 W. Brodziński, *Pozycja...*, *op. cit.*, p. 60.

41 See: A. Коржаков, *Какая дума нам нужна*, „Независимая газета” 14.01.2000.

socialise political community due to the fact that it had not enough capacity and above all not enough authority. An element consolidating and socialising the system and political community was undoubtedly the president and cooperating elements of power. A significant problematic issue for the anti-presidential action of the Duma was also the attitude of the Federation Council, which generally supported the president's actions (it was rather a stable ally of the Kremlin), and thus further restricted any independent actions of the lower chamber.

As a head of state the president has extensive powers regarding foreign policy⁴². He defines its main directions, leads and presides discussions and signs international and ratification agreements. He welcomes diplomatic representatives with credentials, approves war doctrine of the Russian Federation and is the supreme head of the armed forces⁴³, he also appoints and dismisses senior commanders, forms the Security Council and presides it. In the event of aggression or a direct threat he possesses the right to introduce on the territory of the country (or part thereof) martial law⁴⁴.

The President carries out its competencies by means of acts of law of a high order: decrees and regulations which are in force on the territory of the Federation. This permission does not require the consent of the parliament. The constitution of 1993 substantially increases the scope of the president's powers, who in the previous legislation was only able to issue decrees for the implementation of the laws of the Congress of People's Deputies and the Supreme Council⁴⁵. Currently, he is only obliged to comply with one condition that these acts shall not be contradictory with the constitution and federal laws⁴⁶.

The main symbol of presidential power is the flag of the President of the Russian Federation, established by the Decree of 15 February 1994.

Giving the president the status of a head of state was caused by the necessity of increasing the president's prestige both at home and internationally. The definition of the status of the president means that he occupies a special place in the system of state authorities. Such a definition does not provide basis to consider presidential power as the dominant one. Each of the authorities in Russia pursues powers and obligations specified in the constitution. There is no dependency or reliance between individual authorities. Powers are executed on the basis of the constitution, in accordance with it and federal laws, in cooperation with the Parliament and the Government of the Russian Federation. The president of the Russian Federation is

42 CRF, article 86.

43 CRF, article 87, paragraph 1.

44 Informing about this the Council of the Federation the State Duma, CRF, article 87, paragraph 2.

45 W. Brodziński, *Pozycja...*, *op. cit.*, p. 61.

46 CRF, article 90, paragraphs 1–3.

the guarantor of the Constitution of the Russian Federation and the rights and civil liberties. It means that he is personally responsible for a proper functioning of the mechanisms of democracy and thus he is obliged to take appropriate steps in case of their violations. In the order established by the constitution the president takes and implements measures to defend the sovereignty of the Russian Federation, its independence and state integrity.

A crucial aspect of the Russian Federation president's status is to place a chapter regarding the president office in the constitution. He opens a list of chapters on the bodies of state authority in the Russian Federation. This place is an important precondition for the president, whose aim is to secure consistent functioning and co-operation of bodies of state power in Russia.

The Constitution provides for a number of limitations which guarantee that the president does not evolve into an authoritarian ruler. They are enclosed in:

- limiting the period of presidential powers to 4 years (the amendment to the constitution of 31 December 2008 extended the period to 6 years)⁴⁷
- electoral system determining its universality and autonomy,
- limitation of a possibility of holding an office by the same person to two terms,
- the possibility of removing the president from office.

The principle of election of the Russian Federation's President is defined by the Russian Federation Constitution and federal law *On Elections of President of the Russian Federation*⁴⁸. According to the constitution, elections are carried out on the basis of universal, equal and direct suffrage by secret ballot⁴⁹. The constitution also specifies requirements which are to be met by a candidate for a president office. Thus, in order to be registered as a candidate in the presidential election, one must be a citizen of the Russian Federation, be at least 35 years old and who has been permanently residing for at least 10 years in the territory of the Russian Federation is eligible to be nominated⁵⁰.

The elected candidate for the president of the Russian Federation shall be a person who won more than half of the votes. If no candidate succeeds in passing this threshold, a second round of voting is ordered by the Central Election Commission

47 Федеральный закон Российской Федерации о поправке к Конституции Российской Федерации от 30 декабря 2008 г. N 6-ФКЗ *Об изменении срока полномочий Президента Российской Федерации и Государственной Думы*, „Российская газета” 31.12.2008. The first term of office of Boris Jeltzin lasted 5 years, because the 1991 elections took place in the time when regulations defining a 5-year term of presidential office were still valid.

48 The order of the elections of the President of the Russian Federation is defined by the Constitution of the Russian Federation and the Federal Act of 10 января 2003 года № 19-ФЗ *О выборах Президента Российской Федерации*, „Российская газета” 16 January 2003.

49 *CRF*, article 81, paragraph 1.

50 *CRF*, article 81, paragraph 2.

and held with the participation of the two candidates who received the largest and second largest number of votes respectively. In this case the election winner is considered a candidate who won a greater support of voters, with one reservation: the number of positive votes given on the winner must be at least one vote more than the number of votes given „against all”.

After selecting the president of the Russian Federation the constitutional procedure for installing a candidate into his office is introduced. This takes place on the thirtieth day after the date of announcement of the outcome of elections. The person taking the position of the President of the Russian Federation takes an oath before the nation, which text is written in an Article 82 of the constitution: “I do solemnly swear, in the performance of my powers as the President of the Russian Federation, to respect and protect the rights and freedoms of man and citizen, to observe and protect the Constitution of the Russian Federation, to protect the sovereignty and independence, security and integrity of the state and to serve the people faithfully”⁵¹. The oath taken in a solemn atmosphere in the presence of members of the Council of the Federation, deputies of the State Duma and judges of the Constitution Court of the Russian Federation. The President of the Russian Federation takes up his powers since the moment of taking the oath of loyalty and ceases to fulfil them with the expiration of the term of office and from the moment a newly-elected president is sworn in⁵². In some cases, the term of office of the president may be ceased short of the term. This occurs when the president:

- resigns
- stable inability because of health reasons to exercise the powers vested in him
- in case of impeachment⁵³.

In this case the election of the President of the Russian Federation shall take place not later than three months since the termination of the powers short of the term⁵⁴.

The Constitution of the Russian Federation has established quite a complicated order of president’s impeachment⁵⁵. The decision of the State Duma on advancing charges and the decision of the Council of the Federation on impeaching the President shall be adopted by two thirds of the votes of the total number of members of each chamber and on the initiative of not less than one third of the deputies

51 CRF, article 82, paragraph 1.

52 CRF, article, 92, paragraph 1.

53 CRF, article 92, paragraph 2.

54 CRF, article 92, paragraph 2.

55 CRF, article 93.

of the State Duma and with the conclusion of a special commission set up by the State Duma⁵⁶. The impeachment procedure requires the presence of:

- two chambers of the Federal Assembly
- Constitutional Court
- Supreme Court

The Duma advances charges against the president which should be confirmed by the Supreme Court Decision. The Constitutional Court submits an application for compliance with the order setting out the advancing charges. The Council of the Federation impeaches the president. In both chambers such a decision is taken by the majority of 2/3 of the votes of the total number of members of each chamber⁵⁷. The previous constitution contained vague formula defining the grounds for entitlement to an exemption from the post of the president (violation of the constitution, law, and oath). According to the letter of the currently binding law impeachment of the president is possible only when allegations against him concern the state treason or other grave crime confirmed by the decision of the Supreme Court of the Russian Federation about the presence in the activities of the President of the Russian Federation features of a criminal offence⁵⁸. These categories are, however, strictly specified by law and can not be treated abstractly.

The decision of the Council of the Federation on impeaching the President of the Russian Federation shall be adopted not later than three months after the State Duma advanced the charges against the President. If a decision of the Council of the Federation is not adopted during this time, the charges against the President shall be regarded as rejected⁵⁹.

In November 2000 the State Duma adopted in first reading a draft act *On guarantees for the president who ended the performance of his duties and for his family*. „For” voted 282 deputies, „against” 130 (mainly communists). The act applies to Yeltsin, Putin and each of the subsequent presidents. It does not apply to Gorbachev, the first and last president of the USSR. The adopted act is almost a copy of the decree of the above mentioned president of 31 December 1999 issued by Putin immediately after the transfer of power. The only change concerns the inviolability of the former president. According to the decree he cannot even be called to criminal and administrative liability and account, while the provision in this act was lessened and immunity applies only to actions taken while carrying out his duties. The principle of inviolability also applies to close family of the president (his wife and children). The former president is entitled to special social and

56 CRF, article 93, paragraph 2.

57 CRF, article 93, paragraph 2.

58 CRF, article 93, paragraph 1.

59 CRF, article 93, paragraph 3.

medical services, may use his own transport, communications and the dacha, and his own group of assistants. His pension is to be 75% of the salary he received at the office of the president.

5. Constitutional and legal position of the President of the French Fifth Republic

The central authority in the system of state organs is the president of the republic. The advantage of the president over all other authorities has been explicitly underlined in the Constitution. The President is required to settle the arbitration. He is the guarantor of national independence, territorial integrity and observance of the agreements of the European Union and international treaties. The President ensures that the constitution is observed, also ensures the proper functioning of the public authorities and the continuity of the state. Thus, in his hands the protection of fundamental interests of the nation and the requirements of the highest reason of state are vested. A powerful position of the president is emphasised by the manner of election and the powers granted to him.

The constitution stipulated that the president is eligible for 7 years by the electoral body. In 1962 president de Gaulle addressed the nation through a referendum with a request to express their opinion on the change in the election method of a head of state perceiving that the contemporary mode of electing the president did not give strong legitimacy to exercise the presidential power. De Gaulle proposed general and direct presidential elections. Since 1965 the French president is chosen in the general and direct elections. In 2000 the president Jacques Chirac ordered a referendum in which the shortening of the presidential term from seven to five years was put to a vote. Since 2002, the French president is elected for a five years term. The constitution of the French Fifth Republic does not prohibit multiple re-elections, which means that a certain person may hold the office of the president infinite number of times.

Principles and procedures for electing the president are regulated by the amended constitution, in the act of 6 November 1962, decree of 14 March 1964 and the electoral code. In order to be admitted as an official candidate, a potential candidate can be every resident of France who is at least 23 years old on the day of election irrespective of gender, skin colour or religion. He needs to have a right to vote. The election is by an absolute majority of votes. If such a majority is not obtained on the first ballot, a second ballot takes place on the fourteenth day thereafter. Only the two candidates polling the greatest number of votes in the first ballot may stand in the second ballot. The candidate must receive signed presentations from more than 500 elected officials, mostly mayors, members of the parliament, the Economic and Social Council, and general attorneys. These officials

must be from at least 30 regions or overseas collectivities⁶⁰. Candidates must also pay a deposit which is forfeited if they receive less than 5% of the votes in the election. It should be stressed that the election of the president by universal and direct suffrage significantly strengthened its position and legitimacy of political system. The Constitution of the French Fifth Republic creates a type of active presidency. Vagueness of the provisions makes the formation of the president's position depends on the person having authority, and the political situation.

A strong position of the president of France can be attributed to centralisation of state power in his hands. Although the constitution has maintained the dualism of the executive, but it made the president, not a prime minister its real executive. The position of the president is strengthened by the fact that he does not bear the political responsibility – he remains in his office for five years and cannot be removed before the expiration of the term. Significantly reduced was the legal liability of the president. By 2007, the president could be held criminally liable only for high treason. Since 2007, the president has borne legal responsibility before the High Tribunal for acts openly incompatible with his office.

A great attention is paid to the president's office in the constitution. There are 16 Articles devoted to the president, whereas only 2 Articles regard a prime minister's office, not to mention a few other less important references⁶¹. The French president has a number of competencies that can be properly arranged.

5.1. Attributions of the president towards the parliament

The President has the right to address the parliament with a message. The message the National Assembly is be read by the Prime Minister, and in the Senate by the Minister of Justice. The message is of an informational character and is not the occasion for any debate. The president has the right dissolve the parliament, but it refers only to the lower chamber. It is the most far-reaching attribute of the president towards the parliament, caused particularly by negative assessment of its activities. It should be also emphasized that the president is exempted from any restrictions – neither the opinion of the Prime Minister, nor the opinions of the chairmen of the chambers. This actually means that the president at any time may dissolve the lower chamber of the parliament, with one exception: he is unable to do so in the first year of a newly elected parliament.

President has the right to initiate constitutional amendments from which the French presidents have benefited quite often. Within the competence of the president is also to summon and close special sessions of the parliament and it is a head of state who independently assess the merits of the proposal. The presi-

60 K.A. Wojtaszczyk, *Współczesne systemy polityczne*, Warszawa 1998, p. 63.

61 W. Skrzydło, *Ustrój...*, *op. cit.*, p. 157.

dent promulgates laws, and in case of refusal to sign an act, may direct the bill to the Constitutional Council to examine it for conformity with the Constitution or he may use suspensive veto. In France, only the president has the right to call a referendum, in other words addressing the nation beyond the parliament, which allows him to bypass the parliament in cases where it would be difficult to obtain a parliamentary majority⁶².

5.2. Attributions of the president towards the government

The President appoints a prime minister and on his recommendation appoints ministers. He accepts the resignation of a cabinet and presides the Council of Ministers. The appointment of a prime minister is not subject to any legal conditions, as well as receiving the resignation of the government. On his own initiative, the president may not dismiss the government, but because of the authority enjoyed by a head of state, the prime minister adjusts to the president's suggestions and when a head of state considers it appropriate, the prime minister resigns, thus fulfilling the president's will. The appointment of ministers is always performed at the request of a prime minister. The president, however, has an influence on their choice, especially when it comes to the minister of national defence and foreign affairs. General de Gaulle introduced this practice (adopted by his successors), which allows to talk about the common choice of ministers by a prime minister and the president.

By leading session, the president directs the work of the government and influences the content of decisions. The president sets the agenda of a session and governs their progress, summarizes sessions, sets conclusions and has the last word. This president is the *de facto* a head of government.

The president signs acts of law issued by the government – decrees and ordinances. The president as the chairman of the Council of Ministers sessions signs resolutions adopted by the Council. The political practice allows for the president's refusal to put his signature and then the act is not valid.

5.3. Attributions of the president towards the judiciary

In this field there are relationships between the president and the Constitutional Council and Supreme Council of Magistracy. The president appoints one-third of the Constitutional Council members, he also appoints its chairperson and receives an oath from the members of the Council while obtaining an office. The president may address motions to the Council to examine the constitutionality of the act. As a guarantor of the independence of the judiciary, the president presided over the Supreme Judicial Council (SJC) which submitted proposals regarding the promo-

62 A. Antoszewski, *Reżimy polityczne państw europejskich*, (in:) A. Antoszewski, R. Herbut, *Systemy polityczne współczesnej Europy*, Warszawa 2006, pp. 180–181.

tion of judges and bringing them to the account. The amendment of the constitution of 23 July 2008 quite significantly changes the regulations on the SJC. An important change has been depriving the president the leadership in that Council.

5.4. Personal attributions

The President also possesses special personal privileges in emergency situations. Article 16 of the constitution states: “Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council”. In practice, if the president appeals to Article 16 it will result in introducing a kind of dictatorship, because he becomes a person out of any control. Lawyers have pointed out the unclarity of this article. It is not mentioned how long it could last and whether this state could only be used once by the same president. The Article 16 was used only once – during the governance of General De Gaulle. In 1961, following a putsch in Algeria, president de Gaulle addressed the people with a message, in which he informed about the application of Article 16 of the constitution, referring to the exceptional circumstances which constituted a revolt of generals. The full authority under Article 16 lasted five months. According to many constitutionalists, in 1961 there were no grounds for the application of Article 16. While the first condition was met, i.e. integrity of the republic was threatened, the event of interruption of normal functioning of state authorities and the parliament should have existed in 1961, yet the parliament was carrying out its sessions.

The amendment of the constitution of the French Fifth Republic implemented on 23 July 2008 added a new paragraph in article 16, whereby after 30 days of introduction of the emergency powers, the Constitutional Council may be called by the chairman of the National Assembly, chairman of the Senate, 60 deputies or 60 senators in order to examine whether conditions justifying the introduction of emergency powers are met. The Council assesses within 60 days of introduction of this article. The addition of the second paragraph means in fact clarification of the procedure for introducing emergency powers by a head of state and extending control measures of the Constitutional Council in this regard⁶³.

63 W. Skrzydło, *Największa nowelizacja konstytucji V Republiki (z dnia 23 lipca 2008 roku)*, (in:) *Prawo, parlament i egzekutywa we współczesnych systemach rządów. Księga poświęcona pamięci profesora Jerzego Stembrowicza*, ed. S. Bożyk, Białystok 2009, p. 351.

5.5. Cohabitation

The position of the president mainly depends on the distribution of power in the parliament. If a majority of seats in the National Assembly are occupied by the president's supporters, then his position and abilities to pursue policy ideas are much greater. There were, however, situations of interaction and cooperation between the president from one political option and the parliament or government dominated by another political party. These situations are defined as cohabitation – co-residence, namely the co-existence of different political orientations within the state bodies and the triangle formed by the president – the parliament – the government. This is a state that does not positively affect the stability of the political scene.

Table 1. Cohabitation

Years	President	Prime Minister
1986–1988	François Mitterrand	Jacques Chirac
1993–1995	François Mitterrand	Eduard Balladur
1997–2002	Jacques Chirac	Lionel Jospin

Source: self-study

It is worth noticing that in years 1958–1981 the political orientation of the president and a majority of the National Assembly had a homogeneous character, was identical or nearly identical⁶⁴. A new political situation occurred in 1981, when for the first time in the Fifth Republic the highest position in the country by means of general elections was gained by the Socialist Party leader F.Mitterrand. The partner of dominated by right-wing parties parliament became a left-wing president. The homogeneous political orientation of the president, the parliamentary majority and the government was soon restored when the president dissolved the National Assembly and in the parliamentary elections, the Socialist Party enjoyed a victory.

It may be accepted, therefore, that in the cohabitation in the present system-ic experience occurred only three times (not taking into account the year 1981). Cohabitation periods occurred twice during the presidency of F.Mitterrand (1986–1988 and 1993–1995) and once during J.Chirac's presidency (1997–2002). The effects of such system of forces (i.e., violation of political homogeneity) are found in

64 It must be stressed however that the so-called "majority effect" did not mean that the relations between the head of state and the prime minister were always without problems, because differences in opinions concerning major political decisions cooperation styles caused some prime ministers to resign: M. Debre, J. Chaban-Delmasa, J. Chiraka, M. Rocarda, E. Popławska, *Instytucja prezydenta w systemie politycznym V Republiki Francuskiej*, Warszawa 1995, p. 237.

a tendency to diminish the systemic role of president and also to a significant independence of both prime minister and the government from a head of state⁶⁵. During *cohabitation* period the authority of a head of state in appointing a prime minister was limited, because the president had to take into consideration the structure of power in the parliament, and in practice, he assigned the function to the leader of 'a different' political option than his own⁶⁶. Such a precedent was established in 1986 under President Mitterrand. Moreover, the strongly different character has the president's leadership in the Council of Ministers, because the initiative in setting up the government program is taken over by a prime minister. The president, to a minor extent, may affect the conduct of government's meetings and on the resolution taken in the Council of Ministers. Simultaneously, the frequency of the appointment of the Cabinet Council has been increased, or in other words meetings of a government without the president. The constitution does not define clearly the division of powers between the president and government. In times when the parliamentary and presidential majorities were identical, all prime ministers recognized the dominance of a head of state over a government and a prime minister on the assumption that the prime minister does not hold the same position as the president, since he does not appear by means of universal suffrage, and if he shares the same political views as the president consequently he is appointed to a head the government by the president. During the presidency of Valéry Giscard d'Estaing there was a disagreement of opinions between him and then the prime minister Chirac, it was the prime minister who admitted that it was the prime minister's duty and obligation to carry out a policy defined by the president, and if there is a difference of opinion, the prime minister should withdraw⁶⁷.

It should be noted that the authors of the constitution of the French Fifth Republic probably assumed that in practice there would not be variations from the systemic shape defined in the constitution, and that it would always operate in terms of political identity between the president, parliamentary majority and government. A head of state, enjoying the support of the parliamentary majority, had a lot of freedom in choosing a prime minister and the possibility of imposing on him the president's political line⁶⁸. The constitution of the French Fifth Republic introduced a regime which ensured the stability of the government⁶⁹. De Gaulle

65 *Konstytucja Francji z 4 października 1958 r.*, Wstęp i tłumaczenie W. Skrzydło, Warszawa 1997, p. 15.

66 I. Bokszczanin, *Rząd V Republiki Francuskiej*, (in:) E. Zieliński, I. Bokszczanin, *Rządy w państwach Europy*, Warszawa 2003, p. 35.

67 *Konstytucja Francji...*, p. 15.

68 I. Bokszczanin, *Instytucja premiera w systemie politycznym V Republiki Francuskiej*, (in:) *Wielowymiarowość systemów politycznych. Teoretyczne założenia i praktyczne uwarunkowania*, ed. J. Błuszkowski, J. Zaleśny, Warszawa 2009, p. 48.

69 A. Majerska-Sosnowska, *Politycy i urzędnicy w rządzie i administracji rządowej V Republiki Francuskiej: podstawowe zagadnienia*, (in:) *Parlament, prezydent, rząd. Zagadnienia konstytucyjne na przykładach wybranych państw*, ed. T. Moidawa, J. Szymanek, Warszawa 2008, p. 173.

was a strong supporter of executive power vested in the hands of apolitical president, standing over the representative bodies and keeping contact with the nation through a referendum⁷⁰. The emergence of two different and opposing the majorities in 1986 and repeatedly in 1993 and 1997, created a new situation. Agreeing with the results of parliamentary elections the president appoints the government having support in a new parliamentary majority and cooperates with it, however, agreeing to limit its role in comparison with the past. Cohabitation results in diminishing the position of the president, increasing prime minister's and government's independence, along with increased role of political parties. By the way it should be noted that because of the hierarchical dualism of the executive power, a prime minister is not able to gain a position of a political leader, which is usually reached by a head of government in the parliamentary and cabinet regime⁷¹. On the other hand, the function of a prime minister can sometimes be a stepping stone to a future presidency (G. Pompidou, Jacques Chirac), though, neither V. Giscard d'Estaing, or F. Mitterrand were prime ministers, and L. Jospin, whose victory in the presidential elections was foreseen in 2002 did not come up to the second round.

It is worth emphasizing the third period of cohabitation which lasted throughout the five-year term of the National Assembly. Chirac – Jospin cohabitation was defined as „hostile and offensive”⁷² in order to show not so good relations between the president and the prime minister. It was manifested, among other things, in the president's opposition to the government proposals for laws, blocking reforms, opposition to certain judicial nominations, and mutual critical statements of the organs of executive power. As rightly determined by W. Skrzydło, to understand the relationship defined by the term *cohabitation* and their proper approach we should consider equally with the text of the constitution and political balance of power in the country and the relationship which exist between the presidential majority and the parliamentary majority⁷³.

A legal prerequisite to depart from the practice of *cohabitation* has become a constitutional amendment adopted in 2000, equalizing the presidential term to term of the lower chamber of the parliament. The elections (presidential and parliamentary) in 2002 resulted in the return to the practice of forming a homogenous political executive. The electoral calendar was reversed – as the first the president was elected, and second – the parliament, which in turn helped to strengthen the position of the president in the government. Currently, in relation to dominating

70 B. Dziemidok–Olszewska, *System polityczny V Republiki Francuskiej*, (in:) *Współczesne systemy polityczne*, ed. M. Żmigrodzki, B. Dziemidok–Olszewska, Warszawa 2007, p. 61.

71 A. Antoszewski, *Reżimy polityczne państw europejskich*, (in:) *Systemy polityczne współczesnej Europy*, ed. A. Antoszewski, R. Herbut, Warszawa 2006, p. 182.

72 I. Bokszczanin, *Rząd...*, *op. cit.*, p. 91.

73 W. Skrzydło, *O ustroju...*, *op. cit.*, p. 189.

opinions that as a result of the equalizing the presidential term with the term of the parliament, *cohabitation* has become obsolete.

6. Conclusion

The purpose of this article was to examine and compare the constitutional and legal position of the presidents in the political systems of Russia and France. In the context of the presented considerations, it seems essential to also answer the question whether the constitutional and legal position of the presidents of France and Russia are similar or different – and if so, in what respects. It seems interesting to compare the formal power of presidents in both analyzed countries and the basis for the existing differences.

Comparative studies regarding the whole political systems, and taking into account their determinants are usually extremely difficult. It is much easier to compare some elements of the system – in our case, the constitutional position of a president. The strength of this institution in the simplest way can be measured using Timothy Frye index⁷⁴. It is built on the basis of 27 prerogatives, which were divided into three categories:

- legislative – legislative initiative, directing laws to the Constitutional Court; the right to issue decrees (without due consideration of the parliament); possibility of submitting constitutional amendments; the legislative veto rejected by a qualified majority of two thirds of votes in the parliament;
- functional – deciding on elections; the presidency in the National Security Council; the possibility of the dissolution of parliament; summoning an extraordinary session of the parliament; participation in the parliament's sessions; special powers in the event of inability to collect the parliament; directing requests to the parliament; participation in meetings of the government; extraordinary powers in extraordinary circumstances;
- nominating – the appointment of prime minister, ministers, judges of the Constitutional Court, Supreme Court judges, judges, the Prosecutor General, the President of the Central Bank, Security Council members, senior officers, commanders-in-chief of the Armed Forces and the Army Commander.

In our analysis, we compared the most important powers and competences of the presidents basing on a modified and – in some aspects – supplemented Frye index (in our analysis this is a set of 24 competencies). The applied changes seemed necessary, due to the fact that both presidential offices are not fully comparable,

74 T. Frye, *A politics of institutional choice: post-communist presidencies*, „Comparative Political Studies” 1997, no. 10, pp. 523–552.

and the same archetype was created to carry out research in the countries undergoing political transformation.

Table 2. Constitutional position of the presidents of Russia and France in the light of chosen competences/attribution

	Competency	Russia	Comment	France	Comment
1.	Selection of a president	1	directly	1	directly
2.	Admissibility of re-election	0,5	max. 2 terms in office running	1	lack of ban on successive re-election
3.	The right of legislative initiative	0,5	right vested in a president as one of state authorities	0	On the motion of the government or joint motion of two chambers he can to put to a referendum every draft law. The parliament is eliminated from legislative proceedings
4.	Constitutional initiative	0,5	right vested in a president as one of state authorities	0,5	Both, the president on the motion of a prime minister and members of the parliament are entitled
5.	Directing laws to the Constitutional Tribunal / Constitutional Council	0,5	right vested in a president as one of state authorities	0,5	right vested in a president as one of state authorities
6.	The right to issue decrees	1	They must be in accordance with the Constitution and federal laws	0	
7.	Legislative veto	1		1	
8.	The possibility to reject a president's veto	0	By the majority of 2/3 of Federal Assembly and State Duma	0,5	There is such a possibility in theory but it does not exist in practice
9.	To call parliamentary elections	1		1	
10.	The possibility to dissolve parliament	1	In the events specified in Articles 111 and 117 of the Russian Federation Constitution	1	In any moment, apart from the first year of functioning of a newly elected parliament
11.	The possibility to apply forms of direct democracy	1		1	
12.	Legal responsibility of a president	0	Upon the Article 93 of the Constitution	0	for actions violating openly the provisions of his office
13.	Leadership in National Security Council	1		1	
14.	Summoning a special session of the parliament	0		1	

	Competency	Russia	Comment	France	Comment
15.	Participation in the government's sessions	0,5	He has the right to attend	1	The president presides the Council of Ministers
16.	The appointment of a prime minister	0,5	At the consent of the Duma	1	
17.	The appointment of ministers	0,5	On the motion of a prime minister	1	The president appoints ministers on a prime minister's motion but he can consult the nominations of the foreign policy and defence minister
18.	Dissolution of the government	1		1	
19.	The appointment of judges of the Constitutional Court / Constitutional Council	0,5	Introduces the candidate for this position to the Duma	1	The president appoints 1/3 of the Constitutional Council members, appoints its chairman. The CC consists of the former presidents of the French Fifth Republic ex officio
20.	The appointment of judges of the Supreme Court/ Court of Cassation	0,5	Introduces the candidate for this position to the Duma	0,5	Sets forth motions with regard to appointing the judges to the Court of Cassation
21.	The appointment of commanders of the armed forces	1		1	
22.	The possibility to declare a state of martial law / state of emergency	1	By informing the parliament	1	The president declares state of emergency by virtue of Article 16
23.	Personal attributions	0		1	By virtue of Article 16 of the constitution of the French Fifth Republic
24.	The message	1	Addressing the Federal Assembly	1	Addressing both chambers of the parliament

1 p. in the chart means full advantage (competence) in a certain field, 0.5 p. means the separation of certain competence between the president and other public authority. The lack of a certain competence is marked 0 p in the chart.

Source: self-study

Having in mind and being aware of subjectivity and simplifications of certain assessments we can claim that thanks to the results of the analysis (table 2) we have come to quite surprising conclusions. Above all, there are vital discrepancies in systemic solutions regarding the president's office. First of all – in the president's term of office, in possibilities of re-election, conditions fulfilled by a candidate for the president's office, and personal powers of the president of France (Article 16), which are not possessed by the Russian president. Secondly – the pres-

ident of the French Fifth Republic concentrates executive authority, which is not so distinguishable in the Russian system. The next difference relates to Russian president's powers to issue decrees and resolutions. This competence is not vested in the hands of the president of the French Fifth Republic, he only countersigns acts of law issued by a government. It becomes evident that constitutional and legal position of the president of France is a bit stronger than his Russian counterpart (19–15,5 points). Several months ago when Vladimir Putin resided in the Kremlin it could have seemed not so obvious. In this event the position of the president of the Russian Federation resulted not from his legal status but from his considerably powerful political position, personality and other conditions (here above mentioned in the introduction). As a matter of fact constitutional and legal position of the president of Russia, however, strong it may be, is not completely hegemonic in the political system of Russia. The Kremlin's host has to take into account plenty of limitations imposed on him by the constitution – especially when it comes to appointing to a number of crucial posts in the country.

Undoubtedly, the discrepancies in the constitutional and legal position of the presidents are historically bound. The experience of the French Fourth Republic, in which the majority of power belonged to quarrelled and inefficient parliament, was of great importance in departing from duplicating the pattern of malfunctioning system. The only guarantor of a powerful state seemed to be the president entitled to make quick and relevant decisions within the scope of his numerous competencies. The authors of the Russian constitution of 1993 (B. Yeltsin) must have taken into consideration the context of bringing into existence the Basic Law, namely an acute conflict with legislative (the Congress of People's Deputies) about the scope of power in a country – this conflict resulted inter alia in dissolving the parliament by the president (in September 1993) and then pacification (5 October 1993) of the parliament⁷⁵. It seemed that forcible solution with the opposition might have given Yeltsin fullness of power, and consequently discretion at creating a new constitution. However, it did not happen. The opposition, even after pacification of the parliament, did not surrender from fight of conducting social discussion on a draft of the basic law. This attitude was declared in a statement accepted during constitutional consultation held at the beginning of December 1993 on the initiative of several opposition parties. Zorkin Valery (a former chairman of the Constitutional Court), described Yeltsin's project as a „constitution of shock therapy in every field.”⁷⁶ Two days before the election last time Yeltsin appealed to Russians to support a submitted project. In a dramatic television speech, he warned that the decision of voters would determine whether it could be possible to build Russia for which they vot-

75 A.R. Bartnicki, *Demokratycznie legitymizowany autorytaryzm w Rosji 1991–2004*, Białystok 2007, pp. 116–126.

76 S. Popowski, *Albo konstytucja albo wojna*, „Rzeczpospolita” 10.12.1993.

ed in the presidential elections and in April referendum (1993), or whether it would face once again the spectre of domestic war. Yeltsin declared himself as a supporter of strong presidential power, also in the long term perspective⁷⁷. The draft of the constitution to a certain extent, however, reflected hesitations in the Kremlin, which was not yet ready for the introduction of authoritarian solutions and a total marginalization of the parliament. Thus, the Constitution became a kind of compromise between Yeltsin's vision of a strong presidency and the perceived – as part of a democratic system – a relatively important role of the parliament. It was also a compromise between what the Kremlin wanted (or thought it wanted to) and what in 1993 could actually be achieved. Yeltsin, ipso facto, made all believe in democratic deal and governance, however, changing valid hierarchies in the state. The marginalization of the parliament was to take place through political solutions, not legal⁷⁸.

The French Fifth Republic was created in the 50s of the twentieth century on the ruins of the inefficient Fourth Republic. The main objective of de Gaulle was to create a strong national body with the ambitions of great powers, in which power was concentrated in the hands of the president. The President was given a number of prerogatives. General de Gaulle, by creating the foundations of the Fifth Republic, knew exactly what he wanted – what is even more, he had the opportunity (and a strong enough political position) to exert pressure on the emerging political and legal system. Such freedom and confidence regarding the future character of the state (in spite of all) Yeltsin did not possess.

The similarities in the constitutional and legal position of the presidents can be found mainly in the importance of the institution of a president in the hierarchy of state authorities. It is clearly noticeable and visible in a constitution layout in both countries (institution of the president is discussed earlier than the prime minister and parliament ones) and granting the president extensive powers. In light of the constitution, both the president of France and Russia is the head of state, concentrating state authority with respect to governance and legislative. Formally, the office of a president is one of the executive power bodies, but powers granted to him are by far exceed this authority. The presidents of France and Russia as heads of state acts as guarantor of the constitution as well as rights and freedoms of a man and a citizen. It is the president's duty to take steps to protect the sovereignty of the republic, its independence and state integrity, to ensure coordination and cooperation of state power authorities. One of the most important tasks of the presidents of France and Russia is defining the basic directions of domestic and foreign policy of the state. In both countries the president has the power to summon a referendum.

77 *Ibidem*

78 The final political control over the parliament was achieved among others through legal changes (electoral changes).