

THE INSTITUTION OF THE PRESIDENT IN THE VISEGRAD GROUP STATES

1. Historical conditioning of the model of presidency

1.1. The interwar period

Adopting a particular model of presidency in the Visegrad Group States was, in large measure, a result of individual constitutional traditions in the interwar period and in the short period of democratic governments immediately after the end of the World War II. The collapse of the Austro–Hungarian Monarchy, and, in the case of Poland, also the defeat of Germany and the Bolshevik Revolution, determined the creation of new states on the political map of Europe in the end of 1918. They were, among others, Czechoslovakia, Hungary and Poland. These states adopted the model of government prevalent in Europe at that time. It was the system of parliamentary–cabinet government inspired by the French Third Republic. Such a system is characterized by strong position of government and restricted scope of president’s responsibilities².

Among the countries, which are subject to analysis, the institution of president was most rapidly adopted in Czechoslovakia, under the provisions of the Constitution of 13th November 1918. In accordance with this Constitution, the president was elected by the National Assembly³. The president’s authorizations were limited, and the president’s acts required counter–signature of an appropriate government member. A system of parliamentary government was introduced. It was characterized by far–reaching political neutralization of the head of state. Half

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2 Compare with W. Sokolewicz, *Ewolucja ustroju konstytucyjnego Czechosłowacji*, „Studia Prawnicze” 1967, issue 16, p. 78; Z. Witkowski, *Z zagadnień genezy i praktyki funkcjonowania prezydentury w I Republice Czechosłowackiej*, „Acta Universitatis Nicolai Copernici” 1988, Prawo XXVI, p. 11.

3 The first President of Czechoslovakia was Tomáš G. Masaryk. He held the office from 1918 to 1935 (the prohibition to be elected for the president for the third time was not in force concerning his person). His successor was Edvard Beneš. He resigned in 1939 after Germany occupied the Sudeten. During the World War II E. Beneš was in charge of the Provisional Government in London. In 1946 he was re–elected for president. Finally, he resigned in 1948, when he refused to sign the new Constitution implemented by communists.

a year later, under the provisions of so-called May amendment of 1919, the position of president was strengthened, especially through granting him the power to veto statutes.

The model of presidency created by the authors of provisional constitution was universally adopted in the proper Constitution of Czechoslovakia of 1920. Under the provisions of this Constitution, the president was elected for a 7-year term of office by the National Assembly, which consisted of the Chamber of Deputies and the Senate⁴. Obtaining support of 3/5 of deputies participating in a voting was required for the election. If the first two ballots of the voting did not end in success, two candidates, who obtained the greatest support during the second ballot, entered the third ballot. The National Assembly elected the president in the third ballot with simple majority of votes. If the number of votes was equal, the election was decided on by drawing.

The president was vested with the power to dissolve parliament⁵, to use a suspending veto of statutes, to appoint and dismiss government, to summon government's sessions and to preside over the sessions. The president's official acts were subject to government's counter-signature (performed by the minister concerned). The president bore constitutional responsibility for treason. The accusation was presented by the Chamber of Deputies (2/3 majority of votes was required with the presence of 2/3 members of parliament), and the decision if the president was guilty or not was made by the Senate. An element, which rationalized the parliamentary system of government in the Czech Republic, which was however not widely employed, was the power of government to order a referendum⁶.

Contrary to other countries in Middle East Europe, Czechoslovakia had not experienced the period of authoritarian government. The Constitution of 1920 was in force throughout the entire interwar period, what assured its special position in the history of European constitutionalism. The Munich Agreement (1938) caused the dissolution of Czechoslovakia. In consequence, the Slovak First Republic was created. The Constitution of 1939 was the constitutional basis of this state. The head of state was the president, elected for a 7-year term of office by the Slovak Sejm by means of 3/5 majority of votes with the presence of 2/3 deputies. If none of the candidates managed to win such support, two candidates with the biggest number of votes entered the second ballot. Simple majority was sufficient to elect the president in the second ballot. If the number of votes was equal, there was a voting on

4 In the course of works on the Constitution, also the possibility to elect the president directly by citizens was taken into consideration. See: Z. Witkowski, *Z zagadnień...*, *op. cit.*, pp. 15–18.

5 The president had the power to dissolve one house or even both houses. The Constitution did not point out the tangible premises to dissolve parliament. It also forbade dissolving parliament during the last six months of presidency. The president's decision to dissolve parliament was subject to government's counter-signature.

6 M. Kruk, *Wstęp*, (in:) *Konstytucja Republiki Czeskiej*, Warszawa 2000, p. 11.

granting the mandate⁷. Among the most significant powers of the president were: employing legislative veto⁸, appointing and dismissing government members, presiding over government sessions and issuing decrees with the force of statutes⁹. In practice, the president's office was given to priest Josef Tiso. The period of his authoritarian government was marked with the tragedy of Slovak Jews, deported to concentration camps with his consent¹⁰.

Poland regained independence in 1918, after 123 years of captivity. Initially, the head of state in Poland was the Provisional Chief of State. The office was held by Józef Piłsudski. After the election held in January 1919, the Legislative Sejm adopted the Small Constitution. Under the provisions of this constitution the Chief of State¹¹ held the office of the head of state. One of his responsibilities was to appoint government "in agreement" with the Sejm. On the other hand, he was deprived of legislative initiative. Neither did he possess the power to dismiss government. Although the Chief of State (similarly to government) bore responsibility in front of Sejm, his acts required an appropriate minister's counter-signature.

The proper constitution of the Second Polish Republic was passed only in 1921 (March Constitution). It adopted the parliamentary-cabinet system of government. Legislative power was held by a two-chamber parliament: the Sejm and the Senate. Both houses were elected for a 5-year term of office by means of proportional election system. Sejm had the power to make a decision on its own dissolution by means of the 2/3 majority of votes. The president, on the other hand, had the power to dissolve Sejm with the consent granted by 3/5 senate members. The president was elected for a 7-year term of office by the National Assembly (constituted by both houses – the Sejm and the Senate – joined together) with absolute majority of votes. Presidential legal acts required counter-signature of the prime minister and the minister concerned.¹²

Political forces, which had led to the adoption of March Constitution, restricted the president's scope of responsibilities because they thought J. Piłsudski would become the president. However, he withdrew from official participation in public life as a protest against limiting the head of state's competence. The first president, elected in December 1922, was Gabriel Narutowicz, and after his death – Stanisław Wojciechowski.

7 B. Pytlík, *Prezydent Republiki Słowackiej*, (in:) *Prezydent w państwach współczesnych. Modernizacja instytucji*, ed. J. Osiński, Warszawa 2009, p. 605.

8 The Slovak Sejm could reject it with a 3/5 majority of votes with the presence of 2/3 deputies.

9 B. Pytlík, *Prezydent...*, *op. cit.*, p. 606.

10 After the war, J. Tiso was condemned to death for the crimes he committed.

11 Until the election of the first president this office was held by J. Piłsudski.

12 See more: Z. Witkowski, *Prezydent Rzeczypospolitej Polskiej 1921–1935*, Warszawa–Poznań–Toruń 1987, pp. 24–91.

In 1926 J. Piłsudski committed coup d'état (the so-called May Coup). However, he refused to take up the president's office and Ignacy Mościcki became the president. The Constitution was changed in August 1926 (so-called August amendment). This amendment strengthened the position of president and government in the system of organs of public authority. The president had the force to dissolve Sejm on application from the Council of Ministers ("one time only for a particular reason")¹³. At the same time Sejm lost the power to dissolve itself and the president gained the right to issue ordinances with the force of statutes.

In 1935, at the end of J. Piłsudski's life, the April Constitution came into force. It legalized authoritarian system of government. The highest organ of public authority was the president. All other organs, including Sejm and Senate, were subordinated to the president who was elected by the Electoral Assembly. The Electoral Assembly consisted of: the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, the First President of the Supreme Court, the General Inspector of the Armed Forces and 75 electors chosen "from the most dignified citizens" in 2/3 by the Sejm and in 1/3 by the Senate. The retiring president had the right to propose his own candidate. If he did so, then the Nation elected one of two candidates: one proposed by the former president and one proposed by the Electoral Assembly. The president's term of office lasted for 7 years.

Under the provisions of the April Constitution the president had the right to appoint and dismiss government¹⁴, to dissolve Sejm and Senate, to employ legislative veto, to determine dates of their sessions, to appoint 1/3 of the senators and to issue decrees with the force of statutes. He designated his successor for the time of war. Numerous authorizations of the president were his prerogatives and did not require any governmental counter-signature. The president could not be called to account for anything, he only answered to "God and history"¹⁵. The office of president under the provisions of the April Constitution was held by Ignacy Mościcki¹⁶.

In the case of Hungary the office of Provisional President of the Republic was proclaimed in 1918. The office was taken by Mihály Károlyi. However, he was quickly forced to hand in his resignation. On 21st March 1919 communists and socialists proclaimed the creation of the Hungarian Soviet Republic, abolishing the institution of the head of state at the same time. The communist republic last-

13 This was adopted from the Weimar Constitution. Compare with: K. Dunaj, *Weimarski model prezydentury*, Warszawa 2010, p. 66–69.

14 The government bore parliamentary responsibility in front of the Sejm and political responsibility – in front of the president.

15 About the constitutional position of the President under the April Constitution see more: D. Górecki, *Pozycja ustrojowo-prawna Prezydenta Rzeczypospolitej i rządu w ustawie konstytucyjnej z 23 kwietnia 1935 roku*, Łódź 1992.

16 After the defeat of April 1939 I. Mościcki resigned from the Office and appointed Władysław Raczkiewicz as his successor.

ed only a few months. In January 1920 parliamentary election was held, won by the right-wing parties, which decided on the restoration of monarchy. Since the Habsburg's return to the throne was impossible, permanent regency was instituted. The regent's office was held by Miklós Horthy. Throughout the entire interwar period, the Hungarians did not see a new constitution¹⁷. The State's constitutional basis consisted of i. a. the act on the restoration of constitutional political system and temporary superior power of 1920, the act on the creation of the second house of the parliament of 1926 and the act on the regent's competence of 1937¹⁸. The regent had the power to dissolve parliament and to employ legislative veto. His acts required a minister's counter-signature. The regent's position was strengthened under the provisions of the already mentioned act of 1937. He no longer bore constitutional responsibility and was also granted the right to appoint his successor¹⁹.

During the Second World War Hungary supported Germany governed by Adolf Hitler. In October 1944, when the regent attempted to lead Hungary out of the World War II, fascists performed a coup d'état and M. Horthy became an internec²⁰.

1.2. The socialist state period

After the Second World War Czechoslovakia and Hungary enjoyed a short period of democratic government. In Czechoslovakia the National Assembly elected Edvard Beneš as the president (1946). Two years later, communists completely overtook power in the country. A new Constitution was adopted (1948), which ended the binding force of the 1920 Constitution. The Constitution of 1948 established the single-chamber National Assembly as the highest legislative organ. The Assembly elected the president for a 7-year term of office by means of a procedure similar to the one provided by the 1920 Constitution. The president had the power to summon and adjourn parliament's sessions, to dissolve parliament and to employ veto as well as to preside over government's sittings. The parliament could abolish a veto of a statute with simple majority, and a veto of a constitutional statute – with 3/5 majorities. Formally, the new Constitution referred to parliamentary-cabinet system of government created by its predecessor²¹.

The appearances of a democratic country were cancelled by a following constitution – the Constitution of 1960. It preserved the president's office, although

17 W. Brodziński, *Wstęp*, (in:) *Konstytucja Republiki Węgierskiej*, Warszawa 2002, p. 5; B. Pytlik, *Prezydent Republiki Węgierskiej*, (in:) *Prezydent w państwach...*, *op. cit.*, p. 693–694.

18 W. Brodziński, *Wstęp...*, *op. cit.*, pp. 5–6.

19 B. Pytlik, *Prezydent Republiki Węgierskiej...*, *op. cit.*, p. 695; W. Brodziński, *Wstęp...*, *op. cit.*, p. 6; W. Brodziński, *System konstytucyjny Węgier*, Warszawa 2003, p. 12.

20 W. Brodziński, *Wstęp...*, *op. cit.*, p. 6; B. Pytlik, *Prezydent Republiki Węgierskiej...*, *op. cit.*, pp. 695–696.

21 K. Skotnicki, *System konstytucyjny Czech*, Warszawa 2000, p. 9.

the concept of collegiate head of state was prevailing in other socialist states. The Constitution of 1968 introduced the two-chamber Federal Assembly. It consisted of the House of Commons and the House of Nations. The president was elected by both Houses in a joint session with the majority of 3/5 of votes in each house. The candidate also had to gain the support of 3/5 Czech representatives and 3/5 Slovak representatives in the House of Nations. The president had the power to open and close parliament's sessions. He also had the power to dissolve parliament if the houses were unable to adopt a common standpoint on a federal statute's project. What is more, the president had the force to appoint and dismiss members of government, which had to gain the trust of parliament (solidary and individual responsibility).

The institution of president was preserved in Czechoslovakia in spite of the tendencies predominant among the socialist bloc countries²². The soviet pattern of creating a collegiate head of state was not accepted²³. The office of the President of Czechoslovakia was closest to the solutions adopted in western countries²⁴. In the conditions of a socialist state, the president was subordinate to the parliament, elected by the parliament and could be dismissed before the end of his term²⁵. The President of Czechoslovakia was also not vested with powers as broad as those assigned to chief presidential organs holding the head of state's office in other socialist countries²⁶.

Contrary to the situation in Czechoslovakia, in Hungary the institution of the president functioned only for the first few years after the war. The winner of parliamentary election held in November 1945 was the Independent Smallholders Party, who won the support of more than 57% of all voters. The State's new constitutional basis was the First Act on the Political System of Hungary passed by the single-chamber National Assembly on 31st January 1946. Under the provisions of this act,

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- 22 As pointed out by M. Kruk, the main reason for sustaining the institution of president at the time of socialist state was the constitutional tradition. The president was a symbol of the Republic's unity. It was not without significance that the office was given to a communist – Klement Gottwald – in 1948. M. Kruk, *Ustrój polityczny Czechosłowackiej Republiki Socjalistycznej*, Warszawa 1976, pp. 173–174; compare with W. Sokolewicz, *Ewolucja...*, *op. cit.*, pp. 142–143; T. Szymczak, *Ustrój europejskich państw socjalistycznych*, Warszawa 1988, p. 435; E. Gdulewicz, *Republika Czeska*, (in:) *Ustroje państw współczesnych*, t. 2, ed. E. Gdulewicz, Lublin 2005, p. 86.
- 23 In Poland this was the Polish Council of State, in Hungary – the Presidential Council.
- 24 Compare with T. Szymczak, *Ewolucja instytucji prezydenta w socjalistycznym prawie państwowym*, Łódź 1976, p. 31.
- 25 This view was justified by the role of parliament as the supreme organ of public authority, despite the lack of appropriate constitutional regulations determining the course of the president's dismissal. See: W. Sokolewicz, *Ewolucja...*, *op. cit.*, pp. 143–144; K. Domarecki, *Pozycja prezydenta CSRS na tle rozwoju prawa konstytucyjnego*, „Acta Universitatis Wratislaviensis” 1988. Prawo CL, p. 35 and p. 40.
- 26 K. Skotnicki, *Instytucja prezydenta w konstytucjonalizmie czechosłowackim*, (in:) *Instytucja prezydenta we współczesnym świecie. Materiały na konferencję 22–23 lutego 1993 r.*, Warszawa 1993, p. 40. Relevant to the topic of chief residential organs in socialist states see: T. Szymczak, *Organy władzy i administracji europejskich państw socjalistycznych*, Warszawa 1970, pp. 262–281.

the monarchy was abolished and the office of the President of the Republic was created. The president was elected by the parliament for a 4-year term of office. Parliamentary system of government was adopted. The president's official acts were subject to counter-signature of the prime minister and the minister concerned. The president represented the State, signed statutes, had the power to veto statutes, adjourn the parliament's session (but only once in the course of a session and for a period not longer than 30 days), and to dissolve parliament²⁷. The president held constitutional responsibility for infringement of the Constitution or a statute. The accusation was brought by the parliament, yet the president was tried by a special tribunal, which consisted of deputies. The president's office was held by the leader of the Independent Smallholders Party – Zoltan Tildy²⁸.

Between 1947 and 1949 communists led to the elimination of opposition parties, and also subordinated the Independent Smallholders Party to them. They monopolized the political scene and in the 1949 election the left-wing bloc won over 90% of votes²⁹. On 18th August 1949 the parliament passed a new constitution, inspired by the Constitution of USSR of 1936. It adopted the rule of uniform public authority, enforced by a single-chamber parliament – the State Assembly. The Presidential Council, elected by parliament, was the head of state. The council could be entered by any deputy, unless he had already held governmental positions. One of the most important powers of the Presidential Council was its ability to issue decrees with the force of statutes in between the sessions of parliament. The Council held responsibility to the parliament. The State Assembly had the power to dismiss the entire Council or its particular members at any time³⁰. In practice, it was the activity of the Presidential Council that pushed the parliament into the background³¹. A fundamental revision of the Constitution was performed in 1972. Under its provisions Hungary was defined as a socialist country.

In Poland, similarly to Hungary, the institution of president was only maintained until the proper constitution of the socialist state was adopted. In 1947, after the Legislative Sejm election, Small Constitution was passed. Formally this Constitution restored the parliamentary-cabinet system of government from the time when March Constitution was in force. In fact, the system did not work already due to the elimination of opposition. Under the provisions of this act, the President of the Republic of Poland was elected by the Legislative Sejm for a 7-

27 An application appropriate for this matter could be submitted to the president by the government or a group of 2/5 deputies.

28 W. Brodziński, *Wstęp...*, *op. cit.*, pp. 7–8.

29 In the meantime, z. Tildy handed in his resignation and the head of State's office was taken by a social democrat – Á. Szakastis.

30 T. Szymczak, *Ustrój...*, *op. cit.*, pp. 257–258.

31 H. Donath, *Zgromadzenie Krajowe. Parlament Republiki Węgierskiej*, Warszawa 1993, p. 6.

year term of office by means of absolute majority of votes with the presence of at least 2/3 of the statutory number of parliament members. The acquisition of the presidential office by the communist leader – Bolesław Bierut – was synonymous to the concentration of the entire public authority within this office.

The proper constitution was adopted only in 1952. As in other socialist countries, the rule of a unitary state authority was implemented. The authority was held by single-chamber Sejm. Other organs were subordinate to it. The head of state's functions were performed by the Council of State. Its members were elected from among the parliament members by Sejm during its first session, composed of: the President of the Council of State, four deputy presidents and eleven members. The entire activity of the Council of State was subordinate to Sejm. In between Sejm's sessions, the Council of State issued decrees with the force of statutes, which were submitted to the Sejm for approval during the closest session. It also had the power of legislative initiative. The President of the Council of State signed statutes passed by Sejm and ruled their announcement.

1.3. The process of constitutional and political changes in 1989

Determination of the constitutional status of the head of state belonged to the most controversial issues that the authors of the constitution of Central and Eastern Europe had to solve after 1989. In most cases, this meant restoring the institution of the president, which in the era of the socialist state was replaced – on the Soviet model – by collegiate head of state. In Poland, it was the Council of State, in Hungary – the Presidential Council. Among the countries of the Visegrad Group, the institution of the president preserved only in Czechoslovakia. Restitution of single head of state in Poland and Hungary marked the symbolic break with the era of socialist constitutionalism and the reference to the earlier constitutional traditions.

The decision to restore the institution of the president was taken without major controversy by mutual agreement between the communist government and the democratic opposition: in Poland as a result of discussions of the “round”, and in Hungary – of the “triangle” table³². However, the determination of the constitutional position of the president, the mode of his election and a scope of his responsibilities belonged to the most controversial issues. Finally, in Czechoslovakia, and then in the constitutions of the Czech Republic and the Slovak Republic, as well as in Hungary won the idea of the president with limited powers, with his election by a parliament. In Poland, as a result of the “round table” contract, which assumed to entrust the office of the president to Gen. Wojciech Jaruzelski, the model of a strong presidency was assumed. Thanks to that the communist camp want-

32 Discussions of authorities with the opposition resulted in changes to the Constitution introduced in April 1989 in Poland and in October 1989 in Hungary.

ed to keep control over the socio-political changes. This is also a determining factor in choosing the president by the National Assembly, which means by combined chambers of the Sejm and Senate, where the ruling camp had a guaranteed majority of seats.

In Hungary and Czechoslovakia, where the transition process began a little later, the situation was different. The case of Hungary is particularly interesting because the communists declared for a strong president elected by popular elections³³. They were counting on a victory of having a great popularity Imre Pozsgay, referred to as the “Hungarian Gorbachev”³⁴. For the same reasons, the opposition, which did not have such a popular candidate, pursued to elect the president by the parliament. The controversy concerning the model of president election led to a division in opposition circles, part of which agreed to elect the first president by means of direct and general election³⁵. This was formally and legally mirrored in revision of the Constitution of 18th October 1989³⁶. The Hungarian parliament also decided to entrust the function of the provisional president to Mátyás Szűrös, who represented the Hungarian Socialist Party³⁷.

In response, the Alliance of Free Democrats³⁸ initiated a referendum on the mode of electing the president³⁹. In a vote conducted on 26th November 1989 a decision to elect the president only after parliamentary election was made. Then, the retiring parliament, dominated by communists, adopted an amendment to the Constitution, under the provisions of which direct and general presidential election was enforced. The parliamentary election took place at the end of March and beginning of April 1990. Current opposition of that time won the election. On 2nd May 1990 the State Assembly elected the SzDSz candidate – Árpád Göncz – to be the provisional president. On 19th June 1990 the parliament changed the Constitution once more, introducing the rule of electing a president by the National Assembly. MSzP, on the other hand, initiated a referendum on the model of electing the president. Because of insufficient turnout (13,8%) the referendum of 19th July 1990 was regarded as null and void. The political battle about the model of electing the

33 See: W. Brodziński, *Republika Węgierska*, (in:) W. Brodziński, D. Górecki, K. Skotnicki, T. Szymczak, *Wzajemne stosunki między władzą ustawodawczą i wykonawczą (Białoruś, Czechy, Litwa, Rumunia, Słowacja, Węgry)*, Łódź 1996, pp. 168–169; W. Brodziński, *Parlamentarny system rządów na Węgrzech w ustawie XXXI z 18 października 1989 roku o zmianie konstytucji*, „Acta Universitatis Lodzianensis” 2009, Folia Iuridica 70, p. 6.

34 A. Czyż, R. Glajcar, K. Krysiel, *Węgry*, (in:) *Władza państwowa i administracja publiczna w państwach Europy Środkowej i Wschodniej*, ed. M. Barański, Toruń 2007, p. 310.

35 However, in the future the president was supposed to be elected by the parliament.

36 Concerning the changes introduced see more: W. Brodziński, *Republika...*, *op. cit.*, pp. 170–172; W. Brodziński, *Parlamentarny...*, *op. cit.*, p. 6 and the following.

37 *Magyar Szocialista Párt (MSzP)*.

38 *Szabad Demokraták Szövetsége (SzDSz)*.

39 A. Czyż, R. Glajcar, K. Krysiel, *Węgry...*, *op. cit.*, pp. 310–311.

president was ended on 3rd August 1990, when the State Assembly elected Árpád Göncz⁴⁰.

Much less controversy in this respect occurred in Czechoslovakia. Referring to the solution of the Constitution of 1920, the process of selecting the president by the parliament was defined⁴¹. Similar solutions were adopted by the constitutions of the Czech Republic and the Slovak Republic of 1992. A few years later, in 1999 Slovakia changed the mode of electing a president. Since then, the President of the Slovak Republic has been elected by direct and universal suffrage. The cause of the change was a sharp political crisis that broke out in Slovakia at the end of the president Michal Kovač's term of office in 1998. A politically divided parliament was unable to identify a candidate who would receive the support of 3/5 of the votes required for selection of the president.

2. The institution of president in the light of current constitutional solutions – a general characteristic

Abolishing the communist power meant the necessity to create new constitutional basis in the Visegrad Group States. In practice, this resulted in creation of many problems. Poland had to wait for a new constitution up to 1997. Hungary decided not to create a new constitution, they only revised the Constitution of 1949 in October 1989. In the Czech Republic and in Slovakia the process of constitutional changes between 1989 and 1992 was especially dynamic, due to the lasting process of disintegration of the Czechoslovak Federation. The constitutions of the Czech Republic and of Slovakia were passed in 1992, prior to the formal disintegration of the federation, which took place on 1st January 1993.

In all the Visegrad Group States a parliamentary system of government is in force. It is however supplemented with various rationalising elements. This is especially true when talking about general and direct presidential election (Poland, Slovakia) and constructive vote of no confidence (Poland, Hungary). Fewest elements rationalizing the parliamentary system can be found in the Czech Republic, where, referring to the former experience⁴², the system functions in a manner close

40 A. Czyż, R. Głajcar, K. Krysiel, *Węgry...*, *op. cit.*, p. 311. At the end of Á. Göncz's first term of office, the Independent Smallholders Party submitted a project of holding a referendum on the subject of introducing general election of the head of state, but the application was rejected by the State Assembly. The question of implementing general presidential election also appeared later in 2000, at the end of the second (and the last) term of Á. Göncz's office. See: W. Brodziński, *Republika...*, *op. cit.*, p. 174; K. Skotnicki, *System rządów parlamentarnych w wybranych państwach Europy Środkowej (Czechy, Słowacja, Węgry)*, (in:) *Konstytucyjne systemy rządów*, ed. M. Domagała, Warszawa 1997, p. 168; M. Granat, *Węgry: Konstytucyjność referendum w sprawie wyborów bezpośrednich Prezydenta Państwa*, „Przegląd Sejmowy” 2001, no. 6, p. 206.

41 On 28th December 1989 the Federal Assembly elected Vaclav Havel to hold the office of the President of Czechoslovakia.

42 Compare with: K. Skotnicki, *Republika Czeska*, (in:) W. Brodziński, D. Górecki, K. Skotnicki, T. Szymczak, *Wzajemne...*, *op. cit.*, p. 38.

to its original form⁴³. The President of the Czech Republic is the head of state (article 54 paragraph 1) as well as the organ of executive power. The Constitution provides for the president's role of an arbitrator but it does not assign an extensive scope of responsibilities to the president. The president's official acts require a counter-signature to validate, excluding prerogatives strictly specified by the Constitution (article 62)⁴⁴. Counter-signature is performed either by the president of government (that is – the prime minister) or by another government member authorised by the prime minister. The government is responsible for president's decisions, which require counter-signature of the prime minister or another authorised member of government. The president fulfils the role of a stabilising factor and symbolises the State's unity, yet he does not possess actual power⁴⁵.

While working on its constitution, Slovakia considered including elements characteristic for a semi-presidential system, as well as elements of a parliamentary-cabinet system⁴⁶. Finally, it decided to adopt the latter⁴⁷. Similarly to the Czech Republic Constitution, the Constitution of Slovakia explicitly refers to the constitutional heritage of former Czechoslovakia⁴⁸. The president does not possess any actual power, but functions as a stabilizing factor⁴⁹. Under the provisions of article 101 of the Constitution, the president is the head of state, represents the state within its international and internal relations and guarantees correct operation of constitutional organs. The president serves his office in accordance with his conscience and belief. He is not bound with any orders. Legal acts issued by the president do not require the prime minister's counter-signature, except for those appointing ambassadors, proclaiming amnesty and performing the responsibilities of the head of

43 Compare with: M. Kruk, *Wstęp...*, *op. cit.*, p. 25.

44 Under the provisions of this regulation, the president shall appoint and dismiss the president and other members of government and accept their resignation, dismiss the government and accept its resignation, summon the Chamber of Deputies' session, dismiss the Chamber of Deputies, grant temporary execution of functions to the government he dismissed, or whose resignation he accepted, until the appointment of new government, appoint the judges of the Constitutional Court (with Senate's consent – art. 84 para.2), its chairman and the chairman's deputies, appoint the chairman and the chairman's deputies in the Supreme Court from among judges, apply prerogative of mercy and legislative veto, sign statutes, appoint the president and vice presidents of the Supreme Office of Control (on application submitted by the Chamber of Deputies – art. 97 para. 2) and the members of the Bank Council of the National Bank of the Czech Republic.

45 K. Skotnicki, *Republika Słowacka*, (in:) W. Brodziński, D. Górecki, K. Skotnicki, T. Szymczak, *Wzajemne...*, *op. cit.*, p. 133.

46 B. Pytlik, *Prezydent Republiki Słowackiej...*, *op. cit.*, p. 618.

47 In 1999, the text of the Constitution was supplemented with solutions characteristic for a semi-presidential system, especially direct and general election of the head of state. The system of government adopted by the original text of the constitution was characterized by lack of consequences, especially lack of official acts' counter-signature. There is no doubt that such a situation was favourable to the escalation of conflict between the president M. Kovač and the prime minister V. Mečiar, who dominated Slovak political scene in the 90s. However, the conflict was in fact mostly interpersonal.

48 K. Skotnicki, *Republika Czeska...*, *op. cit.*, p. 47; Compare with E. Stein, *Out of the Ashes of a Federation, Two New Constitutions*, "The American Journal of Comparative Law" 1997, vol. 45, p. 49.

49 B. Pytlik, *Prezydent Republiki Słowackiej...*, *op. cit.*, p. 619.

the armed forces. In these instances counter–signature is given either by the prime minister or the minister concerned.

Similarly to Czech and Slovakia, the position of Hungarian president falls within the trisection of powers principle. However, the regulation defining the State Assembly as the supreme organ of state authority and people’s representation has been retained (§ 19). Precedence of the Assembly is decided by, among others, granting the power to conclude international agreements “especially significant for the Hungarian Republic’s relationships with foreign states” (§ 19, sec. 3f), and its competence to introduce states of emergency (§ 19 sec. 3g–j). The president is the head of state, expresses the nation’s unity and protects the democratic activity of State organization (§ 29 sec. 1). The role of the president as the guardian of constitution⁵⁰ is manifested in this manner. This regulation also recognizes the president’s role of an arbiter among the actors of political scene. At a time of parliamentary system of government’s crisis, the president is supposed to perform a role stabilising the State’s policy. Due to the lack of actual power qualifications, performing this function in reality depends on personal abilities of the person holding the office⁵¹.

Official head of state’s acts require counter–signature of the prime minister or the minister concerned by principle. This does not apply to presidential acts related to representation of the state, administration of elections, participation in the State Assembly’s gatherings, placement of applications for settlement by the State Assembly (i.e. legislative initiative) or management of referendum (§ 30/A sec. 2). This means that the original solution of a parliamentary system, that is counter–signature of official acts by the prime minister or a minister, is supplemented in the Hungarian Constitution with a certain range of prerogatives. This is especially the ability to submit a statute project or to initiate a referendum. Thanks to this, the president may emphasize his independent role in settling the State’s policy. In general, the political position of the Hungarian president falls within a parliamentary–cabinet system, which, on the other hand, possesses certain features of a chancellor system. The fact of occurrence of prerogatives, which are a feature of semi–presidential system, should also be remembered.

Undoubtedly, the President of the Republic of Poland enjoys the strongest political position among the Visegrad Group States. Although after 1989 process of gradual weakening of his powers occurred (first by means of Small Constitution of 1992, than by means of the current Constitution of 1997), the powers are still significant⁵². Under the provisions of article 126 of the Constitution the President

50 W. Brodziński, *Wstęp...*, *op. cit.*, p. 21.

51 A. Czyż, R. Glajcar, K. Krysieniak, *Węgry...*, *op. cit.*, pp. 313–314.

52 One should notice foremost the power to veto, which can be abolished by Sejm with 3/5 majority of votes.

of the Republic of Poland shall be the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority. He should as well ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory. The responsibilities stated in this manner are performed by the president by means of realizing particular entitlements.

3. The mode of selecting a president

Choice of a particular model of electing a president by the legislator influences the determination of the head of state's political and constitutional position and is one of the factors determining the existing political system⁵³. Having a direct support of the sovereign, granted by the majority of voters, the president may effectively oppose to parliament's activity, what allows him to effectively use his constitutional competence⁵⁴. However, the adoption of general election as means of selecting a president, does not necessarily mean vesting him with an extensive scope of powers. It may also happen, that a president chosen by parliament possesses a broad scope of responsibilities⁵⁵. General presidential election is a characteristic feature of semi-presidential systems. However, only adopting this model of selecting a president, without giving him an appropriate scope of powers does not determine the adoption of semi-presidential system⁵⁶.

In accordance with rules of the classical parliamentary system, the election of president falls within the competence of parliament or another quasi-parliamentary organ (e.g. the Federal Assembly in Germany). The solutions of the Constitution of the French Third Republic of 1875 constituted a model mirrored by many Middle East European states after the First World War. On the other hand, authors of new constitutions at the end of the 1980s and beginning of 1990s referred to their former constitutional experience: in the Czech Republic and Slovakia to the 1920 Constitution, in Hungary – to the 1946 Constitution, and in Poland to both inter-war constitutions.

As discussed above, Poland adopted model of strong presidency in 1989 despite the president was elected by the parliament. In 1990, as a result of an agreement of major political forces, first general and direct election was held (Gen.

53 A. Olechno, *Prezydent Rzeczypospolitej Polskiej*, (in:) *Prawo konstytucyjne*, ed. M. Grzybowski, Białystok 2009, p. 248.

54 K. Wojtyczek, *Prezydent Rzeczypospolitej*, (in:) *Prawo konstytucyjne Rzeczypospolitej Polskiej*, ed. P. Samecki, Warszawa 2008, p. 345.

55 K. Krysieniak, *Instytucja prezydenta w wybranych krajach Europy Środkowej i Wschodniej*, (in:) *Prezydent w Polsce 1989 r. Studium politologiczne*, ed. R. Głajcar, M. Migalski, Warszawa 2006, p. 36.

56 J. Szymanek, *Modele systemów rządów (wstęp do analizy porównawczej)*, „*Studia Prawnicze*” 2005, no. 3, p. 37–38.

Wojciech Jaruzelski resigned). Lech Wałęsa – the leader of “Solidarity” won the election.

Under the provisions of the 1997 Constitution, the President of the Republic of Poland shall be elected by the entire Nation in universal, equal and direct elections, conducted by secret ballot. System of mixed (absolute) majority is adopted. In the first ballot a candidate must receive absolute majority of votes in order to receive the mandate⁵⁷. If none of the candidates received the required majority of votes, then a repeat ballot shall be held on the 14th day after the first vote. The two candidates who received the largest number of votes in the first ballot shall participate in a repeat ballot. If one of the two such candidates withdraws his consent to candidacy, forfeits his electoral rights or dies, he shall be replaced in the repeat ballot by the candidate who received the next highest consecutive number of votes in the first ballot. In such case, the date of the repeat ballot shall be extended by a further 14 days. The candidate who receives the higher number of votes in the repeat ballot shall be elected President of the Republic (simple majority)⁵⁸.

The president is elected for a 5–year term of office. There is a possibility for a candidate to be re–elected, but only for one more term. A candidate for the president must be at least 35 years of age and must have a full electoral franchise in elections to the Sejm, The elections are ordered by the Marshal of the Sejm to be held on a day no sooner than 100 days and no later than 75 days before expiry of the term of office of the serving President of the Republic⁵⁹.

The President of Slovakia is elected similarly to the President of the Republic of Poland. Under the provisions of current constitutional regulations (in force since 1999⁶⁰) the President of Slovakia shall be elected in the course of universal and direct vote adopting the absolute (mixed) majority system⁶¹. In the first ballot absolute majority is required to win, whereas in the second – simple majority. The candidates are proposed to the chairman of the National Council by a group of either 15 members of parliament or 15 000 citizens, no later than 21 days before the day of the elections. A president may be re–elected but only for one more term of office. The president’s term of office lasts for 5 years. The candidate must attain

57 In 2000 the serving president – Aleksander Kwaśniewski – assured his re–election already in the first ballot.

58 Apart from L. Wałęsa, A. Kwaśniewski (1995), Lech Kaczyński (2005) and Bronisław Komorowski (2010) won the elections in the second ballot.

59 In relation with the death of president L. Kaczyński in a plane crash in Smoleńsk (on 10th April 2010), the Marshal of the Sejm ordered presidential elections on the day of 20th June 2010. Second ballot took place on 4th July 2010.

60 Change in the Constitution introducing direct and general presidential election was possible due to winning the parliamentary election held in autumn 1998 by the Slovak Democratic Coalition (so–called anti–Mečiar opposition).

61 While working on its constitution, Slovakia considered adopting the head of state’s election directly by citizens, but then it was not concluded successfully. K. Skotnicki, *Republika Słowacka...*, op. cit., pp. 142–143, footnote 31 and literature it refers to.

the age of 40, no later than on the day of the elections. The election is conducted during the last 60 days of the serving president's term of office. The first president elected in universal and direct vote was Rudolf Schuster (15th June 1999)⁶², and the following – Ivan Gašparovič (15th June 2004)⁶³, who reassured his re-election on 4th April 2009⁶⁴ as the first president of Slovakia.

Contrary to Poland and Slovakia, the presidents of Hungary and the Czech Republic are elected by parliaments⁶⁵. There are significant differences concerning the mode of electing presidents in these countries. They result especially from the existence of a two-chamber parliament in the Czech Republic and a single-chamber parliament in Hungary. The President of the Czech Republic is elected by parliament (the Chamber of Deputies and the Senate) during a joint session (article 54 paragraph 2), yet each of the houses votes separately⁶⁶. The election is conducted during the last 30 days of the serving president's term of office. An exact date of the election is designated by the Chairman of the Chamber of Deputies⁶⁷. At least 10 members of parliament or 10 senators have the right to propose a candidate. A group consisting of both members of parliament and senators cannot propose a candidate. The candidate who wins absolute majority of members of parliament's votes and absolute majority of senator's votes shall be elected for president (votes of both houses are counted separately). If none of the candidates wins more than half of all valid votes, second ballot is conducted within 14 days. Two candidates enter the second ballot: first, the one who won the highest number of votes in the Chamber of Deputies and second, the one who won the biggest number of votes in the Senate. In practice, this may turn out to be the same person, who obtained the highest number of votes in both houses but did not win the absolute majority⁶⁸. If there are more candidates, who won equal and highest number of votes in the Chamber of Deputies or more candidates who won equal and highest number of votes in the Senate, the votes obtained in both Chambers are added together. The candidate, who acquired the highest number of votes after adding, enters the sec-

62 R. Shuster defeated V. Mečiar in the second ballot. Earlier, M. Kovač withdrew his candidacy.

63 I. Gašparovič defeated his former close associate – V. Mečiar – in the second ballot.

64 I. Gašparovič defeated Iveta Radičová, also in the second ballot.

65 One should notice here, that discussions on the need to introduce general and direct elections of the head of state appear also in the Czech republic and in Hungary. The dispute over the manner of selecting the President of Hungary between 1989 and 1990 is described above. The Czech Republic also considered the possibility of introducing universal and direct presidential elections. V. Havel supported this idea. See: E. Stein, *Out of the Ashes...*, *op. cit.*, pp. 60–61.

66 Choice of the President of the Republic is one of few powers of both houses of Czech parliament, in which their position is balanced. K. Skotnicki, *Republika Czeska...*, *op. cit.*, p. 51; J. Szymanek, *Parlament Republiki Czeskiej: wybrane zagadnienia struktury, funkcji i pozycji ustrojowej*, (in:) *Parlament, prezydent, rząd. Zagadnienia konstytucyjne na przykładach wybranych państw*, eds. T. Moldawa, J. Szymanek, Warszawa 2008, pp. 52–55; E. Gdulewicz, *Republika...*, *op. cit.*, p. 74.

67 Compare with art. 37 para. 1 of the Constitution.

68 K. Skotnicki, *Republika Czeska...*, *op. cit.*, p. 52.

ond ballot. The candidate, who is elected, is the one who won the absolute majority of votes of members of parliament participating in the election and the absolute majority of votes of senators participating in the election.

If the President of the Republic is not elected also in the second ballot, the third ballot is conducted within 14 days. The candidate from the second ballot who altogether won the absolute majority of members of parliament and senators participating in the election gets selected for the office (this time the votes of members of parliament and senators are added together). If the president is not elected in the third ballot, new elections are conducted. The Constitution does not determine the date of new elections, and does not regulate the question whether the same candidates as in the previous elections may participate.

Vaclav Havel, the first President of the Czech Republic was elected on 26th January 1993 only by the Chamber of Deputies, because the Senate did not function yet⁶⁹. He was re-elected for the second term of office in 1998 by means of the procedure determined by the Constitution. The end of this term of office in 2003 resulted in a political crisis. Parliament was unable to elect a new president in the first and in the second ballot. This caused the beginning of a discussion on the possibility of introducing general and direct presidential election. However, Vaclav Klaus – the leader of the Civic Democratic Party⁷⁰ – was elected in the third ballot. In February 2008 he was re-elected for the second term of office⁷¹.

The Constitution of the Czech Republic does not contain specific conditions to obtain the president's office. However, it refers to constitutional provisions regulating eligibility to stand for Senate elections (article 57 paragraph 1). This means that a candidate running for presidency must not only be the citizen of the Czech Republic, but also must possess voting rights and be at least 40 years of age (article 19 paragraph 2). The president's term of office lasts for 5 years and it commences on the day of taking oath (article 55). Refusal to take oath or taking oath with reservations causes that a candidate cannot take the president's office⁷². Under the provisions of the Constitution nobody may be elected the President of the Republic more than twice in succession (article 57 paragraph 2).

In Hungary, a candidate may be proposed by a group of 50 deputies. At the same time, only one candidate can be supported. In the first ballot, it is required to

69 T. Rduch-Michalik, *Czechy*, (in:) *Władza państwowa...*, *op. cit.*, p. 50.

70 *Občanská Demokratická Strana* – ODS.

71 The election turned out to be incredibly complex, because none of the three ballots provided for by the constitution resulted in success. Therefore, it was necessary to repeat the elections. New election was conducted on week after the unsuccessful vote. This time V. Klaus obtained the necessary number of votes, but only in the third ballot. See: J. Zieliński, *Prezydent Republiki Czeskiej*, (in:) *Prezydent w państwach...*, *op. cit.*, pp. 142–149.

72 K. Skotnicki, *Republika Czeska...*, *op. cit.*, p. 54.

obtain the votes of 2/3 of the deputies (§ 29/B sec. 2) in order to be elected. If none of the candidates wins the required number of votes in the first ballot, a new voting is conducted. Groups of 50 deputies propose new candidates. For winning the election in the second ballot also the majority of 2/3 of votes is required (§ 29/B sec. 3). If none of the candidates obtains the required number of votes in the second ballot, third ballot is conducted. In the third ballot, members of parliament select between the two candidates who won the biggest number of votes in the second ballot. In the third ballot it is required to obtain a simple majority of votes in order to be elected, regardless of the number of deputies participating in the voting (§ 29/B sec. 4). The procedure shall be concluded no later than in the course of three subsequent days (§ 29/B sec. 5).

In practice, obtaining 2/3 majority of votes does not turn out to be an insuperable obstacle. Such a majority was won by Á. Göncz already in the first ballot in 1990 and in 1995. However, Ferenc Mádl⁷³ in 2000 and László Sólyom⁷⁴ in 2005 obtained this majority only in third ballot. Recent presidential election was held in Hungary on 29 June 2010. Pál Schmitt, supported by Fidesz⁷⁵, won the election in the first ballot.

Presidential election must be held no later than 30 days before the end of the serving president's term of office. Ordering presidential elections falls within the competence of the Chairman of the State Assembly (§ 29/C sec. 2). The president of Hungary is elected for a 5-year term of office (§ 29/A sec. 1), the president may be re-elected for only one more term of office (§ 29/A sec. 3). A candidate running for presidency must possess the right to vote and must be at least 35 years of age (§ 29/A sec. 2). The newly elected president assumes the office when the serving president's term of office finishes. Prior to assuming the office, the president shall take an oath in front of the State Assembly (§ 29/D).

Parliamentary mode of electing the president was initially adopted also in Slovakia. Under the provisions of the 1992 Constitution, the president was elected by a single-chamber parliament (the National Council) in a secret ballot with the majority of 3/5 of votes. If none of the candidates obtained the required number of votes, second ballot was conducted within 14 days. Two candidates with the biggest number of votes from the first ballot entered the second ballot. It was also required to win 3/5 majority of votes. If the second ballot was not successful, new election was held within 30 days. Candidates proposed for the previous election were un-

73 In the first ballot he needed only seven more votes to be elected.

74 The issue of particular circumstances and results of particular elections is addressed by B. Pytlík, *Prezydent Republiki Węgierskiej...*, *op. cit.*, p. 701.

75 Fidesz (conservative party) won parliamentary election (11 and 25 April 2010) winning 262 seats.

able to participate in the new voting. The first president of the Slovak Republic – M. Kovač – was elected by means of adopting this mode.

4. Entitlements of the president towards parliament

Probably the most important area of the president's power is his competence in relations with parliament. These powers, in large measure, define the functioning of a particular system of government in a state. The power to dissolve parliament and to apply suspending veto towards statutes is especially important.

In a parliamentary system of government, dissolution of parliament by the head of state is a usual manner of ending a cabinet crisis, that is a situation when government loses the support of parliament's majority and the parliament is at the same time unable to appoint new government. In countries, where instruments rationalizing the classical parliamentary system were adopted (especially constructive vote of no confidence), there is a smaller risk of a cabinet crisis. In relation to this, the constitution precisely determines situations, in which a parliament may be dissolved by the head of state. The situation is similar in the Visegrad Group States.

In all of the four countries, which are the subject of analysis, the constitutions indicate enumerative cases in which the president can (and sometimes must) make the act of dissolution of a parliament. The smallest powers in this regard are entitled to the President of the Republic of Hungary. He can dissolve the National Assembly if, during the same term of office within twelve months, it passes a vote of no confidence at least four times against the government, or if within 40 days does not make the choice for a prime minister of the person proposed by the president (§ 28 sec. 3)⁷⁶. Before performing the act of dissolution of parliament, the president must ask for an opinion of: the prime minister, the Chairman of the State Assembly and the leaders of parliamentary fractions (§ 28 sec. 5). In all cases enumerated, the president makes the decision to dissolve parliament optionally, fulfilling the function of arbitration. In practice, fulfilling this function may be doubtful due to the existence of constructive vote of no confidence in Hungary. It is difficult to imagine a situation, when the parliament would change political tone four times in the course of one year since this would have to be connected with a four-time change in majority configuration in the State Assembly⁷⁷. The parliament possesses as well the power to dissolve itself (§ 28 sec. 2)⁷⁸.

76 The president's decision to dissolve parliament does not require counter-signature.

77 It should be added here that the currently binding system of electing the State Assembly is in favour of the strongest parties and therefore of creating stable government coalitions, or even single-party cabinets. See: W. Brodziński, *Republika...*, *op. cit.*, p. 186; B. Pytlík, *Prezydent Republiki Węgierskiej...*, *op. cit.*, p. 714.

78 The National Assembly cannot be dissolved or dissolve itself at a time of an extraordinary state or state of necessity (article 28/A para. 1). At the time of war, threat of the outbreak of war or state of necessity, the president

Slightly larger entitlements are vested to the President of Poland. The Polish Constitution indicates only two cases of shortening the term of office (i.e. dissolution) of the Sejm by the president⁷⁹. Firstly, if the third (final) procedure for the appointment of the Council of Ministers does not succeed, the president must obligatorily reduce the term of office of the Sejm. Secondly, the president can shorten the term of office of the Sejm if within four months the parliament does not adopt the Budget Law. In this case, the president has 14 days to decide whether to shorten the term of office of the Sejm. This is the case of optional shortening of the term of office.

In the Czech Republic and the Slovak Republic, where there is no constructive vote of no confidence, the head of state has a greater capacity to dissolve parliament (although it is not possible to dissolve the parliament because of the fact that the budget law has not been passed.) In the light of Article 35 of the Czech Republic Constitution the president can dissolve the Chamber of Deputies⁸⁰ in four cases: 1) if the Chamber of Deputies fails to vote confidence in a newly appointed government, headed by the prime minister appointed by the president on the proposal of the Chairman of the Chamber of Deputies⁸¹, 2) if the Chamber of Deputies does not comply with the project of the Act the consideration whereof the government tied to the question of confidence⁸², 3) if the session of the Chamber of Deputies is recessed for a longer than admissible in the Constitution term (the Chamber of Deputies may order the interruption of the session for no more than one hundred and twenty days during the year)⁸³, and 4) if the Chamber of Deputies will not be able to adopt resolutions for a period longer than three months although its session was not recessed and the parliament was repeatedly convened to meet. All the

may re-assemble the parliament, which was dissolved earlier. On the other hand, the parliament may pass a statement on the prolongation of its term of office.

- 79 The Constitution of the Republic of Poland uses the term "shortening the Sejm's term of Office" and not "dissolution of the Sejm". The Sejm's term of office – even if it is shortened – lasts and finishes on the day preceding the day of the new Sejm's first session.
- 80 Contrary to the solutions adopted by the 1920 Constitution, the president cannot dissolve the Senate. The Chamber also does not have its own term of office – there is a partial renewability of its composite members. Senators are elected by means of absolute majority system for a 6-year term of office, however the mandate of 1/3 of the senators expires every two years. This is the basis for the right to issue decrees with the force of statutes by the Senat at the time when the Chamber of deputies is dissolved.
- 81 This is equivalent to a situation when the Chamber of Deputies is unable to pass a vote of confidence neither for the government appointed from the initiative of the president, nor from the initiative of parliament.
- 82 This refers to a situation when the Chamber of Deputies neither passes nor rejects a statute, what shows its inability to operate effectively. The president cannot then dissolve a parliament in case when it modifies the text of a government's statute project or rejects the project. See: M. Kruk, *Wstęp...*, *op. cit.*, p. 27; K. Skotnicki, *Republika Czeska...*, *op. cit.*, p. 68; J. Zieliński, *Prezydent...*, *op. cit.*, p. 154. As R. Głajcar pointed out, the regulation of the power to connect the vote of confidence with a statute project submitted by government may be of importance especially in the case of the functioning of coalition government, if the subject of regulation of the mentioned statute raises controversy among the coalition parties. R. Głajcar, *Instytucja prezydenta w Polsce, Czechach i Słowacji w latach 1989–2000. Analiza porównawcza*, Toruń 2004, p. 180.
- 83 The Chamber of Deputies may order a break in a session for a time no longer than 120 days within one year.

above cases are facultative. The Chamber of Deputies cannot be dissolved within the last three months of its term of office. The Constitution of the Czech Republic does not provide for the possibility for the parliament to dissolve itself⁸⁴.

Equally wide-ranging possibilities of dissolution of a parliament (National Council) has the President of the Slovak Republic: 1) if within 6 months after parliamentary elections, it fails to adopt the declaration of the government program, 2) if the National Council within 3 months does not adopt the government bill the consideration whereof the government tied to the question of confidence⁸⁵ 3) if the parliament is not able to gather for the meeting within a period of more than 3 months, in spite of the fact of calling the meeting, and 4) if the session of the National Council is recessed for a longer than admissible in the Constitution term⁸⁶. The above instances are optional. It is compulsory for the president to dissolve the National Council if it orders a popular vote on dismissing the president and the application is not accepted. The president may not dissolve the National Council within the last six months of its term of office, during state of war, state of emergency or martial law.

Another area of the president's entitlements in his relations with parliament is his participation in legislative procedure. This is mostly about employing suspending veto towards statutes⁸⁷. Among the Visegrad Group States, the President of the Republic of Poland undoubtedly possesses the strongest right of veto. In order to reject the president's veto, it is required to obtain 3/5 of the votes of members of the Sejm participating in the voting. Position of the Polish President in the final stage of legislative procedure is only weakened by the fact that employing the veto is equal to the lack of possibility to send the statute to the Constitutional Tribunal in the manner of preventive control (article 122 paragraph 5).

The President of Slovakia has the power to veto statutes passed by the National Council within 15 days from the day he obtained the statute. The parliament shall reject the veto by the majority of votes of all statutory members of parliament, that is 76⁸⁸. Up to 1999 the president had the power to not only apply the veto on his own initiative (article 102n) , but also he was obliged to use legislative veto

84 In practice, the Chamber of Deputies dissolved itself twice under the provisions of the constitution: In 1998 and in 2009. See: V. Jirásková, K. Skotnicki, *Parlament Republiki Czeskiej*, Warszawa 2009, pp. 19–20.

85 There is a significant difference between the regulations of the Czech Republic Constitution and The Slovak Constitution in this matter. The National Council in Slovakia can be dissolved if it does not pass a bill in the course of three months, with which the government connected the vote of confidence, whereas The Chamber of Deputies in the Czech Republic – if it does not assume a standpoint concerning a government's statute project within three months.

86 The National Council May order a break in the session for a time no longer than 4 months within one year.

87 Moreover, the President of Poland and the President of Hungary possess the right of legislative initiative.

88 This majority should be considered a significant strengthening of the president's constitutional position when taking the political division of the Slovak parliament into consideration.

on government's demand (article 87 paragraph 4)⁸⁹. In order to reject a veto the Constitution only required an absolute majority, thus the same majority required to pass a statute⁹⁰. Moreover, the former legal system gave the president the right to use a veto in the case of a constitutional statute. Currently, there is no such entitlement⁹¹. In practice the possibility to veto statutes was most frequently used by Rudolf Schuster. During his 5-year term of office he employed the veto procedure 103 times⁹².

The president of the Czech Republic has the power to veto statutes passed by the Chamber of Deputies, except for constitutional statutes⁹³. He may refuse signing a statute within 15 days from obtaining an adopted statute. The Chamber of Deputies rejects the veto with the majority of votes of all statutory members of parliament (article 50). The president's veto is his prerogative – it does not require governmental counter-signature⁹⁴.

Also the President of Hungary has the right to veto a statute within 15 days (§ 26 sec. 2). The State Assembly re-passes a statute within 60 days by means of an absolute majority, that is the same majority required to adopt a statute (§ 24 sec. 2). The president is obliged to sign the statute re-passed by parliament within 5 days (§ 26 sec. 3)⁹⁵, unless he believes that one of the statute's provisions contradicts the Constitution. In such a situation, the president sends the statute to the Constitutional Tribunal⁹⁶. If the Tribunal decides non-conformity of a statute with the Constitution, the president returns the statute to parliament in order to introduce the corrections considering the Constitutional Tribunal's standpoint. If the Tribunal states that a statute is consistent with the Constitution, the president shall sign and announce the statute within 5 days. Among the Visegrad Group States the Hungarian President's veto is undoubtedly the weakest. However, he possesses – contrary to the President of the Republic of Poland – the right to send a statute to the Constitutional Tribunal before signing it, despite the employed veto.

89 In practice this meant that the power to use a veto fell within the government's competence. E. Stein, *Out of the Ashes...*, *op. cit.*, p. 50.

90 The constitution amendment of 1999 therefore made it more difficult to reject the president's veto.

91 See the comments of R. Glajcar, *Instytucja...*, *op. cit.*, pp. 198–199.

92 B. Pytlík, *Prezydent Republiki Słowackiej...*, *op. cit.*, p. 643.

93 The Constitution of Czechoslovakia of 1920 vested the president with the right of veto and it was frequently used in practice. In comparison with current solutions, the time, in which the president may use a veto was shortened from one month to 15 days. K. Skotnicki, *Instytucja...*, *op. cit.*, p. 42; Z. Witkowski, *Z zagadnień...*, *op. cit.*, pp. 22–23.

94 In practice, the currently serving president – V. Klaus – employed the veto about 30 times. V. Jirásková, K. Skotnicki, *Parlament...*, *op. cit.*, p. 56, reference 10.

95 As stated in article 26 para. 1 of the Constitution the president "ensures the announcement of a statute", what should be considered its promulgation. See: W. Brodziński, *Republika...*, *op. cit.*, p. 184.

96 The president is in Hungary the only organ entitled to initiate control of statute's constitutionality in preventive mode. A. Czyż, R. Glajcar, K. Krysienieli, *Węgry...*, *op. cit.*, p. 316.

Apart from the veto, Hungarian President is also vested in other entitlements as far as legislative procedure is concerned. Similarly to the President of the Republic of Poland, he possesses the power of legislative initiative (§ 25 sec. 1), which does not require counter-signature⁹⁷. The president signs (“ensures the announcement of”) a statute within 15 days from obtaining it, and in urgent cases – on application from the State Assembly – within 5 days (article 26 paragraph 1). Both in Poland and in Hungary, the president’s power to submit a statute project causes the risk of occurring competitive legislative initiatives in the field of executive⁹⁸. Undoubtedly, in this place, an “unfamiliar element” occurs in the parliamentary system of government adopted by the constitutions of Poland and Hungary. Certain explanation of this state of affairs is “inheriting” by the president the power of legislative initiative after the former Presidential Council (Hungary) and after the former State Council (Poland)⁹⁹.

5. Competence towards government

President’s competence towards government relates especially to his participation in the procedure of appointing and dismissing the government. Although in a parliamentary system of government the formal act of appointing and dismissing the government falls within the head of state’s competence, its existence depends on the confidence of parliament¹⁰⁰. The government does not hold political responsibility to the president in any of the Visegrad Group States. Neither can he present to the parliament a motion to grant the vote of no confidence to the government. However, he is vested with other means (for instance, by giving an address in the area of parliament), which enable him to persuade the parliamentary majority to abolish a cabinet¹⁰¹.

The president – as the head of state – initiates the process of appointing a new government. The President of the Czech Republic may designate the prime minister twice. After two-time rejection of the president’s candidate for the prime min-

97 See: P. Sarnecki, *Konstytucyjna pozycja prezydenta wybieranego przez parlament w państwach Europy Środkowo-Wschodniej*, (in.): *Prawo, parlament i egzekutywa we współczesnych systemach rządów. Księga poświęcona pamięci Profesora Jerzego Stembrowicza*, ed. S. Bożyk, Białystok 2009, pp. 339–340.

98 M. Kruk, *Prawo inicjatywy ustawodawczej w nowej Konstytucji RP*, „Przegląd Sejmowy” 1998, no. 2, p. 21; R. Głajcar, *Instytucja... op. cit.*, pp. 189–190.

99 In the case of Poland, legislative initiative was given to the president under the provisions of April amendment of 1989. Since, in accordance with the “round table” contract, the office of president was granted to Gen. W. Jaruzelski, the communist camp possessed an additional instrument to control the course of political changes in 1989.

100 In the case of two-chamber parliament, winning the confidence of the first chamber is most frequently sufficient. This is also true for Poland and the Czech Republic. It is less frequent to depend the existence of government on the second chamber as well (this is the case e.g. in Italy).

101 M. Kovač’s exceptional case should be pointed here. His address given in parliament in 1994 led to the collapse of V. Mečiar’s government.

ister by parliament, the initiative is passed to the parliament. The chairman of the House of Deputies submits to the president the name of the prime minister. The Constitution does not define the premises, which should be adopted by the president while designating the prime minister. However, it is clear, that he must take the relation of political forces in parliament into consideration¹⁰². Assembling members of the cabinet is the task performed by the person designated to be the prime minister¹⁰³. The president appoints the prime minister, and then, on his application, other members of government¹⁰⁴. Cabinet, within 30 days from its appointment by the president, speaks in front of the Chamber of Deputies and presents a motion to be granted confidence. The Chamber of Deputies grants the vote of confidence to the government by means of absolute majority of votes¹⁰⁵. If the vote of confidence is not granted, the government hands in its resignation (and if it does not, it is dismissed by the president under the provisions of article 75) and the entire procedure is repeated. If the government again does not win the vote of confidence, the president appoints the prime minister on application from the Chairman of the Chamber of Deputies¹⁰⁶. He presents the name of the prime minister to the president in writing and the president's role is limited only to the formal act of nomination¹⁰⁷. If the government does not obtain the vote of confidence also this time, the president may dissolve the Chamber of Deputies.

The President of Slovakia appoints the prime minister and – on his application – individual ministers¹⁰⁸. It is customary, that the president designates the leader of the political party, which obtained the most mandates in the election to the National Council to be the prime minister¹⁰⁹. Only if the prime minister is unable to form a cabinet, the office is given to another politician¹¹⁰. On application submitted by the prime minister, the president appoints individual ministers. The

102 K. Skotnicki, *Republika Czeska...*, *op. cit.*, p. 58.

103 The Constitution does not state any period of time, in which the person designated to be the prime minister is supposed to perform this task.

104 Under the provisions of art. 67 para. 2 of the Constitution the government consists of: the prime minister, deputy prime ministers and ministers.

105 R. Glajcar, *Instytucja...*, *op. cit.*, pp. 220–221.

106 From the formal point of view, the Chairman of the Chamber of Deputies – similarly to the president – has freedom of choosing the candidate for the prime minister. In practice, he has to take the relation of political forces in parliament into consideration. E. Gdulewicz, *Republika...*, *op. cit.*, p. 91.

107 W. Jednaka, *Proces formowania i dymisji gabinetów. Rodzaje gabinetów*, (in:) *Systemy polityczne Europy Środkowej i Wschodniej. Perspektywa porównawcza*, ed. A. Antoszewski, Wrocław 2006, p. 222.

108 In practice, a rule was developed that a president may refuse to appoint a particular person for the prime minister's office. For the first time this was carried out by president M. Kovač in 1993. See: K. Skotnicki, *Republika Słowacka...*, *op. cit.*, p. 150.

109 In 1994 president M. Kovač designated the leader of HZDS – V. Mečiar – to be the prime minister, despite the fact that they were in severe conflict and that HZDS did not win the absolute majority of mandates in the National Council. See: K. Skotnicki, *Republika Słowacka...*, *op. cit.*, p. 160.

110 In this moment the president performs a crucial role because he should support the leaders of parliamentary fractions in the process of selecting majority coalition.

government formed in this manner must present its program of operations to the parliament within 30 days and obtain the vote of confidence. Contrary to other Visegrad Group States, the Constitution of Slovakia does not provide the possibility to assume the initiative of forming government by the parliament. This means that if the procedure described above is unsuccessful, it should be repeated.

The President of Hungary is not vested with the power to designate the prime minister, yet he only submits an application for the parliament to choose the prime minister (§ 33 sec. 3)¹¹¹. While submitting the application, the president takes the relation of political forces and the results of coalition discussions into consideration¹¹². Before the voting takes place in the parliament, the prime minister presents the program of operations of his government. The State Assembly elects the prime minister with statutory majority of votes (that is the minimum of 194, with the total number of 386 members of parliament). The State Assembly elects the prime minister within 40 days from the time when the president submitted the first application. The Constitution does not settle a time limit, in which the president shall submit the first application to the parliament. The manner of appointing government is similar to that provided by the German Constitution, with the exception that the National Assembly deputies cannot propose their own candidate for the prime minister¹¹³. On application from the prime minister, the president shall appoint and dismiss individual ministers (§ 33 sec. 4–5). The State Assembly does not participate in this process.

The Constitution of the Republic of Poland provides for three modes of appointing government (the Council of Ministers)¹¹⁴. The first manner involves the initiative falling within the competence of the president, who shall designate the prime minister. The designated prime minister shall propose the members of the Council of Ministers. The president shall appoint the prime minister and the remaining members of the Council of Ministers within 14 days from the Sejm's first session or from accepting the former Council of Ministers' resignation¹¹⁵. The president of the Council of Ministers presents the program of the Council of Ministers' operations within 14 days from the date of appointment, together with a motion for granting the vote of confidence. The vote of confidence is passed by the Sejm

111 The constitution does not state the time limit of the president's submitting the application for the choice of the prime minister by the parliament. See: W. Brodziński, *Kilka uwag o systemie rządów na Węgrzech po zmianach ustrojowych w 1989 r.*, (in:) *Institucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana Prof. Marii Kruk-Jarosz*, eds. J. Wawrzyniak, M. Laskowska, Warszawa 2009, p. 183.

112 W. Brodziński, *Wstęp...*, *op. cit.*, p. 22; M. Bugaj, *Prezydent Republiki Węgierskiej*, (in:) *Szkice o pozycji ustrojowej i statusie głowy państwa*, ed. M. Grzybowski, Kraków 2003, p. 65.

113 W. Brodziński, *Wstęp...*, *op. cit.*, p. 23.

114 Art. 154–155 of the Constitution. See more: R. Mojak, *Parlament a rząd w ustroju Trzeciej Rzeczypospolitej Polskiej*, Lublin 2007, pp. 168–267.

115 President may refuse to appoint government composed of particular members, but he cannot appoint the Council of Ministers composed of members different from those proposed by the prime minister.

by means of absolute majority with the presence of at least half of the statutory number of deputies.

The second mode of appointing new government is applied when the president does not appoint the Council of Ministers, or when the Council is not granted the vote of confidence. The essence of this mode is assuming the initiative to appoint new government by the parliament. A group of 46 members of parliament may propose a candidate for the prime minister within the time limit ordered by the Marshal of the Sejm. The Sejm shall elect the President of the Council of Ministers within 14 days by means of absolute majority of votes, and – on application from the prime minister – the members of the Council of Ministers he proposed. The president cannot refuse to appoint government elected in this manner unless formal obstacles occur (as, for instance, making the choice after the 14 day time limit).

If the Council of Minister is not appointed in the course described above, the third and final stage is adopted. In this stage, the initiative returns to the president, who appoints the President of the Council of Ministers within 14 days and – on his application – remaining members of the Council of Ministers. The Sejm shall then grant a vote of confidence to the Council of Ministers by means of a simple majority within 14 days from appointing by the president. This means that in this stage it is possible to appoint a minority government, tolerated by parliamentary majority¹¹⁶. In the case when the third procedure is unsuccessful, the president is obliged to shorten the Sejm's term of office (article 155 paragraph 2)¹¹⁷.

An equally important role is given to the Visegrad Group States' presidents in the case of dismissing a serving cabinet. This is especially true for the President of the Czech Republic and the President of Slovakia. In Poland and in Hungary there is the institution of constructive vote of no confidence, which limits the president's role to a formal dismissal of a cabinet, which lost the parliament's confidence, and appointment of a new cabinet, elected by new parliamentary majority.

In the Czech Republic, an application for expressing vote of no confidence towards a government may be submitted by a group of at least 50 members of parliament (article 72 paragraph 2)¹¹⁸. The majority of all members of parliament

116 In practice, only one cabinet was appointed by means of this mode. In 2004, after Leszek Miller's resignation, president A. Kwaśniewski designated his associate – Marek Belka – to be the prime minister. Sejm did not pass the vote of confidence to Belka's cabinet in the first mode, and in the second mode it did not use the possibility of selecting the prime minister. When the third procedure was applied, president Kwaśniewski again appointed M. Belka. This time, his cabinet obtained the vote of confidence with an absolute majority of votes. The remaining governments after adopting the Constitution of 1997 were appointed in the first mode provided by the Constitution (art. 154 para. 1–2).

117 However, the president cannot shorten the Sejm's term of office during the state of emergency and within 90 days following its termination.

118 The requirement to collect 50 signatures of support is a significant impediment in the process of passing a vote of no confidence, due to the fact that the Chamber of Deputies consists of 200 members.

is required to pass the application. The constitution recognizes only solidary accountability of government to parliament. Similarly to Hungary, the Chamber of Deputies cannot pass a vote of no confidence towards a minister.

The President of the Czech Republic shall accept the prime minister's and the ministers' resignations¹¹⁹ and he is obliged to accept the resignations if: the government was refused to obtain the vote of confidence, was granted a vote of no confidence or after the new Chamber of Deputies is constitutionalised. The prime minister's resignation is equal to the entire government's resignation. The President of the Czech Republic shall dismiss a government, which did not hand in its resignation although it should have done so (article 75). The president shall entrust temporary performance of functions to the government he dismissed or whose resignation he accepted, until a new government is appointed. On application from the prime minister, he shall appoint and dismiss the remaining members of government (article 68 paragraph 5 and article 74).

In Slovakia, the National Council passes a vote of no confidence towards a government on application from a group of 30 members of parliament (that is 1/5 of the entire number of members of parliament). The Council accepts the resolution by means of absolute majority of the total number of deputies' votes, that is 76. The Slovak Constitution also provides for individual accountability of members of government to the parliament. If the National Council passes a vote of no confidence towards a minister, the president shall dismiss this minister. It is also possible to pass a vote of no confidence towards the chairman of government. In such a situation, the entire cabinet resigns together with the prime minister. Members of government are also politically accountable to the prime minister, who can apply to the president for dismissing a member of government at any time. However, the president is not obliged to consider the prime minister's application and may refuse to appoint a minister¹²⁰. What is more, every member of government may hand in his resignation to the president on his own initiative¹²¹. If it is the prime minister, then the entire cabinet shall resign. The president entrust provisional performance of the functions of the minister he dismissed to another member of government¹²². The Slovak Constitution allows for connecting the application to grant vote of confidence with a statute project submitted by government or with voting conducted on a different matter¹²³.

119 Ministers hand in their resignations to the president, but by hand of the chairman of the government.

120 This was the decision of the Constitutional Tribunal in 1993, while interpreting art. 116 para 4. of the Constitution. See: K. Skotnicki, *Republika Słowacka...*, *op. cit.*, pp. 150–151.

121 M. Barański, A. Czyż, *Słowacja*, (in:) *Władza państwowa...*, *op. cit.*, p. 253.

122 *Ibidem*, p. 245.

123 W. Jednaka, *Proces...*, *op. cit.*, p. 222.

The Hungarian State Assembly may only abolish a serving cabinet by means of a constructive vote of no confidence (§ 39/A)¹²⁴. An appropriate application can be submitted by a group of 1/5 of the deputies (that is 73)¹²⁵. Parliament conducts a debate on the government's program the earliest after three days and the latest – after 8¹²⁶. Formally speaking, the prime minister is the addressee of the application for the vote of no confidence, and actually – it is the entire government¹²⁷. The State Assembly undertakes a statute whose subject is to express vote of no confidence towards government with a statutory majority of the Assembly members' votes. The government may connect voting on a statute with application for granting the vote of confidence. Institution of individual vote of no confidence does not occur in Hungary, what is, together with constructive vote of confidence, another feature of a chancellery system of government.

In Poland, members of the Council of Ministers hold both solidary as well as individual responsibility to the Sejm (article 157). Solidary accountability is enforced by means of constructive vote of no confidence (article 158). The application must be submitted by at least 46 members of parliament and it must also indicate the name of a candidate for the President of the Council of Ministers. The application may be subject to voting no sooner than after 7 days from its submission. The Sejm expresses vote of no confidence towards the Council of Ministers with the majority of votes of a statutory number of deputies, that is 231. If the Sejm grants vote of no confidence to the Council of Ministers, the president accepts its resignation and appoints a new prime minister elected by the Sejm, and – on his application – the remaining members of the Council of Ministers.

What is more, the Sejm may express a vote of no confidence towards a minister¹²⁸. The application for expressing vote of no confidence may be submitted by at least 69 members of parliament. The Sejm shall express vote of no confidence towards a minister with the majority of votes of statutory number of deputies (231). The president shall dismiss a minister, towards whom the Sejm expressed vote of no confidence. Ministers are held politically responsible to the prime minister as

124 Constructive vote of confidence is the only manner of abolishing a government by the parliament. This institution was introduced in 1990. It was an element of agreement between the Hungarian Democratic Forum (*Magyar Demokrata Forum* – MDF) and the Alliance of Free Democrats (SzDSz). MDF supported the SzDSz's candidate for president (as mentioned above – it was A. Göncz). In return, SzDSz accepted the strengthening of the prime minister's position. The office was held at that time by József Antall from MDF. W. Brodziński, *Republika...*, op. cit., p. 189; R.P. Krawczyk, *Konstytucyjny status prezydenta Republiki Węgierskiej*, (in:) *Institucja prezydenta...*, op. cit., p. 48.

125 On 14th April 2009 the State Assembly passed a constructive vote of no confidence towards the prime minister Ferenc Gyurcsány's government. Gordon Bajnai was elected to assume his position. He was supported by the Hungarian Socialist Party (MSzP) and the Alliance of Free Democrats (SzDSz).

126 W. Jednaka, *Proces...*, op. cit., p. 223.

127 W. Brodziński, *Republika...*, op. cit., p. 197.

128 It is impossible to submit an application for expressing vote of no confidence towards a prime minister – it is only possible to pass vote of no confidence towards his cabinet.

well (article 161). The president shall introduce changes to the Council of Ministers on application from the prime minister. The president cannot dismiss a minister on his own initiative unless the prime minister submits an appropriate motion. The president cannot refuse the application from the prime minister, whose subject is to introduce changes to the Council of Ministers¹²⁹.

6. Accountability of the president

6.1. Constitutional accountability

The constitutional position of the president is largely defined by his accountability for the office he holds. In Visegrad Group States, similarly to other democratic countries, the president bears primarily constitutional responsibility. A part of this is the fact, that the president is responsible for violating the law: committing the so-called constitutional delict or alternatively, committing an offence. In practice, constitutional accountability may show certain reference to political accountability. Decision to start constitutional accountability procedure lies within the competence of parliament and therefore it is difficult to expect political issues not to influence its standpoint. The organ pronouncing constitutional responsibility is the Constitutional Court in the Czech Republic, Slovakia and Hungary, whereas in Poland – the State Tribunal.

Under the provisions of article 54 paragraph 3 of the Constitution of the Czech Republic, the president does not bear responsibility for performing his function. Although this regulation does not define the manner of accountability, one should assume that by these means the president – in accordance with the rules of a parliamentary system of government – is free from political accountability. His constitutional accountability has been also minimized. Under the provisions of article 65 paragraph 1 of the Constitution, the president cannot be detained, subjected to criminal responsibility or prosecuted for crime or administrative offence. Criminal responsibility for deeds committed while serving the office of the president is forever excluded (article 65 paragraph 3)¹³⁰. The president can only account for high treason to the Constitutional Court. The accusation is brought by the Senate on application from 1/3 of the senators¹³¹. The punishment may take the form of losing

129 Polish doctrine of law is not fully unanimous regarding this matter. Small Constitution (1992) allowed for the president's power of not considering the application for introducing changes to the composition of the Council of Ministers. It seems that the president could refuse to appoint a particular person for a minister's office if he recognized that this act would contradict the responsibilities of the president discussed in art 126 of the Constitution. He could, for instance, presume that the person holding minister's office poses a threat to the State's security.

130 Regulations excluding manners of president's accountability other than treason are supposed to lead to elevating the head of state's prestige. R. Glajcar, *Institucja...*, *op. cit.*, p. 318.

131 Due to the lack of particular solutions it should be assumed that the Senat adopts the resolution by means of adopting general rules, which means by absolute majority with the presence of at least 1/3 of its members.

the president's office and being unable to assume the office in the future (article 65 paragraph 2). The Constitutional Court makes its ruling by an absolute majority with the presence of at least 1/3 of judges.

The Slovak Constitution provides a more extensive scope of the head of state's constitutional accountability. Under the provisions of article 107 the president shall be responsible for intentional violation of constitution¹³² or for betrayal of his country. Accusation is brought by the National Council with majority of 3/5 of all deputies' votes. The Constitutional Court examines the accusation in its full composition. In the case when the president is pronounced guilty, he loses his office and also loses the ability to assume the office in the future¹³³.

The President of Hungary, on the other hand, bears responsibility for violating constitution or a statute. In order to start the procedure the president's accountability, the State Assembly is required to pass a resolution (in a secret ballot) with the majority of 2/3 of the Assembly's deputies' votes (§ 31/A sec. 3) on application submitted by 1/5 of the Assembly deputies (§ 31/A sec. 2). From the time of adopting the resolution up to the termination of examination, the president is unable to serve his office (§ 31/A sec. 4). Judgment on the matter lies within the Constitutional Tribunal's entitlements (§ 31/A sec. 5)¹³⁴. In the case when the president was found guilty of a crime, the Constitutional Tribunal proceedings apply the regulations of a criminal procedure. Accusation advocate takes up the role of a plaintiff. He is elected by the State Assembly from among the deputies (§ 32 sec. 1). Prosecution of president is permissible even after the end of his term of office. If the Tribunal states that a statute was violated, it may remove the president from the office (§ 31/A sec. 6). In a situation when the Tribunal pronounces committing a crime, it may, apart from removing the president from the office, state the penalty and punishment measures provided for by the penal code¹³⁵.

The Constitution of the Republic of Poland provides a completely different mode of president's constitutional accountability. Uniqueness of solutions adopted in Poland results mainly from the fact, that the State Tribunal is the organ ruling constitutional accountability. This is a specific organ, included in judicial power

Compare with: E. Gdulewicz, *Republika...*, *op. cit.*, p. 88; R. Glajcar, *Instytucja...*, *op. cit.*, p. 321.

132 The Slovak President cannot account for violating a statute.

133 See more: B. Pytlík, *Prezydent Republiki Słowackiej...*, *op. cit.*, p. 653.

134 Initially, the constitutional responsibility of a president was judged by the so-called Ruling Council, which was appointed by the State Assembly, the Constitutional Tribunal and the Supreme Court from among their members (earlier, under the provisions of changes introduced in 1989, the Council was formed with parliament deputies exclusively). Hungarian legislator thus referred to the Constitution of 1946 and the statute of 1848. In 1990, the Constitutional Tribunal became the organ pronouncing the president's guilt. See: W. Brodziński, *Republika...*, *op. cit.*, p. 174; R.P. Krawczyk, *Konstytucyjny...*, *op. cit.*, pp. 49–50.

135 W. Brodziński, *Republika...*, *op. cit.*, p. 180; W. Orłowski, *Republika Węgierska*, (in:) *Ustroje państw...*, pp. 303–304.

(article 10)¹³⁶, appointed for the purpose of ruling constitutional accountability of the president as well as other people serving high offices in the State¹³⁷. The State Tribunal consists of the Chairman (that is the First President of the Supreme Court), 2 chairman deputies and 16 members. The members are elected by the Sejm during its first session from outside the senators and members of parliament for the Sejm's given term of office¹³⁸.

The president is responsible to the State Tribunal for violating the Constitution or a statute, as well as for committing an offence (article 145 paragraph 1)¹³⁹. Bringing charges against the president may be done by means of a statute of the National Assembly adopted by at least 2/3 of the statutory number of the Assembly members' votes, on application submitted by at least 140 members of the National Assembly. Management of the president's office is suspended, starting from the day of adopting the statute on bringing charges against the president to the State Tribunal. If the Tribunal states that either constitutional delict or a crime was committed, it may remove the president from the office. This results in emptying the president's office and – as a consequence – new election of the head of state.

In comparison with other Visegrad Group States, the President of the Republic of Poland is vested with the fullest constitutional accountability. Not only does he account for violating the Constitution or a statute, but also for committing any crime. The President of Hungary is responsible for violating the Constitution or a statute, whereas the President of Slovakia – only for high treason and he does not hold any other accountability¹⁴⁰. Looking at all the above solutions, it should be assumed that the President of the Czech Republic' responsibility was limited to a minimum.

There are significant differences in the procedure of bringing the president to constitutional accountability. The Czech solution is worth noticing, where a special role is given to the Senate – the Chamber of Deputies is excluded from the procedure. Contrary to this, in Poland the accusation is brought by the National Assembly, in which the first chamber – Sejm has a significant precedence over the

136 Such a character of the State Tribunal is also determined by its position in the Constitution's taxonomy (last subsection in Chapter VIII: *Courts and Tribunals*).

137 Under the provisions of art 198 of the Constitution, constitutional accountability to the State Tribunal is held by, apart from the president, the prime minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the prime minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces.

138 The chairman deputies, as well as at least half of the Tribunal's members should possess qualifications required to assume the office of a judge.

139 The president is responsible to the State Tribunal for committing any crime, whether it was connected with serving his office or not.

140 See: B. Dziemidok-Olszewska, *Instytucja prezydenta w państwach Europy Środkowo-Wschodniej*, Lublin 2003, p. 318.

second chamber – the Senate¹⁴¹. In Slovakia and in Hungary single-chamber parliaments bring accusation towards the president.

6.2. Political accountability

One of the basic assumptions of the classical parliamentary system is the lack of the head of state's political accountability¹⁴². Adopted official acts are subject to prime minister's or minister's counter-signature¹⁴³. By means of signing a president's act, prime minister or minister assumes his political responsibility, which can be enforced with the use of different control entitlements, especially with the adoption of vote of no confidence (depending on solutions adopted by a particular state, either towards the entire government or towards individual members of government). The principle of political unaccountability of the president is usually related in parliamentary system of government with limiting the role of the president to performing representative functions only. The president's official acts must obtain government's counter-signature to be valid. Thanks to this, political responsibility for the head of state's activities is held by the prime minister or a minister, or alternatively, the entire government¹⁴⁴.

However, the constitutions of some countries also provide an opportunity to dismiss the president from the office before the end of his term of office for political reasons. The act of the appeal of the president follows – depending on the mode of his appointment – either by popular vote (plebiscite) or by the parliament. Among the countries in which it is possible to appeal the president by the people through a referendum Iceland, Austria and Lithuania should be mentioned in particular. In turn, the possibility of dismissing the president by the parliament is present in the Constitution of Latvia and Israel.

Among the Visegrad Group countries the Constitution of Slovakia provides an opportunity to dismiss the president from the office by popular vote (article 106)¹⁴⁵.

141 This results from the fact that Sejm is composed of 460 deputies, whereas the Senat – of 100 senators. This means that initial application for bringing the president to responsibility to the State Tribunal may be signed only by members of parliament, whereas it cannot be done by only senators (as mentioned above, the application must be submitted by 140 National Assembly members). What is more, 2/3 majority of the statutory number of the Assembly members' votes is required to accuse the president. This means that even when all senators object, the application may still obtain the required majority of votes.

142 This is the feature, which differentiates parliamentary system of government from assembly system of government. K. Skotnicki, *System rządów...*, op. cit., p. 170.

143 Thanks to this, also the unity of both executive organs' operations is ensured. About the institution of the counter-signature see more: A. Frankiewicz, *Kontrasygnata aktów urzędowych Prezydenta RP*, Kraków 2004; A. Rakowska, *Kontrasygnata aktów głowy państwa w wybranych państwach europejskich*, Toruń 2009.

144 B. Dziemidok-Olszewska, *Odpowiedzialność polityczna prezydenta w państwach europejskich*, (in:) *Zachód w globalnej i regionalnej polityce międzynarodowej*, eds. E. Kuźelewska, A.R. Bartnicki, Toruń 2009, p. 115.

145 The power to remove the president from the office by means of popular vote may raise certain controversy from the point of view of art. 101 of the Constitution. Under the provisions of this regulation, the president is not bound with orders in the matter of serving the office, he fulfils the responsibilities of the head of state in accordance with his conscience and beliefs.

This provision was introduced in 1999, together with the introduction of presidential elections by universal suffrage¹⁴⁶. The National Council may order the popular vote (plebiscite) on the appeal of the president by a majority of 3/5 of all members of parliament. On the basis of a resolution of the Council, the voting is formally managed by its chairman. The voting takes place within 60 days. The president is dismissed, if the application of the National Council was endorsed by the majority of those entitled to vote. If the president is not cancelled in the popular vote, he dissolves the National Council within 30 days of the announcement of the voting results¹⁴⁷. Rejection of an application for cancellation of the president in a popular vote is tantamount to starting his new term of office.

In other Visegrad Group States there is no political liability of the president. The Constitution of Hungary declares in article 31/A paragraph 1 the immunity of president. In the doctrine, the question of political accountability of Hungarian President is not assessed unambiguously. However, the Constitutional Tribunal assumes the standpoint of lack of such liability¹⁴⁸. The Constitution of the Republic of Poland is the least restrained in this matter. However, article 144 paragraph 2 clearly states that the prime minister holds responsibility to the Sejm by counter-signing the president's official act. The question of multiple entitlements of the president not subject to counter-signature is left¹⁴⁹. However, the Polish Constitution does not provide regulations, which would allow holding the president politically responsible for these acts.

This study does not discuss the question of the president's accountability of non-institutionalised character¹⁵⁰. This is the case of accountability to voters¹⁵¹,

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- 146 Original text of the Constitution provided a possibility to dismiss president by the parliament with 3/5 majority of votes (on application submitted by half of the entire number of members of parliament) in cases when he was unable to serve the office for a year or when he committed deeds directed against sovereignty and territorial unity of the Slovak Republic or against democratic system in the State while performing his duties. As K. Skotnicki correctly emphasized, the premises to dismiss the president were not formulated in a clear manner and allowed for a significant freedom of interpretation, which in fact depended on the relation of political forces in the parliament and its relations with the head of state. Considering the fact of multiple occurrences of tensions in the Slovak political scene in the 90s, the use of this regulation is not surprising. It was employed by the Slovak National Party (*Slovenská Národná Strana* – SNS) in 1995. The application obtained support of 80 members of parliament, what meant that only 10 more votes were needed to dismiss the president. See: K. Skotnicki, *Republika Słowacka...*, *op. cit.*, pp. 144–145; compare with B. Dziemidok–Olszewska, *Instytucja...*, *op. cit.*, pp. 308–309.
- 147 As mentioned above, this is the case of obligatory dissolution of the parliament by the president. Similar solutions are provided by the constitutions of Austria and Iceland. See: B. Dziemidok–Olszewska, *Odpowiedzialność...*, *op. cit.*, pp. 117–118.
- 148 See: W. Brodziński, *Republika...*, *op. cit.*, p. 180 and the judgment of the constitutional Tribunal of 1992 quoted there.
- 149 Art. 144 para 3 of the Constitution lists 20 prerogatives of the president.
- 150 See: B. Dziemidok–Olszewska, *Instytucja...*, *op. cit.*, pp. 306–307.
- 151 See: H. Duszka–Jakimko, M. Haczkowska, *Odpowiedzialność Prezydenta RP. Kategorie prawne i pozaprawne*, (in:) *Pozycja ustrojowa prezydenta na przykładzie wybranych państw Europy Środkowo-Wschodniej i Niemiec*, eds. A. Frankiewicz, S.L. Stadniczeńko, Opole 2009, pp. 49–50.

public opinion in a civic society, where freedom of speech and freedom of means of social transmission occurs¹⁵². The last example of the President of Germany, Horst Köhler¹⁵³ shows that these liabilities should not be underestimated even in countries, where the president's power is relatively weak and does not allow to play an important role in settling the State's policy.

7. Conclusions

The analysis of selected elements of constitutional position of the president in the Visegrad Group States induces some thoughts. First of all, it should be emphasized that constitutional solutions adopted currently relate to constitutional experiences of particular States. In the case of the Czech Republic and Slovakia this is the Constitution of 1920, In Hungary – the Constitution of 1946, and in Poland – March Constitution (1921) and April Constitution (1935). Mainly due to this, the President of the Republic of Poland is vested with the strongest constitutional position, whereas other countries' constitutions refer to parliamentary–cabinet system of government adopted by the mentioned constitutions, which are characterized by limited entitlements of the head of state.

Constitutional position of the President of the Republic of Poland, stronger than in other Visegrad Group States, is connected in large measure with the mode of the president's election by the nation. Presidential elections have permanently entered Polish political system and despite the voices to introduce presidential election by the parliament, it should not be expected that these ideas have any chance of being implemented. General presidential election in Slovakia shall be, on the other hand, related directly to the political crisis, which took place between 1998 and 1999. While being on the subject, it should be stated that, in spite of casting doubt on the need to elect a president in the conditions of a parliamentary system of government, it possesses the advantage of not leading to crisis when the parliament is unable to elect the president. As mentioned above, the problems related to electing presidents of the Czech Republic and Hungary were an excuse to start a discussion on the need to introduce general presidential elections also in these states.

The president's relations to the parliament, especially the ability to dissolve it, play an important role in determining the president's political position. In a classical parliamentary–cabinet system, dissolution of parliament by the head of state is

152 What is particularly significant here: loss of the president in subsequent elections if he runs for re-election, engagement of the president in the election campaign to parliament, loss of the party supported by the president or loss of a referendum.

153 On 31st May 2010 president H. Köhler handed in his resignation due to his controversial statement about the military intervention in Afghanistan and potential use of Bundeswehra in order to protect German economic interests. See the statement of the president featured on the following website: <http://bundespraesident.de/-/2.664352/Erklaerung-von-Bundespraesiden.htm> (5th June 2010).

a manner of solving political crisis created when the government loses parliamentary majority and there is no possibility to appoint new coalition. Such solutions are adopted by Constitutions of the Czech Republic and Slovakia, which allow the president to dissolve parliament at the time of a cabinet crisis. Rationalization of the parliamentary system in Poland and in Hungary, by means of introducing constructive vote of no confidence, strengthens the position of government towards the parliament, yet at the same time weakens the possibility to dissolve parliament by the head of state. On the other hand, the possibility for government to connect a statute project with vote of confidence provided by Czech and Slovak legislators should be emphasized. This is a solution unfamiliar in Poland and in Hungary. It weakens the position of the parliament towards the government and is simultaneously an element rationalizing the parliamentary system.

Legislative veto may be a dangerous instrument in the hands of the president. It is most significant in the functioning of the Polish political system due to the fact that 3/5 majority of votes in the Sejm is required to reject it. This means that in the case of *cohabitation*, when the president does not agree with the content of statutes passed by parliamentary majority, the government must possess qualified majority of votes in the Sejm or look for the coalition's support to abolish the presidential veto. In this light, the statutory majority of votes needed to override the presidential veto may be treated in remaining states of the Visegrad group¹⁵⁴ as an appeal to re-analyse the content of an adopted statute by parliamentary majority.

The presidents of the Visegrad Group States are vested with important authorizations in appointing the executive and dismissing the governments. However, they are not treated as chiefs of executive in any of the countries. Government does not hold political liability to the president, what is a feature of semi-presidential systems, but only to the parliament (the first chamber). It should be emphasized here, that the Constitutions of the Czech Republic and of Poland give the initiative to appoint government to the parliament in cases when the government is not appointed by the initiative of the president. Thanks to this, governmental majority determined by parliamentary elections, may successfully force the head of state to appoint cabinet composed in accordance with its will.

Responsibility of the president for serving the office is a separate question. All Visegrad Group States adopt constitutional accountability. The organ authorized to pronounce the guilt of the president is the Constitutional Court (Tribunal) in the Czech Republic, Slovakia and Hungary, and the State Tribunal in Poland. In all these countries, the organ authorized to initiate the procedure is the parliament. Here, the solution implemented in the Czech Republic is worth noticing, due

154 In the case of Hungary this is absolute majority.

to the fact that the competence in this matter is vested in the second chamber (the Senate), with the exclusion of the Chamber of Deputies. Different scope of constitutional accountability should also be emphasized. In Poland, the president holds the responsibility for violating the constitution, a statute or for committing a crime. This is the most extensive liability. On the other hand, the least extensive liability occurs in the Czech Republic, where the president is only responsible for high treason. In Slovakia, apart from constitutional accountability, there is also a possibility of holding the president politically accountable. This is implemented by voters in the course of popular vote and is a kind of *actus contrarius* towards the mode of his appointment.

In all Visegrad Group States, the president was constructed as a beyond-party authority, who does not participate in the current political game, but assumes crucial position in times of crisis. In these situations, he fulfils the role of a stabilizing factor. More entitlements are vested in the President of the Republic of Poland, who may act not only by the force of his authority, but also by using actual control entitlements given to him by the Constitution (especially legislative veto). In all states, the presidents are restricted with the existing relation of political forces in the parliaments, especially while appointing new government. However, they have the power – in spite of limited authorities – to take up effective intervention in the conditions defined by the rules of a rationalized parliamentary system.

Generally speaking, none of the Visegrad Group States adopts a system of government fully responding to classical models¹⁵⁵. Undoubtedly, the constitutional system of the Czech Republic is the closest to a parliamentary-cabinet system¹⁵⁶. In Slovakia this model was supplemented in 1999 with institutions characteristic for a semi-presidential system (general presidential election)¹⁵⁷. In Poland, the political system between 1989 and 1997 was frequently referred to as parliamentary-presidential. However, in the light of current constitutional solutions, Polish and Slovak constitutional systems cannot be defined as semi-presidential. Similarly to other Visegrad Group States, it is a rationalized parliamentary system. It should be added here that in the case of Hungary, this rationalization takes the features of a chancellery system. Stabilization of party system, possible mainly due to mixed, proportional-majority system of elections, influences the increase of prime minister's importance and the weakening of the president's position in the Hungarian political system¹⁵⁸.

155 W. Brodziński, K. Skotnicki, *Konstytucyjny...*, op. cit., p. 246.

156 *Ibidem*, p. 248.

157 As emphasized by J. Karp, the Slovak President's entitlements, despite they are limited, allow him to play an active role in political life. J. Karp, *Prezydent Republiki Słowackiej*, (in:) Szkice..., op. cit., p. 86.

158 G. Kuca, *Pozycja ustrojowa i funkcje Zgromadzenia Krajowego – parlamentu Republiki Węgierskiej*, (in:) *Prawo, parlament...*, op. cit., p. 288.