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## THE RATIONALISATION OF PARLIAMENTARY RESPONSIBILITY OF THE GOVERNMENT IN THE FRENCH SEMI-PRESIDENTIAL ARCHITECTURE

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### ABSTRACT

*The paper deals with the parliamentary responsibility of the government under the Constitution of the French Fifth Republic of 1958 (with special regard to a vote of no confidence). Looking at this issue from a contemporary perspective, the author argues that in comparison to the so-called monistic version of parliamentarianism, this type of political responsibility of the executive has been doubly weakened. First of all, the mere rationalisation of a parliamentary system itself occurring at the constitutional level has contributed to such an effect. Strengthening the government at the expense of the legislative is of prime importance in this regard. Another factor which weakens the position of the legislature is far-reaching reinforcement of the French presidency, which corresponds to the process of presidentialisation of politics. This has led to the creation (outside the provisions of the 1958 Constitution) of an additional dimension of the government's responsibility, that is the responsibility before the head of state. The author claims that in such circumstances, a vote of no confidence may be paradoxically perceived not so much as a mechanism that links the French system of government with a parliamentary model, but as one of the factors supporting the so-called majoritarian presidentialism.*

### KEYWORDS

- France
- Parliamentary responsibility
- The government
- Vote of no confidence
- Semi-presidentialism
- Rationalisation
- Majoritarian presidentialism

### 1. Introduction

A vote of no confidence as a constitutional construction belongs to the constitutive components of each and every parliamentary system of government. This is the mechanism by which the principle of ministerial responsibility before the legislative is given the necessary procedural framework. Parliamentary responsibility of the government creates the political identity of two of the three divided powers, that is the legislative and executive. On the other hand, the aforementioned principle and the procedural mechanisms that are linked to it have been subject to visible transformations occurring in modern parliamentary systems. The common denominator of such modifications is the phenomenon of rationalisation which

encompasses various elements of parliamentarism. The main purpose of this process is to make the functioning of this system of government much more effective. This is manifested, *inter alia*, in the ability of the government to work steadily and without major unexpected obstacles caused by various political factors resulting from the anti-government activity of the legislative branch. Importantly, strengthening the stability of cabinets takes place while maintaining the basic mechanisms of a broadly understood parliamentary model (Tanchev: 1993, p. 33). This means that the process of rationalisation cannot lead to the abolition of this system of government. Hence, it is no wonder that political connections between the government and legislature remain the most important area of rationalisation. This can be considered as the starting point of this process as well as an indispensable condition without which rationalisation in other fields would make no sense. This is best seen against the background of the earlier evolution of parliamentarism, particularly in France, where its different forms have been adopted since the first half of the 19th century.

It can be argued that the process of rationalisation in the French variant (conducted at the end of the 50s of the last century) went so far that it led to a fundamental redevelopment of relations between the executive and legislative powers. Such effects could not, however, have been achieved without the influence of the mechanisms of governance disclosed in the practice of the subsequent years of the Fifth Republic. The problem of parliamentary responsibility of the government has taken an important place in these transformations. In the mid-1960s, the letter of the 1958 Constitution (*La Constitution du 4 octobre 1958*) began to be interpreted in an anti-parliamentary spirit. The rationalisation of the procedures applied to verify support for the cabinet in the legislature resulted in the selective use of parliamentary control instruments and caused them to be grossly ineffective. In this way, the process of rationalisation contributed to the implementation, at least to some extent, of the idea of negative parliamentarism which does not require parliamentary support for the government to be officially confirmed every time (Siaroff: 2000, pp. 100-101). It can even be assumed that, as a result of political practice, parliamentary responsibility which is explicitly regulated (in its rationalised form) in the Constitution was supplanted by responsibility before the president, which has no direct normative basis but remains purely political. In any case, it seems legitimate to believe that in the field of the cabinet's parliamentary responsibility, the process of reinforcing the executive is so advanced that it essentially reduces pro-parliamentary components of the constitutional system of government adopted in 1958-1962. It means that the actual role of the government as a body that defines and conducts state policy under article 20 of the Constitution has been significantly limited (except during periods of cohabitation). This function is largely taken over by the head of state. The phenomenon is generally reflected in the idea of majoritarian presidentialism (*présidentialisme majoritaire*), in which the head of state enjoys stable and lasting support from the parliamentary majority and thus can exert a direct influence on the government treated consistently (but not in accordance with the letter of the Constitution) as a presidential one. Majoritarian presidentialism is based on the so-called majority fact (*fait majoritaire*) indicating, generally speaking, that the executive is permanently backed by coherent majorities in the legislature<sup>[1]</sup>. This

1 The majority fact as a specific political configuration can be understood broadly or narrowly. In the first case, this

can be seen as one of the manifestations of presidentialisation of politics understood, in general terms, as an increase in the actual position of the executive branch, which is made without a formal change in normative regulations<sup>2</sup>. This phenomenon particularly applies to single-person bodies (i.e. presidents, prime ministers). This combines with the accompanying personalisation of political processes perceived, among other things, through the prism of mediatising politics thanks to the use of mass communication or electoral campaigns focused on particular candidates, and not on political parties or other organisations as such (Poguntke, Webb: 2005, pp. 1-25). The transformation of the vote of no confidence in France illustrates well this kind of shift of emphasis. Hence, from a methodological point of view, a full analysis of this issue requires taking into account not only legal aspects of the government's political responsibility, but also a broader political context contributing to evident relocation of the French system of government as seen through the prism of its initial constitutional formula.

Under the 1958 Constitution, the most far-reaching consequence of the process of strengthening presidential power was the establishment of a new system of government referred to as a semi-presidential one (Duverger: 1980, pp. 165-187). Although there is still no consensus on how to define it properly and various definitions have been formulated so far (Elgie: 2016, pp. 49-70), it is legitimate to assume that one of its pillars is the construction of an enhanced presidency (in comparison with typical mechanisms of a parliamentary model, in which the head of state seems to be a figurehead without real powers). Such a revalorisation of the power of the head of state is included even in Robert Elgie's definition of semi-presidentialism, which – contrary to the concept presented by Maurice Duverger – does not take into account the scope of presidential competencies (Elgie: 1999, pp. 12-14). As for the presidency itself, the election of the head of the state by universal suffrage is then treated as a sufficient condition for recognising a given system as a semi-presidential one. Consequently, the effect of semi-presidentialism may be the emergence of two strong bodies functioning within a bicephalous executive branch but their actual position is heavily dependent on existing political configurations at the parliamentary level (Sartori: 1997, pp. 131-132). The far-reaching reinforcement of presidential power may also result in adopting the principle of double responsibility of ministers. This means that they are politically dependent not only on the parliament, but also on the head of state. This idea is sometimes expressed directly in relevant legal provisions, but it can also result indirectly from the entirety of regulations adopted at the constitutional level, and even from the practice of governance itself. As far as the government's

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means the existence of a stable parliamentary majority, regardless of whether such parliamentary support is given to the president (outside cohabitation) or to the opposition to the head of state (under cohabitation). In the second case, the majority fact is based on the political identity of the head of state and the majority in the National Assembly. Thus, the majority fact understood in this way seems to be a synonym of majoritarian presidentialism and the opposite of the politically divided executive under cohabitation (Duhamel, Tusseau: 2013, p. 434). French researchers use this term either in the broader (Gicquel, Gicquel: 2015, p. 511; Lavroff: 1999, pp. 928-957) or narrower (Gohin: 2013, pp. 604-608; Le Mong: 1989, pp. 434-437) sense of the word.

2 It is worth mentioning that one of the aspects of broadly conceived presidentialisation of politics is the presidentialisation of political parties, which presupposes their subordination to presidential strategies or candidate strategies in presidential elections (Bachelot, Haegel: 2015, pp. 88-106).

responsibility to the parliament is concerned, its constitutionalisation does not seem to raise any serious doubts from the point of view of requirements of semi-presidential systems. It deserves to be highlighted that political identity of the government and the parliamentary majority (even if this majority is only relative) is commonly treated as a feature that connects semi-presidentialism with a parliamentary model.

In the light of the discussion above, the main purpose of this article is to show that in the case of the semi-presidential system adopted in the Fifth Republic of France, a vote of no confidence has undergone a specific double neutralisation. First of all, this phenomenon is a result of far-reaching rationalisation of parliamentarianism, which has significantly limited the possibility of effective application of the appropriate procedures. Secondly, its downgrade as an instrument guaranteeing, even potentially only, the creation of governments unconditionally supported by the parliamentary majority went hand in hand with the presidentialisation of the Fifth Republic, which involved the emergence of informal ministerial responsibility before the head of state. The latter factor has indirectly contributed to the fact that the government's responsibility before the parliament now seems to fulfil only the role of a general guideline for the president who appoints the cabinet. What is more, when parliamentary elections are held within a few weeks after the presidential election (as in 2017), this guideline is not treated as absolutely binding, which means that the underlying idea of every parliamentary system is obviously undermined at this point. Thus, it can be argued that a vote of no confidence has become a constitutional tool, the role of which – apart from periods of cohabitation – boils down to securing presidential practice through the need to ensure the convergence of the parliamentary majority and the so-called presidential majority (*majorité présidentielle*)<sup>3</sup>. Considering legal changes made after the emergence of the third period of cohabitation (1997-2002) and aimed at effectively eliminating such a political variant, a vote of no confidence inscribed into the 1958 constitutional machinery is to act only indirectly as a component of the system of government, which not so much embeds it in the logic of a parliamentary model, but primarily establishes the requirement of constant support of the parliamentary majority for the whole politically homogeneous executive. This in turn constitutes an indispensable condition for the aforementioned majoritarian presidentialism to be fully implemented in political practice.

Bearing in mind the above remarks, the paper has been divided into four basic sections. The first concerns specific features of the political responsibility of the government, starting from the Third Republic. The second part focuses exclusively on the Fifth Republic, and in particular on the vote of no confidence perceived through the prism of the rationalisation of parliamentarianism at the constitutional level. The third section discusses the phenomenon of neutralisation, in the practice of governance, of basic constitutional mechanisms concerning the government's responsibility to the parliament. The subject of the last part of the paper is majoritarian presidentialism analysed from the point of view of the government's informal responsibility to the head of state.

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3 The latter is perceived as political formations supporting the implementation of the presidential programme at the parliamentary level.

## 2. The parliamentary responsibility of the government and the evolution of French parliamentarism

The unrestricted ability of the legislature to overthrow the cabinet for political reasons was of paramount importance within a parliamentary system of government in the decades preceding the start of the complex process of its gradual rationalisation. In a monistic version of parliamentarism (*régime parlementaire moniste*)<sup>4</sup> introduced in the Third Republic of France (established in 1875), this kind of political responsibility of ministers was treated as a keystone of the whole system of government. This meant that it was not limited in any way. The then French politicians regarded it in a manner that went beyond some established requirements. In political practice, this contributed to very frequent falls of governments. In general, there were over a hundred cabinets operating for seventy years before the collapse of the Third Republic in 1940 (Ardant, Mathieu: 2014, p. 315). The average duration of the then governments was well below twelve months. Prime ministers of that time resigned even when the Chamber of Deputies or the Senate (the ministers were politically responsible before both chambers of parliament) failed to meet cabinets' expectations on issues that were not directly related to their political responsibility (Rakowski: 2016, p. 287). Such an attitude deepened governmental instability. It can be said that the scope of the parliamentary responsibility of ministers did not have much in common with what was regulated by law. This form of parliamentarism proved that the formalisation of both a vote of confidence and a vote of no confidence was not a necessary condition for the principle of parliamentary responsibility of the cabinet to be respected (Szymanek: 2013, pp. 121-123). The influence of the aforementioned political factors as well as some ideological assumptions, including the vision of the parliament as a representation of the sovereign on which the executive power should be dependent without any restrictions, seemed to be of fundamental significance. It is for this reason that President Jules Grévy (1879-1887) announced at the end of the 1870s that he would not take action against the political representation of the nation concentrated in the legislative. It amounted to the inability to dissolve the legislature, even though the head of state had such a constitutional right (Chevallier: 1981, pp. 310-311). Therefore, the then regime deserves to be described as ultra-representative (*ultra-répresentatif*), which meant that the parliament implementing the idea of a legal act as an expression of the general will (*expression de la volonté générale*) occupied a central position. Consequently, both organs of the dual executive were largely neutralised (Bujadoux: 2015, p. 79-80). Under such conditions, the extremely monistic version of

4 This is a non-rationalised parliamentarism, in which the position of the head of state remains largely neutralised, and the main axis of the system of government connects the cabinet with the parliament, bypassing the head of state. In addition, this type of a parliamentary system does not contain relevant mechanisms immunizing the government for the actions of parliamentarians seeking to overthrow it. As a result of the rationalisation process, modern parliamentary systems have departed from this formula. It should be stressed that monistic parliamentarism was not the original form of this system of government. Its appearance was preceded by a phase of classical or dualistic parliamentarism (*régime parlementaire dualiste*), in which the systemic balance provided by the relatively strong head of the state was of key importance. Among the mechanisms that ensure the relevant position of the head of state, there is the right to dissolve the parliament, thanks to which the body can directly influence the relations between the legislature and the cabinet and ensure balance within the system of government (Lauvaux, Le Divellec: 2015, pp. 196-198).

a parliamentary regime could fully manifest itself.

This way of perceiving parliamentary responsibility of the government was not fundamentally changed after the adoption in 1946 of the Constitution of the Fourth Republic (*La Constitution du 27 octobre 1946*). The asymmetry of bicameralism was then introduced, which resulted in the second chamber not being able to overthrow the cabinet any longer. Despite this, prime ministers stepped down due to the absence of a stable majority in the first chamber. Like before 1940, there were no possibilities to discipline deputies through the threat of dissolving the legislature and carrying out early elections. It is worth noting that in the light of article 51 of the 1946 Constitution, the dissolution could take place if two ministerial crises (*crises ministérielles*) occurred within eighteen months. These crises were defined as the rejection of a motion of confidence (article 49) or the adoption of a motion of censure (article 50). What is more, the parliament could not be dissolved within the first eighteen months of the legislature's existence (article 51). These mechanisms were originally designed with the aim of stabilising cabinets in the absence of lasting parliamentary majorities. Thus, they corresponded to the basic postulates formulated by supporters of the idea of rationalisation. However, the practice of governance did not confirm the effectiveness of such constitutional solutions. The main problem was that the then governments were falling without application of articles 49 or 50. This made the executive unable to dissolve the parliament as a retaliatory measure and an instrument for disciplining parliamentarians. As a result, during the entire period of the Fourth Republic, the legislature was dissolved only once. The decision resulted from the fall of the government headed by Edgar Faure in the mid-50s (Chapsal: 1997, pp. 418-422). All in all, governmental instability did not differ from that of the Third Republic (Chagnollaude: 2002, pp. 334-335). It turned out that the whole constitutional regime of that time lacked the necessary balance. This means that some attempts to rationalise the then parliamentary system of government did not meet expectations placed upon them.

Only the establishment of the Fifth Republic (1958) brought the introduction of a completely new constitutional paradigm. Compared to the two former republics, parliamentary responsibility of the government has been countered by the power of the president to dissolve the parliament (article 12). The latter mechanism has not been restricted by any significant requirements that could prevent its effective application. In particular, its use does not require a countersignature of a member of the government (article 19)<sup>5</sup>. Consequently, the government's responsibility before the parliament (in the case of the Fifth Republic, exclusively before the first chamber, that is the National Assembly) has been put in a broader institutional context set by a clearly strengthened presidential power. In practice, the enhanced presidency has become the focal point for the cabinet, and the significance of political responsibility before the legislature has been gradually diminished. The process can be exemplified by the application of article 49 paragraph 1 of the 1958 Constitution, which regulates

5 However, some limitations have been imposed. The most important of them is the prohibition of the application of article 12 during the year following the parliamentary elections conducted due to the dissolution of the legislature. The same applies to the dissolution of parliament while the extraordinary presidential powers regulated in article 16 of the Constitution are applied. Nevertheless, these restrictions are of little importance from the point of view of political practice.

the government's motions for parliamentary approval of its policy. Applying for such a vote has become a non-compulsory activity illustrating the shift of emphasis in relations between the parliament, the government and the president. In the early years of the Fifth Republic, prime ministers were given a vote of confidence from the National Assembly immediately after taking over the office and forming their governments. In that period, article 49 paragraph 1 was applied without any exceptions, which pointed to the specificity of the then regime as a construction firmly embedded in a parliamentary model. The election of the head of state by a special electoral college (before the adoption of the 1962 constitutional amendment), thus without providing legitimacy of the presidential power given directly by the people, also contributed to this. As a consequence, it was thought that the government could not function without formally expressed confidence of the parliamentary majority. This approach indicated that the confidence of the parliament was regarded as a prerequisite for government activities, and this must have been confirmed by the National Assembly. In turn, the support of the head of state was regarded as important but still rather secondary (at least in the light of relevant constitutional provisions) (Chantebout: 1992, pp. 59-64). In general, the concept of negative parliamentarism was not fully accepted at that time.

The change of approach in this area occurred in the mid '60s, when the prime minister's office was held by Georges Pompidou. Forming his third government, he decided not to rely on article 49 paragraph 1 (Debbasch: 2004, p. 289). The resignation from applying for a vote of confidence in the first chamber immediately after the appointment of the cabinet could be interpreted as a signal that this body was primarily a presidential government. Of course, such an interpretation did not rule out the government's responsibility before the legislature. However, the support of the National Assembly started to be perceived as only implied (Zarka: 1992, pp. 289-291). It was the parliament to prove otherwise by adopting a motion of censure regulated in further provisions of the 1958 Constitution. In the following years, however, prime ministers were not consistent in abandoning article 49 paragraph 1 (Maus: 1998, pp. 221-222). A reluctant attitude to the application of this regulation can indicate that a given head of government manifests in this way a particular attachment to the pro-presidential interpretation of appropriate constitutional provisions, according to which there is a hierarchy within the executive, and the government is primarily subordinate to the head of state. The reverse activity in this sphere suggests, in turn, that the prime minister strives to emphasize at least partial autonomy within the framework of the entire executive branch. Such conclusions were to be drawn mainly under cohabitation (this phenomenon occurred in 1986, 1993 and 1997), when a more or less visible conflict between the president and the prime minister remained a quite normal political situation. The then heads of government did not have to reckon with political strategies of presidents who did not come from their own political camps. This change was mainly reflected in the frequency of application of article 49 paragraph 1. Under conditions of cohabitation, prime ministers used the mechanism especially often (Jakubiak: 2013, pp. 197-198). Furthermore, paragraph 4 of the same article was also applied on an unprecedented scale (especially during the first period of cohabitation). This provision makes it possible to obtain support from the second chamber on the basis of a government policy statement. In both cases, the goal was the same – to

strengthen the cabinet in relation to the president thanks to parliamentary support given by the whole legislature. For this reason, the aforementioned instruments were only used to legitimise the government, and not to control its activities. This does not change the fact that the parliament (especially the National Assembly) became the only constitutional body to support the cabinet operating under politically divided executive power (Fournier: 2008, pp. 55-58).

### **3. Initial neutralisation of a vote of no confidence in the light of the 1958 constitutional arrangements**

Analysing a vote of no confidence in the government under the contemporary French political system, attention should be paid to article 49 paragraphs 2 and 3 of the 1958 Constitution. In this case, an initiative to assess government activities belongs to deputies themselves. On the other hand, appropriate parliamentary procedures have been subject to the process of rationalisation aimed at stabilising the executive, in particular when it is threatened due to not very beneficial political configuration in the legislature. In the light of article 49 paragraph 2, the proposal to vote a motion of censure should be signed by one-tenth members of the first chamber. A vote for the resignation of the government can be carried out only after 48 hours. Its adoption requires a majority of all deputies belonging to the first chamber. Since the 1986 parliamentary elections, the National Assembly has been composed of 577 members. Thus, it is necessary to have 289 votes in order to pass a motion of censure. What is more, as a result of the 1995 constitutional amendment, the same deputy may sign up to three such motions at an ordinary session and only one at an extraordinary session (Colliard: 2009, p. 1241). In the light of article 50 of the Constitution, if the National Assembly approves the motion (or rejects the government programme presented pursuant to article 49 paragraph 1), the entire cabinet has to step down. The prime minister's resignation is subsequently taken by the head of state.

The most important thing is to determine the effects of the resignation presented by the head of government after passing a vote of no confidence. Starting from the assumption that the 1958 Constitution is interpreted in a pro-presidential way, it can be concluded that the head of state is not obliged to immediately accept the government's resignation. However, such a reasoning undermines, at least to some extent, the very principle of the government's responsibility before the parliament which is at the heart of every, even heavily modified, parliamentary system. Hence, an alternative interpretation of article 49 paragraph 2 seems to be more convincing. The latter is firmly rooted in the principle of the government's responsibility before the parliament, which is explicitly provided for in article 20 of the Constitution. Thus, the role of the president is maintained within its constitutional boundaries. After all, the organ has no formal powers to dismiss the government on its own initiative (this results from article 8 of the Constitution). All this leads to the conclusion that, in the case of article 50, the role of the head of state is reduced to the acceptance of the resignation of the prime minister and ministers, which is purely declarative and not constitutive. In other words, the president has no room to maneuver and must accept the decision that was previously taken by the parliamentary majority. It can

be said that such an interpretation is obviously pro-parliamentary because it imposes clearly defined limits which the head of state cannot cross. On the other hand, the head of state may use some anti-parliamentary tools regulated outside article 50. Such an instrument is the aforementioned dissolution of the National Assembly, which could somehow justify the decision of the head of state delaying the adoption of the government's resignation (Colliard: 2009, p. 1246). In practice, the instrument can be used by the president who takes retaliatory measures after the overthrow of the government supporting the presidential policy (Le Mong: 1989, pp. 241-242).

As far as article 49 paragraph 3 of the Constitution is concerned, the provision synthesises, in an original way, the legislative function of the parliament and its role as a body controlling the government. It allows the adoption of a given bill without voting in the first chamber. If the prime minister uses this procedure, such a legal act is considered passed unless the opposition successfully applies a motion of censure within a strictly defined deadline (submission of such a motion should take place within 24 hours and its adoption – within subsequent 48 hours). The mechanism means that the support of the National Assembly for a bill promoted by the government is not expressed directly (by voting on a given text), but it is only implied. To overthrow this presumption, the first chamber must pass a vote of no confidence in the cabinet. If the prime minister applies article 49 paragraph 3, there is no other way to prevent the National Assembly from the silent adoption of such a legal act. This leads to the conclusion that this activity of the indicated body may involve far-reaching institutional consequences. The most important of them may be, as in the case of the paragraph 2 of the discussed article, the dissolution of parliament by the head of state, which acts then as a body stabilising the political scene. Such a step would cause early parliamentary elections, which in turn could entail deputies' uncertainty as to the re-acquisition of their parliamentary mandates. The application of the constitutional provision in question may therefore be treated as a form of blackmailing members of the first chamber by the government (Lascombe: 2005, p. 143). Consequently, this specific compilation of adopting legislation and exercising parliamentary control can be seen as a construction inscribed in the structure of rationalised parliamentarianism, whose main goal is, after all, to ensure long-term political stabilisation of the executive branch. It is even legitimate to express the view that the indicated constitutional mechanism is the most offensive instrument serving the effective process of rationalisation. It is due to the fact that, first of all, the whole legislative function of the parliament seems to be very deeply modified in this case. Secondly, such a modification takes place when the parliamentary majority before which the government bears political responsibility is rather unstable and unpredictable. Hence, the main aim of this provision consists in consolidating political formations supporting the cabinet, but it can also be helpful in the process of governance when such a pro-government majority does not provide satisfactory backing for the legislative activities taken up by the executive (Bidégaray, Emeri: 1998, p. 60; Blachèr: 2012, pp. 128-129). Additionally, this procedure may be perceived as draconian because it does not give the parliament the power to influence somehow the content of the project submitted by the government. The National Assembly can simply either reject it by passing a vote of no confidence or pass it without making any changes (Elliott et al.: 2006, p. 46).

#### 4. Further neutralisation of a vote of no confidence resulting from the application of the 1958 constitutional arrangements

The political practice under the Constitution of the Fifth Republic has proved that the article 49 paragraph 2 remains strongly affected by a wider political and institutional context determined by the functioning of the Fifth Republic mechanisms. It should be highlighted that the only effective case of applying the analysed regulation took place in 1962, against the government headed by Georges Pompidou. One of the reasons why the vote of no confidence was adopted was the political composition of the then National Assembly, in which the ruling party – the Gaullist Union for the New Republic (*Union pour la nouvelle République*) – did not have an absolute majority of seats. There is no doubt that the configuration of the political scene that emerged after the presidential and parliamentary elections of the late 1950s was not optimal from the point of view of the executive branch of government. The strategy adopted by President de Gaulle, including the attempt to introduce universal presidential elections by means of referendum, which was conducted without taking into account the appropriate amendment procedure regulated in its article 89 (Jakubiak: 2012, pp. 112-119), led to the fact that the then cabinet (supported by the head of state) lost some of its parliamentary support. This was reflected in the results of the vote of no confidence. This step, however, did not mean long-term negative consequences for the presidential party and the president himself. It should be stressed that in the aftermath of the effective application of article 49 paragraph 2, the first chamber was dissolved and earlier parliamentary elections had to be held. They met the expectations of the then ruling camp, which won an absolute majority of seats in the National Assembly. This allowed the president to appoint another government headed by the previously revoked prime minister (Thevenon: 2016, pp. 40-42). Hence, thanks to the dissolution of the parliament treated as a response to the existing political crisis, the head of the state was able to neutralise possible negative effects (from the point of view of the ruling camp) of passing a vote of no confidence. Combined with the 1962 referendum and parliamentary elections, it even contributed to consolidation of the Gaullist camp.

Since then, motions of censure have been submitted many times, but they have never proved effective. Considering the period from the beginning of the Fifth Republic to the electoral loss of the Socialist Party (*Parti Socialiste*) in 2017, confidence in the cabinet was questioned during the term of office of all prime ministers with the exception of Maurice Couve de Murville (the head of government in the years 1968-1969). Only in the case of three prime ministers (Georges Pompidou, Raymond Barre and Pierre Mauroy), the attempts to dismiss from office under article 49 paragraph 2 were taken 21 times overall (7 times against each of them). The opposition had the greatest chance of success in 1992, when only three deputies were lacking to pass a vote of no confidence against the socialist government headed by Pierre Bérégovoy (it was supported by 286 out of 577). In general, under the 1958 Constitution such motions have been submitted almost sixty times (Assemblée Nationale: 2015). The majority fact was a decisive factor in ensuring the stability of most governments which have existed since the fall of the first Pompidou's cabinet. Like in 1962, the head of state may dissolve the first chamber in order to defend the government perceived as

a body carrying out presidential policies. It is worth noting, however, that attempts to pass a vote of no confidence were also unsuccessful during cohabitation, when the president and government came from different political camps. As mentioned earlier, in such a political configuration, the National Assembly (and possibly the Senate) is the only organ that will legitimise the government. In turn, the president, who more or less openly strives to confront the prime minister in order to keep a strong political position (based on the political practice typical of the formula of majoritarian presidentialism) has the ability to use the power of containment (*contre-pouvoirs présidentiels*) (Portelli: 1999, pp. 59-70). It should therefore be assumed that passing a vote of no confidence in the course of cohabitation would not result in the application of article 12 of the Constitution in order to protect the government created by the opposite political camp. Hence, even if the head of state decided to take such a step, its goal would probably consist in indirect legitimisation of the presidential power by changing the political profile of the first chamber to a pro-presidential one. Anyway, when cohabitation occurs, prime ministers functioning during such a political configuration must provide cohesion of their own political bases. In such circumstances, seeking support of the head of the state is just not possible any longer. It is worth adding that in the conditions of politically heterogeneous executive power (in total this political variant of the French semi-presidentialism persisted for nine years) motions of censure were voted only four times. Leaving aside the problem of cohabitation, it should be noted that particular fragility of parliamentary majorities caused such initiatives to be taken up much more often, because the chances of success for the opposition seemed much greater. This was the case of the National Assembly's functioning in the years 1988-1993. The then left-wing governments had to rely not only on the Socialist Party, but also on politicians representing the central segment of the political scene (Portelli: 1989, pp. 294-297). The National Assembly voted on the dismissal of the government eight times (against governments led by Michel Rocard, Édith Cresson and Pierre Bérégovoy), which meant the activity of the then opposition on an unprecedented scale (Assemblée Nationale: 2015). However, under the Fifth Republic, an unstable or less predictable pro-government parliamentary majority is decisively an exception to the rule. Thanks to the adopted institutional mechanisms, including the majority electoral system in the elections to the National Assembly, the cabinets enjoy constant support of stable majorities of deputies, and most often also support of incumbent presidents.

The same can be said about the effects of applying article 49 paragraph 3. Although the tool established in this constitutional provision is extremely anti-parliamentary, deputies have not avoided using it in political practice. During the nearly sixty years of the Fifth Republic (until 2016), this regulation was applied 88 times. In most cases, members of the first chamber reacted by submitting a motion of censure. In this period, such initiatives were taken 51 times (Assemblée Nationale: 2016). It deserves to be emphasized that the parliamentarians' activity in this field has never been effective, which meant that prime ministers using article 49, paragraph 3 have always achieved their goal of streamlining the legislative procedure for particularly important bills. However, the scope of the application of this mechanism has been significantly limited in recent years. This results from the adoption of the Act of July 23, 2008 on

the modernisation of the institutions of the Fifth Republic (*Loi constitutionnelle n° 2008-724 du 23 juillet 2008 de modernisation des institutions de la V<sup>e</sup> République*). As a consequence, only a finance bill (*un projet de loi de finances*) or social security financing bill (*un projet de loi de financement de la sécurité sociale*) may be submitted on the basis of article 49 paragraph 3. Other bills may also be presented in this way but the prime minister is able to apply the procedure under discussion for only one such a bill (lodged by the government or by parliamentarians) per session. It should be mentioned that in the light of the regulations that were previously in force, there existed no such quantitative restrictions, as well as limitations as to the very content of such legislation. It is not very surprising because some constitutional changes introduced in 2008 were aimed at strengthening the parliament by weakening the channels of influence exerted by the executive on legislative that underlie the conception of rationalised parliamentarianism (Vidal-Naquet: 2012, pp. 146-147; Chevènement: 2008, pp. 249-252). However, these changes have not eliminated solutions applied for a few decades, but only modified them, thanks to which the idea of in-depth rationalisation seems to be generally maintained. In particular, it should be emphasized that the idea of negative parliamentarianism still remains a basic feature of French constitutional arrangements. The amendment to article 49 paragraph 3 may be reasonably perceived as the implementation of such moderate reforms (Jan: 2011, pp. 281-286). Anyway, it is worth mentioning that the amendment in question has already exerted some impact on the role of article 49 paragraph 3 in political practice. Prime ministers François Fillon (2007-2012) and Jean-Marc Ayrault (2012-2014) did not decide to make use of this instrument. The situation only changed after Manuel Valls took over the prime minister's post in 2014 (Assemblée Nationale: 2016).

It should also be mentioned that in some cases, the procedure described in article 49, paragraph 3 has been used several times in relation to the same text. It must be remembered that its application in the National Assembly and the adoption of the bill without voting in this chamber does not affect the necessity of sending the text to the Senate in accordance with article 45 of the Constitution. The latter regulation presupposes that both chambers need to agree on a uniform text. If any problems occur, this may require the creation of a mixed parity commission (*commission mixte paritaire*) composed of representatives of each chamber. In the event of disagreement between them, a final decision may be taken, on the initiative of the government, by the National Assembly. In practice, the analysed provision was sometimes applied at the stage of the final vote in the first chamber. This meant that a bill adopted in this way did not have strong parliamentary legitimacy. This was due to the fact that the Senate was against its adoption (hence, the need to follow the procedure of last word of the first chamber), and the National Assembly gave solely indirect support, that is, by rejecting the motion of censure (Lascombe: 2005, pp. 146, 213; Jakubiak: 2016, pp. 172-174). The latter situation proves that the status of the executive as seen through the prism of legislative proceedings is exceptionally strong. It can be said that although the adoption of laws is the core of parliament's activity, its role may be almost completely marginalised in this area. It also sheds new light on the question of parliamentary responsibility of the government. It should also be emphasized that the aforementioned combination of article 49 paragraph 3 and article 45 paragraph 4 most

often refers to the coincidence of two specific political factors. First of all, there is no majority supporting the government in the Senate, which makes the procedure of the last word more frequent than usual. Secondly, the pro-government majority in the first chamber is not stable enough. The latter may prompt the government to apply article 49 paragraph 3 in order to achieve its own legislative goals. Hence, although both of these procedures were combined several times already in the 1960s and 1980s (in the latter case, this concerned the period of socialist rule in 1981-1986, when the majority in the Senate was dominated by the opposition to the cabinet), these situations were particularly frequent in 1988-1993. Both conditions mentioned above seemed then to be met. As a result, the two procedures joined together were applied seven times during this period (six times under the premiership of Michel Rocard and once under the premiership of Édith Cresson). In addition, article 49 paragraph 3 was often used at an earlier stage of the whole procedure, that is after the meeting of a mixed parity commission in order to maintain the fully symmetrical position of both segments of the legislative power (Maus: 1998, pp. 227-228).

### **5. The emergence of the government's responsibility to the head of state within the configuration of majoritarian presidentialism**

As mentioned above, one of the key features of the French system of government perceived through the prism of constitutional regulations is the absence of formally regulated political responsibility of the cabinet before the president of the Republic. The 1958 Constitution neither explicitly expresses this principle nor even suggests that there exists the ability of the head of state to dismiss the government on his or her own initiative. Formally, this leads to the conclusion that ministers bear political responsibility only before the parliament. In turn, the head of state is limited to the role of arbitrator who cannot constantly influence the prime minister and the cabinet. However, the logic of the functioning of constitutional mechanisms in the triangle composed of the parliament, the president and the government depends on existing political configurations. The formula of majoritarian presidentialism causes the government to be based primarily on the head of the state from which it derives its legitimacy. Hence, political practice in these conditions (before the occurrence of the first cohabitation in 1986) went in a completely different direction from that foreseen in the 1958 Constitution. It means that the aforementioned initial approach to the structure of the system of government (regarded through the prism of renewed parliamentarism) could not be maintained in political practice. This constituted an important factor contributing to the emergence of the Fifth Republic's fully semi-presidential profile based on double responsibility of the cabinet. However, during the evolution of the regime of the Fifth Republic, parliamentary responsibility (which results directly from provisions of the Constitution) has been eclipsed by informal responsibility before the head of state (which does not have sufficient constitutional grounds). The reverse political situation, that is cohabitation, leads in turn to a significant loosening of the political ties between the president and the prime minister from different political camps. The latter resulted in the phenomenon of at least partial

reparliamentarisation of the Fifth Republic (Gicquel: 1989, pp. 69-79), understood as abandoning the paradigm of the president's dominance in the whole political system. The process was accompanied by the reconstruction of the role of the legislature as a political backing for the government, which undoubtedly constitutes a design typical of all truly parliamentary regimes.

Outside periods of cohabitation, political responsibility of the ministers before the head of state began to indirectly affect the second form of their political responsibility, that is the one before the first chamber. This process could be exemplified by the logic of political changes following François Mitterrand's victory in the 1981 presidential elections. The newly elected socialist president decided to dissolve the National Assembly immediately after taking office, which led to earlier parliamentary elections. The step was taken due to the fact that left-wing parties that could support the implementation of the electoral programme of the new head of state had been in the minority at the parliamentary level. What deserves to be emphasized is that the president had appointed a new socialist government led by Pierre Mauroy before the left gained the majority in the legislature (and even before the aforementioned dissolution of the first chamber) (Chevallier et al.: 2007, pp. 270-272; Thevenon: 2016, pp. 130-131). Hence, the victory of the left in the 1981 presidential elections contributed to delegitimation of the then existing parliamentary configuration, despite the fact that subsequent legislative elections had not yet been carried out. This proves that during such a transition period, the government created by the presidential party exists primarily because of the will of the head of state. On the other hand, the tacit consent of the parliamentary majority representing the opposite political camp is a necessary condition for maintaining such a cabinet. From today's perspective, a similar sequence of events is not exceptional. Nevertheless, the dissolution of the legislature does not constitute an indispensable element of such a scenario, an example of which may be the appointment of Prime Minister Édouard Philippe by President Emmanuel Macron directly after the 2017 presidential elections (*France: Edouard Philippe nommé...*). It should be remembered, however, that the wide autonomy of the head of the state is limited to a specific period of time between taking office by a newly-elected president and holding parliamentary elections directly after presidential ones. All this is another manifestation of implied legitimacy given to the government by the chamber which formally is able to overthrow the cabinet by passing a vote of no confidence. In turn, if the head of state decides to dismiss the government, even though the prime minister is not constitutionally obliged to accept the presidential decision, the head of the government follows the will of the head of state (under the conditions of majoritarian presidentialism). This can be seen as the result of incorporating, into the structure of the system of government, a principle that has no solid basis in constitutional provisions. It may be exemplified by dismissing Jean-Pierre Raffarin's government after the 2005 referendum lost by the then centre-right political camp built around President Chirac (Thevenon: 2016, pp. 213-215). Previous cases of the government's resignation forced by the president concerned, *inter alia*, Prime Ministers Michel Debré (1962) and Jacques Chaban-Delmas (1972) (Le Mong: 1989, pp. 233-234). Dismissals submitted by prime ministers were also repeatedly the effect of informal agreements between the head of state and the head of government. Thus,

these were not decisions made independently by prime ministers against the will of the head of state. Under the Fifth Republic, there has been only one such a case: the resignation made in 1976 by Jacques Chirac (after two years in office), who did not see the possibility of cooperation with President Valéry Giscard d'Estaing. What is more, prime ministers began to habitually resign not only after parliamentary elections, but also after presidential ones. The resignation of the socialist government led by Bernard Cazeneuve after the 2017 presidential elections confirms the durability of this political pattern (*Lettre de M. Bernard Cazeneuve...*). Such a practice was not sufficiently justified from the point of view of the adopted constitutional provisions, however, it was based on the concept of presidential domination over the cabinet, which was formed under the conditions of majoritarian presidentialism. It should be noted that such an unwritten rule was created after the resignation of the second government headed by Georges Pompidou, which took place following the 1965 presidential elections (Gohin: 2013, pp. 727-729).

Bearing in mind the above-mentioned dependence of the government on the president and the loosening of ties with the parliamentary majority whose support is not regularly verified, it should also be emphasized that outside periods of cohabitation, the presidentialisation of the political system affects parliamentary responsibility of the cabinet in a direct way, which means that the head of state has an overwhelming influence on the decision of the prime minister to apply procedures regulated in article 49. In accordance with the Constitution, their application requires prior consideration by the Council of Ministers (it should be remembered that the president presides over this body under its article 9). This in turn means that, when it comes to the procedures applied at the request of the prime minister, such discussion on parliamentary confidence in the government becomes practically possible only with the consent of the head of state. Under the configuration of majoritarian presidentialism, these mechanisms are *de facto* initiated by the head of the state. As political practice has shown, such an interpretation was taken into account not only during the Gaullist rule, but also after the first victory of the left-wing camp whose prominent members had previously strongly criticised various arrangements contained in the 1958 Constitution (Massot: 1987, pp. 288-289). The situation changes only in conditions of cohabitation, when the president loses the possibility of constant influence on the government. Thanks to this, the latter body obtains a much wider scope of maneuver in the implementation of its own policies. Undoubtedly, such a weakened head of state cannot effectively interfere with relations between the government and the parliament based on article 49 of the Constitution.

## 6. Conclusion and final remarks

Under the Fifth Republic, political responsibility of the government before the parliament has been subject to numerous constraints. They can be divided into legal restrictions which are conditioned by provisions of the 1958 Constitution, and political ones that arise from the phenomenon of presidentialisation of the French political system. When it comes to the former, rationalisation of parliamentarianism is of key

importance. Mechanisms stabilising the government and protecting this organ because of possible attempts to delegitimise the executive are the backbone of the rationalisation understood in this way. In combination with the majoritarian electoral system, it makes the overthrow of the cabinet by passing a vote of no confidence extremely difficult. There is no doubt that the objectives of rationalised parliamentarianism are then met. This phenomenon itself is not original and should be seen as a characteristic feature of modern systems of government, which are based on the principle of government's responsibility to the legislature (parliamentary and semi-presidential regimes). However, in the case of the institutional structure of the Fifth Republic, such a diagnosis of the existing situation would be far from sufficient. It deserves to be stressed that the French specificity is a visible strengthening of the presidency which goes far beyond the letter of the Constitution, contributing to the transformation of the whole existing system of government. Therefore, it has ceased to be a typical parliamentary system (although with a visible pro-presidential corrective). In practice, this has led to undermining the constitutional principle of political responsibility of ministers before the National Assembly. Parliamentary responsibility has thus transformed into an additional component of the whole institutional structure. As a result, the parliamentarians' confidence in the government is only implied and does not require formal verification even after the appointment of a new cabinet, which does not have to apply for a vote of confidence. Some signs of regress in this respect occurred only after cohabitation emerged, which meant a considerable weakening of the tight bond between the president and the government. However, this did not affect the effectiveness of mechanisms based on the rationalisation that hinder the adoption of a vote of no confidence by the National Assembly. Consequently, the parliamentary opposition (the incumbent president is then one of its broadly understood leaders) is unable to overthrow the government. What really changes in such conditions is that also the head of state is deprived of the ability to replace the existing cabinet with one that meets the expectations of the president. It can therefore be said that under French conditions, the formula of cohabitation secures the government against the head of state, but it does not weaken it in relations with the parliament. It means that basic assumptions of negative parliamentarianism are then observed. Only the above-discussed far-reaching presidentialisation of the political system seems to be largely undermined (Clift: 2005, pp. 221-224).

On the other hand, the legal changes allowing for holding parliamentary elections directly after presidential ones (the introduction of a five-year presidential term in 2000 and the change of electoral calendar in 2001) contribute to the fact that the formula of majoritarian presidentialism has become the only form of the functioning of the Fifth Republic since 2002. Although the emergence of cohabitation is not excluded, it seems to be much less probable. It is worth mentioning that the effects that the introduction of the five-year presidential term has brought have been strengthened by the aforementioned change in the order of presidential and parliamentary elections. The purpose of this modification was to avoid a situation in which presidential elections are carried out in the second place, directly after parliamentary ones. Such an unwanted change in the electoral calendar could possibly lead to a redefinition of the model of presidency shaped in the conditions of political homogeneity of the executive. As

political practice has shown, the priority of presidential elections directly affects the behaviour of voters during parliamentary ones. This gives an extra bonus to the political camp centred around the winner of presidential elections, limiting considerably the risk of another cohabitation (Magni-Berton, Robert: 2017, pp. 488-504). Hence, the above-mentioned highly presidentialised version of the French semi-presidential architecture results from consolidation of the configuration based on the political identity of the head of state, government and majority in at least the National Assembly (additionally also in the Senate). Under such conditions, a vote of no confidence may be perceived as an instrument that is not used effectively due to visible effects of the process of rationalising parliamentarism, but together with some other constitutional and strictly political mechanisms consolidates, somehow paradoxically, the logic of majoritarian presidentialism. It is due to the fact that if, according to the rules of a parliamentary model, the government must have a majority of deputies in order to be able to function (or at least there cannot be a majority that directly seeks to overthrow it), the accompanying consolidation of presidential domination over the government causes the head of state to become the main beneficiary of these components of the French constitutional machinery that, being rooted in the logic of parliamentarism, provide for the political identity of the cabinet and the parliamentary majority). What is more, a kind of vacuum that arises as an outcome of depriving the parliament of the possibility of replacing the government (the ineffectiveness of a vote of no confidence) has been filled by the head of state's ability to change the body regardless of political circumstances (provided that there exists the configuration of majoritarian presidentialism). As a result, the formalised (but strongly rationalised) government's responsibility to the parliament gives way to its informal responsibility to the president. In practice, only the latter body is able to effectively influence the functioning of cabinets in periods between successive parliamentary elections.

From the perspective of sixty years of the Constitution of the Fifth Republic, a vote of no confidence should thus be regarded as nothing but a formal component of the constitutional system of government, which, however, is an indispensable condition for recognising it as a semi-presidential one. Real possibilities to dismiss cabinets remain solely in the hands of the head of state. This means that the ineffectiveness of the parliament striving to defeat an existing government does not necessarily lead to its full stabilisation understood as an inability to overthrow the body for political reasons. From the point of view of durability of cabinets, semi-presidentialism may turn out to be much less stable than a highly rationalised parliamentary model in which the cabinet does not bear political responsibility before the president, while being effectively protected against attacks by the legislature<sup>6</sup>. As a consequence, in spite of evident neutralisation of a vote of no confidence, which is no longer a tool for effective parliamentary influence on ministers, the French case confirms the assumption that semi-presidentialism, as a structure based on parliamentary responsibility of the government as well as on the presidency more or less strengthened in comparison with its counterpart in a typical parliamentary regime, does not favour very long persistence of cabinets. This proves that a semi-presidential model can, in specific circumstances,

6 Governments in pure parliamentary systems never have "two elected principals" (presidents and legislatures). Conversely, they potentially exist in semi-presidential regimes (Schleiter, Morgan-Jones: 2009, p. 887).

effectively limit the stabilising influence of mechanisms that create links between the government and the parliament in line with the process of rationalisation. However, it must be stipulated that this kind of instability does not mean in any way a return to monistic parliamentarianism known from the two previous Republics. Although French governments change relatively frequently (much more often than it could result from the rhythm of parliamentary elections), they are all entrusted, under the configuration of majoritarian presidentialism, with the task to implement a given presidential programme, which is to remain a clearly defined reference point during the term of office of the incumbent head of state.

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