

THEORETICAL FRAMEWORK OF BALANCED SEMI-PRESIDENTIALISM, ITS INSTITUTIONAL RISKS/POSITIVES AND PROSPECTS FOR REFORMATION IN UKRAINE¹

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The article is dedicated to analysing the features of balanced semi-presidentialism compared to other types of semi-presidentialism constitutional system of government. The author outlined theoretical features, institutional risks and positives of balanced semi-presidentialism at the example and experience of different countries and singled the history of formation and prospects for reformation of balanced semi-presidentialism in Ukraine.

Keywords: semi-presidentialism, dual executive, president, prime minister, government, parliament, balanced semi-presidentialism, Ukraine.

ТЕОРЕТИЧНІ ОСОБЛИВОСТІ ЗБАЛАНСОВАНОГО НАПІВПРЕЗИДЕНТАЛІЗМУ, ЙОГО ІНСТИТУЦІЙНІ РИЗИКИ/ПОЗИТИВИ ТА ПЕРСПЕКТИВИ РЕФОРМУВАННЯ В УКРАЇНІ

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У статті проаналізовано особливості збалансованого напівпрезиденталізму на фоні інших типів напівпрезидентської конституційної системи правління. Окреслено теоретичні особливості, інституційні ризики та позитиви збалансованого напівпрезиденталізму на прикладі та досвіді різних країн світу. Виокремлено історію становлення і перспективи реформування збалансованого напівпрезиденталізму в Україні.

Ключові слова: напівпрезиденталізм, дуалізм виконавчої влади, президент, прем'єр-міністр, уряд, парламент, збалансований напівпрезиденталізм, Україна.

Because of massive protests in Ukraine in November 2013 – February 2014 (because of the suspension of the Ukraine's European Integration processes by the President and the Government of Ukraine and systematic society's resistance to the existing political structure), the dictatorial (in the form of competitive electoral authoritarianism) regime of Viktor Yanukovich has been overthrown. After that

¹ Preliminary and early Ukrainian versions of the scientific article were published in other scientific journals. For more information see: V. Lytvyn, *Teoretychni osoblyvosti, instytutsiini ryzyky ta pozytyvy zbalansovanoho napivprezidentalizmu i perspektyvy yoho reformuvannia v Ukraini*, "Studia Politologica Ucraino-Polona: Ukrainsko-polski politolohichni studii", 2015, vol 5.; V. Lytvyn, *Zbalansovanyi napivprezidentalizm: teoretychni osoblyvosti, instytutsiini ryzyky ta pozytyvy i perspektyvy reformuvannia v Ukraini*, "Nova paradyhma" 2014, vol 125, s. 145–163.

the semi-presidential system of government (or semi-presidentialism) in Ukraine has been changed from presidentialised president-parliamentary type into balanced premier-presidential (a similar manoeuvre by the system of government in Ukraine was carried out in 2004–2006). Respectively, the powers of the president were significantly limited, at least on presidential participation in formation and resignation of cabinet and other central government authorities. In a cut of results of early presidential elections held in May 2014 and unstable domestic and foreign political situation in Ukraine, there was hold a course for the adoption of constitutional amendments and, respectively, for determination of a new place of key political institutions in a system of balanced semi-presidentialism in Ukraine. A topical issue in this context was the question of an adequate framework, risks and prospects of balanced semi-presidentialism as a category, which is differently disclosed in the Western and Ukrainian Political Science, as well as the outlining of perspectives for the reformation of balanced semi-presidentialism in Ukraine.

This is a complicated and complex problem and it's solving is practically impossible without the knowledge of theoretical framework, institutional risks and positives, which are peculiar to a balanced semi-presidentialism in different countries. At the same time, the problem of balanced semi-presidentialism in Ukraine can be understood only in the context of the consideration of the evolutionary consequences of different systems of government in 1991–2015. With the help of the theoretical and empirical information and knowledge about the system of a balanced semi-presidentialism, we can understand the peculiarities, risks and prospects of its development and reformation in every country, including Ukraine. Nevertheless, a range of problems of a balanced semi-presidentialism as a type of a constitutional system of government is released mainly in a passing or observation way. This is especially immanent to Ukrainian and Russian Political and Legal Science, where the questions of institutional balance and balanced semi-presidential system of government, but mostly not balanced semi-presidentialism as a constitutional type were investigated by lots of researchers. Among them, we separate O. Zaznaev², V. Lytvyn³, R. Martyniuk⁴,

² O. Zaznaev, *Poluprezydentskaia sistema: polytyko-pravovoi analiz*, Kazan 2006.

³ V. Lytvyn, *Do problemy rozrznennia napivprezydentalizmu ta parlamentaryzmu: napivprezydentski systemy z nominalnymy prezidentamy u Tsentralnii Yevropi (na prykladi Bolharii, Slovachchyny, Slovenii ta Chekhii)*, [w:] Z. Bialoblocki, A. Romanyuk (eds.), *Rozwój polityczny i społeczny państw Europy Środkowej i Wschodniej*, Kutno 2013, s. 149–171.; V. Lytvyn, *Klasyfikatsiia yevropeiskoho pivprezydentalizmu*, "Demokratychni vriaduvannia: Elektronne naukove fakhove vydannia" 2009, vol 3.; V. Lytvyn, *Napivprezydentska systema pravlinnia: konstytutsiino-pravovi vyklyky ta perspektyvy dlia Ukrainy na tli svitovoho instytutsiinoho dosvidu*, [w:] *Konstytutsiia Ukrainy: polityko-pravovi vyklyky i perspektyvy: Materialy nauково-praktychnoi konferentsii*, Wyd. Lvivskiy natsionalnyi universytet imeni Ivana Franka 2014, s. 38–63.; V. Lytvyn, *Napivprezydentski systemy v krainakh Tsentralnoi Yevropy: determinanty definiuvannia*, [w:] Z. Bialoblocki, A. Romanyuk (eds.), *Transformacje ustrojowe w Europie Srodkowej i Wschodniej*, Kutno 2012, s. 207–225.; V. Lytvyn, *Podviina vykonavcha vlada: teoriia ta praktyka yevropeiskoho pivprezydentalizmu*, "Osvita rehionu: politolohiia, psykhologhiia, komunikatsii" 2009, vol 3, s. 25–33.; V. Lytvyn, *Respublikanizm iz posadoiu superprezydenta: do ziasuvannia suti superprezydentalizmu ta dyferentsiatsii prezydentskykh i napivprezydentskykh system pravlinnia z superprezydentamy*, "Studium Europy Srodkowej i Wschodniej: Wydawnictwo Wyzszej Szkoły Gospodarki Krajowej w Kutnie" 2014, vol 1, s. 159–188.

⁴ R. Martyniuk, *Perehliad formy pravlinnia v Ukraini: motyvy ta zmist konstytutsiinoho reformuvannia*, "Chasopys Natsionalnoho universytetu "Ostrozka akademiia". Serii "Pravo" 2013, vol 2, nr 8.; R. Martyniuk, *Funktsionuvannia zmishanoi formy pravlinnia v Ukraini na suchasnomu etapi: otsinka rezultativ*, "Naukovi zapysky": Natsionalnyi universytet "Ostrozka akademiia" (Serii "Politychni nauky") 2008, vol 3, s. 218–226.

S. Seregina⁵, K. Babenko⁶, M. Stavniychuk⁷, Y. Shemshuchenko⁸, V. Kreydenko⁹ and I. Salo¹⁰. However, the problem of a balanced semi-presidentialism is better brought into the open space in works and ideas of the representatives of Western Political Science, including R. Elgie¹¹, M. Shugart and J. Carey¹², H. Bahro¹³, C. Skach¹⁴, T. Jung-Hsiang¹⁵, T. Sedellius¹⁶, A. Stepan and E. Suleiman¹⁷, W. Yu-Shan¹⁸ and others. Nevertheless, even in the works of above-mentioned researchers too little attention is paid to the questions of theoretical comprehension and nature of balanced semi-presidentialism as a type of constitutional system of government, its institutional risks, challenges and positive aspects, not to mention the prospects for reformation of the balanced semi-presidentialism in Ukraine. To solve these problems is the task of the offered research. It should take place in a clear and consistent connection from the clarification of what today is traditionally meant by balanced semi-presidentialism to clarifying its varieties, in particular from the definition of balanced semi-presidentialism, determination its characteristics, challenges and positives to determination the prospects of balanced semi-presidentialism reformations in Ukraine.

Semi-presidentialism is a system of government and a constitutional model with a position of a nationwide and directly elected for a fixed term president (usually as a head of state, but sometimes as a head of state and a chief executive) and with positions of prime minister and cabinet, which are necessarily collectively responsible to parliament. The above-mentioned definition of semi-presidentialism does not consider the authority of presidents, prime ministers (cabinets) and parliaments. Therefore, it is not necessary to refer to the relational properties of political process that is why the avoidance of the subjective elements

⁵ S. Serohina, *Forma pravlinnia v Ukraini: konstytutsiino-pravovyi aspekt*, Wyd. Yurydychna akademiia Ukrainy imeni Yaroslava Mudroho 2012.

⁶ K. Babenko, *Konstytutsiino-pravovi mekhanizmy zbalansuvannia vlady v protsesi vzaiemodii uriadu i parlamentu*, "Visnyk Tsentralnoi vyborchoi komisii" 2008, vol 3, nr 18, s. 76–82.

⁷ M. Stavniichuk, *Nova Konstytutsiia yak instrument konstruiuvannia efektyvnoi vlady*, "Stratehichni priorityty" 2008, vol 2, nr 7, s. 9–11.

⁸ Y. Shemshuchenko, *Problemy ukrainskoho parlamentaryzmu u svitli konstytutsiinoi reformy v Ukraini*, "Stratehichni priorityty" 2008, vol 2, nr 7, s. 99–104.

⁹ V. Kreidenko, *Instytut prezidentsva v Ukraini: porivnialnyi analiz 2004–2012 rr.*, "Efektyvnist derzhavnogo upravlinnia: Zbirnyk naukovykh prats" 2012, vol 30, s. 151–157.

¹⁰ I. Salo, *Shliakhy zabezpechennia balansu vlad v Ukraini u mezhakh chynnoi konstytutsiinoi modeli*, "Stratehichni priorityty" 2010, vol 1, s. 60–65.

¹¹ R. Elgie, *Semi-presidentialism in Europe*, Wyd. Oxford University Press 1999.; R. Elgie, *The classification of democratic regime type: conceptual ambiguity and contestable assumptions*, "European Journal of Political Research" 1998, vol 33, nr 2, s. 219–238.

¹² M. Shugart, J. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Wyd. Cambridge University Press 1992.

¹³ H. Bahro, *Virtues and vices of semi-presidential government*, "Journal of Social Sciences and Philosophy" 1999, vol 11, nr 1, s. 1–37.

¹⁴ C. Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, Wyd. Princeton University Press 2005.; C. Skach, *Constitutional origins of dictatorship and democracy*, "Constitutional Political Economy" 2006, vol 16, s. 347–368.

¹⁵ T. Jung-Hsiang, *Sub-types of Semi-presidentialism and Political Deadlock*, "French Politics" 2008, vol 6, nr 1, s. 63–84.

¹⁶ T. Sedelius, *The Tug-of-War between Presidents and Prime Ministers: Semi-Presidentialism in Central and Eastern Europe*, Wyd. Örebro Studies in Political Science 2006.

¹⁷ A. Stepan, E. Suleiman, *The French Fifth Public: A Model for Import? Reflections on Poland and Brazil*, [w:] H. Chehabi, A. Stepan, J. Linz (eds.), *Politics, Society and Democracy: Comparative Studies*, Wyd. Boulder 1995, s. 394–414.

¹⁸ W. Yu-Shan, *Semi-presidentialism Easy to Choose, Difficult to Operate: The Case of Taiwan*, [w:] R. Elgie, S. Moestrup (eds.), *Semi-presidentialism Outside Europe*, Routledge 2007, s. 201–218.

of the analysis is taking place. The powers of the main institutions vary depending not only on constitutional, but also political conditions, including the results of nationwide presidential and parliamentary elections¹⁹. Thus formal (constitutional and legal) and actual (political) powers of presidents, prime ministers (cabinets) and parliaments significantly affect the actual positioning of semi-presidential systems of government, well-established examples of which in 2015 there were such countries as Austria, Croatia, Finland, France, Georgia, Iceland, Ireland, Lithuania, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Taiwan, Ukraine etc. Generally, at the beginning of 2015, more than 50 states were counted as semi-presidential systems of government. The thing is that different semi-presidential systems of government in different periods of their development can be personalised (in particular in favour of strengthening of formal (constitutional and legal) and actual (political) powers of presidents, prime ministers or parliaments) or can remain institutionally unchanged or even balanced. This means that semi-presidentialism in practice (actually or politically) can be drawn nearer to presidentialism or parliamentarism, at the same time remaining constitutionally unchanged, or can actually and formally meet semi-presidentialism as institutionalized system of government.

It definitely means that all semi-presidential systems of government (which, in virtue of taking into account formal powers of prime ministers, presidents and parliaments, are subdivided into president-parliamentary and premier-presidential types), based on consideration of the actual powers of presidents, prime ministers and parliaments, should be divided into different types²⁰, because of consideration of executive dualism's peculiarities. In particular, there may be semi-presidential systems of government with weak (nominal or ceremonial) presidents and respectively with stronger prime ministers, cabinets and parliaments. They function in a parliament-like way, because presidents in such systems are symbolic leaders who have little or no constitutional powers and are nominal heads of state, rather than active creators of political (executive) decisions. Instead, the real power belongs to prime ministers/parliaments, which are responsible for all aspects of the country's political life. This means that direct and nationwide presidential elections in such semi-presidential systems may legislate a government and allow officials to be representatives of the whole country. However, an absence of constitutive presidential powers means that a legitimacy of presidential powers will not be directly turned against prime minister. Therefore, a legitimacy of presidential powers will not localize a president as political competitor of a prime minister. On the other hand, we can find semi-presidential systems, where the entire political process is being held around presidents, so that the latest are very strong and even omnipotent (respectively the powers of prime ministers, cabinets and parliaments are weak)²¹. Such systems are usually formed in undemocratic

¹⁹ V. Lytvyn, *Podviina vykonavcha vlada: teoriia ta praktyka yevropeiskoho pivprezydentalizmu*, "Osvita rehionu: politolohiia, psykholohiia, komunikatsii" 2009, vol 3, s. 25–33.

²⁰ R. Elgie, *The classification of democratic regime type: conceptual ambiguity and contestable assumptions*, "European Journal of Political Research" 1998, vol 33, nr 2, s. 219–238.

²¹ O. Amorim Neto, K. Strøm, *Breaking the Parliamentary Chain of Delegation: Presidents and Non-partisan Cabinet Members in European Democracies*, "British Journal of Political Science" 20096, vol 36, s. 619–643.

political regimes and therefore cause a lot of controversy, because despite the fact that democracy has moved pertaining to consolidation in terms of civil benefits, strengthening of civil liberties and political rights they have a serious defect in a horizontal responsibility, checks and balances of the presidency²². That is why the combination of a semi-presidentialism with a strong president and a weak prime minister (cabinet) is not always terminal for democracy development. There can also exist semi-presidential systems of government where the powers of presidents, prime ministers/cabinets and parliaments are commensurable or nearly commensurable, namely the systems of government with a different "rough balance" correlation of the power of presidents, prime ministers (cabinets) and parliaments. Nevertheless, always provided that dominance (prevalence) of presidents, prime minister (cabinets) or parliaments should not be critical²³. Countries with the first type of semi-presidential systems of government as of 2015 were, for instance, Austria, Bulgaria, Finland, Iceland, Ireland, Slovenia, the Czech Republic, Slovakia etc., with the second type of semi-presidential systems of government – Azerbaijan, Belarus, Russia, Kazakhstan etc. and with the third type of semi-presidential systems of government – Croatia, France, Georgia, Lithuania, Poland, Portugal, Romania, Ukraine etc. Such conclusion is based on the application of the most widespread methods of evaluation of presidential powers, such as A. Siaroff²⁴, T. Frye²⁵, M. Shugart and J. Carey²⁶, R. Elgie, D. Doyle²⁷, C. Bucur, B. Dolez, A. Laurent²⁸ etc.

Aiming to analyse the balanced semi-presidentialism, we will scrutinize theoretical peculiarities, constitutional and legal as well as political challenges or risks of this system of government, institutional prospects of its improving in Ukraine. On the example of such countries as Croatia, France, Georgia, Poland, Romania and Ukraine (as of 2015 and before) it can be seen that a decisive predominance of

²² A. Croissant, *From transition to defective democracy: Mapping Asian democratization*, "Democratization" 2004, vol 11, nr 5, s. 163.

²³ The proposed typology of semi-presidential systems of government is largely based on the ideas of R. Elgie that grounded on the consideration of power/leadership of presidents and prime ministers as well as binding to the democratic political transit subdivided semi-presidential systems into subtypes. 1) Systems of predominance leadership: a) systems of prime minister's predominance, where a prime minister holds greater powers than a president; b) systems of president's predominance, where a president prevails over a prime minister. 2) Systems of shifting from predominance leadership: a) systems of shifted predominance from a president to a prime minister; b) systems of shifted predominance from a balanced model to a prime minister. 3) Systems of a balanced leadership, where periods of a prime-ministerial, a presidential and divided government alternate with each other. We also believe that systems of a limited prime minister's predominance should be considered as a separate type of semi-presidentialism. For such systems, there is common a semi-presidentialism based on a system of prime minister's predominance (semi-presidentialism with a nominal president), which is characterised in conditions of unified majority systems (when a prime minister and a president have the same majority in a parliament). In return, there is common a semi-presidentialism based on a limited prime minister's predominance, which is characterised in conditions of divided majority systems (i.e. cohabitation, when a president does not have the support of parliamentary majority, which on the contrary have a cabinet and a prime minister). See detailed: R. Elgie, *Semi-presidentialism in Europe*, Wyd. Oxford University Press 1999, s. 282–286.

²⁴ A. Siaroff, *Comparative presidencies: the inadequacy of the presidential, semi-presidential and parliamentary distinction*, "European Journal of Political Research" 2003, vol 42, s. 287–312.

²⁵ T. Frye, *A politics of Institutional Choice: Post-Communist Presidencies*, "Comparative political studies" 1997, vol 30, nr 5, s. 523–552.

²⁶ M. Shugart, J. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge 1992.

²⁷ D. Doyle, R. Elgie, *Maximizing the Reliability of Cross-National Measures of Presidential Power*, "British Journal of Political Science" 2015 (online), s. 1–11.

²⁸ R. Elgie, C. Bucur, B. Dolez, A. Laurent, *Proximity, Candidates, and Presidential Power: How Directly Elected Presidents Shape the Legislative Party System*, "Political Research Quarterly" 2014, vol 67, nr 3, s. 467–477.

powers of a president, a prime minister (cabinet) or a parliament is not a characteristic feature of balanced semi-presidentialism, especially apropos of the realization of executive power. On the contrary, there is peculiar the shift from the predominance of a president, a prime minister and a parliament to the greater personalisation of a system of government by their separate powers and respectively the complication of executive dualism. Therefore, Western scholars the most frequently criticise balanced (with powers of a president, prime minister (cabinet) and parliament) semi-presidential system of government among all three types of semi-presidentialism distinguished based on peculiarities of dual executive. The thing is that such type of semi-presidentialism most frequently leads to different scenarios of "blocked" constitutional and inter-institutional conflicts. Especially, when voters do not provide with a parliamentary majority any centre of executive. It is largely seen during cohabitation (a situation when a president does not have the support of the parliamentary majority that, on the contrary, a prime minister and a cabinet have) when, according to H. Linz and A. Stepan²⁹, the control over the process is lost and the legitimacy level of the state power is reduced³⁰. However, it is even possible in the case of unified majority system, when a prime minister and a president have the same majority in a parliament or they even represent the same political party or coalition.

Taking into consideration T. Jung-Hsiang's³¹ standpoint that at various times different stages of realization, especially president predominating, prime minister predominating, parliament predominating, cohabitational and balanced ones can be the characteristics of any type of semi-presidentialism³², it is obvious that balanced semi-presidentialism is a priori placed in even more unfavourable situation on comparison with the other types of semi-presidentialism. It is theoretically more exposed to the greater number of constitutional, legal and political challenges and risks. The point is that when opposite power institutes (president, prime minister (cabinet), government) reach parity in balanced semi-presidentialism, they will probably compete for the right to conduct legislation and realize executive authority. This explains the fact that in spite of the formal norm that a parliament is the highest institution of legislative power when it comes to balanced semi-presidentialism practically it's not always an institute that unilaterally realises the legislative power as the latter one depends largely on the influence of a president, a prime minister and a cabinet³³. Especially, when the opposing president, prime minister and parliament have the same factual political powers and compete for the power to conduct legislation. Therefore, the balanced

²⁹ J. Linz, A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, Wyd. Johns Hopkins University Press 1996, s. 286.

³⁰ V. Lytvyn, *Teoretyko-metodolohichni "khvyli" doslidzhennia respublikanskykh system derzhavnoho pravlinnia: vid V. Badzhekhota do R. Elhi*, "Visnyk Lvivskoho universytetu: Seriya. Filosofsko-politolohichni studii" 2013, vol 3, s. 146–155.; V. Lytvyn, *Teoriia ta praktyka kohabitatsii v napivprezidentskykh systemakh Yevropy*, "Osvita rehionu: politolohiia, psykhologhiia, komunikatsii" 2011, vol 4, s. 140–149.; A. Romaniuk, V. Melnyk, *Instytut kohabitatsii ta politychni naslidky yoho realizatsii v Ukraini*, "Suchasna ukrainska polityka: polityky i politolohy pro nei" 2009, vol 17, s. 69–73.

³¹ T. Jung-Hsiang, *Sub-types of Semi-presidentialism and Political Deadlock*, "French Politics" 2008, vol 6, nr 1, s. 63–84.

³² Depending on constitutional, legal, institutional and political parameters of a system of government in the context of the powers of a parliament and a president and depending on the partisan composition of a parliament.

³³ H. Bahro, *Virtues and vices of semi-presidential government*, "Journal of Social Sciences and Philosophy" 1999, vol 11, nr 1, s. 1–37.; C. Skach, *Constitutional origins of dictatorship and democracy*, "Constitutional Political Economy" 2006, vol 16, s. 347–368.

semi-presidentialism causes inter-institutional conflicts and political crisis in the system of dual executive the most frequently in comparison with other types of semi-presidentialism³⁴.

The most strikingly it is seen in the case of the cohabitational and balanced stages of balanced semi-presidentialism. The first one has been represented by balanced semi-presidentialism in Croatia, France, Georgia, Lithuania, Poland, Romania, Portugal and Ukraine³⁵, and is described by the situations when a president and a prime minister belong to the opposing parties that do not simultaneously take part in cabinet formation. The sources of state, in particular the executive one, powers of a president and a prime minister, which are commensurable or almost commensurable in terms of their authority, are respectively different in such situations. In particular, a legitimacy of constitutionally influential president depends on the direct popular elections and legitimacy of the prime minister depends on the control of the majority in popularly elected parliament. As a result, a prime minister (irregardless of semi-presidentialism being president-parliamentary or premier-presidential) is responsible for the major part of legislative and executive power while a president takes over a part of his/her responsibilities in some reserve spheres, issues and fields of internal and foreign policy. Moreover, a president usually (but not always) has additional balancing powers. He/she may, for instance, dissolve a parliament, suggest passing any bill of parliament for constitutional court examination or even send a bill back to parliament for modifying³⁶. Furthermore, a president traditionally is empowered to control a cabinet's activity and even to control its meeting in a system of balanced semi-presidentialism. This means that a president who does not have the support of the majority of a parliament even on the cohabitational stage of balanced semi-presidentialism is neither similar to a president in semi-presidential system of government with a nominal president not to a president in parliamentary system. In such system, a president is not a symbolic national leader because is greatly empowered to influence reaching a political decision and its realization. The paradox lies in the fact that it leads to the conflict between a president and a prime minister in the system of dual executive as their constitutional and legal powers turn out to be commensurable or almost commensurable, but a prime-minister actually prevails. A prime minister predominates in legislation procedure issues. On the contrary, a president is empowered to make final decisions in some spheres of politics. President-parliamentary semi-presidential systems (only on the condition that cohabitation is possible), where a presidential right to dismiss a cabinet on his own is institutionalized, correct the situation.

As for the balanced stage of balanced semi-presidentialism that is less frequently applied in different semi-presidential systems of government, including European counties, it leads to the greater number of political and institutional challenges and risks. The point is that according to T. Jung-Hsiang the balanced

³⁴ V. Lytvyn, *Klasyfikatsiia yevropeiskoho pivprezydentalizmu*, "Demokratychnе vriaduvannia: Elektronne naukove fakhove vydannia" 2009, vol 3.

³⁵ V. Lytvyn, *Teoriia ta praktyka kohabitatsii v napivprezydentskykh systemakh Yevropy*, "Osvita rehionu: politolohiia, psykholohiia, komunikatsii" 2011, vol 4, s. 140–149.

³⁶ L. Helms, *Five Ways of Institutionalizing Political Opposition: Lessons from the Advanced Democracies*, "Government and Opposition" 2004, vol 39, nr 1, s. 22–54.

stage of semi-presidentialism presupposes the confrontation between a nationally elected president and a parliament on the condition that neither party nor coalition hold legislative and parliamentary majority³⁷. This usually happens when minority cabinets are formed or when cabinets, which rely on the situational support of parliamentary minority (it can be majority/minority cabinets as well as technocratic/nonpartisan cabinets), do not incorporate into their ranks the representatives of those parties, deputy groups and separate deputies who provide cabinets with the support of majority. Practically, in each of such cases, the logic of the cabinets' functioning is an institutional model based on the principles of the minority or situational majority. That is why inter-institutional and political dynamics, including the one at the parliamentary arena, can quickly change/shift, and the political system can be characterized by different *ad hoc* alliances in an attempt of any institution (a parliament, a president or a cabinet) to implement legislation. In some cases, when cabinet formation is based on the situational legislative/ parliamentary majority, parliaments are given the authority for implementation of legislation. However, in other cases, usually during the formation of minority cabinets, situation is not achieved and, as a result, the so-called "double legislation" is institutionalized. The classical historical examples of such a phase of balanced semi-presidential systems of government were the following: Weimar Republic in 1918–1933, Russian Federation in 1991–1993 (before the new constitution was adopted) or Georgia in 1992–1993. Because of each of the examples of the implementation of a phase of balanced semi-presidentialism the upheaval or "civil", i.e. without the use of the armed forces, usurpation of state power took place: in Germany – by A. Hitler, in Russia – by B. Yeltsin, in Georgia – by E. Shevardnadze. As a result, the constitutional systems of government of these states were immediately reformed and political regimes were gradually authoritarianised. In this respect, those semi-presidential systems of government are considered particularly "dangerous" for the establishment and development of democracy that regulate the right of a presidents to issue orders/decrees with the force of a law outside of their formal powers, particularly till they do not contradict the valid laws. In fact, it means that a lot of challenges and risks are caused by balanced semi-presidential systems of government, which make possible the implementation of "double legislation": on one side, by a parliament and on the other side, by a president, especially, when head of state is vested with powers to send bills for amending or consideration. The parliament is vested with the power to use both the vote of confidence (investiture vote) and the vote of no confidence and to overcome a presidential veto (especially by an absolute, not a qualified, majority of the nominal parliamentary composition). The fact is that an order with the force of law, overweighed by a parliament, provides the basis for the inter-institutional conflict in balanced semi-presidential system of government.

It is generally obvious that balanced semi-presidential system of government is determined by such political and institutional challenges and risks as:

³⁷ T. Jung-Hsiang, *Sub-types of Semi-presidentialism and Political Deadlock*, "French Politics" 2008, vol 6, nr 1, s. 63–84.

1) It maximally (in comparison with other types of semi-presidential systems) enhances the possibility of occurrence and rise of tension between a government institutions in the system of dual executive (primarily between a president and a prime minister, who are vested with a support of various party forces in a parliament, especially under the condition of a minority cabinet formation);

2) It potentially and theoretically minimizes the level of democracy of the political process and the legitimacy of political power as well as its efficiency in counties that only began their transformation (unlike semi-presidential systems of government with strong and even all-powerful presidents, which maximally limit the level of democracy of political process and facilitates authoritarianism)³⁸;

3) It complicates or temporarily makes it impossible to oust a president, a prime minister or a parliament having lost legitimacy and violated the principles of democracy, retains the state power in their hands (especially in the absence of consensus and non-realization of the principle of cabinet formation);

4) The probability of the inter-institutional situations development, when neither president nor prime minister, nor any party or coalition have an independent majority in the legislature, is greater than in other types of semi-presidential systems³⁹. As a result, coalitions and cabinets are permanently changed and presidents constantly and excessively interfere in cabinets' activity and use their reserve powers⁴⁰.

In addition, the phenomenon of balanced semi-presidential system of government is represented as the most institutionally unstable of the rest of the types of semi-presidentialism. The fact is that it is constitutionally based according to the program on the idea of legal commensurability and balance of the powers of presidents and prime ministers as the centres of executive power exercising. A president in this respect can demand the exertion of the dominant impact on the political process taking into account the fact that he/she is elected at the nationwide election for protection of the interests of the whole country, while a prime minister/cabinet is elected by a parliament only based on the electorate of the ruling parties. Therefore, it is clear that the violation of stability in balanced semi-presidential systems of government is the projection of balancing of "double legitimacy" of the head of state and head of cabinet as well as the commensurability of their powers in the executive. In conditions of balanced semi-presidential system of government, presidents that are elected at the nationwide election clearly (however always subjectively) understand the fact that their formal powers not always or not entirely correspond to the mandate they received from the electorate⁴¹. The situation is exacerbated by cases of cohabitation when presidents, even weaker than prime ministers, based on their personal public popularity try to act like "the interpreters of

³⁸ J. Linz, A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, Wyd. Johns Hopkins University Press 1996, s. 286.; A. Stepan, E. Suleiman, *The French Fifth Public: A Model for Import? Reflections on Poland and Brazil*, [w:] H. Chehabi, A. Stepan, J. Linz (eds.), *Politics, Society and Democracy: Comparative Studies*, Wyd. Boulder 1995, s. 394–414.

³⁹ C. Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, Wyd. Princeton University Press 2005, s. 17–18.

⁴⁰ W. Yu-Shan, *Semi-presidentialism Easy to Choose, Difficult to Operate: The Case of Taiwan*, [w:] R. Elgie, S. Moestrup (eds.), *Semi-presidentialism Outside Europe*, Routledge 2007, s. 201–218.

⁴¹ T. Sedelius, *The Tug-of-War between Presidents and Prime Ministers: Semi-Presidentialism in Central and Eastern Europe*, Wyd. Örebro Studies in Political Science 2006, s. 251.

the public will" in their attempt to find additional (actual) advantage over the political system. In addition, vice versa situation is about prime ministers, slightly weaker than presidents, who face the dilemma about exercising of executive powers in "political arenas" ("domains") that are represented as constitutionally controversial/ambiguous. The abovementioned problem becomes even more pronounced in the cases when the implementation of social, political and economic reforms, for which heads of cabinets, not presidents, are directly responsible, is unsuccessful. Such institutional paradox argues the dilemma of double legitimacy of balanced semi-presidential system of government and this is not typical for other types of semi-presidentialism and even parliamentarism. In addition, it is obvious that in an attempt to "expand one's legitimacy in practice" and officially "balance" semi-presidential systems of government presidents and prime ministers may violate its political and inter-institutional stability. On the other hand, the positive feature of balanced semi-presidentialism, as it is often believed, is the fact that it enables sufficient fragmentation, fractionalisation and polarization of party systems and, therefore, their competition, facilitates the consolidation of democracy. However, it is only possible when at the early stage of its transition, the balanced semi-presidential system has not caused collapse or "roll back" of democracy and a political system is based on the comprehensive political consensus and pluralism. In addition to that, the impact of an electoral system on the probable efficiency of balanced semi-presidential system of government wavers between "pure" plurality and proportional representation, and in each case, it requires analysis.

While extrapolating the problem of balanced semi-presidential system of government to Ukraine, we take into account the institutional experience of the implementation of this system of government in Ukraine and the necessity for designing of institutional prospects of its reformation. The balanced semi-presidential system of government in Ukraine was tested three times. 1) In August 1991 – June 1995 under president-parliamentarism, when divided majority semi-presidential system prevailed in its parliament predominating phase. 2) In January 2006 – October 2010 p. under premier-presidentialism, when the system alternated between the unified majority and divided majority in their president predominating and cohabitation phases. 3) Starting from February 2014 under premier-presidentialism, when the system functioned as unified majority under prime minister predomination or cohabitation phase. Each time of balanced semi-presidentialism test caused actual strengthening of presidents' powers, and then their consolidation and constitutional recognition. That is why in 1995 Ukrainian balanced semi-presidentialism was initially reformed into presidentialism and subsequently, in 1996, into president-parliamentary president-like or presidentialised form of semi-presidentialism, which was permanently implemented in president predominating phase⁴². A similar "turn" was made by Ukrainian semi-presidential system in 2010. The result in both cases was the regression of democratic values. Thus, the third approbation of balanced semi-presidentialism requires essential reconstruction and institutional reform, taking into consideration

⁴² V. Lytvyn, *Napivprezidentska systema pravlinnia: konstytutsiino-pravovi vyklyky ta perspektyvy dlia Ukrainy na tli svitovoho instytutsiinoho dosvidu*, [w:] *Konstytutsiia Ukrainy: polityko-pravovi vyklyky i perspektyvy: Materialy naukovo-praktychnoi konferentsii*, Wyd. Lvivskiy natsionalnyi universytet imeni Ivana Franka 2014, s. 38–63.

both negative and positive experiences of Ukraine and other countries, or even it might be modified to semi-presidentialism with a ceremonial president or even to parliamentarism. However, as the object of the research is balanced semi-presidentialism, the focus will be on the institutional prospects of its reformation in Ukraine.

In case of the prolonged approbation of the premier-presidential semi-presidentialism balanced by the influence of president and prime minister of Ukraine, it is appropriate (as in the case of France and Romania) to apply to the conduct of simultaneous (two during one year) presidential and parliamentary elections⁴³. In this way the responsibility of determining the key actor in Ukrainian dual executive, i.e. president or prime minister, will be taken on by electors, which would determine who exactly in a given period of time will dominate and use "greater" legitimacy. Simultaneity of nationwide presidential and parliamentary elections in balanced semi-presidentialism as the theory and practice show (particularly in Ukraine in 2014) usually have positive effect on actual increased powers of a president as the winner party of presidential elections usually becomes also the winner of parliamentary elections. Taking into consideration the experience of France and Romania, it is significantly contributed by the electoral systems for the formation of parliaments with significant influence of majority electoral system component, including relative majority (first-past-the-post) electoral system in France or mixed membership majority system with single ballot in Romania. However, the majority component of electoral systems to the large extent found the middle ground itself in Ukraine. That is why, according to the analogy with successful examples of balanced semi-presidentialism in other European countries (e.g., Lithuania, Poland, Georgia, Croatia, where the principle of simultaneous presidential and parliamentary elections is not approved) it may be modified to a proportional system with open/preferential regional lists. Instead, it may remain mixed parallel electoral system (majority-proportional electoral system, perhaps with slightly different proportions than in 2014, in favour of the proportional component) with significant changes in the majoritarian component in favour of party interests' representation. As far as the electoral formula for proportional representation or proportional component of mixed electoral system is concerned, the issue in the context of Ukraine is quite controversial and is not the objective of the research. However, it is clear that the electoral formulas are helping to stabilize balanced semi-presidentialism, these formulas promote large parties (e.g., the D'Hondt method or Hare quota etc.), because semi-presidential positions of president and prime minister are usually associated with large parties.

It is clear that together with the introduction of the simultaneous election procedure, the cohabitation, which previously negatively affected the political (including power-executive) process in Ukraine, will be made at the most impossible. However, the point when politically/actually powerful president will not have formal or legalized possibility to dismiss unilaterally a cabinet, as the right for early dismissal of a

⁴³ V. Lytvyn, *Teoriia ta praktyka kohabitatsii v napivprezydentskykh systemakh Yevropy*, "Osvita rehionu: politolohiia, psykholohiia, komunikatsii" 2011, vol 4, s. 140–149.

cabinet in premier-presidential semi-presidential systems is reserved exclusively by a parliament, will remain as a specificity of Ukrainian semi-presidentialism. Accordingly, if a president desires to change the structure or management of a cabinet, he or she will be required to negotiate it with a parliament, which is not always politically easy to implement, as presidential or pro-presidential party does not necessarily (either alone or in coalition with other parties) need to have the support of absolute majority of MPs. This is especially topical for Ukraine, where in 1991–2014 there were no cabinet, which relied on the support of one-party majority. Overall, with the use of simultaneous elections and electoral system reformation in context of Ukrainian parliament formation, formally balanced premier-presidential semi-presidentialism might be transformed into practically presidentialised premier-presidential system with sufficient and effective instruments to counter a possible usurpation of powers by a president.

In case when simultaneous presidential and parliamentary elections do not provide a support of a president with parliamentary majority for a prime minister candidate (i.e. unified majority system is not implemented), formally balanced premier-presidential semi-presidentialism will practically work out via cohabitation (i.e. divided majority system will be implemented), however any case of cohabitation will be institutionally circumscribed. In this way, the balanced dual executive will be revealed. The decisive feature is that any dual executive's conflict could be restrained and the number of hypothetical cohabitation cases could be reduced in such a way.

From the voters' point of view, it will be clear that there are formally two very important political posts in a state, i.e. a president and a prime minister. Actually a president will be more powerful in a case where a prime minister is a representative of the same political party, even if such structure will be supported not only by a presidential/pro-presidential party (independently), but also by several parties that form a coalition in a parliament. In return, a prime minister will be more powerful when he or she belongs to opposition, particularly in relation to a president and its party and when a party of a prime minister independently or in coalition with other parties is included in a parliamentary majority, which formally forms a cabinet. The importance of a parliament in cabinet formation and resignation (both directly and indirectly, via consultation with a president), and therefore the importance of the institute of parliamentary elections will draw Ukrainian balanced semi-presidentialism nearer to the established European model of parliamentary democracy.

In the meantime, it is important to understand that while designing the possible options for the reform of Ukrainian balanced semi-presidentialism, we have to rely on slightly different institutional examples, which are presented by different European countries. The fact is that some countries with a balanced semi-presidentialism (e.g., France and Portugal) are the examples of negative parliamentarism, where cabinet formation is not directly dependent on a positive (supported by an absolute or relative majority of MPs) vote of confidence (investiture) or is depended on a negative vote of confidence in a parliament. A negative vote of confidence means that a cabinet in order to begin functioning must receive

a support, the essence of which is that against a prime minister, a cabinet composition or a program should not vote an absolute majority of MPs. This means that a cabinet starts its activity after it or its prime minister is nominated by a head of state or by a parliament without supporting a prime minister, a cabinet composition and a program by the absolute or relative majority of MPs. This also applies when an absolute majority of MPs does not vote against a prime minister, a cabinet composition or a program. Accordingly, a cabinet gets a parliamentary confidence when a prime minister and a cabinet composition are even nominated or when a candidacy of prime minister and a cabinet are not denied by an absolute majority of MPs. Thus, the system of negative parliamentarism is an institutional and constitutional scenario, based on a constant tacit trust for a cabinet, backed by a majority of MPs or on a constant negative trust for a cabinet against which an absolute majority of MPs does not act⁴⁴.

However, most countries with a balanced semi-presidential systems of government (e.g., Poland, Romania, Lithuania, Croatia, Georgia and Ukraine) are the examples of positive parliamentarism, i.e. a cabinet formation totally depends on a positive (the one that maintained by an absolute or relative majority of MPs) vote of confidence (investiture) in a parliament. A cabinet office begins its activity only when a prime minister, a cabinet personnel or a cabinet program is given a vote of confidence/investiture by an absolute or relative majority of MPs (depending on the particular cases). A cabinet is considered to be valid as long as it finds credence of a parliament or until it is expressed with a vote of no confidence. It regulates the fact that under conditions of positive parliamentarism a cabinet confidence is constant and endured at the stage of its initiation and formation, as well as during the process of its functioning.

The issue of quality selection option of the Ukrainian balanced semi-presidentialism reforming towards positive or negative parliamentarism is very broad and ambiguous. The fact is that it needs to be clarified regarding the definition of expediency and the nature of minority governments, and what is more important in the context of semi-presidential system of government, it needs to be clarified regarding qualitative rethinking, defining and implementation the appropriate for Ukraine principles and types of confidence and no confidence vote. Since the problem is rather broad and multidimensional one, it is necessary to focus the particular study on it and compare generated results with others researches that are dedicated to the essential issue of institutional reform of Ukrainian balanced semi-presidentialism.

To conclude, it is to be noted that one should always speak on semi-presidentialism using adjectives. They send us to some of its formal and actual varieties and phases/scenarios that define the system of government in the light of the mutual relations between constitutional provisions and political practice.

⁴⁴ J. A. Cheibub, S. Martin, J. Rasch, *The Investiture Vote and the Formation of Minority Parliamentary Governments*, Presented at the workshop on The Importance of Constitutions: Parliamentarism, Representation, and Voting Rights, Istanbul 2013.; T. Louwse, *Unpacking "positive" and "negative" parliamentarism*, Paper presented at the workshop "The Evolution of Parliamentarism and Its Political Consequences" of the European Consortium of Political Research, Salamanca 2014.; M. Molder, *Coherence of Coalition Governments across Types of Parliamentarism*, Paper prepared for the 2014 ECPR Joint Sessions of Workshops in panel "The Evolution of Parliamentarism and its Political Consequences", Central European University 2014.; F. Russo, L. Verzichelli, *The Adoption of Positive and Negative Parliamentarism: Systemic or Idiosyncratic Differences?*, ECPR Joint Sessions of Workshops, Salamanca 2014.

Considering them, one should speak about the challenges/risks and prospects for various types of semi-presidentialism reformation, in particular balanced semi-presidentialism in Ukraine.

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