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**“Minimalist” concepts of semi-presidentialism: are
Ukraine and Slovenia semi-presidential states?**

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Summary

The concepts of semi-presidentialism by Robert Elgie and Matthew S. Shugart differ greatly. When applied to Ukraine and Slovenia, this shows how a country can be categorized differently depending on the author's understanding of what the defining properties of semi-presidentialism are. Elgie's minimalist concept classifies both countries as semi-presidential, while Shugart's concept points out major differences between the systems of government of these two countries. According to the Shugart's concept, Ukraine is a semi-presidential regime; Slovenia is not. These two concepts illustrate the divergences in defining semi-presidential systems and, consequently, the differences in the understanding of the properties and the functioning of political systems in various countries. By comparing the systems of government in those two countries and by the application of Robert Elgie's minimalist and Matthew Shugart's non-minimalist concepts I will test the usefulness of the minimalist concepts in a theoretical and practical way.

Key words: semi-presidentialism, semi-presidential system, concepts of semi-presidentialism, Robert Elgie, Matthew S. Shugart, hierarchical relationships, transactional relationships, Ukraine, Slovenia



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Introduction

The relationships between and among the institutions of the legislative and the executive branches as stipulated by constitution and political practice make up the element of political system called the system of government. Different ways in which state power operates stem from different sources of legitimacy and various powers and relationships between and among individual political institutions. Thus, different types and subtypes of regimes may be identified on the basis of their dominant common properties. The research of political and constitutional systems has brought forth a variety of interpretations, theories and concepts. Typologizations of regimes are primarily based on the character of the relationship between the executive and the legislative branches; the focus for the executive branch is on state presidents i.e. heads of state. That is why the analyses of the position of presidents within political systems dominate the concepts of presidential and semi-presidential systems, while governments and parliaments are secondary. The role of presidents is the main property of these two systems of government, while in parliamentary systems the analyses of the relationship between governments and parliaments show a weak or a relatively weak role of the head of state. Therefore, the character of the executive and especially the role of the head of state are the chief defining property of a certain regime type.

The theories and concepts of semi-presidential systems are centered round three groups of questions: the source of legitimacy of the legislative and the executive branches, their constitutional powers, and their relationships. Starting from the authors' views of what represents the fundamental property of this system of government, they try to offer some explanations and answers to these three groups of questions (or to some of them at least), according to their importance. Only by analyzing all these groups of questions may we answer fully what the semi-presidential system really is and determine its proper place in the typology of regimes. By omitting one or two of these groups we might fail to put together a clear picture of this system and classify certain countries as semi-presidential though constitutionally and factually they may be quite dissimilar. Also, the classifications may either encompass too few countries or leave out some though they share certain properties with the included countries. In other words, there are two reasons why the theories and concepts that such classifications are based on are not useful for the empirical analyses of semi-presidential systems: either they classify the "wrong" countries as semi-presidential regimes or leave out the countries that should be classified as semi-presidential.

Ukraine and Slovenia, according to their constitutions and their existing political practices, have different constitutional and political characteristics on which the nature of their system of government depends. But, they have

one common characteristic – popularly elected president – which is crucial for the concepts and theories of semi-presidentialism. In the minimalist concepts¹ of semipresidentialism, the popularly elected president is the main characteristic that demarcates semi-presidentialism from parliamentarism. In other concepts of semi-presidentialism it is only one of the few characteristics necessary for that demarcation. By comparing the systems of government in those two countries and the application of Robert Elgie's minimalist and Matthew Shugart's non-minimalist concepts I will test the usefulness of the minimalist concepts in a theoretical and practical way.

Robert Elgie's "minimalist" concept of semi-presidentialism: the conceptual bias and the problem of classifying and typifying systems of government

The Irish political scientist Robert Elgie, the originator of the influential minimalist concept of the semi-presidential regime, has written or edited several studies on semi-presidential systems in Europe and elsewhere². Unlike Maurice Duverger, Matthew S. Shugart, and other authors studying semi-presidential systems, Elgie mentions only two defining criteria of this regime type: "A semi-presidential regime may be defined as the situation where a popularly elected fixed-term president exists alongside a prime minister and cabinet who is responsible to parliament" (1999b:13). This definition is identified by Elgie as "a purely constitutional definition of the concept" (Ibid.) enabling him to classify semi-presidential systems as a pure type of regimes (besides the presidential and the parliamentary ones). Omitting Duverger's second criterion of the "quite considerable presidential powers"³ from his concept of semi-presidentialism has resulted in a huge in-

¹ Mirjana Kasapović (2007) distinguishes between two orientations in the understanding of semi-presidentialism as a discrete type of the system of government: the maximalist (defining this system with about ten constitutive properties) and the minimalist (defining it by only two properties: popularly elected presidents and the election and impeachment of prime ministers by assemblies).

² Elgie is the editor of the anthologies *Semi-Presidentialism in Europe* (1999) and (with Sophia Moestrup) *Semi-presidentialism outside Europe: A comparative study* (2007), the author of several papers published in them e.g.: *Semi-Presidentialism and Comparative Institutional Engineering* (1999), *The Politics of Semi-Presidentialism* (1999), *What is semi-presidentialism and where is it found?* (2007). Elgie also wrote several articles in the journals fully or partly devoted to the semi-presidential system e.g.: *The classification of democratic regime types: Conceptual ambiguity and contestable assumptions* (1998), *Semi-Presidentialism: Concepts, Consequences and Contesting Explanations* (2004) and *Variations on a theme* (2005).

³ Duverger's definition of semi-presidentialism runs as follows: "A political regime is considered as semi-presidential if the constitution which established it combines three elements: (1) the president of the republic is elected by universal suffrage, (2) they possess quite consider-

crease of the number of semi-presidential countries; according to Elgie there are as many as 55 of them. The reasons for not including the "quite considerable presidential powers" in Elgie's concept are twofold. First, different authors cannot agree on what the "quite considerable powers" are. Some authors do not classify certain countries as semi-presidential regimes because their presidents do not have such powers. Others exclude some countries from that classification as their presidents do not have powers considerable enough for their regimes to be considered as semi-presidential. On the other hand, some authors include too many countries as for them "the term 'quite considerable' covers a vast range of possible powers" (Elgie, 2007: 5). Instead of elucidating the vague content of this second criterion (and due to considerable difficulties in determining its content), Elgie falls prey to a conceptual bias by rejecting it and consequently narrowing his concept to only the two mentioned criteria. This enables him to unequivocally determine the number of the countries that, according to his concept, are semi-presidential, but the content of the concept of the structure of the dual executive (the fundamental property of semi-presidential systems) is depleted. The dual executive requires that both actors (president and prime minister) possess certain executive and governing powers that directly or indirectly derive from the constitution. If a president does not possess such powers, he or she cannot be a major political actor on a par with the prime minister; his or her role is reduced to the position of the head of state symbolizing their nation's unity and the president has only ceremonial powers or a narrow range of executive and governing powers. The fact that the president has been popularly elected provides him or her with legitimacy which in certain power constellations of the legislative and the executive branch can turn the president into an influential exponent of state power, but this does not depend only on the manner of election but also on the reputation (or charisma) of the person occupying the post of the head of state. A typical example is Czech Republic during Vaclav Havel's presidency. Owing to the charismatic status he had earned during the communist reign, Vaclav Havel played a more significant role in the Czech political system than he would have on the basis of his constitutional powers and despite the fact that he had been elected by the parliament and not by the popular vote. Elgie's second reason for giving up on Duverger's criterion of the "quite considerable presidential powers" is the problem of the likelihood of the intra-executive conflict. If this criterion was adopted and only the countries with powerful presidents were taken into account, it might be concluded that semi-presidential systems incite such conflicts; if the countries with weak presidents were taken into account, then such a conclusion could not be drawn (Elgie, 2005: 100).

able powers; (3) they have opposite them, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them" (1980: 166).

Elgie's views of the defining criteria of semi-presidentialism remind us to a somewhat modified earlier model of the classification of regimes from his paper *The classification of democratic regime types: Conceptual ambiguity and contestable assumptions* (1998). In it he makes a clear distinction between the *dispositional properties* and the *relational properties* in the classification of regime types. The dispositional properties are those that say "nothing per se about the powers of institutions and office holders... They refer simply to the characteristics of the institutional framework within which any given set of power relations occurs" (224). The relational properties "are descriptions of actual power situations. They are statements concerning the actual capacity of presidents and prime ministers to mobilise the political resources at their disposal" (224). Most constitutional powers are relational properties, though constitutions contain the dispositional ones as well. Elgie does not believe that the separation of the constitutional powers and the political practice in the conceptualization of regimes means that conceptual ambiguity is necessarily avoided: it will happen only if regimes are classified according to either the dispositional or the relational properties. If classification is made according to the dispositional properties, he thinks the following three aspects should be considered: 1. whether the positions of the head of state and the head of government are held by two persons or these two offices are united in one person; 2. whether they have been elected by the popular vote; 3. whether they are elected for a fixed term. By combining these aspects one gets 24 types of regimes. According to Elgie, five of these actually exist, and one of them is semi-presidential. In the semi-presidential system the institutions of the head of state and the head of government are vested in two separate persons; the first is elected by popular elections for a fixed term, the other is not. That regime thus has four properties: 1. popularly elected president; 2. president's fixed term; 3. prime minister is elected in the parliament; 4. prime minister's non-fixed term. According to Elgie, when classifying regimes according to their relational properties, this can result in the contestable assumptions of various authors about the models of intra-executive relationships in individual countries. Although in the paper published in 1998 he came up with the above method of regime classification, in his later works on semi-presidential regimes he chose not to follow his earlier guidelines. The extremely minimalist concept of the semi-presidential regime was toned down by his new definition, which combines both properties: popularly elected, fixed-term president as the dispositional property and the accountability of the prime minister and the cabinet to the parliament as the dispositional and the relational property. Although Elgie claims that that definition is based on the dispositional properties as well (Elgie, 2004: 317), the accountability of prime ministers and cabinets to parliaments means that parliaments may remove them. If, as Elgie argues, the presidential right to remove prime ministers and to dissolve parliaments is a relational property (as this right can be exercised only if the existing political

circumstances allow it), then the right of the parliament to remove prime ministers and cabinets can also be considered as such. In president-parliamentary regimes, the parliament often cannot autocratically remove prime ministers or cabinets without reaching a consensus with the president or when the political circumstances do not allow it.

By analyzing the countries which, according to him, are semi-presidential, Elgie (2005) creates three types of semi-presidential systems based on the difference of the political practices in respective countries regarding the president's position. These are: highly "presidentialized" semi-presidential systems, semi-presidential systems with ceremonial presidents, and semi-presidential systems with the balance of presidential and prime-ministerial powers. The first category may be detrimental for democracy because the outcomes of presidential elections in semi-presidential regimes that are conducted according in line with the principle "winner-takes-all" (drawing on Arend Lijphart) may result in the emergence of a highly personalized institution of president, whose holders may "ridicule" the democratic process and feud with the legislative body. In the second category semi-presidential systems function as parliamentary ones. The president has only ceremonial powers i.e. he or she is a "symbolic leader with few constitutional powers" (Elgie, 2005: 105), while the real power is wielded by the prime minister. Direct elections make presidents spokespersons for the nation, and the fact that they have insufficient powers though they enjoy legitimacy cannot be held against prime ministers nor can presidents emerge as their political rivals. Elgie includes six countries in this category: Austria, Bulgaria, Iceland, Ireland, Portugal and Slovenia. Although the Slovenian Constitution envisages very few powers for Slovenian presidents, this cannot be said of, for example, the Austrian presidents. Even if one takes into account Elgie's chief objection that it is difficult to determine what constitutes considerable presidential powers, the Austrian Constitution envisages for the president bigger powers than the purely ceremonial ones. However, due to the political practice in that country Austria would be categorized as a state with ceremonial presidents. In the third and the last category of semi-presidential systems both the president and the prime minister are given significant (Elgie uses the word *significant*; Duverger *quite considerable*) powers. This category includes for example France, Ukraine, Niger, Poland and Croatia. According to Elgie, in Poland and Croatia the prime minister is the "primary decision maker, while the president has the power to intervene either sporadically or in one or more specific policy areas, usually in foreign or defense policy" (Elgie, 2005: 107). Finally, Elgie distinguishes three sorts of contexts in which a country adopts semi-presidentialism. The first is "purely symbolic" e.g. in the process of national self-determination, when a popularly elected president serves to reinforce the regime's democratic credentials rather than to install powerful presidency. The second type concerns the "reasons of

governability” e.g. when semi-presidentialism is introduced after the collapse of a parliamentary regime to create a strong president who should then prevent a repeat of the former regime’s weaknesses. The third type emerges in democratic transitions, giving rise to either a strong or a weak presidency or to a power-sharing arrangement among president, prime minister and parliament.

Matthew S. Shugart’s concept of semi-presidentialism: modification of Duverger’s concept and analysis of various relationships between legislative and executive bodies

In 2005, American political scientist Matthew S. Shugart published the article *Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns* in which he set out a neo-Madisonian approach to the understanding of how semi-presidential systems function. He emphasized the relationships between institutional actors regarding the source of their legitimacy i.e. the provenance and lasting power of their authority. These relationships are called transactional and hierarchical, and serve Shugart to explain the interaction among presidents, cabinets and parliaments in semi-presidential systems. “In a hierarchy, one institution is subordinated to another... Transactional relationships, on the other hand, are among co-equals. Two institutions or actors in a transactional relationship each have independent sources of authority, and must cooperate to accomplish some task, thereby implying a horizontal juxtaposition of co-equals” (Shugart, 2005: 328). They are separate in presidential and parliamentary systems, but are joined in semi-presidential regimes by transactional relationships between and among the branches of government and by the hierarchical relationships between the legislative and the executive branches. Shugart uses two more essential elements in his concept of semi-presidentialism. First, he espouses Duverger’s defining criteria of the semi-presidential system (in a somewhat modified form⁴ and also drawing on Jean Blondel) as defining as well for the dual executive in which elected presidents, regarding their position in the system of government, are somewhere between the presidents in presidential and the presidents in parliamentary systems: on the one hand they are not mere heads of state since they have a measure of political authority, but on the other they are not unequivocal chief executives since there are also prime ministers as heads of government who are not necessarily accountable to presidents. Also, Shugart does not agree with Duverger’s and Lijphart’s claim that a semi-presidential system represents a modification of the presi-

⁴ “...Semi-presidentialism may be defined by three features: A president who is popularly elected; The president has considerable constitutional authority; There exists also a prime minister and a cabinet, subject to the confidence of the assembly majority” (2005: 324).

dential and the parliamentary stages of government. He insists on distinguishing the institutional and the behavioral approach to defining semi-presidentialism, and on their strict separation. The first approach focuses on the constitutional structures of the relationships between and among the legislative and the executive bodies and on their competences, which enables us to understand the impact of individual extra-constitutional factors within the given constitutional structures. The second approach starts "with the observed behavior and may even assume away the constitutional structure. If it does not assume it away, then how can the same constitutional structure sometimes be 'presidential' and other times be 'parliamentary'? It cannot; rather a semi-presidential system always mixes features of both" (327). According to Shugart, there are two essential properties of semi-presidential regimes: the juxtaposition of the popularly elected president and the cabinet accountable to the parliament, and the possibility that the institution that installs a certain "agent" does not have to be the one that will remove him or her. Based on the latter, two sub-types of the semi-presidential system are distinguished. In the premier-presidential system, presidents appoint the prime minister and the cabinet, but they can be impeached only by the parliament. Presidents cannot control cabinets and the relationships between them are transactional, except under the following two conditions: that the president and the assembly majority belong to the same political option, and that the president is the *de facto* leader of his or her party. In that case the cabinet will be subordinate to the president. In the president-parliamentary system presidents appoint prime ministers and cabinets but can also impeach them (as can parliaments). In that case it is no longer presidents and cabinets that are in the transactional relationship but presidents and assemblies, as they have to cooperate in the formation of cabinets. The presidential power of dissolving assemblies may bring into question this transactional relationship but – in line with Madison's and Weber's arguments – Shugart believes that such a (significant) presidential power is in accordance with the "logic" of the semi-presidential system as it enables presidents to control assemblies and political parties in them.

Shugart's concept of semi-presidentialism accepts Duverger's contentious second criterion, but questions its content. Shugart tries to explain the relationships between the legislative and the executive branches and to identify the essential properties of semi-presidential regimes and – though "borrowing" certain elements of presidential and parliamentary systems – to make it into a separate system. It differs from the other systems not only by the fixed-term and popularly elected president, and the existence of prime ministers and cabinets accountable to parliaments, but also by the specific relationships among presidents, governments and parliaments, which can have various forms in various constellations of power, depending on the constitutional norms determining and regulating the powers and relation-

ships between and among the institutions of the legislative and the executive branches. Shugart shows that the fundamental property of a system of government should not be sought only in the sort of the source of the legitimacy of presidents and governments (or prime ministers), but also in the powers belonging to certain parts of the executive branch. These powers result in different power relationships between and among institutions of the legislative and the executive branches which affect political processes in a state and determine the type of the regime. Moreover, we may conclude that the existence of “quite considerable presidential powers” is a prerequisite for a hierarchical or a transactional relationship between presidents and cabinets. In the first case cabinets are accountable to presidents (the opposite is not possible). Such a relationship means that presidents have the power of scrutiny over the activities of cabinets, and this power may be labeled as significant since it indirectly results in the possibility for presidents to create public policy and to govern. In the second case the juxtaposition of presidents and cabinets can exist solely between equal institutions. Since cabinets as the highest executive body (albeit collective) possess governing and executive powers, it is necessary for presidents to have such powers in order to establish a transactional relationship.

The distinction between parliamentary and presidential systems based on presidents’ source of legitimacy results in even more pronounced differences among countries that would be considered as semi-presidential according to Elgie’s concept than among some semi-presidential and parliamentary states according to Shugart’s concept. That is why Shugart (1993: 30) introduces a special subtype of parliamentarism coexisting with the “pure” parliamentary system, which he calls a parliamentary system with president. In this regime presidents are directly elected by citizens, but the regime is nevertheless considered parliamentary since presidents do not have certain considerable powers that would elevate them above the position of the head of state in a “pure” parliamentary system. If we compare Shugart’s typology with Elgie’s we can see that Shugart distinguishes three types of regimes in which presidents are popularly elected and prime ministers and cabinets are accountable to the parliament: premier-presidential, president-parliamentary and parliamentary with president. Elgie, however, reduces all three Shugart’s types to one and calls it semi-presidential.

System of government in Ukraine: structurally generated conflicts among institutions of state authority

Upon gaining independence in 1991 Ukraine was confronted with the problems besetting the other post-Soviet republics: how to build an independent state and its political institutions. The referendum on independence

was held on 1 December 1991, together with the first presidential elections. The winner was the communist leader and chairman of the Ukrainian parliament (the Verkhovna rada) Leonid Kravchuk. The Constitution of the Ukrainian SSR of 1978 did not envisage the institution of the president of the republic; it was introduced by the constitutional novella of 5 July 1991.

The introduction of the institution of the president of the state marked the beginning of building new institutions of state authority. The constitutional committee for drafting a new Constitution was formed in October of 1990, but a consensus of various political actors about a new political system could not be reached. The previous system of the soviets (as a special type of parliamentarism labeled "the Soviet parliamentarism"), was supposed to be replaced by a new system of government. Although the experts from the Constitutional Committee advocated the abolition of this system and the introduction of the separation of power and a strong president (supported in the Ukrainian parliament by the opposition *Narodna rada*), the so called "Group 239"⁵ was opposed to this proposal. To reconcile the two sides (and advocating a system with the directly elected president), president Kravchuk proposed a system that would combine the presidential powers with the system of soviets. The Constitutional novella of February 1992 made the president chief executive, while the Law on the president's representatives brought on 5 March of the same year conferred on the president the power to appoint officials of central government at the local level; this meant that the president would get the powers related to the vertical separation of power. The president obtained three more major powers: he directed the work of the cabinet, had the power to restructure the executive branch, and the power to bring decisions with the force of law in the economic sphere (Wolczuk, 2001: 113).

In autumn of 1992 Kravchuk appointed Leonid Kuchma as the new prime minister. Kuchma managed to strengthen the prime minister's power, and the right to bring decrees with the force of law, formerly vested only with the president of the state, was transferred to the cabinet. The more Kuchma pushed to increase his powers at the president's expense, the more endangered Kravchuk felt and wanted to reinforce his position. The dual executive became a liability in the state going through a severe economic crisis and commencing the tortuous process of democratic transition. The clash of the two powerful poles of executive power was resolved by Kuchma's resignation in 1993, but this did not dampen his craving for power. In the early presidential elections of 1994 Kravchuk and Kuchma were two main contenders for Ukrainian presidency. Two years before, when Kuchma became prime minister, he was a nonentity, but in the presidential elections of 1994

⁵ That group represented the communist delegates in the Ukrainian parliament elected in the 1990 parliamentary elections.

Kuchma defeated his chief rival in the run-off. Soon he started wrangling with the Parliament (the Verkhovna rada), and demanded additional powers. The deputies did not want to yield to his demands, so Kuchma threatened he would call a referendum on the constitutional amendments that would enable him to achieve this goal. The Parliament granted him some concessions and in July of 1995 the Constitutional Agreement was signed, regulating the relationships between these two institutions and increasing the president's powers. The new Ukrainian Constitution was promulgated in June of 1996; it inaugurated a president-parliamentary system of government.

According to the Constitution the president of Ukraine⁶ is the head of state and acts on its behalf. He is a guarantor of state sovereignty and territorial indivisibility, of the observance of the Constitution and of human and citizens' rights and freedoms (Article 102). The president is elected for a five-year term (Article 103), while the head of government is the prime minister appointed by the president with the consent of more than one-half of the constitutional composition of the Verkhovna rada (Article 114). Article 106 of the Constitution enumerates presidential powers in thirty points, with a proviso that the Constitution grants the president other powers: the power to terminate the authority of the prime minister and adopt a decision on his or her resignation; to call an "all-Ukrainian" referendum regarding amendments to the Constitution and proclaim an "all-Ukrainian" referendum based on popular initiative⁷. The president also designates special elections for the Verkhovna rada within the terms established by the Constitution; he or she dissolves the Verkhovna rada if the plenary meeting fails to commence within thirty days of one regular session. On the submission of the prime minister, the president appoints members of the cabinet of ministers, chief officers of other central bodies of executive power, the heads of local state administrations, and removes them from office. On the submission of the prime minister the president establishes, reorganizes and liquidates ministries and other central bodies of executive power, acting within the limits of funding envisaged for their maintenance. The president revokes acts of the cabinet and acts of the Council of Ministers of the Autonomous Republic of Crimea. In foreign policy, the president represents the state in international relations, administers the foreign political activities and conducts negotiations and signs international treaties. The president also has significant

⁶ In republican regimes the head of state is called the president of the republic, but in the Ukrainian constitution he or she is called the president of Ukraine.

⁷ The president is obliged to call for a referendum following the popular initiative after three conditions have been met: the referendum petition has been endorsed by the signatures of no fewer than three million citizens with the right to vote; the signatures have been collected in no fewer than two thirds Ukrainian provinces; in each of them no fewer than a hundred thousand signatures have been collected.

powers concerning defense and national security. The president is Commander-in-Chief of the armed forces, appoints and dismisses from office the high command of the armed forces, and administers the spheres of national security and defense, the president is head of the Council of National Security and Defense of Ukraine. The president forwards the submission to the Verkhovna rada on the declaration of a state of war, and adopts a decision in accordance with the law on the general or partial mobilization. In the event of a threat of aggression or danger to the state independence of Ukraine, the president declares a state of emergency in entire Ukraine or in some of its areas. The president's powers regarding the organization of courts include appointing one-third of the composition of the Constitutional Court and establishing courts by the procedure determined by law. With the consent of the parliament the president appoints the procurator general and also dismisses him or her from office. The president possesses significant legislative powers: the right to legislative initiative, he or she signs laws adopted by the Verkhovna rada and has the right to veto these laws. In that case, the law is returned to the parliament for repeat consideration; a two-third majority of votes is required to override the president's veto on the original draft of the law. Apart from this, for the execution of the Constitution and the laws of Ukraine, the president issues decrees and directives; some of them are co-signed by the prime minister and the minister responsible for these acts and their execution.

Table 1: Transactional and hierarchical relationships among institutions of state authority in Ukraine according to the Constitution of 1996.

Relations among institutions	Transactional	Hierarchical
President – cabinet/government	-	+
President – parliament	+	-
Parliament – cabinet/government	-	+

Based on the constitutional powers of the president and those he has in practice, in Elgie's classification Ukraine is a "presidentialized" semi-presidential regime. Since the independence and the introduction of the institution of the president, the Ukrainian political practice gave rise to a material Constitution that, combined with the system of clientelism, enabled the president to have the upper hand regarding the other institutions of state authority to such an extent that the principle of checks and balances was betrayed. In fact, that principle was implied only in the proviso that the president could, to a smaller or bigger degree, control the work of the government and force the parliament to agree to certain concessions in his or her favour; the legislative branch did not come up with an efficient mechanism of control or at

least counterbalance to the executive power. The changes of the electoral system of 1998 and 2004 were supposed to reduce the number of the parties in the parliament and bolster the party system in general. D'Anieri (2007) believes that a weak parliament was the main culprit for Ukraine's plight in its transition to democracy. The reason for this weakness of the parliament was its inability to forge stable majorities that might have stood up to the president regarding the composition of the government/cabinet. Stable majorities could not be achieved because many parties and independent candidates entered the parliament after the elections, and because the organization of the legislative body compounded the negative effects of this fragmentation. The fragmentation itself was a consequence of the electoral law which enabled a big number of parties and independent candidates to get a seat in the Verkhovna rada, and also because the party system was weak and unconsolidated, and the citizens mistrusted the political parties (D'Anieri, 2007). Due to the unpopularity of the first freely elected Verkhovna rada of 1994, President Kuchma succeeded to broaden his already considerable constitutional powers in two ways: first, he forced the parliament to adopt the legal acts – first the Constitutional Agreement of 1995 and then the new Constitution of 1996 – that made for a strong position of the president in Ukraine's political system; secondly, he exploited the state's cadre and economic resources in achieving his political objectives. Authoritarian elements in governing and bitter squabbling among the bodies of the legislative and the executive branches arose during the Kuchma's presidency. Electoral rigging in the presidential elections of 2004 was thwarted only by mass demonstrations, but the opposition had to give their consent for the constitutional changes which reduced presidential powers and increased those of the parliament. Even after their introduction at the beginning of 2006 the president still retained significant powers which, though reduced, nevertheless enabled him to maintain the status of a major political actor.

Table 2: Transactional and hierarchical relationships among institutions of state authority in Ukraine according to the 2004 version of the Constitution of 1996

Relations among institutions	Transactional	Hierarchical
President – cabinet/government	+/- ⁸	+/- ⁹
President – parliament	+	-
Parliament – cabinet/government	-	+

⁸ The “minus” beside the “plus” indicates that the cabinet is still formally accountable to the President though he or she can no more remove it.

⁹ Ibid.

The relationship between the president and the prime minister varied between 1991 and 2008. Apart from the changes of the constitutional provisions and the constitutional documents that differently envisaged the powers of the president, the cabinet/government and the parliament and their transactional and hierarchical relationships, the position of the president versus that of the prime minister and the parliament depended on actual power relationships among various political actors. During almost entire Kuchma's reign, the president domineered the government and the parliament. The president-parliamentary system thus brought about a total domination of the president and, practically, a complete dependence of one part of the executive (the cabinet/government) on the other (the president). This made the constitutionally established structure of the dual executive unique. The president's domination might have been undermined had the Verkhovna rada been able to challenge his strongmanship¹⁰. D'Anieri (2007) shows how the high fragmentation of Ukraine's parliament enabled President Kuchma to blackmail the parliament and the cabinet/government and strong-arm the concessions that augmented his strength in relation to them. After 2004 and the "Orange Revolution", the constitutional changes strengthened the parliament and fortified the party system. On the one hand, the presidential powers were reduced and on the other the new electoral legislation replaced the segmented electoral system with a proportional one¹¹. This created the institutional prerequisite for curtailing the parliament's fragmentation and facilitated the formation of a stable and coherent coalition capable of forming government and offsetting the president's dominance. This altered the transactional and the hierarchical relations among the president, the cabinet/government and the parliament. The president no longer has the right to remove the prime minister nor to – on his or her submission – appoint all the ministers. The Constitutional novella of 2004 stipulates that the president submits to the parliament the candidates for the ministers of defense and foreign affairs, but has no say in appointing the other ministers. In 1996 the cabinet was "the highest body in the system of bodies of executive power", but in 2004 it became "the highest authority within the system of executive authorities", which bolstered its position in relation to the president. The president and the cabinet are no longer in a hierarchical relationship (apart from the cabinet being formally accountable to the president, but the president cannot terminate their authority); the relationship now is transactional.

¹⁰ According to Protsyk (2003: 1079), all ten cabinets in first decade of post-communism in Ukraine had technocratic nature that reflected "the underdeveloped character of the party system".

¹¹ Fifty percent of 450 deputies of the Verkhovna rada were elected in single-member constituencies by the segmented electoral system; the other half was elected from the electoral lists at the national level. Now, with the introduction of the proportional electoral system, all 450 representatives are elected from the electoral lists at the national level.

The hierarchical relationship between the cabinet and the parliament is still there as is the transactional relationship between the president and the parliament. Even with the constitutional amendments the president has retained significant powers (though he or she can no longer remove the prime minister); the system of government has morphed from a president-parliamentary into a premier-presidential subtype of the semi-presidential system.

System of government in Slovenia: ceremonial role of the president and constitutional domination of the parliament over the government

Of all six former Yugoslav republics, the process of liberalization in the second half of the 1980s made biggest strides in Slovenia. In the spring of 1990, the republican communist elites organized the first free multiparty elections in Yugoslavia in which the communists were defeated and the DEMOS coalition came to power. Although this gave Slovenia a headstart in relation to the other members of the Yugoslav federation, the constitution-making process in Slovenia dallied, and Slovenia got its first Constitution only at the end of December of 1991, almost three months after it gained independence. Laying the constitutional foundation for a new political system necessitated the new institutions of state authority: a bicameral parliament was introduced, consisting of the National Assembly (Državni zbor) and the National Council (Državni svet), while the collective head of state was replaced by the institution of the president of the Republic.

In the new system of government the president of the state was not explicitly defined either as the head of state or the chief executive, but only as somebody who represents the Republic of Slovenia and who is commander-in-chief of its defense forces (Article 102). The president is elected in direct, general elections for a term of five years and may be elected for a maximum of two consecutive terms. If the term of office of the president expires during a war or a state of emergency, the president's term shall expire six months after the cessation of such war or state of emergency (Article. 103). The office of the president is incompatible with any other public office or occupation (Article 105). Article 107 of the Constitution briefly enumerates the president's powers; almost all are ceremonial. The only significant power is the right to bring decrees with the force of law. These decrees are issued by the president on the proposal of the government in the event of war or a state of emergency, when the first house of the parliament, the National Assembly, cannot convene. The president is obliged to submit to the National Assembly the decrees with the force of law for confirmation immediately upon its next convening. After consultation with the leaders of deputy groups the president proposes to the National

Assembly a candidate for the prime minister. If such candidate does not receive the necessary majority of votes in the National Assembly, the president's role is diminished as the right to propose candidates for the prime minister is now given also to a minimum of ten deputies (Article 111). The president has no right to appoint the ministers as they are appointed and impeached by the National Assembly on the proposal of the prime minister (Article 112).¹² The president cannot dissolve the parliament (except in the event of a repeated failure to form a government), he or she does not have any legislative power (except in state of emergency) such as legislative initiative, legislative veto or decrees with the force of law, does not conduct foreign policy, the government is not politically accountable to him or her and they cannot hold any other public office. The last provision would include any party function, although Cerar (2005) believes that the Constitution does not forbid the president to be a party official. Nevertheless, both president Kuchan and president Drnovšek suspended their party membership after taking office, in line with the generally accepted opinion about the supra-party role of the president, championed also by Max Weber when drafting the Weimar Constitution of 1919 (Shugart, 2005).

Table 3: Transactional and hierarchical relationships among institutions of state authority in Slovenia according to the Constitution of 1991 with amendments adopted till 20 June 2006

Relations among institutions	Transactional¹³	Hierarchical¹⁴
President – government	-	-
President – parliament	-	-
Parliament – government	-	+

¹² Based on the role of the president of the state in forming the government and the appointment of the prime minister and the ministers, Kaučič (2004: 30) distinguishes three possible systems. In the first the president appoints the prime minister and the ministers. In the second the president does not appoint the prime minister but only nominates candidates for that post, but appoints the ministers following the prime minister's proposal. In the third the president only nominates the candidates for the prime minister, and the parliament appoints the prime minister and the ministers. Kaučič includes Slovenia in the latter category.

¹³ There is a sort of a transactional relationship between the president and the government and the president and the parliament only in a few exceptional occasions.

¹⁴ The president has a limited role in the appointments of prime ministers, and this relationship cannot be called hierarchical.

In the political system in which the president has only ceremonial powers and gets somewhat more significant ones only in the event of war or state of emergency, the real power is in the hands of the prime minister and the government. The Slovenian Constitution grants the president the powers held by presidents in parliamentary regimes except for the fact that – unlike the “pure” parliamentarism (Shugart, 1993) – the president is elected by general elections and not by the parliament or – to quote Sartori (1994) – in a manner involving the parliament. The central institution of state authority in Slovenia is the parliament (Cerar, 2005) i.e. its first house or the National Assembly, since the prime minister’s powers are limited even regarding the composition of his or her own cabinet. According to Cerar (2005), there are two reasons for this. First, the Slovenian public is “used to” the central role of the parliament (assembly), a legacy from the former communist regime. Second, at the time when the new Constitution was drafted, the parliamentary majority to which Kuchan did not belong did not want to bestow on the institution of the president significant powers as, due to his popularity, his victory in the next direct presidential election was expected. This manner of electing the president was written into the new Constitution as it was the wish of the Slovenian public to have the head of state directly elected by the citizens. The Constitution stipulates that the National Assembly appoints and removes the ministers, and the prime minister cannot dismiss a minister he or she does not want to have in the composition of his or her cabinet unless approved by the parliament. The president cannot in any way influence the composition of the government (except in the appointment of the prime minister, but even in this he or she has to consult with the leaders of the parliamentary groups) or its work, and these two institutions are almost completely separate. Under normal circumstances, the president and the government are in neither a transactional nor a hierarchical relationship, except in event of war or state of emergency when a certain transactional relationship exists since the president issues decrees with the force of law based on the government’s proposal. The president’s relations with the parliament are also not hierarchical, while certain elements of the transactional relationship between these two institutions exist in normal as well as in extraordinary conditions. First, the National Assembly is empowered to demand from the president to go on record regarding a certain issue and the president is obliged to comply; on the other hand, the president has the right, on his or her own initiative, to make his or her stance on a certain issue known to the parliament although the parliament did not ask for it. Second, both the president and the parliament appoint the prime minister. And third, in wars or in emergencies, the parliament decides on the confirmation of the decrees with the force of law issued by the president.

Between the first presidential elections in December 1992 and the last ones at the end of 2007, three presidents held the post of the head of state in

Slovenia: Milan Kuchan, Janez Drnovshek and Danilo Türk. Kuchan's was a two-term presidency; on both occasions he won in the first round. Almost three years prior to the first presidential elections he had already been the president of Slovenia; he was elected to that position in 1990 according to the old system of electing the president of the Slovenian Presidency. Drnovshek, a former president of the Yugoslav Presidency and several times the Slovenian prime minister, held that office for only one term (2002-2007). Both presidents were popular and played a much more conspicuous role in Slovenian politics than they should have by the Constitution. There are two reasons for this: first, prior to their becoming the heads of state both had been career politicians and holders of important offices; and second, they were elected in direct general elections. This source of legitimacy enabled them to take part in certain political processes, particularly in the relations with other countries, but not in shaping policies or ruling together with the government. This means that between the president on the one hand and the government and the parliament on the other there were neither hierarchical nor transactional relationships. The elements of these two types of relationships between and among these institutions do not suffice to label them as such; accordingly, the Slovenian system of government can be classified as parliamentary and not as semi-presidential.

Conclusion

The regime types are the starting and reference point for the classification of political systems in individual countries. Two countries are prototypical for two classic systems, the presidential and the parliamentary: for the presidential system it is the United States and for the parliamentary it is the United Kingdom. The prototypes of the semi-presidential system that emerged in constitutional documents and political practice of the 20th century are the Constitutions of Finland and the Weimar Republic of 1919 and the Constitution of the Fifth Republic of 1958 (with the amendment of 1962). The evolution of the theories and the concepts of semi-presidential regimes mostly concerns identifying their defining properties, their *differentia specifica* in relation to the other two systems. The main structural feature, the *differentia specifica* of the semi-presidential system as opposed to the presidential and the parliamentary system, is the structure of the dual executive – the president and the prime minister – characterized by significant constitutional powers of the president of the state. Popular presidential elections, almost regularly cited as one of the fundamental properties of semi-presidentialism, are a welcome source of legitimacy of an institution of state authority in democratic political systems and reinforce the president's position in relation to the cabinet/government and the parliament. In contemporary political systems, however, in which constitutions and laws are the most

important sources of law, the constitutional powers of presidents primarily determine his or her role in the system of state authority, and only then the manner of his or her taking office i.e. the source of their legitimacy. The minimalist concepts of the semi-presidential system, which significantly narrow the content of the term “quite considerable presidential powers” or reject it completely, cannot clearly demarcate that type of the system of government from the other types; consequently, in their application and due to the risk of an overlap of the parliamentary and the semi-presidential regime types, this results in a dubious classification of countries as semi-presidential. Unlike that, the concepts that use the criterion of “quite considerable presidential powers” besides the criterion of the source of legitimacy and the nature of the relationships between and among the institutions of the legislative and the executive branches (though they do not taxatively enumerate which powers presidents must have for a system of government to be semi-presidential, as this might mean going to the other extreme, the maximalist concept) are nearer to the identification of structural properties and the explanation of the nature of that system than the minimalist concepts.

The difference between these two approaches in creating the concept of semi-presidentialism can be seen in the works by Robert Elgie and Matthew S. Shugart. While Elgie included in his concept only the source of the legitimacy of the institutions of executive power and partly the relationship among the institutions of the legislative and the executive power, Shugart included all three groups of problems and thus created a basis for analyzing semi-presidentialism which enables a better understanding of its properties and the ways and the institutional requirements for its functioning. The nature of this system of government and its uniqueness is best seen through the existence of hierarchical or transactional relationships, since the precondition for their existence is a certain degree of the constitutionally regulated powers of the president, the cabinet/government, and the parliament.

Besides the differences between these two approaches at the theoretical level, there are some empirical differences as well. The states that according to Elgie’s concept are classified as semi-presidential do not differ only in the constitutional powers of their presidents, but also in the political practice that shows what a regime is really like. In Slovenia the president does not possess considerable constitutional powers, and cannot override the prime minister. The president can, by the power of his or her democratic legitimacy, occasionally influence the creation of government policy, but in the event of a conflict with the prime minister or the government, the president cannot win. Therefore, by all normative and empirical properties, the regime is parliamentary. According to Elgie, the only feature that would classify that state as semi-presidential is the popular election of president, though there are neither transactional nor hierarchical relationships between this institution of authority/power and the parliament. Ukraine, in which the president pos-

sesses considerable powers, shows how a conflict between the president and the parliament or the prime minister can seriously jolt the political system and precipitate a political crisis, resolvable solely by a compromise between the conflicting institutions or by creating a consolidated majority government as a result of presidential and parliamentary elections. The considerable constitutional powers of Ukraine's president constitute transactional and hierarchical relationships between the president and the cabinet/government and the parliament which, besides the popular presidential elections and the government responsible to the parliament, unequivocally classify this system of government as semi-presidential, more so than Slovenia.

Table 4: Sources of legitimacy and constitutional powers of institutions of legislative and executive branches in Ukraine and Slovenia according to their Constitutions

	UKRAINE 1996	UKRAINE 2004	SLOVENIA 1991
Electing president	General direct elections	General direct elections	General direct elections
Appointing prime minister	President	First house of parliament; president nominates prime minister	First house of parliament; president nominates prime minister
Dismissing prime minister	President or first house of parliament	First house of parliament	First house of parliament
President's discretionary right to dissolve first house of parliament	-	-	-
President's right of legislative initiative	+	+	-
President's right to legislative veto	+	+	-
President's decrees with force of law	+ ¹⁵	-	Only in state of emergency
President's right to call referendums	+	+ ¹⁶	-
President commander-in-chief	+	+	+
President signs international agreements	+	+	-
President appoints Constitutional Court judges	Appoints and removes one third of judges	Appoints and removes one third of judges	President proposes to National Assembly candidates for judges
Government's right to legislative initiative	+	+	+

¹⁵ The transitional provisions of the Constitution confer on the president for three years after the adoption of the Constitution the right to issue decrees on economic issues if they are not regulated by law and if approved by the government and co-signed by the prime minister.

¹⁶ This right applies solely to the referendums concerning the alteration of the Constitution and the referendum called by a popular initiative (Article 106 of the Constitution of Ukraine).

Table 5: Transactional relationships among institutions of state authority in Ukraine and Slovenia according to their constitutions

Transactional relations among institutions	Ukraine 1996	Ukraine 2004	Slovenia 1991
President – cabinet/government	-	+/- ¹⁷	-
President – parliament	+	+	-
Parliament – cabinet/government	-	-	-

Table 6: Hierarchical relationships among institutions of state authority in Ukraine and Slovenia according to their constitutions

Hierarchical relations among institutions	Ukraine 1996	Ukraine 2004	Slovenia 1991
President – cabinet/government	+	+/- ¹⁸	-
President – parliament	-	-	-
Parliament – cabinet/government	+	+	+

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¹⁷ The cabinet is accountable to the president and the parliament, but can only be removed by the parliament (Article 113 of the Constitution of Ukraine).

¹⁸ Ibid.

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