| Chapter 15 |

The Executive Power

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ABSTRACT

"The executive power is the moving force of a government. It represents, in the political system, that mysterious principle which, in moral man, unites action to the will".[1] Although more than 200 years have passed since Jacques Necker, the finance minister for Louis XVI, completed his essay on the executive power, his definition still holds in many respects. However, the term 'executive' as the name of a branch of government may be misleading. As Vile notes, the executive "gets its name from one of its major functions, that of putting the law into effect".[2] It goes without saying that the executive means more than just implementing laws passed by the legislature. Although explaining the concept of the executive and enumerating its task would greatly exceed the scope of this chapter,[3] it is worth recalling some thoughts of Mansfield, who claimed in his seminal work on modern executive power that it is the executive power that made the principle of separation of powers workable. In his view, "for executive power, always ready for emergency, ensured that the power of government was not diminished, much less stalemated, when it was separated into three branches".[4] His volume revolves around the idea of ambivalence of the modern executive: "The beauty of executive power, then, is to be both subordinate and not subordinate, both weak and strong. It can reach where law cannot, and thus supply the defect of law, yet remain subordinate to law".[5]

The chapter unfold as follows (since the current volume devotes a whole chapter to the powers of the heads of state, this chapter focuses on governments): in the first section, we outline the structure of the executive power in the eight examined states. The second section is devoted to the governments as key actors of the executive power, dealing with their status, composition, competencies and formation while paying special attention to the question of responsibility. The third section briefly outlines the territorial level of the executive.

KEYWORDS

executive power, governments, prime ministers, government formation, vote of (no) confidence.

1 Necker, 1792, p. 1.
2 Vile, 1998, p. 67.
3 For a comprehensive summary of the history of executive power, see Liebert, McDowell and Price, 2012 (Chapter 1–5).
4 Mansfield, 1989, p. xvi.
5 Ibid.

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1. Parliamentarism, quarter-presidentialism and semi-presidentialism: the structure of the executive power

In the past centuries, the structure of the executive power showed great diversity. The former communist states of Central and Eastern Europe are no exception in this regard. While the actual form of government evolved in several Western countries at the latest after World War II, the post-communist states underwent major changes even during the transition in the third wave of democracy. The regime changes of 1989–1991 and the breakup of Czechoslovakia and Yugoslavia resulted in new independent states and considerably new constitutional systems. As Elster and his colleagues note, constitutions did not play an important role under communism, stating that although "the constitutional texts were formally in force, they were not meant to constrain and to obligate the power elites".[6] However, the constitution-making process became more important during the democratic transition of Eastern and Central Europe and the newly adapted constitutions came to resemble their Western counterparts even in their role. The idea of separation of powers did not prevail during the communist rule at all; therefore, it would be rather meaningless to disentangle the possessors of executive power in these states. Although the constitutions of Czechoslovakia, Hungary, Poland Romania and Yugoslavia had formal provisions on the head of state (be it either a president [Czechoslovakia, Romania from 1974 and Yugoslavia] or a collective head of state [Hungary, Poland, Romania until 1974]) and on the government (which had far less powes than the current ones), the personal rule of the (*de facto*) party leader was the crucial factor.[7] It is a matter of course that the fundamental changes of the democratic transition heavily affected even the executive.

While it is quite evident that who possesses legislative power in a given country, and even the organs of the judiciary, can be identified more or less clearly, the executive branch is slightly different in this regard. Then, who holds the executive power? To answer this question, two actors deserve special attention: the head of state and the government.[8] This raises the complex issue of forms of government, which is at the intersection of constitutional law and political science. As is well known, one can distinguish three basic (and even some other) types of forms of government, based on the structure of the executive and on the relationship between legislative and executive power:[9]

6 Elster, Offe and Preuss, 1998, p. 63 (for constitutional politics in Eastern Europe, see Chapter 3).

7 For the structure and functioning of the communist regimes of Eastern Europe, see Staar, 1982.

8 However, it must be noted that the executive branch is not equal to the head of state and the government. Depending on the proper understanding of executive, even the independent regulatory authorities, other public administration bodies and local governments may be involved in the executive branch.

9 For a brief overview of the systems, see Müller, 2017, pp. 137–141; Pérez-Liñán, 2017, pp. 87–89.

a) presidential systems, where all executive power is vested in a single, directly elected politician (president) for a fixed term, who is (at least politically) not accountable to the legislation (the United States is the most obvious case);
b) parliamentary systems, characterised by dual executive system, i.e. the separation between the head of the government (the prime minister) and the head of state (either a monarch or a president); the government holds the real political power and is accountable to the parliament, while the head of state plays a rather symbolic role (e.g. United Kingdom or Germany);
c) semi-presidential systems, in which the executive is shared by the head of state and the government, but contrary to parliamentary systems, the head of state is always directly elected and possesses a considerable amount of power (the archetypical case is France).

As for the eight examined countries, as noted in Chapter 6, none of them institutionalised a presidential system, but they rather decided between parliamentary and semi-presidential republics. It would be quite logical and probably expected by the readers at this point to classify the eight polities and find the proper 'label' (either parliamentary and or semi-presidential) for the analysed states; however, this task proves to be surprisingly complicated. Even if one disregards the significant changes of the past decades in some of the constitutional arrangements in CEE countries and focuses on the current constitutional framework, several problems still arise in their classification. Semi-presidentialism is a genuinely travelling concept; as Brunclík and Kubát note, "the literature on semi-presidentialism is full of paradoxes, ambiguities, confusions and disagreements".[10] As different scholars use different approaches and methods to grasp the concept of semi-presidentialism,[11] the classification of the states may vary from study to study. It should be also noted that semi-presidentialism has divergent subtypes – e.g. premier-presidentialism (the government is exclusively accountable to the parliament) and president-parliamentarism (characterised by dual accountability, since the government is dually accountable to the president and to the parliament),[12] which is an additional complicating factor. It is very telling that Brunclík and Kubát devoted a whole book to categorise three countries – the Czech Republic, Poland and Slovakia – regarding their form of government.[13] Their contribution clearly demonstrates the problems and caveats of this classification. Considering these difficulties, and bearing in mind that the current volume positions itself as a constitutional law book, while the question of forms of government has significant aspects of political science (e.g. the role of strong political personalities, informal power and influence, the internal working of government and other issues beyond the scope of this constitutional law volume), we do not attempt to provide a clear-cut

10 Brunclík and Kubát, 2019, p. 6.
11 For a brief overview, see Brunclík and Kubát, 2019, pp. 6–22.
12 Shugart and Carey, 1992, pp. 55–75.
13 They argue that Slovakia and the Czech Republic have been parliamentary regimes since 1989 and Poland since 1997, see Brunclík and Kubát, 2019, p. 134.

classification and refrain from making categorical judgements. Instead, we focus on the structure of the executive power according to the wording of the constitutions (see Table 1), while making some references to the forms of government attributable to the examined countries.

Dual executive *expressis verbis*	Indirect reference to dual executive	The government is the sole possessor of the executive	No reference to the possessor of the executive
Poland	Czech Republic Slovakia	Croatia Hungary Serbia	Romania Slovenia

Table 1. The structure of the executive in constitutions
Source: author's compilation

The arrangement introduced by the former Small Constitution of 1992 of Poland may be described as semi-presidential, considering the strong competencies of the president. As the 1997 constitution currently in force significantly weakened the powers of the president, some argue that 1997 marked the beginning of a cabinet-parliamentary regime complemented by elements of semi-presidentialism.[14] The 1997 Constitution offers a clear-cut example of a dual executive system when it stipulates that "executive power shall be vested in the President of the Republic of Poland and the Council of Minister". This judgement is rather controversial among the scholars of constitutional law. Some claim that vesting the executive power in two separate and distinct entities may give rise to conflicts in the future, and in addition, "such classifications runs counter to tendency to weaken the position of the president and the clearly articulated wish to strengthen that of the prime minister".[15] In contrast, others argue that the dualism of the executive power is a solution typical of parliamentary systems and corresponds to the classical separation of powers.[16] According to Granat and Granat, the double-headed executive is one of the main problems of Poland's constitutional system: "On the one hand, the Constitution introduces a presidency with a strong democratic mandate, while, on the other hand, it places the prime minister in a powerful position in respect of the exercise of governmental power".[17]

Contrary to Poland, both the Constitution of the Czech Republic and that of Slovakia refrain from directly identifying the possessors of the executive power. However, each of these constitutions has a separate chapter on executive power, and both these chapters include two sections: the president of the republic and the government. Based on this structure of the two constitutions, one may conclude that the president of the republic and the government share the executive power. As the commentary on

14 Sula and Szumigalska, 2013, p. 111.
15 Szmulik and Szymanek, 2019, pp. 82–83.
16 Ibid.
17 Granat and Granat, 2019, p. 157.

the Czech constitution emphasises, the term 'executive power' is not explicitly defined by the constitution, and the content of this term must therefore be inferred primarily from what is regulated in the related chapter.[18] The Czech constitutional (and even political) landscape changed dramatically in 2012, when the parliamentary elected president was replaced by a directly elected head of state. The amendment of the constitution triggered an ongoing debate on the role of the president and a putative shift from a parliamentary to a semi-presidential system.[19] Brunclík and Kubát conclude that the direct election of the president introduced in 2012–2013 was a serious blunder made by Czech political elites. As the authors argue, "the desirable reform efforts should focus on rationalising the regime in terms of strengthening of the prime ministers within the cabinet and the cabinet itself within the parliamentary system".[20]

As mentioned above, the chapter on the executive power of the Constitution of Slovakia resembles that of the Czech Republic as it consists of regulation on the president of the republic and the government, indirectly suggesting the idea of a dual executive. The relations between the president of the republic and the government belong to those areas which are in many respects only very broadly and vaguely regulated in the constitution.[21] Although the constitution was changed to provide for popular election of the president in 1998 (also much earlier compared to the Czech Republic), its introduction was not followed by a substantial strengthening of the president's competencies.[22] A recent study argues that the position of the Slovakian president is primarily determined by its constitutional definition, meanwhile their personality does not play a significant influence on the exercise of their power.[23] In contrast, Hloušek concludes, in his analysis on the Czech presidents, that "the real distribution of roles inside the executive body depends on the current distribution of power" (mainly on strong political personalities).[24]

The constitutions of Croatia, Hungary and Serbia place the executive power solely into the hands of the government; therefore, the president of the republic seems to be outside of the executive power – at least in virtue of the constitution. While the Croatian Constitution of 1990 established a semi-presidential system very similar – although not absolutely identical to – the contemporary French constitutional form of government,[25] the reform of the Constitution of 2000–2001 considerably tuned down the power of the president, which resulted, borrowing Sokols's striking phrase, in a "quarter-presidential" system.[26]

18 Sládeček et al., 2016 [commentary to Art. 54].
19 E.g. Hloušek, 2014; Brunclík and Kubát, 2016; Wintr, Antoš and Kysela, 2016.
20 Brunclík and Kubát, 2016, p. 5.
21 Giba et al., 2019, p. 237.
22 Spáč, 2013, p. 126.
23 Horváth et al., 2021.
24 Hloušek, 2014, p. 115.
25 Sokol, 1992, pp. 4–17.
26 Sokol, 2008, cited in Kostadinov, 2016, p. 94.

The Hungarian Constitutional Court declared, shortly after the democratic transition, that "the President of the Republic stands outside the executive power and has independent presidential powers. It cannot be derived from the Constitution that the Government and the President of the Republic hold executive power jointly and that they mutually monitor and counterbalance each other or come to consensual decisions".[27] Although Hungary adopted a new constitution in 2012, the working logic of the executive was not affected by the changes.

As for Serbia, the system established by the 1990 constitution is considered to be semi-presidential,[28] not overlooking the fact that the period of 1990–2000 was characterised by the predominant constitutional position and strong political and personal authority of the then-president Slobodan Milošević.[29] The new constitution adopted in 2006 did not bring significant changes to the formal rules.

Romania and Slovenia form another group since their constitutions do not regard either the head of state or the government as an organ of the executive power, although they declare the separation of powers. Romania is usually qualified as a semi-presidential regime, and in contrast to the lack of clear provisions of the constitution on the possessor of the executive power, the country has a *de facto* dual executive.[30] However, various approaches exist regarding the proper position of the president within (or according to some views, outside) the executive power.[31] Conversely, Slovenia, despite the directly elected president, is basically regarded as a parliamentary system[32]; as Boban claims, "by all normative and empirical properties, the regime is parliamentary".[33]

Although the overview of the structure of the executive presented above is rather schematic, one can draw some concluding remarks. First, Hungary, having had parliamentary elected presidents since 1990, is the only country to be unanimously regarded as a parliamentary system. Second, for the remaining seven countries, the situation is significantly more complicated. It is no exaggeration to argue that each of these seven polities has already been described both as a parliamentary and semi-presidential system in the literature. However, this fuzzy picture does not imply that the seven countries take the same position on the imaginary presidentialism–parliamentarism scale. Evaluating academic points of views, one may tentatively claim that while Poland – and perhaps even more so, Romania – are usually regarded as semi-presidential systems, Slovakia and Slovenia seem to be closer to a pure form of parliamentarism. Croatia, Serbia and recently the Czech Republic are rather intermediate categories between the parliamentary and semi-presidential systems (let us

27 48/1991. (IX. 26.) Decision of the Constitutional Court, Part A), Chapter IV (translated by Dezső, 2010, p. 98.) For a broader explanation, see Dobos, Gyulai and Horváth, 2013.
28 Pejić, 2019, p. 52.
29 Pejić, 2007, p. 8.
30 Gherghina, 2013; Perju, 2015.
31 Varga, 2019, pp. 430–431.
32 Krašovec and Lajh, 2013.
33 Boban, 2007, p. 173.

quote Sokol's snappy definition of "quarter-presidentialism"). Third, if one considers any of the seven countries as semi-presidential, it is quite unambiguous that they may fit solely into the so-called premier-presidentialism subtype as the governments in these systems are exclusively accountable to parliaments. Fourth, it should also be noted that, regardless of the role of the head of state, the government is the centre of the executive power in each of the investigated countries. To put it another way, it is the governments that "wield real executive and proactive, constructive power" and act as chief executives, i.e. executive bodies in charge of all areas of policy-making.[34] In contrast, presidents, even though their formal competencies vary from country to country, have limited power and greater room for manoeuvre, primarily in certain exceptional situations.

Finally, although the text of the constitutions served as a starting point for the analysis of the structure of the executives, it would be unwise to attach too great importance on the wording of the constitutions since their provisions *per se* are inadequate to explore the proper structure and functioning of the executive branch. For instance, as can be seen above, neither the Constitution of Romania nor that of Slovenia make any reference to the executive; however, it does not follow that these polities have no executive power. In addition, one should also take into account the actual 'weight' of the head of state when investigating the executive power. Once a more proactive president who is able to expand their personal influence assumes office, the constitutionally entrenched relation of the president and the prime minister (government) may, at least temporary, undergo some changes.[35]

2. Governments as key actors of the executive power

As a starting point, it must be stressed that the term 'government' has several meanings. First, as a broad definition, government includes all public institutions that make or implement political decisions either on the federal, state or local level. Second, as a general understanding, it includes the executive, legislative and judicial branches. Third and most common, the term refers to a country's central political executive as 'the government'.[36] Since this chapter focuses on the executive branch's top body, the latter meaning is used in the following.

2.1. Definition and status of governments

It is interesting to compare how the constitutions in this study grasp the concept of government. Some of them include an exact definition for the term:

a) Czech Republic: "The government is the highest body of executive power"
b) Hungary: "The Government shall be the general organ of executive power"

34 Brunclík and Kubát, 2019, p. 134.
35 For this phenomenon, see Hloušek, 2013.
36 Müller, 2017, p. 137.

c) Serbia: "The Government shall be the holder of executive power in the Republic of Serbia"
d) Slovakia: "The Government of the Slovak Republic shall be the supreme executive body".

The Constitution of Croatia operates in a similar vein, stipulating the role of the government: "The Government of the Republic of Croatia shall exercise executive power in compliance with the Constitution and law". These definitions show an unequivocal similarity as each of them makes a reference to the executive power.

The Polish and Romanian constitutions do not offer any definition but establish the function of the government. According to the former, "The Council of Ministers shall

a) conduct the internal affairs and foreign policy of the Republic of Poland,
b) conduct the affairs of State not reserved to other State organs or local government
c) manage the government administration".

The related provision of the Romanian constitution reads as follows:

> The Government shall, in accordance with its government programme accepted by Parliament, ensure the implementation of the domestic and foreign policy of the country, and exercise the general management of public administration.

The Constitution of Slovenia stands out in this respect since it does not make any attempt to define the government. However, the Act on Government replaces the missing definition, stipulating that the government is the body holding executive power and the supreme body of state administration.

2.2. Composition of the governments

Governments, as a general rule, consist of the prime minister, deputy prime ministers and ministers. In addition, according to the Polish government, "the presidents of committees specified in statutes" may also be appointed to membership in the Council of Ministers.[37] Pursuant to the Romanian constitution, "other members as established by an organic law" may hold membership in the government. The latter may be, according to the act on the organisation and functioning of the Romanian government, ministers of state, as well as so-called delegated ministers, with special tasks attached to the prime minister.

37 However, no such presidents of committees have been appointed to membership in the past decades (Pach, 2015).

It is solely the Constitution of Slovenia that does not make any reference to the position of deputy prime minister; however, the act on the government clarifies that the function of deputy prime minister is performed by one or more ministers.

2.3. Competencies of governments

While the functions and powers of the legislation and the judiciary are clearly defined, it is much more difficult to pinpoint the competencies of the executive branch and mainly the competencies of the government. It is reasonable to compare the constitutions from the way in which they interpret the powers of the government. One may distinguish three basic – partly overlapping – methods here. Four out of the eight constitutions (Croatia, Poland, Serbia, Slovakia) apply an itemised list to describe the government's competencies. Nonetheless, the lists are not complete; governments may also perform tasks other than the ones stipulated in the constitution. The Constitution of Romania and the Hungarian Fundamental Law use a general definition to outline the powers of the government. In Hungary, while the Constitution of 1989 included a long itemised list of the competencies of the government (including some rather vague function such as "ensures the formulation of social and economic policies and the implementation thereof"), the Fundamental Law acts in a more parsimonious way in this regard as it states that the government "shall exercise all the functions and powers which are not expressly conferred by the Fundamental Law or the law on another organ". A similar regulation is found even in the Polish constitution (beyond the itemised list): "The Council of Ministers shall conduct the affairs of State not reserved to other State organs or local government". According to the Constitution of Romania,

> The Government shall, in accordance with its government programme accepted by Parliament, ensure the implementation of the domestic and foreign policy of the country, and exercise the general management of public administration.

The constitutions of the Czech Republic and Slovenia are more laconic in this regard since neither define the powers of the government in either way. However, it does not mean that these constitutions are silent about the government as both of them make several 'scattered' reference to its competencies.

2.4. Government formation

In parliamentary systems, the government derives its legitimacy from the confidence of the legislature. Thus, parliaments are crucial actors in the government formation process, and even the head of state has their own constitutional role. Meanwhile, the process of government formation has some common points, the proper regulation shows striking variety, and it is no exaggeration to say that almost each of the examined constitutions differs from the others.

The government formation process is often seen as a three-stage process (nomination – negotiation/appointment – parliamentary ratification).[38] To highlight the differences, we divide the government formation process into four rather than three phases (see Table 1). As can be seen, the process starts with the president in each state since the head of state has the right to make a proposal for the prime minister (nomination or designation) or even appoint the prime minister. As a general rule, constitutions allow presidents a certain leeway in selecting the prime minister or prime minister-designate. Pursuant to the constitutions of Romania, Serbia and Slovenia, prior to their proposition, the president is obliged to consult with the leaders of the parliamentary parties (or deputy groups). The Constitution of Romania stipulates a further restriction:

> The President of Romania shall designate a candidate to the office of Prime Minister, as a result of his consultation with the party which has obtained absolute majority in Parliament, or – unless such majority exists – with the parties represented in Parliament.

As a consequence, if any party obtains absolute majority in the parliament, the Romanian president has no latitude at all and is obliged to designate the proposed person to the office of prime minister.[39]

As noted earlier, in parliamentary systems, the government's legitimacy is based on the confidence of the legislature, but how is this confidence manifested? In several countries worldwide, government formation rules are formulated in a positive way, i.e. the parliament has to express its confidence by voting. In contrast, in other countries (e.g. Austria and the Netherlands) the constitutional rules are of negative form, i.e. a government must only be tolerated by the parliament (but can be ousted by a vote of no confidence at any time).[40] As for the eight countries examined in this volume, the government formation rule is definitely positive since the government (or the prime minister) must seek and receive the explicit support of the parliament within a so-called investiture vote.[41] This leads us to the next question: when shall an investiture vote take place? Comparing the relevant parts of the eight constitutions, two basic methods can be distinguished. On the one hand, in the Czech Republic, Poland and Slovakia, the prime minister gains office from the president, and the appointment of the member of the government takes place prior to the vote of confidence, which means that the government come into existence even before the vote of confidence (ex-post formation vote). This process may result in controversial situations if a

38 Carrol and Cox, 2011, p. 3; Brunclík, 2015, p. 30.
39 Varga, 2019, p. 458.
40 Bergman, 1993, pp. 56–57.
41 Following the concept of Rasch, Martin and Cheibub, 2016, p. 3 "Investiture consists of a vote in parliament to demonstrate that an already formed or about to be formed government has legislative support".

government loses the vote of confidence but remains in office.[42] On the other hand, the constitutions of the remaining five countries follow a different logic since the vote of confidence takes places before the final establishment of the government (ex-ante formation vote). To sum up, as Rasch, Martin and Cheibub[43] clarify, the vote of investiture can happen at two stages in the process of government formation: either after the head of state has appointed a new government or at some point between the beginning of a new government formation process and just before a new government is appointed by the head of state.

While comparing the investiture rules, Hungary stands out in an important respect: the parliament elects the prime minister without having official information on the prospective ministers. Thus, this is the only state in which the parliament has no formal influence on the ministers.[44] To put it another way, the only task of the parliament is to elect the prime minister, the further steps of the government formation takes place independently from the parliament.[45] This arrangement is in line with the so-called chancellor democracy – the concept that has had a deep impact on the constitutional framework of Hungary.[46]

Despite the pronounced heterogeneity of the government formation process, one may detect two important similarities. Firstly, presidents are the key actors in the initial phase of the process since they are entitled to either nominate or appoint the prime minister. It is not an obvious competence of the presidents as the head of state has no role at this stage in several European countries (e.g. Sweden, Netherland, Ireland). However, the role and leeway of the presidents compared here is constrained by the constitution and by the constitutional conventions. Secondly, contrary to some countries such as Austria or France, there is a significant parliamentary control over government formation. Although the patterns and methods greatly vary, the vote of confidence is an essential part of the government formation process. The rationale of the vote of confidence is quite evident: bearing in mind the internal logic of the parliamentary systems, no government shall take office (or remain in office for a longer period) without the consent of the majority of the parliament. It must be emphasised again that the confidence may be expressed in the entire government as a body or solely in the prime minister (for the latter, see Hungary).

42 E.g. the cabinet of Jiří Rusnok in Czechia appointed in July 2013 failed to win the vote of confidence; however, it remained in office for more than a half year as a caretaker government (cf. Kopeček and Brunclík, 2019, pp. 125–127).

43 Rasch, Martin and Cheibub, 2016, pp. 9–10.

44 However, as the Act on the Government Administration stipulates, "the person nominated for the position of Minister shall be heard by the committee of the National Assembly competent according to the duties of the Minister prior to his or her appointment". This hearing is not equivalent to the vote of confidence at all since it takes place in the committee (not in the plenar session), and the committee has no veto power on the person nominated for the position of minister.

45 For the critic of this method (partly in Slovenian context), see Kocjančič, 2012.

46 Schiemann, 2004.

While the government formation process usually unfolds without a hitch, a number of problems (e.g. failed coalition negotiation or defeat by votes of no confidence) may arise during the procedure; therefore, each of the constitutions includes some additional regulations for the case of unsuccessful government formation to avoid a crisis caused by a lack of an elected/appointed government. Three typical 'emergency solutions' are enacted in the constitutions.

First, the president shall appoint a new prime minister (Czech Republic) or make another proposal for the parliament (Croatia, Romania, Slovenia). Although the constitutions of Hungary, Serbia and Slovakia do not have such an explicit provision, it is the president's duty to facilitate the successful government formation even if the first attempt failed.

Second, the president may lose their initiative. In the Czech Republic, if the government appointed on the second attempt does not receive a vote of confidence from the Chamber of Deputies either, the president shall appoint the prime minister based on a proposal by the president of the Chamber of Deputies. In Poland, the Sejm is empowered to choose a prime minister (as well as members of the Council of Ministers, as proposed by the prime minister) if the Council of Ministers has not been appointed by the president or has failed to obtain a vote of confidence in the Sejm. In this case, the president shall appoint the Council of Ministers as chosen by the Sejm (however, the president regains their initiative if even the latter process proved to be unsuccessful.) Slovenia is slightly different in this regard since the president does not completely lose their initiative: if the prime minister candidate proposed by the president has been voted down by the parliament, the president may propose a new candidate (or the same candidate again), but candidates may also be proposed by deputy groups or a minimum of 10 deputies.

Finally, if not only the basic formation mechanism failed, but the 'backup processes' also proved to be unsuccessful, the dissolution of the parliament and call for early elections are a last resort. In these cases, the dissloution of the parliament is binding for the president in Croatia, Poland, Serbia and Slovenia and only an option in the Czech Republic, Hungary, Romania and Slovakia.

	Croatia	Czech Republic & Slovakia	Hungary	Poland	Romania	Serbia	Slovenia
Step 1	The president entrusts a person with the mandate to form a government.	The president appoints the prime minister.[47]	The president makes a proposal for the prime minister to the National Assembly.	The president nominates a prime minister.	The president designates a candidate to the office of prime minister.	The president proposes a candidate for prime minister to the National Assembly.	The president proposes a candidate for prime minsiter to the National Assembly.
Step 2	The prime minister-designate forms the government.	The prime minister makes a proposal for the ministers to the president.	The National Assembly elects the prime minsiter.	The nominated prime minister proposes the composition of a Council of Ministers.	The candidate to the office of prime minister completes the list of the government.	The prime minister candidate completes the list of the government.	The National Assembly elects the prime minister.
Step 3	The prime minister-designate presents the government to the parliament and seeks a vote of confidence.	The president appoints the ministers.	The prime minister makes a proposal for the ministers to the president.	The president appoints the prime minister together with ministers.	The candidate to the office of prime minister seeks the vote of confidence in the parliament (joint sitting of the Chamber of Deputies and the Senate).	The National Assembly votes on the election of the prime minister and members of the government.	The prime minister makes a proposal for the ministers to the National Assembly.
Step 4	The president appoints the prime minister; the prime minister appoints the minsters.	The government ask for a vote of confidence before the Chamber of Deputies (Czech Republic) / National Council (Slovakia)	The president appoints the ministers (but not the prime minister).	The prime minister asks for a vote of confidence before the Sejm.	The president appoints the members of the government.		The National Assembly elects the ministers.

Note: for the sake of simplicity, we use the term 'president' for each head of state, regardless of the proper title of the function

Table 1. Stages of government formation process – *Source: author's compilation*

47 It must be noted that a kind of constitutional convention exists in both the Czech Republic and Slovakia that before the president appoints someone as prime ninister, they authorise (entrust) a certain person to form the new cabinet; however, this authorisation is not regulated by the constitutional text.

2.5. Responsibilty and the vote of (no) confidence

As demonstrated in Chapter 6, the parliamentary systems embodies the principle of parliamentary accountability, which has evolved gradually between the eighteenth and twentieth centuries.[48] On the one hand, the formation of the governments of the parliamentary systems requires the approval of the majority of the legislative (as outlined above). On the other hand, the government shall have the confidence of the parliament during its entire mandate, and the latter may revoke this confidence at any time.

The principle of parliamentary accountability (in other words, responsibility) clearly appears in each examined constitution, although the proper wording varies by state (Table 2).

Croatia	The government shall be accountable to the Croatian parliament. The prime minister and the members of the government shall be jointly accountable for the decisions made by the government and shall be personally accountable for their respective purviews.
Czech Republic	The government is accountable to the Chamber of Deputies.
Hungary	The government shall be accountable to the National Assembly. Members of the government shall be accountable to the National Assembly for their actions, [...]
Poland	The members of the Council of Ministers shall be collectively responsible to the Sejm for the activities of the Council of Ministers. The members of the Council of Ministers shall be individually responsible to the Sejm for those matters falling within their competence or assigned to them by the prime minister.
Romania	The government is politically responsible for its entire activity only before parliament. Each member of the government is politically and jointly liable with the other members for the activity and acts of the government.
Serbia	The government shall account to the National Assembly for the policy of the Republic of Serbia, for enforcement of laws and other general acts of the National Assembly as well as for the work of the public administration bodies.
Slovakia	The government shall be responsible for the exercise of governmental powers to the National Council of the Slovak Republic.
Slovenia	Within the scope of their powers, the government and individual ministers are independent and accountable to the National Assembly.

Table 2. The wording of the government's responsibility in the constitutions
Source: author's compilation

48 For the overview of the origins of parliamentary responsibility, see Przeworski, Asadurian and Bohlken, 2012.

The withdrawal of confidence may be conducted in two different ways: by either a motion of no confidence or a motion of confidence.

The motion of no confidence has two types – the regular vote of no confidence and the constructive vote of no confidence. As the constitutional regulation of vote of no confidence shows considerable variety,[49] it seems to be expedient to highlight the differences in a tabular format (Table 3).

	Type	Target	Threshold of support to introduce (at least)	Required majority to pass
Croatia	regular	government prime minister ministers	one-fifth of MPs	absolute majority of all MPs
Czech Republic	regular	government	50 (out of 200) MPs of the Chamber of Deputies	absolute majority of all MPs of the lower chamber
Hungary	constructive	prime minister	one-fifth of MPs	absolute majority of all MPs
Poland	constructive	government ministers	government: 46 ministers: 69 (out of 460) MPs of the lower chamber	absolute majority of all MPs of the lower chamber
Romania	regular	government	one-fourth of the total number of MPs of both chambers	absolute majority of all MPs of both chambers
Serbia	regular	government prime minister ministers	60 (out of 250) MPs	absolute majority of all MPs
Slovakia	regular	government prime minister ministers	one-fifth of MPs	absolute majority of all MPs
Slovenia	constructive	government	10 (out of 90) MPs of the lower chamber	absolute majority of all MPs of the lower chamber

Table 3. Parameters of vote of no confidence
Source: author's compilation

As compared with the constructive vote of no confidence, a regular vote of no confidence is the simpler and more common form of no confidence voting. Once the majority of the MPs supports the motion of no confidence, the mandate of the government is terminated, and a new government formation process starts from the very beginning. Croatia, the Czech Republic, Romania, Serbia and Slovakia adopted this version of vote of no confidence in their constitutions. Compared to the constructive one, the

49 For the relevant indicators of the vote of no confidence, see Lento and Hazan, 2021, pp. 4–6.

regular vote of no confidence can be a major source of political instability, especially in fragmented and deeply divided parliaments where the parliamentary groups strongly disagree with each other (Germany under the Weimar Republic serves as an obvious example).

A constructive vote of no confidence requires the legislature to designate a new prime minister upon submitting the motion; thus, this method allows the parliament to revoke confidence from the government (or prime minister) only if there is a positive majority for a prospective successor. Once the parliament supports the motion of no confidence, it thereby expresses its lack of confidence in the government (or prime minister) and simultaneously either elects the person proposed for the office of prime minister in the motion or the president is obliged to appoint the proposed person. The constructive vote of no confidence is quite a rare phenomenon since less than 10 constitutions apply this method worldwide.[50] Germany and Spain are the most famous examples, but three out of the eight analysed countries (Hungary, Poland [from 1997] and Slovenia) have also institutionalised this type of vote of no confidence. Its rationale lies in the fact that it provides a greater degree of stability for the incumbent prime minister (and thus for the whole government).[51] While the majority of MPs may agree to dismiss the incumbent prime minister in certain turbulent situations (negative majority), it is much more complicated to find a new prime minister candidate whom the majority of MPs may support (postive majority), especially in a fragmented parliament that consist of parties of radically different ideological views. As Just notes, "consensus on the removal of something / someone (negative approach) is easily found, while finding consensus on some alternative (positive approach) may be a superhuman task".[52] However, some objections may also be made to the constructive vote of no confidence. Critics stress that this regulation makes the government pratically unremovable from power, and even a dysfunctional government could thus be kept in power only because there would have not been enough votes for the nomination of a new prime minister.[53]

The motion of no confidence may be examined even from the aspect of the 'target' of the motion. The primary goal of the motion of no confidence is to remove the government from office; therefore, the motion may be submitted against the government in each country.[54] In some constitutions (Croatia, Serbia, Slovakia), it is also possible to table the motion against the prime minister.

50 Rubabshi-Shitrit and Hasson, 2021, p. 2.
51 According to the findings of Rubabshi-Shitrit and Hasson (2021), governments in countries with the constructive vote of no confidence tend to be more durable than governments in countries with a regular vote of no confidence.
52 Just, 2015, p. 171.
53 Just, 2015, p. 173.
54 In Hungary, the motion of no confidence may be taken formally solely against the prime minister. However, this is equal to the motion being submitted against the government since upon the termination of the prime minister's mandate, the mandate of the government terminates automatically.

The crucial question is whether the motion may be submitted against a minister. The Croatian, Polish, Serbian and Slovak constitutions allow it, but the ministers in the other four countries cannot be removed in this way. The theoretical background of this question revolves around the interpretation of the accountability (responsibility) of the government. Two distinct approaches can be outlined in this regard. The first concept understands accountability in a broader sense, claiming that the government's responsibility involves even the removal of particular ministers. The second concept takes the following view: once the prime minister has selected their ministers, the parliament shall not be empowered to oust them, virtually circumventing the prime minsiter as the head of the government. This method strengthens the role of the prime minister while somewhat weakening the parliamentary oversight. As the legislation cannot overthrow the particular ministers, their mandate depends solely on the will of the prime minister. It is also noteworthy to mention that the motion of no confidence against the ministers is always a regular one (not constructive); thus, MPs are not forced (and even not entitled) to designate the new candidate.

Table 4 also reveals the preconditions for submitting a motion of no confidence. While in some European countries (e.g. Ireland or Denmark) even a single MP can lodge the motion, a certain threshold of support is required to introduce the vote of no confidence in the scrutinised eight countries. As can be seen, at least 10–25% of the MPs can table the motion. Polities with bicameral legislatures (Czech Republic, Poland, Romania and Slovenia) deserve more attention since the chamber(s) involved in the process vary. In the Czech Republic, Poland and Slovenia, only the lower house of the parliament is affected by the vote of no confidence since both the initiation and the voting procedure take place here. Romania considerably differs in this regard as even the senators (members of the upper chamber) may participate in the submision and are entitled to vote as the parliament decides on the motion in a joint sitting.

The majority required to pass a vote of no confidence is another important point. As Lento and Hazan note, the government is more vulnerable if only a plurality (simple majority) of the votes is needed to pass the motion.[55] Our eight countries do not differs in this respect since an absolute majority of all MPs must vote 'yes' for the vote to pass. In bicameral systems, with the exception of Romania, only the MPs of the lower chamber participate in the voting. In Romania, even the Senate is involved in the process; thus, an absolute majority of all MPs of both chambers is needed to pass the motion.

Although the issue of confidence mainly emerges related to the vote of no confidence, another process must be examined. While the vote of no confidence is based on the motion of the MPs, even the government may initiate a vote to reveal whether it still has the support of the parliament or not (although the terms 'vote of no confidence' and 'vote of confidence' are often used interchangeably, in the interests of clarity, hereby the latter refers to the motion initiated by the government.) One may pose a question about the rationality of a vote of confidence since, at first glance, it

55 Lento and Hazan, 2021, p. 4.

may seem pointless for the government to enter into a risky situation. However, under certain circumstances, the government may be forced to judge its support and call for a vote of confidence.[56] The risk of the motion is obvious: if the parliament expresses its lack of confidence, the government's mandate terminates (usually either by a mandatory resignation or automatically). As for the positive outcome, if the government receives the support of the majority of MPs, the 'victory' may enhance the position of the government (at least politically).[57]

Initiating a vote of confidence may have a further reason since the motion can be combined with a proposal by the government. In these cases, the government may announce that the vote on its own proposal shall be simultaneously a confidence vote. Accordingly, if the parliament votes down the government's proposal, it expresses its lack of confidence in the government at the same time. Practically, a government applies this process if it wants to put pressure on the parliamentary majority in case of an uncertain government proposal.[58]

Concerning the examined countries, each of the eight constitutions includes provisions regarding the vote of confidence requested by the government or the prime minister (Table 4).

	Vote of confidence *per se*	Vote of confidence linked with a proposal	Consequence of a failed vote of confidence
Croatia	Yes	No	The prime minister and the government shall resign.
Czech Republic	Yes	Yes	The government shall submit its resignation to the president of the republic.
Hungary	Yes	Yes	The prime minister's (simultaneously the entire government's) mandate terminates.
Poland	Yes	No	The prime minister shall submit the resignation of the Council of Ministers to the president of the republic.
Romania	No	No	–

56 Kis and Cserny, 2015, p. 174.

57 In 2006, the incumbent Hungarian prime minister's Gyurcsány Ferenc's famous 'we lied' speech was leaked, causing a nationwide political crisis, mass protests and rioting. To gauge his support in the parliament (mainly in the parliamentary groups of the coalition parties), the prime minister initiated a motion of confidence. As the parliament expressed its confidence, Gyurcsány Ferenc stabilised his position to a certain degree.

58 The fall of the Slovak government in 2011 serves as an illustrative example for that. As the support of the European Financial Stability Facility caused huge debates within the then ruling coalition, prime minister Iveta Radičová linked its ratification to a vote of confidence in the government. Since the majority of the parliament (including the MPs of a junior coalition party) refused to support the proposal, the government was brought down.

	Vote of confidence *per se*	Vote of confidence linked with a proposal	Consequence of a failed vote of confidence
Serbia	Yes	No	The term of office of the government ends, and the president of the republic shall be obliged to initiate proceedings for the election of the new government.
Slovakia	Yes	Yes	The president of the republic shall recall the government.
Slovenia	Yes	Yes	The National Assembly must elect a new prime minister or, in a new vote, express its confidence in the incumbent prime minister; if this fails, the president of the republic dissolves the National Assembly and calls new elections.

Table 4. Parameters of vote of confidence
Source: author's compilation

As can be seen, the vote of confidence *per se* is a much more common form, while vote of confidence linked with a proposal is mentioned only in the constutions of the Czech Republic, Hungary, Slovakia and Slovenia.

Romania shows a remarkable deviation in this regard since neither of the two forms of vote of confidence is regulated by the constitution; instead, the constitution stipulates the so-called 'assumption of responsibility by the government', which works in a way similar to the vote of confidence linked with a proposal. If the government assumes responsibility of a programme, a general policy statement or a bill before the Chamber of Deputies and the Senate in a joint sitting, the MPs are entitled to lodge a motion of no confidence against the government within 3 days of the date of presenting the programme, the general policy statement, or the bill. If the government has not been dismissed by the vote of no confidence, the bill presented, amended or completed, as the case may be, with the amendments accepted by the government shall be deemed as passed. Although the process may be a bit risky, it has obvious advantages since a bill may be passed within an exceptionally fast procedure, without any debate[59] (however, the institution's judgement of the government's assumption of responsibility is rather controversial, raising a number of legal problems.)[60] Thus, one can conclude that a vote of confidence does not exist in its pure form in Romania, and the special form of vote of no confidence – the assumption of responsibility by the government – fills the gap.

59 Varga, 2019, pp. 410–411.
60 Vrabie, 2014, pp. 73–80.

3. Territorial level of the executive

Although the executive branch is principally attributed to the governments and heads of state, it has its own territorial dimension. Contrary to the legislative power, which can be easily centralised (at least in unitary states), the executive would be unable to function without territorial and/or local administrative bodies. From the viewpont of centralisation, states can be divided into three categories (with a certain simplification): federal, regional and unitary states. The constitutions of Croatia, the Czech Republic, Poland, Romania and Slovenia explicitly claim that the state is unitary, while the other three constitutions do not cover this issue. Nevertheless, each of the eight countries subject to investigation easily fits into the category of unitary state since each lacks self-governing provinces, states or other regions, though one can detect some differences regarding the supremacy of the central government and the level of decentralisation. However, it must be noted that Serbia is exceptional in this aspect as the constitution recognises two autonomous provinces: Vojvodina and the disputed territory of Kosovo. According to the constitution, these provinces are autonomous territorial communities, in which the citizens exercise the right to provincial autonomy.[61] The new statute of the Autonomous Province of Vojvodina (passed in 2014) stipulates that the provincial government shall be the executive authority of the province. Taking the status, accountability and competences of the provincial government into account, it is no exaggeration to say that Vojvodina has its own executive system.

Table 5 summarises the territorial level of the executive.

	Performer of the state administration at the regional level		Territorial level (number of bodies)
	Body	Head	
Croatia	county local governments	county governor	counties + capital (20+1)
Czech Republic	regional local governments	governor	regions + capital (13+1)
Hungary	capital or county government offices	government commissioner	counties + capital (19+1)
Poland	voivodeship offices	voivode	voivodeships (16)
Romania	prefectures	prefect	counties + capital (41+1)
Serbia	administrative districts	head of administrative district	districts + capital (29+1)
Slovakia	district offices	head of district office	72

61 Beretka, 2014.

	Performer of the state administration at the regional level		Territorial level (number of bodies)
	Body	Head	
Slovenia	administrative units	head of administrative unit	administrative districts (58)

Note: the table does not include the bodies operating at lower levels of state administration

Table 5. Territorial level of the executive
Source: author's compilation

Although each of the eight constitutions has some provisions on public administration, only three of them refer to the territorial authorities of the government. According to the Fundamental Law of Hungary, "The capital and county government offices (*fővárosi és megyei kormányhivatal*) shall be the territorial state administration organs of the Government with general competence". These government offices operate at the county level and in the capital, headed by the government commissioner (*kormánymegbízott*), who counts as a political appointee of the prime minister. Although capital or county government offices have their own precursors dating back to the 1990s, the territorial representation of the government has been considerably strengthened after 2010.[62]

In Poland, the highest-level administrative division are the 16 voivodships (*województwo*). The constitution establishes that the voivode (*wojewoda*) shall be the representative of the Council of Ministers in a voivodship. The voivode, appointed by the prime minister, is responsible for implementing the policy of the Council of Ministers in the voivodeship and acts as the head of central government institutions at the regional level.

In Romania, the constitution stipulates that the prefect (*prefect*) is the representative of the government at the local level and directs the decentralised public services of ministries and other bodies of the central public administration in the territorial-administrative units. The prefectures (*prefectul*) have been established in each of the country's 41 counties as well as the capital.

In Serbia, the territorial state administration is based on the 24 (29 including Kosovo) administrative districts (*upravni okrug*). According to the law on administrative districts, these are the regional centres of state administration, integrating district regional units of all state administration bodies. The head of the administrative district (*načelnik upravnog okruga*) is appointed by the government and accountable to the minister of state administration and the government for their work.

Similiar to the Czech Republic, Slovakia does not have public admnistration bodies with general competencies at the regional level, i.e. at the level of the eight

62 Barta, 2016, pp. 1–10.

regions (*kraj*); therefore, sub-central state administration activities have been conducted since 2013 primarly by the 72 district offices (*okresný úrad*).[63]

The Czech Republic may be characterised by the so-called 'mixed' model of public administration, which means that "state administration activities as well as self-governmental activities may be exercised by the same bodies of municipalities/regions"[64] and not by bodies with separate competencies. The territorial state administration bodies with general competence were dissolved in 2002, and their tasks were transferred primarily to the 13 regional self-governments (headed by the governor *[hejtman]*) and to the so-called 205 municipalities with extended responsibilities (*správní obvody obcí s rozšířenou působností*).

As for Croatia, a new law on state administration was adopted in 2019 which abolished the county state administration offices (*ured državne uprave*) as first-instance state administration bodies, and their competences were transferred to the county-level units of local self-government (*područna [regionalna] samouprava*).[65] The directly elected county governor (*župan*) is the holder of the executive power in the counties and is responsible for the execution of the transferred tasks.

In contrast to the previous countries, no official intermediate unit has been established between the municipalities and the central government in Slovenia. The state administration tasks are performed by the 58 administrative units (*upravne enote*), which are the only subdivisions of government administration (with general competence). The units are headed by the head (*načelnik upravne enote*), appointed by the minister of public administration.

As this brief overview demonstrates, the eight countries show remarkable differences regarding the territitorial dimension of the executive. The governments of Hungary, Poland and Romania have relatively powerful representatives at the regional level who are rather political appointees, and their position is raised to the constitutional rank. The arrangement is somewhat similar in Serbia, although the heads of the administrative district are in a less significant position than the government commissioner, voivode or prefect. Slovakia and Slovenia notably differ from the previous countries as neither of them has established a government representative at the regional level; the district offices and the administrative units primarily serve as customer services. Finally, the Czech Republic and Croatia form another group as the state administration tasks are performed mainly by regional self-governments.

63 Masárová, Koišová and Habánik, 2017, pp. 52–64.
64 Špaček and Špalek, 2007, p. 218.
65 Lopižić and Toman, 2021, pp. 43–45.

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