The Presidency in Central and Eastern Europe: A comparative analysis between Poland and Romania

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1. Introduction

With the collapse of communist regimes in East Central Europe, institutions such as the Presidency and the parliament took on renewed meaning. In all cases the European model of parliamentary government was adopted. However, the institution of the Presidency differs from country to country. The role of the President ranges from a figurehead chief of state, like in the Hungarian or Slovene Constitution, to a powerful political actor, like in Russia. There have been advanced many explanations for the choice of a strong presidency, ranging from the correlation between weak parties and strong presidencies to the argument that presidentialism is a response to uncertainty about the future. Nevertheless, these constitutional provisions form only the basis for the actual role and influence of presidents in daily political life. As important for the presidential power as the constitutional basis are the political support, personality, and moral authority of the individual filling the position.

We have chosen to study two cases: the Polish Presidency and the Romanian Presidency. First of all, in order to get a full insight of the constitutional evolution in Central Europe 1989, it is better to focus on concrete examples rather than on the region as a whole. Second, we have chosen these two particular countries because they represent two different patterns: Poland evolves from a Presidency shaped by and for the communists to a mixed parliamentary-presidential system, while Romania keeps the same strong presidency tailored in 1991 by the former communists. We will analyse the historical evolution of these two institutions, especially after 1989, the elements that lead to the present configuration of these Presidencies and its consequences on the rest of the political stage of the two countries. We will use not only the constitutional provisions that concern the powers of the two presidents, but also other elements that help shaping a certain image of the Presidency – political support, personality and moral authority of the person in charge.


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Poland and Romania have known a similar historical evolution since the 1930s. Authoritarian heads of state, marshal Pilsudski in Poland and the authoritarian monarchy of Charles II in Romania, and, after WWII almost fifty years of communist rule. This last period strengthened popular tolerance of authoritarian political behaviour by teaching people that politics in the sense of choosing leaders and influencing public policy was the Communist Party’s business, not theirs. By giving the peoples of Central and Eastern Europe the appearance and not the reality of self-government, communist rule deprived them of a real understanding of how democracy works and ill prepared them for the liberal transformation to occur in the early 1990s. Nevertheless, some differences have to be made: in Poland the civil society had already begun to be active while in Romania it was quasi-inexistent. Besides, in Poland the change in 1989 was smooth, representing the end of a long process, while in Romania it was brutal and violent.

In the two countries, as well as in all the other states in Central and Eastern Europe, the changing of the political system transformed the nature of the Constitution itself: from a propaganda document, a fiction – constitution, that dissimulated the reality of power, it came to be a fundamental juridical document, a framework for the political and social life.

2. Historical evolution before 1989

2.1 Poland

Even if the Poles were the first in Europe to have a written Constitution dated 3 May 1791, the first Constitution of the independent modern Poland dates back to 1921. This Constitution was very much influenced by the fear of a strong Presidency. Its authors tried to avoid that too much power be concentrated in the hands of Josef Pilsudski, the father of independent Poland and an advocate of centralized government. Therefore, the framers preferred a parliamentary system, in which the Low Chamber (Sejm) held a great amount of power. The government was subordinated to the Sejm and the powers of the president were limited. Nevertheless, the weaknesses of the political system in general and the difficulty of creating stable parliamentary majorities in particular did not allow a smooth functioning of the parliamentary system. In 1926 Pilsudski seized power;

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he chose not to take the office of the President, but he ran the country nevertheless, continuously confronted with the limitations imposed by the 1921 Constitution.

In 1935 a new Constitution, which gives far more powers to the President, was set up. But, by coincidence, Pilsudski died the same year and none of his successors could take advantage of all the functions allowed by the new Constitution.

Until the end of WWII and 1952 the Presidency was irrelevant. The power was concentrated in the hands of the communists and the decisions were partly made in Moscow. The 1952 Constitution, based on the Soviet model, abolished the Presidency and replaced it with the Council of State (Rada Panstwa), a body formed by members of the Sejm. In its first years the Council of State had an important role to play but after 1957 it had merely a decorative function.

The Polish Constitution of 1952, following the dominant doctrine in the socialist countries, placed the Diet at the head of all the institutions of the Popular Republic of Poland. Article 15 said:

_The Diet of the Popular Republic of Poland is the superior body of the state power. The Diet, as supreme expression of the will of the working people in villages and cities, realises the sovereign rights of the Nation._

This dominant position leads to a superiority of the Diet in the relationship with the other bodies of the Polish state – the Council of State and the government.

In the 1980s, because of the Martial Law experience, proposals for re-establishing the presidency appeared again.

The Presidency was re-created during the Rountable Talks of April 1989. In return of the staging of semifree parliamentary elections and the relegalization of Solidarity, the opposition accepted the creation of an office whose main objective was to keep the foundations of the communist regime untouched. Tailored to mirror the extensive powers the enjoyed by party leader and head of state General Wojciech Jaruzelski the Presidency was oriented to blocking change rather than promoting it. The opposition tried to limit the office with counterbalancing parliamentary controls. Besides, opposition negotiators deliberately designed the presidential clauses of the agreement to be as confusing as possible, in order to reduce Jaruzelski’s room for manoeuvre.

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The Presidency was re-established on April 7, 1989, by Constitutional Amendment. The details of the new office will be analysed later on.

2.2 Romania

In Romania’s case, the first Constitution to be taken into account is the 1923 one, inspired by the Belgian Constitution, that set up a constitutional monarchy with clearly separated powers. But, due to the evolution of the Romanian monarchy toward an authoritarian one, in 1938 the Constitution was changed in order to respond better to the realities of the time. This time we can talk about a conceded Constitution, because it no longer was an emanation of the nation, but of the only will of the king. There was no more separation of powers, but on the contrary, a massive concentration of power in the hands of the king. The legislative power was exercised by the king, through the National Assembly and the executive power was also exercised by the king, through his government. The king also enjoyed the monopoly of the revision of the Constitution.

Between the end of WWII and 1989 Romania had three Constitutions, all inspired by the Soviet model. The first one dates back to 1948 and had a provisional character; the economic measures are more important than the political ones, because its aim was to be the legal instrument by which all the economy pass under state control. Romania was a Popular Republic. The second communist constitution, adopted in 1952, was characterized as “the Constitution of Romania’s total subjection to the Soviet Union.” All the activities of the state powers were subordinated to the Romanian Working Party. The third Constitution dates back to 1968 and proclaimed the Socialist Republic of Romania. In all the three Constitutions the executive power was assured by the Council of State and the legislative power by the Grand National Assembly.

The office of President of the Socialist Republic of Romania was created by a 1972 law. The President cumulated a great amount of attributions transferred from the Council of State and the Grand National Assembly. Therefore, it became the main office in the state.

We can conclude that the beginnings of the Romanian communism are similar, in what concerns the presidential office, to the Polish ones – we have no President, but a Council of State that assumes this role. The difference between the two cases resides in the moment when the office was created: in Poland in 1989, during the Roundtable talks, and in Romania in 1974. Romania will therefore know fifteen years of absolute power of the President. This will make the population more used to absolutist dirigisme and will educate the authors of the post-communist Constitution with the idea of a strong chief of state. The

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10 ibid, page 118
result will be the 1991 Romanian Constitution that we will analyse in detail in the following chapter, and that sets up a semi-presidential regime. We will see that the prerogatives of the President are very much inspired from the prerogatives given to Ceausescu in the last communist Constitution.

3. After 1989

3.1 Poland

3.1.1 The Constitutional amendment from April 7, 1989

The Polish transition is based on two constitutional laws but, in fact, on three constitutional documents\(^\text{11}\). The constitutional law dated April 23, 1992 concerning the adoption of the Constitution of the Polish Republic concerns the future Constitution. The constitutional law from October 17, 1992 on the reciprocal relationships between the legislative and the executive powers and on the territorial self-management is known as the Little Constitution. Finally, there is the 1997 Constitution.

In order to understand the importance of these documents for the presidential office we have to go back in time and analyse the dispositions of the constitutional amendment from April 7, 1989, which re-created the Presidency as an institution. The President would be elected for a six-year term, with an option for a second term, by the General Assembly (the Sejm and the Senate together). The role of the President was, according to Art. 32.2,

\begin{quote}
To watch over the observance of the Constitution, to safeguard the security and sovereignty of the state, as well as the inviolability and indivisibility of its territory; and the implementation of political and military alliances with other states.
\end{quote}

It was not clear whether these powers took into account the realization of particular competencies according to further provisions, or whether they were individual powers of the president\(^\text{12}\).

Besides, the president enjoyed further competencies, such as commander-in-chief of the armed forces, chairman of the State Defence Committee, the right to declare martial law, to dissolve Parliament (when Parliament failed to create a government or enact laws that enable the president to perform his constitutional duties), had veto authority, the right to propose candidates for the prime ministership. The President was only accountable to the legislature by impeachment. The General Assembly could, by a two-thirds majority, charge the president with violating the Constitution. Some of the important acts of the

\(^\text{11}\) Lesage, Michel – \textit{op. cit}, page 18

\(^\text{12}\) Garlicki, Leszech Lech – \textit{op. cit}, page 2
president required the counter-signature of the prime minister or of one of the ministers, but the list of such acts was to have been stipulated in a separate law, which was never written. In practice though, the president acted alone.

These competencies established a strong presidency with broad, but vague powers\textsuperscript{13}. As a consequence, the office did not contribute constructively to the new democratic system. On the contrary, the Presidency had come about as a counterproposal during the Roundtable talks to calm down Solidarity’s demands. It is interesting mentioning that one of the powers of the president, established at the Roundtable, was the observance of the Constitution which, at that time, still specified the leading role of the Communist Party and Poland’s alliance with the Soviet Union\textsuperscript{14}.

In conclusion, the April Amendment created a quasi-presidential system, with presidential authority similar to that found in the 1958 French Constitution. Nevertheless, the reality of the system was different from the letter of the Constitution. President Jaruzelski had been elected by both houses of the National Assembly by a one-vote majority, and from the outset he lacked a sufficiently strong political base\textsuperscript{15}. Besides, the evolution of the political parties in the Assembly and the self-dissolution of the PZPR in January 1990 made the Polish system temporarily become more parliamentary in reality than it was on paper.

The Presidency was strengthened by the September 1990 amendment that stipulated popular election for the President, at the same time limiting his term of office at five years. Besides, the election of Lech Walesa as president in December 1990 also contributed, by the personality and the prestige of the elected, to strengthen the presidential institution.

3.1.2 The Little Constitution

Walesa’s constitutional prerogatives, established by the April Amendment, even if wide in theory, did not give him the executive powers that would have allowed him to monopolise political initiative as he used to do while president of Solidarity\textsuperscript{16}. Therefore, he submitted to the Parliament a project of “Little Constitution”, conceived as a short-term constitution that would have enabled the state to function in accordance with the specific demands of a country in transition from one political and economic system to another and pending the

\textsuperscript{13} ibid, page 2
\textsuperscript{14} ibid, page 2
\textsuperscript{16} Sabbat-Swidlicka, Anna – Poland, RFE/RL Research Report, vol. 1, no. 27, 3 July 1992, page 29
drafting of a full Constitution. The special Sejm commission set up to work on the draft of the interim Constitution made such changes in it that Walesa withdrew it altogether. Finally the Sejm will adopt a Little Constitution on October 17, 1992. It was designed as a constitutional statute which would regulate – with the binding force of a Constitution – the system and functioning of some of the chief state organs only (parliament, president and government); it was to have remained in force until a new, complete constitution could be promulgated\(^7\).

The Little Constitution abandons the anti-parliamentary provisions included in the April Amendment and is based instead on the concept of a “rationalized” parliamentary system\(^8\). Actually, the system of government established by this Constitution is a mixed presidential-parliamentary one\(^9\). It represents a compromise between Walesa’s desire for a political system centred on the Presidency and his opponents’ determination to give Poland a purely parliamentary structure. Characterized by equilibrium and clarity, the Little Constitution enshrines the principle of balance of power among the three branches of government. The executive is strengthened, but the President’s gains are offset by new counterbalancing government controls. Besides, the interdependence between the President and the Parliament is reinforced.

We cannot say that the powers of the President were dramatically increased. He holds the most important powers defined for Jaruzelski in April 1989. Thus, he has the right to veto legislative acts (this veto can be annulled by a two thirds majority in the Sejm), can ask the Constitutional Tribunal to rule on the constitutionality of legislation (which automatically suspends the law’s implementation until a verdict in handed down), has the right to propose legislative measures, can convene and chair cabinet sessions, can declare martial law and military mobilization, as well as emergency state. The President is commander-in-chief of the armed forces. He also has the right to ratify international agreements, to nominate the head of the National Bank, to name judges, issue pardons and award Polish citizenship.

The new elements brought by the Little Constitution concern the following points. The most important is that the dominance of the President in the field of external politics and defence is clearly expressed. The Prime Minister has to ask for the President’s opinion when nominating the ministers of external affairs, defence and internal affairs. Besides, the President can name the chief of the General Staff of the armed forces. Here the Little Constitution expands the


\(^8\) Garlicki, Leszek Lech – *op. cit*, page 3

\(^9\) Vinton, Louisa – *op. cit*, page 19
President’s role by stipulating that he does this “in agreement with” rather than “on the nomination of” the defence minister, as has been the case in the past. The President also has the right to consult the population in national referendums, with the condition that the Senate also agrees. Before the Little Constitution this power had belonged exclusively to the Sejm. The President can also deliver formal addresses to the Sejm and the Senate that need not be subject to debate.

There are also some limitations on the President’s powers if compared with the April Amendment. The President is still authorized to dissolve the Parliament if it fails to adopt a budget within three months. But he loses the right he had under the old Constitution to dissolve the Parliament if it passes a law or adopts a resolution that prevents the president from performing his constitutional duties. Besides, the Little Constitution introduces the practice of requiring government countersignatures for the president’s legal decisions. It also enumerates a list of presidential acts that do not require a countersignature by the relevant minister. These include vetoing legislation, calling a referendum, convening and dissolving parliament, calling elections, issuing pardons, naming the government and nominating the National Bank head. On the other hand, the President can no longer ask for the demission of the government.

The authors of the Little Constitution did not want to design a political system to last for decades. Quite the contrary, they wanted to clarify the rules of the political game going on at the certain moment. Nevertheless, the place it reserves to the President has a major political importance, because it is a gesture of confidence in the Presidency as an institution and in its occupant at that moment, Lech Walesa. Walesa’s role did not expand, but neither did it shrink. In fact, the dispositions of the Constitution suggest that the Sejm accepts his activist approach to presidency, provided extensive safeguards remain in force. Consequently, Walesa himself and his collaborators were not satisfied with the result, thinking that the Constitution perpetuated “sejmocracy” and accusing it of anti-presidentialism.

### 3.1.3 The 1997 Constitution

Walesa’s ambitions did not fit well within the limitations of the Little Constitution. Therefore, during his five-year term of office (1990-1995) he strengthened the powers of his institution. Using constitutional precedents, and without violating the Constitution, he gained near total control over the affairs where, constitutionally, he had “general coordination and leadership”, especially over security and defence matters. After the parliamentary elections in September 1993 the Parliament introduced two amendments that limited the president’s right to dissolve the Sejm. The fear of strong presidency was also

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20 ibid, page 26  
21 Garlicki, Leszek Lech – op. cit, page 4
shared by the Constitutional Commission that was in charge of drafting a new Constitution. It seems that the majority parties in the commission assumed that Walesa would be elected for a second term and they wanted to use the new Constitution to confine him. But Aleksander Kwasniewski was elected president in December 1995, which substantially weakened the coalition’s interest in limiting the presidential powers. However, by this time the constitutional drafting process had gone too far to return to the idea of a strong presidency. As a result, a limited presidency is reflected in the final version of the new Constitution\textsuperscript{22}.

The 1997 Constitution, like the 1992 Little Constitution, accepts the “rationalized” parliamentary system as the basis for legislative–executive relations\textsuperscript{23}. The role of the president has been substantially limited, but he still retains some constitutional powers. He is elected by popular voting, which gives him democratic legitimacy and the ability to invoke the support of millions of his electors. The presidential mandate is for five years, with a possible second term. The president can lose his post only by impeachment, if he violates the Constitution or other laws, or commits a crime. There is no vice presidency. If the president is unable to perform his duties he is replaced, in order of succession, by the speaker of the Sejm followed by the speaker of the Senate. They have all the same powers as the president, except the power to dissolve the Sejm.

The primary goals of the Presidency are, according to the Constitution (Art. 126.2),

\begin{quote}
\textit{to ensure the observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory.}
\end{quote}

According to Art 126.3, the president fulfils his duties \textit{within the scope of and in accordance with the principles specified in the Constitution and statutes}. It excludes the obscure concepts like “implied” or “inherent” powers. Words such as “safeguard” or “ensure” cannot be constructed as a source of additional powers, except in the ways explicitly stated by the Constitution. The Constitution also does not provide for the president’s “general coordination and leadership” in state security, defence and foreign affairs, excluding the idea of implied powers in these fields. In practice, this means that the president’s position is weaker, not so much because concrete powers have been taken away, but because constitutional ambiguities have been eliminated\textsuperscript{24}. He still holds considerable power in emergency or crisis situation.

\begin{itemize}
\item \textsuperscript{22} ibid, page 5
\item \textsuperscript{23} ibid, page 5
\item \textsuperscript{24} ibid, page 5
\end{itemize}
It is counter-signature that most of all defines the new presidency. It concerns all the acts of the President; in the Little Constitution it was required only for legal acts. Nevertheless, there still is a list of acts that do not require a counter-signature. Besides, the new Constitution states that only the Prime Minister is entitled to counter-sign acts, which is a substantial departure from previous constitutions (before, all ministers could counter-sign presidential legal acts). As a result, the role of the Prime Minister in the government and in the relation to the president is strengthened.

Presidential powers over the legislature have not been significantly changed, even if they are weaker than before. The president still has the power to dissolve the Sejm, but only in two cases: if within four months both chambers fail to adopt a budget and if the Sejm is unable to accept a cabinet appointed by the president or if it cannot produce its own. The President can no longer dissolve the Parliament following a no-confidence vote. This comes as a consequence of a change of the concept of the vote of no-confidence: dismissal of the cabinet is possible only on the condition that a new prime minister be elected (Art. 158.1). Dissolution of the Sejm is possible only if that body is unable to make fundamental state decisions. This cannot happen to a Sejm with a stable majority, even if politically it opposes the president. This is a full realization of “rationalized parliamentarism”.25

In respect to the legislative process, the President has the same powers as before: legislative initiative, veto power and the right to petition the Constitutional Tribunal to review bills (preventive control).

Within the executive branch the position of the president has been significantly weakened. The procedure for creating the cabinet has been changed, or rather simplified, and the president can no longer create a presidential cabinet when Parliament lacks a majority. Besides, he has lost the powers to review the nominations for the internal affairs, external affairs and defence ministries. Nevertheless, the president alone can appoint a new minister, but only following a motion from the prime minister. Under the Little Constitution, the procedures for dismissal and appointment were a source of numerous conflicts between Walesa and his prime ministers. In the new Constitution the president can no longer intervene into the shape of the cabinet solely on his own initiative and the ministers are no longer politically responsible to him. Also, the new Constitution removes the President from the government’s current activities, leaving him without “general supervision” over security, defence and foreign affairs.

The legal competencies of the President have remained in their traditional form: he has the right to pardon, to declare the state of emergency and the authority to appoint judges (only as proposed by the Court Council). He also remains the supreme commander of the armed forces.

25 ibid, page 6
In conclusion, the 1997 Polish Constitution shows the will to end the strong presidency and to emphasize the role of the Sejm.

3.2 Romania

The first legal document concerning the Presidency drafted after the change of regime in December 1989 was the Law Decree no. 92, dated March 14, 1990, concerning the election of the Parliament and of the President of Romania, given by the Provisionary Council of National Union – a body that had seized power after the fall of Ceausescu. This document is full of contradictions. First of all, law decrees are equivalent to ordinary laws; the latter cannot establish constitutional norms such as the determining the powers in the state. Second, this decree creates a function that had just been abrogated by a previous document. A law decree from December 27, 1989 states, at Art. 10, that “are dissolved all the structures of power of the old dictatorial regime”.

As the office of President had been introduced by the old dictatorial regime, it was abolished by the December 1989 decree. All this shows the clear lack of constitutional experience and, if we go further in the argumentation, can have more profound implications. For instance, Eleodor Focseneanu, a Romanian jurist, considers that, taking into account these two reasons, the function of President is illegitimate, because it had not been the object of a choice made by the population after the dissolution of the communist regime.

Unlike Poland, that has known two Constitutions after 1989, Romania has only known one, approved by popular referendum on December 9, 1991. If compared with the draft Constitution from July 1991, the final version is better, because it reinforces parliamentary control over the executive and the Presidency and increases the legislature’s independence from the Constitutional Court. Nevertheless, the Constitution in its final version has serious deficiencies. It is inspired by the 1958 French Constitution and, especially in the chapter concerning presidential powers, by the 1965 Constitution of the Socialist Republic of Romania.

The principle of power separation in the state is not mentioned. Besides, the term “state power” is replaced with “public authority” (found in the French 1958 Constitution) – a terminology error, because the concept of public authority is specific to the executive power. This clearly indicated the wish of the Constitution framers to favour this power. As a consequence, instead of the three classical powers in the state, the Romanian Constitution enumerates five public authorities, which extends the sphere of the executive power. They are: the

26 Focseneanu, Eleodor – op. cit, page 141-142
President, the Government, the Public Administration, the Parliament and the Jurisdictional Power.  

In accordance with this option for a strong executive, the Romanian Constitution establishes a semi-presidential republic. The President is elected by popular vote, which makes him independent from the Parliament and legitimised by the vote of the people. The demission of the President is also subject to popular vote, by referendum. Therefore, his actions are not submitted to parliamentary control, which could encourage authoritarian behaviours. Besides, the President can take part, whenever he wants, to the cabinet meetings; in those cases he presides over them.

If we take a close look to the prerogatives of the President we will find, in almost an identical form, the prerogatives given to Ceausescu by the 1974 law. The acts of the President never require ministerial counter-signature; the Prime Minister needs to counter-sign only in a few cases: international responsibility (international treaties, diplomatic accreditations), exceptional circumstances (war, general mobilization, siege), special rights (decorations, the grades of marshal, general and admiral, individual pardon). As a consequence, in Romania nobody is responsible for the application of the laws, because the president cannot be held responsible for his acts (Art. 84.2) and the ministers are not answerable for the simple reason that they do not counter-sign.

Like the Polish president, the Romanian president is commander in chief of the armed forces. Besides, he is also president of the Supreme Council of defence of the country. He can be impeached for violation of the constitutional dispositions, by the Parliament (a two thirds majority is needed), after consultation of the Constitutional Court.

One of the limits to the presidential powers is the fact that he cannot dissolve Parliament in the last six months of his mandate or during war or emergency state. Normally, the president of Romania can dissolve Parliament if it failed to give its confidence vote to the government in 60 days after the first vote and if there have been at least two non-confidence votes.

Nevertheless, despite these restrictions, the powers of the president are extremely vast and potentially dangerous for a country that lacks democratic traditions and where the civil society is very vulnerable to abuses of the executive.

28 Focseneanu, Eleodor – op. cit, page 160
29 ibid, page 164
3.3 Comparison between the prerogatives of the President, such as established by the present Constitution, in Poland and in Romania

As Barbara Geddes observed, Communist parties initially preferred strong presidencies, which they expected to win or appoint, and majoritarian electoral systems\(^{30}\). Where they expected to win, like in Romania, they preferred a popularly elected president, since popular election would confer more power and legitimacy on the holder of the office in any struggles with an unpredictable elected legislature. Where mass opposition had already become apparent, as in Poland, a president elected by Parliament was preferred (as specified in the April Amendment). While in Poland the situation evolved, in Romania the first choice was also the last, which leads us to the present situation of big differences between the two institutions.

James McGregor proposes to divide, for analytical purposes, the powers of the president in five categories: symbolic, ceremonial, procedural, appointive and political powers\(^ {31}\). These are somewhat artificial categories, because any power can become political in the hands of an astute or manipulative politician. Moreover, some powers cannot be clearly assigned to one of these categories. Nonetheless, the categories are useful as an organizing device and are ranged in according to their potential to affect politics.

- **Symbolic powers** are those that are basically devoid of immediate political importance, although more than one leader has managed to turn a national day or a speech into a call for action (for instance the Serb President Slobodan Milosevic).
- **Ceremonial powers** (for example awarding honours or titles) likewise have low political potential; but because they affect individuals or classes of citizens, they can sometimes be used to reward, punish or provoke.
- **Procedural powers** (opening the Parliament or fixing the date of elections for instance) are somewhat more important politically than the preceding categories, because a failure or a refusal to exercise the power or to carry out the function could lead to a constitutional, legal or political confrontation.
- **Appointive powers** (of prime ministers, judges or prosecutors for instance) are politically important, since the choice of the person to fill a critical post can have a considerable impact on how the duties of the position are executed.

\(^{30}\) Geddes, Barbara – *op. cit*, page 21

\(^{31}\) McGregor, James – *op. cit*, page 24
Political powers (such as vetoing legislation) have direct and immediate consequences for the political life of a country.

We are now going to analyse, from a comparative perspective, the powers of the Romanian and of the Polish president, taking into account these five categories in order to facilitate the comparison. Besides, we have put together, in the table, the symbolic, ceremonial and procedural powers – those who have the smallest degree of political influence – in order to simplify the unify the comparison.

We have also added some other variables used by McGregor in his analysis\(^\text{32}\). Thus, we have made a distinction between the powers the president can exercise alone, marked with an X and called by McGregor “unqualified constitutional powers” and the powers the president can only exercise under the control, or with the participation, of other institutions, marked avec O and called by McGregor “partial, shared or qualified constitutional powers”.

<table>
<thead>
<tr>
<th>Symbolic powers</th>
<th>Poland</th>
<th>Romania</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ceremonial powers</td>
<td>-awards decorations, titles, honors</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>-head of state</td>
<td>0</td>
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<tr>
<td></td>
<td>-convenes constituent sessions of parliament</td>
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<td></td>
<td>-grants pardons</td>
<td>X</td>
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<td></td>
<td>-grants citizenship</td>
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<td>-accredits foreign ambassadors</td>
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<td></td>
<td>-signs law</td>
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<td></td>
<td>-promulgates law</td>
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<td></td>
<td>-dissolves Parliament</td>
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<td></td>
<td>-calls referendums</td>
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<td></td>
<td>-calls elections</td>
<td>X</td>
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<td></td>
<td>-signs treaties ratified by Parliament</td>
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<tr>
<td></td>
<td>-receives oath of office</td>
<td>0</td>
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<td></td>
<td>-appoints caretaker government</td>
<td>0</td>
</tr>
</tbody>
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\(^{32}\) ibid, pages 25-27
After analysing this table we can draw the following conclusions.

First of all, with regard to the symbolic, ceremonial and procedural powers, we have to mention that having a great amount of these powers does not necessarily mean that the presidency is strong. Therefore, even if the Polish president has 14 such powers, eight of them are exercised together with other institutions. The Romanian president only has 10 such powers and he cannot exercise alone seven of them. This could give the impression of a weak presidency but, as we have already seen in the chapter concerning the 1991 Romanian Constitution and as

| Powers of appointment       | -Prime minister                  | X | 0 |
|                            | -ministers at the suggestion of   |   | 0 |
|                            | Prime Minister                    | - | 0 |
|                            | -Constitutional Court             | 0 | - |
|                            | -Supreme Courts                   | 0 | 0 |
|                            | -judges                           | 0 | - |
|                            | -Central Bank officials           | - | X |
|                            | -senior officers                  | 0 | - |
|                            | -senior commanders                | X | 0 |
|                            | -ambassadors                      | | |

| Political powers            | -commander in chief of armed      | X | X |
|                            | forces                            |   |   |
|                            | -chairs National Security Council | 0 | X |
|                            | -remads laws for reconsideration  | 0 | X |
|                            | -sends laws to Constitutional     | X | X |
|                            | Court                             |   |   |
|                            | -proposes legislation             | X | - |
|                            | -issue decrees in nonemergencies  | 0 | 0 |
|                            | -proposes amendments to the       | - | 0 |
|                            | Constitution                       |   | X |
|                            | -calls special sessions of        |   |   |
|                            | Parliament                        |   |   |
|                            | -assumes special powers if        | X | X |
|                            | parliament not in session or      |   |   |
|                            | unable to convene                 |   |   |
|                            | -assumes emergency powers at      | X | X |
|                            | other times                       |   |   |
|                            | -may address or send messages     | X | X |
|                            | to parliament                      |   |   |
|                            | -may convene cabinet sessions     | 0 | - |
|                            | -participates in cabinet sessions | - | 0 |
|                            | -may request reports from the     | X | - |
|                            | government                        |   |   |
the following points will show, the presidency in Romania is far from being weak.

The rows concerning the powers of appointment give a better image of the real role of the presidents, as nominating officials is one of the most important powers of the Presidency. If one appoints close collaborators to fill leadership positions one rewards their loyalty, but, at the same time, controls the execution of policies. The majority of the nominations the President can make is submitted to approval by another institution as well. Thus, out of the seven of the powers of appointment of the Polish president four require the participation of another institution. In Romania, the president can only exercise alone one of the six powers of appointment he holds. We have to add that the two Presidents also hold some other powers of appointment that have not been mentioned in the table, because they are a mark of the particularities of each country. Thus, the president of Romania names the head of the Romanian Information Service, which gives him great influence over this institution.

Political powers are those who show the best the real character of the Presidency in the two countries. The Romanian and Polish presidents enjoy an equal number of political powers, eleven, but the difference consists in the way they can exercise them. The Romanian president exercises alone more powers than his Polish counterpart (eight, respectively seven). Besides, we can see that the interference of the Romanian presidency in the affairs of other branches is more developed than in the Polish case. The President of Romania can propose amendments to the Constitution, call special sessions of Parliament and take part in the cabinet meetings whenever he wants. The Polish president cannot do any of these actions. Besides, in Romania the power of the President to remand laws for reconsideration to the Parliament is not subject to any control; the President could thus block the whole legislative process.

In conclusion, the main difference between the prerogatives of the Presidency in Poland and in Romania resides mainly in the political powers of the two presidents. But, as we have already mentioned, the real impact of the presidential power does not depend only on the Constitution, but on the political support and on the personality and moral authority of the office holder as well.

4. The other factors that build the Presidency – political support, personality and moral authority of the President

4.1 Poland

The constitutional evolution of Poland after 1989 has been very much influenced by the personalities of the different individuals filling the function. For instance,
if the 1989 April Amendment was tailored to fit Jaruzelski’s position, the Little Constitution bears the hallmark of Walesa.

From the Roundtable talks in February 1989 up until the October 1991 Parliamentary elections, Walesa had been the driving force in Polish politics, the main actor on whose role everything else centred. He started to see his role as essential and to propose a French-style Presidency. He thought that for the transition period the best solution for Poland would be a presidential system of government, in which the president should be responsible for forming the government and in which the Parliament should focus on the legislative process and on controlling the executive. Unsatisfied with the provisions of the Little Constitution, Walesa tried to maximise his influence, by controlling three key ministries, by nominating close collaborators to head public media, and by other methods.

This attitude gave the impression that he was more interested in personal short-term advantages and that he lacked a wider strategic vision. That is why he lost his credibility as an efficient politician. At the beginning of the 1990’s Walesa enjoyed strong credibility and moral authority, in Poland as well as abroad. But his political evolution during his term of office eroded this symbolic capital and lead to election of the former communist Aleksander Kwasniewski as president. The latter, unlike Walesa, had no moral authority. Quite the contrary, he had been Minister for Youth in a communist government. His advantage was that he had been the president of the parliamentary commission in charge of drafting the new Polish Constitution that tried to limit the powers of the president. Therefore, he did not appear as a supporter of a strong Walesa-style presidency. After his election he has tried to counterbalance his lack of moral authority and legitimacy by a political position open towards the West and by keeping a moderated presidency.

4.2 Romania

Ion Iliescu, appeared out of a sudden during the 1989 Revolution, did not enjoy the moral authority or legitimacy of Walesa. Quite the contrary, he had been one of the apparatchiks of the old regime. But the great majority of Romanians, used to paternalism, only wanted to see a good demiurge in the place of the bad one. Iliescu, habile and well served by the population, created himself the image of

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the saviour of the country and enjoyed such extensive power that, at the beginning of 1990, he could have done anything, including preparing the population to adapt itself to democracy\textsuperscript{36}. Advocate of socialism with human face, he quickly realized that the circumstances were not in favour of such a project. Consequently, not being able to save socialism, he tried to associate to power a great number of the people who had managed it. The 1991 Romanian Constitution is a clear example of lack of democratic experience and of will not to establish solid bases for a full liberal democratic system. Thus, as already mentioned, the principle of power separation in the state does not appear in the Romanian Constitution.

In regard to Iliescu’s behaviour as president, we have to admit that he has not tried to force or widen his powers, as the Constitution gives him enough. He generally keeps the distance from the internal social and economic life, wishing to respect the Constitution, but also wishing not to appear responsible for the constant fall of the living standards of the Romanian population\textsuperscript{37}.

In 1996 the democratic forces won the elections, but this did not lead to the expected changes. President Constantinescu, despite his power to propose amendments to the Constitution, did not want to reform and to adapt it to the requirements of any real democratic system. Unlike Iliescu, Constantinescu enjoyed greater legitimacy and moral authority. But his political evolution during his term of office eroded them.

5. Conclusion

The strong Presidencies that developed in post-communist countries represent a transformation of communist-era practices\textsuperscript{38}. The countries that had longer democratic traditions, like the Czech Republic, succeeded to avoid strong presidencies.

This situation confirms Fred Rigg’s theories; he demonstrated, using empirical evidence from a large group of “new democracies”, that those which had chosen the parliamentary system of government had considerably better chance to successfully consolidate as democracies than those which had opted for a


\textsuperscript{37} ibid, page 524

\textsuperscript{38} Karpinski, Jakub – In the Wake of Presidential Elections, a Crisis of Authority, Transition, 26 January 1996, page 56
presidential system of government. The transition year proved that in Central and Eastern Europe the political transformation was smoother in parliamentary regimes.

In Romania and, until the 1997 Constitution, in Poland, the President enjoys very strong authority. The most important difference between the two countries is that Poland knew how to evolve, during the transition, from a semi-presidential republic to a mixed parliamentary-presidential system while Romania kept on being a semi-presidential republic. The causes of these two situations are complex. First of all, the strong structure of the Polish civil society, no longer disposed to bear a strong presidency, versus the total lack of civil society and Romania and the paternalism of the population, used to authoritarian rulers. Second, the personalities who imposed themselves on the political stage of the two countries after the fall of communism: Walesa brings the moral legitimacy and authority of the fight against the system and does not nominate former apparatchiks in high functions. On the other hand, Iliescu and the new Romanian elite are nothing less than a re-baptized former elite, that does not necessarily want a radical change of the system.

We could go on analysing the reasons that lead to this difference, but the most important is to see the present situation. Romania is a semi-presidential republic, with all the risks that it implies for the civil society. Poland enjoys a mixed system, where the Parliament has extensive control powers and where the President loses a series of prerogatives given by the Little Constitution.

6. Bibliography


DORNBERG, John – Central and Eastern Europe, Oryx Press, Phoenix, 1995


HESSE, Joachim Jens, Johnson, Nevil – *Constitutional Policy and Change in Europe*, Oxford University Press, 1995

KARPINSKI, Jakub – *In the Wake of Presidential Elections, a Crisis of Authority*, Transition, 26 January 1996

KARPINSKI, Jakub – *Setting the Stage for the Presidential Election*, Transition, 3 November 1995

KARPINSKI, Jakub – *Kwasniewski Unseats Walesa as President*, Transition, 15 December 1995


LESAGE, Michel – *Constitutions d’Europe centrale, orientale et balte*, La documentation française, Paris, 1995


NIVAT, Anne – *Convincing Polish Voters that Kwasniewski is “The Choice of the Future”*, Transition, 19 April 1996


SCHMIDT, Josephine – Excerpts from Speeches, Editorials and Other Notable Documents. Walesa as “History’s Slave”, Transition, 20 October 1995


SMOLAR, Aleksander – Kwasniewski’s Legitimacy Deficit, Transition, 22 March 1996

SOBERG Shugart, Matthew – Executive – Legislative Relations in Post-Communist Europe, Transition, 13 December 1996


TISMANEANU, Vladimir et Kligman, Gail - Romania’s First Postcommunist Decade: From Iliescu to Iliescu, East European Constitutional Review, vol. 10, no. 1, winter 2001


VINTON, Louisa – Velvet Restoration, Transition, 30 January 1995

WACKERMANN, Gabriel – La nouvelle Europe Centrale, Ellipses, Paris, 1997


WOODWARD, Colin – “The People are Ready for Change”, Transition, 4 April 1997