

Presidential Elements in Government

The Portuguese Semi-Presidential System

About Law in the Books and Law in Action

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Influences of the *Movimento das Forças Armadas*, of earlier Portuguese and of foreign constitutions on Portuguese Constitution of 1976 – A semi-presidential system with originally four political powers: president, parliament, government and Revolutionary Council – Progressive ascendancy of the presidency in practice between 1976-1982 – Constitutional amendment of 1982: Revolutionary Council abrogated, parliamentary powers strengthened, presidential powers reduced – Presidential role in practice not declining, though depending on the political party power constellation – Influence of president as political moderator and institutional regulator at the lowest when political colours of president and parliamentary majority match – President not conducting, directly or indirectly, the country's general policy.

The political system created by the Constitution of the Portuguese Republic (hereafter Constitution) of 1976 is based on a separation of effective – positive and negative – powers between the president, parliament and government, each possessing identical democratic legitimacy.¹ It does not match well with any classical system – parliamentary or presidential. As a result, the majority of the Portuguese doctrine classifies it as a semi-presidential system.²

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¹ An English version of the Constitution can be consulted on <www.parlamento.pt>.

² See Jorge Miranda, *Manual de Direito Constitucional* [Handbook of Constitutional Law], Vol. I, 7th edn. (Coimbra, Coimbra Editora 2003) p. 411; Carlos Blanco de Morais, 'As metamorfoses do semipresidencialismo português' [The Metamorphoses of Portuguese Semi-presidentialism], 22 *Revista Jurídica* (1998) p. 141 et seq.; Vitalino Canas, 'Sistema semi-presidencial' [Semi-presidential System], in *1st Supplement Dicionário Jurídico da Administração Pública* (1998) p. 490 et seq.; Marcelo Rebelo de Sousa, *O Sistema de Governo Português* [The Portuguese System of Government] 4th edn. (Lisbon, AAFDL 1992), p. 14, 71; Francisco Lucas Pires, *Teoria da Constituição de 1976 – A transição constitucional* [Theory of the Constitution of 1976 – Constitutional Transition], (Coimbra 1988) p. 226 et seq. Contra J.J. Gomes Canotilho, who qualifies the Portuguese system as parliamentary-presidential mix (*Direito Constitucional e Teoria da Constituição*) [Constitutional Law and Theory of

European Constitutional Law Review, 2: 81–100, 2006

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DOI: 10.1017/S1574019606000812

The main purpose of this article is not to discuss the concept of the semi-presidentialism,³ but to individualise the features of the Portuguese system by studying the relevant constitutional provisions and the constitutional praxis in a diachronic perspective.

This article starts with an overview of the post-revolutionary period (from April 1974 to April 1976), in order to clarify the political solutions consecrated in the Constitution of 1976. This as well as the constitutional praxis during the period 1976-1983 will be studied in the following section. Subsequently there will be an analysis of the constitutional amendment of 1982 and later revisions of the Constitution in order to assess whether they have substantially modified the Portuguese system of government, in theory and/or practice. Finally, some conclusions will be presented.

THE REVOLUTION AND THE GENESIS OF THE CONSTITUTION OF 1976

The current Portuguese political system is founded on the Constitution of 1976 and was mainly conceived in the first two years after the Revolution (25 April

Constitution], 6th edn. (Coimbra, Almedina 2002) p. 593). Paulo Otero qualifies the Portuguese political system as a parliamentary rationalised system (*O poder de substituição em Direito Administrativo*) [The Power of Substitution in Administrative Law], Vol. II (Lisboa, Lex 1995) p. 792. Adriano Moreira supports the idea of a prime-minister presidential system ('O regime: presidencialismo do Primeiro-Ministro') [The Regime: a Semipresidentialism of the Prime Minister], in Mário Baptista Coelho (coord.), *Portugal – O Sistema Político e Constitucional 1974/87* (Lisbon, ICSUL 1989) p. 31. In a recent article on the semi-presidentialism, Cristina Queiroz argues that the main feature of the semi-presidential system is the domination of the parliamentary majority by the President. She concludes that the sole country in Europe that has such a system is France ('A classificação das formas de governo. Em particular, o sistema de governo "semi-presidencial"') [The Classification of Government Systems. In particular, the Semi-presidential system], in *Estudos em homenagem ao Prof. Doutor Armando Marques Guedes* (Lisbon, Almedina 2004) p. 358.

³ Ever since Maurice Duverger 'discovered' the semi-presidential concept, scholars have tried to identify its constitutive elements and its different types. Cf. Mauro Volpi, 'Le forme di governo contemporanee tra modelli teorici ed esperienze reali' [Contemporary Forms of Government between Theoretical Models and Real Experiences], in Jorge Miranda (ed.), *Perspectivas constitucionais nos 20 anos da Constituição de 1976*, Vol. III (Coimbra, Coimbra editora 1998) p. 516 et seq. The dimension and the scope of this article do not allow the development of this issue. As a point of departure we adopt the concept of Marcelo Rebelo de Sousa (*supra* n. 2, at p. 14), who sees the semi-presidential system as a system of government in which the president is elected by direct and universal suffrage and the government is politically responsible to parliament. Throughout this article we will adjust this definition. For the discussion of the concept of the semi-presidential system in the Portuguese doctrine, cf. Cristina Queiroz, *supra* n. 2, p. 359 et seq.; Vitalino Canas, *supra* n. 2, 468 et seq.; Raul Machado Horta, 'A Constituição da República Portuguesa de 1976 e o regime semi-presidencial' [The Constitution of the Portuguese Republic of 1976 and the Semi-presidential Regime], in Jorge Miranda (ed.), *Perspectivas Constitucionais nos 20 anos da Constituição de 1976*, Vol. I (Coimbra, Coimbra Editora 1996), p. 515 et seq.; Manuel de Lucena, 'Semipresidencialismo: teoria geral e práticas portuguesas (I)' [Semi-presidentialism: general theory and Portuguese praxis], 138 *Análise Social* (1996) p. 831 et seq.

1974). Its elaboration was largely influenced by the *Movimento das Forças Armadas* [Armed Forces Movement] that had freed Portugal from the dictatorship,⁴ and by the power constellation of the political parties seated in the Constituent Assembly, which had meanwhile emerged.

According to the *Movimento das Forças Armadas*' programme, a Constituent Assembly [*Assembleia Constituinte*] had to be elected within a year after the Revolution by direct, secret and universal suffrage with the aim of establishing a constitution. Without clearly imposing any particular solution, the programme foresaw, however, the existence of a directly elected president beside parliament.⁵

Elected on 25 April 1975, the Constituent Assembly was exposed to huge political pressure.⁶ It especially came from the Communist Party, which tried to conquer in the streets the power it had failed to win in the ballots. In spite of the tense political climate, the Assembly was able to draw-up a constitution and to approve it on 2 April 1976.

The influence of the post-revolutionary period on the Constitution of 1976 is in many aspects remarkable. In its original form it reflected the political and ideological options of the revolutionary period, enshrining a transition to socialism based on the nationalisation of the principal means of production. Perhaps even more remarkable was that the *Movimento das Forças Armadas* maintained involvement in the exercise of political power through the Revolutionary Council, which had been created during the Revolution when it represented, on the one hand, the *Movimento das Forças Armadas* and, on the other hand, the armed forces in general. It became a constitutional organ with extensive powers (*see infra*).

Inspiration for the final choice of political system came also from two former Portuguese constitutional experiences and from foreign constitutions.⁷ After almost fifty years of dictatorship, in which political parties were prohibited and parliament played a reduced role, the Constitution of 1976 liberalised political parties and reinstated parliament in a central role by reinforcing its powers, for instance by giving it political control over the government. So far the Constitution of 1976 followed in the footsteps of the 'parliamentary' Constitution of 1911. However, fearing the excessive power of parliament and to counterbalance it, the

⁴ In the political History after the Revolution one can distinguish three periods: 1) 25th April 1974 – 11th March 1975 (date of a coup d'État from left wing of MFA); 2) 11th March 1975 – 25th Nov. 1975 (date of a coup d'État of the right wing of MFA); 3) 25th Nov. 1975 – 2nd April 1976 (date of the approval of the Constitution). On the 13th April 1975, as a consequence of the political instability the First MFA/Parties Pact was signed. After 25th Nov. 1975 it was re negotiated and a Second MFA/Parties Pact was signed on the 26th Feb. 1976.

⁵ See Manuel Braga da Cruz, 'O Presidente da República na génese e na evolução do sistema de governo português' [The President in the Origins and in the Evolution of the Portuguese System of Government], 125-126, *Análise Social* (1994) p. 239.

⁶ See also Jorge Miranda, *supra* n. 2, at p. 348 et seq.

⁷ See J.J. Gomes Canotilho, *supra* n. 2, at p. 593.

Constitution of 1976, like the Constitution of 1933 before the 1959 revision, featured the direct election of the president. This confers on the president a democratic legitimacy beyond the political parties' choices.

As regards foreign constitutions, one should mention the German Constitution of Weimar of 1919 and the French Constitution of 1958, both dividing the political power among three organs – parliament, government and president – as it was to occur in the Portuguese Constitution.⁸

Notwithstanding these influences, as it is stressed by *Jorge Miranda*, the political system in the Constitution of 1976 was the outcome of the power constellation in the hemicycle.⁹

SEMI-PRESIDENTIALISM 'IN THE BOOKS'

In the original version of the Constitution of 1976, the political power, instead of being divided between three organs as usually happens in the semi-presidential systems, was distributed between four: the president of the Republic, the Revolutionary Council, the Assembly of the Republic and the government.¹⁰

As mentioned above, the inclusion of the Revolutionary Council in the core of the constitutional balance of powers can solely be explained by the important role the armed forces played in the Revolution and by the subsequent political instability. Actually, the Revolutionary Council would disappear at the first opportunity, in 1982, when the first revision of the Constitution took place.¹¹ The Council was composed of the president of the Republic, who chaired it,¹² the chief and the vice-chief of the general staff of the armed forces, the chiefs of staff of three armed services, the prime-minister, when from the military, and fourteen representatives of the three armed services.¹³ It was not only an auxiliary organ of the president, but it also was vested with legislative powers in the military field,¹⁴ as well as the power to control the constitutionality of legal and regulatory rules.¹⁵

The president, elected for a five-year term by all Portuguese citizens who are registered to vote in Portuguese territory¹⁶ and according to a specific electoral system,¹⁷ was given a wide range of powers. These included the right to veto

⁸ See Vitalino Canas, *supra* n. 2, at p. 472 et seq.

⁹ See Jorge Miranda, *supra* n. 2, at p. 349.

¹⁰ Art. 113 Constitution 1976 (current Art. 110).

¹¹ See also Jorge Miranda, *supra* n. 2, at p. 371.

¹² Art. 136(a) Constitution 1976.

¹³ Art. 143 Constitution 1976.

¹⁴ Art. 148 Constitution 1976.

¹⁵ Art. 146 Constitution 1976.

¹⁶ Art. 124 Constitution 1976 (current Art. 121).

¹⁷ The candidate who receives more than half of the valid votes cast becomes president. If none of the candidates obtains this number of votes, a second ballot shall be held within twenty-one days

legislation of the Assembly of the Republic¹⁸ and decree-laws of the government,¹⁹ the right to dissolve the Assembly of the Republic within certain limits,²⁰ the power to appoint the government in the light of the electoral results,²¹ and the power to declare the state of siege and the state of emergency.²² Many of the president's powers were not personal but shared, i.e., they were limited in the sense that his decisions required ministerial countersignature or that he had to respect the binding 'advisory' opinions of the Revolutionary Council, such as in case of dissolution of the Assembly of the Republic and the dismissal of the government.²³

Legislative power was conferred on the Assembly of the Republic,²⁴ which represented all Portuguese citizens²⁵ and was elected for a four-year term by direct, secret and universal suffrage, in accordance with the proportional representation system and using d'Hondt's highest-average rule.²⁶ Moreover, the Assembly could politically control the government and public administration.²⁷

The prime minister was appointed by the president of the Republic, after consultation of the parties with seats in the Assembly of the Republic and in light of the electoral results, the other members on the proposal of the prime minister.²⁸ The government conducted the country's general policy and was the supreme authority in public administration.²⁹ It was politically responsible to the president and could be removed from office by him within the above-mentioned limits. However, the composition and survival of the government depended not only on presidential, but on parliamentary confidence, too. The government was also

of the date of the first one. Only the two candidates who received the most votes in the first ballot and have not withdrawn their candidatures shall stand in the second ballot (Art. 129 Constitution).

¹⁸ Arts. 137(b), 139 Constitution 1976 (current Arts. 134(b), 136).

¹⁹ The consequences of the veto were (and still are) different. While in the case of the Assembly's decrees the veto is only suspensive (the act could be confirmed by a qualified majority in the Assembly), in case of the government's decrees it is final.

²⁰ Art. 136(e) Constitution 1976 (current Art. 133(e)). The Assembly could not be dissolved after the rejection of the government's programme (Art. 198(2) Constitution 1976), during the state of siege or a state of emergency (Art. 175 Constitution 1976, current Art. 172), and during the extension of the president's terms of office (Art. 128(2) Constitution 1976). By contrast, the Assembly had to be dissolved after the refusal of a confidence motion to the government or the voting of two no confidence motions (Art. 198(3) Constitution 1976).

²¹ Art. 190 Constitution 1976 (current Art. 187(1)).

²² Art. 137(1)(c) Constitution 1976 (current Art. 143(d)).

²³ Art. 136(e), (f) and (g) Constitution 1976. According to this provision only the president can take the initiative to dissolve parliament, but he has to consult with the Revolutionary Council, which by a negative advice can block dissolution.

²⁴ Arts. 164, 167, 168, 172 Constitution 1976 (current Arts. 161, 164, 165, 169).

²⁵ Art. 150 Constitution 1976 (current Art. 147).

²⁶ Art. 155(1) Constitution 1976 (current Art. 149(1)).

²⁷ Art. 165 Constitution 1976 (current Art. 162).

²⁸ Art. 190 Constitution 1976 (current Art. 187).

²⁹ Art. 185 Constitution 1976 (current Art. 182).

politically responsible to the Assembly, which could send it home by refusing to approve a motion of confidence or by voting two motions of no confidence.³⁰

As one will have observed, the 1976 Portuguese system contained some elements of a presidential system – the election of the president by direct suffrage, his right of veto, and the political responsibility of the government to the president.³¹ However, in contrast to presidential systems, the Portuguese government was founded on parliamentary electoral results and politically responsible to the Assembly; the president could not, at least immediately, conduct the general policy of the country, and some acts of the president were subjected to ministerial counter-signature.³² These four elements belong without doubt to the parliamentary system.³³ In conclusion, the original 1976 Portuguese political system, as it resulted from the written constitutional law, should be characterised as semi-presidential,³⁴ since it included elements of both classical systems – presidential and parliamentary.

THE ORIGINAL VERSION OF THE CONSTITUTION OF 1976 ‘IN ACTION’

Throughout the application of the original version of the Constitution of 1976 several phases can be distinguished. The role played by the three main actors – president, parliament and government – differs considerably in each of them.

The first phase from 1976 to 1979 is characterised by a progressive ascendancy of the president to the detriment of parliament and government. Whereas the president increasingly intervened in the political arena, the lack of a coherent and permanent majority in parliament made the constitution of stable governments impossible.

The First Constitutional Government, in office from 25 April 1976 until the end of 1977, was supported by a single party (the Socialist Party, hereafter PS) which possessed only a relative majority in parliament. This government had to coexist with a ‘neutral’ president (General Eanes) elected by a large majority. Until March 1977 Eanes refused to use his power to impose a government supported by a parliamentary majority, which would have reinforced the weight of parliament. The resignation of the government following the rejection of a confidence motion

³⁰ Arts. 195, 196, 197, 198 Constitution 1976 (current Arts. 192, 193, 194, 195).

³¹ See Marcelo Rebelo de Sousa, *supra* n. 2, at p. 11.

³² Art. 141 Constitution 1976 (current Art. 140).

³³ See also Marcelo Rebelo de Sousa, *supra* n. 2, at p. 10.

³⁴ See André Gonçalves Pereira, *Direito Público Comparado – o sistema de governo semi-presidencial* [Comparative Public Law – the semi-presidential system of government] (Lisbon, AAFDL 1984) p. 60; Marcelo Rebelo de Sousa, *supra* n. 2, at p. 8; Carlos Blanco de Morais, *supra* n. 2, at p. 143, 144; Vitalino Canas, *supra* n. 2, at p. 490 et seq.; Jorge Miranda, *supra* n. 2, at p. 370.

in March 1977, however, changed the ways of the president, who started to intervene more and more deeply in matters of the government.³⁵

During the formation of the Second Constitutional Government, which lasted from the end of 1977 until the middle of 1978, the president required an executive supported by a coherent, stable and long-lasting parliamentary majority agreement. The PS and the Social Democratic Centre (CDS), a right wing party, agreed to form a post-electoral coalition that stayed only one year in office. At that time the parliamentary dimension of the system was still preponderant.³⁶ However, tensions inside the coalition and finally its break up led to a political crisis, which culminated in the removal of the Prime Minister – Mário Soares – by the president. Subsequently the balance of powers shifted in favour of the president.³⁷

Successive political crises, and the general incapacity of the political parties to solve them, contributed to increase the presidential component of the system.³⁸ The three (Third, Fourth and Fifth) subsequent Constitutional Governments (from August 1978 until December 1979) were all based on presidential initiative and headed by an independent prime minister (Nobre da Costa, Mota Pinto and Maria de Lourdes Pintassilgo, respectively). As none of them had any secure parliamentary support, they concerted on every decision with the president,³⁹ who, in practical terms, decided the major policy issues, without being the political leader of neither government nor parliamentary majority. This ascendancy of the president in the political system increased the tension between him and the political parties, which would find its discharge in the dissolution of the Assembly of the Republic and the calling of parliamentary elections.

In December 1979, the victory of the Democratic Alliance (AD), a preelectoral right wing coalition between the Social Democratic Party (PSD) and the CDS, initiated a new phase of the system, in which the president's influence decreased.⁴⁰ The Sixth Constitutional Government (December 1979 to December 1980) was headed by Sá Carneiro and enjoyed a comfortable absolute majority in parliament, which raised parliament's and, even more so, the government's relative power in the system. While the system was formally double-engined and driven by parliament and government together, substantially, however, the government was in the driving seat.⁴¹

³⁵ See also Marcelo Rebelo de Sousa, *supra* n. 2, at p. 21.

³⁶ *Ibid.*, at p. 23.

³⁷ See also Manuel Braga da Cruz, *supra* n. 5, at p. 245.

³⁸ See Marcelo Rebelo de Sousa, *supra* n. 2, at p. 24; Carlos Blanco de Morais, *supra* n. 2, at p. 154.

³⁹ See also Manuel Braga da Cruz, *supra* n. 5, at p. 245 et seq.

⁴⁰ See Carlos Blanco de Morais, *supra* n. 2, at p. 154; Manuel Braga da Cruz, *supra* n. 5, at p. 248.

⁴¹ See Marcelo Rebelo de Sousa, *supra* n. 2, at p. 25.

In December 1980 President Eanes was re-elected, this time with support of socialist and communist parties, i.e., the forces that opposed the parliamentary majority, whose candidate (Soares Carneiro) had lost the battle for the presidency. The accidental death of the prime minister (Sá Carneiro) and the minister of defence (Adelino Amaro da Costa) at the end of 1980 compelled the calling of parliamentary elections, which, again, gave a clear absolute majority to the existing government coalition (AD). In spite of that, the coalition suffered from remarkable instability, due to a crisis inside its major party (PSD). These tensions affected the Seventh Constitutional Government (January 1981 to September 1981) and culminated in the resignation of the prime minister (Pinto Balsemão) and his government. In these circumstances the president began to recapture some of the influence he had once had. In fact, disagreements between the president and the government on some important matters, such as foreign or defence policy, were frequently solved in favour of the president.⁴² This did not change when the Eighth Constitutional Government came into office (from the end of 1981 to 1983). It was founded on the same parliamentary majority as its predecessor, it suffered from the same leadership crisis and also found its end by resignation of the prime minister.⁴³ In the meantime (1982), the first constitutional revision considerably modified the political organisation. Therefore, we have to return to the law 'in the books'.

CONSTITUTIONAL REVISIONS: REDUCING THE PRESIDENTIAL AND REINFORCING THE PARLIAMENTARY DIMENSION OF THE SEMI-PRESIDENTIAL SYSTEM

The first constitutional revision (1982)

Once the excitement of the Revolution was over, it was necessary to rethink the constitutional system. The constitutional revision of 1982 not only sought to reduce the ideological content of the Constitution, allowing for greater flexibility in the economic system, but also redefined the structures for the exercise of political power. Here we will focus on those constitutional revisions that could, at least theoretically, affect the semi-presidential character of the political system.

First, the extinction of the Revolutionary Council provoked a global redistribution of powers between the other political organs – the president, the Assembly and the government⁴⁴ – as well as the creation in its place of two other organs: the Constitutional Court and the Council of State. While the first assumed the con-

⁴² See Manuel Braga da Cruz, *supra* n. 5, at p. 250.

⁴³ See Marcelo Rebelo de Sousa, *supra* n. 2, at p. 26.

⁴⁴ *Ibid.*, at p. 48.

trol of the constitutionality, the latter inherited from the Revolutionary Council the function of advisor of the president.⁴⁵

Secondly, the responsibilities and powers of the president were modified. The definition of the president's tasks was broadened: he or she not only had to represent the Portuguese Republic, as before, but also had to guarantee national independence, the unity of state and the proper functioning of the democratic institutions.⁴⁶ Also his legislative veto was strengthened.⁴⁷ At the same time his most considerable powers were subjected to additional and stricter conditions. Although the government continued to be responsible to the president and the Assembly,⁴⁸ only the latter responsibility is characterised as political.⁴⁹ In line with this, the president from 1982 onwards can only remove the government from office when it is necessary to ensure the normal functioning of the democratic institutions (and after having invoked the (non-binding) advice of both the Council of State and the parties represented in parliament).⁵⁰ The right to dissolve the Assembly was also restricted: the Assembly shall not be dissolved during the six months following its election and during the last six months of the president's term of office.⁵¹ At the same time, however, a restriction on the exercise of these two powers was deleted: in both cases the obligation to respect the (binding) advice of the Revolutionary Council was suppressed.

Thirdly, while the presidential dimension was reduced, the parliamentary one was reinforced. The Assembly saw its exclusive and partially exclusive legislative powers extended (Articles 167 and 168 of the Constitution 1982 version, currently Articles 164 and 165). Moreover, the Assembly saw its political powers enlarged, as regards, for example, the exercise of controlling the government. The passage of one (instead of two) no confidence motion by an absolute majority of all members in full exercise of their office results in the resignation of the government⁵²

The formation of the government still depended on the composition of parliament, as the president of the Republic shall appoint the prime minister in the light of the electoral results,⁵³ the government remained empowered to conduct

⁴⁵ Arts. 141 et seq. Constitution 1982 version.

⁴⁶ Art. 123 Constitution 1982 version (current Art. 120).

⁴⁷ Art. 139(3) of the Constitution 1982 version (current Art. 136(3)) enlarged the matters, in which the veto of the President could exclusively be overcome by two thirds of all Members present of the Assembly, provided that this number would be greater than an absolute majority of all Members in full exercise of their office. Conversely, the pocket veto was explicitly interdicted (Art. 139(1)(4) Constitution 1982 version).

⁴⁸ Art. 193 Constitution 1982 version (current Art. 190).

⁴⁹ Art. 194 Constitution 1982 version (current Art. 191).

⁵⁰ Arts. 136(g) and 198(2) of the Constitution 1982 version (currently Arts. 133(g) and 195(2)).

⁵¹ Art. 175(1) Constitution 1982 version (current Art. 172(1)).

⁵² Art. 198(1)(f) Constitution 1982 version (current Art. 195(1)(f)).

⁵³ Art. 190(1) Constitution 1982 version (current Art. 187).

the country's general policy⁵⁴ and remained politically responsible to parliament.⁵⁵

However, the terms of this responsibility changed. The rejection of the government's programme, the passing of a no confidence motion and the failure of any motion of confidence implies the obligatory resignation of the government; and until its programme has been considered by the Assembly, and, after its resignation or removal, the government shall limit itself to undertaking such acts as are strictly necessary in order to ensure the management of public affairs.⁵⁶

In the sequence of these constitutional amendments, and as a result of the substantial reduction of the presidential powers, some authors considered that the Portuguese political system in 1982 turned into a rationalised parliamentary system.⁵⁷ By contrast the majority of the doctrine continues to qualify the system as semi-presidential. For the latter, the constitutional revision only produced a reorganisation of powers, keeping intact the institutional dualism (president/parliament) that characterises the semi-presidential system.⁵⁸ As a matter of fact, the Constitution maintained, amongst others,⁵⁹ the following presidential features:

- the direct election of the president and his powers of removing the government,
- the power to dissolve the Assembly,
- the power to veto legislation (laws and decree-laws), not only for constitutional but also for political reasons (see also Table II annexed to this Article),
- and the right to be informed by the members of the government about matters concerning the conduct of the country's internal and external policy (Article 204 (c) Constitution 1982 version).

In a suggestive image, Gomes Canotilho and Vital Moreira argue that the president had and still has a triple task. He is a *policeman*, controlling the action of the

⁵⁴ Art. 185 Constitution 1982 version (current Art. 182).

⁵⁵ Art. 189(4) Constitution 1982 version (current Art. 186(5)).

⁵⁶ *Idem*.

⁵⁷ André Gonçalves Pereira, *supra* n. 34, at p. 75. See also Wolfgang Merkel/Volker Stiehl, 'Das politische System Portugals' [The Portuguese Political System], in Wolfgang Ismayr (ed.), *Die politischen Systeme Westeuropas*, 3rd edn., (Opladen, Leske + Buedrich 2003) p. 653.

⁵⁸ Francisco Lucas Pires, 'O Sistema de Governo: sua Dinâmica' [The system of government: its dynamic], in Mário Baptista Coelho (coord.), *Portugal – O Sistema Político e Constitucional 1974/87* (Lisbon, ICSUL 1989) p. 303; Marcelo Rebelo de Sousa, *supra* n. 2, at p. 71; Manuel Braga da Cruz, *supra* n. 5, at p. 251.

⁵⁹ The full powers of the President were enumerated in Art. 136 of the Constitution 1982 version (current Art. 133) and included the appointment of members for several organs, such as the Council of State and the Representatives of the Republic to the autonomous regions, as well as the chair of the Council of State and the Supreme National Defence Council.

government and the parliamentary majority, in order to respect the Constitution, the functioning of the democratic institutions, the rights of the opposition parties and the morality of the political conduct. He is also a *referee* of conflicts between the government and the Assembly, and between the majority and the opposition. Finally, when the conflicts degenerate into an insurmountable political crisis, the president is the *fireman* of the system, dissolving the Assembly or removing the government from office.⁶⁰ The authors sum this all up in one phrase: the president exercises the regulatory power of the system.⁶¹

Other constitutional revisions

The subsequent constitutional revisions hardly changed the balance of powers between the three main organs of sovereignty. In other words, they did not significantly modify the Portuguese system of government. However, one can note many relevant amendments in the political matters that played an important role in consolidating our democracy, such as the introduction of the referenda in the revision of 1989, which without doubt enlarged the power of the president. According to Article 118(1) of the 1989 version of the Constitution (current Article 115(1)), following a proposal from the Assembly or the government, the president may decide to call upon citizens to directly and bindingly pronounce themselves by referendum. The same provision states that ‘draft referenda that are refused by the President (...) shall not be resubmitted by the same legislative session ...’ (Article 118(8) of 1989 version of the Constitution, current Article 115(10)).

In contrast to the first revision, the second one (1989) was centred on economic issues, allowing for greater openness in the economic system and rejecting the principle of the irreversibility of the nationalisations. The subsequent revisions in 1992 and 1997 adapted the text of the Constitution to the principles of the Treaty on European Union (Maastricht and Amsterdam) introducing, amongst other things, developments in the field of fundamental rights, and strengthening the exclusive legislative powers of the Assembly of the Republic. In 2001 the Constitution was once again amended in order to allow Portugal to ratify a treaty – the Convention creating the International Criminal Court, altering the rules on extradition.⁶² The sixth revision, approved in 2004, extended the political and administrative powers of the autonomous regions, amended the rules on interna-

⁶⁰ See J.J. Gomes Canotilho/Vital Moreira, *Os poderes do Presidente da República* [The powers of the President of the Republic] (Coimbra, Coimbra Editora 1991) p. 30.

⁶¹ *Ibid.*, at p. 33.

⁶² For more details, see Ana M. Guerra Martins, ‘La Constitution portugaise: Une Constitution inflationniste’, in Giuliano Amato, et al., *The Constitutional Revision in Today’s Europe/La révision constitutionnelle dans l’Europe d’aujourd’hui* (London, Esperia Pub. 2002) p. 129 et seq.

tional relations, and the rules on the applicability within Portugal's internal legal system of European law.⁶³

POLITICAL PRACTICE AFTER 1982

In spite of the reinforcement of the regime's parliamentary side, the presidential dimension of the system of government did not disappear in practice. Thus, some months after the first constitutional revision in 1983, President Eanes could and did, as a result of a crisis inside the major party of the parliamentary majority (the PSD), exercise three essential powers: he removed the government from office, refused to appoint a prime minister (Vitor Crespo) indicated by the parliamentary majority and dissolved the Assembly with the consequence of calling for elections. The most controversial decision was the second one.⁶⁴ Notwithstanding the controversy, the results of the subsequent elections confirmed the president's opinion that another governmental alternative was viable.⁶⁵ The PS, the largest party with 101 of the 230 seats in parliament, and the PSD, the second major party with 75 seats, decided to form the so-called *central bloc* coalition. The Ninth Constitutional Government fell two years later (1985), as a result of multiple controversies inside the coalition, and especially because the new leader of the PSD (Cavaco Silva) strongly opposed the coalition. Again Eanes dissolved parliament. Few had expected this dissolution that occurred in the last days before the last six months of his term began.⁶⁶ As we will see, it formed a precedent that has recently been invoked, when at the end of 2004 President Sampaio dissolved the Assembly under similar circumstances.

The Tenth Constitutional Government (mid 1985 to mid 1987), consisting of PSD members and headed by Cavaco Silva, was only supported by a relative majority in parliament. It therefore had to negotiate every decision with the other parties in the hemicycle. Meanwhile, a new president, Mário Soares, had been elected and with him a new style of exercising the presidency was introduced. After the military style and the '*institutional guerrilla*' of President Eanes, he inaugurated the '*influence magistracy*' [*magistratura de influência*], as it would subsequently be known. In contrast to his friend Mitterrand in France, Soares, the former leader of PS, did not dissolve the Assembly, having tacitly confirmed the right wing Government, which, without a sustainable majority in parliament,

⁶³ For more details, see Jorge Miranda, *supra* n. 2, at p. 387 et seq.

⁶⁴ While some argued that the President was not constitutionally empowered to reject a prime minister proposed by a parliamentary majority, others considered the presidential decision absolutely consonant with the Constitution.

⁶⁵ Francisco Lucas Pires, *supra* n. 58, at p. 297.

⁶⁶ In terms of Art. 175(1) Constitution 1982 version (current Art. 172(1)), the President shall not dissolve the Assembly during the last six months of his term of office.

went on negotiating with the other parties in parliament and extended its negotiation to the president, in order to avoid conflicts, such as legislative vetoes. At that time, the role of the president basically consisted of avoiding and moderating the conflicts. Simultaneously, he tried to amass popular support by travelling through the country and getting in touch with the population in the so-called 'open presidencies'.

The opinion of doctrine diverges as regards the relative weight of the three organs of sovereignty – president, parliament and the government – during that period. Whereas some authors consider that the role of moderator of the president set him at the top of the pyramid of power,⁶⁷ others emphasize the progressive affirmation of parliament, due to the above-mentioned need of permanent negotiation of the government.⁶⁸

The political crisis of 1987 confirmed the dualism of the Portuguese system of government. On the one hand, parliament showed its supremacy when it passed a no confidence motion that forced the government to resign; on the other hand, the president affirmed his primacy when he refused to appoint a minority government headed by the PS leader (Vitor Constâncio). Instead President Soares opted for the dissolution of the Assembly and the convocation of parliamentary elections, which some political sectors considered excessive interventionism. In our opinion, however, it just was the semi-presidential system functioning.

The victory of the PSD, with a strong absolute majority (59,2%) in the elections of 1987, swung the pendulum of power to the parliamentary side with supremacy of the prime minister (Cavaco Silva).⁶⁹ If the intention of President Soares, when he decided to dissolve the Assembly, was to enlarge the number of members or parliament of the PS, nobody can say, except himself. What is sure however is that the victory of the PSD was absolutely unexpected. As a result, the interventionism of the president had to calm down in the subsequent years. The period from 1987 to 1991 can be characterised as a '*balanced and constructive cohabitation*' between a right wing prime minister and his government and an originally left wing president. However, the peaceful times would not last long.

In 1991 parliamentary elections confirmed the right wing majority (58,7%) and President Soares was elected for a second mandate that he exercised in a more interventionist way. The cohabitation became more prone to conflict in this phase. The '*open presidencies*' intensified and acquired a more critical shape. The president expressed his opinion, which mostly diverged from that of the government, about every political issue. Some even alleged that the president was surpassing his

⁶⁷ See Manuel Braga da Cruz, *supra* n. 5, at p. 253.

⁶⁸ See Marcelo Rebelo de Sousa, *supra* n. 2, at p. 83.

⁶⁹ See Marcelo Rebelo de Sousa, *supra* n. 2, at p. 85; Carlos Blanco de Morais, *supra* n. 2, at p. 155.

conferred constitutional powers. However, as Gomes Canotilho and Vital Moreira demonstrate, a semi-presidential system grants the president a large margin of freedom in expressing his opinions. This is, indeed, one of the ways in which the president can exercise his tasks of political moderator and regulator.⁷⁰ Another means the president possesses to influence politics consists of addressing messages to the Assembly. They can draw attention to controversial issues, exposing the government to criticism. In July 1991, President Soares, for the first time in his mandate, addressed a message to the Assembly of the Republic concerning the interference of the government with the media in hard critical terms, and this reproach would be repeated several times in the future. Moreover, the president more often used his right to veto governmental or parliamentary decrees and sent more decrees to the Constitutional Court for prior review of their constitutionality.⁷¹ The refusal to appoint a vice-prime minister proposed by the prime minister represented the culmination point of that conflict. As a consequence, the relations between the two organs became tense.⁷²

At the end of 1995, the electorate gave the victory to the PS and António Guterres became prime minister. For the first time in the history of the Third Republic, the parliamentary majority coincided with the original party of the president, which, in contrast to France, would reduce, in practical terms, the role of the president. The subsequent president (Jorge Sampaio), elected in 1996, had also been a former general secretary of the PS. That meant the convergence between parliamentary majority and president continued without any remarkable events occurring. In 1999 the PS repeated its electoral success in the parliamentary elections (it missed the absolute majority by one seat by gaining 115 of the 230 seats), and its leader António Guterres again formed the government. In this whole period the Portuguese political system was characterised by a relative predominance of the government and its prime minister. However, as the PS did achieve an absolute majority neither in 1995 nor in 1999, the government had to negotiate with other parties in parliament to implement its programme. The president played a relatively low-profile role.

In 2002 the reversal in the municipal elections led Prime Minister António Guterres to resign and the president called new parliamentary elections, which were won by the PSD, however without obtaining an absolute majority. Therefore, the forming of a stable government was conditional on the support of another party in the hemicycle. At the end of the day, the Fifteenth Constitutional

⁷⁰ See J.J. Gomes Canotilho/Vital Moreira, *supra* n. 60, at p. 58.

⁷¹ In practice, the veto of parliamentary laws is less effective than the veto of governmental decrees, as the parliamentary act can be confirmed by a qualified majority in the Assembly, which is not possible if it is an act of the government. Therefore, presidents tend to veto more governmental decrees than parliamentary ones. See also Table II annexed to this article.

⁷² See Carlos Blanco de Morais, *supra* n. 2, at p. 156.

Government was based on a right wing coalition PSD–CDS/PP led by Durão Barroso. Regarding the functioning of the political system, this period remained dominated by parliament and government, the latter's leadership being slightly disputed between Prime Minister Durão Barroso and Vice-Prime Minister Paulo Portas. Due to the low-profile of President Sampaio, the cohabitation with the right wing government was rather peaceful.

The appointment of Durão Barroso, in the middle of 2004, as president of the Commission of the European Union meant his resignation as prime minister. He presented to the president the name of Santana Lopes as his successor. President Sampaio's decision of accepting or refusing Santana Lopes as prime minister was far from easy. In favour of refusal was the fact that since 1987, and especially 1991, the parliamentary elections had become, at least from a political point of view, elections for the prime minister. Moreover, in the last elections for the European Parliament (some months before), the electorate had severely penalised the coalition parties PSD and CDS/PP. Last, but not least, the instable character and the lack of professional experience of Santana Lopes did not augur for a stable government and even inside the PSD the legitimacy of Santana Lopes was contested. All these arguments pointed in the direction of new elections, which, of course, the opposition parties called for. However, the coalition parties presented a governmental alternative and insisted that they had to govern because they had a parliamentary majority, which assured a stable governmental solution – thereby underestimating the problems of the substitution of the prime minister. At the end of the day, the president, to the great disappointment of the opposition, decided to appoint Santana Lopes. This decision had without doubt been the most interventionist one of President Sampaio until that moment.

However, only some months later, Sampaio took the most interventionist decision ever taken by a president since the first mandate of President Eanes. The disastrous governance of Santana Lopes' government, followed by general social discontent, led the president to dissolve the Assembly of the Republic and to call for new elections. The subsequent parliamentary elections generated an absolute majority of the PS and a stable government led by José Socrates since March 2005.

The decision to dissolve the Assembly was politically controversial, taking into account that the Santana Lopes government had majority support in parliament and nothing particularly serious occurred on the day or in the week that Sampaio made his decision public. However, the instability of the Santana Lopes government was evident. Contradictory declarations of the prime minister and his ministers took place in a hallucinating rhythm; ministers and secretaries of state were substituted without any comprehensible reason; a minister dismissed himself by a declaration in the media and not by directly communicating to the prime minis-

ter and, last but not least, one has to mention the alleged interference of the government with the media. Taking all this into account, the president was convinced that the government was unable to accomplish its task and that instability would continue. It should be stressed that under these circumstances, the constitutionality of the president's decision is unquestionable. Actually, the power to dissolve parliament distinguishes a semi-presidential system from a parliamentary one.⁷³ Whereas in a parliamentary system this power belongs, in principle, to the prime minister who will exercise it at a favourable time for him, in a semi-presidential one not the prime minister but the president is in control of parliament's dissolution which can happen at a time not convenient for the government's party.⁷⁴ According to the Portuguese doctrine, a president elected by direct and universal suffrage should not only hold symbolic powers. In the Portuguese context, the president's power to dissolve parliament represents a permanent sword of Damocles above the parliamentary majority and the government, as the president may discretionally exercise it when he considers that parliament has exhausted the political possibilities to generate appropriate governmental solutions to overcome political crisis. The exercise of this power is certainly exceptional, but its importance in the balance of powers must not be underestimated. Without this power, all other powers, such as the right of veto, the appeal to the Constitutional Court for prior review of the constitutionality of laws and the right to nominate, would not be so effective.⁷⁵ To sum up, within the system of government the so-called excessive interventionism of the president is not more than a normal exercise of his powers.

CONCLUSION: CONSOLIDATION OF THE SEMI-PRESIDENTIAL SYSTEM OF GOVERNMENT

The Constitution of 1976, which over the last thirty years has been modified several times (1982, 1989, 1992, 1997, 2001, 2004 and 2005) without considerably changing the character of the system,⁷⁶ introduced a rather complex and hybrid political system based on the principle of separation and interdependence of power.⁷⁷ On the one hand, the election of the president by direct and universal suffrage according to a majority two-round electoral system independently of the

⁷³ As well as the power to appoint the Prime Minister and the power to remove the Government. See J.J. Gomes Canotilho/Vital Moreira, *supra* n. 60, p. 48.

⁷⁴ See also J.J. Gomes Canotilho/Vital Moreira, *supra* n. 60, p. 52.

⁷⁵ See Jorge Reis Novais, 'O Presidente da República e o poder de dissolução' [The President of the Republic and the power of dissolution], *Público*, 22 Dec. 2004.

⁷⁶ See Jorge Miranda, *supra* n. 2, p. 411.

⁷⁷ Art. 111 Constitution.

political parties⁷⁸ confers on him the legitimacy to exercise effective positive and negative political powers, such as the appointment of the prime minister, the right of veto, the removal of the government and the dissolution of the Assembly. As we have pointed out above, these powers are all subject to limitations. On the other hand, the Assembly of the Republic, elected on the basis of a proportional representation system,⁷⁹ exercises legislative and political control powers. The terms of office of both organs do not coincide, in order to prevent reciprocal dependencies.

The prime minister is appointed by the president in the light of the electoral results for the Assembly of the Republic. The government shall be responsible to the president and to the Assembly. The latter may reject the government due to no confidence motions in relation to the implementation of its programme or due to any important matter of national interest.

The complexity and the hybrid character of the system resulted in a rich constitutional praxis, but also in a certain political instability. In fact, in thirty years Portugal has had seventeen different governments. Seven of them were in office for less than a year. By contrast, only three coincided with the duration of the legislature (four years). The electoral system is one of the causes of this instability, as it does not propitiate the formation of absolute majorities in parliament that can efficiently support the government. The semi-presidential character of the regime is sometimes also seen as a cause for this instability, but the analysis of the Portuguese constitutional praxis does not confirm it. As we mentioned above, governments without majority parliamentary support often generated the instability.

The president is, above all, an institutional moderator. He or she does not conduct, directly or indirectly, the country's general policy, which is the responsibility of the government. Even in the foreign policy, the powers of the president are somewhat limited, since, to a certain extent, they depend on other organs, such as the government or parliament.⁸⁰

As regards the relative weight of the three political organs of sovereignty in the system of government, the constitutional praxis alternated periods of great interventionism by the president with periods of a more active role of parliament, without definitively tilting to one or to the other side. In other words, the system still remains semi-presidential.

⁷⁸ In accordance with Art. 124 Constitution, nominations for President of the Republic shall be put forward by at least 7.500 and at most 15.000 registered electors.

⁷⁹ Art. 149(1) Constitution.

⁸⁰ Art. 135 Constitution reads: 'In international relations the President of the Republic shall be responsible for: a) Appointing ambassadors and extraordinary envoys upon a proposal from the government (...); b) Once they have been duly passed, ratifying international treaties; c) Upon a proposal from the Government, after consulting the Council of State and subject to authorisation by the Assembly (...) declaring war in the case of effective or imminent aggression and making peace'.

TABLE I. The Portuguese governments and presidents of the Republic after 1976

Date of the elections	Period of legislature	Prime Minister and his/her party	Duration of the government	Type of government	Parliamentary support (in members of parliament and in percentage)	President of the Republic
25/4/1976	I	Mário Soares (PS)	From 7/1976 to 12/1977	Relative Majority	PS-107 M.P's (40,7%)	António Ramalho Eanes (independent) 1976-1981
		Mário Soares (PS)	From 1/1978 to 8/1978	Non official coalition	PS-107 M.P's CDS-42 M.P's (56,7%)	
		Nobre da Costa (Independent)	From 8/1978 to 11/1978	Presidential initiative	-	
		Mota Pinto (Independent)	From 11/1978 to 8/1979	Presidential initiative	-	
		Maria de Lurdes Pintassilgo (Independent)	From 8/1979 to 1/1980	Presidential initiative	-	
2/12/1979	II	Francisco Sá Carneiro (PSD)	From 1/1980 to 12/1980	Coalition <i>Aliança Democrática</i> (PSD/CDS PPM)	PSD-73+7 M.P's CDS-43 M.P's PPM-5 M.P's. (51,2%)	António Ramalho Eanes (independent) 1981-1986
		Francisco Pinto Balsemão (PSD)	From 1/1981 to 8/1981	Coalition <i>Aliança Democrática</i> (PSD/CDS PPM)	PSD-74+8 M.P's CDS-46 M.P's PPM-6M.P's (53,6%)	
		Francisco Pinto Balsemão (PSD)	From 9/1981 to 6/1983	Coalition <i>Aliança Democrática</i> (PSD/CDS PPM)	PSD-74+8 M.P's CDS-46 M.P's PPM-6M.P's (53,6%)	

TABLE I. Cont.

Date of the elections	Period of legislature	Prime Minister and his/her party	Duration of the government	Type of government	Parliamentary support (in members of parliament and in percentage)	President of the Republic
25/4/1983	III	Mario Soares (PS)	From 6/1983 to 11/1985	Coalition <i>Bloco Central</i>	PS-101 M.P's PSD-75 M.P's (70, 4%)	António Ramalho Eanes (independent) 1981/1986
5/10/1985	IV	Aníbal Cavaco Silva (PSD)	From 11/1985 to 8/1987	Relative Majority	PSD-88 M.P's (35,2%)	Mário Soares (PS) 1986-1991
19/7/1987	V	Aníbal Cavaco Silva (PSD)	From 8/1987 to 10/1991	Absolute majority	PSD-148 M.P's (59,2%)	Mário Soares (PS) 1986-1991
6/10/1991	VI	Aníbal Cavaco Silva (PSD)	From 10/1991 to 10/1995	Absolute majority	PSD-135 M.P's (58,7%)	Mario Soares (PS) 1991-1996
1/10/1995	VII	António Guterres (PS)	From 10/1995 to 10/1999	Relative majority	PS-112 (48,7%)	Jorge Sampaio (PS) 1996-2001
10/10/1999	VIII	António Guterres (PS)	From 10/1999 to 4/2002	Relative majority	PS-115 (50%)	Jorge Sampaio (PS) 1996-2001
17/3/2002	IX	Durão Barroso (PSD)	From 4/2002 to 7/2004	Coalition PSD and CDS/PP	PSD-105 M.P's CDS-14 M.P's (56,1%)	Jorge Sampaio (PS) 2001-2006
20/2/2005	X	Santana Lopes (P&SD) José Sócrates	From 7/2004 to 3/2005 From 3/2005 to —	Absolute majority	PS-121 M.P's	Jorge Sampaio (PS) 2001-2006

TABLE II. Laws and decree-laws submitted to President Jorge Sampaio between 9 March 1996 and 31 August 2005⁸¹

Laws and decree-laws enacted					5225
Vetoed for constitutional reasons					10
Parliamentary laws vetoed for political reasons					12
Government decree-law vetoed for political reasons					63
Submitted to the Constitutional Court for prior review of constitutionality					11
Total					5440
<i>Periode of Legislature</i>	<i>X.</i>	<i>IX.</i>		<i>VIII.</i>	<i>VII.</i>
<i>Government</i>	<i>Sócrates</i>	<i>Santana Lopes</i>	<i>Durão Barroso</i>	<i>Guterres</i>	
PARLIAMENTARY LAWS					
Submitted	20	251		200	466
Enacted	20	240		193	460
Vetoed	–	10		6	5
GOVERNMENT DECREE-LAWS					
Submitted	106	188	909	1163	2134
Enacted	95	151	890	1104	2069
Vetoed	–	34	3	18	9

N.B. The difference in numbers of (decree-) laws submitted to the president on the one hand, and those enacted or vetoed on the other, is due to the fact that the president had not yet decided on a number of (decree-) laws on 31 August 2005.



⁸¹ Source: <www.presidencia-republica.pt/pt/actualidade/promulgacoes/index.html> [15.8.2005].