

THE PRESIDENTS OF THE BALTIC STATES – COMPARATIVE OVERVIEW

Abstract

Estonia, Latvia and Lithuania are three countries that encompass diverse and creative constitutional solutions when it comes to the system of separation of powers and the constitutional engineering of the role of the president of the republic. Sharing the same Soviet history, these sovereign states continue to maintain high level of cooperation, but also develop their constitutional systems in different directions. While Lithuania adopted one form of the semi-presidential system, Estonia and Latvia on the other hand opted for parliamentary ones. Differences are especially prominent when it comes to particular presidential powers, e.g. presidential veto power, where constitutional solutions of these countries manifest attributes that are not only significantly different from one another, but also unique in a general comparative perspective and from the theoretical standpoint. Some of these powers also enable (or have the potential to do so) the presidents of Estonia, and especially Latvia to achieve much more prominent role in comparison to the one that is to be expected from the president in a parliamentary system. In this paper the author analyses key elements regarding presidential power in all three of the Baltic States, their constitutional foundation and framework, as well as real manifestation in political life, especially highlighting the sui generis constitutional solutions that the Baltic States exhibit in this matter.

Keywords: *Baltic States, President, Presidential Powers, Constitution, Latvia, Lithuania, Estonia.*

1. Introduction – Divergent Development of Presidential Power in the Baltic States

After the collapse of the Soviet Union the Baltic States regained their independence, went through governmental and economic reforms, then joined NATO and finally – European Union in 2004. The restoration of independence and transition processes went peacefully and rather smooth. “For the time being, with the USSR gone, the Russians were too preoccupied with wrenching internal changes to make revanchist moves against the littoral; the Germans too were busy dealing with the problems of reunification; the Poles, who had been the bane of Lithuania’s statehood as recently as the decades between the two world wars, were having to cope with their own problems of post-communism. Very

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promising as future friends and supporters were those countries which in the cataclysms of the twentieth century had shown no territorial interest in the littoral – the Scandinavian countries, the United Kingdom, France, and, of course, the superpower that had emerged as the victor in the Cold War, namely, the United States of America. Diplomatic recognition of renewed independence was easy enough both to receive and to grant, but the really pressing questions revolved around material aid, investment, and advice about how to create institutions that would function as efficiently and productively as those in the west” (Plakans, 2014, p. 403).

After the fall of the Berlin wall, the constitutional system change was initiated – and in some countries continued as “a directive from above”, leading many countries to give rise to presidential and powerful semi-presidential systems (in Lithuania), while in some others like Estonia and Latvia parliamentarism has been institutionalized – as the evidence that the old communist political elites did not like-mindedly prefer the presidential system of government (Kasapović, 1996, pp. 129-130). Some authors state that because of “Lithuania’s semi-presidential choice by the preference of the population for strongman rule and a concrete balance of power among the elites during the preparation of a semi presidential constitution”, the “consolidation of semi-presidentialism in Lithuania can be attributed to its role in assimilating political newcomers into the traditional elite community and counterbalancing populist voting behaviour in parliamentary elections” (Matzuzato, 2006, p. 318).

The new Lithuanian system was striving to achieve a balance between presidential powers and powers of the prime minister (while both of them remain significant). The position of the prime minister is such that he can be defined as “the primary decision-maker, while the president has the authority to intervene sporadically, or in specific areas, and usually in foreign and defense policy” (Rapajić, 2016, pp. 121-122). The semi-presidential system was the result of a compromise, “an ‘honorable’ outcome for both options, as each could claim to have gotten something for themselves and prevented the other side from achieving all what it wanted” (Rapajić, 2016, pp. 114-115). Estonia and Latvia went down the road of introducing parliamentary system with the indirect election of the president of the republic. Heads of these states had sometimes however quite prominent roles in reality.

Because of that, there were also different characterizations of the constitutional systems of these countries back in 1995. Some authors were suggesting that Lithuania actually belonged to the category of presidentialism, Latvia to semi-presidentialism and only Estonia to the parliamentary system (Kasapović, 1996, p. 126). Lithuania is nowadays in contemporary literature rather considered to be an example of the balanced form of semi-presidentialism, with the advantages of effective restriction of power concentration “in hands of one or few leaders”, but also with disadvantages that led to several institutional conflicts, even to the impeachment of the President in 2004 (Krupavičius, 2013, p. 205) – the only impeachment to ever happen in one Baltic State. The role and the constitutional place of the president of the Republic also lead to doctrinal conclusions about the system being “the semi-presidential system heavily weighted in favor of the legislature [...] where the office holders’ presidential powers are actually relatively weak and comparable to those of Estonian and Latvian heads of state” (Auers, 2015, pp. 55, 59).

Sharing the same or similar historical paths, expressing and maintaining high level of mutual cooperation, these countries certainly express differences when it comes to the structure and practice of the system of powers, hence the position and role of the president of the republic. Additionally, the relation between the formal and informal (“real”) powers of these respective presidents was sometimes in certain discrepancy with the expected one (e. g. Latvian president gained more dominant role than expected, thanks to some presidential powers like presidential, suspensive veto) and some of the presidential powers have unique characteristics in comparative perspective.

2. Estonia

The role of the president was one of the topics that caused most discussion and debate in the 1991–1992 Estonian Constitutional Assembly and in the Lithuanian legislature’s debates on the new constitution. “Debates polarized around the need for a popularly elected versus parliament-elected president. The Estonian Constitutional Assembly debated the costs and benefits of five different constitutional models before ultimately settling on a parliamentary model with an indirectly elected presidency” (Auers, 2015, p. 54). Presidential activism was somewhat more pronounced right after gaining independency, but right after the first term of the Estonian President Lennart Meri, political parties made it clear that they would only vote for his re-election if he decreased his activism. Since then presidential activism has constantly decreased and presidents have (similar to the views of parliament and government on the matter) seen their legitimacy and authority as limited (Köker, 2017, p. 111).

At first glance, the powers given by the Constitution to Estonian president may seem substantial, maybe even excessive concerning the fact that he/she is not being elected directly, but by the parliament (*Riigikogu*), or by the special electoral body that is being convened to elect the president if *Riigikogu* fails to do so (Art. 79). However, most of these powers have significant limitations. Most of them are practiced in accordance with some other article that by rule narrows the scope and power of application, or stipulate the use of countersignature. The countersignature requirement in Estonia is stipulated in case of decree-laws exclusively, in Latvia however the principle of “the negative form enumerating exclusions” has been adopted, while the Constitution of Lithuania uses the system of “positive countersigning” (Olecho, 2012, p. 3)

Estonian Constitution proclaims the President of the Republic to be “the head of state of Estonia” (Art. 77), which is not so common in comparative constitutions, contrasting the doctrinal stance on this issue.¹ The President of Estonia represents the Republic of Estonia in international relations; appoints and recalls diplomatic agents of the Republic

¹ From the comparative perspective, the president of the republic is much more often not referred to as the “head of the state”, even in countries where the president has much more power compared to Estonia. Although still being supported by a significant part of the doctrine, the use of this term is also somewhat disputed, when it comes to the countries with non-presidential or strong semi-presidential system of power – especially in those ones where the president is being elected indirectly. Some German scholars suggest even avoiding the term altogether (Schlaich, 1987, pp. 579-580).

of Estonia, on the proposal of the Government of the Republic, and receive the credentials of diplomatic agents accredited to Estonia; declare regular and extraordinary elections to the *Riigikogu*; convenes the new membership of the *Riigikogu* and opens its first session; proposes to the Chairman of the *Riigikogu* to convene an extraordinary session of the *Riigikogu*; proclaims laws (or vetoes them – Art. 107) and signs instruments of ratification; issues decrees; may initiate amendment of the Constitution; designates the candidate for Prime Minister; appoints to and release from office members of the Government; makes proposals to the *Riigikogu* for appointments to the offices of Chief Justice of the Supreme Court, Chairman of the Board of the Bank of Estonia, Auditor General and Chancellor of Justice; on the proposal of the Board of the Bank of Estonia, appoints to office the President of the Bank of Estonia; on the proposal of the Supreme Court, appoints judges; confers state awards, and military and diplomatic ranks; is the supreme commander of the national defense of Estonia; makes proposals to the *Riigikogu* to declare a state of war, to order mobilization and demobilization, and may declare a state of emergency; declares, in the case of aggression against Estonia, a state of war and order mobilization; by way of clemency releases or grants commutation to convicts at their request; initiates the bringing of criminal charges against the Chancellor of Justice (Art. 78).

Estonian doctrine generally establishes three positive general qualifications of the role and the position of the President of the Republic and one negative – particular flaw or loophole in the system. Positive ones include the fact that the essence and development of the presidential institution in a parliamentary form of government show that the Estonian political system is in accordance with widely understood democratic beliefs and that the principle of the separation of powers is overwhelmingly accepted among different political powers and is supported by the general public in actual politics. The role of the president in both politics and society is clear and there is practically no pressure to change to a presidential political system. The legal framework that regulates the actions of the president has been relatively stable. The respective constitutional framework may however have certain destabilizing effect on the society in case of the concurrence of several conditions, because of the two loopholes in legislation, one of them being connected to the complex, electoral system of the president and the second one referring to the potential of presidential removal procedures (Toomla, 2013, pp. 189-190). Still, Estonian constitutional system, including the role and position of the president remains stable and presents a solid example of good transitioning of a state from the former Eastern bloc.

3. Latvia

Similarly to Estonia, the President of the Republic in Latvia is also not being elected on direct election. Latvian constitution proclaims that the parliament (*Saeima*) shall elect the President for a term of four years by secret ballot with a majority of the votes of not less than fifty-one members of the *Saeima* (Art. 35-36). Public pressure to introduce the direct election of the president of the Republic was and still is to some extent present nowadays. “However, the majority of parliamentary parties, as well as Latvia’s most influential legal

thinker and judge at the European Court of Justice, Egils Levits, are opposed to a popularly elected president. The issue regularly appears on the political agenda because there is a tremendous amount of public support for it” (Auers, 2015, p. 55). Levits is at the moment the President of this country.

The Constitution of Latvia stipulates that the President shall represent the State in international relations, appoint the diplomatic representatives of Latvia, receive diplomatic representatives of other states and implement the decisions of the *Saeima* concerning the ratification of international agreements (Art. 41). He or she is the Commander-in-Chief of the armed forces of Latvia (during wartime, the President appoints a Supreme Commander), has the right to initiate legislation, is entitled to propose the dissolution of the *Saeima* (triggering a referendum), grant clemency etc. (Art. 45-54). By summarizing his constitutionally given powers and their real-life manifestations, the President of Latvia stands somewhere in-between presidents of Estonia and Lithuania.

It is also often stated that there is a strong anti-party feeling in Latvia that remains, traditionally resulting in strong support for independent presidential candidates. Literature describes Latvian presidents as “weak, compromise candidates” (Auers, 2015. p. 57), because of the way of their election. On the other hand, in practice, their power sometimes seems to be greater than the one that would be expected from the indirectly elected president. One of the reasons for that may, among other factors, also be the quite potent presidential power of suspensive veto, which will be explained in more detail later in this paper.

4. Lithuania

As already mentioned within the introductory remarks, the Lithuanian system belongs to semi-presidential ones, but the presidential powers are actually relatively weak and comparable to those of Estonian and Latvian heads of state. The real source of political power comes for the most part from the way how the president is being elected, since direct election assumes much more public exposure and hence popular political influence. Actually, the major difference between the Lithuanian presidency and its Baltic counterparts is the nature of their election. “The head of state in Lithuania is considered to hold substantial powers in practice, regardless of whether this is regulated in detail by law. Still, the Lithuanian president is not an omnipotent ruler as he or she is a part of a dual executive within the semi-presidential system.” (Krupavičius, 2013, p. 232). Although he possesses, comparatively speaking, significant “nonlegislative” powers, “ironically he is among the weakest semipresidential presidents” (Roper, 2002, p. 269).

The President of the Republic gets elected by the citizens of the Republic of Lithuania for a five-year term by universal, equal, and direct suffrage by secret ballot. Powers of the president include: representation of the State; conducting of foreign policy (together with the Government); appointing and recalling (upon submission of the Government) of the diplomatic representatives of the Republic of Lithuania to foreign states and international organization (and other related diplomatic functions); appointment and dismissal, upon the assent of the *Seimas*, of the Prime Minister and other Ministers (upon the submission

by the Prime Minister); submitting candidates for Supreme Court justices, Court of appeal, judges and presidents of regional and local courts, appointment and dismissal of the Prosecutor-General of the Republic of Lithuania (all with assent of *Semias*) among other electoral duties; making of annual reports to *Seimas*; conferring the highest military ranks and has a role in declaring state of emergency and making decisions concerning defense against such armed aggression; promulgating laws and having the right of presidential veto, right to grant pardons and citizenships, confer State awards etc. (Art. 84 of the Constitution of Lithuania). The President of the Republic, implementing the powers vested in him, also issues acts-decrees, which however require countersignature to be valid, significantly limiting their reach and scope of power.

Naturally, the president's affiliation with political parties and consequently to parliamentary majority is often regarded as one of the major sources of informal presidential power, because of the fact that the presidents who have been well-connected to major political parties and/or strong parliamentary majorities in most cases enjoyed higher political influence and cohabitation with other institutions (Krupavičius, 2013, p. 216). The personal characterizes of the office holder play important role in the actual political influence of the holder of the presidential office.

5. Unique Constitutional Solutions of the Baltic States – Presidential Veto Power

The Baltic States demonstrate some inherent differences when it comes to the role and position of the president of the republic. One individual constitutional institute however especially stands out and exhibits not only different solutions when these states are compared to each other, but also some unique characteristics in the scope of general comparative constitutional law.

The most notable curiosity in this sense is one quite unique constitutional-legal institute that can be found in Latvian constitutional system: the so-called “*suspensive veto*”, that is in many regards very similar, but also different from the “classical” presidential veto power – the power of the President of the Republic to conditionally deny the act of promulgation to the voted bill, until the final decision is made by another (constitutional) body (Đorđević, 2020, p. 198). In the first place, a possible *linguistic confusion* here is to be noted and avoided. In many European countries and languages the presidential veto is regarded as the “suspensive veto”, deriving etymologically from the Latin verb *suspendo*, *suspendere*, *suspendi*, *suspensus* (to hold or delay something), while “veto” comes from *veto*, *vetare*, *vetavi*, *vetatus* (to prohibit, deny). Hence, a list of European languages uses those two words to name the institute of suspensive veto, since it effectively puts the legislative on hold by the will of the president, at least for some time (French: *veto suspensiv*; Russian: *суспензивное veto*; Serbian: *суспензивни veto*, etc.).

However, in Anglo-American constitutional law and political science literature (as in most English written texts in general²), the common use for the traditional power

² Exceptionally, it can also be found used in the meaning of presidential veto, though not in a legal-technical, but more descriptive manner. For example: Pritchett, 1959, p. 307.

of the president is “presidential veto”³, while the term “suspensive veto” is being used to describe another legal institute, that, as aforementioned, exists as a *sui generis* constitutional peculiarity, in Ecuador, Latvia, and, debatably, in some form in Finland.⁴ Unlike the presidential veto, the suspensive veto’s main purpose is not to “check” if the proposed bill is unconstitutional (constitutional veto) or politically unfit (political veto) to be promulgated, but to literary suspense a bill for a specified period of time. “During this period, the veto power is, in effect, absolute, since it cannot be overridden. Override becomes possible, however, when the period of suspense has elapsed. [...] The rationale behind this rule is that the president’s veto acts as a delaying power to provide time for political passions to cool and for wider deliberation to take place. The suspensive veto is rather unusual in the world’s contemporary constitutions, but it might have advantages in some situations, especially when it is combined with a relatively low threshold requirement (such as an absolute majority). It could filter out hasty legislation motivated by sudden and momentary passions, and allows more time for public debate to influence the direction of legislation, but it does not allow the minority to thwart the settled will of the majority” (Bulmer, 2017, p. 16). The most distinctive type of this particular solution is to be found in Ecuador, where the bill remains suspended for one whole year.

In Latvia, the President has the right to suspend the proclamation of a law for a period of two months, if he/she decides to do so, or if requested by not less than one-third of the members of the *Saeima* (within ten days of the adoption of the law by the *Saeima*). The law thus suspended shall be put to a national referendum if so requested by not less than one-tenth of the electorate. If no such request is received during the aforementioned two-month period, the law shall then be proclaimed after the expiration of such period (Art. 72). Apart from the suspensive veto, the “traditional” presidential veto exists as well and these powers of the President are in Latvian literature considered to be “one of his most powerful functions” (Abolina, 2018, p. 471).

In Estonia, another quite unique solution regarding the presidential veto is to be found. Comparatively speaking, presidents either use their vetoes for the reasons of suspected unconstitutionality or political inadequacy. In some countries the path of the vetoed bills remains the same regardless of the reason for its use (either way they go to the parliament again – e.g. in Russia, Italy, Czech Republic, Ukraine, etc.), while in some others, the separate procedure is stipulated by constitution and laws (constitutional vetoes go to constitutional courts, while political ones go back to the parliament – e.g. Hungary, Poland, France, Romania, etc.). However, in Estonia, if the proposed bill is suspected to be unconstitutional, the President first has to send the bill to the parliament (*Riigikogu*), and

³ The English term, unlike the German (*das Prüfungsrecht des Bundespräsidenten*), Serbian (*суспензивни veto*) or Russian (*суспензивное veto*), does not indicate the legal nature of this institute. It can only be seen from it that some power of the President of the Republic is in question and that it is a matter of a veto. The only drawback of this term is that it does not show what kind of veto it is – the “temporary” or the absolute one, but since the latter is today more or less a historical category and exists only as a curiosity, that fact could not be considered as a serious shortcoming.

⁴ The existence of suspensive veto in Finland could be somewhat disputed, since the respective constitutional solution resembles both the presidential and suspensive veto and could exhibit the characteristics of both or only of one, depending on the concrete case (Đorđević, 2020, p. 132).

only if it gets passed again, he may send it to the Supreme Court (Estonia does not have a separate constitutional court). The Constitution states: “The President of the Republic may refuse to proclaim a law passed by the *Riigikogu* and, within fourteen days after its receipt, return the law, together with his or her reasoned resolution, to the *Riigikogu* for a new debate and decision. If the *Riigikogu* again passes the law which is returned to it by the President of the Republic, unamended, the President of the Republic shall proclaim the law or shall propose to the Supreme Court to declare the law unconstitutional. If the Supreme Court declares the law constitutional, the President of the Republic shall proclaim the law.” (Art. 107) This is essentially a way for the parliament to realize its mistake and give up the unconstitutional bill before its adoption is prevented by the constitutional court. Hence, on one hand, the reputation of the parliament is preserved in this way, and on the other hand, it facilitates the work of the constitutional court by discouraging unnecessary, politically motivated disputes over constitutionality.⁵

Finally, the Constitution of Lithuania (Art. 72) stipulates that “[t]he *Seimas* may consider anew and adopt the law which has been referred back by the President of the Republic”. Hence this is not “a must” for the parliament to reconsider the vetoed bill – MPs may, but they do not have to do it. This type of solution is comparatively speaking unusual (apart from Lithuania, it exists in one form only in the Republic of Serbia) and can be hardly justified from both the theoretical and practical perspective. If the parliament decides to abandon the bill by simply doing nothing, such (in)action still remains the sovereign decision of the parliament. Although it may seem that if the parliament “decides not to reconsider”, the presidential veto becomes *de facto* absolute – that is not the case, because the parliament solely made such decision. From the practical perspective, the consequences of “refusing to reconsider” and “accepting to reconsider” but then denying the necessary majority to the vetoed bill are in essence identical and this constitutional solution therefore only unnecessarily complicates the procedure in the parliament.

6. Concluding Remarks

All Baltic States can be described as examples of successful transition and post “Iron Curtain’s” fall building up of a democratic constitutional system. Presidents of these countries for the most part did not try to “examine the limits” of their constitutional powers like in some other former Eastern bloc countries (e.g. Poland or Hungary) and remained, with occasional natural oscillation depending on the personality of the office holder, within the expected framework of presidential powers and role. Estonia and Latvia have presidents that are being elected indirectly, according to parliamentary system tradition, while Lithuanian Constitution stipulates the direct election of the president, though still remaining among the weaker ones in the semi-presidential category. Among the specifics that these countries exhibit, the regulation of the presidential veto power/suspensive veto stands out as being the especially prominent and unique in comparative perspective when all the Baltic States are being considered.

⁵ Constitutions of Columbia (Art. 167) and Salvador (Art. 137-138) stipulate similar solutions.

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PREDSEDNICI BALTIČKIH DRŽAVA – UPOREDNI PREGLED

Sažetak

Estonija, Letonija i Litvanija su tri zemlje koje obuhvataju raznorodna i kreativna ustavna rešenja kada je u pitanju sistem podele vlasti i ustavni inženjering uloge predsednika republike. Deleći istu sovjetsku istoriju, ove suverene države nastavljaju da održavaju visok nivo međusobne saradnje, ali takođe i da razvijaju svoje ustavne sisteme u različitim pravcima. Dok je Litvanija usvojila jedan oblik polupredsedničkog sistema, Estonija i Letonija su se opredelile za parlamentarni. Razlike su posebno izražene kada su u pitanju pojedina predsednička ovlašćenja, npr. ovlašćenje suspenzivnog veta, gde ustavna rešenja ovih zemalja ispoljavaju attribute koji se ne samo značajno međusobno razlikuju već su neki od njih i unikatni posmatrano kroz opštu komparativnu perspektivu, kao i sa teorijskog gledišta. Pojedina od ovih ovlašćenja takođe omogućavaju (ili imaju potencijal da to učine) predsednicima Estonije, a posebno Letonije da ostvare mnogo značajniju ulogu u odnosu na onu koja se od predsednika očekuje u parlamentarnom sistemu. U ovom radu autor analizira ključne elemente predsedničke vlasti u sve tri baltičke države, njihove ustavne osnove i okvire, kao i realnu manifestaciju u političkom životu, posebno ističući *sui generis* ustavna rešenja koja baltičke države po ovim pitanjima ispoljavaju.

Ključne reči: baltičke zemlje, predsednik, predsednička ovlašćenja, ustav, Estonija, Letonija, Litvanija.

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