Constitution of the fifth republic: the organization of state power in France

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Конституция Пятой республики: организация государственной власти во Франции

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Аннотация: Юбилей Конституции Франции придает своевременность попытке ревизии отраженной в ней модели организации государственной власти. С учетом приближающейся круглой даты в истории Российской Конституции и разделяемого многими исследователями мнения о схожести Основных законов двух стран, анализ истоков формирования, условий становления и специфики функционирования Конституции Франции представляется чрезвычайно актуальным. В работе рассмотрены история создания документа, изменения, которые он претерпел со времени своего принятия, принципиальные отличительные черты, способы и механизмы взаимодействия ветвей власти. Конституция Пятой республики принималась в кризисное для Франции время. Анализируя положения, закрепленные в Конституции, авторы приходят к выводу, что, несмотря на сложности становления, модель организации государственной власти во Франции сформировалась. Сложный характер позволяет ей, в зависимости от политической конъюнктуры, приближаться то к парламентской, то к президентской. Это обеспечивает устойчивость и эффективность модели и в периоды сосуществования властей, и при президентско-парламентской власти.
Ключевые слова: конституция, президент, парламент, парламентское большинство, правительство, вотум недоверия, роспуск парламента

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CONSTITUTION OF THE FIFTH REPUBLIC: THE ORGANIZATION OF STATE POWER IN FRANCE

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Abstract: The anniversary of the French Constitution gives timeliness to an attempt to revise the models of organization of state power reflected in it. Taking into account the approaching round date in the history of the Russian Constitution and the opinion shared by many researchers about the similarity of the Basic Laws of the two countries, the analysis of the origins of formation, the conditions of becoming, and the specifics of functioning of the French Constitution is extremely relevant. The paper considers the history of creating the document, the changes that it has undergone since its adoption, the fundamental distinctive features, methods and mechanisms of interaction between the branches of government. The Constitution of the Fifth Republic was adopted at a time of crisis for France. Analyzing the provisions enshrined in the Constitution, the authors come to the conclusion that, despite the difficulties of formation, the model of organization of state power in France has been formed. The complex nature allows it, depending on the political conjuncture, to become either parliamentary or presidential. This ensures the stability and efficiency of the model during periods of coexistence of the authorities and under presidential-parliamentary power.
Keywords: constitution, president, parliament, parliamentary majority, government, vote of no confidence, dissolution of parliament

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History is a policy that cannot be corrected.
Policy is a history that can still be corrected.
Sigmund Graff

Introduction

2018 is a jubilee year for French constitutionalism. On October 4, the country celebrates the 60th anniversary since the adoption of the Constitution of the Fifth Republic. This year is also marked in the history of Russian statehood. 25 years ago, as a result of a nationwide discussion, the Constitution of the Russian Federation was adopted, it became the legal basis for the development of modern Russia, which laid the foundation for the subsequent transformations and determined the vector of country's aspirations. Of course, these legal acts were developed and adopted in different political conditions, they reflect different legal traditions and demonstrate different legal schools.

Revolutionary past had the biggest influence on the development of the statehood of both countries. Starting in 1789 and until the establishment of the Fifth Republic in 1958, the situation in the country was characterized with permanent instability, the endless series of revolutions, changes of political regimes and forms of government, there were proclaimed two empires and five republics, numerous state coups[1] took place. The Fifth Republic is the 22nd political regime since the beginning of the French Revolution, and the 1958 Constitution is either the 16th or the 17th French Constitution[2]. Such extensive lawmaking allowed Marcel Prelo to give France the feature infinitely quoted in the scientific literature as "a real laboratory for preparing constitutions, they can be found here literally for every taste" [Constitutional Law ..., 2004. P. 436]. Indeed, the French rightly consider themselves to be "great consumers of constitutions".

The search for the most optimal state-legal model, reflecting historical and legal traditions of statehood, was often extremely painful, but after passing the test of time and public opinion, this model is considered really functioning and determining style and lifestyle of modern France. Therefore, the study of the French experience by domestic constitutionalists, state scholars, legislators, and public administration practitioners seems to be today, on the eve of the 25th anniversary of the Russian Constitution, particularly important and, in our opinion, able to provide answers to many questions concerning the regulatory meaning of the country's basic law.

Transitioning into the Fifth Republic

In France, the parliamentary regime (or, as French lawyers prefer to call it, "strengthened parliamentarism" [Massot, 1993. P.37]), established by the Constitution of the Fourth Republic in 1946, proved incapable of solving domestic and foreign policy problems. The constitutional reform, carried out in 1953, aimed at strengthening the executive power, did not bring the state out of the political crisis, did not contribute to increasing public confidence in the government. In 1954, an ultra-right riot began in Algeria (a former French colony at that time), contradictions within France itself intensified, and the stability of the Republic was threatened. The legitimate authorities could not solve this problem. The government resigned, and the leader of the French Resistance, General Charles de Gaulle, who was able to offer a way out of the crisis, returned to power.

In domestic science, assessments of his activities were initially quite politicized and, often, polar: from negative ones, evaluating his activities as a combination of conservatism, Bonapartism and nationalism [Rubinsky, 1964; 1969], to positive, in which de Gaulle was considered a hero, a reformer of the entire French political system [Chernega, 1984; Maklakov, 1981; Arsenyev, 1978], for "... in the period of de Gaulle France found those basic directions that allowed it to develop steadily, which was reflected in de Gaulle's practice of "political continuity" [Novikov, 1984; Arzakanyan, 2002]. At the same time, some opponents of Gaullism as a system of principles and values subsequently revised their views, recognizing that *"... de Gaulle committed the most important historical act in the history of France: he reconciled two different Frances, two parts of French society ... He reconciled traditional France with the republic and made republican values those of national wealth"* [Rubinsky, 2015].

For most Frenchmen, de Gaulle was always not just the first President of the Fifth Republic, the national hero of the Resistance, the symbol of the new France, but also the ideologue of the new political system, who managed to temper polar sentiments both in political circles and in society as a whole [Demichelle, Demichelle, Piquemal, 1977; Decaumont, 1980; Duhamel, 1991; Dulong, 1974; Rémond, 1983; Revel, 2000].

He was able to achieve this, in part thanks to the coalition government formed in June 1958, which, along with its supporters from the former Union of the French People[3], consisted of socialists and representatives of the Republican People's Movement (Mouvement républicain populaire, MRP). As a result, de Gaulle's government received emergency powers and a mandate to draft a new constitution, in which a group of his supporters – senior officials led by Justice Minister M. Debre and Vice-President of the Council

1 The period of the French Revolution (1789 – 1799); The First French Republic (1792 –1804); The First French Empire (1804 – 1814); The Restoration period (1814 – 1830); The July Monarchy (1830 – 1848); The Second Republic (1848 – 1852); The Second Empire (1852 – 1871); The Third Republic (1871 – 1940); The Fourth Republic (1946 – 1958); The Fifth Republic (1958 – present).

2 The number of French constitutions is debatable: various authors name 14 to 17 constitutions and constitutional charters in action, but if the constitutional acts that have not been in action are also taken into account, the number goes to 22.

3 In April 1947, General de Gaulle, together with his supporters, in order to fight against the weak "party regime", founded a right-wing political party, the Union of the French People (Rassemblement du peuple français, RPF). The party was dissolved 5 years before de Gaulle was appointed prime minister in 1953.

of State R. Cassin – played a major role. They are rightly considered the authors of the Constitution of the Fifth Republic of 1958.

On September 28, 1958, the following question was put to the referendum: "*Êtes-vous pour la création de la V-e République*?" ("Are you for the formation of the Fifth Republic?"). 82.6% voted for the adoption of the Constitution, which in total amounted to 31 123 483 votes[4]. On October 4, 1958, the Constitution was promulgated and the Fifth Republic was proclaimed the next day.

It is not clear which acts form the Constitution of the French Republic. According to the French constitutional doctrine, it consists of: a) the actual Constitution of 1958; b) the Declaration of the Rights of Man and the Citizen of 1789; c) the preamble of the Constitution of 1946. The Constitution also includes: d) European Charter for the Environment, 2004; e) fundamental principles recognized by the laws of the republic (10 such principles were formulated during the processing of constitutional matter by the Constitutional Council) and e) principles and objectives of constitutional significance, also formulated by the Constitutional Council for clarity of the application of material constitution acts[5].

In accordance with the transitional provisions of the adopted Constitution, de Gaulle received the right to govern the state for four months by issuing ordinances, which should contain "provisions necessary for the life of the nation". During this time, 296 ordinances were issued and a new regulatory framework for the established constitutional regime was created.

It is the scope of power based on high personal authority and independence in decision-making that became the starting point for the subsequent widespread criticism of de Gaulle's governance by politicians, representatives of culture and business in France and beyond. The famous Belgian writer Georges Simenon noted [Simenon, 1988. P. 99] that *"... de Gaulle's experiment (the Constitution of 1958) from the very beginning caused me repulsion, and not only because of his arrogance, his disregard for someone else's opinion or because of those whose interests are represented by him and his entourage ... And yet, when I watch TV, I find myself wanting new failures to French politics, since this is de Gaulle's politics"*.

According to de Gaulle, democratic in nature Constitution of the Fourth Republic could not guarantee political stability. The idea of a parliamentary republic containing the threat to consolidate the "regime of the parties" should have been opposed to the principle of direct democracy based on referendums and general and direct presidential elections.

Indeed, despite enshrined in Art. 3 of the Constitution of 1946 principle of national sovereignty, the practice of referendum in the conditions of the Fourth Republic was not applied. In fact, an "ultra-representative regime" emerged at that time, based on parliamentary sovereignty, which, however, did not bring stability to the French state and legal model: forty-five governments changed in the twelve years of the Fourth Republic, and several long ministerial crises were observed.

To solve this problem, according to de Gaulle, it was necessary to radically change the system of organization of state power. The head of state, he believed, as the direct representative of the whole of France should be vested with powers independent of parliament. The legislative and executive branches of power should not be as demarcated as balanced, and the president, who oversees the parties, exercises political control over the activities of all branches, should not be a dictator (which is exactly what de Gaulle was blamed of by his opponents), but an arbitrator and guarantor of national interests, who tempers the interests of different political forces.

The original text of the Constitution provided for an indirect form of presidential elections – the president was elected by the electoral college that included members of the French parliament, members of the General Councils, overseas assemly, mayors and city councils. In the presidential elections of 1958, 81764 electors were registered, of whom 81290 people participated in the elections. Unconditional victory in the elections was won by General de Gaulle, who received 78.5% of the electoral votes, while his rivals Georges Marran and Albert Chatelet won 13.1% and 8.4%, respectively. These elections were the last indirect presidential elections in the history of France.

The amendment to the Constitution of 1962 changed the order of presidential elections – since 1965, the president was elected through general and direct elections. The amendment submitted by de Gaulle raised objections from the parliament even at the stage of its development, and later also at the approval stage: the National Assembly not only did not approve it, but also expressed no confidence in the government (it is noteworthy that only two governments were changed during the entire de Gaulle's presidency – as a result of crisis in 1962 Georges Pompidou and in 1968 Maurice Couve de Murville were appointed as Prime Ministers).

The conflict between the president and the parliament resulted in the dissolution of the National Assembly and de Gaulle's call for a referendum regarding the change in the procedure for presidential elections. De Gaulle then declared: "The constitution may well change. You shouldn't mummify it" [Mauriac, 1964. P.61].

The politicization of de Gaulle's decision on the appointment of a referendum was linked to voting on the issue of his resignation, that is, in essence, it was a referendum about trusting the president. Despite the fact that the opponents of electing the president by popular vote (socialists, radicals, Internationalist Workers Party) were united in the so-called «Cartel No», most supported the idea of the French President – the decision was adopted in a referendum with 62.25% of the vote.

4 http://www.politiquemania.com/referendums-1958-france.html

5 The fact that, in its pursuit of clarity, the Constitutional Council significantly complicated the perception of constitutional and legal material, cannot be explained by anything other than eager observance of the rights and freedoms of French citizens.

The positive results of the referendum required a subsequent amendment to the text of the constitution. The procedural part of the question is regulated by Article 89. In particular, it provides for a procedure to revise the constitution, similar to revising the law, but with one exception: the initiator of this decision may be the President of the Republic, but only on the proposal (actually, with consent) of the Prime Minister and parliament members. This is the only example when the President implemented his right to legislative initiative.

Revision of the constitution in accordance with Art. 89 is final after its ratification in a referendum, in which it is enough to get a simple majority of votes, or by the Congress (by a majority of 3/5 of the votes). Thus, the right to choose the procedure belongs to the president. The draft revision of the Constitution is not submitted to a referendum if the president decides to submit it to the parliament convened in the format of Congress.

In the entire history of the Fifth Republic, the usual procedure for revising the Constitution has been used many times. One of the recent examples is the constitutional reform of N. Sarkozy in 2008, in which 47 of the existing 89 articles of the Basic Law were modified or amended. In this case the referendum was not needed, the president received support from the Congress, although it was not unconditional.

This example demonstrated the complexity of the implementation of the reform process by the president. Therefore, the addition to Art. 11 of the Constitution, introduced by the constitutional reform of 2008[6] became quite logical. To date, a referendum can be held on the initiative of 1/5 of the total number of parliamentarians, supported by 1/10 of the voters. Such an initiative should be framed in the form of a proposal and submitted to the chambers of parliament for approval. However, if the draft is not approved by the National Assembly within six weeks and within four weeks by the Senate, the President of the Republic is vested with the right to submit it to a referendum. Without a doubt, the adopted changes are aimed primarily at strengthening his powers in this matter. Even in case of a possible clash with the opposition parliament, the position of the president will prevail.

The French model for separating powers in institutions and functions

The basic principles of the model for separating powers, characteristic of the French state-legal model and laid down in the Constitution of 1958, can be traced in the interrelation and interaction of three aspects: institutional, functional and subjective.

Institutional aspect allows to identify the features of the system of government bodies, the order of their formation. In this context, the current edition is far from the original text.

Since 1962, the president has become the direct representative of the entire French people. The majority electoral system[7] started to be applied. The changes also affected his term of office. Since 2000, the president has been elected not for seven, but for five years.

In 2003, a law was passed that significantly reformed the Senate. Previously, in accordance with the principle of rotation, the Senate was renewed every three years by 1/3 (similar to the Senate of the US Congress), and the term of office was nine years. The reform reduced the term of office of senators to six years with the frequency of holding elections to every three years (from now on half of the chamber's membership is updated). The number of senators increased from 321 to 331. The age limit for senators was reduced from 35 to 30 years.

The National Assembly is formed by the absolute majority system. To win in the first round, you need to gain an absolute majority of votes (50% + 1 vote). If no candidate gets the necessary majority, two candidates enter the second round, receiving a relative majority of votes or all the candidates for whom at least 12.5% of the voters on the electoral rolls voted. To win in the second round, a simple majority of votes is sufficient.

Thus, both the president and the parliament (both of its chambers) are elected by the people, being its direct representatives.

However, the institutional aspect does not allow to reveal the specificity of the mechanism of state power, be-

6 Loi constitutionelle organique №2008-724 du 23 julliet 2008 de modernization des institutions de la V-me Republique du 23 julliet 2008

7 To win in the first round, you need to gain an absolute majority of votes (50% + 1 vote). If none of the candidates gains the necessary majority, the second round is nominated, in which two candidates with the highest number of votes enter.

In the entire history of applying this electoral system in the Fifth Republic (from the first direct presidential election of 1965), the president was never elected in the first round. In 1965, Charles de Gaulle was elected President of the Republic (in the second round, he defeated F. Mitterrand), in 1969 - Georges Pompidou (second place was taken by A. Poher), in 1974 - Valery Giscard d'Estaing (F. Mitterrand) , in 1981 - Francois Mitterrand (V. Giscard d'Estaing), in 1988 - Francois Mitterrand (J. Chirac), in 1995 - Jacques Chirac (L. Jospin), in 2002 - Jacques Chirac (Jean-Marie Le Pen) , in 2007 - Nicolas Sarkozy (S. Royal), in 2012 - Francois Hollande (N. Sarkozy), in the last presidential election in 2017 - Emmanuel Macron (Marine Le Pen entered the second round).

It is noteworthy that after the scandal associated with the financing of the election campaign of the ex-President of France, N. Sarkozy, the electoral legislation has undergone many changes. The most significant of them were related to strengthening of state control over the financing of candidates' election campaigns. A prerequisite was filling out a specially developed form indicating the source and size of sponsorship donations. Control over it and the election campaign as a whole is exercised by the French Constitutional Council. It also performs the functions of an electoral court in relation to the elections of the President of the Republic, to the elections of deputies and senators, as well as to the referendum / Loi constitutionelle organique No. 2016-506 du Avril, 2016 De modernisation des règles applicable à l'élection présidentielle // https://presidentielle2017/conseil-constitutionel.fr

cause in its essence it reflects not the substantive, but only its descriptive side.

It is noteworthy that the French Constitution does not even mention the division of power as the basic principle of the organization of state power. Art. 5 indicates that "the President is monitoring compliance with the Constitution. With his arbitration he ensures the normal functioning of public authorities, as well as the continuity of the state. " In its form, the norm is typical for the characterization of the president of a parliamentary republic who does not have real authority (that is, a nominal president). However, such an assumption in characterizing the legal status of the President of France is a blasphemous mistake. In order to understand the place and role of the presidential institution in the system of state power in France, it is necessary to analyze the scope of its powers, the mechanisms of interaction with other government bodies, that is, the functional aspect of its activities.

The wording of Art. 20 of the Constitution is also ambiguous: "The government determines and conducts the policy of the Nation." It would seem that the body that "... determines the policy of the nation" should lead de jure the executive branch. However, this issue is not regulated constitutionally and also remains open. In the Constitution there is no direct indication of the actual duality of the legal status of the government: in practice, "government" can be understood as the Council of Ministers – a collegial body chaired by the President of the Republic, and the cabinet – a collegial body chaired by the Prime Minister. In the latter case, it is more a matter of an administrative body exercising managerial functions, while in the format of the Council of Ministers the government can exercise its authority. However, this is a functional aspect of the dualism of government activity as well.

It would seem that the place of parliament in the system of state authorities is defined more clearly. However, the paradox is that in French Constitution there is no direct indication that this is a body of legislative (representative) power. Although Art. 24 indicates that the "Parliament adopts laws ...", the lawmaking process in France is very specific: the parliament only has limited legislative powers, so it is important to define the specifics of the lawmaking process as an integrated mechanism in which other government bodies are involved.

The normative uncertainty of the Constitution creates difficulty in understanding the institutional aspect of the French model of separation of powers. The classical concept for separation of powers, which is based only on the institutional separation of the government branches, does not reflect the current constitutional and legal realities and is archaic.

The specifics of the state-legal model of the Fifth Republic can be understood when analyzing *the functional aspect of the French model for separation of powers*. This approach will allow to determine the factors of balance of the state mechanism. The balance is achieved by the constitutionally established volume of powers in the supreme bodies (institutions) of state power, first of all, the president, the government and the parliament.

In legal terms, the procedure for forming the government is relatively simple: in accordance with Art. 8 of the Constitution, the president appoints the prime minister and, upon his submission, other members of the government. Formally, he is not bound by any legal conditions of appointment, and his decree does not need a counter signature.

However, in accordance with Art. 49 to start the work, it is necessary to have a vote of confidence on the part of the lower house of parliament – the National Assembly (the upper house of parliament – the Senate – does not participate in the process of forming the government, it doesn't have control powers over the government's activities. In the future, the "parliament" will be understood by activities of the lower house – the National Assembly). Thus, the president is not free to choose candidates for the post of prime minister and other members of the government. He cannot disregard the alignment of political forces in parliament, since otherwise this step of the president may be followed by a parliamentary vote of no confidence, provided for by Art. 49 of the Constitution.

On this basis, the third, *subjective aspect of the division of power*, which defines the "party color" for the highest state power holders, acquires extremely great importance. The specificity of the French state-legal model lies in the fact that it is the party affiliation of the president and the parliamentary majority, under certain conditions, that is characterized either by strengthening or weakening of their actual powers.

For example, the period of coinciding of the party affiliation of the president and the parliamentary majority is characterized as the presidential mode of the state mechanism functioning. During this period, the so-called superpower *party authority* is established, leaded by the president (*party-presidential power*). In such a situation, the prime minister, at best, finds himself in the role of first deputy, at worst – first assistant to the president. "The president dominates the executive branch. It is he who concentrates in his hands the largest amount of authority, being the supporting structure of the entire system of state power", wrote N. Copin [Copin, 1978. P.26].

It is natural to assume that the president, who forms the government from the representatives of his party and relies on his parliamentary majority, will coordinate the activities of both parliament and the government. Based on this, some authors believe that it is possible to single out the power of the French president in the fourth, "presidential", "arbitration" branch of state power [Chirkin, 1993. P.23].

It seems that if we are talking about the real powers of the president, there can be no "arbitration" power, because if one institution controls the others and is beyond their control, the very structure of separation of power is broken. This is not a division of power, but its organizational unity. The power can not be balanced by the arbitrator, but only by another power.

We believe that the basis for this approach lies in the concept of the "moderating, restraining" power of the head of state formulated in the XIX century by B. Constant (*le*

pouvoir modéré - Fr.). By the subject implementing these moderating, arbitration functions, the thinker was referring to the monarchs of constitutional parliamentary states[8]. At present, the concept may also be extended to the nominal power of the presidents of parliamentary republics, but not to the president of France, who has more than real authority.

In the period of a single party affiliation with a parliamentary majority, the power of the president increases, but remains executive in nature. Moreover, during this period, the president actually becomes the head of the executive branch (although there is no norm for this in the text of the Constitution).

However, regular (or irregular) presidential or parliamentary elections may change the alignment of political forces. To the situation when the president and the parliamentary majority belong to different parties, the term coexistence of authorities applies. For the first time in the scientific literature, M. Duverger used it, defining this period as "a state in which the president and the parliamentary majority adhere to different political orientations and exist simultaneously" [Duverger, 1986. P. 11].[9]

This situation is characterized by a *parliamentary way* of functioning for the mechanism of the state. The president ceases to *coordinate* the activities of the parliament and the government, becoming the opposition for the established *party and government power* (that is, the government based on the parliamentary majority, in opposition to the president). The executive branch acquires the character of a bicephalic, bicipital (that is, headed simultaneously by the president and the prime minister). In a political sense, the government and the parliament become one.

However, the parliamentary majority is not always homogeneous[10]. Some disagreements arising between the allies can escalate into opposition between the parliament and the government and seriously shake the seemingly unshakable position of the latter. At the same time, the potential difficulties of the subjective component of the separation of powers can be mitigated or even eliminated by the functional distribution of powers.

According to M.A. Koende, "the first and third paragraphs of Article 49 of the French Constitution[11] allow the Prime Minister to push the parliamentary majority". Particularly significant is paragraph 3 of Art. 49, according to which the government can carry out financial laws through parliament without a vote, if it binds them to the question of trusting themselves. If within 24 hours after this announcement a resolution of censure is not introduced or it is not adopted, the submitted draft law is considered approved. However, French experience shows that such pressure can not always be crowned with success, that is, parliamentarians have the opportunity to deny trust to the government by adopting a censure resolution, and also have time to gather to express distrust by linking it with the proposed law. That is, the parliament has the opportunity to resist the actions of the Prime Minister. If a resolution of censure is adopted, the government is obliged to resign (Article 50 of the Constitution).

However, the mechanism for adopting such a resolution is rather complicated. In the entire history of the Fifth Republic, the censure resolution was submitted to the Chairman of the National Assembly many times, however, in the voting, an absolute majority was collected only once. The exception was 1962, when the conflict between President de Gaulle and the National Assembly reached its apogee. As a result, the cabinet of G. Pompidou was dismissed.

However, one cannot regard the 1962 decision on the dissolution of parliament as a general rule and forget about the restrictions established by the Constitution on such a step. The National Assembly can not be dissolved: during the year, following the previous dissolution; during the state of emergency; by Acting President, that is, the Chairman of the Senate before the new President takes office.

If a resolution is passed on a censure during a year when parliament's dissolution is impossible, the president will

8 "The legislative, executive and judicial authorities are the three springs, which should work together in their part of the general movement, but when these springs begin to intersect, collide and interfere with each other, it is necessary to have such a force that could put them in place. This force should not be one of the springs, as in this case it could destroy others. This force must be neutral so that its actions are applied only where they are applied, so that it remains preventive, revitalizing, but not hostile" (*Constant B.* Principles de politique applicables a tous les gouvernements representatives. 1815. Oeuvres. La Pleiade. 1956. P.113).

9 At the same time, in the dictionary of legal terms, this period is characterized as follows: "The expression used to characterize the functioning of the Fifth Republic in France during the opposition of the presidential and parliamentary majority" (Lexique des termes juridiques. Paris. 1990. P.97).

It is noteworthy that for characterizing it in French, two terms are used – "cohabitation", literally translated into Russian as "inhabitating the same space" and "coexistence" - "existing in the same space". However, due to the inconsistency of the term "cohabitation" in the Russian language it is more correct to use the term "coexistence".

At the same time, J. Massot introduced another term - "diarchie" (diarchy, dual power), defining it as "a state led by two leaders" (*Massot J.* Diarchie en France. Paris. 1984. P.1-17). The difference between this term and "coexistence" lies in the fact that the latter implies always and completely opposing state leaders, and "diarchy" includes all cases of the actual leadership of the country by two persons, regardless of their political beliefs. Based on this, the second term is significantly wider than the first one in its scope.

10 This was particularly evident in France in the first and second periods of coexistence, when the right-wing parties had approximately the same number of deputy mandates: in 1986, the Union in Support of the Republic (Rassemblement pour la République, RPR) – 155, the Union for French Democracy (Union pour la Démocratie Française, UDF) – 131 mandates. In 1993, RPR – 258, UDF – 214 mandates (Le monde. Dec. 22, 1986).

11 Paragraph 1 of Art. 49 of the Constitution speaks of raising the question of confidence to the government in connection with its program, and paragraph 3 – the question of confidence in connection with voting on a specific law.

have no choice but to dismiss the government. The confrontation, by definition, will end in favor of parliament.

During the sixty-year history of the Fifth Republic, the National Assembly has been dissolved five times[12]. Each time, resorting to dissolution, the presidents had good reason for this, taking into account the alignment of political forces, as well as the mood of society as a whole. As history shows, such a step, in general, justified itself, since in most cases (four out of five) after the dissolution of parliament, the presidential party won the parliamentary elections[13]. According to B. Chantebout, "the dissolution of parliament without a serious reason to get an obedient majority should be carried out at the most opportune moment, for example, immediately after the referendum, which received a positive response for the president" [Chantebout, 1997. P. 498].

The right to dissolve parliament for the president is unchanged with all political factors. In the period of coexistence of the authorities, it becomes one of the most effective means to influence the party and government power, and also helps the president to resort, if necessary, to arbitration of voters in conflicts between him and the parliamentary majority.

So, F. Mitterrand during the first period of coexistence[14] actively used the contradictions between the Gaullists, centrists and the extreme right, thereby increasing his popularity, and then in the presidential election of 1988 three representatives of these parties (R. Barr, J. Chirac, J.M. Le Pen) could not make him a worthy competition[15].

Directly related to this is the issue of government responsibility. The French Constitution does not give the president the right to independently decide on the resignation of the government: it must be either the initiative of the prime minister himself or a resolution of censure adopted by parliament. On this basis, the government bears political responsibility *only before the parliament*[16], i.e. if the parliament expresses no confidence in the government, the latter is obliged to hand the resignation letter to the president, which, in turn, may not accept it, but dissolve the parliament.

The beginning of the period of "party-presidential power" somewhat transforms the essence of the government responsibility. Legally, the institution of parliamentary responsibility of the government is preserved, i.e. formally, nothing restricts the right of parliament to express no confidence in the government. "Theoretically, the president needs a parliamentary majority, which is supported by his government. But if the president has the support of the majority of the nation, then not a single part of the parliamentary majority will dare to provoke a political crisis by pushing the government to resign", wrote N. Copin [Copin, 1978. P. 37].

Due to the fact that in this period the president, relying on the parliamentary majority that supports him, essentially forms the government alone, it is more obvious that

12 Two times by C. de Gaulle, two times by F. Mitterrand, and once by J. Chirac.

13 The only exception is the dissolution of the lower house of parliament by J. Chirac in 1997, when the left won the parliamentary elections, resulting in the "coexistence" of the right-wing president and the left-wing parliamentary government. The president explained this step by the desire to avoid stagnation and demagogy, which characterized the conduct of election campaigns (the next parliamentary elections were to be held in March 1998), as well as the intention to prevent possible attempts to slow down the construction of a united Europe.

However, political scientists were inclined to believe that the real reason, in their opinion, was the president's attempt to retain the parliamentary majority until the end of his mandate (1997-2002), since all sociological predictions spoke of a decline in the popularity of right-wing parties and their obvious defeat in 1998. And during the parliamentary elections a year earlier, Chirac had a small chance to get a majority in the National Assembly, but the president's hopes were not fulfilled.

14 In the 1986 parliamentary elections, the right-wing opposition won, and by accepting the resignation of L. Fabius, Mitterrand had to appoint the leader of the neogaullist "Union in support of the republic" J. Chirac as prime minister, with the result that the left president worked with the right prime minister.

The political results of such coexistence are interesting. On October 29, 1981, the president signed a law that significantly facilitated immigration to France, which allowed an illegal immigrant to be deported only if he was sentenced to imprisonment for more than one year (as a result, only in 1982 about 100,000 immigrants received a residence permit in France and many social rights). With the beginning of the "period of coexistence" norms of immigration law have been changed. In September 1986, a law was passed, abolishing the previously established restrictions on the deportation of illegal migrants.

15 According to polls by the sociological service Kantar Sofres, the support of citizens who wanted F. Mitterrand to remain at his post during the period of coexistence increased. So, if, before the victory of the right-wing parties in the parliamentary elections, 48% of respondents supported this, on average, after the establishment of coexistence in March 1986, this figure increased from 62% to 69% in just one month. In April 1986, only 22% of those surveyed believed that F. Mitterrand should resign. Thus, in two years of coexistence, the image of Mitterrand as a national arbiter has become entrenched in the mass consciousness. According to the survey conducted in September 1987, half of the French claimed that "the true Mitterrand" is "the president of coexistence", the arbiter and guarantor of national unity" // https://www.tns-sofres.com/

16 Along with political responsibility, the legislation also provides for measures of civil and criminal liability towards members of the Government. In the first case – this is a responsibility to private individuals. Criminal liability, in accordance with the provisions of Section X of the Constitution (Art. 68–1, 68–2), is provided for acts recognized as criminal and committed by members of the Government in the performance of their duties. This category of cases is under the jurisdiction of the Chamber of Justice of the Republic, which includes 15 judges – 6 from each chamber of Parliament (the composition is updated after each election) and 3 judges of the Court of Cassation. At the same time, the circle of persons entitled to lodge a complaint against the actions of members of the Government is not limited.

the government is accountable to the president as he is the person who formed and leads it. And, despite the fact that the Constitution does not give the president the right to independently decide on the resignation of the government, given the political situation, his lack of such a right is formal. As V. V. Maklakov notes, the responsibility of the government *to the president* is established by custom and consists in the actual leadership of the entire executive power [Maklakov, 1997. P. 96].

Even if the prime minister tries to disobey the president and refuses to resign, nothing can forbid the president to push the parliamentary majority obedient to him and achieve an expression of no confidence in the government, with the result that the prime will be required to file a resignation minister in accordance with Art. 50 of the Constitution.

On this basis, many authors note the dual responsibility of the government both to the parliament and to the president [Kerimov, 2001. P.71-74; Nikolaev, 2001. P. 18-31; Meny, 1996. P.42]. However, they point to this as a general rule, the specifics of the organization of state power in France. We believe that this is not quite true: if the government's double responsibility exists, it is only during the establishment of party-presidential power. The beginning of the period of coexistence of the authorities excludes this possibility.

To date, the mechanism of state power in France operates according to the party-presidential model. We believe that the change in the term of presidential powers played a significant role in this. By amending the Constitution of the Fifth Republic in 2000, it was reduced from seven to five years and equated to the term of office of the deputies of the National Assembly. Thus, in accordance with the current legislation, both the President and the deputies of the National Assembly are elected for the same term, and their elections are held almost simultaneously[17].

Both the French president and the parliamentarians are representatives of political parties, which, depending on their party affiliation, have certain, often polar, interests. Based on this, it is rather difficult to assume that in the presidential and parliamentary elections that are held almost at the same time, voters will be so inconsistent in their preferences that in the first case they will give their vote to a representative of one party, and in the second – to another. We believe that this change in legislation was primarily aimed at strengthening the position of the president, and, as a result, at establishing a "party-presidential" model for organizing state power. The experience of the presidential and parliamentary elections held after these changes came into force confirms: between 2002 and 2017, the presidential and parliamentary elections were held four times and representatives of the same party won all of them.

Thus, if in the XVI century under the conditions of the Reformation, the religious factor exerted the strongest influence on politics, then in the realities of the XX-XXI centuries, politics are determined by the parties[18].

The Constitutional amendments of 2000 laid a solid foundation for the "party-presidential" model of organization of state power, characterized by autocracy in the highest state structures. However, it is not the only possible one. Changes in legislation only strengthened the position of the president, but did not affect the very essence of the French state-legal model, which provides for various options, including the possibility for beginning a period of "coexistence of authorities".

During the period of coexistence of authorities, the volume of potential for the realization of the presidential powers is significantly reduced, but does not turn him, like the president of a parliamentary republic, into a nominal head of state. There is a number of powers that the president can exercise regardless of the distribution of political forces.

In addition to the aforementioned right to dissolve parliament, another effective tool for influencing party and government power is the president's participation in the law-making process. Article 13 of the Constitution gives him the power to sign ordinances and decrees adopted by the Council of Ministers (in which he presides). At the same time, as history shows, the president can refuse to sign that during the period of coexistence acquires special significance and is an effective mechanism for influencing the government. For example, the ex-president F. Mitterrand in the first period of coexistence in 1986, said that he would sign ordinances[19] only in the social sphere and only those that represent progress compared to the previous ones. In the end, he refused to sign, in particular, the Ordinance on price freedom, competition and deprivatization[20].

According to some French lawyers, such a move by the president was unconstitutional, since "if Article 13 of the French Constitution states that "the president signs the ordinances", then this provision is imperative and it is not possible for him not to fulfill this duty" [Cohendet, 1993. P. 42]. J. Massot, on the contrary, believed that "*the Constitution provided the president with something more than the role of a simple clerk. By signing the ordonance, he becomes the real author of the decision*" [Massot, 1993. P. 102]. M. Duverger adhered to a similar point of view, explaining this by the absence in the Constitution of a term for which the president should sign – an indefinite postponement of the issue can be equated to a veto [Duverger, 1996. P. 555]. "Nothing can force the president to sign a government ordinance", summarizes this position M. Troper [Troper, 1987. P. 75-91].

17 In 2017, almost simultaneously – with difference in just one month – the latest presidential elections [second round of elections] and the National Assembly elections were held: presidential elections – on April 23 (1st round) and May 7 (2nd round); parliamentary elections – on June 11 (1st round) and June 18 (2nd round).

18 The aspect of channels for financing political parties (including during the election campaign), as well as forms of lobbying interests are beyond the scope of this topic.

19 "My duty", noted F. Mittteran, "is to ensure national independence with the prevalence of national interests". Le monde. 14 Juillet. 1986.

20 Ordonnance No. 86-1243 du 1 décembre 1986 relative à la liberté des prix et de la concurrence.

It is this authority that makes some authors speak about the responsibility of the government to the president [Maklakov, 1997. P. 96]. According to the Constitution, the president does not have such a right; in any case, this should be the initiative of the parliament. However, "responsibility" here can be considered in a broader sense – as "controllability".

The fact that the president signs regulatory acts of the government and presides over its meetings characterizes the influence he continues to exert on the government during the period of coexistence. Thus, neither the government can adopt acts without their signing by the president, nor the president can sign acts not adopted by the government. Accordingly, the president and the prime minister are forced to reckon with each other's position, even while belonging to different political parties.

Lawmaking as a reflection of the French model of separation of powers

Institutional and functional flexibility of the French model of separation of powers is also evident in the lawmaking process. The French Constitution divided the entire area of law-making into laws enacted by parliament (the legislative branch) and regulatory acts of the government signed by the president (the executive branch). Thus, the competence of the French Parliament in the legislative field is limited. Among the questions, on which laws can be passed, are included (Article 34):

civil rights and basic guarantees provided to citizens to exercise public freedoms, pluralism and independence of the media;

citizenship, civil status and legal capacity, family and property relations, inheritance and donation;

identification of serious and moderate crimes, as well as the penalties imposed on them; criminal proceedings, amnesty; creation of new courts;

rates and conditions for levying all kinds of taxes; the procedure to issue the money;

procedure for elections to the chambers of parliament and local governments;

establishment of categories for public institutions;

basic guarantees provided to civil servants and military personnel;

nationalization of enterprises and transfer of ownership of public sector enterprises to the private sector.

Based on this, according to Art. 37 the whole range of relations, not regulated by Art. 34, is controlled by default by government regulatory acts. At the same time, it is fundamentally wrong to regard them as legal (in the classical sense), because the issues on which they are adopted are excluded from the sphere of legislative regulation. They are not accepted on the basis of and, moreover, not in pursuance of laws, but have the primary legal nature and legal force of law.

Regulatory acts and, on the main part, ordinances play a significant role in the lawmaking process in France. This is evidenced by the statistics of the growth of their number. So, if in the period from 1984 to 2003 only 155 ordinances were adopted, then from 2004 to 2017 their number increased to 489 [Mauduit, 2017]. The growth of indicators is also due to the practice of delegation of legislative powers, provided for by Art. 38 of the Constitution. This provision gives parliament the right to delegate its own legislative powers to the government, but only on the issues listed in Art. 34, and only for a limited time.

However, this is only one of the options that the government can use to make decisions. Another option is established, in particular, in Art. 74-1 of the Constitution, which regulates an easier procedure for adaptating the laws in the French overseas territories[21]. It is realized by the adoption of government ordinances, only on the basis of the conclusion received from the State Council. This procedure was put into effect by the constitutional reform of 2008 and is remarkable in that it does not require simultaneous approval by Parliament – consent must be obtained within 18 months after publication.

Comparing the two data mechanisms, it can be noted that it is the second option that the government has been using more actively in recent years. Statistics show that 71 ordinance was issued in accordance with the requirements of Art. 38, and 223 ordinance – in accordance with the procedure of Art. 74-1[22].

Another authority that can be exercised by the government in the form of ordinances is the approval of the draft law on the budget or on the financing of the social sphere. This area is regulated by the Ordinance on Organic Law adopted in 1959 regarding financial laws (or, as the French call it, the "French Financial Constitution")[23]. The Order significantly limited the competence of parliament in the financial sphere in favor of the executive, it is reduced only to approval of the financial policy pursued by the government.

The French Constitution is rich with rules governing the mechanism of relations between the government and parliament, including in the law-making sphere. The key, in our opinion, among them is Art. 49. According to it, after discussing with the Council of Ministers, the Prime Minister may raise the question of confidence in the government with the National Assembly in connection with voting on the draft financial law or the law on financing social security. That is, the adoption of the budget is linked to a vote of confidence, which undoubtedly adds significance to this issue and once again proves the functional flexibility of the French model for separation of powers.

Of particular importance in this matter is the subject aspect of the French state-legal model. In the period of

21 The list is contained in Art. 72-3 of the Constitution. The overseas territories of France include: Guadeloupe, Guiana, Martinique, Reunion, Mayotte, St. Barthelemy, St. Maarten, St. Pierre and Miquelon, Wallis and Futuna and French Polynesia. New Caledonia, French Southern and Antarctic lands, and Clipperton also have special status.

22 Statistics is given for the period from 2008 to 2015 // https://www.senat.fr/role/ordonnances/etude_ordonnances0.htm

23 Ordonnance №59-2 du 2 janvier 1959, portant loi organique relative aux lois de finances // http://www.legifrance.gouv.fr/

establishing a single party-presidential power, difficulties with lawmaking (both with the adoption of laws and regulatory acts) are generally unlikely: the acts are approved and promulgated by representatives of one political bloc. However, in case of disagreements between political allies, as well as during the establishment of the coexistence of the authorities, problems may arise.

With regard to laws, the Constitution provides for the possibility of overcoming the presidential veto, which is suspensive in nature[24]. The situation is more complicated with the regulatory acts of the government, because the president's refusal to sign them is final and impossible to overcome.

According to the Constitution, the right of legislative initiative belongs only to the Prime Minister and members of parliament (Article 39 of the Constitution). If initially (since 1958) the deputies were given rather limited powers to implement it, the 2008 reform expanded their circle: from now on, during the discussion in the committees of government law projects, deputies can make changes to the texts and even completely change them, with some other possibilities added. According to some political scientists, this demonstrates the "general vector for development of the political system in France, which is expressed in the movement towards parliamentarism" [Medushevsky, 2015. P. 102].

Legally, the president does not have the right of legislative initiative, but laws introduced by the Prime Minister are subject to mandatory discussion at a meeting of the Council of Ministers in which he presides. Thus, even if the act was proposed by the government, bypassing the position of the president, the latter has the right not to sign it. That is, with all the political dispositions of the political forces, the president is still an active participant in the legislative process.

The Constitution, without giving the president the right of legislative initiative, grants him the right to adopt his own regulatory acts (Article 19). Depending on the subject of legal regulation, these acts may require a subsequent counter-signature by the prime minister (or other responsible minister), or may be implemented by the president independently. In this case we are talking about key powers aimed at ensuring the normal functioning of the state:

- appointing the Prime Minister,
- holding a referendum,
- dissolving the National Assembly,
- imposing the state of emergency;
- sending messages to Congress (both houses of parliament),
- participating in the formation of the Constitutional Council, as well as sending it requests to verify the constitutionality of draft laws subject to promulgation.

Also, the French president has the right to convene an extraordinary session of parliament[25], which is especially important for him during the period of coexistence of the authorities.

Of great importance is the party affiliation of the president and parliament. If it coincides, then the government, in fact, is formed by the president (who also relies on the parliamentary majority that supports him), if not – by the opposition parliament (opposition parliamentary majority).

Regardless of which party – presidential or oppositional – wins the parliamentary elections, *the government always relies on a parliamentary majority*. Based on this, *the dualism of the mixed (French) state-legal model means that the government should be either under the president* (the president relying on his fellow supporters in the parliament forms his own government, actually leading it), or *under the parliament* (the government rules partly with the opposition president, relying on the parliamentary majority that supports him).

According to the apt remark of A. Shayo, the government plays the role of a ferry between the president and the parliament, and "stands either on one or on the other side, that is, it can depend on either the president or the parliament" [Shayo, 2001. P. 91].

The party membership of the president and the parliamentary majority in the French state-legal model can form two models of state power organization that are polar to each other:

1. The president and the parliamentary majority belong to the same party. In this case, we can talk about establishing the "party-presidential power", headed by the president – the leader of the majority party in parliament, based on which he forms the government, in fact, independently, becoming its leader.

2. The president and the parliamentary majority belong to different parties. In this situation (called "coexistence of the authorities"), the president-leader of the opposition is opposed to the parliamentary majority and the government actually formed by it (the "party-government" power). In this case, the executive branch adopts the bicipital character: it is carried out by the Prime Minister and the President.

The most important of the presidential powers that he can exercise in all possible political alignments of political forces, including the period of coexistence of the authorities, are the dissolution of the parliament and other signifi-

24 The institute of the presidential veto has not been widely adopted in France: constitutional practice demonstrates to a greater degree the search for a compromise at the stage of discussion of a law, rather than at the stage of its promulgation.

25 Such a session is opened and closed by a presidential decree (Article 30 of the Constitution), but a necessary condition for this is the requirement of the Prime Minister or the majority of members of the National Assembly (Article 29 of the Constitution).

The original precedent in this field was created by Charles de Gaulle. In response to the demand of the majority of the National Assembly to convene an extraordinary session, he explained that the Constitution gives the National Assembly only the right to demand the convening of an extraordinary session. The decision on whether to convene it or not remains with the president of the republic. Based on this interpretation, he refused to conduct such a session in 1962, although it was demanded by the majority of deputies.

cant powers that are not subject to counter signature of the members of the Government, in particular:

- signing government regulations,
- appointing a referendum,
- convening an extraordinary session of parliament,
- exercising the functions of the Supreme Commander.

That is, the president, even in a period of significant weakening of his sphere of influence on the "party-government power", is able to resist it to the extent of his unchanged powers. Thus, *a feature of the mixed state-legal model* of modern France, distinguishing it from presidential and parliamentary, is the possibility of competition between the president and parliament for the right to form the government, and the main feature is that the government in certain situations can be formed both by the president and by parliament.

Conclusion

The model of organization of state power in France is of complex nature, allowing it, depending on the political situation, to approach either parliamentary or presidential models of organization of state power. At the same time, combining some of the institutions of one and the other, the French state-legal model transforms them into features unique to it and is characterized by features specific only to it. From the presidential model it borrowed the institution of the president-elect, who has executive powers, from parliamentary – the parliamentary responsibility of the government leaded by the prime minister.

Some authors call such a system executive bicephalic. In fact, it is rather dualistic, where two sources of government powers seem to compete: the parliament and the president. It is dualistic not in the sense that the power of the president and the power of parliament formally have different sources (both the president and the parliament in France are direct representatives of the people), but the fact that the president and the parliamentary majority can be different political actors – representatives of different, competing parties. That is, the government can be either presidential or parliamentary.

In the 60 years that have passed since the adoption of the French Constitution, the state-legal model established by it has demonstrated its stability, proved capable of overcoming the political crisis and laid the foundation for an effective mechanism of state administration.

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