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THE PARLIAMENTARY OPPOSITION AND THE SENATE UNDER THE FRENCH FIFTH REPUBLIC*

OPOZYCJA PARLAMENTARNA I SENAT
W V REPUBLICIE FRANCUSKIEJ

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— ABSTRACT —

The paper is devoted to the role of the French Senate (under the constitution of the Fifth Republic) as an organ that can remain a tool in the hands of opposition to the government. It has been pointed out that in the French formula of the semi-presidential system, which was created as a result of the rationalisation of a parliamentary model, bicameralism may be the field of special expansion of the executive which aims at the effective implementation of its own legislative activities. The author argues that this has a particularly negative impact on the status of the parliamentary opposition. This is the case even when the opposition has a majority in the Senate. The French second chamber, although the body is relatively strong, can be neutralised in legislative proceedings designed to implement the government's programme. The author analyses the problem of marginalising the parliamentary opposition in relation to the two major political arrangements of the Fifth Republic: the so-called

— ABSTRAKT —

Artykuł jest poświęcony roli francuskiego Senatu (pod rządami konstytucji V Republiki) jako organu, który może stanowić narzędzie w gestii opozycji antyrządowej. Wskazano, że we francuskiej formule systemu semiprezydencyjnego, która została stworzona w efekcie racjonalizacji systemu parlamentarnego, bikameralizm może stanowić obszar szczególnej ekspansji egzekutywy, która dąży do efektywnego wdrożenia swoich własnych zamierzeń legislacyjnych. Autor dowodzi, że ma to szczególnie negatywny wpływ na status opozycji parlamentarnej. Jest tak nawet wtedy, gdy opozycja dysponuje większością w Senacie. Francuska izba druga, choć jest to organ relatywnie silny, może być neutralizowana w procesie ustawodawczym zmierzającym do implementacji programu rządowego. Autor poddaje analizie problem marginalizacji opozycji parlamentarnej w odniesieniu do dwóch podstawowych układów politycznych V Republiki: tak zwanego efektu większościowego (władza

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majority effect (the executive branch is politically homogeneous) and cohabitation (the executive branch is politically divided).

Keywords: French Fifth Republic, Senate, parliamentary opposition, majority effect, cohabitation

wykonawcza jest politycznie jednorodna) oraz koabitacji (władza wykonawcza jest politycznie podzielona).

Słowa kluczowe: V Republika Francuska, Senat, opozycja parlamentarna, efekt większościowy, koabitacja

INTRODUCTORY REMARKS

The political practice under the constitution of the Fifth Republic of 1958 has shown that the French political system can successfully operate in two basic variants: in the conditions of majority effect (*fait majoritaire*) and of cohabitation. The first one assumes that both segments of the dual executive branch (the president of the Republic and the government led by the prime minister) come from the same political camp and enjoy support of at least the first chamber of parliament. In turn, cohabitation is based on the principle of political power-sharing within the executive power in which the head of state and the head of government are political opponents. In such circumstances, the government always has a majority of seats in the first chamber – the National Assembly (*Assemblée nationale*), because the French semi-presidential system, as a result of the extreme rationalisation of a parliamentary model¹, provides a political

¹ The process of rationalisation of a parliamentary system of government in the strict sense of the word was launched generally after the Second World War with the rise of a chancellor system in Germany and a semi-presidential system in France. Both models share a significant constitutional foundation. This common component is to strengthen the government – as one of the organs of dual executive power – over the legislature in order to prevent the latter from destabilising the institutional framework of the state. Thus the logic of the rationalisation process consists, first and foremost, in giving cabinets stable parliamentary majorities (Gicquel, 1992). However, in the case of France, rationalisation has gone a step further, as the position of the head of state was also strengthened (for example, by introducing universal presidential elections in 1962, chairing the meetings of the Council of Ministers held in the presidential palace, as well as due to almost unrestricted possibility to dissolve the first chamber of parliament). As a result, the French rationalisation followed two paths, moving, however, in the same direction – the reinforcement of the executive as such. Therefore, it can be said that in the case of contemporary France, the combination of various institutional factors (such as the powerful presidency elected by universal suffrage and the mechanisms of rationalised parliamentarianism) causes the French presidents to become beneficiaries of solutions taken from two different institutional areas: presidentialism and parliamentarianism (Levy, Skach, 2008).

responsibility to at least one of the houses of parliament. It has to be the first chamber as a nationwide representation which is elected by universal suffrage. Taking into consideration contemporary constitutional systems, the issue of political responsibility before the second chamber remains open and depends on the position of the body within the constitutional structure. Symmetry of bicameralism in a parliamentary system requires that the second chamber be in this respect equal to the first chamber. An alternative solution, that is asymmetrical bicameralism, allows for the functioning of the government in the conditions of different majorities in both segments of the legislature². The latter possibility has been adopted under the French constitution of 1958 (Constitution du 4 octobre...). The Senate, which differs politically from the National Assembly, is not an obstacle to the efficient activity of the cabinet. This is particularly true in the case of political identity of the executive branch, that is during the aforementioned majority effect. The second chamber is then the only body within the structure composed of the executive and legislative bodies, in which there may be a predominance of opposition parties.

Therefore, it can be stated that the formula of majority effect is not an internally homogeneous configuration. It may occur in a strong or weak form, depending on the political attitude of senators. The same applies to the phenomenon of cohabitation, which may also exist in two variants: with the Senate that supports the cabinet or with the Senate that is an ally of the president. As a result, the political structure of the French semi-presidential model is based on two basic configurations and their four further subtypes (Jakubiak, 2016). All this creates a complex institutional environment for the functioning of the French party system, including major opposition groups. Political parties that are against the ruling camp may, in spite of their inferior political position, have control over some of the institutional components of the system of government. Under the variant of semi-presidentialism, in which there is a bicameral parliament

² The existence of symmetry or asymmetry of the houses of parliament largely depends on the manner in which they are formed. If second chambers are institutions based on appointments or co-options, the symmetrical relations between both segments of the legislative power do not have any justification today. However, the use of democratic electoral mechanisms in relation to the entire bicameral parliament causes the tendency to strengthen the contemporary second chambers (Lane, Ersson, 2000). On the other hand, their strong legitimacy within the symmetrical structure can sometimes do not prevent from attempts to introduce asymmetry of bicameralism. It should be emphasized that such actions do not have to be successful, as evidenced by the example of Italy. The introduction of asymmetry of chambers in that country was rejected in a nationwide referendum of 2016.

combined with the dual executive power, such opposing institutions may be the president and the second chamber (however, the latter only provided that the government is not politically responsible before the body and does not have to be supported by a majority of its members). The control of the opposition to the government over the presidency means the existence of cohabitation. In turn, such an influence exerted on the second chamber is more universal – it may occur not only during the periods of coexistence between presidents and prime ministers from different political camps, but also in the configuration of majority effect. Hence, it can be argued that it is the scope of the impact of the opposition through the Senate that constitutes a significant component in the structure of the French constitutional system, and at the same time affects actions taken by the executive in relation to the legislative. It is worth paying attention to the political importance of the second chamber under the 1958 basic law in conjunction with each of the main political configurations. It will enable to assess the extent to which the body can be used as a tool in the hands of the parliamentary opposition.

It can be argued that from the point of view of opposition parties, the Senate gains special importance during majority effect in a weak form, as well as during cohabitation combined with politically differentiated houses of parliament. In both cases, the majority in the second chamber is in opposition to the government. In the second one, however, the Senate is linked to the head of state, because the executive branch remains politically divided. It needs to be emphasized that all these configurations have already occurred in political practice. The purpose of this article is to show that both of the political variants have – although due to the political composition of the executive they differ substantially from each other – a common denominator. It is a high level of activity of the government, which aims to neutralise – in terms of political influence – the second chamber dominated by the opposite political camp. The said activity is strongly associated with the use of procedures to rationalise a parliamentary system of government. They have been conceived as instruments to stabilise the executive (mainly the government, which is – in a parliamentary system – responsible to the legislature, and for this reason it needs to be specially protected). It can be assumed that configurations in which opposition parties dominate the Senate using the body against the government involve two basic effects, namely the marginalisation of the second chamber in the legislative procedure as well as passivity of the executive in the use of legitimising impact of senators. As a result, the two above mentioned configurations lead ultimately to deepening the asymmetry of the

French bicameralism. Such a government strategy has a negative impact on the ability of opposition parties to exert a considerable influence on the process of exercising power. The neutralisation of the parliamentary opposition is another important aspect of rationalised parliamentarianism.

THE OPPOSITION-DOMINATED SENATE UNDER THE CONDITIONS OF MAJORITY EFFECT

In the first period of the Fifth Republic (until de Gaulle resigned from the office of the president after the 1969 referendum) there was no unequivocal support of senators for the policy of the ruling camp. The then Senate was basically conflicted with the Gaullists. The body seemed to be more centrist or even centre-left than centre-right. As a result, supporters of the head of state constituted a minority in the second chamber. Until 1962 they did not have, moreover, the absolute majority in the National Assembly (Chantebout, 2004; Avril, 1994). Serious tension between the executive and senators was caused by some constitutional changes proposed by the head of state. In 1962, the proposal to introduce universal presidential elections was submitted. Opposition of senators, and in particular of Gaston Monnerville, the president of the chamber, was associated, *inter alia*, with application of article 11 of the constitution. It regulates a legislative referendum and is not intended to alter provisions of the basic law (Mastias, 1980; Jakubiak, 2012). However, in this way it was possible to bypass the entire parliament, whose participation in the normal amendment procedure is required. A similar situation also occurred almost seven years later, when the Gaullists wanted to limit the constitutional position of the Senate. It was a confirmation of the maintenance of the above-mentioned conflict (Avril, 1994). The situation was normalised only after taking over the presidency by Georges Pompidou. The direct successor to de Gaulle and the prime ministers of this period (Jacques Chaban-Delmas and Pierre Messmer) did a few gestures to the Senate, which indicated that the earlier conflicts between the executive and the second chamber belonged to the past (Smith, 2009). A remarkable factor that contributed to this was the progressive marginalisation of the formations representing the political centre. The process emerged at first in the National Assembly but it slowly began to be seen in the Senate. Good relations between the government and the second chamber persisted until gaining power by the left in the early 1980s.

The taking of power by the left in 1981 occurred in both the presidential and parliamentary dimension. François Mitterrand's victory in the presidential elections paved the way for the unprecedented success of the left in the parliamentary ones, which took place due to the dissolution of the National Assembly by the head of state (Debbasch, Bourdon, Pontier, Ricci, 1985; Chapsal, 1984). It is worth noting that the main reason of the dissolution was the president's desire to secure a favourable majority in the first chamber (Jakubiak, 2013)³. The Senate remained outside of this kind of influence of the head of state, because the senators' term cannot be shortened by dissolving parliament. As a result, the change of the existing political configuration did not include the second chamber, which was still centre-right. Thus, the presidential strategy could at best lead to majority effect in its weak version. For this reason, the Senate began to play a role of bastion of the parliamentary opposition to the government and to the president (Reydellet, 2001). Although the organ was critical of the ruling camp under the presidency of Charles de Gaulle, only during the exercise of power by the left (after 1981) it had a particularly strong reflection in the course of legislative proceedings. Firstly, the procedure of the last word (*dernier mot*) of the first chamber (article 45 paragraph 4 of the constitution) – a mechanism that allows situational reliance on asymmetry of chambers in order to discriminate the Senate – was then used by the government on an unprecedented scale. It was the only way to neutralise the opposition of senators. For example, in 1985, the right to take a final decision by the National Assembly was used 45 times. The so-called mixed parity commissions (*commission mixte paritaire*), which serve to maintain the symmetry of legislative process and to avoid the procedure of the last word, were then convened 60 times, but they developed a common position, which was later supported by both chambers, only in 15 cases. A similar situation occurred in earlier years of the left-wing domination on the French political scene. Overall, in the period 1981–1985 these commissions were set up more than 200 times, however their effectiveness was exceptionally low. In almost three-quarters of the cases it was necessary to use the procedure of the last word given to the National Assembly (Maus, 1998).

³ Such a strategy proved that the left, which came to power in 1981, intended to uphold the presidential paradigm previously introduced by the Gaullists. Until the first cohabitation of 1986, the socialist head of state appeared to be a powerful political actor to whom the then prime ministers were subordinated (Elgie, 1999). It should be emphasized that, generally speaking, outside periods of cohabitation the head of state is evidently stronger and the prime minister becomes only “the president's manager” (Bell, 2000).

Data from this period should be compared with the scale of the government's impact on the relations between the chambers in the 1970s, when the entire legislature was politically homogeneous and supported the president and the cabinet. Significant differences can be seen in connection with the use of the procedure of the last word of the National Assembly. In the 1970s, the number of mixed parity commissions was also quite high, but in nearly all cases the bodies were able to come to an agreement, which was subsequently accepted by both parts of the legislature. Thus, in that decade the final decisions of the first chamber were taken sporadically. In the years 1975–1980 there were only 6 cases of application of article 45 paragraph 4 of the constitution. In this respect, this period is also remarkable in comparison with the 1960s, when there was a bit more such cases, although not more than 10 per year (Maus, 1998). However, the situation was then atypical because of the aforementioned conflict between the Gaullist camp and the second chamber, which began on a large scale in 1962. An essential source of disputes was also a failed attempt to limit the position of the Senate in a referendum in 1969. The goal was then, among other things, the elimination of the constitutional arrangements based on the symmetry of the chambers. After such changes, the Senate would not have been able to block effectively some important activities of the executive branch.

The strategy consisting in neutralisation of the parliamentary opposition dominating in the second chamber was confirmed at the next occurrence of majority effect in a weak version – after the start of Mitterrand's second term in 1988. As a result of the parliamentary elections, which took place after two years of cohabitation (1986–1988), the left formed – after the dissolution of parliament and early legislative elections – a government that was able to cooperate with the newly elected head of state. Also in this case, the Senate retained its centre-right profile, becoming the only bastion of the opposition to the governments of the left. Again, the effectiveness of mixed parity commissions strongly decreased. In about half the cases, attempts to reach an agreement between the National Assembly and the Senate failed, which led to final decisions taken by the first chamber (Maus, 1998). It should be noted, however, that the National Assembly existing in the years 1988–1993 in some respects distinguished from that of the years 1981–1986. The differences related primarily to the political configuration of the first chamber. The situation of the left was not so favourable. The Socialist Party (*Parti socialiste*, PS) had in fact only a relative majority of seats in the National Assembly (275 out of 577 mandates), which, combined with

the negatively oriented Senate, complicated its situation (Amson, 2002)⁴. These inconveniences after the double elections of 1988 were reflected in the intensive use of the most important instruments of rationalised parliamentarianism – not only the mixed parity commissions and the procedure of the last word, but also other constitutional tools. One of them was laid down by article 49 paragraph 3. On this basis, it is possible to combine a bill discussed in the legislature with the issue of confidence in the government raised in the first chamber. The cabinet headed by Michel Rocard, which was established in 1988, especially often made use of this opportunity⁵. All this meant that rationalised parliamentarianism was in these conditions particularly aimed at limiting the position of both segments of the legislature, because the overriding objective was to ensure the effective functioning of the executive.

It is worth noting that the political configuration in which the Senate is the only body within the legislative and executive that represents the opposition to the ruling camp has also occurred in recent years. It took place in 2011, when left-wing parties won a slight advantage in the second chamber (Gohin, 2013). Although it was not a clear and very disciplined majority, it had an impact on the relations between the two parts of the legislature. The best evidence of this is the parliamentary session statistics in the years 2011–2012. After the period of almost complete disappearance, in the years 2002–2011, of the procedure of the last word of the National Assembly, the tool has become necessary again (*Les Cinquante-six ans...*). It needs to be emphasized that the then political configuration was quite unusual. The Senate had in fact a rather left-wing profile, whereas the other legislative and executive bodies belonged to the centre-right camp. It was the first time during the Fifth Republic such a formula of majority effect in a weak variant had happened. What is more, even after the presidential and parliamentary victory of the left in 2012, the procedure of the last word has not lost,

⁴ It is worth highlighting that the French Communist Party (*Parti communiste français*, PCF), which entered the cabinets in the years 1981–1984, did not form a coalition with the PS after 1988 (Szarka, 2000).

⁵ It allows, under certain conditions, to adopt legislation without voting in the first chamber. During the existence of the Rocard government, which functioned for 3 years (1988–1991), this regulation was used 28 times. (Chevallier, Carcassonne, Duhamel, 2007). In previous years this mechanism had been applied much less often, especially at the beginning of the Fifth Republic (Maus, 1998). The particular importance of this regulation can be seen in the context of the status of the parliamentary opposition in the French model of rationalised parliamentarianism. As Machelski noted, this procedure reverses the majority logic, because it is not the government that is forced to seek the majority. Such actions should be taken by opposition groups (Machelski, 2016).

contrary to expectations, its importance. This proved that the government could not count on permanent and unconditional support of the second chamber.

The variable role of the French Senate is also visible against the background of parliamentary responsibility of the government. The authority before which the prime minister and other ministers are politically responsible is only the first chamber. Even so, the French Senate has been included, to some degree, into the structure of the relationship between the parliament and the government based on the question of parliamentary responsibility of ministers. The second chamber may in fact be used as an additional source of legitimacy of the government or the entire dualistic executive. According to article 49 paragraph 4 of the constitution, there is no obligation to verify support of senators for government policy. It is therefore clear that the practice in this field must depend on existing political configurations. The fact that the opposition to the government occupies most seats in the second chamber greatly diminishes the likelihood of using the said constitutional provision. The risk of rejection of policy proposed by the government is then particularly high. In political practice, the procedure has not been used very often – for the first time in 1975 by the then prime minister Jacques Chirac (Maus, 1998). If it takes place, it is when the prime minister aims to strengthen the position of the cabinet in relation to other organs of the state. There is no doubt that the application of this provision can only occur when the head of government is confident of a favourable outcome of the vote. For this reason, the political specificity of the Senate, which can sometimes operate outside the configuration of majority effect, severely limits the applicability of article 49 paragraph 4 of the constitution. Parliamentary legitimacy of governmental policy is in such conditions provided exclusively by a nation-wide representation in the National Assembly. As a result, majority effect in its weak form, which means that there is no control of the ruling camp over the majority of senators, does not give the cabinet full parliamentary legitimacy.

However, the situation was not so schematic in practice. Differences between practice between 1981–1986 and 1988–1993 show this. During the first *alternance* period and the functioning of the governments created by the left-wing parties, the aforementioned configuration prevented the then prime ministers (Pierre Mauroy, Laurent Fabius) from verifying support for their policies in the second chamber. This was consistent with the logic of rationalised parliamentarianism. Hence, only those mechanisms that served to neutralise the Senate were used with considerable intensity. Their aim was to weaken opponents of the government that dominated the body. As indicated above, opposition

parties of that time were undertaking in the Senate permanent actions aimed at amending the legislation proposed by the government (Smith, 2009). The political position of the cabinet was thus built on two pillars. These were the president who expected from his governments the implementation of the policies defined by the head of state, as well as the National Assembly chosen after the elections of 1981. In turn, despite the similar structure of the political scene, the next period in which the president and the government came from the left, and centre or centre-right senators dominated in the second chamber (1988–1993), was a bit different. It is indicated by the strategy adopted by Rocard. He had to take into account the fact that the National Assembly was not stable politically due to the lack of an absolute majority, which could support the government. However, despite different political attitudes of the National Assembly and the Senate, in some cases the prime minister sought in the latter body the approval of the government policy. Such a situation took place twice. In both cases the aim was to obtain support of senators with regard to policy in particular areas. Not all elements of the programme of the executive were therefore put to the vote. Rocard selected only those issues which did not arouse intense controversy between the major parties. The first vote referred to the declaration concerning the French foreign policy towards the countries of Central and Eastern Europe (1989). In turn, the declaration presented at the beginning of 1991 was devoted to the Middle East. Both were supported by a clear majority of senators. In the latter case, 290 members of the second chamber favoured the cabinet and only 25 were opposed to the government policy in this field (Maus, 1998). Such a strategy of the prime minister resulted from a special international context at the turn of the 1980s and 1990s. In the configuration of majority effect in a weak version, this was definitely an exception to the rule. Generally speaking, under such conditions heads of government did not stand for the Senate's support for the policy created by the executive.

It is also worth noting that after the political change of the Senate majority in 2011, when majority effect was again combined with the second chamber that represented the opposition, the article 49 paragraph 4 was not the only constitutional provision that allowed the government to apply for senators' support. Three years earlier, as a result of the comprehensive constitutional reform of 2008 (*Loi constitutionnelle n° 2008–724...*), a new regulation contained in article 50–1 had been introduced. It gives the government the opportunity to make a declaration on a specific issue (the procedure can be also initiated by a parliamentary group, so it reinforces the status of the opposition). This is followed by

a debate, and – if the cabinet decides to do so – by a vote. The latter is therefore not obligatory. Furthermore, such a declaration may be presented in each of the chambers. One of the most important advantages of the new constitutional provision is that there is no need to vote on parliamentary confidence in the government. As a result, the prime minister is able to use the article 50–1 only in part. Because of the lack of a clear majority in the Senate, the aforementioned regulation was applied in 2012 by the then socialist prime minister Jean-Marc Ayrault (Gicquel, Gicquel, 2015; *Vote sur la politique...*, 2012). The strategy chosen by the head of government showed that even after the partial renewal of the Senate in 2011, the centre-right opposition to the left-wing governments still had much to say. Anyway, thanks to the article 50–1, the prime minister could build relations with the second chamber in a more flexible way. As a result, the article 49 paragraph 4, as a more rigorous constitutional provision, may in practice lose its importance. On the other hand, after the amendments made in 2008, the Senate can expand its role as a body that is a constant point of reference in the activities of the government. All this may be seen as one of the manifestations of the revised relationship between the executive and the legislative, which was the main objective of the reform adopted in 2008⁶.

THE OPPOSITION-DOMINATED SENATE UNDER THE CONDITIONS OF COHABITATION

Compared with majority effect in a weak version, a specific situation occurs under cohabitation. The coexistence of the president and the government from different political camps can – as indicated above – take two forms: with politically homogenous parliament (the same political camp dominates in each of the chambers) and with politically divided parliament (various majorities in the chambers). The first variant of cohabitation took place during the functioning of the centre-right cabinets created by Jacques Chirac (1986–1988) and Édouard Balladur (1993–1995). The politically homogeneous parliament supported the

⁶ Proponents of the introduction of new constitutional provisions stressed the need to weaken the existing mechanisms of rationalised parliamentarism that were designed and adopted in the 1950s. It is also worth highlighting that in the aftermath of this reform, the constitution regulates the status of the parliamentary opposition, although the act mainly refers to the rules of procedure of the chambers (art. 51–1). From the point of view of the current tendency which involves the constitutionalisation of the opposition, such a novelty may be considered a step forward.

government, which remained in opposition to the president. The legitimacy provided by senators, though it was not crucial, strengthened, at least to some extent, the position of the prime minister and ministers. The second form of cohabitation has occurred only once so far. It took place during the years 1997–2002, when the socialist prime minister Lionel Jospin led the government. In the latter case, the hostile attitude of the majority of senators was particularly important because – in contradiction to the configuration of majority effect in a weak form – the government functioned in the conditions of rivalry with the centre-right president Jacques Chirac. The second chamber was therefore regarded as a valuable ally of the head of state who cannot, under cohabitation, determine the state policy, but is limited to using the so-called power of disturbance (*faculté d'empêcher*), as opposed to the power of decision (*faculté de statuer*; Branchet, 2008)⁷. The power of disturbance may be imposed on the legislative branch (for example, its dissolution), but also on the government (for example, the refusal to sign a governmental ordinance issued on the basis of article 38 of the constitution⁸). As a result, in some cases the president is able to disrupt heavily the functioning of the cabinet. In such a situation, the negative attitude of the Senate is of particular importance for the government, which is forced to deal at the same time with two obstacles – the head of state and the second chamber.

The formula of cohabitation in the conditions of a politically divided parliament means therefore a system in which the role of the anti-government opposition seems to be particularly strong. It covers not only the presidency but also the second chamber. Compared with other variants, this is – taking into consideration the strength of opposition parties – the optimal one. The second chamber acts then as an organ that supports the head of state as the main rival

⁷ This configuration leads to the limitation of the role of the president, whose status begins to resemble the position of the head of state in the classical parliamentary model (the president as a political arbitrator, not a leader who is in charge of the day-to-day affairs of the state). As Stevens noted, the politically heterogeneous executive power means “a less interventionist and more aloof presidency” resulting from a much more parliamentary interpretation of the basic law (Stevens, 2003). However, such a reading does not lead to the re-emergence of a powerful parliament known from the period before 1958 (Knapp, Wright, 2001).

⁸ Thanks to the article 38, the government can enter the legislative sphere, which is normally reserved for the parliament. However, the consent of the latter body is always required. Ordinances are then signed by the head of state. This situation in which the president refused to sign such a legal act occurred three times in 1986 – at the beginning of the first period of cohabitation (Gouaud, 1996). It has never repeated since then.

of the government. Hence, from the perspective of the government that has to function next to the president from the opposite political camp, it is particularly important to neutralise – like during majority effect in a weak form – the second chamber. As the third period of cohabitation showed, it became again much more common to use the procedure of the last word of the National Assembly. This was necessary in case of about one third of the legislation then adopted. It should be pointed out, however, that, despite the circumstances of cohabitation, this percentage was lower than during the 1981–1986 period. This means that the *navette* procedure (aiming at reaching an agreement between the chambers) was at the turn of the 1990s and the new century a little more effective. On the other hand, the government did not seek support for its policy in the second chamber. Due to the dominance of the opposition to the left-wing government, the application of article 49 paragraph 4 was not an option. Under difficult conditions of political coexistence within the executive branch, such an action would not be rational, because it could indirectly lead to a significant weakening of the prime minister in relation to the head of state. It is also worth mentioning that, paradoxically, during the third cohabitation the position of the Senate chairman was taken over by Christian Poncelet, the fourth president of the Senate under the constitution of 1958 and the first member of the Gaullist camp to occupy this position (Chevallier, Carcassonne, Duhamel, 2007). All this increased criticism of the left camp towards the second chamber. For the politicians of the ruling coalition of the plural left (*gauche plurielle*) the aforementioned attitude to the body had a particular justification in the political situation of that time.

FINAL REMARKS

Nearly sixty years of the constitution of the Fifth Republic has proved that the French semi-presidentialism can successfully run a couple of different political configurations. Bearing in mind that this period was dominated by the formula of identity of the presidential majority and the parliamentary one, and cohabitation of the president and the prime minister from different political camps was an exception rather than a principle, it should be noted that it is the Senate which could weaken the optimal – at least from the point of view of the politically homogenous executive branch – formula of majority effect. The opposition to the president and the government gained in such circumstances one of the four centres of power within the dual executive and the bicameral legislative, although

it needs to be emphasized that the second chamber is undoubtedly the least significant of them. This is due to two related factors. Firstly, the most important mechanisms of rationalised parliamentarianism serve to eliminate institutional blockades that would make it possible to effectively impede the implementation of a political programme supported either by the entire executive branch (majority effect) or only by its governmental segment (cohabitation). Secondly, the Senate has no possibility to overthrow governments that do not bear political responsibility before this body. In this respect, the second chamber differs from the other components of the basic constitutional structure. Under the conditions of majority effect, the cabinet is responsible both to the president and to the National Assembly, and in the process of cohabitation only before the first chamber. The Senate is completely devoid of this right. Such a provision is also directly linked to the question of rationalisation. This means minimisation of the threat that the government may face from parliament as such (Szymanek, 2005)⁹.

Therefore, in political practice the specific autonomy of the French second chamber, understood as resistance to political trends reflected in the elections to the National Assembly, clearly loses a lot of its importance. A different selection mode, the lack of correlation between the mandates of deputies (five years) and senators (six years; before the reform of 2003 – nine years), as well as partial replacements of members of the Senate, means that majorities in the chambers do not have to be the same. What is more, political divisions in the Senate may not correspond to those in the National Assembly. This is manifested, for example, by the composition of the body in the 1960s and the small size of the Gaullist group. In turn, in the National Assembly the party enjoyed a clear advantage over other fractions. It leads to the conclusion that the then Senate was not incorporated into the structure of majority effect. Such an integration process took several decades, bringing visible results only in the 21st century. Currently, the political structure of the Senate is based on the domination of two parties: the Republicans (until 2015: the Union for a Popular Movement – *Union pour un mouvement populaire*, UMP), and the PS. The political role of other groups has been clearly reduced. Thus, the tendencies in the party system perceived through the prism of the composition of the first chamber, have become clearly noticeable in the second chamber (Jakubiak, 2016).

⁹ This danger is the most serious in the systems where both chambers can adopt a motion of no confidence independently of one another. The government is then at double risk. This worsens, at least in theory, its actual position, negatively affecting the level of political stability of the body.

What is more, attention should be paid to the fact that during the first five decades the French Senate was rather centrist (at the beginning of the Fifth Republic), and then consistently centre-right. As mentioned earlier, only in 2011 left-wing parties gained some advantage in the Senate, which lasted exclusively until 2014. Such a political configuration of the French second chamber did not coincide, in many cases, with the political composition of the National Assembly. The latter was much less stable, as confirmed by the phenomenon of alternation of power carried out periodically from 1981 to 2002. The Senate remained then immunized with the frequent political changes in the first chamber. The centre-right maintained a solid majority, although senators continued to be traditionally more independent of the deputies in the National Assembly. This is what led to a situation in which the second chamber could become – during periods of left-wing governments – a stronghold of the parliamentary opposition. Alternation of power in the National Assembly did not mean automatic alternation in the Senate. In this respect, there was no connection between the two institutions¹⁰. The political composition of the second chamber was related more to the results of local elections than to the parliamentary ones. In such conditions the Senate could play the role of chamber of resistance to the political camp which dominated other state bodies (the presidency, the government, and the first chamber). As mentioned above, such political “separateness” of the Senate as an organ which may, though not necessarily, be included in the political structure of majority effect, does not, however, have a fundamental significance. The cause lies in the government’s irresponsibility before the second chamber, which does not encourage the government to seek support of senators (Boyer, 2011).

It is also worth noting that despite the said autonomy of the Senate, the second chamber has not become an object of a specific institutional engineering. The latter may be regarded as the introduction of legal changes, which aim to ensure the expected results as to how the political system works (in the political practice of the Fifth Republic one of such purposes was to minimise the risk of further periods of cohabitation). As far as the Senate is concerned, such engi-

¹⁰ From this point of view, some attention should be devoted to the relationship between the National Assembly and the Senate after the beginning of Emmanuel Macron’s presidency in 2017, as the far-reaching decomposition, in the legislative elections held in the same year, of the political structure of the first chamber has taken place (the marginalization of political formations which dominated the political scene in previous years and the emergence of a strong parliamentary representation of the political movement supporting the new president). However, analysis of this problem requires a longer time perspective.

neering would involve permanent inclusion of the second chamber into the construction of the majority effect (for example, by unifying the length of term of office of both chambers and the mode of selection of their members). At the same time, this would probably mean giving up the formula of incongruence of both chambers, which aim is to provide a diverse political representation in the French parliament as such. In conjunction with the aforementioned departure from the formula of cohabitation, the main result of such actions would be the consolidation of majority effect in a strong form, in which the majority of senators coincides with the majority of deputies in the National Assembly, and the dualistic executive is supported by the entire bicameral parliament. As a result, the likelihood of majority effect in a weak version would be significantly restricted. However, steps aiming at limiting the incongruence of the chambers have never been taken. The shortening of the term office of senators to six years, which was carried out in 2003, cannot be treated in this way. However, this kind of changes would have forced, if introduced, to answer the question of the sense of further maintaining such a transformed second chamber in the institutional structure. The possible amendments could also go in the opposite direction, which would lead to the weakening of the logic of majority effect (Boyer, 2011). This way of thinking is illustrated by unsuccessful reform of the second chamber, which was initiated by de Gaulle in the second half of the 1960s. His purpose was to remarkably reduce the role of the Senate, above all in legislative proceedings (Chapsal, 1984). In case of success, this reform would have led to a fundamental change in the structure of the French rationalised parliamentarianism. It seems that if the reform had not failed, the second chamber could no longer have been neutralised by the executive only if necessary (through the procedure of the last word of the National Assembly), but it would have been permanently marginalised as a result of one constitutional reform.

REFERENCES:

- Avril, P. (1994). *La Ve République. Histoire politique et constitutionnelle*. Paris: Presse Universitaires de France.
- Bell, D.S. (2000). *Presidential Power in Fifth Republic France*. Oxford–New York: Berg.
- Boyer, V. (2011). Le Sénat, contre-pouvoir au bloc majoritaire? *Revue française de droit constitutionnel*, 85(1), 41–68.
- Branchet, B. (2008). *La fonction présidentielle sous la Ve République*. Paris: L.G.D.J.
- Chantebout, B. (2004). *Brève histoire politique et institutionnelle de la Ve République*. Paris: Armand Colin.

- Chapsal, J. (1984). *La vie politique sous la Ve République*. Paris: Presses Universitaires de France.
- Constitution du 4 octobre 1958 (version consolidée au 12 mai 2017). Légifrance. Le service public de la diffusion du droit. Retrieved from: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071194>.
- Debbasch, Ch., Bourdon, J., Pontier, J.M., Ricci, J.C. (1988). *La Ve République*. Paris: Économica.
- Elgie, R. (1999). France. In: R. Elgie (ed.), *Semi-presidentialism in Europe*. Oxford, New York: Oxford University Press.
- Gicquel, J. (1992). Parlementarisme rationalisé. In: O. Duhamel, Y. Mény (eds.), *Dictionnaire constitutionnel*. Paris: Presses Universitaires de France: Paris.
- Gicquel, J., Gicquel, J.É. (2015). *Droit constitutionnel et institutions politiques*. Issy-les-Moulineaux: L.G.D.J.
- Gohin, O. (2013). *Droit constitutionnel*. Paris: LexisNexis.
- Gouaud, Ch. (1996). *La cohabitation*. Paris: Ellipses.
- Jakubiak, Ł. (2012). *Referendum jako narzędzie polityki. Francuskie doświadczenia ustrojowe*. Kraków: Księgarnia Akademicka.
- Jakubiak, Ł. (2013). Przesłanki rozwiązania parlamentu w praktyce ustrojowej V Republiki Francuskiej. *Przegląd Politologiczny*, 18(2), 57–70.
- Jakubiak, Ł. (2016). *Francuska izba druga na tle przekształceń parlamentarnego systemu rządów (od III do V Republiki)*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.
- Knapp, A., Wright, V. (2001). *The Government and Politics of France*. London, New York: Routledge.
- Lane, J.E., Ersson, S.O. (2000). *The New Institutional Politics: Performance and Outcomes*. London, New York: Routledge.
- Les Cinquante-six ans du Sénat de la Cinquième République, Juin 1959-Septembre 2014. Statistiques actualisées au 30 septembre 2014. (2014). Retrieved from: https://www.senat.fr/fileadmin/Fichiers/Images/seance/tableaux_de_bord/56_ans.pdf.
- Levy, J.D., Skach, C. (2008). The Return to a Strong Presidency. In: A. Cole, P. Le Galès, J.D. Levy (eds.), *Developments in French Politics 4* (p. 111–126). Basingstoke, New York: Palgrave Macmillan.
- Loi constitutionnelle n° 2008–724 du 23 juillet 2008 de modernisation des institutions de la Ve République. (2008). Légifrance. Le service public de la diffusion du droit. Retrieved from: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019237256>.
- Machelski, Z. (2016). *Opozycja polityczna w Europie. Ujęcie porównawcze*. Warszawa: Difin.
- Mastias, J. (1980). *Le Sénat de la Ve République: réforme et renouveau*. Paris: Économica.
- Maus, D. (1998). *Les grands textes de la pratique constitutionnelle de la Ve République*. Paris: La Documentation Française.
- Reydelle, M. (2001). Le bicamérisme a-t-il un avenir en France? *Revue du droit public et de la science politique en France et à l'étranger*, 117(6), 1779–1842.

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- Smith, P. (2009). *The Senate of the Fifth French Republic*. Basingstoke, New York: Palgrave Macmillan.
- Stevens, A. (2003). *Government and Politics of France*. Basingstoke, New York: Palgrave Macmillan.
- Szarka, J. (2000). The Parties of the French “Plural Left”: An Uneasy Complementarity. In: R. Elgie (ed.), *The Changing French Political System* (p. 20–37). London: Frank Cass.
- Szymanek, J. (2005). *Druga izba we współczesnym parlamencie. Analiza porównawcza na przykładzie europejskich państw unitarnych*. Warszawa: Kancelaria Senatu.
- Vote sur la politique générale: Ayrault craint le Sénat. (2012). *Le Point*, 28.06.2012.