

# Key constitutional role of the president

by Chibli Mallat

**C**ontrary to popular belief, the presidency remains the most important position in the country. And contrary to wide belief, the denting of that position by the institutional amendments introduced in Taif was marginal. This bears heavily on presidential elections this year, both from the point of view of the need to hold elections and because of the decency and transparency required in such an important process.

It has been often suggested that the presidency was weakened by Taif and, on a number of scores, the margin for manoeuvre of the president may have been formally constrained. Instead of the president being simply the head of executive power, there is now in Article 53 a long list of twelve prerogatives, which are for all intents and purposes the formalisation of the *de facto* work of the president, eg accrediting ambassadors, presiding over official functions, granting pardons and so forth.

Where the president has arguably been made a figurehead, the texts do not support such a conclusion. Even for the infamous right to dissolve parliament, the fact is that no constitutional system acknowledging the now basic scheme of separation of powers between the executive, the legislature and the judiciary, could countenance any longer the dissolution of the legislature by the executive.

Even the French have become comfortable with "cohabitation", under which there have learnt to live together the president, issued from the will of the people in presidential elections, and the prime minister, issued from the people's will in parliamentary elections.

In the Lebanese system, it is wrong to think that the president's power to dissolve parliament has been undermined by Taif. He could not do so without the approval of the council of ministers under the previous formulation of Article 55. Taif did not change much in that power: it simply added some additional formal constraints.

It is true that the former power to appoint

and dismiss the ministers at will has been denied, and the council of ministers can be changed only in a limited number of situations under Article 69 of the constitution. These include the resignation of a third of the ministers. Although this new situation never arose in the course of our second republic, it would be indeed a weak and ineffective president who could not force cabinet resignation by persuading a third of its members to resign. Considering the constitutional practice in Lebanon's confessional system, which has always prevented the president from operating unless he was at one with the prime minister, this power to dismiss an individual minister, and the awkward system of voting in the cabinet, are the two constitutional aberrations introduced by Taif. These two oddities have in effect ensured that the most mediocre minister could stand up to the president (and the prime minister) without their being able to dismiss him without the whole cabinet going under.

As it turns out, that may have been the most significant constitutional change introduced by Taif. It is not the most felicitous by any standard. Only by way of a "mistake" of the type achieved by one unlucky minister since Taif can one be rid of a minister without losing the entire cabinet. So, the individual minister can only be "tricked" in losing his position. As for the prime minister and the speaker, constitutional practice has been changed, curiously enough, over position rather than over power. If one were to consider the amendments regarding the speaker's functions, there is little that has changed. Where the speaker has stopped being at the mercy of the president (and even then, one would wonder how much someone like Kamel al-Asaad and the late Adel Osseiran were indeed at the mercy of the president) is over

his annual (re-)election. Now the speaker can rest assured over a period of four years without the Damocles' sword which used to hang over him every autumn.

As for the prime minister, he may have been comforted on paper over his "normal" presiding over the council but he is number two in command over the military, after the president, and he continues to defer the first position to the president if the latter so wishes. Twice in the Taif-inspired 1990 amendments to the constitution is it mentioned that the president is entitled to preside over the council of ministers and to introduce any item he wishes on its agenda at will.

So how does this bear on the forthcoming dateline on presidential elections, the need to hold them and to hold them in a proper

### Presidential elections

The text of Taif doesn't support the conclusion that the president has been made a figurehead

and open way? First, change is important because the president holds the most important position in the country, since the most important prerogative of the presidency has remained: the designation of the prime minister. Any necessary (*mulzima*) consultations he is required to make with parliament under Article 53.2 are symbolic, or informative, or perhaps useful. They are constitutionally insignificant. Lawyers know that consultations, like recommendations, are all but binding.

It is true that, whether before or after Taif, the confessional straitjacket in our country makes it impossible for the president to rule without minimal agreement with his prime minister. That does not change the fact that the prime minister is chosen by the president, not the contrary.

Any nuances introduced by the prime minister recently, including stalling on presidential legislative proposals, will not alter that basic constitutional fact. A new president in November is there for changes to

occur also on that level. Changing the president ensures renewal at all levels because the top will have been renewed.

More pressingly, the Lebanese people should be persuaded that the change in the presidency is crucial for the country. If there is no change on November 23, the present blockage of the institutions will remain, and the self-prolongation syndrome continue, as has always been the trend in public and semi-public offices at all levels – from the leadership of the army, to the ministries of interior and foreign affairs, all the way to the head of the national university and two vice-governors at the Central Bank, which represent the latest episode in our weakened democracy.

This is no reflection on the quality of these people. Much as some of these characters may have proven their individual excellence, such practices have dramatic effects on stifling democracy. This is reflected also in "civil society", most notoriously in the presidency of the press corps – editors-in-chief and publishers have been sitting there, unchanged, for decades. Nor is that inevitable – contrast the presidents of the bar, of the medical profession, and even of the jewellers' union, who have been tempted to stick to power at various sad junctures of their organisations' lives but are replaced now with healthy regularity.

Following on the thread about the historical need for regular change at the top as one of Lebanon's most precious legacies expressed in the previous column on the presidential elections, neither the needed institutional reform nor the even more important institutional renewal will be possible in the absence of such a change. The lynchpin of both diachrony – the history of our institutions – and synchrony – our constitutional law – hinges on constitutionally ordered presidential change.

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