

## The 2015 legislative elections in Portugal: A constitutional analysis

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### Abstract

The 1976 Portuguese Constitution implemented a hybrid government system known as semi-presidential. This modality combines characteristics from the two more conventional systems: the presidential and the parliamentary. In this context, the selection of the Prime-Minister does not directly come from the voters. Instead, it results from the Presidential nomination bearing in consideration the results of the legislative elections. Furthermore, it also lacks the majoritarian support from the National Parliament. Hence, the government becomes an organ political accountable before the President and the Parliament. The current Parliament was elected on October 4, 2015. Yet, the electoral results were striking, as they allowed more than one possibility for the formation of the Portuguese government, including post-electoral partisan agreements, which was an unprecedented situation in the country. The present paper aims to describe the electoral process referred to above, through factual analysis and its constitutional framework.

Keywords: Constitution, elections, government, politics, Portugal.

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## 1. Introduction

The theme of the parliamentary elections of October 4, 2015, in Portugal and their political consequences is still a relevant subject in the country for its unexpected consequences. The choice of this theme is due to the fact that the electoral results were surprising, not by the percentage of votes obtained by the main political parties that in recent years have dominated the national political practice, but because they allowed more than one possible Government, with post-electoral party agreements, an unprecedented situation in the Portuguese political scene, which provoked intense debate in society about the legitimacy of the government to be appointed by the President of the Republic. This debate was a frequent and intense subject of the Portuguese press, generating in the minds of the citizens doubts about the maintenance of a democratic political regime, as the Portuguese Constitution postulates.

Thus, this work aims, from the factual analysis of the events, to constitutionally frame them, taking into account this unusual scenario in the Portuguese democracy.

## 2. The Emergence of the Current Portuguese Constitution

Portugal has a Constitution dating from April 1976, as a result of the 25th of April revolution, known as the Carnation Revolution of 1974. The revolution was unleashed by the military but in a peaceful way, with virtually no effective use of weapons. This revolution intended to end the previous political and constitutional regime of autocratic nature, legitimated by the 1933 Constitution and to enshrine a democratic political regime, with the creation of a new constitution. The revolutionary movement was carried out by the Armed Forces (MFA), and after the success of the uprising came to present the program of the MFA, released after the revolution and which led to immediate acts such as the release of political prisoners, the permission for return of political exiles, the disappearance of censorship and the dismissal of holders of political functions through constitutional laws created in April 1974 as Law No. 1/74. These are some examples of actions resulting from the MFA program.

We understand that this MFA program can not be considered a mere political text, but also a legal one, as with the success of the revolution, it became a constitutional act of the State, including immediate measures, such as the replacement of the holders of political organs, the change of the organs of power themselves; and also the restoration of civil liberties that had been curtailed. It also encompassed as short-term measure, the creation of a new fundamental law, a Constitution that would enshrine the ideology that had inspired the revolution. Therefore, we understand that the MFA Program can be seen as a pre-constitutional document for the current Portuguese Constitution. As for the legitimacy of the revolution, like all revolutions, it was inspired by a set of ideas and legitimized by the willingness for leaving the autocratic regime, aligned with the Universal Declaration of Human Rights (Canotilho, 2014).

After the transitional period, on the 25th of April 1975 for the first time in Portugal it was carried out a universal suffrage, giving all citizens the opportunity to directly choose the members of a Constituent assembly, representative of the people, whose task was the drafting of a new Constitution for the Portuguese State (CRP), that ended up expressing the ideals that inspired the Revolution. This task lasted about nine months and on April 2, 1976, the present Constitution of the Portuguese Republic entered into force.

This new text of ideological-programmatic nature enshrines a republican social and democratic rule of law state. Despite its unitary form, it admits the administrative political autonomy of the regions, the Azores and Madeira, and the administrative decentralization of local authorities. The document also presents an extensive catalogue of fundamental rights, expressed forms of control of political power and respect for the Constitution. It is still today, and after seven constitutional revisions to which it has been subjected, a rigid and normative constitution, that only admits its

revision according to a specific procedure, different from the ordinary legislative procedure (Sousa, 1979).

Until its first revision in 1982, the Constitution expressed a more revolutionary content, aimed at the socialization of the means of production, but with the accession of Portugal to the EU, and given the course taken by the national economy, during those six years, the constitutional revision resulted in a more liberal democracy (Canotilho, 2014).

This is the text in force and the one that determined the *modus faciendi* of the parliamentary elections in October 2015, whose results have created a new and *sui generis* situation in national political practice and therefore deserved our analysis.

### **3. The political system and the system of government under the current Portuguese Constitution**

The Constitution of the Portuguese Republic of 1976 implemented a political democratic regime and instituted a system of government qualified as semi-presidential, which is considered a hybrid system because it combines components of the parliamentary and presidential systems that can be summarised as below (Silva & Alves, 2016).

#### *3.1. Elements of the parliamentary system*

- The Government is formed according to the composition of the Parliament, reflecting the election results. The choice of the Government is not, therefore, a separate reality from the verdict of the parliamentary elections, nor from the relative weight of each of the parties in the Assembly of the Republic (article 187 of the CRP).
- There is a duality between the President of the Republic and the Prime Minister.
- There is a Council of Ministers chaired by the Head of Government, with institutional autonomy and its own competences (articles 184 and 200 of the CRP).
- There is political responsibility of the Government before the Parliament and before the President of the Republic (Articles 190 and 191 of the CRP).
- The President of the Republic has the power to dissolve the Assembly of the Republic (Articles 133 (e) and 172 of the CRP) and to dismiss the Government (Article 133 g) CRP).
- There are acts of the President of the Republic that require ministerial referenda, as a political commitment on certain acts (Articles 140 and 197, paragraph 1, point a) of the CRP).

#### *3.2. Elements of the presidential system:*

- The President is elected by universal, direct and secret (Article 121 of the CRP).
- The President has the ability to veto the bills from the Assembly (Articles 134, paragraphs b) and g), and 136, n.ºs 1 and 5, Of the CRP).
- The President has powers to interfere in political life, hence no need for ministerial referenda in a number of presidential acts. He may dissolve the Assembly of the Republic (Articles 133 (e) and 172 of the CRP).
- The President may dismiss the Government (Articles 133 (g), 195 (2) and 186 (4) of the CRP).

There is therefore an interdependence with autonomy, between the organs of sovereignty. One of the characteristics of the Parliamentary system is the existence of an assembly that represents the will of the people - the Assembly of the Republic - whose holders are elected through universal, direct, secret and periodic elections for a term of four years. On the other hand, there are characteristics of the presidential system because there is a head of state, the President of the Republic, also directly

elected by universal suffrage but for five years, which makes the terms of office of the two sovereign bodies different (Fernandes, 2015).

Thus, in October 2015, when elections to renew the composition of Parliament were held, the President was at the last semester of his second term. For this reason, there were presidential elections on the 24<sup>th</sup> of January 2016 and the new president took office on the 9<sup>th</sup> of March. Hence, this was the context during the parliamentary elections in October 2015 took place. Their results have created a different situation from what has occurred so far and therefore deserves our analysis.

#### **4. The Legislative Elections of October 4<sup>th</sup>, 2015**

These elections were attended by a variety of political forces, those that had already been based on the previous composition of the parliament and twelve new political forces, creating a great dispersion. Note that to these elections can only run party lists. The previous government resulted from a coalition of center-right orientation (CDS-PSD), which managed to win the elections getting the highest proportional number of votes. The coalition of CDS-PSD parties, which was already in the exercise of the previous government, obtained the largest share of votes (38.6%) but without achieving an absolute majority, and PS, the socialist opposition party, got a relatively large percentage – 32.4%. Media disseminated the sense of the great prominence for the victory of the coalition.

However, in the Portuguese system of government, it is up to the President, taking into account these results and the analysis of the political context, to appoint a Prime Minister who will then form a government that proves to be stable (Sousa, 1979). Given these results, the President of the Republic called the leader of the coalition in order to reach a lasting government for the four-year term. However, political negotiations to reach that goal (as in the case of Spain in the course of a long period of time in 2016) did not achieve the desired success and it was necessary to inform the Head of the State that no agreement was reached with the Socialist Party in order to form a stable government. On the other side, it is the Socialist Party that communicated that it had been signing bilateral agreements with other smaller leftist parties: PCP – the Portuguese Communist Party, and the Left Block (BE). The leader of the Socialist Party guaranteed he would reach the necessary agreement that would allow him to form a stable government.

It is up to the Head of State to assess the situation and some sectors of the public opinion were claiming the President would be committing an unconstitutionality, given the fact that the Portuguese Constitution states that the President shall appoint the Prime Minister after consultation of the other political parties and taking into account the results of the elections, meaning that he should invite the leader of the most voted coalition (Fernandes, 2015).

Indeed, the President appoints the leader of the coalition with proportionally more votes for Prime Minister, as leader of the most voted party. The President followed the constitutional *praxis* by naming the leader of the party with the largest number of votes.

Yet, after the nomination of the government, its first act in office is to submit to the Assembly of the Republic its Program of Action (Canotilho, 2014). The new government was appointed on the 30<sup>th</sup> of October and would have 10 days to present its program to parliament, which it did on the 10<sup>th</sup> of November.

During the voting, the other parties rejected the program, which, in the Portuguese constitutional system, immediately causes the resignation of the newly appointed government, making it the

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\* The numbers concerning the electoral results have been extracted from the website of the National Elections Commission, including the official publication at the national official journal.

shortest government of the Portuguese democratic post-revolution phase, for lasting only 11 days, 5 hours and 40 minutes, which was widely publicized by the media.

In view of this, the Head of the State is seen again in the position of having to appoint a government. Another constitutional alternative, possible for the President, would be the dissolution of the Parliament. However, given that the six months of the legislature were still taking place and the last six months of the presidential term, this way was not a real alternative according to the Constitution.

Thus, the President met again with the leaders of the parties and this time asks the leader of the second most voted party – the Socialist Party, to present a viable and stable governance solution. This leader, Antonio Costa, as already mentioned, had already concluded bilateral agreements which gave him sufficient leeway in the parliament. The President presented him a letter with six demands for government stability and in seven hours the PS leader responded and accepted, giving assurances of the real possibility of creating a government. In view of this, the President again fulfilled all the constitutional formalities of hearing all the parties represented in the Assembly of the Republic and other entities of political life as trade union and social partners. The President considered that there was no other solution because it was not possible to make new elections nor to keep the government dismissed in management functions as it would be a very long period until new elections, which could only come to be held in April next year by constitutional determination (the elections to the Parliament cannot be performed in the second half of the President's mandate). A management governance situation would not be accepted either by the government dismissed or by the European Union itself, a regional integration organization, to which the Portuguese State owes certain international obligations.

Thus, the President nominated the leader of the second most voted party to form a Government, having nominated Antonio Costa as Prime Minister on the 24<sup>th</sup> of November. The XXI constitutional government took office on the 26<sup>th</sup> of November and the presentation and approval of the program of the government took place on the 2<sup>nd</sup> of December.

## **5. Final Considerations**

In conclusion, it is shown that public opinion questioned the legitimacy of this process and the Portuguese democracy itself, because apparently the direct choice of the voters did not correspond to the executive. In fact, the people did not express their will on the choice of PS, BE or CFP and leads to the question of whether the appointment of a government led by 2<sup>nd</sup> most voted party is truly democratic. Nevertheless, it appears that the constitutional compliance is met, based on separate and post-electoral agreements with each of the two remaining parties (PCP and BE). Mathematically speaking, the government is composed by elements from three parties that, when combined, represent the absolute majority of the voters' choices.

However, on the 24<sup>th</sup> of January 2016 Presidential elections were held, and the President took office on the 9<sup>th</sup> of March. The new President may now schedule parliamentary elections, if he considers that the current government is not stable or is not fulfilling Portugal's international commitments and he deems necessary to consult the will of the people. Yet, this has not happened, at least so far, and both sovereignty organs have developed an affable relationship until this moment, which means that it is not expectable that the President takes that procedure for the time being.

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