Fifth chapter

DISSOLUTION OF CONGRESS

In Ecuador, Peru, Uruguay, and Venezuela the Congress can be dissolved. The same happens in Armenia, Belarus, Egypt, Georgia, Kazakhstan, Pakistan, Russia, Syria, Turkey, Turkmenistan, and Ukraine. This extreme measure is explained in parliamentary systems although it is exorbitant in presidential ones. The reason why it is applied where the heads of state and government are separated can be understood as an instrument of defense of the head of government against the potential harassment of Parliament. In a parliamentary system, the motion of censure implies the removal of the person who heads the government, but this does not happen in presidential systems, even if the head of the cabinet is the one who is threatened.

In parliamentary systems, the purpose of dissolution is to bring the dispute before the electorate so that citizens can ultimately decide on the permanence of the head of government. This does not occur in presidential systems even when the Constitutions provide for the existence of a cabinet that can be removed by Congress. In presidential systems, the dissolution of Congress strengthens the president's intangibility and undermines the advantages of incorporating other control measures, such as interpellations, the question of confidence, and the motion of censure with limited effects.

The inclusion of some control mechanisms from the parliamentary system should be seen as a means to compensate for the existing asymmetries between the congresses and the presidential parent governments, not to accentuate the weaknesses of the congresses.

The Cuban Constitution of 1940 adopted a parliamentary system compatible with the presence of a president elected by popular vote, and deliberately excluded the most rigorous measures such as the dissolution of the Congress. The author of the draft Constitution offered arguments in the sense of building a prudent system, which he called a "restricted parliamentary regime," which would allow for the implantation of a "healthy"

balance between Congress and the government.[47] He was right, since the insertion of all the forms of parliamentary control in the presidential systems could upset the balance sheets to the detriment of Congress.

In the presidential system, the head of government is never exposed to being removed by Congress, so the power to dissolve him is a way of exacerbating presidential powers to a limit that not even military dictatorships have reached, with legal grounds. This measure shows that the incorporation of some control mechanisms from the parliamentary system, far from compensating the existing asymmetries between congresses and presidential governments, can accentuate the Caesarist nature of the presidents' power. In a case like this, the institutional interaction is negative.

The argument for putting the possibility of dissolving Congress in the hands of the president is based on the thesis that it should not be left defenseless in the face of political pressure exerted by Congress. It is dismissed that the president does not run any risk when his ministers are censored, and that by granting him an instrument as categorical as dissolution, he becomes the holder of a capital power that tends to inhibit even reasonable actions of control by the Congress.

As for Latin America, in Uruguay there is a long tradition of imposing limits on presidential power, so that the prospect of dissolving Congress does not pose a greater risk; in Peru, on the other hand, the double round system for the presidential election sometimes causes a certain fragmentation in Congress that makes it difficult to exercise the powers of parliamentary control, especially given the risk that the president dissolves it motivated by the expectation of that a new election favors your party; in Venezuela and Ecuador, the accentuated plebiscitary nature of the respective systems acts as an intimidating factor that limits the controlling capacity of Congress.

There is, however, another possible situation: some systems have a parliamentary presidential structure, as will be seen in the next chapter. In such cases, the head of state and government do not correspond to the same person, even when the preeminence of the president is ostensible, and the censorship does affect the head of government, so parliamentary dissolution is admissible. This has happened so far outside the Latin American area, but it is being considered as an option in Nicaragua.

Let's see below how the dissolution of Congress is regulated in Latin America.

[47] Cortina, José Manuel, "Exposición de motivos y bases para reformar la Constitución", in Lazcano y Mazón, Andrés María, *Constituciones políticas de América*, La Habana, Cultural, 1942, t. I, pp. 445 and et esq.

I. Ecuador

> Article 150. The President of the Republic may dissolve the National Assembly when, in his opinion, it has assumed functions that do not correspond to it constitutionally, after a favorable opinion of the Constitutional Court; or if she repeatedly and unjustifiably obstructs the execution of the National Development Plan, or due to a serious political crisis and internal commotion.

The incorporation of this institution into the supreme Ecuadorian norm denotes an authoritarian excess. The first cause of dissolution invests the president with a power outside the democratic systems, because "when in his opinion" the Assembly acts outside its constitutional powers, the president can dissolve it. In this case, the prior opinion of the Court, which may well be made up of people related to the president, or subjected to government pressure, does not mitigate the authoritarian effects of the institution. The following cause is related to the "repeated and unjustified" obstruction of the development plan, which leaves ample space for presidential discretion, especially if one takes into account that article 143 includes, among the executive functions, that of planning; this decision is corroborated by articles 149 and 279, according to which the president must formulate and present the proposal of the National Development Plan to the National Planning Council, which he presides over. In this way, contrary to what happens in parliamentary systems, in the Ecuadorian case when the congress rejects the government program, it is the representative body who disappears. The third cause is an invitation to struggle between the institutions. As can be seen in chapter IV of this work, the Assembly can dismiss the president in situations of crisis and shock, while the president can dissolve the Assembly in the same circumstances. The system adopted in Ecuador incorporates control mechanisms that, far from contributing to balance and stimulating cooperative behavior between the organs of power, encourages the subordination of the congress in relation to the government, or the confrontation between them.

II. Peru

> Article 117. The President of the Republic can only be accused, during his term, of treason; for preventing presidential, parliamentary, regional or municipal elections; for dissolving Congress, except in the cases provided for in

> article 134 of the Constitution, and for preventing its meeting or operation, or those of the National Elections Jury and other bodies of the electoral system.
>
> Article 134. The President of the Republic is empowered to dissolve Congress if it has censured or denied the trust of him to two councils of ministers.
>
> The dissolution decree contains the call for elections for a new Congress. Said elections are held within four months of the dissolution date, without the preexisting electoral system being altered.
>
> Congress cannot be dissolved in the last year of his mandate. Once the Congress is dissolved, the Permanent Commission remains in office, which cannot be dissolved.
>
> There are no other forms of revocation of the parliamentary mandate. Under a state of siege, Congress cannot be dissolved.

This norm has its origin in the Constitution of 1979, which empowered the president to dissolve the Chamber of Deputies after the trust of three councils of ministers had been censored or denied (article 227). The precept in force, of apparent innocuousness, places in the hands of the president a political weapon of great caliber, assuming that in an extreme situation it would be enough for him to sacrifice a couple of councils of ministers to be able to dissolve Congress. Although this possibility seems unlikely, the fact is that it is not recommended that the Constitutions offer options that may be contrary to the constitutional order itself. Even in unfavorable conditions for the president, the dissolution does not pose any risk to him, because if he were to become a minority again, this would not condition his permanence in office.[48]

III. Uruguay[49]

When the General Assembly has censured one or more ministers and, after presidential observations, ratifies its decision by a number less than three-fifths of the total number of its members, the possibility arises that the president dissolves the chambers and calls elections. The Assembly that results from this electoral process determines, by an absolute majority, whether to maintain or revoke the ministerial disapproval. In this case, despite the draw-

[48] In Peru, however, the inclusion of this faculty was aimed at preventing the overflowing exercise of censorship and has yielded the desired results.

[49] The text of the applicable precepts appears in the third chapter, corresponding to the interpellation and the motion of censure.

backs already mentioned, the appeal to citizens is explained in terms of settling the conflict that has arisen between the organs of political power.

IV. Venezuela[50]

The dissolution of the Assembly, in accordance with the final part of article 240, is optional for the president when there have been three removals of the vice president in the same term of government.

Let us now look at other cases.

V. Angola

> Article 66.
>
> The President of the Republic has the following powers:
>
> ...
>
> e) Decree the dissolution of the National Assembly after consulting with the Prime Minister, the President of the National Assembly and the Council of the Republic.
>
> Article 95.
>
> 1. The National Assembly may not be dissolved within the first six months following its election, in the last quarter of the presidential term, during the government of an interim president or when the state of siege or emergency is in force.
>
> Article 102.
>
> 1. When the National Assembly is in recess, it has been dissolved and in other cases that the Constitution provides, it will be replaced by the Permanent Commission

The Council of the Republic (article 76) is made up of the President of the Republic, who heads it, and by the President of the National Assembly, the Prime Minister, the President of the Constitutional Court, the Attorney General of the State, the former President of the Republic, ten citizens appointed by the President of the Republic and the presidents of the political parties that have representation in the Assembly. In 2008 there are 7 parties with members in the Assembly, so the Council has a total of 23 members.

[50] The applicable text, article 240, appears in the third chapter, corresponding to the interpellation and the motion of censure.

Of these, the president has the vote of the prime minister, whom he can remove freely (article 66 a and c), and of the general counsel, appointed and removed also by the president (article 66 i). It also has the vote of the president of his own party and of the ten councilors he has appointed. In turn, the Constitutional Court is made up of 7 members, of which 3, including its president, are appointed by the President of the Republic (article 135.1 a). Thus, the president has at least 15 of the 22 votes of the Council. In accordance with this regulatory scheme, the fate of the Assembly depends on the president.

VI. Algeria

> Article 82. If the approval of the National People's Assembly is not obtained on a second occasion, the Assembly will be dissolved by right.
>
> The existing government will remain in office to handle ordinary affairs, until the election of a new National People's Assembly, which must be elected within a maximum of three months.
>
> Article 129. The President of the Republic, after consulting with the President of the National People's Assembly, the President of the Council of the Nation, and the head of government, may dissolve the National People's Assembly or call early legislative elections.
>
> In both cases, the elections will take place within a period of three months.

The dissolution of the Assembly proceeds automatically in accordance with the provisions of article 82, which was already examined in the chapter on trust. There is a second hypothesis that leaves the discretion of the president to judge the timing of the dissolution or the early calling of elections. The difference between the two options is that the sole convocation does not relieve the outgoing Assembly from continuing to function until the elections are held and the results are qualified, while the dissolution operates immediately. The president is obliged to consult, but not to follow, the opinions expressed to him.

VII. Armenia

> Article 55. The President of the Republic:
>
> ...

3) He can dissolve the National Assembly in the cases and in accordance with the procedure established by article 74.1 of the Constitution, and calls extraordinary elections;

...

Article 74.1. The President of the Republic will dissolve the National Assembly if it does not approve the government program twice in a row in a two-month period.

The President of the Republic will also dissolve the National Assembly on the recommendation of the President of the Assembly or the Prime Minister in the following cases:

a) If the Assembly does not attend within a period of three months a bill considered urgent by the government, or
b) if during a period of sessions, the Assembly does not meet for three months, or
c) if during a period of sessions, the Assembly does not resolve a debated question for more than three months.

The Armenian Constitution presents original characteristics. The dissolution of the National Assembly is admitted as a means of overcoming a conflict with the government and to solve internal problems of the Assembly itself. In the first case, dissolution can only be achieved when the Assembly does not approve the government program. In this way, the fate of the members of the government is dissociated in relation to the program that the president intends to promote. As can be seen in the section on questions, interpellations and motion of censure, the Assembly can censure all or part of the ministers, but this does not lead to dissolution; on the other hand, the non-approval of the government program, twice in a row in a period of two months, does lead to the dissolution of the Assembly.

This constitutional provision is striking, because when extraordinary elections are called, they are not held due to a dispute between the organs of political power that affected the presence in the cabinet of one, several or all ministers; what is presented to the electorate to settle differences is a political program. According to this same logic, dissolution proceeds when a bill that has been declared urgent is not addressed by the Assembly. This does not mean that it must be approved; it is enough that it has been "attended", that is, ruled, discussed, and decided on it, for the dissolution to be inappropriate. With this mechanism, the president is protected so that his proposals do not go unnoticed, and the Assembly is protected, whose power to decide is not conditioned by government action.

The other original aspect of the Armenian provision is that the request for dissolution could come from within the Assembly itself. This mechanism

confers great power on the President of the Assembly. Note that a recommendation is alluded to, so the President of the Republic can dismiss the request made by whoever heads the Assembly. But even so, the law allows that high congressional official to exercise effective powers of intraorganic control. If in a given period there is no quorum or the matters that fall within the Assembly are not dispatched, its president may recommend to the President of the Republic that he call new elections. This possibility is debatable and is only understood in an environment where parliamentary disagreements paralyze or slow down legislative activity. Even so, it is an instrument that does not contribute to promoting cooperative behavior and it is a potential source of confrontations with the government.

VIII. Belarus

> Article 94. The term of the House of Representatives may be terminated early when it adopts a motion of no confidence in the government, or when it denies its consent to the appointment of the prime minister on two successive occasions.
>
> The terms of the House of Representatives or that of the Council of the Republic may be concluded in advance by resolution of the Constitutional Court, due to serious and systematic violations of the Constitution by the chambers.
>
> The decision will be made by the president after consulting with the presidents of the chambers.
>
> The chambers may not be dissolved during the state of emergency or martial law, nor during the last six months of the presidential term, nor when the removal of the president is being processed.
>
> Chambers cannot be dissolved during the first year of sessions.

Under article 84, which is discussed in greater detail in the chapter on the vote of confidence, the President is empowered to dissolve the Houses of Parliament, to appoint the Prime Minister with the consent of the House of Representatives, as well as to appoint and to freely remove the vice prime ministers, ministers and all other government officials. As for the dissolution of Parliament, the rules have a certain complexity; in addition to the conventional provisions regarding the dissolution caused by censorship of the government or by denying consent for the appointment of the prime minister on two successive occasions, it includes rare hypotheses.

The Constitutional Court can take the decision to dissolve Parliament when it has incurred serious and systematic violations of the Constitution.

In this case, however, the decision of the Court is subject to the President endorsing it. Before making a final decision, the president must listen to the presidents of both chambers. The mechanism adopted can give rise to tensions that are difficult to manage in institutional relations, because it is up to the president to act as a kind of review body for the Court. It is contradictory for the Court to determine that one of the chambers, or both, have incurred in serious and systematic violations of the constitutional order, and that notwithstanding the president sustains them in his functions. This attitude of the president would suppose either of two positions: either he determines, against the opinion of the Court, that there were no serious and systematic constitutional violations, or he admits that even if there were, he gives his support to Parliament to continue its functions. In this case, an understanding could occur between the government and Parliament, adverse to the validity of the supreme rule or to the public interest.

We are facing a poorly designed institution because any of the possible options, including dissolution in accordance with the Court's resolution, leads to a process of confrontation between the organs of power. For the conditions to be met that allow a Constitutional Court to reach the conclusions set forth in article 94 of the Constitution, unusual events would have to have occurred. If the Court invented or exaggerated them, or if the president tolerated and covered up them, the crisis would be capital and lacking solutions according to the constitutional text itself. It is difficult for such an episode to be registered in the normal life of a constitutional state, and its inclusion in the legal system suggests that the elaboration of the norm was subject to pressure from public mistrust.

The resulting mechanism is inadequate to preserve institutional stability, even if it has been surrounded by some preventions such as those that prevent dissolution during the validity of martial law, the state of emergency or during the first year of the corresponding legislature like the Russian standard. In the case of the state of exception, the exception is explained because the dissolution under these conditions would eliminate political control over the president. On the other hand, it is difficult to reconcile the provisions of the first and last paragraphs of the precept. There is an obvious contradiction between the prohibition to dissolve Parliament during its first year of sessions, and the failure to grant consent for two successive prime ministerial proposals, which usually occurs in the initial phase of a government and a legislature. The error, in any case, favors the critical capacity of Parliament. The construction of the precept leads one to think that it was developed in this way to make its application almost impossible, perhaps considering that this was the best option to preserve governance.

IX. Egypt

See both the constitutional text and the comment on the parliamentary dissolution provided for by the Egyptian Constitution, in the section corresponding to this country in the fourth chapter.

X. Russian Federation

Article 84.

The President of the Russian Federation:

...

B. he will dissolve the Duma in the cases and according to the procedure established by the Federal Constitution.

Article 92.

...

3. In all cases where the President of the Russian Federation is unable to exercise his functions, the President of the Government of the Russian Federation shall temporarily exercise them. The acting President of the Russian Federation shall not have the right to dissolve the State Duma, announce a referendum, or make suggestions on amendments to reconsider the articles of the Constitution of the Russian Federation.

Article 109.

1. The Duma may be dissolved by the President of the Russian Federation, in accordance with articles 111 and 117 of the Federal Constitution.

2. When the Duma has been dissolved, the President of the Russian Federation shall fix the date of the elections on the condition that the new Duma begins to sit within four months at the latest from the moment of dissolution.

3. The Duma may not be dissolved, as provided in article 117 of the Constitution of the Russian Federation, for one year after being elected.

4. The Duma may not be dissolved from the moment of filing accusations against the President of the Russian Federation until the approval of the relevant resolution by the Federation Council.

5. The Duma may not be dissolved during the period of martial law or state of emergency decreed throughout the national territory, nor in the course of six months prior to the end of the mandate of the President of the Russian Federation.

Article 111.

...

4. If the candidate for the Presidency of the government of the Russian Federation is rejected three times by the Duma, the President of the Federa-

tion shall appoint the head of the federal government, dissolve the Duma and call new elections.

Article 117.

...

3. The State Duma can express a vote of no confidence in the government. The provision on distrust of the government is approved by a majority vote of the total number of deputies of the State Duma. After the State Duma expresses a vote of distrust to the government, the President of the Russian Federation has the right to announce the resignation of the government or its disagreement with the decision of the State Duma. In the event that the Duma, within three months, again expresses distrust of the government, the president will announce the resignation of the government or dissolve the State Duma.

4. The Prime Minister of the Russian Federation may submit a motion of confidence in the government to the Duma. If the State Duma does not admit it, the president in the course of seven days must order the resignation of the government or the dissolution of the State Duma and fix new elections.

The Constitution establishes several limitations for dissolution: it cannot be carried out by the acting president. Furthermore, it is inadmissible in four circumstances: within the first year of the legislature, in the last six months of the presidential term, during the trial of the president and while a state of exception is in force. These restrictions, understandable, do not mitigate the draconian nature of the measure in a presidential and even semi-presidential system. In the latter case, a distinction can be made between the head of government and the head of state; even so, when the constitutional structure makes the president prevail over the prime minister, removal from the cabinet does not affect the president. Dissolution is a radical measure whose imminence may inhibit Parliament from exercising its control functions, while at the same time it does not encourage cooperation between political agents.

XI. Georgia

Article 80.

...

5. If the composition of the government or the government program does not obtain the confidence of Parliament for three successive times, the President must nominate a new candidate for Prime Minister within a period of five days or appoint the prime minister without the consent of Parliament,

> and the prime minister will designate the members of the government with the approval of the President, within the next five days. In this case, the president will dissolve Parliament and call extraordinary elections.
>
> Article 81.
>
> ...
>
> 4. The Prime Minister can raise a question of confidence in the government when he presents the budget, the tax law or changes in the structure, competence, or functions of the government. Parliament will grant its confidence by most of the total of its members. In the event that Parliament does not declare confidence in the government, the president will remove the government or dissolve Parliament within the following week and will call extraordinary elections.

The Constitution of Georgia (article 79) establishes that the prime minister is the head of government; however, the constitutional reforms of February 6, 2004, included a strong presidential nuance.

In order to offer wide margins for political negotiation, the Constitution establishes that, after on three successive occasions the Parliament has not granted its confidence to the government or offered its support to its respective program, the president will have two options: to propose another candidate to the first minister or appoint him freely. In this case, in addition, he must dissolve the Parliament. In other words, the president can choose between submitting to Parliament or facing new elections. It is evident that if his considerations about the correlation of political forces lead him to the conclusion that a new configuration of Parliament may be even more adverse for him, his normal decision will be to seek an understanding with that representative body. This type of calculation is frequent, especially when the fragmentation of political parties makes it foreseeable that the result of an extraordinary election will not make it easier for the electorate to build a stable majority.

Another circumstance that can lead to the dissolution of Parliament occurs when the prime minister presents the question of confidence regarding the budget or the organization of the government, and does not obtain it. In this case, the president will be faced with the dilemma of removing the government and making a new proposal to Parliament, or he supports it, but at the cost of calling elections. The hypotheses adopted by the Georgian Constitution are based on the conventional, but with a prudent attitude that allows the president to sustain a long process of negotiation with Parliament. This mechanism, far from weakening it, strengthens it insofar as it assigns an arbitration function on which the governance of the system depends.

XII. Kazakhstan

> Article 63.
>
> 1. The President of the Republic may dissolve Parliament in the following cases: when Parliament issues a vote of no confidence to the government, when Parliament denies the investiture vote to the prime minister on two consecutive occasions, when there is a political crisis due to the insurmountable differences between the two houses of Parliament or between Parliament and other organs of power.
>
> 2. Parliament may not be dissolved during the validity of a state of emergency or martial law, in the last six months of a presidential term, and during the year following a previous dissolution.
>
> Article 70.
>
> ...
>
> 6. In the event that the resignation of the government or its members is not accepted, the president may instruct the government or some of its members to continue in their positions. In the event that the resignation of the government was due to a motion of censure and the president does not accept it, he may dissolve Parliament.

In the dissolution power of Parliament, the Constitution places a considerable quota of power in the hands of the president. Of the anticipated hypotheses, the Kazakh system incorporates two that it shares with other systems: a motion of no confidence, rejected by the president, and the refusal to grant the investiture vote for the proposed prime minister, on two successive occasions. However, dissolution is also possible as a political weapon to bend Parliament. The presence of "insurmountable differences" between both chambers, or between Parliament and the government, is reason enough for the president to call new elections. In this way, the president becomes an arbitrator with powers to assess the conduct of parliamentarians, and to impose a kind of political sanction for their reluctance to understand each other or with the government.

The dissolution of Parliament as an instrument of subordination of legislators radiates another type of pathological behavior towards the rest of the political system. If the president has the almost unrestricted power to dissolve and has an important range of mechanisms to influence public opinion, it is foreseeable that the members of Parliament will adopt obsequious attitudes to avoid a challenge in which their real chances of success are very highly limited. This case illustrates the extent to which the constitutional possibility of dissolving Congress, in a presidential system, fosters

hypertrophic deformations close to Caesarism. The limitations introduced in article 63.2 only qualify the extension of the power contained in article 63.1, to avoid an overflowing use of an excessive power.

XIII. Mozambique

> Article 136.
>
> 1. At the beginning of each legislature, the Assembly of the Republic will evaluate the government's program.
>
> 2. The government will present a revised program that takes into account the conclusions of the Assembly debate.
>
> 3. In the event that, after the debate, the Assembly rejects the government program, the President of the Republic may dissolve it and call new elections.

According to the Constitution, the President of Mozambique is the head of government (article 117.3). Among his powers are those to appoint and remove the prime minister and the other members of the cabinet (article 121 b and d), and to preside over and convene the Council of ministers (articles 121a and 150.2). The question of trust is not expressly foreseen; however, the government program must be approved by the Assembly of the Republic, and in the event that the majority vote is adverse, the president can dissolve the Assembly (article 120 e) and call general elections (article 120 d). However, when the Assembly does not approve the program a second time (article 120 f), the president is obliged to remove the cabinet, while he cannot dissolve the Assembly twice, within the same legislature. In this way, trust, which is not explicit, appears linked to the approval of the government program.

The Council of Ministers is responsible to the President and to the Assembly, for the conduct of the country's internal and foreign policy, but the effects of this responsibility are not provided for in the fundamental norm (articles 151 and 156). In the terms of 155, transcribed, the possibility remains open for the prime minister to attend the Assembly regularly and, insofar as he must explain government policies and decisions, there is room for questions and interpellations, but without that a motion of censure may be derived from these. The Mozambican scheme makes a dissolution mechanism available to the president that generally affects the balance between the organs of power, but its use is limited at the beginning of government administration.

The intention of the Constituent Assembly was to build a very powerful presidential system, with a dominant party, for which reason two successive

presidential re-elections are planned (article 118), for periods of five years, with the possibility of allowing a period to pass to be reelected again for two terms. President Joaquim Chissano, for example, remained in office for 19 years (it began before the current Constitution came into force), and was succeeded by Armando Guebuza, also a leader of the same party, the Mozambique Liberation Front.[51] While the Congressional and presidential elections are simultaneous, the president has a mechanism that allows him to have a majority in the Assembly from the beginning of his term; anticipating the event that this did not happen, he could dissolve the Assembly and, with the electoral influence offered by the exercise of the presidency, call a second election. Only if the results of these elections were unfavorable to him, the president would be forced to integrate a coalition government that would allow him to obtain the majority necessary for the approval of the government program. Despite the disadvantages for political balances that the dissolution of the congress into a presidential system implies, the modality adopted in Mozambique is one of the least aggressive.

XIV. Pakistan

> Article 58. Dissolution of the National Assembly.
>
> 1. The President may dissolve the National Assembly if the Prime Minister so advises; the dissolution will take effect within forty-eight hours following the notification made by the prime minister.
>
> 2. The President may dissolve the National Assembly by his own decision, if in his opinion any of the following circumstances arise:
>
> a) there is no member of the National Assembly who can replace the prime minister, when a vote of no confidence was passed; or
>
> b) there is a situation that prevents the government from carrying out its functions in accordance with the provisions of the Constitution
>
> 3. If the decision to dissolve the Assembly is made based on the provisions of numeral 2 b), the president must consult the Supreme Court, which will have thirty days to issue a resolution.

From the way in which article 58.1 is constructed, it is concluded that the dissolution does not proceed after the censorship of the prime minister, because the effects of the parliamentary decision are immediate. When a prime minister is censured, he ceases to serve him and is no longer in constitutional capacity to advise the president. Hence, it is also foreseen that the

[51] In the 2004 elections, the Frelimo party obtained 62% of the Assembly's members.

president can make the decision to dissolve the Assembly; to avoid presidential discretion, an exorbitant power is included for the Court, which does not rule on a specific controversial case, but on the president's assessment of the prevailing political conditions. The 30-day period seems to be suggested by the convenience of offering a time frame in which the normality of the institutional functioning is restored. The considerations of prudence that may have inspired this modality did not realize the magnitude of the pressures that may be exerted on the Court and the uncertainty that occurs when the organs of power experience a prolonged conflict. In addition to the many inconveniences of dissolution in the presidential base systems, in this case we must add the prolongation of a crisis that can completely damage the power structure and promote processes of rupture like the one in 1999.

XV. Syria

> Article 107.
>
> 1. The President of the Republic may dissolve the People's Assembly, by means of a reasoned decision. Elections will be held within 90 days of dissolution.
>
> 2. The same president may not dissolve the Assembly more than once for the same reason.

This precept does not associate the dissolution to a vote of no confidence rejected by the president, or to the lack of confidence in the government. In the Syrian system the dissolution does not obey the purpose, real or apparent, of balancing the relations between the political organs of power; here there is an unparalleled case of a parliamentary dissolution not regulated by the constitutional order, although the applicable precept requires that the decision be reasoned. Clearly, when there are no legal safeguards, the quintessential reason is force. According to the wording of the precept, any reason is valid.

The only existing limitation does not affect the decision-making capacity of the president; it only raises a requirement of imagination, because it is said that successive dissolution decisions cannot be made for the same reason. As this limitation is not related to the period of the Assembly, but to the presidential one, and there is the possibility of indefinite re-election, the same president must invoke a different reason each time he decides to dissolve the Assembly. This requirement is not difficult to fulfill because, after all, any reason is validated by the constitutional order.

This mechanism is related to the type of presidential system in force in Syria. In accordance with article 84 of the Constitution, the Assembly proposes a candidate for the presidency, whose approval is submitted to a referendum. If in this process it does not obtain an absolute majority of the total popular votes, the Assembly must nominate another candidate. On the other hand, parliamentary immunity is lost in the case of dissolution, so the president controls who can nominate him for his re-election.

XVI. Turkey

> Article 116. In cases where the Council of Ministers does not receive the vote of confidence for the investiture in accordance with article 110, or has lost confidence in accordance with articles 99 or 111, and if it has not been possible to form a new Council of Ministers within the next forty-five days, the President of the Republic may call new elections, after consulting the President of the Grand Assembly. If a new Council of Ministers cannot be formed within 45 days of the resignation of the Prime Minister, or within 45 days of the election of the Steering Committee of the Grand National Assembly of Turkey, the President of the Republic, after consulting with the President of the Grand Assembly, may also call new elections.
>
> The decision to call new elections will be published in the Official Gazette, and the elections will take place immediately.

With the plurality of circumstances referred to in the Turkish norm, an attempt is made to limit the presidential discretion regarding the dissolution of the Assembly. In the Turkish constitutional system, the president is only head of state; however, he has important constitutional powers of political mediation that make him a significant figure in institutional life. For example, he has a veto, he can submit to a referendum the constitutional reforms approved by the Great Assembly, he can promote before the Constitutional Court actions to annul laws, government decrees and even the internal regulations of the Great Assembly. Furthermore, he is the head of the armed forces and assumes the presidency of the Council of Ministers in the event of a state of emergency (article 104).

The dissolution of the Assembly does not correspond to a decision that the government proposes to the president, who is only obliged to consult it with the president of the Assembly itself. The cases provided for by the Constitution deal with the lack of prime minister for not having obtained the trust for the investiture of him, for having been censured or for not having been replaced by the resigning prime minister. In any of these circum-

stances, a period of 45 days is foreseen, so that there is a reasonable margin to seek political solutions.

The structure of the precept is aimed at turning dissolution into an extreme act, once all the possibilities of understanding between political agents have been exhausted, and not into an instrument of pressure to reduce Parliament's resistance to government decisions. This constitutional design strengthens the presence of the president by making him an important political arbiter in exceptional circumstances.

XVII. Turkmenistan

> Article 64. Parliament can be dissolved early:
>
> By decision of a referendum
>
> By resolution of the Parliament itself, by no less than two-thirds of the total votes.
>
> By the President, if Parliament does not integrate its governing bodies within a period of six months, or if in a period of eighteen months it adopts two motions of no confidence in the Cabinet of Ministers.

This system is quite original because in addition to being an instrument of control of the president in relation to Parliament, if he adopts two motions of censure in a period of 18 months, or that he does not integrate his board in the course of the six months after his election, it also allows self-dissolution, decided by two thirds of its members, and the referendum to revoke the mandate.

The first hypothesis falls within the conventional instruments of rigid presidential systems that have severe forms of control over the organ of political representation. Control is accentuated by the possibility given to the president to dissolve Parliament for not having defined his directive within six months. These factors would be sufficient to characterize a very strong presidential system and a very weak representative system.

To underline the fragility of the representative system, the Constitution included a People's Council, which it considers the highest representative body (articles 45 and 48), made up of the President of the Republic, the ministers, the heads of the administrative regions, the presidents of the municipal councils, and the popular district councilors, all dependent on the president; it is also made up of the presidents of the Supreme Court, the Commercial Court and all the deputies of Parliament. This Popular Council, where the president has predominance, can call the recall referendum (article 95), at the request of a quarter of its members.

The self-dissolution of Parliament, which can be agreed to by two-thirds of its members, is just a formal provision for a Parliament whose structure shows extreme weakness.

XVIII. Ukraine

> Article 90.
>
> ...
>
> The President of Ukraine can dissolve the Verkhovna Rada [Assembly] before the end of his term, if he does not hold sessions within thirty days of the beginning of a term.

What is intended to regulate with this precept is a rare situation in which, by not starting its sessions, the body of political representation affects the normal functioning of the institutions and, especially, of the government. It is about preventing a kind of government blockade due to parliamentary inactivity, which is unlikely in practice. The structure of the Constitution confers a clear pre-eminence on the president, which is corroborated by the presidential interference in parliamentary life.