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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OF THE COUNCIL OF EUROPE

(VENICE COMMISSION)

FRANCE

FINAL OPINION

ON

ARTICLE 49.3 OF THE CONSTITUTION

Adopted by the Venice Commission
at its 143rd Plenary Session
(online, 13-14 June 2025)

On the basis of comments by

Mr Nicos ALIVIZATOS (Member, Greece)
Mr Richard BARRETT (Member, Ireland)
Ms Paloma BIGLINO (Substitute member, Spain)
Ms Marta CARTABIA (Member, Italy)
Mr Philip DIMITROV (Expert, former Member, Bulgaria)
Mr Christoph GRABENWARTER (Member, Austria)
Mr Dan MERIDOR (Expert, former Member, Israel)

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I. Introduction

1. By letter of 28 April 2023, the Chairman of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on Article 49 of the Constitution of France, and the established practice allowing the government to force the adoption of a bill without a vote in the National Assembly, unless the latter adopts a motion of censure. This request was made within the framework of the regular periodic reviews by the Parliamentary Assembly of the compliance of the obligations entered into upon their accession to the Council of Europe by member states.

2. Mr Nicos Alivizatos, Mr Richard Barrett, Ms Paloma Biglino, Ms Marta Cartabia, Mr Philip Dimitrov, Mr Christoph Grabenwarter and Mr Dan Meridor acted as rapporteurs for this opinion.

3. At its 135th Plenary Session (Venice, 9-10 June 2023), the Commission adopted the interim opinion on Article 49.3 of the Constitution of France, where it decided, before reaching conclusions, to carry out a comparative analysis of the manner in which motions of no confidence and other means by which the Executive may intervene in the legislative powers of parliaments are regulated in the constitutions and legislations of its member States.

4. At its 139th Plenary Session (Venice, 21-22 June 2024), the Commission adopted the Report on the relations between Parliament and the Government: confidence and responsibility (CDL-AD(2024)016).

5. This final opinion was prepared on the basis of comments by the rapporteurs. Following an exchange of views with Mr Remi Bénard, Project Manager for Foreign Affairs and Defence, General Secretariat of the Government of France, it was adopted by the Venice Commission at its 143rd Plenary Session (online, 13-14 June 2025).

II. Scope of the opinion and background

6. Article 49 of the French Constitution reads:

> *The Prime Minister, after deliberation by the Council of Ministers, may make the Government's programme or possibly a general policy statement an issue of a vote of confidence before the National Assembly.*
>
> *The National Assembly may call the Government to account by passing a motion of no-confidence. Such a motion shall not be admissible unless it is signed by at least one tenth of the members of the National Assembly. Voting may not take place within forty-eight hours after the motion has been tabled. Solely votes cast in favour of the no-confidence resolution shall be counted and the latter shall not be passed unless it secures a majority of the Members of the House. Except as provided for in the following paragraph, no Member shall sign more than three motions of no-confidence during a single ordinary session and no more than one during a single extraordinary session.*
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> *The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance bill or Social Security Financing bill an issue of a vote of confidence before the National Assembly. In that event, the bill shall be considered passed unless a motion of no-confidence, tabled within the subsequent twenty-four hours, is carried as provided for in the foregoing paragraph. In addition, the Prime Minister may use the said procedure for one other Government or Private Members' bill per session.*
>
> *The Prime Minister may ask the Senate to approve a statement of general policy.*

7. The request of the Monitoring Committee refers to the procedure whereby "the government may pass a bill through the National Assembly without its vote, unless the latter adopts a resolution of no confidence in the government". The request therefore refers more specifically to Article 49.3 of the French Constitution.

8. This procedure was introduced into the 1958 Constitution in response to the governmental instability that affected the IV Republic of France. The coalitions in the National Assembly were so fragmented and uncontrolled that the government could not pass crucial legislation in the legislative branch. Article 49.3 was the response to such negative experiences of deadlocks and parliamentary blockage.[1] Other vehicles to "rationalise" the parliament were introduced in the Constitution, with the aim, in the words of General de Gaulle, to restore the authority of the State ("restaurer l'autorité de l'Etat"). Originally, there were no limitations to the scope of application of Article 49.3. Due to the frequent use of the provision and wide criticism, the legal framework was amended in 2008.[2] Since then, the Prime Minister can only engage the responsibility of the government (activate the procedure) for Finance or Social Security financing bills, and "no more than one other Government or Private Members' bill per session". The French Government in its 2023 and 2025 observations underlines that during the latest constitutional reform, the amendments aiming at removing Article 49.3 were rejected by a large majority, and that the various initiatives that have been introduced in this regard have never prospered.

9. The aim of this mechanism – closely related to the concept of "rationalised parliamentarism"[3] – was to make government stable and strong and sustainable vis-à-vis the National Assembly, especially in times where there is no clear majority in parliament. Therefore, the main aim of Article 49.3 was to maintain the functioning of the law-making process and to avoid parliamentary blockage,[4] potentially to some extent at the cost of parliament's powers.[5] It therefore serves to facilitate the adoption of laws which do not have enough support in Parliament or for which the majority is uncertain, but which are important for the political orientation of the government.[6]

III. Analysis

A. European standards on the role of parliament and its relations with the executive: general aspects

a. The involvement of Parliament in legislation and the relation between parliamentary majority and minority

10. The foundation stone of democracy is the involvement of the population of voters in the design and enactment of laws through their representatives.[7] That process of designing and enacting laws is in principle carried out by the representatives through an assembly or congress

[1] *Aromatario*, La genèse du 49 al. 3, Revue générale du droit on line 2019, n° 43719.
[2] In his report to the President of the Republic of 1993, Georges Vedel proposed amongst others to limit the application of Article 49.3 to the laws on finances and to a small number of texts per session" (*Limiter l'application de l'article 49, alinéa 3, aux lois de finances et à un petit nombre de textes par session*). Vedel explained that Article 49.3 « issu de l'expérience de la IVe République […] donne au Gouvernement une arme contre l'indiscipline de sa majorité en ne laissant à celle-ci d'autre alternative à l'acceptation d'un texte que la censure ». However, this report rejected the restrictions ultimately proposed in 2008 on the grounds that they would result in "excessive paralysis of the mechanism".
[3] *Harmsen*, Michel Debré and the Constitution of the Fifth Republic: the theory and practice of rationalised parliamentarism, Modern & Contemporary France 1995, 275.
[4] Francesco Natoli, "Le recours à l'article 49 al. 3 dans le cadre de la réforme des retraites : les limites constitutionnelles à la rationalisation parlementaire", La Revue des droits de l'homme, [Online].
Actualités Droits-Libertés, para. 9, http://journals.openedition.org/revdh/8972.
[5] *Aromatario*, La genèse du 49 al. 3, Revue générale du droit on line 2019, n° 43719.
[6] Laurèn Audouy, "La révision de l'article 49 alinéa 3 de la Constitution à l'aune de la pratique", *Revue française de droit constitutionnel* 2016/3 (N° 107), p. e.2, https://www.cairn.info/revue-francaise-de-droit-constitutionnel-2016-3-page-e1.htm&wt.src=pdf.
[7] See Article 25 ICCPR and the General Comment (No. 25) on the Right to Participate in Public Affairs.

or parliament with opportunities for debate and consideration of amendments. Exceptionally, voters may enact laws directly through a referendum.[8]

11. The European Court of Human Rights has held that "*democracy constitutes a fundamental element of the "European public order", and that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see, among many other authorities, Ždanoka v. Latvia [GC], no. 58278/00, §§ 98 and 103, ECHR 2006-IV). Thus, the Convention establishes a close nexus between an effective political democracy and the effective operation of Parliament. Accordingly, there can be no doubt that the effective functioning of Parliament is a value of key importance for a democratic society and therefore the exercise of free speech in Parliament may have to yield on occasions to the legitimate interests of protecting the orderly conduct of parliamentary business as well as the protection of the rights of other members of parliament. Orderly debate in Parliament ultimately serves the political and legislative process, the interests of all members of the legislature, enabling them to participate on equal terms in parliamentary proceedings, and the interests of society at large. […] In a more general vein, the Court reiterates that pluralism and democracy must be based on dialogue and a spirit of compromise (see United Communist Party of Turkey and Others v. Turkey, 30 January 1998, § 45, Reports 1998-I; Leyla Şahin v. Turkey [GC], no. 44774/98, § 108, ECHR 2005-XI; and Tănase v. Moldova [GC], no. 7/08, § 178, ECHR 2010*)".[9]

12. The process of designing and enacting laws is not only an exercise of power by the majority block. A C Grayling identified that the precept "*… democracy is not mere majoritarianism - … underlies the necessity, if the state is to be a democratic one, of having a system of representation that will capture the diversity of views and interests among all the enfranchised. It entails that government, once formed, must as far as possible transcend politics in the sense of transcending political divisions so that it will serve the interests of all and not just a section (however large) which has been successful in capturing the organs of government*."[10] The Parliamentary Assembly of the Council of Europe in Resolution 1601 (2008) has affirmed that the existence of "a political opposition inside and outside of parliament is an essential component of a well-functioning democracy". The Venice Commission has repeatedly warned against the "winner takes all" mentality.

13. The system should allow for efficient decision-making. The majority should be able to pursue its political agenda and the opposition, on its side, should not indulge in a deliberate obstruction of the normal work of Parliament.[11]

14. Sufficient time should be allocated to parliamentary debate, both in committee and in plenary meetings, in the light of all relevant circumstances, and in particular the complexity and importance of the bill. Laws changing fundamental institutional arrangements […] need more time than ordinary legislation. Complex and controversial bills would normally require particularly long advance notice, and should be preceded by pre-drafts, on which some kind of (internet-) consultation takes place. By contrast, for the passage of minor and uncontroversial legislation shorter timeframes and simpler procedures (for example, not involving a separate examination in a relevant committee) may be designed. However, such cases shall be clearly defined and tightly circumscribed in the regulations.[12]

[8] For France see Articles 3.1 and 11 of the Constitution.
[9] ECtHR (GC), 17 May 2016, Karácsony and Others v. Hungary, para 141.
[10] A C Grayling, The Good State, 2020.
[11] Checklist on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy, CDL-AD(2016)007, paragraph 27
[12] Report on legislative initiative, paragraphs 73 ff, CDL-AD(2008)035

b. The legislative power

15. The Venice Commission's Rule of law Checklist, II1.4.i, provides for the supremacy of the legislature. It refers to the need for Parliament to be "supreme in deciding on the content of the law" under the Constitution.[13] Exceptions should be limited in time, exercised within the limits of the Constitution and subject to the control of parliament and the judiciary.[14]

16. In its Report on legislative initiative,[15] the Venice Commission has underlined that States have developed throughout history various concepts and methods of separation of powers. The parliamentary functions have even been subject to a variety of conceptions. Different systems and regimes are experienced, from presidential to parliamentarian systems, which have consequences on the holders and on the process of legislative initiative. However, it is worth noting that in practice the complexity of the decision-making process in modern democracies along with the multiplicity of the actors in democratic life tend to blur the strict approach of the principle of the separation of powers. In parliamentary democracies, the exercise of a power in the executive to initiate legislation is regarded as a necessary manifestation of the political leadership of the Cabinet, provided the latter has the confidence of the Parliament. This situation, which prevails in parliamentarian regimes, is usually explained and grounded by the fact that the implementation of governmental policy should be as efficient as possible and by the recognition of the government as the leader of the assembly majority which is supposed to support the governmental action.[16] Even though the prevalence of the executive power cannot always be observed in the terms of the constitutions, it remains valid in the reality of constitutional life and, more largely speaking, in political life.[17]

17. In devising its rules on distribution of power, each state balances different factors. The most important of these is democratic legitimacy (of the parliament, but also of elected local authorities). In a democratic state, general norms are adopted by parliament through a legislative process which - in bicameral systems with symmetrical powers in the two chambers - requires at least two readings, intervals between readings and deliberations in a committee, which all prevent a rushed adoption of laws. The decision-making process should be inclusive, i.e. involve all political groups in Parliament. Rules on quorums give additional legitimacy to the decisions taken by Parliament. Certain political processes – such as the amendment of the Constitution – require the broadest political support, through a genuine all-inclusive and open debate in which the media and civil society can also participate.[18] For a "deliberative democracy" the legitimation process is in the discussion in itself, not simply the authoritative "stamping" that the legislature provides when it transforms a government legislative proposal into a law. A legislative proposal should provide a well-prepared basis for the parliament to adopt a law. The proposal should be well drafted (technically speaking). The procedure in parliament should follow a clear and predictable pattern (no unexpected procedural manoeuvres etc.).[19]

18. A common trend may be observed to change the relationship between governments and parliaments in favour of the former: the executive power is not subordinated to the legislative one and must be able to promote laws in accordance with its policy. In the most recent experiences of parliamentarism the governments have been endowed with and have made use of the power to compel a reluctant or fragmented majority to pass a legislative text, and also to accelerate the legislative process, and in particular to end any obstruction from the opposition or from some of

[13] CDL-AD(2016)007.
[14] CDL-AD(2016)007.
[15] CDL-AD(2008)035.
[16] Ibidem, paragraph 23.
[17] Ibidem, paragraph 34.
[18] CDL-AD(2016)007, paragraphs 27, 66-67.
[19] Venice Commission, Report respect for democracy, human rights and the rule of law during states of emergency: reflections, paragraph 66, CDL-AD(2020)014.

the members of the majority.[20] The French Government notes, however, that recent constitutional amendments in France have increased the powers of Parliament (in particular since the constitutional amendment of 23 July 2008, which notably limits recourse to Article 49.3).

19. In the classic separation of powers model there will be a formal constitutional relationship between the law-making parliament as legislature and the executive. The dividing line between the different arms of government is not rigid and the executive will be a major participant in parliamentary procedure with a power to guide or even control the law-making process. The involvement of the executive in the legislative process may in some systems turn the executive into part of the legislature.

20. Examples of the executive intervening into the act of legislating include:

a) the granting of legislative powers to the executive directly by the Constitution or by a law, in accordance with the Constitution

21. The benchmark of the Rule of Law Checklist on supremacy of the legislature further provides that normative acts must, in principle, be adopted in the form of an act of Parliament or an implementing text based on that law; when legislative power is delegated by Parliament to the executive, the objectives, contents, and scope of the delegation of power should be explicitly defined in a legislative act (Rule of Law checklist II.1.4). In its 2019 *Checklist on the Relationship Between The Parliamentary Majority and the Opposition In A Democracy,* the Venice Commission expressed scepticism with respect to the idea of a general legislative power being given to the executive directly by the Constitution. It stressed that *"at the least, such powers should be limited in time and in scope […] and may only be used for good reasons, such as a state of emergency […], and should be phased out as quickly as possible"*. As for the enabling act, it "must define the material scope of the delegated legislation (specifying the areas *in which the government may or may not legislate), setting time limits, etc*."[21]

b) special law-making powers in financial areas

22. It is a basic democratic rule that especially the decisions on finance and use of taxpayers' money should belong to the representative body. It was precisely the principle that there can be "no taxation without representation" that was at the origin of the English, American and French revolutions. Parliaments are the protagonists of the law-making process, of the budgetary decisions and – in the parliamentary forms of government – also of the "confidence" relationship with the government. Most constitutional systems contemplate that the executive will have an enhanced lawmaking role in relation to financial laws.[22] The collection of taxes and the laws directing public expenditure are often designed in a special way with parliamentary involvement but a stronger executive role.[23]

c) powers to initiate a parliamentary 'guillotine' and cut short a parliamentary debate

23. Such a parliamentary mechanism (probably to be found in parliaments' internal rules rather than the Constitution or statute) allows parliamentary debates to be summarily brought to an end at the initiative of the executive to close part of the parliamentary process and proceed with the

[20] In its observations, the French Government stress that since the constitutional amendment of 2008 that trend has been reduced in France.
[21] CDL-AD(2019)015, Parameters On The Relationship Between The Parliamentary Majority And The Opposition In A Democracy: A Checklist, Opinion No. 845/2016, 24 June 2019, paras 119-121.
[22] Posner/Park, Role of the Legislature in the Budget Process: Recent Trends and Innovations, OECD Journal on Budgeting 2007, 1. In Austria, there are specific rules for budgetary laws laid down in the Austrian Constitution: Article 51 para. 7 allows the executive under certain circumstances to exceed the budgetary caps.
[23] The special role of the executive in the preparation of laws in financial issues is analysed in the Report on legislative initiative, paragraphs 24 ff.

draft law. This may break a filibuster or a procedural deadlock even when the majority to pass the law may not be in doubt. The democratic credibility of such guillotine powers has long been debated. Most notably, the biggest critiques of the guillotine are that it is fundamentally contrary to democracy as it curtails parliamentary debate, ultimately affecting the scrutiny of legislation. Some critiques focus on the balance of power between the executive and legislative branch, specifically that the ability of the executive to steamroll the parliament is contrary to the democratic process and does not incorporate the views of represented citizens. However, this critique is nuanced as parliament, in theory, usually has the ability to stop this executive steamroll, but at a great cost – the potential toppling of the government and loss of political career.

d) special law-making powers in a situation of emergency

24. During the state of emergency, the executive may, temporarily, exercise certain powers that would be otherwise reserved to the legislative. The exercise has to have a clear and prospective legal basis. The power of the executive to issue legislative acts in times of emergency should be limited both in terms of content and of time: such acts should only relate to issues related to the exceptional situation and they should not remain in force beyond the state of emergency (unless confirmed and prolonged by the legislative). Appropriate "sunset clauses" should also include clear time limits on the duration of these exceptional measures.[24]

B. The motion of confidence in the relationship between parliament and the executive comparative outline

25. An essential aspect of the relationship between parliament and the government in parliamentary systems lies in the motions of confidence, aimed at ensuring that the government benefits from the confidence of parliament, through the use of such motions. More precisely, a motion of confidence is a parliamentary procedure whereby the government seeks the formal expression by parliament of its confidence either in the whole government or, in some countries, in specific ministers.[25] The motion of confidence is an expression of the natural competition (sometimes conflict) between the executive and the legislature. The legislature can pressure the Cabinet with a threat to pass a vote of no-confidence when it finds it convenient. The Cabinet should be able to pressure it with the threat of a confidence vote that may lead to the dissolution of parliament, when for the legislature this may be inconvenient.[26] Motions of confidence thus serve to confirm that the government has a sufficient majority to remain in power. Sometimes they are also used when the parliamentary majority supporting the government is in crisis. The vote of confidence in these cases is used to oblige members of parliament to make a decision and decide if they prefer to support the government or to face the consequences of the executive's dismissal.

26. The motion of confidence is regulated in the constitutions of the majority of member states with a parliamentary system participating in the Commission's study which led to the "Report on

[24] Report respect for democracy, human rights and the rule of law during states of emergency: reflections; CDL-AD(2020)014, paragraph 64. For an analysis of the features of emergency legislation in Venice Commission member states see: Report on emergency powers, CDL-STD(1995)012; Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights, CDL-AD(2020)018. In the EU legal order Art 122 TFEU enables the Council to bypass the European Parliament in certain emergencies. It allows the Council to use qualified majority voting to break a deadlock.

[25] Venice Commission, CDL-AD(2024)016, Report on the relations between Parliament and the Government: confidence and responsibility., para. 12.

[26] Art. 12 para 4 (new) of the French Constitution - since July 2024, the President has to wait one year before he can dissolve again. It should be noted that Article 12 of the Constitution does not make dissolution conditional on a vote of no confidence by Parliament.

the relations between Parliament and the Government: confidence and responsibility".[27] In other countries, a constitutional convention makes it possible (Canada, United Kingdom); in Italy, while the Constitution provides for the initial motion of confidence,[28] a constitutional custom progressively consolidated on the question of confidence at the initiative of the government, which was partially codified first in the Chamber's (in 1971), and then in the Senate's rules of procedures (in 1988), as well as, eventually, in Law No. 400/1988. In Belgium too, the motion of confidence is based on a constitutional custom and detailed in the Rules of Procedures of the House of Representatives. In Latvia, the vote of confidence is regulated in the Rules of Procedure of the Saeima.

27. In its Report quoted above,[29] the Venice Commission has identified six different kinds of motions of confidence: motions of confidence for the government's investiture; general motions of confidence in the government; motions of confidence related to a general programme or policy statement; motions of confidence linked with a specific bill ("questions of confidence"); commitment of the government's responsibility linked with the adoption of a specific bill; and motions of confidence in an individual member of the government.[30] Two of these forms appear particularly relevant for analysing Article 49.3 of the French Constitution: the question of confidence, and the commitment of the government's responsibility linked with the adoption of a specific bill.

28. Questions of confidence are procedures whereby the government decides to link the motion of confidence with the adoption of a specific bill: parliament must consider the adoption of such bill as a matter of confidence in the government. Questions of confidence vary considerably in comparative practice in terms of quorum and majority required, timeframes, even political consequences of the no confidence vote.[31] They all may be considered to reduce the scope of the parliamentary control over the draft laws initiated by the government (in particular through the limitation of the power of amendment); they can also be considered as changing the nature of this control, the Parliament's decision being based on a more profound understanding whether opposing a particular bill is worth the price of toppling the government. Instead of debating on the draft law through the ordinary legislative procedure, the Parliament must decide on a political issue: to further support the government or to withdraw its support and end government's mandate. When a question of confidence is put by the government, several scenarios are possible: the vote on the bill and the vote of confidence take place either jointly or separately; the vote on the bill 'absorbs' the vote of confidence; the vote of confidence 'absorbs' the vote on the bill; no vote is necessary, either on the bill or on the motion of confidence, unless a motion of no confidence is tabled – this is the case provided for in Article 49.3 of the French Constitution.[32]

29. Similarly to questions of confidence, the commitment of the government's responsibility in relation to a bill (or to the government's policy) reduces the parliament's control over the text to be adopted, and changes the nature of the parliamentary debate, which moves from the specific bill to the support for the government. However, unlike for questions of confidence, when the government commits its responsibility in relation to a specific bill, no parliamentary vote is necessary at all, either on the bill or on confidence: unless a motion of no confidence is submitted, the bill is adopted, without a vote and even without any obligation to deliberate (thoroughly), in one chamber (as in France), or in both (as in Romania), or in a unicameral parliament (as in the Republic of Moldova).

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[27] CDL-AD(2024)016, *op. cit*. Amongst the states which replied to the questionnaire, it can be found in Algeria, Armenia, Belgium, Bulgaria, Canada, Croatia, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, North Macedonia, Poland, Portugal, Romania, Serbia, Spain, Sweden.
[28] Article 94 of the Italian Constitution.
[29] CDL-AD(2024)016.
[30] Report on the relations between Parliament and the Government, CDL-AD(2024)016, paragraphs 17 ff.
[31] Ibidem, paragraphs 25-35.
[32] Report on the relations between Parliament and the Government, CDL-AD(2024)016, paragraph 81.

30. The commitment of the government's responsibility exists in France (Article 49.3 of the French Constitution); in the Constitution of Romania,[33] which however provides, following the constitutional revision process (Constitutional Review Law) of 2003, that if the President returns the Law adopted through the commitment of responsibility for reconsideration, the two chambers shall reconsider the returned Law in a joint sitting and may make amendments to the text which the government cannot reject (the added paragraph 3 of Article 114); and in the Constitution of the Republic of Moldova.[34] Furthermore, similar provisions can be found in several countries influenced by the French constitutional tradition which are not members of the Venice Commission: Constitution of Cameroon (Article 34), Constitution of the Central African Republic (Article 55), Constitution of Mauritania (Article 75), Constitution of Mali (Article 78), Constitution of Burkina Faso (Article 116), Constitution of Chad (Article 137), Constitution of Niger (Article 107), and Constitution of Senegal (Article 86).

31. The commitment of responsibility is generally accompanied by conditions in terms of kind of bill, stage of the parliamentary procedure, frequency, often developed by the case-law of the Constitutional Courts.[35]

C. Article 49.3 of the French Constitution

32. Article 49.3 of the French Constitution is a question of confidence in the form of commitment of the government's responsibility.

33. This mechanism must be seen in the context of the constitutional setup of France. The Constitution of the fifth republic has set up a semi-presidential system, which incorporates within it instruments to rationalise parliament such as Article 49 para. 3 and Article 44.3 which allows government to request that its bill be voted upon as a block, rather than by individual article – a block vote may also apply to part of the text. The basic innovation of the semi-presidential regime lies in the place and role of the President of the Republic. Elected directly by the people, s/he presides the Council of Ministers (Article 9); it can therefore be considered that s/he plays a direct political role, which, in practice, is not limited to external affairs but extends to almost all political issues. Formally, the power according to Article 49.3 is vested in the Prime Minister and not in the President. However, it may also be pointed out that the Ministers, being appointed by the President, admittedly on the proposal of the Prime Minister (Article 8 of the Constitution), except in relatively rare periods of "cohabitation" when the President and the government belong to different parties, are also responsible to her/him. Consequently, it is widely accepted that the President exercises significant influence over the decisions of the government.

34. Formally, Article 49.3 is invoked by the Prime Minister. However, it does not seem that this initiative can be adopted without the participation of the President of the Republic. Indeed, the President of the Republic presides over the Council of Ministers (Article 9 of the French Constitution), which is consulted before the Prime Minister may activate Article 49.3 and s/he is also the one who promulgates the law (Article 10 of the French Constitution). Under these conditions, the intervention of the President of the Republic is often crucial in this decision.

35. As previously noted, in the Westminster system the motion of confidence is an expression of the natural competition (sometimes conflict) between the executive and the legislature. The executive (the Cabinet) comes from and belongs to the legislature and, in order to be able to maintain its institutional independence and active role in dealing with the public agenda, it needs to have weapons to defend its positions, if not strictly similar at least comparable to those of the legislature. The legislature can pressure the cabinet with a threat to pass a vote of no-confidence when it finds it convenient. To ensure the balance of powers, the Cabinet should be able to

[33] Article 114 of the Constitution of Romania.
[34] Article 106(1) of the Constitution of Republic of Moldova.
[35] Report on the relations between Parliament and the Government, CDL-AD(2024)016, paragraphs 40 to 50.

pressure it with the threat of a confidence vote that may lead to the dissolution of parliament, when for the legislature this may be inconvenient. This is not exactly the situation under the French Constitution. The legislature has the instrument of a motion of no-confidence according to article 49.1 and, if it is successful, the Prime Minister should present the resignation of the government to the President (article 50). However, in principle the legislature is not menaced by dissolution and the more powerful part of the executive (the President) stays. The Prime Minister can use this instrument only on a programme, a declaration of general policy (article 49.1) or on a vote of a finance or social security financing bill (or one more law per session) (article 49.3). In other words, this is hardly the weapon designed in the Westminster system and its main purpose is to facilitate the passing of some legislation which is faced with resistance or reluctance in the National Assembly.

36. The question arises if the use of Article 49.3 insofar as it allows passing a law without final approval and, at least in principle, without a real and thorough discussion of its contents in one of the two chambers, violates the principles of pluralism, of separation of powers and of the sovereignty of the legislature.

37. The Venice Commission underlines at the outset that the description of Article 49.3 should be accurately qualified: by triggering Article 49.3, Government may bypass the vote *in the plenary* of only *one chamber* (the National Assembly).

38. In fact, pursuant to Article 43 of the Constitution, "*Government and Private Members' bills shall be referred to one of the standing committees, the number of which shall not exceed eight in each House*." Pursuant to Article 45, "*Every Government or Private Member's bill shall be considered successively in the two Houses of Parliament with a view to the passing of an identical text. Without prejudice to the application of articles 40 and 41, all amendments which have a link, even an indirect one, with the text that was tabled or transmitted, shall be admissible on first reading. If, as a result of a failure to agree by the two Houses, it has proved impossible to pass a Government or Private Member's bill after two readings by each House or, if the Government has decided to apply the accelerated procedure without the two Conferences of Presidents being jointly opposed, after a single reading of such bill by each House, the Prime Minister, or in the case of a Private Members' bill, the Presidents of the two Houses acting jointly, may convene a joint committee, composed of an equal number of members from each House, to propose a text on the provisions still under debate*. *The text drafted by the joint committee may be submitted by the Government to both Houses for approval. No amendment shall be admissible without the consent of the Government*. *If the joint committee fails to agree on a common text, or if the text is not passed as provided in the foregoing paragraph, the Government may, after a further reading by the National Assembly and by the Senate, ask the National Assembly to reach a final decision. In such an event, the National Assembly may reconsider either the text drafted by the joint committee, or the last text passed by itself, as modified, as the case may be, by any amendment(s) passed by the Senate*." This means that any text is always examined and has to be voted in a standing committee before it is sent to the Plenary for debate. Article 49.3, which freezes the text of the bill preventing any further discussion or amendment, may be activated at any moment *after* the opening of the debate in the plenary, not before, so it does not affect the discussions in the committee. It should be noted that it is more likely that the MPs will participate in the discussions and vote of a text in a standing committee than in the debate and voting in the plenary. Indeed, as the French representatives have argued, votes in the plenary, especially in favour of the government's budget or other financial measures, tend to be seen – and Plenary debates tend to be watched much more than committee sittings which are also broadcast - as in support of the executive, that is to say the President. This is a result of the electoral system (majoritarian with two rounds) coupled with the alignment of the duration of the mandates of the President and of parliament, with the presidential elections taking place before the parliamentary ones: the majority and the opposition are formed with reference to the support for or the opposition to the President, not around political programmes. The rapporteurs' interlocutors have argued that there is no culture of political coalition in France.

39. Further, Article 49.3 may be triggered by the Prime Minister in any phase of the parliamentary procedure, after reaching a standing committee, not necessarily during the first debate before the National Assembly; the only requirement under the Constitution is for the Prime Minister to consult the Council of Ministers prior to declaring to resort to Article 49.3; the deliberation of the Council of Ministers does not relate to one specific phase of the parliamentary procedure, but covers the procedure as a whole. Article 49.3 thus may be activated for the first time during the second reading or during the debate of a text agreed by the Joint committee, or in during the reconsideration of a text in the final phases. Conversely, however, its activation in the initial phase will almost inevitably entail its subsequent activation in the following ones. Each use of Article 49.3 will bypass only one of the votes of the Plenary in the National Assembly.

40. It follows that even when Article 49.3 has been invoked already in the first reading, the National Assembly has necessarily had the possibility to discuss and amend the text in a sitting of a standing committee; if it is invoked during the second reading only, it has had the possibility to discuss it in the previous phase of the procedure and has this possibility again in the sitting of the standing committee which precedes the new debates in the plenary.[36]

41. Moreover, while the government may submit a bill in the first place to either the National Assembly or the Senate (with the exception of Finance bills and Social Security Financing bills which must be submitted to the National Assembly first - see Articles 47 and 47.1 of the Constitution), every bill must necessarily be submitted to both chambers (Article 45.1 of the Constitution). Article 49.3 may only be invoked before the National Assembly, not before the Senate. The Senate has the power to discuss, amend, approve or reject the text when it receives it subsequent to the activation of Article 49.3. The relations between the executive and the Senate are very different: the President may dissolve the National Assembly but may not dissolve the Senate. The Prime Minister and the government are appointed and dismissed by the President and are therefore *de facto* responsible towards him or her. The government may be voted down by the National Assembly, not by the Senate.

42. Following the activation by the Prime Minister of Article 49.3, and if no motion of censure is tabled, the bill is passed to the Senate for adoption without further discussion and without a vote. The Prime Minister may block the further amendment of the text by the National Assembly. The Prime Minister, however, has no power over the amendment (or the rejection) of the text by the Senate (while the Senate cannot oppose the activation of Article 49.3).

43. The activation of Article 49.3 therefore does not result in the obliteration but in a potentially significant reduction of the parliament's control over the content of the law. Its rationale is to allow the government to guide – if not control – on some crucial decisions the policy of the majority in power, overcoming party divisions in Parliament, whenever the executive (i.e. the President of the Republic and the government, acting together) deems it necessary for the adoption of measures it considers important, even if such measures fall within the *domaine de la loi*.

44. Article 49.3 is also one of the tools against obstructionism and filibustering.

45. To assess whether the necessary balance of powers between parliament and the executive is maintained, it remains to be seen to what extent its use by the executive is constrained, i.e. what safeguards exist against its excessive use and to prevent its abuse.

[36] The law on the pensions adopted in 2023 through three activations of Article 49.3 was subject to almost 9,000 amendments by the National Assembly.

a) The motion of no-confidence

46. The Commission observes that the only way in which the National Assembly can regain power over the bill – but it is limited power, as it may reject the bill, not amend it - is to submit a motion of no confidence in the government within twenty-four hours, pursuant to the procedure established in Article 49.2 of the Constitution (the motion must be presented by one-tenth of the members of the National Assembly and must be voted by the absolute majority of the members of the National Assembly within forty-eight hours, with only positive votes counting). On the other hand, the French government underlines that the legislator may, by means of a subsequent bill, come back to the law that would have been adopted by means of Article 49.3. Opposition parties may also refer the matter to the Constitutional Council if they consider that procedural rules have been disregarded or that the provisions of the bill on which the government's responsibility is engaged are contrary to the Constitution.

47. The Venice Commission is of the view that Article 49.3 in this respect calls for several considerations: first, in the motion of no-confidence the National Assembly does not vote for or against the law in question, but for or against the staying in office of the government. Second, "[I]t is not the same thing for members of parliament to oppose a bill and to topple the government, with all the potential consequences (including early legislative elections)".[37] The motion of no-confidence comes at a very high cost: it might bring down the government, which is not what members of parliament – especially those who otherwise support the government as members of the coalition – may wish to do. It also entails the risk of dissolution of the parliament itself by the President of the Republic. In France, only two motions have been passed since 1958, (in 1962 and 2024) and only the second one was a result of Article 49.3, whereas the procedure was activated more than 100 times. The adoption of a motion of no-confidence in March 2023 was short of 9 votes, one in 1991 was short of 5 votes and one in 1986 was also short of 5 votes. According to the French government, these figures show that a vote of no-confidence is "neither impossible, nor unlikely", as the no-confidence vote of December 2024 shows.

48. In addition and in particular, the Venice Commission acknowledges the necessity for the government to dispose of effective tools to carry out its programme, including in case of a minority government, by uniting the parliamentary majority and countering filibustering and boycott. However, it notes that differently from the question of confidence, where the formal requirement of vote is maintained, the commitment of the government's responsibility under Article 49.3 removes the final vote of one chamber of parliament – the one with the decisive vote - for the adoption of a statute,. This represents a more significant interference by the executive in the powers and role of the legislature. The Commission is of the view that such interference calls for necessary limitations in order to preserve the essential legislative function of parliament.

b) The material limitations

49. The Commission observes that since 2008 the French Constitution mainly contains a limitation of the subject matters in which Article 49.3 may be used to financial matters, including financing social security – Article 49.3 can be used on other matters only once in a session. It may be argued in this respect that the sphere of public finances is particularly complicated and specialised, and the executive expertise is more sophisticated; furthermore, the specialised members of the relevant standing committee do discuss the bill. The French authorities also argued that, as explained above, while it is true that the decisions on finance and use of taxpayers' money should belong to the representative body, such decisions are crucial for the implementation of the President's programme and therefore voting in their favour amounts, in the French system, to express support for the President. Several MPs would be ready to, and indeed do vote for parts of the budgetary laws in the standing committees, but finally abstain in the

[37] *Bottini*, Constitutional? Perhaps. Democratic? Not so much: On the French Government's Maneuver to Pass the Law on Retirement, VerfBlog 2023/3/27.

plenary vote. The Prime Minister, by invoking Article 49.3, avoids that MPs who support the budget and have negotiated it in the committee, feel subsequently obliged to reject it for partisan reasons.

50. In the Commission's view, the limitation of Article 49.3 to these subject matters may be understandable, subject to the considerations below on the time of triggering it. It notes, however, that Article 49.3 may be triggered also "for one other Government or Private Members' bill per session". This clause gives the Prime Minister the discretion to use it in relation to any kind of law (even though there is a doctrinal discussion as to whether it can be invoked also for organic laws or even constitutional amendments, which has however never occurred in practice), on any topic. Furthermore, the limitation to one time *per session* does not exclude extraordinary sessions, which may be convened by the Prime Minister to debate a specific agenda (Article 29 of the Constitution). This means that in theory the Prime Minister may convene an extraordinary session of parliament to use 49.3 if s/he has already exhausted the constitutional possibilities to use it during the ordinary parliamentary session. It should be noted, however, that according to Article 28 of the Constitution, the ordinary session begins on the first working day of October and ends on the last working day of June: during this period, the government may only invoke Article 49.3 once, which strictly limits its scope outside financial matters. The Venice Commission considers that this clause is excessively broad ; it should also be made clear that it applies only to ordinary laws – the executive should not have the final say on higher-ranking texts such as organic laws.

c) The moment of activation

51. The Commission further notes that the Constitution does not limit the moment of activation of Article 49.3: as confirmed by the Constitutional Council,[38] the Prime Minister, once s/he has consulted the cabinet, may invoke the procedure of Article 49.3 at any moment after the opening of the debate in the plenary of the National Assembly; from this moment, the discussion is terminated, that phase of the procedure is terminated, the text of the bill is frozen and, unless a motion of censure is tabled, the bill is passed to the Senate. Even if there has necessarily been a discussion involving representatives of all political groups in the standing committee, the members of the National Assembly are thus deprived of the possibility to continue to debate; this may notably affect the opportunity for the members of the opposition to present their arguments in plenary session. The Commission was informed that in practice the Prime Minister triggers Article 49.3 only after the general discussion at which all political groups present their statements: this is welcome, but is nevertheless not an obligation, which in the Venice Commission's opinion it should be.

d) The control by the Constitutional Council

52. Respect for Article 49.3 is subject to control by the Constitutional Council, which has limited jurisdiction on the question of whether the formal conditions were respected, including the principle of 'clarity and sincerity of parliamentary debates' and the absence of procedural abuse. The Constitutional Council refers to the record of the decisions of the Council of Ministers to determine whether deliberation has taken place. The Constitutional Council has also held that Article 49.3 may be triggered at any time after the opening of the sitting in the plenary. It appears all in all that, even though it has used the constitutional requirements of "clarity and sincerity of the parliamentary debate",[39] the Constitutional Council has examined only the strictly procedural requirements of the activation of Article 49.3, which limits the guarantee of supremacy of the legislature.

[38] Decision No. 2015/715, https://www.conseil-constitutionnel.fr/decision/2015/2015715DC.htm.
[39] The Constitutional Council has drawn these requirements from Article 6 of the Declaration of the Rights of Man and of the Citizen of 1789 ("The law is the expression of the general will") and the first paragraph of article 3 of the Constitution ("National sovereignty belongs to the people, who exercise it through their representatives").

e) The combination of the "guillotine" and Article 49.3

53. Article 47 provides for an expedited procedure of adoption of Finances bills by the National Assembly (40 days from the tabling of the bill by the government) and by the Senate (15 days); parliament then disposes of a term of 70 days for approving the bill, failing which the government is empowered to pass it through an ordinance. Under Article 47.1, the terms for the adoption of Social Security Financing bills are even shorter (20 days for the National Assembly, 15 days for the Senate, 50 for the final adoption). There is no rule preventing the combination of these guillotines with Article 49.3, as the Constitutional Council has recently held. Yet, such combination risks imposing an even heavier limitation the parliamentary debates, which may appear disproportionate, if the executive is free to characterise any bill as falling under these two constitutional provisions. The control of the Constitutional Council of the "clarity and sincerity" of the parliamentary debates, however, may represent a guarantee against excess.

IV. Conclusion

54. Article 49.3 of the French Constitution represents a specific form of question of confidence, the commitment of the government's responsibility in relation to a specific bill. Similarly to the question of confidence, it reduces the parliament's control over the text to be adopted (notably through a limitation of the power of amendment), and changes the nature of the parliamentary debate, which moves from the specific bill to the support for the government. However, unlike for questions of confidence, when the government commits its responsibility in relation to a specific bill, no parliamentary vote is necessary at all, either on the bill or on confidence: unless a motion of no confidence is submitted, the bill is adopted, without a vote and even without (thorough) deliberation. This form of motion of confidence only exists in three Venice Commission members: France, the Republic of Moldova and Romania.

55. The Venice Commission is of the view that the use of Article 49.3 is not *per se* contrary to the principles of a democratic state, in particular the principle of the supremacy of the legislature, provided that it is only exercised in defined areas and is supported by effective safeguards. These limitations are necessary to preserve the legislative function of parliament.

56. The Commission recommends:
- introducing the explicit requirement that Article 49.3 may only be activated after a thorough discussion in the National Assembly;
- excluding the possibility to activate it for organic laws;
- limiting the frequency of activation, including through extraordinary sessions; and
- excluding the possibility to combine it with other tools of so-called rationalised parliamentarism such as Article 47 of the Constitution.

57. The Commission is of the view that the control by the Constitutional Council may be a sufficient safeguard only to the extent that it goes beyond strict compliance with the procedure for activating Article 49.3.

58. The Venice Commission notes that, as the French authorities have argued, the limitations and safeguards referred to in the previous paragraphs may exist in practice. The Commission is of the view that informal norms and practices may be crucial to sustaining the democratic functioning of the institutions of the state. However, it stresses that informal norms should complement and support, and not substitute formal safeguards altogether.

59. The Venice Commission remains at the disposal of the French authorities and the Parliamentary Assembly for further assistance in this matter.