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**(VENICE COMMISSION)**

**REPORT**  
**ON CHOOSING THE DATE OF AN ELECTION**

**Adopted by the Council for Democratic Elections**  
**at its 22<sup>nd</sup> meeting**  
**(Venice, 18 October 2007)**  
**and the Venice Commission**  
**at its 72<sup>nd</sup> plenary session**  
**(Venice, 19-20 October 2007)**

**on the basis of comments by**  
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## **Introduction**

1. *Elections are crucial to democracy. Choosing the precise date to hold elections is therefore an issue of the utmost importance. Many questions arise when an appeal to the electorate is made: Is the date of the elections determined by the Constitution or the electoral law or is it in the power of an authority to decide on it? Is it a discretionary power or can the decision only be taken within a strict constitutional framework? Which authority takes the decision? How much time has to elapse between the call for elections and the date of the elections? The answer to all these questions determines the democratic quality of the elections, as they depend on the guarantees that surround these different aspects of the “choosing of the date of an election”.*

2. *This report aims at providing a survey of the regulations in the Constitution and the electoral law of 48 States on the choosing of the date of the election. Both the regulations on the date of the ordinary elections, after the expiration of the normal term of the legislature (part I), as the regulations on the date of the extraordinary elections after a dissolution of parliament (part II), shall be examined. As the decision to dissolve parliament prematurely, before the normal term has expired, implies that elections will have to be organised, this decision is of course intimately connected with the decision to choose the date of these elections. Therefore the constitutional rules on the dissolution of parliament will also be examined.*

3. *This report only addresses the elections for the entire national or federal parliament. The elections for the parliaments of federated entities or the so-called “by-elections” in case of a vacancy of one or more parliamentary seats will not be examined.*

4. *This report was adopted by the Council for Democratic Elections at its 22<sup>nd</sup> meeting (Venice, 18 October 2007) and the Venice Commission at its 72<sup>nd</sup> plenary session (Venice, 19-20 October 2007).*

5. *At this occasion, the Council for Democratic Elections and the Venice Commission took note of the following documents:*

- *The Executive Power – Comparative Table (CDL-AD(2007)037add1);*
- *Choosing the Date of an Election – Comparative Table (CDL-AD(2007)037add2);*
- *Choosing the Date of an Election – Constitutional and Legislative Provisions (CDL-AD(2007)037add3);*
- *Note on the Issue of Dissolution of Parliament (CDL-AD(2007)037add4).*

### **I. Choosing the date of the ordinary elections after the expiration of the normal term of office**

6. After the expiration of the normal term of a legislature, elections will have to be organised. Three types of regulations can be distinguished as to the choosing of the date of these ordinary elections:

- A. in a number of states the date of these elections is precisely determined in the Constitution or in the electoral law;
- B. in a number of states the date of the elections will have to be chosen by an authority, in a fairly strict temporal framework determined in the Constitution or the electoral law;
- C. in other states an authority disposes of a (fairly) large margin of appreciation in choosing the date on which the ordinary elections will have to take place.

#### **1. The date of the ordinary elections precisely determined in the Constitution or the electoral law**

7. In many states, the Constitution or the electoral law determines the date of the ordinary elections at the end of the legislature, either by stipulating the exact day on which the elections

will have to be held, or by prescribing precisely the way this date can be determined. These states clearly pursue the legitimate aim to eliminate every political partiality in choosing the date of the elections. The authorities that have to organise the elections do not dispose of any discretionary power in this field. Such a system exists in Albania<sup>1</sup>, Belgium,<sup>2</sup> Bosnia-Herzegovina,<sup>3</sup> Cyprus,<sup>4</sup> Estonia,<sup>5</sup> Finland,<sup>6</sup> Kyrgyzstan,<sup>7</sup> Latvia,<sup>8</sup> Luxemburg,<sup>9</sup> Monaco,<sup>10</sup> the Netherlands,<sup>11</sup> Russia,<sup>12</sup> Switzerland,<sup>13</sup> Sweden,<sup>14</sup> Turkey<sup>15</sup> and Ukraine.<sup>16</sup>

<sup>1</sup> Albania, The Electoral Code of the Republic of Albania Art. 7 [...] 7. In any case, the elections for the Assembly shall take place on the Sunday nearest to the forty-fifth day after the date of the decree setting the election date.

<sup>2</sup> Belgique, Code Electoral. Art. 105 La réunion ordinaire des collèges électoraux à l'effet de pourvoir au remplacement des représentants et sénateurs sortants a lieu le premier dimanche qui suit l'expiration d'un délai de quatre années prenant cours à la date à laquelle il a été procédé à la désignation des sénateurs cooptés lors de l'élection précédente. Si le dimanche visé à l'alinéa précédent coïncide avec un jour férié légal, l'élection est remise au dimanche suivant.

<sup>3</sup> Bosnia and Herzegovina Election Law. Art. 1.14 The elections at all levels of authority in Bosnia and Herzegovina shall be held on the first Sunday in October unless that date conflicts with observance of a religious holiday of one of the constituent peoples of Bosnia and Herzegovina. [...]

<sup>4</sup> Cyprus, Constitution of Cyprus. Art. 66.1. A general election for the House of Representatives shall be held on the second Sunday of the month immediately preceding the month in which the term of office of the outgoing House expires [...] 3. If an election under paragraph 1 or 2 of this Article cannot take place on the date fixed by or under this Constitution owing to extraordinary and unforeseen circumstances such as earthquake, floods, general epidemic and the like, then such election shall take place on the corresponding day of the week next following.

<sup>5</sup> Estonia, Constitution Article 60 (3) and Riigikogu Election Act. § 2. Time of regular elections (1) Regular Riigikogu elections shall be held on the first Sunday in March in the fourth year following the year of the preceding Riigikogu elections

<sup>6</sup> Finland, Election Act Part II, Chapter 9, Section 107, first indent: The date of the election in Parliamentary elections is the third Sunday in March.

<sup>7</sup> Kyrgyzstan, The Code of the Kyrgyz Republic on Elections in the Kyrgyz Republic. Article 69 (3): The day of elections shall be the first Sunday prior to the expiration of the constitutional term for which the previous Legislative Assembly and the Assembly of People's Representatives to the Zhogorku Kenesh of the Kyrgyz Republic were elected.

<sup>8</sup> Latvia, Constitution, Art. 11. Elections for the Saeima (Parliament) shall be held on the first Saturday in October.

<sup>9</sup> Luxemburg, Loi électorale. Art.134 "Les élections pour pourvoir au remplacement des députés sortants ont lieu, de plein droit, de cinq en cinq ans, le premier dimanche du mois de juin, conformément aux articles 121 et suivants de la présente loi. Si cette date coïncide avec le dimanche de Pentecôte, les élections ont lieu le dernier dimanche du mois de mai."

<sup>10</sup> Monaco, Loi n° 839 du 23 février 1968 sur les élections nationales et communales, article 34-1. - Les élections au conseil national ont lieu le dimanche correspondant ou succédant au onzième jour précédant l'expiration du mandat du conseil en exercice.

<sup>11</sup> Netherlands, Elections Act, Section C 1. Members of the Lower House shall be elected for a term of four years. Section J 1. Voting shall take place on the forty-third day after the nomination day. Section Q 2 (1). The members of the Upper House shall be elected for a term of four years. Section T 1. Voting shall take place on the thirty-fourth day after the nomination day. The nomination day for the Lower House is in principle the Tuesday between 18 and 24 January, Section F1/within forty days of the date of the royal decree of dissolution for extraordinary ones, Section F2. For the Upper House, it is on the Tuesday between 19 and 25 April, Section Q4.

<sup>12</sup> Russia, Federal Law on election of the deputies of the State Duma, Art. 6 (2). Under the Constitution of the Russian Federation, Art. 84, the election of deputies of the State Duma of a new convocation shall be called by the President of the Russian Federation. The decision to call the election shall be taken not earlier than 110 days and no later than 90 days before the voting day. Voting day at the election of deputies shall be the first Sunday of the month in which the constitutional term of the State Duma of the previous convocation expires. The day of the election of the State Duma shall be the day of voting as a result of which it was elected as a competent body. Art. 6 (3). If the President of the Russian Federation does not call the election of deputies of the State Duma within the period indicated in Clause 2 of this article, the election of deputies shall be called and conducted by the Central Election Commission of the Russian Federation on the first Sunday of the month in which the constitutional term of the State Duma of the previous convocation expires. Art. 6 (7). If the Sunday on which the election is to be held coincides with a day preceding a holiday, or a holiday, or a day following a holiday or if this Sunday has been declared a working day in the established procedure, the election shall be held on the next Sunday.

<sup>13</sup> Suisse, Loi fédérale sur les droits politiques du 17 décembre 1976. Art. 19 Date de l'élection. 1. Les élections ordinaires pour le renouvellement intégral du Conseil national ont lieu l'avant-dernier dimanche du mois d'octobre.

<sup>14</sup> Sweden, Constitution, Chapter 3, Art. 3. Ordinary elections for the Parliament shall be held every fourth year. Parliamentary elections are held every four years on the third Sunday of September.

<sup>15</sup> Turkey, Law no. 2839 on Parliamentary elections. Art. 6 Elections for the Grand National Assembly of Turkey shall be held once every five years. The beginning date of the elections shall be July 3rd of the last meeting year of each elections period and votes shall be cast on the second Sunday of October. (...)

2. The power to choose the date of the ordinary elections, within a strict constitutional or legal framework

8. In many states the Constitution or the electoral law does not precisely determine the date of the ordinary elections, but they contain a fairly strict temporal framework in which the decision on the date of the elections will have to be taken. This framework holds three elements: a. it determines the authority that will have to decide on the date of the elections b. it determines the period in which the decision has to be taken; c. it determines the period in which the elections will have to be held.

9. a) Firstly the Constitution or the electoral law determine the authority that will have the power to choose the date of the ordinary elections. Exceptionally, this power is assigned to the legislature.<sup>17</sup> It is mostly up to the Head of State to fix the date of the elections: the King under the responsibility of the Government<sup>18</sup> or the President. If the president is directly elected by the people he most often chooses autonomously the date of the elections.<sup>19</sup> In France, the Council of Ministers appoints the date of the election, which must take place in the sixty days preceding the expiry of the powers of the National Assembly.<sup>20</sup> If the president is not directly elected but appointed by parliament, he decides either autonomously,<sup>21</sup> or under the responsibility of the Government.<sup>22</sup> In a number of States it is explicitly stipulated that if the Head of state neglects to determine the date in due time, another authority will organise the elections.<sup>23</sup>

10. b) The power to choose the date of the elections is, in these states, not a discretionary power, as the Constitution or the electoral law gives compulsory indications as to the period in which the elections will have to be held. These terms vary from country to country.

- Albania: sixty to thirty days before the end of the mandate (Art. 65.2 Constitution)
- Andorra: between the thirtieth and fortieth days following the end of the term/the dissolution of the Counsel General (Art. 51 (2) Constitution)
- Armenia: "no sooner than fifty and no later than forty days prior to the expiration of the term of the National Assembly" (Art. 68 par. 1 Constitution)
- Belarus: no later than thirty days prior to the expiry of the powers of the current Parliament (Art. 91 Constitution)
- Bulgaria: within two months from the expiry of the mandate of the preceding one (Art. 64.3 Constitution)

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<sup>16</sup> Ukraine, Constitution, Art. 77 (1) Regular elections to the Verkhovna Rada of Ukraine take place on the last Sunday of the last month of the fifth year of authority of the Verkhovna Rada of Ukraine.

<sup>17</sup> Moldova, Art. 76 (2) Elections Code. "The day of elections to parliament shall be scheduled by a resolution of Parliament no later than sixty days before election day." Slovakia, Section 25 (2) Act on elections to the Slovak National Council: "The elections shall be declared by the Chairperson of the National Council of the Slovak Republic (...)" the former Republic Yugoslav Republic of Macedonia", Article 12, paragraph 1 of the Electoral Code: "the President of the Parliament".

<sup>18</sup> Norway, Representation of the People Act, par. 9-2. See also Art. 45 Constitution of Andorra: "the coprinceps with the countersignature of the Cap de Govern."

<sup>19</sup> This is the case in Armenia, Art. 68 par. 3 Constitution; Belarus, Art. 84 (2) Constitution; Bulgaria, Art. 64 and 98.1 Constitution; Croatia, Art. 97 Constitution; Georgia, Art. 50 (3) Constitution; Lithuania, Art. 84 (20) and 85 Constitution; Montenegro, Art. 88 (3) Constitution; Poland, Art. 98 (2) and 144 (3), 1) Constitution; Portugal, Art. 19, Parliament Electoral Law; Serbia, Art. 25 of the Law on the Election of Members of Parliament; Slovenia, Art. 81 (3) Constitution; the only exception seems to be Romania, Art. 6 Law N 68/1992 on The Election to the Chamber of Deputies and the Senate: "The date of elections shall be settled, and publicly announced by the Government..."

<sup>20</sup> Art. L.O. 121 and L.O. 122 of the Electoral Code.

<sup>21</sup> Albania, Art. 7.3 Electoral Code; Czech Republic, Art. 14 (1) Act on Elections to the Parliament of the Czech Republic; Germany, Art. 16 Federal Electoral Law; Hungary, Art. 30A 1. d) Constitution.

<sup>22</sup> Greece, Art. 53.1 Constitution (presidential decree countersigned by the Cabinet); Italy, Art. 87 and 89 Constitution.

<sup>23</sup> Lithuania, Law on the Amendment of the Law on Elections to the Seimas, Art. 6 (2). If, with four months remaining before the expiration of the powers of the Seima's members, the President of the Republic has not yet announced the date of regular elections to the Seimas, the Central Electoral Commission shall hold regular elections to the Seimas on the last Sunday from which at least a month remains before the expiration of the powers of the Seima's members.

- Czech Republic: during the period commencing thirty days prior to the expiration of each electoral term and ending on the day of its expiration (Art. 17 (1) Constitution)
- Croatia: "Elections for members of the Croatian Parliament shall be held not later than 60 days after the expiry of the mandate or dissolution of the Croatian Parliament" (Art. 73 (1) Constitution)
- France: « dans les soixante jours qui précèdent l'expiration des pouvoirs de l'Assemblée nationale » (Article LO 122, Code électoral)
- Georgia: at least fifteen days before the expiration of its term (Article 50 (3) Constitution)
- Germany: forty-five months at the earliest, and forty-seven months at the latest after the beginning of the legislative term (Art. 39 (1) Constitution)
- Greece: within thirty days (Art. 53 (1) Constitution)
- Hungary: within a period of three months following the declaration of the Parliament's dissolution or the Parliament having been dissolved (Art. 28 (6) Constitution)
- Italy: within seventy days of the end of the term of previous Houses (Art. 61 Constitution)
- Liechtenstein: in February or March of the calendar year in which the fourth year ends (Art. 47 Constitution)
- Lithuania: no earlier than two months, and no later than 1 month, prior to the expiration of the powers of the Seimas' members (Art. 57 Constitution)
- Moldova: not later than three months from the end of the previous mandate (Art. 61 Constitution)
- Montenegro: no less than fifteen days prior to the termination of the term of office of councillors and representatives whose term of office is still valid (Art. 14 Law on election of Councillors and Representatives)
- Norway: in the month of September in the final year of the electoral term of each Storting. (Chapter 9 Representation of the People Act)
- Poland: within thirty days prior to the expiry of the 4 years term (Art. 9 (1) Parliamentary Law election)
- Portugal: between 14 September and 14 October of the year corresponding to the end of legislature. (Art. 19 (2) Parliament Electoral Law)
- Romania: within three months at the most of the expiry of the term of office (Article 63 (2) Constitution)
- Serbia: not later than thirty days prior to the termination of the term of office of Members of Parliament whose term of office is expiring (Art. 26 of the Law on the Election of members of Parliament)
- Slovenia: no sooner than two months and no later than fifteen days before the expiry of four years from the date of the first session of the previous National Assembly (Art. 81 (3) Constitution, Art. 13 National Assembly Elections Act)
- "the former Yugoslav Republic of Macedonia": in the last ninety days of the term of the previous composition of the Parliament (Article 15 paragraph 1, Electoral Code).

11. c) A last element of the framework is that in some states the Constitution or the electoral law gives compulsory indications as to the period in which the decision on the date of the elections has to be made. The legitimate aim is to oblige the Head of State to make and announce his decision in due course, so that the political parties are informed in due time and can prepare their participation in the elections. Again these indications vary from state to state:

- Albania: no later than seventy-five days before the expiry of the mandate of the Assembly (Art. 7 (3) Electoral Code)
- Armenia: no later than one hundred days prior to the day of voting (Art. 117 (1) Electoral Code).
- Belarus: no later than four months prior to the expiry of the powers of the current Parliament (Art. 91 Constitution)
- Bulgaria: no later than sixty days prior to the election day (Art. 5 (1) Act on Election of Members of Parliament)

- France, « Les élections ont lieu le septième dimanche qui suit la publication du décret convoquant les électeurs. » Article L173, Code Electoral
- Georgia, no later than sixty days prior to the elections (Article 50 (3) Constitution and Art. 90 (2) Organic law of Georgia unified election code of Georgia)
- Greece: elections within thirty days (of the proclamation of elections) (Art. 53 (1) Constitution)
- Moldova: no later than sixty days before election day. (Art. 76 (2) Elections Code)
- Montenegro: no less than sixty days and no more than 100 days shall pass between the day of calling for the election and the polling day. (Art. 14 (2) Law on election of Councillors and Representatives)
- Poland: no later than ninety days prior to expiry of four years from the beginning of the term of office of the Sejm, (Art. 9 (1) Parliamentary Law election)
- Portugal: at least sixty days in advance (Art. 19 (1) Parliament Electoral Law)
- Romania: at least sixty days before the election day (Art. 6 (1) Law N 68/1992 on the Election to the Chamber of Deputies and the Senate)
- Serbia: No fewer than forty-five or more than ninety days shall pass from the date of calling for the election and the polling day (Art. 26 of the Law on the Election of members of Parliament)
- "the former Yugoslav Republic of Macedonia": from the day announcing the elections, until the day of holding the election, a period of no more than ninety days, nor less than seventy days may pass. (Article 12, paragraph 4, Electoral Code of the Republic of Macedonia).

### 3. Discretionary power to choose the date of the ordinary elections

12. Ultimately in a number of states the Constitution and/or the electoral law only provide the maximum term of the legislature and leave it to an authority – usually the Head of State, exceptionally the Speaker of Parliament<sup>24</sup> - to fix the date of the elections before the expiration of that term. This is the case in Austria,<sup>25</sup> Iceland,<sup>26</sup> Denmark<sup>27</sup> and the United Kingdom, and also in Croatia, Ireland and Slovakia. In these three states it is stipulated that a certain period has to elapse between the decision on the date of the election and the election itself. (Croatia: thirty days;<sup>28</sup> Ireland: minimum seventeen and maximum twenty five days<sup>29</sup> and Slovakia: hundred and ten days<sup>30</sup>).

13. In all these states the power to choose the date of the elections seems to be unfettered. In the United Kingdom and Ireland, this power is connected, as shall be shown hereafter, with the discretionary power to dissolve Parliament before the end of its normal term of five years.

## II. Choosing the date of extra-ordinary elections after the dissolution of parliament

### 1. The pre-term dissolution of the Parliament

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<sup>24</sup> Slovakia: Section 25. Act on elections to the Slovak National Council.

<sup>25</sup> Art. 1 par. 1 (2) Federal Law on the election of the National Council, The election shall be announced by the federal government in the Federal Law Gazette by way of regulation. This regulation shall contain the day of election, which must be set by the federal government on a Sunday or other public holiday in accordance with the main committee of the National Council.

<sup>26</sup> Art. 45 Constitution: Regular elections to Lathing (Parliament) shall take place not later than the end of the electoral term.

<sup>27</sup> The Prime Minister shall cause a general election to be held before the expiration of the period for which the Parliament has been elected (Art. 32 (3) Constitution).

<sup>28</sup> Art. 5 Act on Election of representatives to the Croatian Parliament: "Since the day of the calling, until the days of elections for representatives minimum thirty days must pass".

<sup>29</sup> Art. 96 (1) Electoral Act, 1992. A poll at a Dáil election shall be taken on such day as shall be appointed by the Minister for the Environment, Heritage and Local Government by order, being a day which (disregarding any excluded day) is not earlier than the seventeenth day or later than the twenty-fifth day next following the day on which the writ or writs for the election is or are issued.

<sup>30</sup> Section 25 Act on elections to the Slovak National Council, (2) The elections shall be declared by the Chairperson of the National Council of the Slovak Republic; he or she shall declare the elections and announce the polling day not later than one hundred and ten days before polling day.

14. In most of the States parliament can be dissolved before the expiration of the normal term of the legislature. In only a few states, pre-term dissolution and extra-ordinary elections are not at all possible.<sup>31</sup> In many states the Constitution explicitly forbids dissolution of parliament during a state of war (state of martial law) or a state of emergency.<sup>32</sup>

15. The dissolution of a directly elected Parliament before the end of its normal term is not contrary to democracy. In its Resolution 1549 the Parliamentary Assembly noted that:  
*“both regular and pre-term elections constitute a legitimate democratic instrument for the people to choose and control the authorities that act in their name. Early elections are a normal practice in all democratic countries of the Council of Europe and as such could be acceptable as a key building block of the political compromise. However, the Assembly underlines that for any elections to be considered democratic, they should be conducted according to a legitimate procedure that allows fair campaigning and free choice for voters.”*<sup>33</sup>

16. Hereafter we shall examine which framework the Constitutions and the electoral law of the States of Europe contain for the dissolution of Parliament and the choosing of the date of pre-term elections. We distinguish three types of dissolutions of parliament. The dissolution can either be automatic (A), it can be the result of a decision taken by Parliament itself (B), or it can be the result of a decision taken by the Head of State or the Government (C).

A. Dissolution “de jure”, in the circumstances described in the Constitution

17. In some States the Constitution provides for an “automatic” pre-term dissolution of the Parliament. Sometimes the *de jure* dissolution is an element of the procedure to amend the Constitution. The aim of the dissolution is here to permit the electorate to be indirectly involved in the amendment of the Constitution, by electing the representatives in Parliament that will have the power to amend. This type of dissolution exists in Belgium,<sup>34</sup> Iceland,<sup>35</sup> Luxemburg,<sup>36</sup> Montenegro,<sup>37</sup> and the Netherlands<sup>38</sup> and, as far as total revision of the Constitution is concerned, also in Spain<sup>39</sup> and in Switzerland.<sup>40</sup>

18. Furthermore an automatic dissolution is sometimes related to the negative results of a referendum<sup>41</sup> or to the failure of the Parliament to elect the President.<sup>42</sup> These issues will be discussed later on.

B. Dissolution by a decision of parliament itself

<sup>31</sup> This is the case in Norway, San Marino and Switzerland (except in the case of the total revision of the Constitution). In Cyprus and “the former Yugoslav Republic of Macedonia” only a self-dissolution by Parliament is possible.

<sup>32</sup> Art. 71.2. Constitution of Andorra; Art. 63.3. Constitution of Armenia; Art. 94 par. 4 Constitution of Belarus; Art. 51 (1) Constitution of Georgia; Art. 155 h (3) Constitution of Germany; Art. 63 (4). Constitution of Kyrgyzstan; Art. 85 (3) Constitution of Moldova; Art. 84 Constitution of Montenegro; Art. 172 Constitution of Portugal; Art. 89 (3) Constitution of Romania; Art. 109 (5) Constitution of Russia; Art. 109 (4) Constitution of Serbia; Art. 102 (1) Constitution of Slovakia.

<sup>33</sup> Resolution 1549 (2007) on Functioning of democratic institutions in Ukraine.

<sup>34</sup> Art. 195 Constitution of Belgium.

<sup>35</sup> Art. 79 Constitution of Iceland.

<sup>36</sup> Art. 114 (2) Constitution of Luxemburg.

<sup>37</sup> Art. 119 Constitution of Montenegro.

<sup>38</sup> Art. 137 Constitution of the Netherlands.

<sup>39</sup> Art. 168 Constitution of Spain.

<sup>40</sup> Art. 193 Constitution of Switzerland.

<sup>41</sup> See Art. 60 (6) of the Constitution of Austria (negative referendum on the deposition of the Federal President); Art. 105 (4) of the Constitution of Estonia (negative referendum on a piece of legislation at the request of Parliament); Art. 11 Constitution of Iceland and Art. 102 (1) Constitution of Slovakia (negative referendum on the recall of the President of the Republic).

<sup>42</sup> See Art. 87 (7) and (8) Constitution of Albania and Art. 32 (4) Constitution of Greece.



19. In a number of states Parliament has the power to dissolve itself by a decision passed by a simple majority – Austria,<sup>43</sup> Croatia,<sup>44</sup> Hungary,<sup>45</sup> Turkey,<sup>46</sup> “the Former Yugoslav Republic of Macedonia”<sup>47</sup> - a qualified majority - Bosnia-Herzegovina,<sup>48</sup> Cyprus<sup>49</sup> - or a majority of two thirds – Kyrgyzstan,<sup>50</sup> Poland<sup>51</sup> - or three-fifths – Lithuania<sup>52</sup> - of its (elected) members. Sometimes the decision to dissolve is not taken by Parliament itself, but needs the approval of the majority of Parliament.<sup>53</sup> This type of dissolution can be opted for when Parliament is of the opinion that political developments make it desirable to hold early elections.

C. Dissolution by a decision of the head of the state/government

20. In most of the states the Head of State – the King or the President – is a stabilising factor in the governmental system. In relation to the organs of sovereignty and their interaction, the Head of the State disposes of a number of instruments which are necessary for maintaining a certain balance between the powers. The dissolution of Parliament is one of these instruments. The Constitution of the States submits the decision to dissolve Parliament to formal and sometimes also to substantial conditions.

a. Formal conditions

21. Many Constitutions determine formal conditions that have to be fulfilled in order to be able to dissolve Parliament. In the first place the Constitution determines the authority that has the power to dissolve Parliament. In the Comparative Table prepared by the secretariat and attached to this report (CDL-EL(2007)027), the different systems of Government are elucidated. In pursuance to the system of Government, it will be the Head of State autonomously or on the initiative and under the responsibility of the prime minister or the Cabinet, that has the power to dissolve Parliament.

22. In Republics with a directly elected President, the decision to dissolve Parliament is mostly taken by the President, possibly after consultation with the Government and or the Parliament.<sup>54</sup> To this principle there are a few exceptions. The directly elected President of

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<sup>43</sup> Art. 29 (2) of the Constitution.

<sup>44</sup> Art. 77 of the Constitution.

<sup>45</sup> Art. 28 (2) of the Constitution.

<sup>46</sup> Art. 77 of the Constitution.

<sup>47</sup> Art. 63 (5) of the Constitution.

<sup>48</sup> Art. IV, par. 3 of the Constitution: “The House of Peoples may be dissolved by the Presidency or by the House itself, provided that the House's decision to dissolve is approved by a majority that includes the majority of Delegates from at least two of the Bosnian, Croat, or Serb peoples.”

<sup>49</sup> Article 67 (1) of Constitution: The House of Representatives may dissolve itself only by its own decision carried by an absolute majority including at least one third of the Representatives elected by the Turkish Community.

<sup>50</sup> Art. 63 (1) of the Constitution: The Parliament may be dissolved early by a decision adopted by a majority vote of no less than two-thirds of the total number of deputies.

<sup>51</sup> Article 98 (3) of the Constitution: “The Sejm may shorten its term of office by a resolution passed by a majority of at least two-thirds of the votes of the statutory number of Deputies.”

<sup>52</sup> Art. 58 (1) of the Constitution: “Pre-term elections to the Seima may be held on the decision of the Seima's adopted by three-fifths majority vote of all the Seimas members. The day of elections of the new Seima shall be specified in the resolution of the Seima...”

<sup>53</sup> See Art. 46 of the Belgian Constitution: “En outre le Roi peut, en cas de démission du Gouvernement fédéral, dissoudre la Chambre des représentants après avoir reçu son assentiment exprimé à la majorité absolue de ses membres.”

<sup>54</sup> Directly elected presidents. Armenia (Art. 55 (3) Constitution: “after consultations with the President of the National Assembly and the Prime Minister”); Belarus (Art. 84 Constitution); Bosnia-Herzegovina (Art. IV (g) Constitution); Bulgaria (Art. 102 Constitution “no countersigning is required”); France (Art. 12 (1) Constitution: “after consultation with the Prime Minister and the presidents of the assemblies”); Georgia (Art. 51 (1), 73 (1), 80 (5), 81 (1) and (4) Constitution); Iceland (Art. 19 Constitution); Kyrgyzstan (Art. 46 (6), 51 (2), 63 (1), 71 (4), 72 Constitution) Lithuania (Art. 58 and 85 Constitution); Montenegro (Art. 84 Constitution; dissolution by the President or by the Government); Poland (Art. 98 and 144 Constitution: 2) Official Acts of the President shall require, for their validity, the signature of the Prime Minister who, by such signature, accepts responsibility therefore to the Sejm. (3) The provisions of par. 2 above shall not relate to : (...) 3) shortening of the term of office of the Sejm in the instances specified in the

Croatia may only dissolve Parliament, at the proposal of the Government and with the countersignature of the Prime Minister, after consultations with the representatives of the clubs of parliamentary parties. In Finland the President may dissolve Parliament in response to a reasoned proposal of the Prime Minister<sup>55</sup>. In Ireland the directly elected President can only dissolve Parliament on the advice of the Prime Minister (Taoiseach). He is however free to refuse a request for dissolution if the Prime Minister has lost confidence of the majority of Parliament.<sup>56</sup> In Serbia the directly elected President may dissolve the National Assembly, upon the elaborated proposal of the Government.<sup>57</sup> In Lithuania the power of the directly elected president to dissolve parliament is counterbalanced by the fact that after dissolution the newly elected parliament may declare new elections for the office of President of the Republic.<sup>58</sup>

23. In parliamentary monarchies, the King or the Queen takes the decision on the dissolution of Parliament with the countersignature of the prime minister who bears the responsibility for it.<sup>59</sup> Only Monaco and Liechtenstein seem to form an exception to this principle. In Monaco the Prince can dissolve Parliament, after a compulsory consultation of the Crown Council, without a deliberation in the Government and without a presentation by a Minister of State.<sup>60</sup> In Liechtenstein the Reigning Prince has the right to dissolve Parliament “on significant grounds to be communicated each time to the Assembly.”<sup>61</sup> In Sweden, on the contrary, not the King, but the Government may order an extra election.<sup>62</sup>

24. In parliamentary republics the decision to dissolve Parliament is taken either by the President, possibly after consultations,<sup>63</sup> or by the President, on the initiative and/or with the countersignature of the Prime Minister. In Austria both of last-mentioned conditions must be fulfilled<sup>64</sup>. In Latvia the president is only entitled to propose the dissolution of parliament.

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Constitution.); Portugal (Art. 136 and 143 Constitution; no countersignature required); Romania (Art. 89 Constitution: “After Consultation with the presidents of both the Chambers and the leaders of the parliamentary groups ...”); Russia (Art. 109, 111 and 117 Constitution); Serbia (Art. 109 Constitution); Slovakia (Art. 102 (1) e, Constitution); Slovenia (Art. 81 and 111 Constitution); Ukraine (Art. 90 Constitution: (“... following relevant consultations with the Chairperson and Deputy Chairpersons of the Verkhovna Rada of Ukraine and with Chairpersons of Verkhovna Rada parliamentary factions.”)

<sup>55</sup> Section 26 (1) of the Constitution.

<sup>56</sup> Art. 13 Constitution of Ireland.

<sup>57</sup> Art. 109 Constitution of Serbia.

<sup>58</sup> Art. 87 Constitution of Lithuania.

<sup>59</sup> Andorra (Art. 45 and 71 (1) Constitution); Belgium (Art. 46 and 88 Constitution); Denmark (Section 13 and 32 Constitution); Luxemburg (Art. 74 and 78 Constitution); the Netherlands (Art. 64 (1) and 42 (2) Constitution); Spain (Art. 56, 62, 64, 99 and 115 Constitution); United Kingdom.

<sup>60</sup> Art. 46 and 74 Constitution of Monaco.

<sup>61</sup> Art. 48 (1) Constitution of Liechtenstein.

<sup>62</sup> Chapter 3 Art. 4 Constitution of Sweden.

<sup>63</sup> Parliamentary Republics: Albania, (Art. 87.1, 104.2, 105.2 Constitution); Czech Republic (Art. 35 and 62 Constitution); Estonia (Art. 89, 105 and 119 Constitution); Germany (Art. 63 and 68 Constitution and Art. 58 Constitution: “Orders and directions of the President require, for their validity, the countersignature of the Chancellor or the appropriate Minister. This does not apply to (...) the dissolution of the House of Representatives under Art. 63 and a request made under Article 69 (3)”; Greece (Art. 35 (2) Constitution: “By exception, the counter-signature shall not be required only in the following cases: c) The dissolution of Parliament in accordance to Articles 32 (4) and 41 (1), if the Prime Minister does not countersign, as well as the dissolution in accordance to Article 53 (1), if the Cabinet does not countersign. Hungary, Art. 28 (3) and 30A (2) Constitution; Latvia, Art. 48 and 53 Constitution: “(...) All orders of the President shall be jointly signed by the Prime Minister or by the appropriate Minister, who shall thereby assume full responsibility for such orders except in the cases specified in Articles forty-eight (dissolution) and fifty-six.”) Moldova (Art. 85 (1)) Constitution: “on consultation with parliamentary groups”) Portugal Art. 91 (e) Constitution: “(...) after first consulting both the parties with seats in the Assembly and the Council of State (...), Art. 140 (no counter-signature); Turkey: Art. 77 and 116 Constitution: “(...) in consultation with the President of the Turkish Grand National Assembly.”

<sup>64</sup> Parliamentary Republics: Austria (Art. 29 and 67 Constitution: “based on recommendation”...“require the countersignature”); Estonia (Art. 97 Constitution: “in case of no confidence, (...) on proposal by the Government”) Germany (According to Art. 58 of the Constitution the dissolution under Art. 68 of the Constitution will have to be countersigned by the Chancellor); Italy (Art. 88 and 89 Constitution (“countersigned by the minister”); Malta (Art. 76 (5) Constitution provides that if the prime minister recommends a dissolution and the president considers that

Following this proposal, a national referendum shall be held. If in the referendum more than half of the votes are cast in favour of dissolution, the *Saeima* shall be considered dissolved, new elections called, and such elections held no later than two months after the date of the dissolution of the *Saeima*. If in the referendum more than half of the votes are cast against the dissolution of the *Saeima*, then the President shall be deemed to be removed from office, and the *Saeima* shall elect a new President to serve for the remaining term of office of the President so removed.<sup>65</sup>

25. As the dissolution intervenes in the delicate balance between the powers the Constitution sometimes prescribes the circumstances in which no dissolution is possible. Clearly in order to protect the rights of the Parliament, in some states the Constitution explicitly forbids dissolution during the first months after the elections<sup>66</sup> or provides that dissolution is only possible once in the course of a year<sup>67</sup> and not twice for the same reason.<sup>68</sup> In order to prevent abuse of power, the dissolution of Parliament is in some States forbidden when the position of the President and/or the Government is contested or when the end of their term of office is near. Therefore a number of Constitutions prohibit the dissolution of parliament during the last months of the term of office of the president,<sup>69</sup> if impeachment proceedings have been instituted against the president,<sup>70</sup> if the Prime Minister has not yet presented himself to Parliament,<sup>71</sup> or if a motion of censure is presented against the government.<sup>72</sup> These rules aim to avoid that Parliament is dissolved by an authority with a weak democratic legitimacy.

b. Substantial conditions

26. In many states the Constitution determines more or less precisely the conditions that have to be fulfilled in order to dissolve parliament. In these Constitutions the dissolution is considered to be an instrument to solve a political crisis that relates to

- a) the election of the president
- b) the relation between the government and the parliament
- c) the functioning of parliament and/or

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the government of Malta can be carried on without a dissolution and that a dissolution would not be in the best interests of Malta, the president may refuse to dissolve parliament.)

<sup>65</sup> Art. 48 and 50 Constitution of Latvia.

<sup>66</sup> Art. 71 (3) Constitution of Andorra « No dissolution shall be carried out before one year has elapsed after the most recent elections. » Art. 63 Constitution of Armenia («one year period following its election »); Art. 94 par. 5 Constitution of Belarus; Art. 12 (3) Constitution of France («Il ne peut être procédé à une nouvelle dissolution dans l'année qui suit les élections»); Art. 51 (1) Constitution of Georgia («within six months from the holding of the elections of the Parliament»); Art. 58 (2) Constitution of Lithuania («six months»); Art. 172 Constitution of Portugal («six months»); Art. 109 (3) Constitution of Russia («within one year after its election»); Art. 4 (2) Constitution of Sweden (until three months have elapsed from the first meeting of the newly-elected Parliament); Art. 90 in fine Constitution of Ukraine: «not during the last six months of its term...»

<sup>67</sup> Art. 41 (4) Constitution of Greece; Art. 85 (3) Constitution of Moldova; Art. 89 (2) Constitution of Romania; Art. 115 (3) Constitution of Spain; in France, no further dissolution shall take place within a year following an early election (Art. 12 (4) Constitution).

<sup>68</sup> Art. 29 (1) Constitution of Austria; Art. 41 (2) Constitution of Greece.

<sup>69</sup> Art. 55 (3) Constitution of Armenia, «not during the last six months of his or her term of office»; Art. 94 (4) Constitution of Belarus; Art. 99 (7) Constitution of Bulgaria, «not during the last three months of his term of office.»; Art. 35 (2) Constitution of the Czech Republic; Art. 51 (1) Constitution of Georgia. («six months»); Art. 88 Constitution of Italy: «(...) in the last six months of his term of office, he only has this power if the Chambers themselves are also in the last six months of their term.»; Art. 63 (5) Constitution of Kyrgyzstan («six months»); Art. 58 (2) Constitution of Lithuania («six months»); Art. 78 (5) Constitution of Moldova («six months») Art. 172 Constitution of Portugal («six months»); Art. 89 (3) Constitution of Romania; Art. 109 (5) Constitution of Russia («within six months of the expiry of the term of office of the president of the Russian Federation»; Art. 102 (1) Constitution of Slovakia («six months»); Art. 90 *in fine* Constitution of Ukraine («six months»).

<sup>70</sup> Art. 63 (3) Constitution of Armenia; Art. 94 (4) Constitution of Belarus; Art. 103 Constitution of Croatia; Art. 63 (5) Constitution of Kyrgyzstan; Art. 109 (4) Constitution of Russia.

<sup>71</sup> Art. 32 (2) Constitution of Denmark.

<sup>72</sup> Art. 71 (2) Constitution of Andorra: «No dissolution shall be carried out after the presentation of a motion of censure ...» Art. 84 Constitution of Montenegro; Art. 115 (2) Constitution of Spain; Art. 109, par. 2 Constitution of Serbia; Art. 4 (2) Constitution of Sweden «while ministers retain their posts, after having all been formally discharged, pending the assumption of office by a new government.»

## d) the relation between parliament and the people

b.1) Dissolution as an instrument to solve a political crisis relating to the election of the president

27. In parliamentary republics, such as Albania<sup>73</sup> and Greece,<sup>74</sup> with a president that is elected by Parliament, the Parliament can be dissolved if, after a certain number of votes, no candidate obtains the required majority. In these States the election of the President is deemed to be one of the major functions the Parliament has to fulfill. If it fails to do so, the electorate will have to choose another Parliament.

b.2) Dissolution as an instrument to solve a political crisis relating to the relations between government and parliament

28. In states with a parliamentary system - republics (Albania,<sup>75</sup> Czech Republic,<sup>76</sup> Estonia,<sup>77</sup> Germany,<sup>78</sup> Greece,<sup>79</sup> Hungary,<sup>80</sup> Malta,<sup>81</sup> Moldova<sup>82</sup> and Turkey<sup>83</sup>) as well as monarchies (Belgium,<sup>84</sup> Spain<sup>85</sup> and Sweden<sup>86</sup>) - the decision to dissolve parliament is an essential element of a so-called "rationalised" parliamentary system. Being a stabilising factor in the exercise of powers, the Head of State can dissolve parliament in order to solve the political crisis that rises when no government obtains a majority in parliament, when a motion of no-confidence has been adopted or when the budget has been rejected. In semi-presidential states – such as Armenia,<sup>87</sup> Belarus,<sup>88</sup> Bulgaria,<sup>89</sup> Croatia,<sup>90</sup> Georgia,<sup>91</sup> Kyrgyzstan,<sup>92</sup> Lithuania,<sup>93</sup> Montenegro,<sup>94</sup> Poland,<sup>95</sup> Romania,<sup>96</sup> Russia,<sup>97</sup> Serbia,<sup>98</sup> Slovakia,<sup>99</sup> Slovenia,<sup>100</sup> Ukraine<sup>101</sup> - with a government that both has to be appointed/proposed by the elected president, and has to be supported by a majority in parliament, the dissolution of parliament can be a means to solve a conflict on the formation of the government, the governmental program and/or the governmental policies (vote of no-confidence, rejection of the budget).

<sup>73</sup> Art. 87, 7 and 8 Constitution Albania; Art. 7 (4) of the Electoral Code of the Republic of Albania.

<sup>74</sup> Art. 32 (4) Constitution Greece.

<sup>75</sup> Art.104 and 105 Constitution of Albania.

<sup>76</sup> Art. 35 Constitution of the Czech Republic.

<sup>77</sup> Art. 89, 97 and 119 Constitution of Estonia.

<sup>78</sup> Art. 63 (4) and 68 Constitution of Germany.

<sup>79</sup> Art. 37 *in fine* and 41 (1) Constitution of Greece.

<sup>80</sup> Art. 28 (3) Constitution of Hungary.

<sup>81</sup> Art. 76 (5) Constitution of Malta.

<sup>82</sup> Art. 85 Constitution of Moldova.

<sup>83</sup> Art. 116 Constitution of Turkey.

<sup>84</sup> Art. 46 Constitution of Belgium.

<sup>85</sup> Art. 99 (5) Constitution of Spain.

<sup>86</sup> Chapter 6, Art. 3 Constitution of Sweden.

<sup>87</sup> Art. 74 (1) Constitution of Armenia.

<sup>88</sup> Art. 94 (1) Constitution of Belarus.

<sup>89</sup> Art. 99 (5) Constitution of Bulgaria.

<sup>90</sup> Art. 77 (2) and 103 (1) Constitution of Croatia.

<sup>91</sup> Art. 73 (1), 80 (5), 81 (1) and 4 Constitution of Georgia.

<sup>92</sup> Art. 63 (2), 71 (4) and 72 (6) and (7) Constitution of Kyrgyzstan.

<sup>93</sup> Art. 58 (2) Constitution of Lithuania. The president's power is undermined by the fact that after dissolution a newly elected parliament may declare new elections for the office of president of the republic (Art. 87 (1)).

<sup>94</sup> Art. 84 Constitution of Montenegro.

<sup>95</sup> Art. 155 (2) and 225 Constitution of Poland.

<sup>96</sup> Art. 89 (1) Constitution of Romania.

<sup>97</sup> Art. 109, 111, and 117 Constitution of Russia.

<sup>98</sup> Art. 109 (3), 130 (4), 131 (4), 132 (5) Constitution of Serbia.

<sup>99</sup> Art. 102 (1) e, Constitution of Slovakia.

<sup>100</sup> Art. 111 Constitution of Slovenia.

<sup>101</sup> Art. 90 Constitution of Ukraine.

b.3) Dissolution as an instrument to solve a political crisis relating to the functioning of Parliament

29. In a number of states dysfunctions of parliament can lead to a decision of the Head of State to dissolve Parliament. In one State – Belarus – a “systematic and gross violation of the Constitution by the Chambers of the Parliament” can lead to dissolution by the President.<sup>102</sup> In four States – Armenia,<sup>103</sup> the Czech Republic,<sup>104</sup> Slovakia<sup>105</sup> and Ukraine<sup>106</sup> – Parliament can be dissolved if it fails to reach a quorum or to hold a session for a certain period. In one State, Kyrgyzstan,<sup>107</sup> Parliament can be dissolved in the event of a crisis caused by insurmountable differences between the houses of the Jogorku Kenesh or between one or both houses of the Jogorku Kenesh and other branches of state power.

b.4) Dissolution as an instrument to solve a conflict between parliament and the people, expressing itself in a referendum

30. In some States the decision to dissolve Parliament is related to a (presumed) conflict between Parliament and the people. In Liechtenstein one thousand five hundred citizens or four municipalities may demand a referendum on the dissolution of the Parliament<sup>108</sup>. In four other States the negative results of a referendum can lead to dissolution of parliament. In Kyrgyzstan Parliament can be dissolved “as the result of a referendum”<sup>109</sup> and in Estonia<sup>110</sup> the President shall declare early elections for Parliament when a draft law which has been put to referendum does not receive a majority of yes-votes. In Austria the Federal Assembly is dissolved if the proposal to depose the Federal President is rejected in a referendum, demanded by the Federal Assembly.<sup>111</sup> In Iceland<sup>112</sup> and Slovakia<sup>113</sup> the President has to dissolve the National Council if a parliamentary resolution to dismiss the President is not approved in a referendum.

b. 5) Discretionary power or a power more or less regulated by unwritten constitutional law or by conventions of the Constitution

31. In a certain number of states the Constitution does not determine (exhaustively) the substantial conditions that have to be fulfilled in order to exercise the power to dissolve Parliament. This is the case in Andorra,<sup>114</sup> Austria,<sup>115</sup> Denmark,<sup>116</sup> Finland,<sup>117</sup> France,<sup>118</sup> Greece,<sup>119</sup> Iceland,<sup>120</sup> Ireland,<sup>121</sup> Italy,<sup>122</sup> Luxemburg,<sup>123</sup> Malta,<sup>124</sup> the Netherlands,<sup>125</sup>

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<sup>102</sup> Art. 94 Constitution of Belarus.

<sup>103</sup> Art. 68, par. 2 Constitution of Armenia.

<sup>104</sup> Art. 35 (1) (c), Constitution of the Czech Republic.

<sup>105</sup> Art. 102 (1) (e), Constitution of Slovakia.

<sup>106</sup> Art. 90 par. 2 (3) Constitution of Ukraine.

<sup>107</sup> Art. 63 (2) Constitution of Kyrgyzstan.

<sup>108</sup> Article 48 (3) of the Constitution of Liechtenstein.

<sup>109</sup> Art. 63 (2) Constitution of Kyrgyzstan.

<sup>110</sup> Art. 105 (4) Constitution of Estonia.

<sup>111</sup> Art. 60 (6) Austrian Constitution.

<sup>112</sup> Art. 11 par. 4 Constitution of Iceland.

<sup>113</sup> Art. 102 (1) (e), *in fine* Constitution of Slovakia.

<sup>114</sup> Art. 45 (1) (d), and Art. 71 (1) Constitution of Andorra.

<sup>115</sup> Art. 29 (1) Constitution of Austria.

<sup>116</sup> Art. 32 (2) Constitution of Denmark.

<sup>117</sup> Art. 26 (1) Constitution of Finland.

<sup>118</sup> Art. 12 (1) Constitution of France.

<sup>119</sup> Art. 41 (2) Constitution of Greece. “in order to deal with a problem of extraordinary importance for the nation.”

<sup>120</sup> Art. 24 Constitution of Iceland.

<sup>121</sup> Art. 13 (2.1) Constitution of Ireland.

<sup>122</sup> Art. 88 (1) Constitution of Italy.

<sup>123</sup> Art. 74 Constitution of Luxemburg.

<sup>124</sup> Art. 76 (1) Constitution of Malta.

<sup>125</sup> Art. 64 (1) Constitution of the Netherlands.

Portugal,<sup>126</sup> Serbia,<sup>127</sup> Spain,<sup>128</sup> Sweden<sup>129</sup> and the United Kingdom. In these states the dissolution of the parliament can have many functions: (a) it can be a “conflict dissolution”, aimed at consulting the electorate on a conflict raised between the government and the parliament. Especially in states with a semi-presidential system, with a government appointed by an elected president and accountable to parliament, the power to dissolve can be a strong weapon in the hands of the president especially when the presidential majority and the majority in the Assembly do not coincide. (b) The right to dissolve parliament can also be used to put an end to a political impasse, such as the impossibility of forming a stable new government after a governmental crisis. (c) The right to dissolve parliament also makes it possible to allow the people to express itself on a problem of major importance. (d) Last but not least dissolution can also be an appeal by the president or the Government to the electorate, at a time considered to be favorable for it, e.g. because there are good electoral prospects for the presidential or the parliamentary majority. In this case one can really speak of a power to “choose the date of the election.” Although in the above-mentioned states the Constitution itself does not prescribe precisely the conditions that have to be fulfilled to dissolve Parliament, sometimes the dissolution is more or less regulated by unwritten constitutional law or by conventions of the Constitution.

## 2. Choosing the date of the election

32. In most cases the power to dissolve the parliament includes the power to choose the date of the extraordinary election. When the decision to dissolve is taken by parliament itself, the decision on the election date is either a parliamentary prerogative<sup>130</sup> or a prerogative of the Head of State<sup>131</sup> or the Government.<sup>132</sup>

33. When the decision to dissolve is taken by the Head of State (the King or the President) the decision on the election date is taken by the Head of State or the Government,<sup>133</sup> either together with the decision on the dissolution,<sup>134</sup> or in a very short period after it.<sup>135</sup>

34. In many States the Constitution or the electoral law determines the minimum number of days that have to elapse after the decision to dissolve, before the elections can be held. Sometimes also the maximum number of days is determined. These periods vary from state to state.

- Albania: -“...not later than forty-five days after its dissolution.” (Art. 65 (2) Constitution)
- Andorra: “between the thirtieth and fortieth days following the end of the term/the dissolution of the Council General” (Constitution, Art. 51 (2))
- Armenia: “no sooner than thirty and no later than forty days after the dissolution of the National Assembly.” (Art. 68 par. 2 Constitution)

<sup>126</sup> Art. 136 Constitution of Portugal.

<sup>127</sup> Art. 109, par. 1, Constitution of Serbia.

<sup>128</sup> Art. 115 Constitution of Spain.

<sup>129</sup> Chapter 3, Art. 4 (1) Constitution of Sweden.

<sup>130</sup> This is the case in Cyprus ( ), Lithuania (Art. 58 (1) of the Constitution).

<sup>131</sup> This is the case in Belarus (Art. 22 Electoral Code), Croatia (Art. 97 Constitution??); Kyrgyzstan (Art. 63 (5) of the Constitution), Poland (Art. 10 (1) Parliamentary Election Law).

<sup>132</sup> This is the case in Austria (Art. 29 (1) of the Constitution) and in Turkey (Art. 8 of the Law n° 2839 on Parliamentary elections).

<sup>133</sup> This is the case in Austria (Art. 29 (1) of the Constitution).

<sup>134</sup> Art. 67 (2) Constitution of Cyprus; Art. 119 (2) Electoral Code of Armenia; Art. 99 (5) Constitution of Bulgaria; Finland: Election Act, Part II, Chapter 9, Section 107; Art. 69 (4) of The Code of the Kyrgyz Republic on Elections in the Kyrgyz Republic; Art. 58 (4) Constitution of Lithuania; Article 98 (5) Constitution of Poland; Art. 109 (2) Constitution of Russia; Art. 13 National Assembly Elections Act, (Slovenia) Art. 64 (2) Constitution of the Netherlands; Art. 115 Constitution of Spain; Art. 28 (3) Constitution of Hungary.

<sup>135</sup> Art. 84 Constitution of Montenegro (the day following the day of the dissolution); Art. 8 Law no. 2839 on Parliamentary elections (within forty-eight hours).

- Austria: In such case the new election shall be so arranged by the Federal Government that the newly elected National Council can at the latest meet on the hundredth day after the dissolution (Art. 29 (1) Constitution)
- Belarus: "within three months since the premature expiry of the powers of the chambers of the Parliament." (Art. 91 Constitution)
- Belgium: « le collège électoral est réuni dans les quarante jours de l'acte de dissolution ou de la vacance ». (Code Electoral. Art. 106)
- Croatia: "Elections for members of the Croatian Parliament shall be held not later than 60 days after the expiry of the mandate or dissolution of the Croatian Parliament"<sup>136</sup>
- Czech Republic: "If the Chamber of Deputies was dissolved, elections shall take place within sixty days of its dissolution." (Art. 17 (2) Constitution)
- Cyprus : "The same decision is required to state the date for the general election which must be not less than thirty days and not more than forty days from the date of such decision" (Art. 67 (2) Constitution)
- Estonia: "3) Extraordinary Riigikogu elections shall not be held earlier than twenty days or later than forty days after the elections are called." (Art. 60 (4) Constitution; Riigikogu Election Act, par. 3 (3))
- Finland: (...) the date of the new election is, following the order of the President, not earlier than the first Sunday after fifty days and not later than the first Sunday after seventy-five days from the time when the order to hold new elections was made public. Election Act, Part II, Chapter 9, Section 107
- France: Les élections générales ont lieu vingt jours au moins et quarante jours au plus après la dissolution (art. 12 (1) Constitution of France)
- Germany: Where the Bundestag is dissolved, the new election shall be held within sixty days. (Art. 39 (1) Constitution)
- Georgia : "(...) extraordinary elections, which shall be held not earlier than forty-five days and not later than sixty days before the enforcement of an order on the dissolution of the Parliament. (Constitution Art. 50 (3))
- Greece: new elections within thirty days and the convocation of the new Parliament within another thirty days from the election (Constitution, Art. 41 (3))
- Hungary: "A new Parliament shall be elected within a period of three months following the declaration of the Parliament's dissolution or the Parliament having been dissolved" (Constitution Art. 28 (6))
- Iceland: "before forty-five days have elapsed since the dissolution was announced." (Art. 24 Constitution)
- Ireland: "(...) no later than thirty days after dissolution of Dáil Éireann. (Constitution, Art. 16 (3) 2) not later than ninety days after the dissolution of the Dáil (Constitution Art. 18 (8))
- Italy: "Elections for the new Houses (Parliament) will take place within seventy days of the end of the term of previous Houses." (Constitution, Art. 61)
- Kyrgyzstan: "(...) so that the newly elected house or houses convene for its first sitting no later than six months after the moment of dissolution." (Constitution, Art. 63 (5))
- Lithuania: "The election to the new Parliament must be organized within three months from the adoption of the decision on the pre-term elections." (Constitution Art. 58 (4))
- Luxemburg: "Il est procédé à de nouvelles élections dans les trois mois au plus tard de la dissolution. » (Constitution art. 74)
- Netherlands: "the newly elected House to meet within three months" (Constitution, Art. 64 (2))
- Poland: "on a day falling no later than within the 45 day period from the day of the official announcement of Presidential order on the shortening of the Sejm's term of office." (Constitution Art. 98 (5))
- Portugal: "within the following sixty days and in accordance with the electoral law that is in force at the time of the dissolution..." (Art. 113 (6) Constitution of Portugal)

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<sup>136</sup> Art. 73 (1) Constitution of Croatia.

- Romania: "Elections to the Chamber of Deputies and the Senate shall be held within three months at the most of the expiry of the term of office or the Parliament dissolution." Constitution Article 63 (2)
- Russia: In the event of the dissolution of the State Duma, the President of the Russian Federation shall determine the date of elections so that the newly-elected State Duma shall convene not later than four months since the time of dissolution. (Constitution, Art. 109 (2). "When dissolving the State Duma (...) voting day shall be the last Sunday before the day on which three months expire from the day of the dissolution of the Duma." (Federal Law on the Election, Art. 6 (4))
- Serbia: "Simultaneously with the dissolution of the National Assembly, the President of the Republic shall schedule elections for deputies, so that elections finish not later than sixty days from the day of their announcement." (Art. 109 Constitution)
- Slovenia: "If the National Assembly is dissolved, a new National Assembly shall be elected no later than two months after the dissolution of the previous one." (Constitution, Art. 81 (3))
- Sweden: "Extra elections shall be held within three months of the issue of such an order." Constitution, Chapter 3, Art. 4 (1)
- "the former Yugoslav Republic of Macedonia": "within sixty days from the day of dissolution of the Parliament." Electoral Code of the Republic of Macedonia. Art. 15 (1)
- Turkey: "If the renewal decision has been taken by the President of the Republic, then votes shall be cast on the first Sunday following the ninetieth day after the decision." (Law no. 2839 on Parliamentary elections. Renewal of Election, Art. 8)
- Ukraine: "held within sixty days from the day of the publication of the decision on the pre-term termination" (Constitution, Art.77 (2)).

35. These rules pursue a double aim: by fixing a minimum term, they try to guarantee that the political parties are informed in due time so that they can prepare the elections; by determining a maximum term, they try to avoid that after the dissolution the democratic expression of the will of the people will be expressed in a reasonable time.

### **Conclusion**

36. Although the constitutional and legal regulations on the choosing of the date of an election vary strongly from state to state, it seems nevertheless to be possible to derive a few guidelines from the survey that is presented in this report. Taking into account the importance of elections, the constitutional law tries to guarantee the democratic character of the decision-making on the date of the election. This is especially appropriate as the Constitution often does not exhaustively determine the date of the elections but confers to a certain authority the power to decide on pre-term elections and on the precise date to hold the elections. The democratic character of the decision-making depends largely on the legitimate character of this authority. To be legitimised to dissolve a democratically elected Parliament and to choose the date of the elections, the authority itself must be democratically legitimised, either by being directly elected or by having the confidence of parliament, or by taking the decision to dissolve with the approval of parliament. Over and above this minimal safeguard, states can deem it useful to further regulate in the Constitution the substantial conditions that have to be fulfilled before a decision can be taken to dissolve parliament and to hold new elections. In order to be legitimised the dissolution may not be arbitrary, but has to serve the proper functioning of the democratic institutions. As it is of the utmost importance that the political parties have enough time to prepare the elections and that the new Parliament is elected without undue delay, it can be useful to determine a minimum and a maximum period between the decision on the date of the elections and the elections themselves. It therefore seems to be good practice that the written or unwritten constitutional law contains these safeguards to avoid abuses.