

## DISSOLUTION OF PARLIAMENT IN FUNCTION OF THE REALIZATION OF CONSTITUTIONALITY IN SERBIA

**Golijan Dragan,**

Faculty for Education of the Executives, Novi Sad, Serbia, dragan.golijan@fppsp.edu.rs

**Abstract:** *The main levers of power crystallized throughout history: the head of state, government and parliament. The head of state and parliament are indigenous and derive their legitimacy from the will of the people. Constitutions are paying special attention to the levers of power. Since the creation of the parliament to date, many times happened that Parliament rise above the citizens and their will so that constitution must provide the opportunity for the head of state so he can intervene, by prorogue. In Serbia, many times came to the dissolution of Parliament by the head of state before the end of the term, and the termination based on the other known bases.*

**Keywords:** *assembly, dissolution, constitution, president, government, country*

### 1. THE ROLE OF PARLIAMENT IN GOVERNMENT

Parliament is the national representative. It had a different shape and role throughout history. Initially, parliament had consultative and advisory function. At the beginning of Greek democracy, parliament had an important role and attitudes of the Assembly were binding on the rulers (“*voxpopuli, voxdei*”). The adoption of the U.S. Constitution, Parliament (Congress) has become an important lever of power.<sup>1</sup> The system of the separation of powers between the legislative, executive and judicial was established. For a long time, the rulers were passing laws, then Parliament together with the ruler, and finally, the parliament itself. Today’s ruler has significant powers to the parliament, such as the fact it can have a legislative initiative, may veto the law, to promulgate laws that may dissolve the parliament, under certain circumstances.

In practice, a parliamentary system was first constituted (the principle of cooperation between the government), then the presidential system (separation of the three powers) and the parliamentary system (union and government influence). The characteristic of the parliamentary system is a strong government, so it has the ability to interfere with the parliament and to require its dissolution from the head of state.<sup>2</sup>

Parliament is the basic and the most important factor in creating a legal order, and the easiest way is the adoption of a democratic constitution and good laws that are in accordance with the constitution. Laws must have an element of natural law in addition to elements of positive law.<sup>3</sup> The main responsibility of parliament is constitutional and legislative,

<sup>1</sup> Jovičić, Miodrag, *Velikiustavnisistemi* (Beograd, 1986), 77.

<sup>2</sup> Jovičić, Miodrag, *Leksikon srpske ustavnosti 1804-1918* (Beograd, 1999), 197.

<sup>3</sup> Vasiljević, Mirko, *Pravo, pravda, privreda*, (Beograd, 2009), 18-20.

but nowadays the jurisdictions of parliament are increasing, and the most significant are planning, finance, human resource, political and other. The best is when the principle of a reciprocal relationship of the authorities and monitoring to insure that some authority is not moving away from its constitutional duties.

## 2. DISSOLUTION OF PARLIAMENT

Elected parliament ends with the completion of the term, by self-dissolution and dissolution.

There are different ways of dissolving parliament. In monarchies, the dissolution of parliament is done only by the will of the ruler. In a presidential system, there is no dissolution of parliament in the classical separation of powers. In democratic societies, the dissolution of parliament is normal and common.

In the pre-constitutional times, the ruler could dissolve parliament whenever he wanted, and that was often the case. With the advent of the constitution court subjectivity ceases in relation to the right to dissolve parliament. Some states provide for more stringent and precise conditions for the dissolution of parliament in case of the conflict between the government and parliament, and when parliament is not functioning in the long term, and the inability of forming government due to composition of the parliament, several obvious votes of no confidence to the government, obstruction of parliament from the opposition and the inability of passing budget and laws. In some countries, the mood of voters after local elections may be the reason for the dissolution of parliament.<sup>4</sup>

Contemporary European countries have constitutionally established right of the head to dissolve parliament, as well as the process of dissolution. Dissolution of parliament could be achieved in a variety of ways:

- a) (Dissolution of the parliament after the end of the term prescribed by the Constitution is the way of ordinary termination and occurs without political tensions.
- b) Dissolution of parliament by constitutional authority of the head of state upon the fulfillment of certain conditions. It is a very strong power that the Constitution gives to the head of state. This is not a common measure but often used.
- c) Self-dissolution of parliament under the conditions determined by the parliament. Self-dissolution is very rare, and usually in the event of war.
- d) Dissolution of parliament by virtue of the constitution when parliament dissolve, when it something like that is required by the head of the state, nor a parliament. The constitution prescribes the reasons. The Serbian constitution provides that the Serbian assembly dissolve *ex constitucione* if voters do not recall the president as the National Assembly has initiated proceedings for his impeachment.
- e) The dissolution of the assembly is a kind of dissolution when its work is finished; this is the common practice of temporary or constituent assemblies.

## 3. THE POSSIBILITY OF DISSOLUTION OF THE PARLIAMENT OF SERBIA

The development of constitutionalism in France, England and other countries transfers to Serbia by adapting local conditions. Serbia has rapidly built its political and legal sys-

<sup>4</sup> Marković, Ratko, *Ustavno pravo i političke institucije* (Beograd, 1995), 378.

tem and accepted the principle of constitutionalism and parliamentarianism. Some elements of the constitution are cited in Dusan's Code. Since the time of Karadjordje, known as Black George, until now, the constitutional system of Serbia constantly improves and evolves, as evidenced by the fact that the last Serbian Constitution of 2006 is the seventeenth constitutional act. Since 1869, the National Assembly is the Serbian legislature.

Since the beginning of constitutionality, two levers of power were permanently highlighted: the head of state (prince, king or president) and the assembly as a legislative body. Relations between the two authorities were in relative harmony (cohabitation), because there were frequent disagreements that culminated from the political disagreement and sharp warning up to the dissolution of parliament.

The role of the head of state – the prince over the assembly is regulated by the first Serbian constitution-Sretenjski Ustav. It was found that the prince “dissolves” National Assembly by its decree.<sup>5</sup>

Law on the National Assembly of 1858 gave to the prince the right to terminate the National Assembly.

The constitutions of 1861 and 1888 and then the constitutions of 1901 and 1903 more accurately prescribe when and why the National Assembly is dissolved or adjourned.

In Serbia, dissolution of Parliament happened many times, and the first time it was done in 1875. Aleksandar Obrenovic used the right of dissolution. The second decade of the twentieth century, the constitutional and civil order was an unusual period of many wars, defeats and victories. In the First World War Serbia joined with full state capacity, and came out of the war without a state.

Aleksandar I of Yugoslavia, also known as Alexander the Unifier used the right of dissolution twice, first in 1924, partially, and the second time in full, to suspend the constitution. In early 1931, he issued the Yugoslav constitution, the second and final constitution of the Kingdom of Yugoslavia, which reserved the right of dissolution.<sup>6</sup>

During socialist Yugoslavia up to the 1990 constitution of the Republic of Serbia, there were no signs of classical parliamentarism, because there was so-called unity of government in Parliament. It was not until the 1990 constitution, the constitutionality and sovereignty have been returned, and the president introduced the dissolution of the parliament. From the provisions of the constitution, we can see that the president of the republic exercises the right of dissolution of the assembly, on the proposal by the government; we are talking about harmonizing both bodies (the president and the government). The government's will is of the initial character, because without a reasoned proposal of the government, no legislative body can be dissolved, also if the decision to dissolve is not made by the president. The president of the republic has to assess whether he is going to support the government or the national assembly. In this case, the president's power is limited only in time of war, imminent threat of war or emergencies.

In practice regarding the application of the 1990 constitution of the Republic of Serbia three cases of dissolution of the National Assembly were recorded; when the President of the Republic of Serbia, Slobodan Milosevic, made decision to dissolve the national assembly in 20 October 1992, and 25 October 2000, when the decision was made by Milan Milutinovic the former president. These two decisions were made when presidents have accepted government's rationale by which some political parties and their representatives

---

<sup>5</sup> First “Serbian Constitution”, Article 85, 1835.

<sup>6</sup> “Yugoslav Constitution”, Article 77, 1931.

in the assembly blocked the decision-making mechanism. The third time the National Assembly was dissolved in November 2003 according to the decision made by Nataša Mikić (as President of the Assembly that was performing the duty of the President of the Republic). The government's rationale was that the Assembly is unable to continue pursuing reforms because of disunity, bargaining over terms and forming coalitions that were not on the electoral will of citizens. The 2006 constitution is still in force along with the article 109 that regulates the dissolution.

Comparing the provisions of the 2000 and 2006 constitutions regarding assembly dissolution, it is evident that it is the same authority of the head of state, but there are some differences, since the 2006 constitution precisely delineates the situations in which the head of state has the narrowed authority to dissolve i.e. regarding the situations in which the head of the state shall dissolve the national assembly according to the principle of automatism. Two occasions when the national assembly may not be dissolved impose. In the first case, the government may propose the dissolution of the assembly if the proposal was submitted to the vote of no confidence or if the question of its confidence arises. This solution is in accordance with the standard of parliamentary democracy and ensures regularity and appropriateness of other institutes of parliamentarism such as parliamentary control over the government through a vote of no confidence. Except in this situation, the national assembly may not be dissolved during the war or emergencies, in order to eliminate potential abuse of state power in all public exigencies. In the second case, the president of the republic is obliged to dissolve the assembly if within 90 days from the date of constitution of government is not elected<sup>7</sup>. This provides space for new parliamentary elections, which the president shall call, so they end no later than 60 days after the announcement<sup>8</sup>. During the period of the dissolving of the national assembly up to the election, i.e. the constitution of new one, it can only perform current and urgent tasks specified by law.<sup>9</sup>

Boris Tadić, Serbian President, based on Article 109, paragraph 5 of the Constitution of the Republic of Serbia issued a decree on dissolving the parliament in 2008 according to the proposal of the government, and at the same time issued a decision on election of MPs.

#### 4. RESUME

No public authority may be sovereign in the power-sharing system. Power and authority must be within morality, justice and laws.

Institute of dissolution is a good balance of control and enforcement of the rule of law. Today, this institute serves to achieve the rule of law based on the will of the citizens. The head of the state dissolves the parliament so there would be no serious consequences for the realization of human rights, the functioning of government, not because of their own ideological complexes or self-interest.

<sup>7</sup> Stojanović, M. Dragan, *Ustavnopravoknjiga 2* (Sven: Niš, 2009), 275.

<sup>8</sup> Đorđević, Srđan, *O Mitrovdanskomustavu* (Kragujevac: Pravni fakultet, 2009), 74-78.

<sup>9</sup> Golijan, Dragan, *Zakonodavnavlast Bosne i Hercegovine* (NUBL: Banja Luka, 2011), 146.

## BIBLIOGRAPHY:

- [1] Đorđević, Srđan. *O Mitrovdanskomustavu*. Kragujevac: Pravnifakultet, 2009.
- [2] Golijan, Dragan. *Zakonodavnavlast Bosne i Hercegovine*. NUBL: Banja Luka, 2011.
- [3] Jovičić, Miodrag. *Leksikonsrpskeustavnosti 1804-1918*. Beograd, 1999.
- [4] Jovičić, Miodrag. *VelikiustavnisIstem*. Beograd, 1986.
- [5] Marković, Ratko. *Ustavopravo i političkeinstitucije*. Beograd, 1995.
- [6] Stojanović, M. Dragan. *Ustavpravoknjiga 2*. Sven: Niš, 2009.
- [7] Vasiljević, Mirko. *Pravo, pravda, privreda*. Beograd, 2009.
- [8] "Sretenjskiustav", 1835.
- [9] "UstavKraljevineJugoslavije", 1931 god.