UDK 328.1:324(497.11)
Review article

FREQUENT EXTRAORDINARY PARLIAMENTARY ELECTIONS AS A THREAT TO THE RULE OF LAW IN SERBIA

Vladimir Mikić, PhD, Research Associate
Institute for Comparative Law
Terazije 41, Belgrade, Serbia
v.mikic@iup.rs, mikic.vlada@gmail.com

ABSTRACT

In December 2023, another extraordinary parliamentary election was held in the Republic of Serbia, the fourth in the last decade. Serbia has held no less than thirteen general elections since the multiparty system was introduced in 1990, with only three of them not being extraordinary. The aftermath of almost every early election consisted of the same dominant political party staying on power. This implies that almost every extraordinary election aimed at political capitalization on the status of current executive power-holder. In addition, this type of election is often held simultaneously with local elections. This cannot easily be regarded as a welcome democratic procedure.

Resorting to untimely dissolution of the National Assembly of the Republic of Serbia may be assessed as a tool of expressing the dominant position of the executive in relation to the National Assembly. According to the frontal provision of its Constitution, Serbia is based on the rule of law, and it is committed to European principles and values. Another constitutional provision clearly determines that the duration of the term of a legislature is four years. However, caretaker governments, with much restricted legitimacy, appear to have become an objectionable rule rather than an exception.

It seems to be quite unusual for a candidate state for membership in the European Union to hold so many elections earlier than constitutionally scheduled. While the practice is not formally endangering Serbia's negotiations with the EU, relevant reports presented by the European Commission, the OSCE, and the Venice Commission express concern in this regard. In one of the reports, adopted in December 2022, it is recommended that the Serbian Constitution should be interpreted in such a way that a legitimate limitation of periodical recourse to early elections is enabled.

In this paper, method of comparative normative analysis of legal framework of extraordinary parliamentary elections held throughout Europe is used, as well as method of analyzing comments and recommendations of competent European political and legal authorities. After the

introductory part, the survey of Serbian legal framework envisaging possibilities for dissolving the National Assembly is presented. This part is followed by the analysis of the history of early dissolutions of the National Assembly. In the fourth part, comments and recommendations on Serbian snap elections of various European bodies are examined. In conclusive part of the paper, normative suggestions are laid out in order to curtail the possibly unconstitutional practice of arbitrary dissolution of the National Assembly. These are coupled with recommendations aiming at fostering a stable practice of protecting full-term legislative periods from frequent obstructions by the executive branch of power, since opportunistic parliamentary election timing appear to represent an indirect assault on the rule of law and on the separation of powers in Serbia.

***Keywords**: Constitution of Serbia, extraordinary elections, snap elections, risks to the rule of law*

1. INTRODUCTION

In theory, dissolution of parliament is a legitimate tool in any constitutional democracy. It is a very useful instrument for the general public – when it is truly necessary – to get acquainted with voters' political preferences when it comes to the structure of the legislative body. In this way, dissolution of a legislature before the expiration of its constitutional term has for the function to bring the people's representatives closer to primary sources of political legitimacy – the citizens.[1] It resides in a typical domain of the executive power – either the chief of state (the president of the republic) or the government – to which the counterweight clearly is represented by the executive's responsibility before the legislative body. This mechanism presents one of the core elements of the principle of the separation of powers, which is recognized as one of the crucial components of the rule of law by the United Nations,[2] as well as by the Constitution of the Republic of Serbia.[3]

However, by resorting too often to the instrument of calling early general elections, the executive branch of power may find herself in a position in which such moves of the executive could be assessed as a form of abuse of constitutional powers. This is significantly important because the dissolution can be (and usually is) esteemed as a *political move*, rather than as a strictly *legal act*. The consequence of such a con-

---

1 The core purpose of the dissolution of parliament is to settle out conflicts between the legislative and the executive branches of power by transferring the decision-making power to the citizens, who are the original holders of sovereignty: Orlović, S. P.; Rajić, N. N., *Raspuštanje parlamenta – vršenje ili zloupotreba ustavnih ovlašćenja*, Zbornik radova Pravnog fakulteta u Novom Sadu Vol. 4, 2018, p. 1546.

2 "The "rule of law" (…) requires (…) measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency", United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General*, 23 August 2004, Art. III para. 6.

3 See Part 2 of this paper, "Legal framework on the rule of law and on the dissolution of the National Assembly".

clusion is that it is exceptionally difficult, if not outright impossible, to formally scrutinize the early dissolution of parliament before the constitutional court. The criteria of conveniency, rather than legality (constitutionality), constitutes the basis of such an advance, because it is usually motivated solely by political considerations and electoral projections of the ruling political party or coalition. Practically, „if it is taken into account that the government emerges from the parliamentary majority, it is clear that, under regular circumstances, it will not cause the dissolution of the representative body because it would also collapse its own political existence", and, thus, „the right of dissolution established in this way is used exclusively in rare situations of conflict between the parliament and the government".[4]

The rule of law and timely elections *do* stand in a mutually reinvigorating relation. Although from the comparative perspective snap elections are not a rarity,[5] it is plausible to claim that the respect of ordinary functioning of state institutions, including the complete fullfilment of their respective terms of office, stands in a relation to the appreciation of relevant components of the principle of separation of powers. Democratic governance may indirectly be endangered by continuous dissolution of a legislature when there is no need for doing so in perpetuity. If the decision on the dissolution of parliament is in the executive's hands, and at the same time the identical executive commands the confidence of the majority of members of parliament, one may reasonably be suspicious when it comes to the motives of the chief of state or of the government to resort to such an action. If the rule of law is "a multilayered value that encompasses (…) values such as democracy",[6] the practice of routinely putting a legislature's term to an early end can be assessed as detrimental to the rule of law itself.

Ever since Serbia adopted its first post-Communist constitution in 1990, its legislative body (the National Assembly) has been dissolved without well founded political justification too many times. This means that the National Assembly is regularly forced to make a sudden discontinuation in its functioning without any semblance of a hung parliament or of an unreliable parliamentary majority. Thus, commanding a stable support in the National Assembly provides no guarantees for the executive in Serbia to restrain itself from repeatedly resorting to snap elections.

---

4 Simović, D. Z., *Institucionalne pretpostavke usklađivanja ustavnopravnog realnog položaja predsednika Republike Srbije*, NBP – Nauka, bezbednost, policija, Vol. 18, No. 1, 2013, p. 14.

5 Turnbull-Dugarte, S. J., *Do opportunistic snap elections affect political trust? Evidence from a natural experiment*, European Journal of Political Research Vol. 62, 2023, p. 308.

6 Vlajković, M., *Rule of law – EU's common constitutional "denominator" and a crucial membership condition on the changed and evolutionary role of the rule od law value in the EU context*, EU and Comparative Law Issues and Challenges Series (ECLIC) Vol. 4, 2020, p. 235.

In the paper, historical analysis of early elections for the National Assembly is exposed, as well as the chronology of holding simultaneous parliamentary, presidential and local elections in Serbia. The reader is invited to consult the analysis of the legal framework on elections in Serbia. The problem of snap elections is also analyzed from the perspective of Serbia's progress in the process of its perspective full membership in the European Union (the EU), including the recommendations of relevant institutions of the European Union, Organization for Security and Cooperation in Europe (OSCE), and the Council of Europe. For this purpose, in the paper comparison of the practice of extraordinary parliamentary elections with other candidate countries is laid out. Author also aims at suggesting improvements in the constitutional framework in order to reduce risks posed to the rule of law by frequent calling of early general elections.

One of the less desired effects of frequent extraordinary elections may be the *voter fatigue* – a higher voter abstention created by the fact that elections are held more often than it is expected or verifiably needed. This represents a general trend in Europe. Namely, authors of a recently organized survey across 26 European countries concluded that, "while it appears that no form of constitutional rules for early election is directly related to citizen satisfaction with democracy, when early elections are called by prime ministers or presidents, democratic satisfaction drops significantly, and this effect is more pronounced the later in the term the early election is called."[7] It can also be claimed that "snap elections have a causal impact on political trust" – and that of a negative type.[8] Voters' dissatisfaction with frequently organized elections may form a particular form of vulnerability of the rule of law, because it leads to the lower level of overall legitimacy of political actors and elected constitutional institutions. According to the OSCE International Election Observation Mission (OSCE IEOM), organizing early elections in Serbia "has further eroded public confidence in the functioning of democratic institutions".[9]

2. LEGAL FRAMEWORK ON THE RULE OF LAW AND ON THE DISSOLUTION OF THE NATIONAL ASSEMBLY

The frequency of early elections in Serbia arrives mostly from the shortcomings of the *implementation* of the actual constitutional framework, although the latter

---

7 Morgan-Jones E.; Loveless M., *Early Election Calling and Satisfaction with Democracy*, Government and Opposition: An International Journal of Comparative Politics Vol. 58, 2023, Cambridge University Press, Cambridge, 2023, p. 598.

8 Turnbull-Dugarte, S. J., *op. cit.*, note 5, p. 308.

9 OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Republic of Serbia: Early Parliamentary Elections (17 December 2023): Final Report*, Warsaw, 28 February 2024, (hereandafter: OSCE/ODIHR 2024 Final Report on Serbia), p. 1.

may be regarded as ripe for useful amendments.[10] In this part of the paper, constitutional dispositions on the rule of law, the separation of powers, and the dissolution of the National Assembly, will be analyzed.

In the current Constitution of the Republic of Serbia,[11] the rule of law is defined as "a fundamental prerequisite for the Constitution which is based on inalienable human rights" (Art. 3 Para. 1). This principle of governance is mentioned as the very basis of the "just, open, and democratic society", as Serbia is self-recognized by its Constitutions wording,[12] and it is "exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary and observance of Constitution and Law by the authorities" (Art. 3 Para. 2). If it is conceded that the principle of separation of powers represents nothing less than "a pillar of every modern democratic state founded on principles of the rule of law",[13] it represents no surprise that the separation of powers is recognized as one of the constitutionally designed means for enabling the establishment and maintenance of the rule of law. Additionally, the Constitution stipulates that "relation between three branches of power is based on balance and mutual control" (Art. 4 Para. 3).

When it comes to the dissolution of the National Assembly, it should be noted at the first place that the term of office of members of parliament lasts four years (Art. 102 Para. 1 of the Constitution), which is in line with the dominant model in comparative constitutional law. The Constitution stipulates that the National Assembly „shall be dissolved if it fails to elect the Government within 90 days from the day of its constitution" (Art. 109 Para 3). It is interesting to note that the cited provision has never been applied in the history of the Constitution, because the parliament had always been dissolved within the constitutionally fororddained period of time. The constitutional body authorized to dissolve the parliament is the President of the Republic. This prerogative of his (or hers) is exercised "upon the elaborated proposal of the Government" (Art. 109 Para. 1), which is logical, because the Government is put in the position to make a reasonable assessment whether it still enjoys the confidence of the parliamentary majority or

---

10 See Part 5 of this paper, "Certain suggestions for improving the legal framework on early elections in Serbia".

11 Constitution of the Republic of Serbia (Ustav Republike Srbije), Official Gazette, No. 98/2006, 115/2021.

12 "Guarantees for inalienable human and minority rights in the Constitution have the purpose of preserving human dignity and exercising full freedom and equality of each individual in a just, open, and democratic society based on the principle of the rule of law.", Art. 19 of the Constitution of 2006.

13 Andrun, M., *Raspuštanje parlamenta prema Ustavu Republike Srbije od 2006. godine: neka otvorena pitanja*, Arhiv za pravne i društvene nauke Vol. 3, 2023, p. 109.

not. However, the phrase "elaborated proposal" obviously leaves wide space for various politically useful deviations from the supposed original intention of the Constitution-writers. Therefore, a constitutional amendment may be required to limit the possibility of resorting to unneeded early general elections, in ways that the dissolution of parliament can no longer be used arbitrarily, i.e. to be abused.[14]

The cited formulation was practically inherited from the Art. 89 Para. 1 of the previous Constitution of the Republic of Serbia (adopted in 1990),[15] which might serve as an explanation for the continuity in the practice of dissolving the National Assembly without much reason ever since the democracy was reinstated in Serbia, slightly before the break-up of former Yugoslavia. Although from the theoretical point of view the scale of stability of the government and of the parliament's session was secured in this way (in comparison to the French Constitution of 1958),[16] the linguistic construction in question did not represent a barrier built in a way powerful enough in order to stop the holders of the executive power determined to call early elections whenever they calculated it was convenient. This is the line of thought of important Serbian constitutional scholars from the late 20th and early 21st century, who claim that President's parliamentary dissolution powers cannot easily be dissected from the interest that he or she might share with the government in office.[17]

This was particularly evident on the occasion of the 2023 parliamentary election, in the wake of which the President of the Republic threatened to resign from office in case the result of the election does not suit his political party's interests, *i.e.*, if the opposition parties gain ennough electoral support to form the new Government. Three years earlier, after the general elections of 2020, the President of the Republic announced that the newly elected legislature's term of office (four years) will be shortened by half, in order for it to expire in 2022 (so that the following general elections could be held simultaneously with the presidential election). This early announcement of the soon-to-be-exercised dissolution of the National Assembly served as „an instructive illustration of the political reality of Serbia, which is characterized by the subordination of central constitutional institutions to party

---

14 See Part 5 of this paper, "Certain suggestions for improving the legal framework on early elections in Serbia".

15 Constitution of the Republic of Serbia (Ustav Republike Srbije), Official Gazette, No. 1/1990.

16 Marković, M., *Moć i nemoć predsednika Republike Srbije* (*The power and powerlessness of the President of Serbia*), Anali Pravnog fakulteta 3-4/LII, 2004, p. 339.

17 Details about these authors' conclusions are summed up in: Simović, D., Ustavni amandmani iz nužde – Kritički osvrt na ustavnu reformu sudske vlasti (*Constitutional Amendments Resulting from Necessity – A Critical Overview of the Constitutional Reforms of the Judiciary*), Zbornik radova Pravnog fakulteta u Novom Sadu, 1/2022, p. 89.

interests".[18] The cited announcement rendered the constitutionally set term of a legislature unenforceable and not binding on the executive (particularly on the President of the Republic).

From the perspective of the systematic constitutional interpretation, it is important to underline that, according to the text of the Constitution, besides through referendums and people's initiative, citizens' sovereignty is exercised through "freely elected representatives" (Art. 2 Para. 1). However, the right of the people (the citizens) to freely elect their representatives, whether on local, provincial, or national level, can effectively be curtailed by the dominant political powers resorting to unnecessary early elections. Holding on to the existing practice might lead to endangering exercise of the sovereignty by compromising one of the most important tools for its practical appearance.

3. THE HISTORY OF EARLY PARLIAMENTARY ELECTIONS AND SIMULTANEOUS MULTI-LEVEL ELECTIONS IN SERBIA

On December 17 2023, extraordinary parliamentary elections were held in Serbia, after only a year and ten months have passed since the last elections were held. On the same date, extraordinary provincial elections were organized in one of its two autonomous provinces, Vojvodina, and snap elections for the capital city of Belgrade and 65 other local self-governments in Serbia (approximately a third of municipalities in the country). This was a political headliner in itself, but it was not a deviation from the usual practice of organizing multi-level snap elections. On the contrary, Serbia is a country where holding early elections has become a tacit constitutional custom.

Thirteen parliamentary elections were held since the restoration of the multiparty political system in Serbia (in 1990), with only three of them (1997, 2012, 2020) not being prematurely held,[19] which include two (1997 and 2020) that were boycotted by influential opposition parties. At the same time, incumbent party, or party coalition, remained in power after the eight out of ten snap elections that were organized.[20] This strongly leads to the conclusion that in most of the cases there was no need to hold an early general election in the first place. Drawing from this analysis, dissolution of the legislature may be regarded as successful political

---

18 *Ibid*.

19 Early general elections were held in: 1992, 1993, 2000, 2003, 2007, 2008, 2014, 2016, 2022, and 2023.

20 This was the case after the elections held in: 1992, 1993, 2007, 2008, 2014, 2016, 2022, and 2023.

move, effectuated at the moment when the opinion polls were obviously encouraging for the political options in power.

Serbia has a long history of tactical dissolutions of parliament and of holding unnecessary early general elections. Only in 1993, 2007, and 2008 at the moment of its dissolution the National Assembly had no functional majority, which led to the fact that the Government could not rule the country. All the other early general elections were most likely held only in order to consolidate the incumbent political forces, without any obvious previous interparty or inter-coalition disputes.

General elections were held concurrently with Serbian presidential elections in 1992, 1997, 2012, and 2022, and, hypothetically, the same might be the case in 2027, the year in which the term of office of the president of the republic expires, as well as that of the actual legislature. In all of these cases, the president of the republic dissolved the parliament, in accordance with the constitutional framework, but probably with the intention that the atmosphere of the presidential elections will probably affect the outcome of the general elections.

Since the reintroduction of multi-party democracy in Serbia no less than seventeen governments have been elected, under the authority of twelve prime ministers, while only five presidents of the Republic were elected during the same period. An observer may be drawn into conclusion that the presidency, by factual means of holding the office longer than a prime minister or a government, represents a higher political authority than its executive counterparts. This argument appears to be even more solidly constructed when it comes to comparing the political and institutional authority of the president of the republic and that of the parliament.

Instead of passing legislation and controlling the government, functions of the National Assembly have been practically greatly reduced because of the lack of appropriate period of time to fulfill its important tasks. Additionally, with the one sole exception (during the so-called cohabitation period from 2004 to 2007), the President of the Republic was the member of the political party that held the dominant political position in the Government in any sequence of the analyzed period, from 1990 up until 2024.

Another important institutional consequence of frequent parliamentary elections deserves to be noticed. Historically, it has taken an unusually long time for the National Assembly to elect the government, counting the period since the election day. In addition, since after each dissolution every work in the parliament comes to an end, caretaker governments, with very restricted legitimacy, continue

to govern.[21] In 1994 and 2004 it took three months for the Serbian parliament to put its confidence in the new government's hands, while in 2016 and 2020 (the latter had been postponed due to grave epidemiological circumstances) this period was longer, and it consisted of four months. In 2007 and 2022, the government was formed after five and slightly less than six months respectively. The reader is invited to observe the critical sounding of the expression used by the European Commission, when, after the general election of 2022, it stated that „the new government was appointed and sworn in on 26 October 2022, within the constitutional deadline, albeit almost 7 months after election day".[22] At the time of the submission of this paper, the general public in Serbia is still waiting for the new government to be sworn in after the December 2023 election (more than three months have passed since), although the incumbent parties hold a comfortable majority of parliamentary seats in the new legislature.

When it comes to local elections, a concern may be expressed that frequent simultaneous organization of local (and provincial) and national elections (2008, 2016, 2020,[23] and, partly, in 2023) can put the very concept of local autonomy at risk. The reason is that, "because of their differences in size, scope and bias, the factors that shape electoral politics in most local elections are very different from those in presidential or state elections".[24] When it comes to partial local elections held in 2023, they were held "following the sudden and simultaneous resignation of mayors from the ruling party",[25] while "several opposition and civil society members publicly expressed concerns that the early local elections were called without a clear explanation".[26]

Any deliberate concurrent organization of national (either presidential, or parliamentary) elections and local elections erodes public trust in local autonomy, because the topics on which voters decide in local elections tend to become irrelevant and covered by the strategic issues of general national (as well as the regional and international) politics. Thus, "voters in local elections mainly express support or distrust of the national government. Local policies and local parties are not relevant to voters' decisions."[27] As it is stated in the official the Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR) 2023

---

21 Concurrently, any dissolved National Assembly is entitled to "perform only current or urgent tasks, stipulated by the Law", Art. 109 Para. 7 of the Constitution.

22 European Commission Serbia 2023 Report, Brussels, November 8th 2023, p. 13.

23 Nastić, M., *Local elections in Serbia: A critical overview*, Studia Wyborcze Vol. 30, 2020, p. 120.

24 *Ibid*, p. 113.

25 OSCE/ODIHR 2024 Final Report on Serbia, *op. cit.*, note 9, p. 5.

26 *Ibid*, p. 5, fn. 5.

27 Nastić, M., *op. cit.*, note 24, p. 114.

Report on Serbia, "the frequency of the early elections further eroded public trust in democratic institutions and electoral processes, and detracted from the efficiency of democratic governance."[28] The traces of the "trend of "nationalization of local elections"[29] can be identified as early as in 2004, when the majority electoral system for the local elections was replaced by the proportional system, and when the mode of direct mayoral elections in four major cities in Serbia was abandoned.

The habit of calling early elections in Serbia has attracted the attention of competent European political authorities. Most recently, in its report adopted after the 2023 local and early parliamentary elections,[30] OSCE/ODIHR concluded that "the government formed after the 2022 early parliamentary elections held office for less than 13 months", and, therefore, „many ODIHR EOM interlocutors noted that frequent early elections effectively stalled the work of the executive and legislative branches on some strategic issues and reforms".[31] The decision of Serbian authorities to delay the more important tasks in order to call an early election in the same period was also noted by the European Commission. In its 2023 Report on Serbia this EU institution concluded that "developments following the two tragic mass shootings [in a Belgrade primary school, in May 2023], the ensuing protests, and speculations about snap parliamentary elections led to a shift in the reform priorities".[32] In its Statement of Preliminary Findings and Conclusions issued on 18 December 2023, a day after the elections, OSCE IEOM concluded that "the frequency of early elections (…) together with the lack of political will left needed reforms unaddressed".[33]

4. EARLY ELECTIONS IN SERBIA FROM THE PERSPECTIVE OF ITS POTENTIAL MEMBERSHIP IN THE EUROPEAN UNION

Serbia has been a candidate for EU membership since 2012. Frequency of holding early elections does not necessarily make Serbia's dedication to the EU full membership more relative, abstract, or distant. However, frequent elections might lead to deterioration of condition of one of the primary values of the EU – the rule of

---

28 OSCE/ODIHR 2024 Final Report on Serbia, *op. cit.,* note 9, p. 5.

29 Nastić, M., *op. cit.*, note 24, p. 114.

30 Local elections for the City Assembly of Belgrade were also held prematurely. Namely, the previous ones were held in 2022, which means that regularly they ought to have been scheduled for 2026, specifically because the ruling parties have secured the majority in the local parliament of the Serbian capital.

31 OSCE/ODIHR 2024 Final Report on Serbia, *op. cit.,* note 9, p. 5, fn. 7.

32 European Commission Serbia 2023 Report, *op. cit.*, note 23, p. 3.

33 OSCE/ODIHR 2024 Final Report on Serbia, *op. cit.,* note 9, p. 1.

law, which remains "one of the most important conditionality criteria for the EU enlargement policy".[34]

In the Treaty on European Union (the TEU)[35] adopted in Lisbon in 2007 it is confirmed that the rule of law is one of the founding elements of the EU itself, alongside with "the values of respect for human dignity, freedom, democracy, equality" and respect for human and minority rights (Art. 2 of the TEU). Additionally, representatives of the EU member states confirmed their attachment, among other principles, to the rule of law, which found its place in the corps of "the universal values" that were developed from "the cultural, religious and humanist inheritance of Europe" (Preamble, Para. 5 and 3 of the TEU). When it comes to the subject of this paper, it is even more significant to remind that the EU promised in its constituent act that its "action on the international scene shall be guided by the principles (…) which it seeks to advance in the wider world: democracy, the rule of law", the protection of basic rights and freedoms, human dignity, equality, solidarity, and respect of international law (Art. 21 Para. 1 of the TEU). Thus, promotion and protection of the rule of law in international relations constitutes a legal obligation of the EU and its member-states,[36] as part of the *acquis* which candidate States have to accept.

It is important to outline that in the case of Serbia (as well as Montenegro, another candidate state) "the EU Commission's documents seem to determine the rule of law criteria in a more precise and detailed manner than in the previous enlargement rounds."[37] As with all the other Western Balkans candidate states, "the strong rule of law conditionality will determine the pace of negotiations, and more importantly the opening and closing of the accession negotiations".[38] The mentioned tacit pre-accession conditionality implies that the respect of all the components of the rule of law is ever more important, in particular when it comes to the context of a noticed rise of the disrespect of the rule of law in one of the EU member states – Hungary[39] and Poland, the latter being the cause of the final triggering by the EU of "the infamous Article 7" of the TEU,[40] which regulates the

---

34 Vlajković, M., *op. cit.*, note 6, p. 235.

35 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/01.

36 This obligation is further confirmed in Art. 21 Para. 2 point "b".

37 Vlajković, M., *op. cit.*, note 6, p. 248.

38 *Ibid*, p. 251.

39 Bugarič, B., *Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge*, LSE 'Europe in Question' Discussion Paper Series No. 79, 2014, p. 13.

40 Vlajković, M., *op. cit.*, note 6, p. 237.

activation of internal EU mechanisms against a member state which persistently exercises the breach of the EU values.[41]

eriodical resorting to early elections in Serbia is not esteemed as a welcome development by competent European political and expert institutions. In a joint report of OSCE/ODIHR and the Venice Commission of the Council of Europe, issued on December 2022, it is recommended that the Constitution of Serbia should be interpreted in such a way that recourse to snap elections could be limited. The report recommends "an interpretation of the Constitution that would limit recourse to early elections, specifically that the President only dissolves the Parliament on the basis of a well elaborated proposal and preferably only when necessary due to the parliamentary situation."[42]

Comparison of the practice of holding extraordinary elections in Serbia to other recognised candidates for membership in the EU leads to compelling conclusions. Even in Hungary and Poland, two EU member states whose democratic governance has been criticized for a number of years, parliamentary elections have been steadily regular since the fall of the Socialism. However, the primary object of the analysis in this part of the paper is consisted of examination of the frequency of dissolving parliaments in candidate states for EU membership. The results of this examination point out that the Serbian authorities resort to snap general elections more often than other candidate states.

In Albania, stability of the term of legislature has characterized no less than *six* legislatures in row: parliamentary elections in this country have been held on regular basis for almost three decades. General elections were held regularly in 1997, 2001, 2005, 2009, 2013, 2017, and 2021, and the next ones are expected to be held in June 2025. This sort of a *golden standard* might be seen as an atypical expression of institutional confidence in respect of the full term of parliamentary legislatures, if there was no example of Bosnia and Herzegovina. Since 1998, all parliamentary elections held at the national level (Bosnia and Herzegovina is composed of two federal units) were *regular*. The same goes for Georgia, another EU candidate country in which several regular parliamentary elections have been held one after another: from 2004 to the ones held on March 28 2004, which suggests that five legislatures have served for full four-year terms.

---

41 "The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations", Art. 7 Para. 2 of the TEU.

42 European Commission Serbia 2023 Report, *op. cit.*, note 23, p. 11.

However, there are countries placed at the threshold of full EU membership in which regular parliamentary elections cannot be easily assessed as standard. In Moldova in the last 20 years eight general elections were held, with three successive legislatures having been dissolved prematurely (from April 2009 to November 2010). Early elections were held twice in Montenegro since the independence of the country in 2006: voters went to the polls earlier than was expected in 2009, 2012, and 2023, with two parliamentary elections held after the constitutional term of the legislature had expired (in 2012 and 2020). Similarly, in North Macedonia, five snap elections were held between 2006 and 2016 (in 2006, 2008, 2011, 2014, and 2016), although in April 2024 second regular general election in row will be held. In Turkey, regular general elections were held in 2007 and 2023, whilst snap elections were organized in 2011, 2015, and 2018. Finally, Ukrainian parliamentary legislatures completed their constitutional term in 2002, 2012 and 2019, and the next ones are about to be held in 2024, whereas early general elections were held in 2007 and 2014 (as in Turkey, the term of the national legislature of Ukraine expires after five, not four, years).

Opportunistic election timing cannot be regarded as a habit of the executive branch solely in Serbia. However, in comparison with Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, and North Macedonia, early elections were held much more frequently in Serbia than it is necessary for a constitutional democracy aiming at the full membership of the EU. The rule of law is one of the basic values (principles) of the EU, and continuous tactical calling of extraordinary parliamentary election, combined with the organization of simultaneous parliamentary, presidential, provincial, and local elections, may threaten the European perspective of Serbia.

5. CERTAIN SUGGESTIONS FOR IMPROVING THE LEGAL FRAMEWORK ON EARLY ELECTIONS IN SERBIA

Constitutional amendments may be the key for effectively constraining the unwelcome practice of periodical premature dissolution of the National Assembly and holding concurrent elections on many (or all) levels of government. Raising public awareness of harmfulness of the mentioned custom would be very contributing to resolving the problem in case, but it seems that establishing rigid legal barriers is the more convenient tool for rectifying the misdeeds brought upon early and simultaneous elections. The suggestions for improving Serbia's constitutional framework in this regard are fourfold: the ban of the possibility of dissolving the National Assembly until the half of its term has expired, reformulation of the legal basis for the dissolution, shortening the period for constituting the parliamentary

session and electing the government, and formal separation of general elections from other types and levels of elections.

Calling early elections might in this way be regarded not as (and just potentially) a move of dubious legal foundation. The application of such a constitutional (and, consequently, legislative) revision would make any unfounded and arbitrary dissolution of the National Assembly outwardly unconstitutional. Ending the session before its constitutionally prescribed term can be bypassed by explicitly banning the badly founded dissolution of the parliament. For that purpose, the Constitution may be amended in order to forbid the dissolution of the National Assembly in the last several months of the president's term of office (three months, as is stipulated by Art. 99 Para. 7 of the Constitution of Bulgaria, or, even more efficient, six months, as is prescribed by: Art. 94 Para. 4 of the Constitution of Belarus, Art. 58 Para. 3 of the Constitution of Lithuania, Art. 85 Para. 4 of the Constitution of Moldova, Art. 172 Para. 1 of the Constitution of Portugal, Art. 89 Para. 3 of the Constitution of Romania, Art. 102 Para. 1 point "e" of the Constitution of Slovakia, or Art. 90 Para. 5 of the Constitution of Ukraine).

The Constitution of Serbia might be amended in order to include the ban of dissolution of the National Assembly twice in a row for the same reason, following the model contained in the Constitution of Greece (Art. 41 Para. 2) and the Constitution of Austria (Art. 29 Para. 1). Another useful suggestion is that the National Assembly should not be exposed to the possibility of dissolution until at least a half of its mandate has passed.[43] Whichever modality is chosen, it appears that there exists a necessity for effectively limiting the possibility of arbitrary ending of a legislature's period of existence.

Putting aside the single explicitly cited cause for the dissolution (Art. 109 Para. 1 of the Constitution), the President of the Republic is not formally *obligated* to dissolve the National Assembly. Therefore, the absence of any sort of duty from the chief of state should be made more explicit. In order to decrease the possibility of abusing the right to dissolve the parliament, it is possible to outline clearer forms of basis for resorting to such a radical move. More precise grounds for the dissolution of parliament can be constructed, based at a clear recognition that the government does not command majority in parliament, or that the government aims at specific policy issues that to do not easily reconcile with its pre-election programme or public announcements.

Also, time limits for the election of the Government should be shortened. In Art. 101 Para. 1 of the Constitution, it is stipulated that the President of the

[43] Andrun, M., *op. cit.,* note 13, p. 117.

Republic calls the elections for the National Assembly 90 days before the end of the legislature's term of office, and that the elections have to be completed within the following 60 days. Additionally, the first meeting of the session is to be held within 30 days following the declaration of the election results (Art. 101 Para. 2). Another possibility for prolonging the effective commencement of parliament's work is provided by the provision in which it is stated that the National Assembly is to be dissolved if it fails to elect the Government within 90 days from the day of its constitution. Finally, by dissolving the National Assembly, the President of the Republic schedules elections, which must be finished within 60 days from the day of their announcement (Art. 101 Para. 6).

When all the mentioned constitutional deadlines are added up, one arrives at a surprisingly long period of time (270 days) for the commencement of the work of a parliamentary session. In terms of these deadlines, a theoretical post-electoral negotiation process may look like a depressing prospect, potentially dragging for almost a year. With the advantage of historical hindsight, it appears that the shortening of the deadlines truly is a necessity. Basically, all of the time periods enumerated in Art. 101 of the Constitution can be abbreviated. There is no particular need for waiting for 30 days to convene the new legislature after the election results are officially pronounced, and one can hardly find a plausible justification for stipulating that the election of the Government must take place within the time limit of 90 days. This period of time may be twice, or three times as short, and it may still provide enough space for various sorts of political arrangements even for the most stubborn negotiators in the coalition-making process, not to mention the situations that do not request any coalition-building, which have occurred very frequently in Serbia.

Ultimately, different levels of elections need to be separated. In the current state of affairs, "voters are unable to differentiate behaviour at the local and national levels; their behaviour in local elections is only a reflection of electoral behaviour at parliamentary or presidential elections."[44] Precise time intervals between the elections at various levels can (must) be inserted in the Constitution, or within the sub-constitutional normative framework. Minimal time difference between the general elections on one side, and presidential, provincial, and local elections on the other side, should consist of six months, in order to create enough space for voters to address their political choices to different types of electoral topics. In addition, since the introduction of proportional representation for local elections, combined with simultaneous local and general elections, "led to the depersonali-

[44] Nastić, M., *op. cit.*, note 24, p. 114.

zation of candidates and councilors",[45] a return to majority system for local elections and direct elections of mayors should be considered, whether at the level of the Constitution or the law regulating local elections.

6. CONCLUDING REMARKS

From the historical point of view, pre-term parliamentary elections in Serbia have served to ensure political survival of a particular government in office. In this sense, the unnecessary dissolution of parliament can indeed be assessed as "manipulative evasion of the Constitution",[46] and a mechanism for "perpetuating power".[47] The same implication might arrive from observing the usual practice of holding simultaneous elections on many levels of government. Verifiably functional governments do not need to resort to early elections, and should not be entangled in the habit of doing the same wrong thing over and over again.

In comparison with most of the other candidate states for EU membership, Serbia is the country with an elevated custom of holding snap parliamentary elections. One of the most influential tools in the process of preventing the regular cycles of parliamentary elections, and of putting the practice of holding concurrent multilevel elections to an end, lays in introducing precise and strict mechanisms for the protection of the integrity of each parliamentary session in the text of the Constitution.

The rule of law is the principle of governance designed to be constructed gradually, by small but resolute steps serving to accomodate the normative life of a country to ideals, values, and procedures stipulated by its highest legal act – the constitution. One must admit that these ideals, values, and procedures suffer, from time to time, from certain deviations even in traditional and well-established democracies. Serbia's Constitution englobes the values of a democratic society, with respect of the separation of powers and promotion of accountability and precise terms of office of the very central institutions of the state. Nevertheless, a particular aversion to holding regular parliamentary elections has arised during many years of political instrumentalization of the institute of dissolution of the National Assembly.

Although the institute of dissolution of parliament is marked by a "deep political connotation",[48] presence of the practice of calling snap elections in Serbia is alarm-

[45] *Ibid*, p. 120.

[46] Orlović, S. P.; Rajić, N. N., *op. cit.*, note 1, p. 1550.

[47] Bojanovska Popovska, D., *Snap elections in illiberal democracies: Confirming trust or establishing hegemony? The case of North Macedonia*, Constitutional Studies Vol. 8, No. 1, 2022, p. 121.

[48] Orlović, S. P.; Rajić, N. N., *op. cit.*, note 1, p. 1549.

ing, because it rarely has anything to do with political currents, at least when it comes to possibilities of forming and maintaining stable governments. This habitude tends to lead to a fictive separation of power, the one in which the legislative branch of power is fully submitted to manifestations of the whim of the executive, as well as to a state of continuous electoral fever.

REFERENCES

BOOKS AND ARTICLES

1. Andrun, M., *Raspuštanje parlamenta prema Ustavu Republike Srbije od 2006. godine: neka otvorena pitanja*, Arhiv za pravne i društvene nauke Vol. 3, 2023, pp. 109 – 132.
2. Bojanovska Popovska, D., *Snap elections in illiberal democracies: Confirming trust or establishing hegemony? The case of North Macedonia*, Constitutional Studies Vol. 8, No. 1, 2022, pp. 111 – 131
3. Bugarič, B., *Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge*, LSE 'Europe in Question' Discussion Paper Series No. 79, 2014, pp. 1 – 39
4. Marković, R., *Moć i nemoć predsednika Republike Srbije*, Anali Pravnog fakulteta Vol. 3-4, 2004, pp. 325 – 360
5. Morgan-Jones E.; Loveless M., *Early Election Calling and Satisfaction with Democracy*, Government and Opposition: An International Journal of Comparative Politics Vol. 58, 2023, Cambridge University Press, Cambridge, 2023, pp. 598 – 622.
6. Nastić, M., *Local elections in Serbia: A critical overview*, Studia Wyborcze Vol. 30, 2020, pp. 113 – 125.
7. Orlović, S. P.; Rajić, N. N., *Raspuštanje parlamenta – vršenje ili zloupotreba ustavnih ovlašćenja*, Zbornik radova Pravnog fakulteta u Novom Sadu Vol. 4, 2018, pp. 1545 – 1557
8. Simović, D. Z., *Institucionalne pretpostavke usklađivanja ustavnopravnog realnog položaja predsednika Republike Srbije*, NBP – Nauka, bezbednost, policija, Vol. 18, No. 1, 2013, pp. 11 – 24
9. Simović, D. Z., *Ustavni amandmani iz nužde – kritički osvrt na ustavnu reformu sudske vlasti*, Zbornik radova Pravnog fakulteta u Novom Sadu Vol. 1, 2022, pp. 85 – 119
10. Turnbull-Dugarte, S. J., *Do opportunistic snap elections affect political trust? Evidence from a natural experiment*, European Journal of Political Research Vol. 62, 2023, pp. 308 – 325
11. Vlajković, M., *Rule of law – EU's common constitutional "denominator" and a crucial membership condition on the changed and evolutionary role of the rule od law value in the EU context*, EU and Comparative Law Issues and Challenges Series (ECLIC) Vol. 4, 2020, pp. 235 – 257

EU LAW

1. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/01

LIST OF NATIONAL REGULATIONS, ACTS AND COURT DECISIONS

1. Constitution of the Republic of Serbia (Ustav Republike Srbije), Official Gazette, No. 98/2006, 115/2021
2. Constitution of the Republic of Serbia (Ustav Republike Srbije), Official Gazette, No. 1/1990

OTHER SOURCES

1. European Commission Serbia 2023 Report, Brussels, November 8 2023
2. European Commission Serbia 2023 Report, Brussels, November 8th 2023
3. OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Republic of Serbia: Early Parliamentary Elections (17 December 2023): Final Report*, Warsaw, 28 February 2024
4. United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, *Report of the Secretary-General*, 23 August 2004