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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

PERU

DRAFT OPINION
ON
LINKING CONSTITUTIONAL AMENDMENTS
TO THE QUESTION OF CONFIDENCE

on the basis of comments by

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I. Introduction

1. By a letter of 16 August 2019, Mr Pedro Oleachea Álvarez-Calderón, Speaker of the Congress of the Republic of Peru requested an opinion of the Venice Commission on the issue of linking constitutional reform to a question of confidence. The authorities expressed their wish to receive the opinion of the Commission in October 2019.

2. The request by the Speaker referred to a letter sent by Ms Rosa Maria Bartra Barriga, Chair of the Committee on Constitution and on Rules of Procedure of the Congress on 24 June 2019, informing the Venice Commission about the conflict between the President and his government on one side and the majority in the Congress on the other.

3. On 31 July 2019, the President of the Republic¹ and the President of the Cabinet (*Consejo de Ministros*) sent to the Congress an “urgent” proposal of constitutional amendment to move up the next general congressional and presidential elections from 2021 to 2020 and to forbid anyone who has held the presidential office to run for immediate re-election. The proposal was sent to the Congress and, if approved, would be submitted to a national referendum.

4. The present opinion was prepared on the basis of comments by Messrs Castellà Andreu, Hernández Emparanza, Newman, Tuori and Vargas Valdez. The rapporteurs worked on the texts in Spanish provided by the authorities of Peru. For the purpose of facilitating exchanges with the Venice Commission the Congress made available the English translation of the draft amendments (see CDL-REF (2019)025). The English translation of the Constitution of Peru is available on the web-page of the Congress (see also CDL-REF (2019) 026). These translations may not always accurately reflect the original texts of the amendments and the Constitution.

5. On 23-24 September 2019, a delegation of the Venice Commission composed of Messrs Josep Maria Castellà Andreu, Domingo Hernández Emparanza, José-Luis Vargas Valdez, Thomas Markert, Serguei Kouznetsov and Alberto Guevara Castro travelled to Lima where it met with the President of the Congress, the Bureau of the Congress and the President of the Committee of the Constitution, different political groups in the Congress, the President of the Cabinet, the Vice-President of Peru, the Minister of Justice, the Constitutional Court, the Ombudsman and a group of national experts in the field of constitutional law. The delegation also attended a special meeting of the Committee of the Constitution. The Venice Commission wishes to thank them for the constructive meetings and for the organization of the visit.

6. *The present final opinion was prepared on the basis of the rapporteurs' contributions. It was adopted by the Commission at its ... Plenary Session (Venice, ...).*

II. Constitutional structure and procedure for constitutional amendments

7. Peru is a presidential republic with important elements of parliamentary control of the government. The Constitution establishes a rather intricate system of checks and balances between the executive and the legislative powers. The executive branch includes a Cabinet with its own President. The President of the Republic appoints and dismisses the President of Cabinet, as well as other ministers (Art. 122 of the Constitution). However, the Cabinet and individual ministers must also enjoy the confidence of the Congress. The Congress makes effective the political responsibility of the Council of Ministers or of each Minister individually through a motion of censure and the refusal of a motion of confidence (Art. 132 of the

¹ Martín Alberto Vizcarra Cornejo, former Vice-president, took office as the President of the Republic of Peru on 23 March 2018, after the resignation of Pedro Pablo Kuczynski, who was originally elected for the period 2016-2021.

Constitution). On the other hand, the President has the possibility to dissolve the Congress in the case of two censures or denial of confidence to the Cabinet (Art. 134 para. 1 of the Constitution). These latter features are characteristic of a parliamentary system.

8. The Congress of Peru is unicameral, consisting of a single chamber made up of 130 members. Those members are, in principle, national representatives who are not responsible to any other body or authority for the votes they cast or the opinions they express. The imperative mandate is explicitly prohibited (Art. 93).

9. The Congress has the legislative and deliberative functions of passing laws (legislative bills) and resolutions, including the amendment or repeal of existing laws; and generally, ensuring the respect of the Constitution and the laws (Art. 102). Of particular note is that the Constitution provides that bills sent by the executive branch and indicated as urgent shall have priority in the Congress (Art. 105).

10. With respect to the executive branch, the President of the Republic fulfils the role of the Head of State and is elected by direct suffrage, for a term of office of five years with no right to immediate re-election (Articles 110-112). Amongst the duties of the President is to observe and enforce the Constitution (Art. 118).

11. Article 206 of the Constitution of Peru lays down the procedure for constitutional amendments. Constitutional changes must be adopted by the Congress through an absolute majority of the legal number of its members and ratified by a referendum. The referendum is not required when more than two-thirds of the legal number of Congress members approve the reform in two successive regular sessions of the legislature. The right to initiate a constitutional reform belongs to, inter alia, the President of the Republic with the approval of the Cabinet. Thus, initiating constitutional reforms lies in the remit of the Cabinet – although only in the form of consenting to the President's initiative – and the adoption of such reforms lies in the remit of the Congress – although, as rule, ratification in a referendum is still required. The President may not veto constitutional amendments adopted by Congress.

III. Background

12. In 2018 President Alberto Vizcarra proposed a series of constitutional amendments concerning in particular the judiciary and the legislative power. The Congress attempted to block these reforms by delaying their approval and the organization of the constitutional referendum. Due to these actions of the majority of Congress, the President presented a motion of no confidence threatening to dissolve the Congress². As a result, the Congress approved the constitutional reforms on 18 September 2018. The first reform transformed the National Council of the Magistracy into the National Board of Justice. The appointment of its members changed: - new members would be chosen by a special commission headed by the Attorney General, the Comptroller General, the president of the Constitutional Tribunal, the president of the judicial branch and the Public Defender through a public competition. The second reform approved by Congress was an amendment to article 35 of the Constitution regulating political party finances, introducing audits and penalties for illegal donations. The third proposal approved in October 2018 introduced a term limit of one consecutive term for members of Congress while the fourth and final proposal included making Congress a bicameral legislature with 130 deputies and 50 senators. These four issues were submitted to the constitutional referendum on 9 December 2018. The voters approved the first three proposals and rejected the last one.

² According to Art. 134(1), the President of the Republic has the power to dissolve Congress if it has censured or denied its confidence to two Cabinets. The current legislature has already rejected a motion of confidence of the Cabinet in 2017.

13. In spring 2019 President Vizcarra asked the Congress to approve a second set of political reforms which included two constitutional reforms: limitation of the right to run for a public office of persons convicted for an intentional crime that incurs a prison sentence of more than four years; primary elections within political parties open to the general public, mandatory, and supervised by the electoral bodies; criminalising undue party financing, or forgery of information on contributions, revenues and expenditures of political parties; new requirements for the registration of political parties; eliminating preferential voting and establishing the mandatory nature of gender alternation in the drawing up of the parliamentary lists; as well as giving the power to lift parliamentary immunity to the judiciary. Since the Congress had not dealt with these proposals as a matter of priority, the President of the Cabinet Mr S. Solar de Labarthe informed Congress that, if MPs failed to approve these proposals, his government would raise the question of confidence. As set out above, since this would have been the second time the Congress refused confidence to a Cabinet during the current legislature, according to the Constitution this would have given the Head of State a possibility to dissolve Congress. In July the reform proposed by the President was approved by the Congress.

14. In his address to the nation on 28 July 2019, the President of the Republic announced new constitutional amendments in order to hold both Presidential and Parliamentary elections in 2020 instead of 2021³ and to forbid anyone who has held the presidential office to run for immediate re-election, even if this person assumed the presidential office not immediately following the elections but only subsequently during the term of office. A bill to this effect was sent to the Congress on 31 July. In his request for the opinion of the Venice Commission, the President of the Congress expressed his preoccupation with "*the possibility of the Executive branch using, once again, a motion of confidence to force a vote in favour of this reform*". Most MPs share these concerns and are opposed to this new reform. Some of the opposition parties in the Congress support the proposals of the executive. Thus, the chairpersons of five of the twelve political groups (*bancadas*) of the Congress sent a letter to the President of the Venice Commission, defending the constitutionality of the action of the executive branch. On the other hand, when the delegation of the Venice Commission attended the meeting of the Committee on the Constitution and the rules of Procedure of the Congress, it was apparent that a clear majority of its members opposed the amendments.

15. In his meeting with the delegation of the Venice Commission on 24 September, the President of the Cabinet informed the delegation that the executive did not intend to propose a question of confidence linked to the constitutional amendments. However, he also stated that the President would have to decide on how to react if Congress did not adopt the amendments.

16. On 27 September 2019 the Committee of the Constitution of the Congress shelved the proposal of constitutional amendments. The President of Cabinet responded that his government was considering an adequate response which could be the request for a motion of confidence.

17. Considerations of the political context in Peru are put aside in the present opinion. However, it is important to remember that the current constitutional amendment proposal has been part of a wider package of political reforms (constitutional and legal) promoted by the President of the Republic Martín Alberto Vizcarra Cornejo as a tool for a political renewal of the country in a moment when public institutions, including the Congress, are strongly criticised and challenged by the public opinion in Peru. The executive insists that the constitutional amendment under consideration establish an exceptional rule for the next

³ The current President and Vice-president are supposed to end their mandate on 28 July 2021, and the members of the Congress on 26 July 2021. According to the constitutional amendment proposal, anticipated general elections should take place on April 19th, 2020.

presidential and parliamentary elections and do not represent a new general power of dissolution of the Congress by the President. Some representatives of the majority of the Congress suspect that the President could use the referendum for introducing two separate questions (it is the executive that drafts the questions) on the dissolution of Congress and the term of the President, being the last presumably legitimated by the electorate.

18. The purpose of the draft opinion is not to provide a full analysis and assess the constitutionality of the proposed amendments and procedures. This is the task of the Constitutional Court of Peru. Following its usual practice, the Venice Commission examines the issue submitted by national authorities, in the present case the linking of constitutional amendments to the question of confidence, on the basis of its experience in comparative constitutional law and constitutional theory as well as its previous opinions and reports issued on similar cases.

19. It is also important to note that the constitutional amendment project argues that expedited general elections are an “*optimal mechanism to overcome the current political crisis*” where there is “notable difficulty to find consensus between the Executive and the Legislature, to the detriment of the citizenry”. If the amendment was approved by both the Congress and the referendum, the general elections would take place on April 19th, 2020, and would encompass the Presidency, the Congress and the representatives of the Andean Parliament.⁴ This would put additional pressure on the different State institutions, which will need to adapt the existing legal framework (including some rules changed recently, as it has been said, which are difficult to apply in early elections in 2020) and to organise the vote in a very reduced timeframe. Additionally, in such a reduced timeframe it seems difficult to believe that the current political fragmentation and polarization among political groups could be overcome. In order to achieve the main goal of the reform, which is to overcome the political crisis and regain the confidence of the Peruvian citizens, the electoral process should ensure transparency and be in accordance with international standards and best practices.

IV. Constitutionality of linking the vote of no-confidence to constitutional amendments under the Peruvian Constitution due to the possibility of then dissolving Congress

The motion of no-confidence in Peru

20. According to Art. 130 para.1 of the Constitution of 1993, within thirty days of having assumed his functions, the President of the Cabinet and the other ministers shall attend the Congress to present and discuss the general policy of the government and the main measures required for its implementation, asking for a vote of confidence. Subsequently, the issue of confidence can be raised both by members of Congress and by the executive branch. A quarter of the members of Congress can introduce a motion of no confidence against the Cabinet or individual ministers. Its approval requires the vote of over half the legal number of members of Congress (Art. 132 para. 2). On the side of the executive branch, the President of the Cabinet may introduce before Congress a vote of confidence on behalf of the Cabinet (Art. 133). In addition, an individual

⁴ The Andean Parliament is a regional international body comprised of representatives of the member States of the Andean Community: Bolivia, Chile, Colombia, Ecuador and Peru. Its mission is to “support the governments of the member States in the harmonization of national legislation, as well as in the regionalization of public policies and successful government practices that may contribute to enhancing the quality of life and well-being of the Andean population”. Free translation. See <https://parlamentoandino.org/>. According to the amendment proposal, the “inclusion of Andean Parliament in the [general] elections to be held in April of 2020 is in response to the need to hold one general election [...] in a single date”, and to comply with the obligations set forth by the Law No. 28360, Law on the Elections of Representatives to the Andean Parliament, regarding that “*the representatives shall be elected directly by the Peruvian people on the occasion of the other elections*”.

minister can also turn the approval of a ministerial initiative into an issue of confidence. This becomes clear from Art. 132 para.5, according to which “defeat of a ministerial initiative does not force the minister to resign, unless its approval was made a question of confidence”.

21. A total cabinet crisis occurs if the confidence requested by the President of the Cabinet is rejected or if the President of the Cabinet is censured upon a motion of no confidence introduced in the Congress or resigns or is removed by the President of the Republic (Art. 133). Then, the Cabinet resigns, and the President of the Republic should accept this resignation in the next 72 hours (Article 86 “e” and “b” of the Rules of the Congress). The President possesses a counter-measure against denial by Congress of confidence in the Cabinet. According to Art. 134 para. 1, the President of the Republic has the power to dissolve Congress if it has censured or denied its confidence to two Cabinets. It is this possibility in the current situation for the President to dissolve Congress, if Congress rejects the proposed constitutional amendments, which makes the linking of constitutional amendments to the motion of confidence particularly salient.

22. In 2018 the Constitutional Tribunal declared that in Peru a motion of confidence can be linked to the adoption of a law⁵ and deemed unconstitutional the substantive restrictions on the use of the power to introduce the question of confidence which were included in the rules of the Congress.

23. There are various models of motion of confidence in comparative constitutional law. In the Italian and French model, the motion is directed against the government programme or a statement of general policy, and, with some limitations, against a legislative bill.⁶ In both countries the use of the motion of confidence in respect of constitutional amendments is not possible. In the Spanish model, the motion is directed against the President of the Government’s “*programme or to a statement of general policy*” (Art. 112 Spanish Constitution) and cannot be applied in relation to a legislative initiative. After the Constitutional Court decision of 2018, Peru assimilates the motion of confidence to the French or Italian model, instead of the Spanish one, that had inspired the wording of the rules of the Congress declared unconstitutional.

Arguments in favour of linking constitutional amendments constitutional amendments to a vote of confidence

24. The wording of Art. 133 on the question of confidence is quite general and seems to leave open to which issue the Cabinet - through its President – may connect the vote of confidence. One can defend the interpretation that corresponding to the provision in Art. 132 para. 5, concerning the confidence of an individual minister, introduction of a vote of confidence on behalf of the Cabinet as a whole must be linked to the approval of an initiative by the executive branch. If such an interpretation is adopted, it can be argued that it must lie within the competence of the executive branch to take such an initiative and within the competence of Congress to approve it. This would not preclude linking constitutional amendments to the vote of no-confidence since according to Art. 206 of the Constitution the President with the approval of the Cabinet may initiate constitutional amendments. Initiating constitutional reforms involves the Cabinet not only in the

⁵ The Constitutional Tribunal of Perú, in the paragraphs 75 and 76 of the ruling 0006-2018-P1/TC stated that “... *the motion of confidence proposed by the Ministers is openly established by the Constitution, in order to grant the Executive Branch a broad set of possibilities to pursue political support in the Congress for its policies*”. However, the ruling is not clear as to the full reach of the motion of confidence as stated in article 133 of the Constitution.

⁶ Article 49 paragraph 2 of the French Constitution contemplates the use of this instrument “The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance Bill or Social Security Financing Bill an issue of a vote of confidence before the National Assembly. In that event, the Bill shall be considered passed unless a resolution of no-confidence, tabled within the subsequent twenty-four hours, is carried as provided for in the foregoing paragraph. In addition, the Prime Minister may use the said procedure for one other Government or Private Members' Bill per session. “

form of consenting to the President's initiative but also in using any constitutional instruments necessary for its successful adoption and implementation. In 2018 and 2019 the Cabinet used the question of confidence to speed up the adoption of constitutional and legislative reforms.

25. In addition, the interpretation which presupposes that the vote of confidence must be linked to the approval by Congress of a particular initiative is not the only one. Another possible interpretation is that the President of Cabinet can introduce the vote for whatever reason he or she considers relevant, corresponding to the power of the Congress to introduce and approve a motion of no confidence for any reason it regards as pertinent.

26. It can be argued that the frequency with which the President of Cabinet introduces a vote of confidence on behalf of the Cabinet, may add to political instability in the country. However, this does not make such recourse to a procedure expressly established by the Constitution unconstitutional.

27. While the Constitutional Tribunal in its decision of 2018 did not expressly pronounce on the possibility of linking the vote to a constitutional reform, it defended as a general approach a broad interpretation of the scope of the procedure.

Arguments against

28. Article 206 of the Constitution of Peru clearly establishes that every constitutional reform should be passed by the Congress. Amendments must be adopted by Congress through an absolute majority of the legal number of its members and ratified by a referendum. It can be argued that any attempt to put pressure on the Congress in the process of consideration of constitutional amendments would amount to limitation of its attributions as a holder of "a derived constituent power".⁷ The constitutional reform power is not the same as the legislative power. The law on constitutional amendment is different in substance from ordinary laws. For this reason, the procedures of their approval are different. For the constitutional amendment, "*the function [of the Parliament] as constitutional legislator is almost always subject to special procedures and requirements*".⁸ The admission of a motion of confidence for draft laws doesn't mean that the same rules should be automatically applicable to a constitutional amendment.

29. Even if the President has the power to propose constitutional amendments (with the approval of the Cabinet), "a law concerning constitutional reform shall not be objected by the President of the Republic" (Art. 206). This norm is different from the rule applied to ordinary laws (including organic laws) as it appears in Art. 106 of the Constitution - the President can make "observations" in relation to a law or part of the law passed by the Congress, i.e. he or she has a suspensive veto. The effect of such power is the requirement of an overall majority (half plus one) of the members of the Congress for the definitive approval of the law and its promulgation by the President (Art. 109 of the Constitution). The procedure of the approval of a law on constitutional amendment has another particularity compared to the ordinary legislative procedure - it is forbidden in this case to delegate legislation to the Government (Art. 76 "d" of the Rules of the Congress (RC)). This is an additional limitation on the intervention of the Cabinet which leaves solely to the Congress the discussion of the constitutional amendments. But what happens with other possible interventions of the President not expressly regulated or forbidden by Art. 206 of the Constitution? There are arguments in favour of using a restrictive criterion.

⁷ Some Peruvian scholars advance an argument that the original constituent power, the Constituent Assembly which adopted the 1993 Constitution, granted the derived constituent power to the Congress, awarding it a unique and exclusive faculty to pass constitutional reforms.

⁸ Report on Constitutional Amendment CDL-AD(2010)001, para. 35

30. Constitutional amendments are particularly sensitive since they may affect the balance of powers between the executive and the legislature. Linking constitutional amendments to a motion of confidence could give to a President the possibility of exercising pressure on Congress to alter the balance of powers in his or her favour. In its decision on the vote on no confidence the Constitutional Tribunal referred to the principle of the balance of powers when interpreting the scope of the vote of no confidence. There seem to exist certain substantive limitations to constitutional reform in Peru. For the Constitutional Tribunal and most legal scholars, the presidential form of government in itself is one of such limits. It is not a rare case in comparative law. As has been recognised by the Venice Commission, this is a common limitation in cases where an entrenched clause does exist. But the concrete scope of these substantive limitations does not seem clearly defined. Even if the principle of the separation of powers is an unamendable provision in some countries, *“it is true that the principle of “division of powers” is not immovable; exact limits of the presidential power vis-à-vis parliament cannot be defined once and for all.”*⁹

31. The purpose of a motion of confidence presented by a government is usually to enable the government to carry out its programme without any impediment. By contrast, constitutional amendments are more far-reaching and go beyond an ordinary government programme. This is the reason why in other countries it is not possible to link the vote of no confidence to constitutional amendments (see below) and the reason why some Peruvian constitutional lawyers consider this link inadmissible taking into account also the paragraph 75 of the 2018 decision of the Constitutional Tribunal.¹⁰

32. The use of the question of confidence puts a strong pressure on the Congress since it has to be voted upon in a very limited timeframe. Too rigid time constraints, notably the parliamentary debate under the threat of a motion of confidence, should be avoided for constitutional amendments since they reduce possibilities for achieving a broad consensus among political forces and for involving civil society in the constitutional amendment process. This is more evident when the Cabinet, as happened in the last request of a motion of confidence in relation to the political reforms already passed in 2019, required that the approval of such proposals by the Congress should respect the “essence” of the President’s initiative, establishing a limitation on the decision-making power of the Congress. The application of such procedure to the discussion of a constitutional amendment seems to be problematic since it reduces the rights of the MPs and of the Congress in general.

33. After the announcement of the proposed constitutional amendment by the President of Peru, both the executive and the Congress requested advice on the matter from several national constitutionalists. The opinions of the national experts were divided, but those who oppose the acceptability of the proposal would seem to prevail.

34. Since the Constitution does not include any express limitations on the power of the executive branch to introduce a vote of confidence or to turn a ministerial initiative into an issue of confidence, neither as concerns the frequency of exercising this power nor the subject-matter to which it is linked, the issue whether a constitutional amendment introduced in Congress by the executive could be linked to a motion of confidence can only be clarified by a decision of the Constitutional Tribunal of Peru.

V. Elements from the doctrine of the Venice Commission with respect to this issue

35. The role of the Parliament and of the Head of State (or the government) during the constitutional amendment process has been analysed by the Venice Commission on numerous

⁹ Opinion on the draft modifications to the Constitution of Azerbaijan, CDL-AD(2016)029-e, para. 64

¹⁰ Ruling of the Constitutional Tribunal 0006-2018-P1/TC.

occasions. The President or the executive, depending on the Constitution, have the right of initiative to propose constitutional reforms. The Venice Commission's *Report on Constitutional Amendment*¹¹ provides several useful examples on the matter. As far as the executive power is concerned it points out that:

*"The executive may be involved in the constitutional amendment procedure in one way or the other. First, the executive will often share a right of initiative with parliament. Second, it may have the competence to decide between different procedures for amendment (France), or a constitutional amendment must be sanctioned by the head of state before being enacted..."*¹²

36. By contrast, the Venice Commission underlined that the role of the Parliament in the constitutional amendment process is essential:

*"In the great majority of countries, the executive will not have a direct role in the parliamentary constitutional amendment process, though of course representatives from the government may participate in the debate according to ordinary procedures. In a few countries, however, the head of state had been given a formal role, with the competence to make proposals on the draft amendments [Armenia, Turkey, when draft amendments are submitted to the President for promulgation]. In the Netherlands, the government generally plays a primary role in the legislative process; thus, in general, it is the government that introduces the proposal to change the Constitution."*¹³

37. The Venice Commission came to the conclusion: *"that the national parliament is the most appropriate arena for constitutional amendment, in line with a modern idea of democracy."*¹⁴

38. If constitutional amendments are adopted at the constitutional referendum proposed by the executive, the referendum should not be used as a tool to bypass the legislators or force parliaments to adopt constitutional amendments quickly. Referendums gain legitimacy when carried out within a reasonable time frame¹⁵. As follows from the Code of Good Practice on Referendums, *"the circumstances of the referendum must guarantee the freedom of voters to form an opinion. This requires inter alia that the question put to the referendum is formulated clearly, that sufficient information is given to the voters, and that enough time is left for public debate"*.¹⁶

39. Each constitutional amendment process is different, hence international standards do not provide a concrete time period in which these reforms should ideally be discussed and voted. Nevertheless, strong democratic deliberation requires that the debate within the legislative branch and the public arena are not constrained in advance by a fixed timetable or by restrictions to the amendment power of the members of the Parliament (or Congress) imposed by the executive or President.

40. The Venice Commission calls for an amendment procedure *"applied in an open, transparent and democratic way."*¹⁷ For this *"...properly conducted amendment procedures, allowing time for public and institutional debate, may contribute significantly to the legitimacy and sense of ownership of the constitution and to the development and consolidation of democratic*

¹¹ CDL-AD (2010)001.

¹² Idem. para. 181.

¹³ Idem, para. 45.

¹⁴ Idem para. 183.

¹⁵ Venice Commission, Guidelines for constitutional referendums at national level, CDL-INF (2001)10, p. 2.

¹⁶ Opinion on the draft modifications to the Constitution of Azerbaijan CDL-AD (2016)029 para. 8.

¹⁷ Idem para. 202.

constitutional traditions over time. In contrast, if the rules and procedures on constitutional change are open to interpretation and controversy, or if they are applied too hastily or without democratic discourse, then this may undermine political stability and, ultimately, the legitimacy of the constitution itself. In this sense, the Commission has repeatedly stressed that a duly, open, informed and timely involvement of all political forces and civil society in the process of reform can strongly contribute to achieving consensus and securing the success of the constitutional revision even if this inevitably takes time and effort.”¹⁸

41. As a conclusion, the Venice Commission favours constitutional amendment procedures characterised by the search of a broad consensus in parliament (or similar legislative bodies) among different political forces and the involvement of civil society in the process. In addition, on several occasions the Commission stressed that *“transparency, openness and inclusiveness, adequate time frame and conditions allowing pluralism of views and proper debate of controversial issues, are key requirements of a democratic Constitution-making process”¹⁹*. In consequence *“Too rigid time constraints should be avoided and the calendar of the adoption of the new Constitution should follow the progress made in its debate”²⁰*.

42. It should also be mentioned that normally in presidential systems the term of the legislative power is fixed, and Presidents do not have powers to dissolve a Congress. The Venice Commission noted that *“in purely presidential republics, the power to dissolve the legislature is quite rare, as it would undermine the principle of the separation of powers as classically understood”²¹*. Ecuador is an exception (Art. 148 of the Constitution), as is Peru.

VI. Conclusions

43. The Peruvian Constitution does not set forth any explicit limitations with respect to the issues which may be linked to a motion of confidence. It will be up to the Constitutional Tribunal to decide whether proposals for constitutional amendments may be linked to a question of confidence. In comparative law, linking constitutional amendments to a motion of no confidence is unusual.

44. Any constitutional amendment process should preserve the principle of the separation of powers and the requirement of checks and balances between the President and the Congress. The power for the President to link a motion of confidence to constitutional amendments may create a risk of being used to alter this balance. The threat of dissolution may make it difficult for Congress to resist attempts to alter it in favour of the President. In Peru some substantive limitations to constitutional amendments seem to exist, such as the principle of separation of powers or the republican form of government, which might provide a safeguard, but their scope is not clearly defined.

45. The Venice Commission’s report on constitutional amendments suggests that constitutional reforms should be based on a wide consensus and undertaken with due care and deliberation in Parliament, in keeping with modern ideas of democracy, as they alter the supreme and fundamental law of the land. For this reason, a Constitution is normally designed to be difficult to amend to ensure its relative permanency, stability, foreseeability, and continuity, and amendment procedures tend to be lengthy. This is in contrast with motions of confidence, which have to be voted upon quickly.

¹⁸ Idem. Paras 204 and 205.

¹⁹ See among others the Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary, CDL-AD (2011)001, para. 18.

²⁰ Opinion on the draft New Constitution of Iceland, CDL-AD (2013)010.

²¹ CDL-AD(2017)005-e, para. 84

46. The Commission hopes that the President and the Congress of Peru will find a compromise and adequate constitutional solutions which will bring stability and help the authorities to address the challenges faced by the Peruvian society.

47. The Venice Commission remains at the disposal of the Peruvian authorities for any further assistance.

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