

# Article 49-3: Move to force through pension reform set to deal big blow to Macron presidency

Sunday 8 March 2020, by [SALVI Ellen](#) (Date first published: 3 March 2020).

**On Saturday February 29<sup>th</sup>, during an emergency meeting of ministers called to discuss the Coronavirus crisis, the French government took the decision to force its bitterly-opposed pension reforms through Parliament without a vote. In adopting the “nuclear option” of invoking Article 49-3 of the French Constitution to do this, President Emmanuel Macron is hoping that public debate will now shift to other issues. But as Ellen Salvi writes, the move is likely to plunge the remaining two years of his presidency into greater political uncertainty and even undermine his chances of re-election in 2022.**

President Emmanuel Macron has just ended up turning the constitutional weapon known as Article 49-3 on himself. In deploying this article of the French Constitution - which enables a law to be forced through without a Parliamentary vote - for its controversial pension reforms, the current administration has chosen to back out of a Parliamentary debate which it felt was taking far too long [1]. In doing so the president hopes to bring to a close the debate on the catastrophic pension reforms which have dogged his government from early on [2], and switch the focus of public debate to other issues. But in reality President Macron's decision to force this legislation through is likely to mean he spends the final two years of his term watching powerlessly as his presidency falls apart.

The decision to resort to Article 49-3 was taken on Saturday February 29<sup>th</sup> during a meeting of ministers whose main objective was to discuss the growing Coronavirus emergency. The government made use of the gathering to slip the pension reform legislation onto the agenda, having warned over the last few weeks that recourse to Article 49-3 might be required. The government felt that the time was right for such a move and that public opinion had now reached a point where people would accept the use of a drastic procedure which even ministers themselves cheerfully describe as the “nuclear” option.

So, late on Saturday, the prime minister Édouard Philippe went to the National Assembly and announced the decision to a thinly-attended chamber. After the extended debates and delays over the legislation, the prime minister spoke about the “particularly sad image that the events of the last few days have given of our institutions”. And in the face of continual barracking from Member of Parliament François Ruffin of the radical left La France Insoumise (LFI) ('Unbowed France') party, Philippe said: “And I have to say that there is no more eloquent illustration of this than what we are witnessing at this moment.” The prime minister said that he did not feel that “our democracy can afford the luxury of such a spectacle”.

Édouard Philippe insisted that using the guillotine procedure of Article 49-3 was not intended to

“end the debate” but instead, after the opposition had tabled 41,000 amendments, it was aimed at ending “this episode of ‘non-debate’ in a Parliament deprived of its important function of making the law”. The government had to allow the post-legislative work to go ahead and Philippe pointed out that the current state of the legislation was not that which had been initially proposal but was instead “an improved text, greatly improved thanks to all the amendments that we have incorporated”. He continued: “First and foremost it reflects the last two months of consultations conducted with the social partners on issues linked to the impact of hardship at work, the employment of older people and to the transition [period of the law’s measures].” The prime minister said that the new version of the law would also take into account the Parliamentary work that had been carried out, which would allow them to “consolidate other measures relating to social justice”.

Back on February 25<sup>th</sup> the prime minister had warned: “My ambition is to make sure that the debate takes place. If that is not possible, after many hours of debate, the Constitution allows the prime minister to use 49-3. To ensure that the debate goes forward and does not become sterile... when it’s time to assume one’s responsibilities I will do so without hesitation and I will use all of the Constitution and nothing but the Constitution.” Under the previous presidency Philippe, who was then a member of the conservative opposition party Les Républicains, had voted for the motions of censor that were triggered after the then prime minister Manuel Valls had used the 49-3 procedure to force through business-related and labour legislation known as the Macron and El Khomri laws.

Those two episodes occurred in 2015 and 2016 respectively and the first one of them in particular had a deep impact on Emmanuel Macron who was at the time economy minister under President François Hollande. In a way the experience even reinforced his presidential ambition, seeing it as an opportunity for a form of revenge. Macron in fact has never got over the fact that his eponymous 2015 law, which was aimed at “growth, economic activity and equality of economic opportunity”, had to be passed in this way. And over the fact that all the hundreds of hours he spent haggling over the smallest details in the bill’s text with government rebels and the opposition were at a stroke rendered pointless. “It was a form of humiliation and that wasn’t forgotten by anyone,” recalls a former ministerial advisor from that time.

“He was very reticent about the use of 49-3, we all were,” confirms the socialist MP Cécile Untermaier, who at the time was co-sponsor of the legislation along with a fellow socialist MP, Richard Ferrand, who is now a senior figure in Macron’s La République en Marche (LREM) party and president of the National Assembly. “But the situation was very different because the Parliamentary debate had taken place. The 49-3 [procedure] came at the end because the prime minister feared he might be a few votes short. It’s nothing like that this time: the text wasn’t even amended at the committee stage. The government is going to be able to pass its initial version. That’s a lot more explosive. Democracy has nothing to gain from using exceptional measures and it will pay the heaviest possible price for this failure,” the MP said.

On November 25<sup>th</sup> 2016, a few months after he had left François Hollande’s government to launch his En Marche! movement, Emmanuel Macron told *Le Monde* that he did not “for a single second ... believe in reforming by decree”. Yet the pension legislation includes 29 decrees, which according to the country’s top constitutional authority, the Council of State, “takes away the visibility of all that is necessary for the appreciation of the consequences of the reform and, as such, its constitutionality and adherence to convention”. But in that 2016 interview Emmanuel Macron had gone further. “Look what’s just happened when one carries out reform using Article 49-3, even though it’s an article of the Constitution: people take it very badly,” he said.

When Mediapart asked him about these statements, on the eve of the second and decisive round of the presidential election in 2017, Emmanuel Macron was already a little more equivocal. “I criticised the context of the labour law. That’s to say ... one law at the end of a presidential term which was

not explained, which wasn't supported politically, and debate was rejected," he said, regretting the "neurotic relationship" that political leaders had with Article 49-3.

To justify the use of this procedure now, the government will insist that it was forced into it by an opposition which did not want to discuss the real issues of the reform and which was preventing real Parliamentary debate by "obstructing" it through tens of thousands of amendments.

Article 49-3 of the French Constitution has often been used by prime ministers in order to build majorities in the National Assembly; this was especially the case with Michel Rocard, who was premier from 1988 to 1991 and who used this procedure no fewer than 28 times to save 13 different bills. Since the start of the Fifth Republic in 1958 this article has also been used as a means of subduing restless ruling majorities.

On this occasion, however, it has been unfurled against the opposition in the name of rationalising Parliamentary time, as was done by previous prime ministers Pierre Mauroy (1981-1984), Laurent Fabius (1984 - 1986), Édouard Balladur (1993 - 1995) and Jean-Pierre Raffarin (2002 - 2005). It may end the initial battle but not the war. "Two can play at that game. [Édouard Philippe] can use it just once [per text and per ordinary Parliamentary session]. So it will be impossible [to use it] on the organic law [editor's note, the accompanying constitutional legislation that is also part of the pension reform]," the LFI's Jean-Luc Mélenchon told Mediapart recently.

### **'It's the start of the problems'**

In the meantime the government has agreed on the line it will adopt over using Article 49-3. Ministers and MPs from the ruling LREM have in recent days lined up to attack the "spectacle" that MPs from the opposition LFI and communists have staged. "Considerable time was spent over the question of whether the term 'considering' should be replaced by 'with regard to', 'annually' by 'each year' or 'each year' by 'annually', said an exasperated Édouard Philippe on February 25<sup>th</sup>. "The time devoted to these exchanges - I don't object to that, it's perfectly honourable - doesn't seem to me to reflect the deep purpose of an ambitious reform aimed at all our fellow citizens." Indeed, in order to bring an end to this situation, some LREM MPs were themselves calling for Article 49-3 to be deployed.

Édouard Philippe, meanwhile, is very aware of the explosive character of this constitutional procedure and of the political trap that goes along with it - especially as he is himself campaigning to be mayor of Le Havre in northern France in the local elections later this month - and he wanted to delay its use. Though he defends it publicly, privately the prime minister harbours strong doubts about the value of this unpopular procedure which is widely perceived as forcing legislation through an elected Parliament. He is not alone. "Article 49-3 is a weapon of authority for 24 hours. Afterwards, that's when the problems start," Bruno Le Maire, then an opposition MP and now minister of the economy, told Mediapart at the time of the passing of the Macron law under François Hollande. More recently, one of Le Maire's government colleagues said: "It's a shame to use this weapon, the message it sends out isn't a good one. It will be harder to reduce tensions after that."

The president himself is intending to let the prime minister's office take all the responsibility for using Article 49-3, to avoid as much as possible the collateral political damage that it could do him. For several weeks the government has been preparing the ground, acting as if it had no choice but to deploy the procedure. Prime minister Édouard Philippe has constantly pointed out that the head of state had set a timetable of reforms which made it clear that the pension reforms had to be carried out by this summer. This meant, the government has insisted, that it had to move fast. This was despite the fact that public opinion is still against the plans, and despite a stinging attack from

the State Council, the country's highest constitutional authority [3]. And this is despite, too, its handling of the whole process, which from start to finish has reinforced the idea that the government is completely deaf to everyone around it.

The use of Article 49-3 is in fact an appropriate end to this fiasco. "The mistake was earlier on, much earlier on," says one minister who prefers to heap the blame on its former pensions tsar Jean-Paul Delevoye [4], rather than the pension reform itself. During the 2017 presidential campaign the En Marche! team said they wanted to make the planned pension reform an "illustration of the Macron method faced with obstacles in France". In fact the saga will indeed lodge in the annals of French political history, but as a casebook example of what not to do. After weeks of making it up as they went along, the government ended up having to use the weapon that is deployed by those who have failed to convince. It was, as the current president of the Assembly Richard Ferrand wrote back in 2016 about the use of Article 49-3 for the El Khomri law, an "unpleasant admission".

The political risk the government now faces after using this constitutional procedure should not be minimised: it is immense. Yet not for a moment did the executive think it could do anything else. Every minister questioned about it in the past few weeks responded in the same way: "Have you got any other ideas?" It seems impossible for this government to be able to take its time, review and redo the text, gather everyone around the table and to recognise its own mistakes. In political reasoning that is hard to grasp, Emmanuel Macron remains convinced that he will never be re-elected in 2022 if this pension reform does not go through.

But within the ruling party, the LREM, some are now starting to think the opposite. "Forcing through legislation as important as this is an open door for Marine Le Pen [*editor's note, president of the far-right Rassemblement National*]," worries one LREM MP, who does not see how the government can carry on calmly with its reforms after such a defeat. "You can't say that Parliament emerges stronger from what's just happened," says a colleague. "The problem isn't that the opposition are opposing, which is quite normal. The sole mistake comes from the timetable set by the government: you don't do the mother of reforms in two weeks."

In the corridors of power more and more voices subscribe to this view. And they are worried - that word is perhaps not strong enough - about the reaction of centre-left voters who were the "cornerstone" of the 2017 presidential victory and who have already gone missing. The government's recourse to Article 49-3 could persuade them to stay away from the voting booths in the 2022 presidential election if there is a repeat of the 2017 second round duel between Emmanuel Macron and Marine Le Pen.

Weary of waiting for a new lease of life in the remaining two years of the presidency, some Macron supporters do not hide their desire to change direction and attack the prime minister who is from the conservative Les Républicains and whose appointment they have never fully come to terms with. "Everything must be done to avoid using 49-3 and we must ask how we arrived at this point," LREM MP Aurélien Taché told RFI radio on February 22<sup>nd</sup>. "Yes, the local council elections are important, particularly in Le Havre [*editor's note, where Édouard Philippe is standing to be mayor*], but we need everyone's commitment and that of the head of the orchestra to carry out the pension reforms."

Having made a quick trip to his town to campaign on the evening of Friday February 28<sup>th</sup>, Édouard Philippe soon put aside his candidate's hat and hurried back to Paris to perform his duties as head of the government - the prime minister's role in the French system. This week he will, like all his predecessors who have used Article 49-3, have to face a motion of no confidence from the opposition. That has happened 88 times since 1958. Already two have been laid down by the opposition and they will trigger debates in the National Assembly.

The founder and head of the opposition LFI, Jean-Luc Mélenchon, who accuses the government of “deceitful behaviour”, said: “The prime minister is trying to make us responsible, that’s unacceptable. He’s abusing us.” The first secretary of the Socialist Party, Olivier Faure, tweeted: “The government prefers the brutality of 49-3 to debate.” The head of the Les Républicains group of MPs, Damien Abad, also indicated their support for a motion of censure.

If a motion of censure is passed by a majority of MPs then the government would have no alternative other than to resign. But the administration can take comfort from the fact that in the history of the Fifth Republic only one such motion has been successful, and that was in 1962 under the premiership of Georges Pompidou. However, what happens to this presidency in the coming months after this use of Article 49-3 is another - and from the government’s point of view altogether more worrying - matter.

**Ellen Salvi**

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## **P.S.**

- MEDIAPART. MARCH 3, 2020 :  
<https://www.mediapart.fr/en/journal/france/030320/move-force-through-pension-reform-set-deal-big-blow-macron-presidency?onglet=full>

- English version by Michael Streeter.

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- *Les article d’Ellen Salvi sur Mediapart :*  
<https://www.mediapart.fr/biographie/ellen-salvi>

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## **Footnotes**

[1] <https://www.mediapart.fr/en/journal/france/290220/france-push-pension-reform-through-parliament-decree>

[2] <https://www.mediapart.fr/en/journal/france/010120/macron-s-new-year-address-falls-flat-pension-row-deepens>

[3] <https://www.mediapart.fr/journal/france/250120/reforme-des-retraites-le-conseil-d-etat-assassine-le-projet-du-gouvernement?onglet=full>

[4] <https://www.mediapart.fr/en/journal/france/171219/protests-sweep-france-another-oversight-fallen-pension-reform-tsar>