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A modification or an upheaval of the parliamentary form of government? An analysis of the Meloni Government's constitutional bill*

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1. *Introductory remarks: Setting the scene*

The beginning of the nineteenth parliamentary term, in October 2022, was marked by a renewed interest in constitutional reform in Italy. In the general election on 25 September 2022, the right-of-centre coalition won relatively comfortable majorities both in the Chamber of Deputies and in the Senate, and its programmatic platform put strong emphasis on institutional reforms and constitutional amendments, including the introduction of the *direct election of the President of the Republic*.

On 12 April 2023, some months after the Meloni Government took office, Maria Elisabetta Alberti Casellati, Minister of Constitutional and Law Reform, presented the main guidelines of her future action in a hearing before the Committee for Constitutional Affairs of the Chamber of Deputies. Alberti Casellati announced that a constitutional bill would be tabled in the following months and would address two main topics, that is, governmental stability and the *direct election of the President of the Republic or the President of the Council of Ministers*. In her words, «the frailty of our political and institutional system is caused by its inability to deliver a stable political

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direction over the long term and negatively affects enterprises and citizens and, consequently, the economic development of our country. It is high time to lead this government's country back to the will of the voters. Too many times in the last few years, the citizens' vote was not followed by cabinets in line with electoral choices. … Such misalignment has contributed to fuelling the citizen's alienation from politics, which has manifested itself with growing levels of abstentionism in the past elections»[1].

In November 2023, the Meloni Government presented a constitutional bill whose title reads «Amendment to Articles 59, 88, 92 and 94 of the Constitution for introducing the direct election of the President of the Council of Ministers, strengthening governmental stability, and abolishing the appointment of senators for life by the President of the Republic». The bill was considered by the Senate Committee for Constitutional Affairs, which decided to send it to the plenary on 24 April 2024. After that, the bill was adopted by the Senate on 18 June 2024 and is currently under consideration in the Chamber of Deputies. Meanwhile, following the adoption of a few amendments, the contents of the bill have been expanded, and the wording of some of its provisions modified[2].

The purpose of this article is to present and discuss the goals and implications of this reform project. In so doing, it aims, first, to present, the factual background and the general outline of this reform proposal, also with an eye to a comparative frame of reference. After that, the paper focuses in detail on the main innovations that the constitutional bill aims to bring about. This paper reflects legal and factual development until 30 June 2024.

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[1] Full text of the hearing available at http://documenti.camera.it/leg19/resoconti/commissioni/stenografici/html/01/audiz2/audizione/2023/04/12/indice_stenografico.0003.html#stenograficoCommissione.tit00020.int00020. See a concise presentation in G. Delledonne – Y.M. Citino, *Italy*, in L.R. Barroso – R. Albert (eds.), *The 2022 International Review of Constitutional Reform*, Austin, 2023, p. 190-191.

[2] General information on constitutional bill no. 935 is available at https://www.senato.it/leg/19/BGT/Schede/Ddliter/57694.htm. On the procedures to amend the Constitution in Italy, see T. Groppi, *Constitutional revision in Italy: A marginal instrument for constitutional change*, in X. Contiades (ed.), *Engineering Constitutional Change: A Comparative Perspective on Europe, Canada and the USA*, Abingdon, 2013, p. 203-227; M. Cartabia – N. Lupo, *The Constitution of Italy: A Contextual Analysis*, Oxford, 2022, p. 15-18.

2. *Factual background*

Ahead of the 2022 general election, the four parties making up the right-of-centre coalition presented a shared platform, in which plans for constitutional reform held an important place. The *Framework Agreement for a Right-of-Centre Government*[3] hinted at the need to modify significant parts of the Second Part of the Constitution in order to reshape the institutional architecture of the Italian Republic. The policy document referred to the full implementation of asymmetric regionalism under Article 116(3) of the Constitution (hereinafter also Const.), to an overarching reform of the judicial system and the Higher Council for the Judiciary, and to introducing the direct election of the President of the Republic. Therefore, the coalition that looked poised to win the election, and ultimately won relatively comfortable majorities both in the Chamber of Deputies and the Senate, was bringing back to the forefront proposals to modify the existing parliamentary form of government or, possibly, to replace it with a different one, either presidential or semi-presidential. As a matter of fact, a generic reference to the direct election of the head of state, with no specification of the powers and tasks of this organ, may be compatible with a parliamentary form of government, as is the case with several European countries[4], or provide the cornerstone for a different system, for instance, a semi-presidential regime in the spirit of the French Fifth Republic. In fact, the option for a (semi-)presidential form of government would have been in continuity with a long-lasting commitment of right-wing parties, first and foremost the Italian Social Movement[5]. From time to time, however, a number of conservative, moderate or liberal political figures also showed their sympathies for the French semi-presidential model[6].

The need to redefine some aspects in the institutional architecture is an issue on which other political groupings also agreed. In its electoral platform, the Democratic Party – Democratic and Progressive Italy defined

[3] Available at https://dait.interno.gov.it/documenti/trasparenza/POLITICHE_20220925/Documenti/68/(68_progr_2_)-programma.pdf.

[4] See R. Ibrido, *La classificazione delle forme di governo europee caratterizzate dalla commistione tra fiducia ed elezione diretta del Capo dello Stato*, in *il Filangieri*, Quaderno 2023, p. 81-119.

[5] See, among others, R. Tarchi, *Il "premierato elettivo": una proposta di revisione costituzionale confusa e pericolosa per la democrazia italiana*, in *Osservatorio sulle fonti*, 3, 2023, p. 7.

[6] See P. Scoppola, *La repubblica dei partiti. Evoluzione e crisi di un sistema politico 1945-1996*, Bologna, 1997, p. 431 ff.; P. Pombeni, *La questione costituzionale in Italia*, Bologna, 2016, p. 322-323.

governmental instability in the country as an «aberration unparalleled in any major Western democracy»[7]. The proposed remedies, however, were quite different, as they mostly focused on ordinary laws, including the electoral laws for the Chamber and the Senate, a comprehensive regulation of political parties, and the strengthening of digital participation. Very little was said about specific constitutional amendments, if not for the introduction of the constructive vote of no confidence.

Finally, the electoral platform of the centrist list "Azione – Italia Viva – Calenda" highlighted the virtues of the unsuccessful constitutional amendment promoted by the Renzi Government, criticised the institutional legacy of the outgoing Parliament, and pointed to the need for three constitutional reform measures, affecting the bicameral structure of the legislature, the territorial organisation of the Italian Republic, and the transformation of the President of the Council of Ministers into a *Mayor of Italy*. The centrist platform defined governmental instability as an important weakness of Italy, also at European and international level. Furthermore, it made a link between instability and the growing levels of distrust towards liberal democracy. In order to overcome these problems, "Azione – Italia Viva – Calenda" recommended introducing the direct election of the President of the Council of Ministers, «following the model of the mayors of bigger cities»[8]. The idea of a directly elected *Mayor of Italy* is a long-standing slogan in Matteo Renzi's political communication[9] and is based on an analogy between the direct election of mayors, first introduced by law no. 81/1993[10], and a directly elected President of the Council of Ministers. On 1 August 2023, Renzi presented a bill to amend Articles 88, 92, 94 and 95 Const., thereby entrenching the direct election of the President of the Council of Ministers[11]. In the following, this paper will focus more closely

[7] Policy document available at https://dait.interno.gov.it/documenti/trasparenza/POLITICHE_20220925/Documenti/75/(75_progr_2_)-programma_politiche_2022.pdf.

[8] Policy platform available at https://dait.interno.gov.it/documenti/trasparenza/POLITICHE_20220925/Documenti/7/(7_progr_2_)-programma_azione-italia_viva-calenda.pdf.

[9] See F. Bordignon, *Dopo Silvio, Matteo: un nuovo ciclo personale? La democrazia italiana tra berlusconismo e renzismo*, in *Comunicazione politica*, 2014, p. 441.

[10] See G. Baldini, *The direct election of mayors: an assessment of the institutional reform following the Italian municipal elections of 2001*, in *Journal of Modern Italian Studies*, 2002, p. 364-379.

[11] Information on constitutional bill no. 830 is available at https://www.senato.it/leg/19/BGT/Schede/Ddliter/57385.htm.

on the dubious aspects of the analogy between mayors and a hypothetical Mayor of Italy.

The wording of electoral platforms should not be overestimated; rather than containing precise commitments, these documents tend to be quite vague. The level of vagueness is even more striking in the electoral programme of the right-of-centre coalition, which was (correctly) seen as a clear favourite in the run-up to the general election; in that case, a rather unprecise programme is intended not to undermine the room for manoeuvre after the election. Despite this, it is possible to draw some preliminary conclusions. After a turbulent parliamentary term, in which three executives took office with the support of three different majorities in Parliament[12], the idea that some form of institutional reform is needed was widely perceived among political parties and coalitions. The proposed remedies, in turn, varied considerably. Policy platforms clearly disagree on whether or not the Constitution itself should be amended. Another major point of disagreement, and a red thread in the decade-long about institutional reform in Italy, is if the reasons for the current instability, and the primary object of a reform endeavour, lie in flaws of the institutional architecture or in the inherent weakness and increasing de-institutionalisation of the party system[13].

3. *The contents of the bill: A general overview*

In its original form, the bill aims to introduce three (or four) major innovations. The first one is the new procedure for the selection of the President of the Council of Ministers (*Presidente del Consiglio dei ministri*), as the head of government is known in the Italian legal order[14]. As things stand, the President of the Council of Ministers is appointed by the President of the Republic after consultations with party leaders and representatives of

[12] See A. De Petris, *From political to technocratic government and back: the source of legitimacy in the government building in Italy*, in *Rivista di Diritti comparati*, 2, 2023, p. 21-55.

[13] See general discussion by P. Bianchi, *L'ossessione riformatrice. Alcune osservazioni sul processo di revisione costituzionale permanente*, in *Osservatorio sulle fonti*, 2, 2019, p. 11-16. With regard to the constitutional implications of a de-institutionalised party system see M. Cartabia – N. Lupo, *The Constitution of Italy*, cit., p. 24-25.

[14] In this article, resort will generally be made to the official formula "President of the Council of Ministers" or to a broader phrase like "head of government". Conversely, the phrase "Prime Minister", which may give rise to ambiguity and misunderstandings, will not be used.

the parliamentary parties. The appointment of the President of the Council is followed by the appointment of the other ministers and the swearing-in of the new government. If the bill is adopted, the President of the Council will be elected by direct universal suffrage concomitantly with the Chamber of Deputies and the Senate. A second goal is to make sure that the directly elected President of the Council and his or her government are supported by majorities in both houses. Consequently, the results of the elections for the two legislative houses have to be reconciled with the outcome of the prime ministerial election; it remains to be seen how this can be done, and the bill is not likely to provide conclusive answers. Third, the direct election of the President of the Council is supposed to be instrumental in bolstering governmental stability. Therefore, one would expect snap elections to be called for whenever the President of the Council and his or her government leave office for any reason. However, a constitutional regulation of this sort would most likely be affected by a lack of flexibility, that is, the greatest virtue of parliamentary regimes. Facing these competing objectives, the bill contains a quite complex regulation of the consequences arising in the event of the termination of office of the head of government. As will be said later, this is the most daunting conundrum both in academic debates on neo-parliamentary regimes and in the drawing up of new constitutional arrangements, as was the case with Israel in the 1990s. Finally, the bill intends to abolish senators for life appointed by the President of the Republic, while maintaining the right of former heads of state to sit in the Senate for lifetime. Although this provision may look marginal, it is destined to play a key role in the approval process of the bill, and its rationale is closely connected with the Italian-style quest for governmental stability.

In the light of the above, the contents of bill no. 935 may sound surprising. Ahead of the general election, the ruling majority included in its programme the introduction of the direct election of the President of the Republic. In her hearing before the parliamentary committees, Minister Alberti Casellati stated that there was uncertainty about whether to introduce the direct election of the head of state or the head of government. In the end of the day, the constitutional bill tabled by the Meloni Government is centred on an innovation almost unprecedented in the comparative scenario. The impact of the proposed modifications on the existing form of government is under dispute, and quite different labels, like neo-parliamentarism or prime ministerial form of government (*premierato*),

have been used[15]. Until now, the only country in which the direct election of the head of government has been implemented was Israel when a new Basic Law: The Government was adopted in 1992. The Israeli experiment was short-lived since the direct election of the Prime Minister could do little or nothing to remedy the chronic instability of the governing coalitions, and the Basic Law: The Government was modified again in 2001 to restore a parliamentary form of government in the traditional sense[16].

If the focus of the analysis shifts to scholarly debates, the history of this adaptation of the parliamentary form of government is much richer. Its origin can be traced back to the terminal stage of the French Fourth Republic, when Maurice Duverger proposed to amend the Constitution of 27 October 1946 and to introduce the direct election of the head of government, which would be held in coincidence with the election of the National Assembly. If the National Assembly had passed a motion of no confidence, the Government would have been forced to resign *and* the Assembly itself would have been automatically dissolved. Early dissolution would also have been the effect of the head of government's voluntary resignation. In Duverger's opinion, this innovation would have provided a remedy to the apparently hopeless instability of French governments and would have make the operation of the parliamentary form of government more similar to the British prototype[17]. Duverger was ultimately unsuccessful, as the Constitution of 1946 was altogether replaced by a new Constitution in 1958. In accordance with General de Gaulle's views, the new Republic, the fifth since 1789, was based on a strong role for the President of the Republic and was complemented by the introduction of the direct election of the head of state in 1962.

In Italy, Duverger's proposals were taken up in the early 1970s in a debate published by the journal *Gli Stati*[18]. Some of the scholars who participated in the debate, including Serio Galeotti and Aldo M. Sandulli,

[15] The option for either term depends on how much the proposed innovations pave the way for a departure from the parliamentary form of government and the adoption of an entirely different model (see M. Cavino, *L'introduzione dell'elezione diretta del Presidente del Consiglio dei Ministri*, in *Osservatorio costituzionale*, 1, 2024, p. 49).

[16] See C. Klein, *Direct Election of the Prime Minister in Israel: the Basic Law in its First Year*, in *European Public Law*, 1997, p. 301-312; D. Kretzmer, *Presidential Elements in Government Experimenting with Constitutional Change: Direct Election of the Prime Minister in Israel*, in *European Constitutional Law Review*, 2006, p. 60-80.

[17] See M. Duverger, *Un système présidentiel?*, in *Le Monde*, 12 April 1956; M. Duverger, *Un véritable régime parlementaire*, in *Le Monde*, 13 April 1956.

[18] Now available at http://dircost.di.unito.it/altriDocumenti/documenti.shtml.

pleaded in favour of introducing the direct election of the President of the Council of Ministers and the automatic dissolution of the two chambers in the event of a cabinet crisis. Costantino Mortati also subscribed to this proposal, although he disagreed on some key points. Since then, the direct election of the President of the Council of Ministers has been a recurring argument in the discussion on how to reform the Second Part of the Constitution. In 1991, in coincidence with the electoral referendums and the imminent departure from proportional representation, it was revived by Augusto Barbera, who later went on to become vice chair of the pro-referendum committee[19].

4. *Approach: A departure from attempts to reform the Second Part of the Constitution comprehensively*

In the decade-long debate about constitutional reform in Italy, two different approaches have been in the spotlight. On the one hand, comprehensive amendments, generally labelled as 'The Great Reform', have been part of the programmes of many political leaders and intellectuals since the late 1970s, when Giuliano Amato and Bettino Craxi, then general secretary of the Italian Socialist Party, made a strong case for a decisive transformation of the institutional architecture[20]. The idea of the Great Reform is connected both with cross-partisan attempts to change the rules of the game, mostly through ad hoc bicameral parliamentary committees, and with unilateral action, generally led by the executive of the day. In the last decade, the very idea of a Great Reform has suffered major setbacks; in 2006 and 2016, the constitutional bills promoted, respectively, by the Berlusconi Government and the Renzi Government were handily defeated in constitutional referendums. Aside from the possible flaws of these reform projects, a recurring criticism is that Great Reforms are inherently

[19] See A. Barbera, *Una riforma per la Repubblica*, Roma, 1991. See also F. Clementi, *L'elezione diretta del Primo ministro: l'origine francese, il caso israeliano, il dibattito in Italia*, in *Quaderni costituzionali*, 2000, p. 579-605; S. Ceccanti, *La forma neoparlamentare di governo alla prova della dottrina e della prassi*, in *Quaderni costituzionali*, 2002, p. 107-126; T.E. Frosini (ed.), *Il premierato nei governi parlamentari*, Torino, 2004; J.O. Frosini, *Il sistema "primo-ministeriale": una quinta forma di governo?*, in *Quaderni costituzionali*, 2010, p. 297-309.

[20] See G. Amato, *Una Repubblica da riformare. Il dibattito sulle istituzioni in Italia dal 1975 a oggi*, Bologna, 1980; C. Fusaro, *Per una storia delle riforme istituzionali (1948-2015)*, in *Rivista trimestrale di diritto pubblico*, 2015, p. 461-462; N. Urbinati – D. Ragazzoni, *La vera Seconda Repubblica. L'ideologia e la macchina*, Milano, 2016, p. 85 ff.

complex and do not properly fit, in practical terms, the amendment procedure regulated in Article 138 Const. If the bill is not approved by two-thirds majorities both in the Chamber and in the Senate, a popular referendum is likely to be the final stage of the procedure; in this vein, a Great Reform that encompasses multiple objects with scant regard for a unifying rationale does not really lend itself to undergoing the binary logic of a referendum[21]. Another line of criticism is that Great Reform projects were badly affected by the fact that they were perceived as opportunistic attempts to strengthen the parliamentary majority and the government in office[22].

Also in reaction to the outcome of the 2016 referendum, an allegedly minimalist approach to constitutional reform was one of the guiding threads during the eighteenth parliamentary term (2018-2022). In hearings before the parliamentary committees, Riccardo Fraccaro, Minister in charge of Relations with the Parliament and Direct Democracy in the first Conte Government, described an innovative approach to institutional reform based on limited resort to constitutional amendments, with a clear delimitation of their object(s) and homogeneous contents. In Fraccaro's view, this was instrumental in allowing voters, in the event of a referendum, to make an informed choice[23]. Constitutional law no. 1/2020, which reduced by more than one-third the size of the Chamber and the Senate, is the most important product of those years and reveals the intrinsic limitations of an allegedly minimalistic, piecemeal approach. Far from impacting on merely quantitative profiles, including the infamous *cost of politics*, the amendment passed in 2020 left a number of problems

[21] See A. Manzella, *Lezioni dal referendum: per un rinnovato dialogo istituzionale*, in *Quaderni costituzionali*, 2017, p. 341-342; A. Fusco, *Il procedimento di revisione: le fasi ulteriori, necessarie ed eventuali*, in U. Adamo – R. Caridà – A. Lollo – A. Morelli – V. Pupo (eds.), *Alla prova della revisione. Settanta anni di rigidità costituzionale*, Napoli, 2019, p. 77-82.

[22] See E. Cheli, *Il dibattito sulle riforme costituzionali*, in S. Rogari (ed.), *Costituzione della Repubblica e Dichiarazione universale dei diritti dell'uomo. Lezioni magistrali, 12 gennaio-8 marzo 2018*, Firenze, 2019, p. 68.

[23] See P. Faraguna, *La nuova stagione di riforme istituzionali: verso la democrazia integrale, ma a piccoli passi*, in *Quaderni costituzionali*, 2018, p. 902-903. In terms of constitutionality (and not of practical desirability), both approaches are admitted: see P. Faraguna, *Populism and Constitutional Amendment*, in G. Delledonne – G. Martinico – M. Monti – F. Pacini (eds.), *Italian Populism and Constitutional Law: Strategies, Conflicts and Dilemmas*, London, 2020, p. 110. For a more nuanced viewpoint, see V. Marcenò, *Manutenzione, modifica puntuale, revisione organica, ampia riforma della Costituzione: la revisione costituzionale ha un limite dimensionale?*, in U. Adamo et al. (eds.), *Alla prova della revisione*, cit., p. 290-297.

unresolved, first and foremost, the apparently unchangeable equal bicameralism[24]. According to more radical critics, the successful reduction of the number of deputies and senators just opened «a wound that is difficult to heal and will justify resort to the most invasive treatment»[25].

The constitutional bill promoted by the Meloni Government seems to have opted for a third way. Far from seeking to amend several provisions of the Constitution, it will only affect, if approved, four of its provisions, that is, Articles 59, 88, 92, and 94[26]. In contrast to the Great Reform projects rejected in 2006 and 2016, a leitmotif is clearly recognisable throughout the text of the bill, namely, the direct election of the head of government as a precondition for greater governmental stability. Still, the proposed amendment may have farther-reaching implications than its reduced length actually suggests. Its underlying rationale can be described as an attempt to reshape some pillars of the Italian form of government thoroughly. If the bill is adopted and the amendment comes into force, the institutional position of the President of the Council of Ministers vis-à-vis the bicameral legislature and the head of state will clearly be redefined. Consequently, clear differences also exist with respect to the self-styled parsimonious approach advocated by Minister Fraccaro at the beginning of the eighteenth parliamentary term.

Paolo Passaglia's study of the French Constitution of 1958 provides useful insights to categorise this exercise in constitutional reform. In his analysis of the amendments passed in France since the entry into force of the Constitution of the Fifth Republic in 1958, Passaglia suggests that three of these have had a systemic impact, in that they made it possible to feel «a before and after»[27]: they include the introduction of the direct election of the President of the Republic (1962), the opening up of the access to constitutional review to parliamentary minorities (1974), and the reduction

[24] See G. Tarli Barbieri, *La riduzione del numero dei parlamentari: una riforma parziale (fin troppo)*, in E. Rossi (ed.), *Meno parlamentari, più democrazia? Significato e conseguenze della riforma costituzionale*, Pisa, 2020, p. 211-224; M. Volpi, *La riduzione del numero dei parlamentari e il futuro della rappresentanza*, in *Costituzionalismo.it*, 1, 2020, pp. 44-45.

[25] M. Manetti, *La riduzione del numero dei parlamentari e le sue ineffabili ragioni*, in *Quaderni costituzionali*, 2020, p. 536.

[26] As things stand, some amendments have been considered and adopted by the Committee for Constitutional Affairs of the Senate, which may lead to expand the scope of the bill. These amendments, which introduce modifications to Articles 57, 83 and 89 Const., mostly focus on the constitutional position of the President of the Republic.

[27] See P. Passaglia, *La Costituzione dinamica. Quinta Repubblica e tradizione costituzionale francese*, Torino, 2008, p. 156-157.

of the presidential term to five years (2000). Moving back to the Italian scenario, constitutional bill no. 935 can be traced back to this category. Although the proposed modifications only affect a limited number of provisions, they will, if adopted, redefine the functioning of the Italian form of government. Such an ambitious plan, however, is not exempt from risks and possible drawbacks. The bill should be appraised in the light of its internal consistency and its ability to achieve its declared goals. As the bill focuses on just some provisions in the Second Part of the Constitution, it remains to be seen if the bill fails to address relevant aspects of the current regulation of the parliamentary form of government. As mentioned earlier, the most significant among them is the structure of Italy's bicameral legislature, with the Chamber of Deputies and the Senate put on equal footing.

The approach of the Meloni Government is also quite peculiar with respect to the *consensual vs. unilateral* dichotomy. Before presenting its constitutional bill, the executive conducted talks with representatives of the ruling majority and the opposition groups. The decision to opt for the so-called *premierato* can be understood as a result of intra-coalition bargaining and, above all, as an attempt to attract votes from sectors of the parliamentary opposition. Constitutional bill no. 935 echoes, with a greater degree of sophistication, Renzi's proposal to introduce a directly elected Mayor of Italy. As Stefano Ceccanti once wrote, conservative and moderate groups have generally expressed a preference for the French semi-presidential model, whereas neo-parliamentary, prime minister-centred models have rather been advocated by representatives of the centre-left[28]. Still, the dominant feelings in the opposition are quite hostile towards this proposal, and Giorgia Meloni herself has declared that the sitting majority has the ability and duty to pursue its agenda and to have the «mother of all reforms» adopted. In a nutshell, the process is closely controlled by the executive, which tried to accommodate some likely demands of the opposition prior to launching its proposal. Barring unexpected news, a constitutional referendum will probably be the final stage in the process. Referendums organised under Article 138 Const. are a quite risky tool: the executive may be tempted to exploit the people's vote to its own advantage,

[28] See S. Ceccanti, *Il premierato. Matrici ideali e traduzione nell'oggi*, in T.E. Frosini (ed.), *Il premierato nei governi parlamentari*, cit., p. 71-75.

but the gamble may ultimately backfire on it. In this respect, the fate of the Renzi Government in 2016 represents an instructive precedent[29].

5. *Electing a head of government and a bicameral legislature*

When it comes to the regulation of the method of election of the President of the Council of Ministers, the bill in its current shape looks quite disappointing and most likely needs a significant overhaul. Article 3 contains modifications to Article 92 Const. If the amendment enters into force, Article 92(2) and (3) Const. will read: «The President of the Council is elected by universal and direct suffrage for five years […]. A(n ordinary) law regulates the election system for the chambers and the President of the Council». A crucial component of the reform is not regulated by a constitutional provision but is referred back to an ordinary piece of legislation. Article 3 of the bill does not specify, for example, if the head of government is elected by majority or by plurality; in the latter case, a further relevant aspect might be the need to cross a minimum threshold of votes. If the President of the Council of Ministers is to be elected by majority, a second round of voting should likely be held. All these alternative options can hardly be branded as mere technicalities, as they have significant implications on the election process. To give one example, how much support is a candidate supposed to gather within the voting public to win the prime ministerial election? The answer to this question will influence the attitudes of the political parties in the run-up to this vote and will inevitably spill over to the conduct of the elections for the two chambers. In principle, the current wording of Article 3 is compatible with both a single-round and a two-round voting system. However, a systematic reading of these provisions alongside the principles of popular sovereignty and equal suffrage (Articles 1(2) and 48(2) Const.) makes it difficult to conceive a legislative regulation according to which a mere plurality is enough to elect the President of the Council of Ministers. Should the (ordinary) electoral law provide for a minimum threshold, a second round of voting would inevitably take place in the event that none of the candidates cross the said threshold[30].

[29] See G. Martinico, *Filtering Populist Claims to Fight Populism: The Italian Case in a Comparative Perspective*, Cambridge, 2022, p. 113-115.

[30] See N. Zanon, *Su quanto possa o debba essere "forte" un Presidente del Consiglio eletto direttamente*, in *Osservatorio costituzionale*, 1, 2024, p. 95.

In this case, comparative arguments allow highlighting that the regulation of direct elections for monocratic positions generally admits the possibility of a run-off voting; accordingly, receiving a majority of valid votes, either in the first round or in the run-off, is a recurring requirement.

As already mentioned, it is very difficult to identify appropriate terms of comparison. However, a couple of remarks will allow highlighting the unique features of this provision. In Israel, s. 13 of the 1992 amendment to the Basic Law: The Government provided that the Prime Minister would need to get a majority of the valid votes to be elected. If no candidate succeeded in receiving a majority of the votes, a run-off vote would take place. More broadly, the several constitutions that provide for the direct election of the head of state almost invariably opt for an absolute majority requirement. This is the case of all the fourteen member states of the European Union where the head of state is elected by direct universal suffrage[31]; outside the European Union, a quite rare exception is Iceland[32]. Quite importantly, the basic rules of the electoral process are laid down in constitutional provisions[33]. It seems quite inappropriate to leave this decision in the hands of occasional parliamentary majorities.

The regulation of parliamentary elections is even more problematic. Constitutional bill no. 935 tries to resolve a problem that was deliberately left unanswered both in Duverger's writings and in the Israeli experiment in the 1990s. Should a directly elected head of government be assured to rely on the support of a sizable majority in the legislature? In Duverger's opinion, the main key to answer this question was an evolution in the voters' attitudes: «Everything leads to believe that they will vote for the same political tendencies. The citizens of an old democratic country are not crazy, and their political behaviour keeps some consistency»[34]. In Israel, the direct election of the Prime Minister went in hand with the well-established option

[31] In the Republic of Ireland, a single-round election takes place in which the single transferable vote applies (Art. 12(2) of the Constitution of 1937).

[32] A different approach, based on a strong plurality requirement, can be found in a few constitutions in Latin America, first and foremost, the Constitution of Argentina as amended in 1994: see M.P. Jones, *Presidential and Legislative Elections*, in, E.S. Herron – R.J. Pekkanen, M.S. Shugart, *The Oxford Handbook of Electoral Systems*, New York, 2018, p. 287

[33] See, among others, Article 7(1) of the French Constitution of 1958, Article 60(2) of the Austrian Federal Constitutional Law of 1920-1929, Article 126 of the Portuguese Constitution of 1976, and Article 127 of the Polish Constitution of 1997.

[34] M. Duverger, *Demain, la République*, Paris, 1958; Italian edition, *La Repubblica tradita* (R. Zorzi transl.), Milano, 1960, p. 116.

for proportional representation for electing the Knesset[35]. Back to the point, Article 3 of constitutional bill no. 935 states that the electoral laws for the Chamber of Deputies and the Senate have to provide for a national bonus, so that the party lists supporting the head of government elect gain a majority of seats in both houses. In all this, following the approval of a parliamentary amendment, the said electoral laws should duly consider «the principles of representativeness and protection of linguistic minorities».

Despite its ambitious outlook, the bill does not try to modify the Italian model of equal bicameralism, with the executive dependent on the confidence of both chambers[36]. If the amendment is approved and enters into force, the directly elected head of government will need to be supported by relative majorities both in the Chamber and the Senate. Therefore, Article 3 of the bill provides that the results of the elections for three distinct organs – that is, the President of the Council of Ministers, the Chamber of Deputies, and the Senate – should produce compatible outcomes. A preliminary draft, informally circulated before the President of the Republic authorised the presentation of the bill, made reference to the use of «one ballot» to elect all three organs; this eventually disappeared, and Article 3 only states that the three elections are held «concomitantly»[37]. For the sake of the separation of powers, the three elections are and should be kept distinct, hence the need for compatible outcomes. In an unusual move, the bill does not aim to entrench a voting system, for instance, proportional representation or first-past-the-post voting, but a specific component of electoral laws, that is, a bonus of seats. Moreover, the bonus should produce majority-assuring effects[38]. In line with the case law of the Constitutional Court[39], the bonus should be attributed so as to produce similar outcomes

[35] See H. Diskin – A. Diskin, *The Politics of Electoral Reform in Israel*, in *International Political Science Review*, 1995, p. 40-43; J.O. Frosini, *Il sistema "primo-ministeriale*, cit., p. 302-304.

[36] For a defence of (possibly unequal) bicameralism see M. Luciani, *Riforme e saggezza*, in *federalismi.it*, 7 June 2023, p. 5.

[37] See. E. Caterina, *Sulla misteriosa sparizione della "scheda unica" dal ddl costituzionale sul "premierato"*, in *laCostituzione.info*, 4 December 2023; R. Tarchi, *Il "premierato elettivo"*, cit., p. 30.

[38] With regard to the function of bonuses, see criticism by G. Zagrebelsky, *La sentenza n. 1 del 2014 e i suoi commentatori*, in *Giurisprudenza costituzionale*, 2014, p. 2981.

[39] As the Court put it in judgment no. 35/2017, «while the Constitution does not oblige the legislature to introduce identical electoral systems for the two branches of Parliament, it does nevertheless require that the systems adopted, in order not to affect the

in both chambers. In the last decade, the Constitutional Court stroke down in two landmark judgments key components of two national electoral laws that provided, with some differences, for majority-assuring bonuses[40]. The Court stated, first, that the winning coalition should be required to cross a minimum threshold to get the bonus and, second, that the regulation of the runoff voting should not allow producing excessively distortive effects. These points can be seen under a different light if parliamentary elections are held alongside the prime ministerial election, as the Court itself admitted in judgment no. 35/2017[41]; in the meantime, some constitutional provisions may provide a reference. If the constitutional amendment enters into force, electoral laws for the two chambers will be constitutionally required to provide for a bonus. Still, the freshly enacted provision, where «representativeness» and the protection of linguistic minorities are also mentioned, will be subject to systematic interpretation and will need to be reconciled with the principles of equal suffrage (Article 48(2) Const.). Moreover, in 2014 the Constitutional Court argued that the Chamber of Deputies and the Senate cannot be put on equal footing with regional legislatures and municipal assemblies, as they are «the exclusive locus for "national political representation" (Article 67 of the Constitution) … by virtue of this fact, they are vested with fundamental functions of a "typical and unique nature" (see judgment no. 106/2002), including the direction and control of the government along with the delicate functions associated with the guarantee itself of the Constitution (Article 138 of the Constitution)»[42]. The specific role of the Parliament, as distinct from subnational representative assemblies, is one of the reasons, the other being the presence of a head of state, why the idea of a Mayor of Italy is based on a fallacious analogy between local governments and the national institutional framework.

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correct functioning of the parliamentary form of government, and despite their potential differences, must not impede, upon the outcome of elections, the formation of homogenous parliamentary majorities».

[40] See judgments no. 1/2014 and no. 35/2017. See also E. Longo – A. Pin, *Judicial Review, Election Law, and Proportionality*, in 6 *Notre Dame Journal of International and Comparative Law*, 2016, p. 101-117; P. Faraguna, *'Do You Ever Have One of Those Days When Everything Seems Unconstitutional?': The Italian Constitutional Court Strikes Down the Electoral Law Once Again: Italian Constitutional Court Judgment of 9 February 2017 No. 35*, in *European Constitutional Law Review*, 2017, p. 778-792.

[41] See M. Cavino, *L'introduzione dell'elezione diretta del Presidente del Consiglio dei Ministri*, cit., p. 52-53.

[42] Constitutional Court, judgment no. 1/2014.

In practical terms, the implementation of a bonus to provide the head of government elect with comfortable majorities may face at least two issues[43]. First, the elections of the Chamber and the Senate, although held simultaneously, are distinct; this makes different results a possible option, all the more so in the event of very tight contests[44]. Second, the preservation of equal bicameralism and the reduced size of the chambers will complicate the task of elaborating a new electoral law for the 200-member Senate, which, under Article 57(1) Const., is elected «on a regional basis»[45].

[43] See also E. Rossi, *La nomina del Presidente del Consiglio realizzata mediante una norma abrogata: quel pasticciaccio della norma transitoria*, in *Forum di Quaderni costituzionali Rassegna*, 2, 2023.

[44] It should be added that the electoral law for the mayors and the municipal assemblies of towns and cities with more than 15,000 inhabitants includes a few situations in which the party lists that support the mayor elect do not get a majority of seats in the municipal assembly. In the last decade, some regions, including Latium, Liguria and the Marches, modified their electoral laws and introduced minimum thresholds to get a bonus of seats in the regional legislature. In this respect, constitutional bill no. 935 stands out in (apparently) not providing for exceptions to the automatic attribution of bonuses in the Chamber of Deputies and the Senate.

[45] See M. Cavino, *'introduzione dell'elezione diretta del Presidente del Consiglio dei Ministri*, cit., p. 53; E. Aureli, *Premio di maggioranza e vincolo di mandato governativo: rilievi critici ad una prima lettura del ddl. Costituzionale Meloni*, in *Osservatorio costituzionale*, 2, 2024, p. 21-22. When the bill was being considered by the Senate Committee for Constitutional Affairs, a new Article 3-*bis* was added to ensure compatibility between the bonus and the fact that the Senate is elected on a regional basis; this innovation, however, seems to have limited practical impact.

On a different note, the bill fails to consider some technical aspects that may undermine the consistency between legislative elections and the direct election of the head of government. Articles 56(2) and 57(2) regulate legislative apportionment and allocate a fixed number of constituencies to the Italian citizens residing abroad. In so doing, the Constitution provides for a derogation from the principle of equal suffrage; as things stand, the same does not apply to the direct election of the head of government (see R. Calvano, *Una prima lettura del progetto di legge di revisione costituzionale sul "premierato", alla luce delle pagine di* Costituzione e politica *di Enzo Cheli*, in *Nomos*, 3, 2023, p. 12). Moreover, Article 66 Const. states that ordinary courts and administrative courts have no jurisdiction over disputes related to legislative elections, which are adjudicated, respectively, by the Chamber and the Senate. This controversial provision is known as *verifica dei poteri* and does not apply to the distinct but closely intertwined election of the President of the Council of Ministers.

6. *Forming a new government: Innovation and continuity*

If the President of the Council of Ministers is elected by direct universal suffrage, the President of the Republic will lose, at least to a great extent, the power to appoint the head of government. The bill implicitly reckons with this innovation, as the head of state only commissions the President of the Council of Ministers elect to form a new government, *the first (not necessarily the only one) in the parliamentary term*.

The subsequent part of this provision – that is, the last paragraph of Article 92, as modified by Article 3 of the bill – contains a more significant innovation. So far, ministers have been appointed by the President of the Republic at the proposal of the President of the Council of Ministers. A well-established argument to prove the relative weakness of the Italian head of government is the fact that he or she cannot remove the other ministers from office (or, more properly, advise the President of the Republic to do so)[46]. In this respect, there is a major difference between the Italian head of government, on the one hand, and the German Chancellor or the Spanish President of Government, on the other hand[47]. Initially, the constitutional bill did not aim to attribute to the directly elected head of government a power to bring about the removal from office of his or her ministers. Early scholarly comments highlighted the intrinsic contradictions of this omission: the bill was characterised by an attempt to strengthen the legitimacy of the head of government thanks to direct election, but did not appropriately consider his or her position within the cabinet. According to other comments, the introduction of direct election did not go to the detriment of the principle of collegiality in the operation of the executive[48]. More recently, the Senate Committee for Constitutional Affairs has approved an amendment whereby ministers are appointed *and removed* by the President of the Republic at the proposal of the President of the Council of Ministers elect. This amendment should be viewed favourably, as it tries

[46] See critical assessment by L. Paladin, *Governo italiano*, in *Enciclopedia del diritto*, vol. XIX, Milano, 1970, p. 695-696; see also L. Elia, *Il Primo Ministro nel diritto comparato* (1966), in *Costituzione, partiti, istituzioni* (M. Olivetti ed.), Bologna, 2009, p. 157.

[47] See, respectively, Article 64(1) of the Basic Law for the Federal Republic of Germany and Article 100 of the Spanish Constitution of 1978.

[48] See B. Pezzini, *L'introduzione del premierato nel sistema costituzionale italiano*, in *Osservatorio costituzionale*, 1, 2024, p. 69-70; M. Cavino, *L'introduzione dell'elezione diretta del Presidente del Consiglio dei Ministri*, cit., p. 54.

to reconcile the stronger electoral legitimacy of the head of government and his or her role within the Council of Ministers[49].

Another point deserves mention. The constitutional bill does not intend to modify the wording of Article 92 Const. in that ministers are appointed *by the President of the Republic* at the proposal of the President of the Council of Ministers. Some scholars see the appointment of the ministers as a dual act in which the head of state and the head of government appointed concur, whereas other scholars describe the head of government's proposals as binding[50]. On few occasions during the history of the Italian Republic, the President of the Republic refused to follow proposals from the head of government appointed. These disagreements did not derive from policy concerns and were generally kept confidential[51]. In 2018, at the beginning of the eighteenth parliamentary term, a major public conflict arose between President Sergio Mattarella and the two leaders of the emerging "yellow-green" majority, Luigi Di Maio and Matteo Salvini. After asking Giuseppe Conte to form a government, Mattarella refused to appoint Conte's nominee for the crucial Ministry of Economy and Finance. Mattarella justified his refusal on the basis of Savona's Eurosceptic views; in his words, «uncertainty over our positions on the euro has raised alarm among investors and savers, Italian and foreign, who have invested in our government bonds and in our companies». Due to Conte's unwillingness or inability to make another proposal on the spot, the conflict became public, with Di Maio loudly (and improperly) requesting to impeach Mattarella. Tensions rapidly subsided, and the first Conte Government was sworn in, with Giovanni Tria, a more Europhile figure, taking office as Minister of Economy and Finance. Mattarella set a precedent and publicly gave reasons for his decision. On subsequent occasions, he even returned to the subject of the extension of presidential powers regarding the appointment of ministers. As Mattarella put it, the role of the President of the Republic cannot be limited to rubberstamping proposals from the incoming President of the Council of Ministers; rather, the head of state

[49] See N. Zanon, *Su quanto possa o debba essere "forte" un Presidente del Consiglio eletto direttamente*, cit., p. 98.

[50] See G. Cavaggion, *La formazione del Governo. Aspetti e problemi tra quadro costituzionale e nuove prassi*, Torino, 2020, p. 99-104.

[51] See B. Randazzo, *I poteri di nomina e le nomine dei presidenti*, in S. Cassese – G. Galasso – A. Melloni (eds.), *I presidenti della Repubblica. Il Capo dello Stato e il Quirinale nella storia della democrazia italiana*, Bologna, 2018, p. 1112-1113.

acts as an arbiter and «has never suffered and cannot suffer impositions»[52]. Six years later, the constitutional bill does not intend to modify the existing state of affairs; if this happens, it will result from an overall alteration in the role of the President of the Republic (see below at 9).

After being sworn in, the new government has to appear before the two chambers for the vote of confidence. If either chamber does not grant confidence to the new government, the President of the Republic asks to the President of the Council elect, once again, to form a government. If even this second attempt fails to pass the test of the vote of confidence, the President of the Republic dissolves the two chambers. This provision of the bill has been heavily criticised for creating a contradiction between the will of the voters and the will of the deputies or the senators. Although the head of government is directly elected, his or her government risks immediate disavowal from the Parliament[53]. This provision is not irrational per se. Italy is a country of coalitions, quite often of heterogeneous ones. The winning candidate in the prime ministerial election will most likely be supported by a coalition of political parties. During the negotiations that precede the formation of the government (and are obviously influenced by the electoral results), early expectations may not be fulfilled. These expectations may affect the distribution of ministerial posts but also the formulation of the government programme. Furthermore, the President of the Republic, as said before, may play some role in the process that leads up to the inauguration of a new government. Having regard to this, the initial vote of confidence allows confirming the ongoing coherence between the new President of the Council of Ministers and the parliamentary majorities that support him or her in the two chambers[54]. A less justifiable point is that the second vote of confidence seems to be a mere repetition of the first one. The bill does not follow in the footsteps of foreign examples like Articles 63(3) and (4) of the German Basic Law and Article 99(3) of the Spanish Constitution, which provide for a different regulation of the first vote and

[52] See the speeches delivered by President Mattarella on 27 May 2018 (in the aftermath of the failure of Conte's first attempt) and on 24 September 2020 (on the tenth anniversary of the death of former President Francesco Cossiga). See also G. Delledonne – L. Gori, *Le presidenze della Repubblica rilette dal Quirinale. Potere di esternazione ed esigenze di continuità istituzionale*, in *Quaderni costituzionali*, 2021, p. 334-336.

[53] See, for instance, S. Curreri, *Quel "pasticciaccio brutto" del voto di fiducia iniziale*, in *laCostituzione.info*, 15 December 2023.

[54] See in-depth discussion by N. Zanon, *Su quanto possa o debba essere "forte" un Presidente del Consiglio eletto direttamente*, cit., p. 99-100.

possible subsequent votes in order to unlock a stalemate[55]. A possible justification is that in Spain the Congress of the Deputies, after the first vote, is called on to approve or to reject the same candidate for President of the Government. In Italy, in turn, the President of the Republic asks the head of government elect to initiate a second attempt to form a government; both the initial composition of the cabinet and its programmatic commitments may be modified under way. In the end, the second vote of confidence differs from the first one not in terms of quorums but for the (possible) differences between the first and second governments.

7. *Automatic dissolution of the legislature: A conundrum?*

The second key component of the neo-parliamentary or prime ministerial form of government is the dissolution of the legislature as an automatic consequence of the downfall of the government. This measure should dissuade parliamentarians from adopting a vote of no confidence or inducing the executive to resign in any other way. In Duverger's words, «the fear of having o face a snap election will lead the deputies to maintain the government in office and will secure the stability of the latter»[56]. The head of government and the lower house being elected simultaneously by direct universal suffrage, their destinies are «inextricably tied»[57]. In his works, Duverger basically focused on snap elections as a consequence of conflicts between the directly elected head of government and the legislature, but he did not consider other possible occurrences, for instance, the death, permanent impediment or voluntary resignation of the President of the Council. Should the legislature be dissolved whenever the head of government leaves office for whatever reason?

A decade later, this question was also addressed by the Italian scholars who took part in the debate organised by the journal *Gli Stati*. On that occasion, Antonio La Pergola suggested that if the President of the Council of Ministers dies, is permanently incapacitated or resigns for personal resigns, a Vice President, also directly elected at the previous general

[55] See S. Curreri, *Quel "pasticciaccio brutto" del voto di fiducia iniziale*, cit.

[56] M. Duverger, *Institutions politiques et droit constitutionnel*, 7th edition, Paris, 1963, p. 474. According to Duverger, the idea of an automatic dissolution of the French National Assembly as a consequence of the government's resignation was first developed by Jean Monnet's close advisers in 1949.

[57] M. Duverger, *Institutions politiques et droit constitutionnel*, cit., p. 475.

election, should take over. By doing so, La Pergola was making a distinction between political crises that cause the executive to leave office, and other, mainly non-political occurrences that make it unadvisable to call for a snap election. Costantino Mortati also raised some doubts on such a rigid mechanism and proposed to entrust the President of the Republic, as «a neutral and impartial organ», to seek a solution for the conflict between the legislative and the executive. Mortati also recommended preserving the presidential power to dissolve either chamber or both[58].

Also in Israel, the brief experiment with the direct election of the Prime Minister testifies to the difficulty of linking the destinies of the two organs rigidly. On a number of occasions, including the failure to present a government, the death and the voluntary resignation of the Prime Minister, special separate elections were held for choosing a new Prime Minister, but the Knesset was not dissolved (s. 5 of the Basic Law: The Government)[59]. This happened, for instance, in 2000, when Prime Minister Ehud Barak resigned: a new prime ministerial election was called, but the Knesset elected in 1999 stayed in office until 2003. In present-day Italy, any discussion about how to regulate the early dissolution as an automatic consequence of the government's resignation is obviously influenced by the peculiar form of government that was put in place in the Italian regions and municipalities, where the *simul stabunt simul cadent* rule applies with no exceptions. The Court upheld a narrow reading of this rule when reviewing the new regional charter (*statuto*) of Calabria, in 2004[60].

The text of Article 4 of the bill has already been modified, and further adjustments are not unlikely to be adopted in the following steps. As things stand, automatic dissolution would only follow from the adoption of a motion of no confidence under Article 94(5) Const., that is, in a situation in which the executive *is forced to resign*. The same should happen, despite some controversy, when the executive makes its remaining in office dependent on a vote of confidence (*questione di fiducia*) and is subsequently defeated[61].

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[58] Incidentally, Article 2 of the bill seeks to modify Article 88 Const. so as to abolish the presidential power to dissolve just one chamber.

[59] See J.O. Frosini, *Il sistema "primo-ministeriale*, cit., p. 303-304.

[60] Constitutional Court, judgment 2, 2004. See C. Fasone – G. Piccirilli, *The new "form of government" in the reforms of the Italian regional system*, in E. Arban – G. Martinico – F. Palermo (eds.), *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism*, Abingdon, 2021, p. 39.

[61] See discussion by S. Curreri, *Le dimissioni del Governo battuto su una questione di fiducia: valutazione politica o obbligo giuridico?*, in *laCostituzione.info*, 9 February 2024.

Votes of confidence called by the government are not explicitly regulated in Article 94 Const., but the need for clarification has led the Senate to pass an amendment to Article 4 of the bill. According to the amended provision, automatic dissolution will only occur if a motion of no confidence is passed by either assembly. "In the other cases of resignation" – including, presumably, a failed vote of confidence called by the head of government – the President of the Council of Ministers, after appearing before the Parliament, can advise the President of the Republic to dissolve the chambers, and the head of state will have to grant him or her an early dissolution. A third scenario opens up if the President of the Council of Ministers does not ask for a dissolution and in cases of death, permanent impediment, or disqualification from office. Should any of these events come true, the President of the Republic could either ask the outgoing President of the Council of Ministers to form a new government or pick «another member of the Parliament» as the new head of government. This can happen only once in a legislative term, which means that there cannot be more than two Presidents of the Council of Ministers during a parliamentary term. The final part of Article 4 is quite poorly drafted and will probably need some further refinement.

The main feature of this provision of the bill is a clear downsizing of the role of the President of the Republic in managing cabinet crises. Under the existing arrangements, with the legislative-executive relationship not regulated in detail, the head of state can resort to a quite wide, albeit not unlimited, discretion. If the proposed amendment enters into force, the handling of a cabinet crisis will fall into the hands of the President of the Council of Ministers. If the government is forced to resign after losing a vote of no confidence, there is no alternative to a snap election; however, there are several situations in which the head of government, to anticipate and prevent a conflict, may decide to tender his or her resignation. In the history of the Italian Republic, executives have never resigned as a result of a vote of no confidence[62], and everything suggests that this will not change in the foreseeable future. The incumbent head of government may decide to resign, after which he may ask for an early dissolution, be commissioned to form a new government, or step aside and make room for a successor. Even if the outgoing head of government has lost control over its majority,

[62] In 1998 and 2008, Romano Prodi was forced to resign after seeking a vote of confidence (and losing it).

its wide-ranging powers enable him or her to play a guiding role during the crisis.

The second purpose of Article 4 is to avoid *ribaltoni*, that is, a succession of governments supported by different majorities. This occurrence is hardly foreign to the intrinsic logic of a parliamentary form of government, but in Italy, due to the huge number of members of Parliament defecting from their groups, joining other groups or forming new groups (and parties), it has become almost uncontrollable and has contributed to undermining trust in the system. The bill tries to provide a remedy in providing that only another President of the Council of Ministers may take office during the parliamentary term; the unelected head of government must have been elected in the lists that were supporting the former President of the Council of Ministers. It is far from obvious that this innovation will be suited to achieve its alleged purpose; over the course of a five-year parliamentary term, parliamentary majorities may break down and come together in a different shape, and the new wording of Article 94 Const. could do little to prevent new *ribaltoni*[63]. Incidentally, in these situations the President of the Republic may retrieve, at least in part, its power to manage a cabinet crisis. Article 4 of the bill is based on a complex mixture of different constitutional materials, in which neo-parliamentary and traditionally parliamentary features are ambiguously forced to coexist. It is for the incumbent President of the Council of Ministers, when a crisis may arise, to decide which component of the institutional machinery should have precedence.

The third major innovation brought about by Article 4 is the fact that only a member of Parliament can become President of the Council of Ministers. Indeed, as a general rule, national constitutions do not require the head of government or the other members of the cabinet to be members of the legislature[64]. This means, first, that technocratic governments, a recurring characteristic of Italian politics during the last three decades, could be consigned to history quite soon. According to a persuasive attempt at

[63] In its early shape, the bill was much more rigid in trying to limit the autonomy of the second head of government from the directly elected one; these provisions were probably ineffective and ended up diminishing the institutional position of the incoming President of the Council of Ministers (see B. Pezzini, *L'introduzione del premierato nel sistema costituzionale italiano*, cit.).

[64] See in this respect A. Pierini – M. Volpi, *Technical Governments and Technical Experts in the Government*, in F. Merloni – A. Pioggia (eds.), *European Democratic Institutions and Administrations: Cohesion and Innovation in Times of Economic Crisis*, Cham, 2018, p. 66-67.

definition, governments can be labelled as technocratic if they are directed by a President of the Council of Ministers who does not come from elective politics but has a different professional background, including high-level experience at European or international level. Distance from party politics is a key factor in leading the President of the Republic to appoint a technocrat as head of government[65]. Not all Presidents of the Council who were not sitting in Parliament when they took office fall within this definition; such is not the case, for instance, with Matteo Renzi, who was serving as Mayor of Florence and had just been picked as new leader of the Democratic Party when he was asked by President Giorgio Napolitano to form a new government. This was the case, however, with Carlo Azeglio Ciampi (1993), Lamberto Dini (1995), and Mario Draghi (2021). Mario Monti was a freshly appointed senator for life when he was asked to form a government, but this point is addressed in Article 1 of the bill (see below at 8). If the amendment comes into force, the President of the Republic will no longer have the power to appeal to an independent personality, possibly in times of crisis. In retrospect, the legacy of Italian technocratic governments can be described as a mixed bag[66], but this should not prevent us from recognising their role in unlocking situations of stalemate. On a different note, no alternative *political* leaderships could emerge outside the Parliament in the five years between a general election and the subsequent one[67]. Due to the oligarchic or personalistic structure of most political parties in present-day Italy, this point may be quite problematic.

8. *Abolition of the power to appoint senators for life: Only apparently a marginal provision*

At first sight, Article 1 seems to stand apart from the rest of the constitutional bill, as it aims to abrogate a provision that plays a quite marginal role within the parliamentary form of government. As per Article 59(2) Const., the President of the Republic may appoint as senators for life

[65] See N. Lupo, *Un governo "tecnico-politico"? Sulle costanti nel modello dei governi "tecnici", alla luce della formazione del governo Draghi*, in *federalismi.it*, 8, 2021, p. 135. As for the Draghi Government (2021-2022), see A. De Petris, *From political to technocratic government and back*, cit., p. 50-54.

[66] See N. Lupo, *Un governo "tecnico-politico"?*, cit., p. 138.

[67] … with the possible exception, depending on the structure of the new electoral law, of by-elections in single-member constituencies.

five citizens «who have brought honour to the Nation through their exceptional accomplishments in the social, scientific, artistic, and literary fields». In 2020, in coincidence with the reduction of the size of the two houses of Parliament, it was added that the overall number of sitting senators for life «may not, under any circumstances, exceed five».

By giving the President of the Republic a power to appoint up to five senators for life, the Constitution provides for a limited derogation from the principle whereby the Italian Parliament is composed of two chambers, both directly elected. The underlying idea is that the head of state may appoint as senators for life «prominent individuals with which all Italian citizens, regardless of their political views, can identify»[68]; these appointments contribute to demonstrating that the Republic, founded on labour, rewards its most illustrious citizens with the highest honour. Meanwhile, Article 59(1) provides that former presidents of the Republic become senators by right after leaving office; if the constitutional bill finally enters into force, this rule will remain unchanged.

Over the decades, Article 59 has been frequently criticised since it represents a derogation from representative democracy and popular sovereignty. Other critics have focused on the fact that the actual contribution of many senators for life to parliamentary work has been quite limited. Besides, the very role of senators for life in situations when the government of the day was supported by a tight majority or by no majority at all in the Senate has been repeatedly called into question[69]. Criticism from centre-right parties and media outlets was particularly vocal during the fifteenth parliamentary term (2006-2008), when the second Prodi Government depended on the support of a few senators for life to stay in office. In a vote of confidence on 19 January 2022, some senators for life were part of the relative majority that allowed the second Conte government to stay in office a further week. In the comparative scenario, legislators appointed for life, as distinct from ex officio members like former heads of state, are very rare.

It remains to be seen why a constitutional bill with limited, albeit significant goals seeks to abolish the constitutional provision that enables

[68] See P. Franceschi, *Articolo 59*, in G. Branca (ed.), *Commentario della Costituzione*, *La formazione delle leggi*, vol. I, Bologna-Roma, 1984, p. 107.

[69] See L. Scaffardi, *Articolo 59*, in F. Clementi – L. Cuocolo – F. Rosa – G.E. Vigevani (eds.), *La Costituzione italiana. Commento articolo per articolo*, vol. II, Bologna, 2018, p. 38-39; P. Armaroli, *I senatori a vita visti da vicino. Da Andreotti a Segre, da Fanfani a Spadolini*, Lucca, 2023, p. 351 ff.

the President of the Republic to appoint up to five senators for life. Two possible rationales can be detected. The abrogation of Article 59(2) Const. is instrumental, first, in ensuring that no technocratic administration may take office. The constitutional bill seeks to establish a very tight link between the electorate, the head of government elect, and the parliamentary majorities in the Chamber of Deputies and the Senate. As shown before with regard to Article 4, the bill is not completely consistent in pursuing this design. Be that as it may, only a sitting member of Parliament can succeed the directly elected President of the Council of Ministers during the parliamentary term. At the beginning of the term, if the President elect fails to win the vote of confidence, the President of the Republic has no choice but to call for a snap election. Based on Articles 3 and 4 of the bill in their current shape, there is no room for a government led by someone who does not sit in the Chamber or in the Senate. In November 2011, President Napolitano surprisingly appointed former European Commissioner Mario Monti senator for life; in so doing, the head of state was suggesting that the resignation of the fourth Berlusconi Government was imminent, and Monti was a clear favourite to form the new government[70]. Therefore, Article 1 of the bill is instrumental in ensuring that no one outside the two chambers can ever ascend to President of the Council of Ministers.

The second reason has to do with the constitutional referendum, that is, the most probable final stage of this amendment procedure. Not only is the abolition of the presidential power to appoint senators for life regulated in Article 1 but is also mentioned in the title of the constitutional bill. How does this affect the following steps in the procedure? Article 16 of law no. 352/1970 lays down rules on the text of the question to be submitted to the voters in a constitutional referendum. In doing so, it makes a distinction between constitutional laws that modify specific provisions of the Constitution (*leggi di revisione costituzionale*) and other constitutional laws (*leggi costituzionali*) whose provisions are set, if adopted, to remain outside the text of the Constitution proper. Borrowing from Richard Albert's terminology, this distinction reflects the fact that Article 138 Const. combines an *integrative* and a *disaggregative* model of codification of constitutional provisions[71]. When a referendum is held on a constitutional law that amends

[70] See critical assessment by D. Galliani, *Metodo di studio e settennato Napolitano*, in *Quaderni costituzionali*, 2013, p. 72-73; I. Pellizzone, *Poteri e garanzie (Presidente della Repubblica),* in *Enciclopedia del diritto. I tematici*, vol. V, *Potere e costituzione*, Milano, 2023, p. 902-903.

[71] See R. Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions*, New York, 2019, p. 235.

the Constitution proper, the question should be as follows: «Do you approve the text of the law that modifies Article … (or Articles …) of the Constitution, relating to …?». When a constitutional law of the second type is submitted to referendum, the question should sound like this: «Do you approve the text of the constitutional law … concerning … that was adopted by the Parliament and published in the Official Gazette, no. … on …?».

Four constitutional referendums have taken place until the present day[72]. In all these cases, in which the modification of provisions of the Constitution was at stake, the wording of the question followed the second option mentioned in Article 16 of law no. 352/1970 and focused on the heading of the constitutional bill. In 2001 and 2006, this was relatively unproblematic, as the titles were quite generic. In 2006, for instance, a constitutional referendum was held on a constitutional bill on «Modifications to the Second Part of the Constitution». A more heated controversy emerged in 2016, when the title of the Renzi-Boschi amendment and, consequently, the question submitted to referendum made reference, among other things, to the «containment of the running costs of the institutions». The cost of politics was and to some extent is a recurring subject of dispute in political conversation in Italy amidst widespread disenchantment with representative democracy, and mentioning it in the question was perceived as instrumental in persuading undecided or disillusioned voters to vote in favour of the amendment. In legal terms, critics argued that the constitutional bill promoted by the Renzi Government sought to amend several provisions of the Constitution; therefore, the wrong part of Article 16 of the ordinary law on referendums had been applied. Other authors objected that the bill contained diverse provisions, some of them regulating objects outside the text of the Constitution proper; if that is true, the bill had correctly been ascribed to the residual category of the *other constitutional laws*[73].

[72] In 2001, a major reform of the territorial organisation of the Italian Republic was approved by the voters. In 2006 and 2016, in turn, organic reform projects presented, respectively, by the Berlusconi Government and the Renzi Government were soundly defeated. In 2020, voters approved the constitutional bill aiming to reduce the size of the two chambers.

[73] See. P. Carnevale, *Sul titolo delle leggi di revisione costituzionale. Prime riflessioni a margine del disegno di legge di riforma della seconda parte della Costituzione attualmente in itinere*, in *Rivista AIC*, 1, 2015, p. 17-20; G. Piccirilli, *Il referendum costituzionale e il suo quesito. Proseguendo un*

The wording of the title of constitutional bill no. 935 can be understood in the light of the above. In order to avert possible objections, and in line with constitutional law no. 1/2020, the title of the bill makes reference both to the provisions to be amended and to the contents of the reform, including the direct election of the head of government, strengthened governmental stability, and the abolition of the power to appoint senators for life. This last point may have a mobilising impact on parts of the electorate, mostly but not exclusively in the pro-government field[74].

9. *Transformations in the role of the President of the Republic*

On 6 March 2024, the Senate Committee for Constitutional Affairs approved an amendment whose goal is to modify the procedure for electing the President of the Republic as regulated in Article 83 Const. Under the existing rules, a two-third majority of the members of the electoral college is required in the first three ballots. From the fourth ballot onwards, an absolute majority is sufficient to elect a new President of the Republic[75]. The regulation of the electoral process is functional to enhance the constitutional role of the President as «head of state and representative of national unity» (Article 87(1) Const.). In principle, the parties that support the government in office need to conduct negotiations with parts of the opposition for their candidate to reach the prescribed majority. Even after the adoption of non-proportional electoral laws in the 1990s, Italian presidential elections have remained a complex process. The chaotic condition of the political system resulted in an apparent deadlock during the 2022 presidential election, which led scholars to make proposals to modify the current procedure[76].

dialogo con Paolo Carnevale, in *Osservatorio sulle fonti*, 2, 2016, p. 1 ff.; R. Pinardi, *Alcune annotazioni sul giudizio di legittimità-ammissibilità delle richieste di referendum costituzionale*, in U. Adamo et al. (eds.), *Alla prova della revisione*, cit., p. 355 ff.

[74] See S. Leone, *Il referendum costituzionale. Ovvero dei rischi di una "esaltazione" dell'intervento popolare nel procedimento di revisione costituzionale*, in *La Rivista Gruppo di Pisa*, 1, 2024, p. 319-320.

[75] See a concise presentation by G. Grasso, *The Re-election of President of the Republic Sergio Mattarella and the Challenges for the Italian Form of Government*, in *I•CONnect*, 17 February 2022.

[76] See C. Fusaro, *L'elezione del tredicesimo presidente (24-29 gennaio 2022). Ottimo risultato, meccanismo da rivedere, sistema in crisi irreversibile*, in *federalismi.it*, 31 January 2022.

The amendment states that a two-third majority will be required until the sixth ballot; from the seventh ballot onwards, an absolute majority will suffice. As things stand, the amendment adopted by the Committee is of little benefit. Since 2006, parliamentary parties have proved to be very reluctant to support their candidates from the very first ballot. In 2006 and 2015, although the left-of-centre majorities had already selected their candidates – respectively, Giorgio Napolitano and Sergio Mattarella – they recommended to their parliamentarians to opt for a blank vote. Both Napolitano and Mattarella were elected in the fourth ballot. In 2013, the failure of Franco Marini's candidacy in the first ballot was perceived as traumatic and immediately led the parliamentary parties to search for another candidate. In sum, the first three ballots represent «a ritual too complex to be seriously considered a viable option»[77]. If an amended Article 83 Const. enters into force, the parliamentary parties will most likely wait until the seventh ballot to vote for their actual nominees. Thanks to the majority-assuring electoral laws for the two chambers, the majority groups will be well placed to elect their own candidate[78]. In Italy, the history of presidential elections is one of fractious ruling coalitions and backroom negotiations with the opposition; however, if the President of the Council of Ministers is elected by direct universal suffrage, he or she will be more likely to control the electoral process thanks to a strengthened institutional position.

On a general level, and leaving aside the crucial powers to appoint the head of government and to dissolve the bicameral legislature, the constitutional bill does not explicitly affect the role of the President of the Republic (see above at 6 and 7). However, an indirectly elected President of the Republic may have some trouble in confronting a directly elected President of the Council of Ministers. The powers of the Italian President of the Republic are quite difficult to encompass; Massimo Luciani persuasively described the President's activity as «unravelling the tangle» when necessary[79], that is, remedying the occasional malfunctioning of the institutional system. This complex activity goes beyond the formation of

[77] L. Gori, *Alcune osservazioni a proposito dell'esperienza più recente in tema di elezione del Presidente della Repubblica*, in E. Catelani – S. Panizza – R. Romboli (eds.), *Profili attuali di diritto costituzionale*, Pisa, 2015, p. 231.

[78] See D. Paris, *Brevi note sulla disciplina costituzionale dell'elezione del Presidente della Repubblica, tra storia e riforme*, in *federalismi.it*, n. 11/2024, p. 14-15.

[79] M. Luciani, *Un giroscopio costituzionale. Il Presidente della Repubblica, dal mito alla realtà (passando per il testo della Costituzione)*, in *Rivista AIC*, 2, 2017, p. 19.

governments and the dissolution of the legislature and involves, among others, the lawmaking process. In an interesting move, the Committee for Constitutional Affairs approved an amendment presented by Marcello Pera, a former President of the Senate. In order to strengthen the position of the head of state vis-à-vis the executive and its directly appointed leader, the amendment seeks to modify Article 89 Const. and to exempt some presidential acts from the requirement of ministerial countersignature[80]. These acts include the appointment of the President of the Council of Ministers in the course of the legislative term, the appointment of five judges of the Constitutional Court, the grant of pardon, sending messages to the Parliament, the decrees by which elections and referendums are called, and the power to send back laws to the Chambers for further consideration[81]. The aim of the Pera amendment is to consolidate an interpretation of Article 89 Const. that has emerged over the decades thanks to scholars, institutional practice, and the case law of the Constitutional Court: although all presidential acts currently need to be countersigned, some of them are the product of a presidential decision, and «the counter-signature implies a mere acknowledgment of the decision reached by the President of the Republic and a kind of certification of authenticity of the President's signature»[82]. In this respect, the Pera amendment may play a positive role in preserving the head of state from majoritarian pressures[83].

[80] According to Article 89 Const., «No act of the President of the Republic shall be valid unless it is countersigned by the Ministers who have submitted it, who assume responsibility for it».

[81] Interestingly, the Pera amendment does not mention the power to dissolve the Chamber and the Senate under Article 88 Const., which is often understood as (and should remain) a dual act. This point is crucial, as the President may call for a snap election in situations other than those mentioned in Article 4 of the bill, for instance, when it clearly emerges that the composition of the Parliament is no longer representative of the feelings prevalent in the general public (see L. De Carlo, *L'esercizio del potere di scioglimento delle Camere da parte del Presidente della Repubblica: Per una ricostruzione diacronica*, in *Nomos*, 2, 2024, p. 43-44).

[82] M. Cartabia – N. Lupo, *The Constitution of Italy*, cit., p. 126.

[83] See critical discussion by C. Fusaro, *Il silenzio dei costituzionalisti e l'emendamento Pera sulla controfirma*, in *Astrid Rassegna*, 5, 2024; A. Ruggeri, *La controfirma ministeriale e il gioco dell'oca, ovverosia quando si modifica la Costituzione per tornare… all'originario dettato (nota minima su una vicenda anomala)*, in *Consulta online*, 1, 2024, p. 446-450.

10. *Concluding remarks*

The main rationale of the constitutional bill can be described as an attempt to simplify the functioning of the Italian parliamentary form of government. Simplification is supposed to enhance executive stability and to counter the apparently unstoppable rise of electoral abstentionism. If the bill is approved and enters into force, the institutional position of the directly elected head of government will be clearly strengthened; as argued above (see paragraph 7), the President of the Council of Ministers will substantially decide the outcome of cabinet crises. Nevertheless, a stable leadership does not fully equate to a stable parliamentary majority, let alone a stable policy direction. During the eighteenth parliamentary term, Giuseppe Conte could stay in office thanks to the support of two quite different coalitions, a populist and a progressive one. On a different note, institutional simplification cannot be unlimited. The national institutional architecture cannot be properly compared with local and even regional governments, if only for the presence of a head of state as distinct from the head of government. The bill implicitly acknowledges this, and the possibility that a second, unelected head of government takes office during the term confirms that the reform project does not represent a full-blown departure from parliamentary government[84].

A simplified functioning of the institutional machinery may attract disillusioned voters and make the use of suffrage more understandable[85]. In a de-institutionalised party system, however, a direct election may end up resembling a wild card. This has to do with the evolving role of political parties: as constitutional scholars and political scientists noticed decades ago, political parties have contributed to making direct elections, for instance, French presidential elections, a functioning exercise in democracy[86]. In the last decade, the implosion of traditional political parties and the rise of new, often volatile groups has made the French presidential

[84] See general remarks by A. Poggi, *Perché e a che condizioni l'elezione diretta del Presidente del Consiglio può essere utile alla razionalizzazione della forma di governo parlamentare*, in *federalismi.it*, 7 June 2023, p. 6.

[85] See L. Violini, *Crisi della democrazia e elezione diretta del premier: un passo verso il superamento della disaffezione al voto?*, in *federalismi.it*, 7 June 2023.

[86] See L. Elia, *Governo (forme di)*, in *Enciclopedia del diritto*, vol. XIX, Milano, 1970, p. 667

election more similar to an unpredictable «Russian roulette»[87]. If the bill is adopted, a comprehensive regulation of political parties will be urgently needed. As said above, a regulation of political parties would also contribute to mitigating the rigidity of a system in which only a sitting member of Parliament may be asked to lead the government.

As things stand, important aspects of the constitutional bill are quite disappointing and need significant adjustment. This is the case, above all, of the regulation of the elections of the President of the Council of Ministers, the Chamber of Deputies, and the Senate. On the one hand, the method for electing the head of government should be entrenched in the Constitution. On the other hand, the preservation of equal bicameralism, untenable but easily understandable in practice, gives rise to a number of serious problems when it comes to legislating the electoral systems of two chambers. Electoral laws will also be crucial in providing a fair balance between majority-building function and an appropriate representation of political pluralism, including the presence of vital parliamentary parties in the opposition[88].

The author's assessment of Articles 3 and 4 of the bill, by contrast, is not necessarily negative, as they try, more or less persuasively, to reconcile different objectives. The chief goal of the bill is to foster executive stability, which will inevitably affect the backup role of the President of the Republic. The head of state may still play a significant role, with regard, for instance, to lawmaking, an issue that is completely neglected by the constitutional bill. For this to be possible, the President of the Republic should not be a mere offshoot of the majority of the day; in this respect, a possible solution might be increasing to three-fifths the majority required for electing the head of state.

Constitutional bill no. 935 is an ambitious project and tries to respond to some current challenges. In the preceding paragraphs, the focus has been put on virtues and flaws of the bill; a more difficult question, however, is if it is able to escape the well-known paradox of constitutional reform (as theorised by Norberto Bobbio and by Gustavo Zagrebelsky)[89] and to

[87] See É. Thiers, *La mystique constitutionnelle gaullienne: l'ombre portée du Général*, in *Pouvoirs*, no. 174, 2020, p. 37. See also F. Clementi, *Per un'innovazione consapevole : rafforzare la premiership senza rigidità sistemiche*, in *federalismi.it*, 7 June 2023.

[88] See A. Pertici, *La prevedibile incostituzionalità dell'Italicum e le sue conseguenze*, in *Quaderni costituzionali*, 2017, p. 291-292.

[89] For a recent appraisal, see P. Carrozza, *The Paradoxes of Constitutional Reform*, in *Italian Law Journal*, special issue 2017, p. 91-103.

provide conclusive answers to the ongoing crises of representative democracy and liberal democracy.

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ABSTRACT: This piece presents and discusses the latest attempt to amend the Second Part of the Italian Constitution. To do so, it retraces the reform plans of the Meloni Government, with a special focus on the bill that aims to introduce the direct election of the President of the Council of Ministers. The paper discusses virtues and flaws of the so-called *premierato*, with an eye to the stated goals of this project, its ability to achieve them, and the comparative context.

KEYWORDS: Italy – constitutional amendment – Prime ministerial government (*premierato*) – forms of government – Executive stability

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