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Opposition and minority groups in the troubled waters of the French National Assembly *

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1. *Introduction*

Parliamentary assemblies are a core element of the common constitutional tradition of European countries. Although they have developed in different ways in each country, there are considerable similarities in their dynamics and the topic of parliamentary opposition is gaining a proper space in recent legal studies[1]. Within this framework, the gradual recognition of the status and special prerogatives of parliamentary minorities in their opposition function has become a characteristic feature of the *jus publicum europaeum* of parliamentary assemblies.

The Westminster system marked Britain's consistency in strengthening a political system that established the exercise of limited power as the bedrock of constitutional government, in which Parliament itself was the guarantor of civil liberties. In continental Europe, on the other hand, although sometimes even older than the British parliament, parliaments were characterised by different features and for a long time they mainly acted as assemblies of states, expressing the particular interests of the corporations and voting according to the ancient tradition of the binding mandate. The decline of this type of parliament in absolutist continental Europe between the 17th and 18th centuries, especially in France, is very evident, despite their legislative powers.

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[1] See A. Fourmont, *L'opposition parlementaire en droit constitutionnel, étude comparée*, Paris, 2019.

The traumatic break occurred in France with the fall of the *Ancien Régime* and the establishment of revolutionary institutions. The main change was the radical rejection of the imperative mandate and the exercise of constituent power by the National Assembly, which held a revolutionary constituent power in the name of the nation and established a new and legitimate regime.

Despite the centrality of the parliament in modern French history, with its multi-party system and its recurrent formulas of coalition government, France has not looked to the British model for a source of inspiration[2]. Rather, it considered as a suitable arrangement the one drafted in the United States of America.

The fluctuating French assemblies passed through the *Directoire*, the Consulate, the Empire, the Bourbon Restoration (with all due respect to Joseph de Maistre ...), the Orléanist monarchy of Louis-Philippe's Constitution of 1830, the Republic of 1848, the Second Empire and the Constitutions of the Third and Fourth Republics, with mixed fates. Throughout these events, the *Assemblée nationale* has always maintained the prestige of a legitimate representative of the nation, evolving from census to universal suffrage: the parliament and the constituency remain essential elements of the modern French form of government under the Fifth Republic, albeit with some peculiarities[3].

In contrast to the London Parliament, the French experience is constantly expressed in written form, which allows us to understand the constant oscillations of the Assemblée in the transition from autocratic rule to parliamentary forms of government. The elected parliament quickly became the absolute executor and guardian of a legality (thought to be synonymous with legitimacy) that did not tolerate external or superior control. The French response to questions of historical importance, such as the entry of the masses into parliamentary life and the claim of the welfare state, did not take the same form as the Weimar Constitution, but was expressed in the policies and government of the *Front populaire*.

In the post-war period, the crisis of the Fourth Republic revealed almost indelibly the weakening of the parliamentary opposition, in a general decline of the

[2] Montesquieu himself doubted the feasibility of these kind of legal transplant, since political and civil laws "must be so specific to the people for whom they are made, that it is a very great coincidence that those of one nation are suitable for another" (Montesquieu, *De l'esprit des lois*, 1745, L I, ch. 3). Similarly, Gunther Teubner remarks that when a foreign rule is imposed on a national culture, it acts as a strong irritant, triggering a series of new and supposed events: G. Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, in *Modern Law Review*, 1998, p. 12.

[3] Along the lines masterfully traced by G. Lombardi, *I Parlamenti in Europa e il costituzionalismo della democrazia, in Bibliografia italiana dei parlamenti nazionali dell'Unione europea*, Soveria Mannelli, 2003, pp. XVII-XXII.

original model that exposed the permanent instability and the difficulty of taking crucial decisions. The spectre of negative parliamentarism made it impossible to adopt the Westminster model, which requires a united and oppositional minority[4], in a political context characterized by a very high degree of factional fragmentation.

The ascendancy of the Presidency of the Republic, according to the scheme devised by General De Gaulle, obscured for many decades the role of the National Assembly, which became a mere chamber for ratifying the will of the majority gathered around the *Président de la République*, at least until the first experiences of cohabitation (Mitterrand-Chirac and Chirac-Jospin). This quickly led to a substantial 'domestication' of the parliamentary assembly and its total subordination to the executive, unlike in other neighbouring countries[5].

2. *The gradual development*

Almost seventy years after the adoption of the Gaullist Constitution, collective and individual guarantees for parliamentarians are now fully established in France. Moreover, the autonomous prerogatives of the opposition did not come immediately. A major constitutional reform was necessary because the legal regime established by the rules of procedure of the National Assembly was initially considered contrary to the Constitution[6]. It has taken many years for these guarantees to take shape, mainly thanks to the July 2008 reform by the Parliament convened for this purpose[7], with the new article 51-1, which now allows the rules of procedure of each assembly to define

[4] A. Le Divellec, *Vers la fin du "parlementarisme négatif" à la française? Une problématique introductive à l'étude de la réforme constitutionnelle de 2008-2009*, in *Jus politicum*, 2011, n° 6.

[5] Although all the parliaments of Western systems offer useful sources of inspiration, some authors point out that French, German, British and Italian parliaments are undoubtedly the reference parliaments: C. Vintzel, *Renforcer le Parlement français: Les leçons du droit comparé*, in *Jus Politicum*, 2017, p. 677 ff. For a broader perspective on this subject: Id., *Les armes du gouvernement dans la procédure législative : Étude comparée : Allemagne, France, Italie, Royaume-Uni*, Paris, 2011.

[6] Especially to the first paragraph of Article 4 of the Constitution, as the *Conseil constitutionnel* adhered to the traditional equalitarian conception of French parliamentary law and therefore denying the legitimacy of any special status for the opposition. In the original text, dating from 1958: "Political parties and groupings contribute to the expression of suffrage. They are free to form and carry out their activities. They shall respect the principles of national sovereignty and democracy". It did not prescribe, differently from the 2008 amendment, the guarantee of the pluralistic opinion and the equal participation of all political parties and groups to the democratic life of the nation.

[7] During these years, many authors spoke of a kind of "reparlementarisation" of the French political system, including J. Gicquel, *La reparlementarisation: une perspective d'évolution*, in *Pouvoirs*, 2008, p. 47 ff. and P. Avril, *Un nouveau droit parlementaire*, in *Revue du Droit Public*, 2010, p. 121 ff.

the rights of the parliamentary groups and, above all, to recognize that opposition groups can have "specific rights" for the opposition and the parliamentary groups[8]. Implementing constitutional norms has been slow and gradual[9]. Our analysis is limited here to the internal rules of the National Assembly, which in any case has some characteristics different from those of the Senate[10].

The basic idea of "A Guaranteed Place for the Opposition" at this turning point was to respond to the needs of a modern and responsible democracy[11]. It aimed to legalize the existence of a legitimate countervailing power, based on formal and written rules, regardless of the concerns of those who, paradoxically, expressed their distrust of overly detailed written guarantees that could prevent the development of a dynamic and political power such as the opposition.

However, if we look at the content of the current rights of the political groups, we must note that, behind the apparent neutrality and generality of the term "rights of the political groups", there is a wide range of specific and different rights which Art. 51 implicitly distinguishes between ordinary rights, i.e. rights granted to all groups, and specific rights granted only to the opposition and minority groups: the French doctrine has developed a classification of these differences[12]. It should not be forgotten, however, that the rules of the parliamentary assemblies must be submitted to the Constitutional Council before they can be applied, in order to verify their conformity with the Constitution. The Constitutional Council ensures that the new constitutional balance and the rights of all the political groups in the Assembly are respected. Nevertheless, the Constitutional Council has exercised self-restraint and limited its control in this matter to a minimum[13]. This caution and the reluctance of the

[8] See A. Vidal-Naquet, *L'institutionnalisation de l'opposition. Quel statut pour quelle opposition?*, in *Revue française de Droit constitutionnel*, 2009, p. 153 ff.

[9] P. Avril, *Le statut de l'opposition: un feuilleton inachevé*, in J.-P. Camby et al. (dir.), *La révision de 2008, une nouvelle Constitution?*, Paris, 2011, p. 27 ff.

[10] J. Charruau, *Une spécificité sénatoriale: les «espaces réservés» aux groupes minoritaires et d'opposition*, in *Revue française de droit constitutionnel*, 2019, p. 285 ff.

[11] J.-L. Warsmann, Rapporteur in the National Assembly in 2008, on the constitutional bill that introduced the reform: *Rapport n° 892 fait au nom de la commission des lois constitutionnelles, de la législation et de l'administration générale de la République sur le projet de loi constitutionnelle (n° 820) de modernisation des institutions de la Ve République*, 15 May 2008, p. 54. For an assessment on the impact of the constitutional reform, see J.-L. Hérin, *Les groupes minoritaires entre droit et politique*, Pouvoirs, 2013, p. 57 ff. For further reading, see also P. Jensel-Monge, *Les minorités parlementaires sous la Cinquième République*, Bibliothèque parlementaire et constitutionnelle, Paris, 2015.

[12] A. Vidal-Naquet, *Les groupes parlementaires* (dir.), Paris, 2019.

[13] Decision No. 2009-581of 25 June 2009, Resolution amending the *Règlement de l'Assemblée nationale.*

Constitutional Court to interfere in the internal mechanisms of the Assemblée provides Parliament greater responsibility and strengthens the autonomy of the Assemblies themselves.

Since it is impossible to describe in detail the gradual changes that have taken place, the contribution simply outlines the current status of the opposition groups within the Assembly and describes the powers, in accordance with their function, to control and evaluate policies[14], in order to counterbalance the dominance of the majority (if there is one, we must add today...) at the legislative level.

3. Constitutional requirements

The premise of the rights of parliamentary minorities is Art. 4 of the Constitution: by entrusting political parties and groups with the task of expressing the will of the electorate (as an "*expression du suffrage*"), this article allows them to organize and freely operate within the principles of national sovereignty and democracy[15]. Moreover, it is also significant that this article stipulates that "the statutes must guarantee the expression of the diversity of opinions and the equal participation of political parties and groups in the democratic life of the nation". Art. 48, by establishing *de jure* a co-determination between the Government and the Houses in the setting of the agenda – two weeks out of four are reserved as a priority and in the order determined by the Government; during at least one sitting per week, including during extraordinary sittings, priority is given to questions from members of Parliament and to answers from the Government – establishes some special guarantees for the tasks of control[16], in particular for the minority and opposition groups. To this end, one day

[14] On parliamentary control in France, its emergence in constitutional history, its foundations, procedures and objectives, and in particular on the revolution in the exercise of this essential function by the constitutional amendment of 23 July 2008, see: P. Türk, *Le contrôle parlementaire en France*, Paris, 2011.

[15] Art. 4, par. 1: "Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They shall respect the principles of national sovereignty and democracy".

[16] One week out of every four sittings is reserved for the scrutiny of Government action and the evaluation of public policies, and at least one sitting per week, including during extraordinary sessions, is reserved as a priority for Members' questions and Government answers. It should be emphasised that the opposition minority's vocation is only very marginally legislative, which belongs to the government and (more incidentally) to those who support the government in a majoritarian parliament. In terms of oversight and monitoring, information gathering and inter-institutional dialogue, the contribution of the parliamentary opposition is likely to be more substantial: A. Fourmont, *L'opposition parlementaire, un feuilleton trop tôt achevé?*, in *Petites Affiches*, 2018, p. 24 ff.

a month is reserved for an agenda drawn up by each assembly on the initiative of the opposition groups and the minority groups. One of the tools available for the minority is the power to question the government's responsibility before the National Assembly by proposing a motion of censure signed by at least one tenth of the members of the National Assembly, as per Art. 49.3, which was much debated during the controversial reform of the pension system. In addition, any parliamentary group may issue a statement on a given subject and invite the government to submit a statement for debate[17].

A final general clause refers to the Rules of Procedure in order to precisely define the rights of the parliamentary groups set up within them, giving "specific rights to the opposition groups of the assembly concerned and to minority groups"[18].

4. A pivotal point: the referral powers (saisines) granted by the Constitution to parliamentary minorities

The different powers of referral that the Constitution reserves for qualified minorities of deputies or senators requires to be addressed in detail. The first refers to the case of exceptional measures taken by the President of the Republic to protect the republican institutions, national independence, the integrity of the territory or the fulfilment of international commitments, when they are seriously and immediately threatened, or the case of interruption of the regular functioning of the constitutional powers. Sixty Deputies or Senators may call upon the Constitutional Council to supervise if these exceptional conditions persist.[19]. The same number of members of Parliament may ask the Constitutional Council to check whether an international commitment contains clauses contrary to the Constitution or requires an amendment

[17] Constitution, Art. 50-1.

[18] This innovation was suggested by the Comité Balladur, the "*Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions*", a think-tank set up in 2007 by the President of the Republic, Nicolas Sarkozy, to propose a reform of the institutions of the Fifth Republic. The conclusions of its Report inspired the reform carried out in 2008.

[19] *Règlement de l'Assemblée nationale, Art.* 16, para. 5: «After thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down in paragraph one still apply»: *Règlement de l'Assemblée nationale, available at:* https://www.assemblee-nationale.fr/dyn/15/divers/texte_reference/02_reglement_assemblee_nationale (accessed on september 15, 2024).

to the Constitution[20], or even to give its preliminary opinion on the conformity with the Constitution of fundamental laws[21] or amendments to the regulations of the parliamentary assemblies[22].

A similar mechanism allows minorities to bring an action before the Court of Justice of the European Union against European legislative acts for alleged non-compliance with the principle of subsidiarity. This procedure is mandatory at the request of sixty members of the National Assembly or sixty senators.[23]. All these procedures are designed to activate external checks on the activity of the legislative body and have the indirect effect on forcing minority groups to cooperate in order to exercise these rights, thereby coordinating their action[24].

In a more active perspective within the legislative function, a referendum on a fundamental issue[25] can be held on the initiative of one-fifth of the Members of the Parliament[26], supported by one-tenth of the voters registered in the electoral roll. This is known as the 'joint initiative referendum' (a referendum can be called on the initiative of 185 deputies supported by 4.5 million voters, but this is an obviously hard task).

5. Implementation by the National Assembly

The Assemblée nationale rapidly took advantage of the opportunity provided by Art. 51-1 of the Constitution to strengthen the guarantees of the opposition, even if the process does not yet seem to have been completed[27]. However, the formalisation of parliamentary opposition has thus led to a composite and tricky status based on constitutional, legislative, jurisprudential and regulatory rules.

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[20] Constitution, Art. 54.

[21] It concerns government bills dealing with the organization of the public authorities, or with reforms relating to the economic, social or environmental policy of the Nation, and to the public services contributing thereto, or which provides for authorization to ratify a treaty which would affect the functioning of the institutions. Constitution, Art. 11.

[22] Constitution, Art. 61.

[23] Constitution, Art. 88-6.

[24] E. Thiers, *Les commissions permanentes de l'Assemblée nationale et l'élaboration de la loi de-puis 2008: une révolution très discrète*, in *Revue juridique Thémis*, 2014, p. 211 ff.

[25] *Supra.*

[26] Constitution, Art. 11, par. 3.

[27] P. Avril, *Le statut de l'opposition : un feuilleton inachevé*, cit.

It should first be noted that the Règlement de l'Assemblée nationale take up the distinction made in the French Constitution between 'opposition groups' (groupes d'opposition) and 'minority groups' (groupes minoritaires). This option was considered to be the most respectful of the freedom of each Member and rely upon a political declaration signed by the members of the group themselves: this declaration states if the group belong to the opposition. The document would then be published in the Official Journal[28] and this seems to be the best ways of informing the public in a transparent way about the political position of the group itself.

A parliamentary group may consist of no fewer than 15 members and its formal classification as an opposition group is based on an explicit declaration, which may be withdrawn at any time. The status of 'opposition group' confers many prerogatives, some can be exercised at the beginning of each parliamentary term and remain in force for the duration of that term (as in the case of appointments), while others are renewed each year at the beginning of the ordinary session. On the other hand, a minority group is a set that has not declared itself part of the opposition and does not coincide with the group with the highest number of elected members. Minority groups enjoy specific rights, some of which are the same as those granted to the opposition.

The political positions reserved for the opposition groups in the National Assembly decision-making bodies have increased and must now be granted on the basis of an agreement between the group leaders and on a vote, with the aim of maintaining a political balance of power[29].

The president of some strategically important commissions must also be a member of an opposition group in order to be elected[30] (as the president of the Special Committee for the Audit and Settlement of the Accounts of the Assembly[31]). The requirements of representativeness apply to the composition of all the bureaux of the Legislative Committees, which must reflect the general political set-up of the Assembly and ensure the representation of all its components, as well as respect for gender equality[32]. In the absence of its representatives within the bureau of the committees,

[28] Rules of procedure of the National assembly, Art. 19, par. 2.

[29] Pursuant to Art. 146, par. 2 of the Rules of Procedure, the composition of the Presidency shall reflect the political composition of the National Assembly, and only a member belonging to a group that has declared itself to be in opposition may be appointed as the first of the Vice-Presidents in the order of precedence.

[30] Rules of procedure of the National Assembly, Art. 39, par. 3: "Only a member belonging to a group that has declared itself to be in opposition may be elected to chair the Committee on Finance, the General Economy and Budgetary Control".

[31] *Règlement de l'Assemblée nationale,* Art. 16, par. 2.

[32] *Ivi*, Art. 39, par. 2.

each political group is entitled to appoint one of its members to attend meetings without the right to vote[33].

The obligation to reflect the political composition of the assembly and to include a member belonging to an opposition group applies to all collegial bodies within the assembly, such as committees of inquiry[34] and fact-finding missions[35]. In these bodies, the functions of chairman or rapporteur are assigned to a member belonging to an opposition group, and the group that initiated the procedure is allowed to choose which of these two functions is assigned to one of its members. The opposition also has the right to take the initiative and to carry out monitoring and evaluation missions[36].

The opposition is entitled of the droit de tirage, once per ordinary session, to put a resolution on the agenda to set up a committee of inquiry or a fact-finding mission. This right is clearly linked to a practice, now widespread in European democracies, which allows political groups to trigger a classic procedure for scrutinising government action. Recently, this prerogative has been strengthened by making compulsory to set up either a committee of inquiry or a fact-finding mission at the request of an opposition or minority group. The evaluation reports of the Committee for the Evaluation and Monitoring of Public Policies (CEC) are equally divided between the political groups and one of the two rapporteurs must belong to an opposition group[37]. Minority representation is also compulsory in the appointment of the two rapporteurs on the state of implementation of laws[38] and in the presentation of the reports.

In open sessions, each opposition or minority group has the right to have its own item on the agenda for a general debate (without a vote) during the 'scrutiny week'[39] or a question time. Each week, half of the questions to the government are reserved for opposition MPs, and the first of these is reserved for an opposition or minority group to exercise its scrutiny powers. Half the time is reserved for opposition groups during general debates on government statements, during votes of confidence

[33] *Ibidem*.

[34] The position of President or Rapporteur is automatically held by a member belonging to an opposition group: Rules of Procedure of the National Assembly, Art. 143, par. 2.

[35] *Règlement de l'Assemblée nationale,* Art. 145, par. 3, and Art. 146, par. 2.

[36] In the frame of information or assessment report provided by Articles 145-7, 145-8, 146, par. 3, and 146-3.

[37] *Règlement de l'Assemblée nationale,* Art. 146-3.

[38] *Ivi*, Art. 145, par. 7.

[39] *Ivi*, Art. 48, par. 4.

and during general policy statements[40]. One sitting day per month is reserved for debates. The agenda is drawn up on the initiative of the opposition and minority groups.

The National Assembly has also created a 'scheduled legislative time', which defines deadlines for the discussion of texts during the plenary debate to ensure that all groups, especially opposition and minority groups, have the right to speak, with a minimum amount of time allocated to each group[41]. A minimum amount of time is allocated to each group, but more time is allocated to opposition groups (60% of the additional time according to their numerical strength). The Conference of Presidents also determine the speaking time allocated to the non-attached Members, who shall be allocated a total amount of speaking time which is at least proportional to their number.

6. The ethno-national factor, a non-characteristic element for parliamentary minorities

The comparative approach shows that the French parliamentary system lacks a particular type of parliamentary opposition as per other constitutional systems. The opposition in the National Assembly is never linked to the ethno-national matrix, unlike in many other systems where this specific factor usually fosters the formation of strong permanent parliamentary minorities. In many European parliaments, members belonging to linguistic minorities enjoy specific guarantees, particularly with regard to the definition of autonomous groups or participation in internal bodies[42].

In France, the historical constitutional tendency relied upon the maintenance of the principle of equality between the representatives of the Nation, and this principle has always been an obstacle to the recognition of special rights or privileges for minorities. In accordance with this view, the jurisprudence of the Constitutional Council has always considered the recognition of different nationalities to be incompatible with the legal concept 'French people', the only one that has existed and been enshrined in constitutional texts since the Declaration of the Rights of Man and of the Citizen in 1789[43].

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[40] *Ivi*, Art. 132, par. 2.

[41] *Ivi*, Art. 49, par. 2.

[42] In Italy, they are enshrined in the Rules of Procedure of the Chamber of Deputies (Art. 14).

[43] See Decision No. 91-290 DC of 9 May 1991, according to which the Constitution recognizes only the French people without distinction as to origin, race or religion (par. 13). In this regard, the Constitutional Council points out that the preamble to the Constitutions of 1958 and 1946, as well as the Declaration of the Rights of Man and of the Citizen of 1789 and many other constitutional texts of

In order to ensure that the principle of majority is properly interpreted with regard to political minorities, distinctions based on religion, language, etc. have so far not influenced the organisation and functioning of the National Assembly. Historical identity cleavages are therefore not an influential factor in political decision-making in this context, and there are no legal safeguards for the inclusion of candidates from historical ethnic minorities in the elected chamber. However, another kind of cultural identification factor is now strongly emerging in relation to issues of discrimination against minorities: the ethnicisation of candidacies and the election of parliamentarians from contexts where large visible minorities live, but there is still no formal recognition of this phenomenon through the definition of specific rules related to the composition and functioning of the Legislative Assembly.

7. Conclusions: multiple signs of a systemic crisis

Emmanuel Macron's two presidencies have marked the disappearance of the usual bipolarism between majority and opposition, expanding the fracture lines in society and parliamentary practice. France experienced in the last short term of its National Assembly continuing polarization and seems to be now unable to define strong majorities as long to identify possible alternatives. Even after 2024 legislative election, President Macron is still managing to sustain a minority government, by resorting to the prestige of a personality like Michel Barnier, who epitomizes a kind of 'political dinosaur' having been entrenched in the circles of power for 50 years, who is clearly not representative of the address from the last votes. President Macron seeks to appease relations between political parties and to contain the social anger about the immigration policies and the pension reform, despite the traditional view that "Minority governments are not a very common feature of French politics because of the majority voting system and the predominance of presidential elections over domestic politics"[44]. It is not a surprise that the image of this President of the Republic, who aimed to break the established (but also worn-out) patterns of the old political logics, has been likened to the mythical figure of Janus, the god of passage, whose two faces simultaneously look to the past and to the future. But politics, by its very nature,

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the last two centuries, have always referred exclusively to the legal concept of "the French people", which is therefore the only one with constitutional value (par. 12).

[44] S. Bendjaballah – N. Sauger, *France: Political Developments and Data for 2023: Rediscovering Minority Government*, in *European journal of political research. Political data yearbook*, 2024.

is constantly evolving and can produce an infinite variety of nuances, making cooperative attitudes or highly competitive behaviours more feasible from time to time: the true substance of the parliamentary opposition must therefore be reaffirmed in an informal way, even before its official recognition, which codified law often formalize only a posteriori and–inevitably–in an incomplete way.

The basic issue that still arise analysing the French case still needs to be addressed: the definition of the rights of the opposition by means of special rules is also a limitation that can lead to a future restriction of opposition space. In this matter, it is crucial to take into account the legitimate concern that the Parliament should not be paralysed by minorities, and it is therefore essential to constantly work to strike a balance between the protection of the opposition and the effectiveness of Parliament. Recognizing a defined status and specific prerogatives for the opposition, France has obviously sought to make the opposition more accountable. However, these rights will only be effective if the opposition uses its prerogatives moderately and refrains from obstructionist tactics.

The text of the Règlement de l'Assemblée nationale do not fully reflect the real polymorphism of the opposition in France: in addition to groups adopting forms of adherence to the majority, there are groups functioning as fulcrums, or adopting positions of clear differentiation, strong competition and even general anti-system positions (taking also into account the presence in Assembly of parliamentarians that do not belong to any group). This framework makes the classic concept of a "close union, almost complete fusion, of the executive and legislative powers"[45] as the efficient secret at the heart of the constitutional French system essentially inapplicable.

From the very first months of President Macron's second five-year term, an unprecedented picture emerged: a kind of "majority of the opposition", which forced the (minority) government of the day, led by Elizabeth Borne, to insist on a vote of confidence, in accordance with the third paragraph of Article 49 of the Constitution. The insecurity of the consensus supporting the government has led the President of the Republic to limit the scope for dialogue with the opposition, and sometimes even with some elements of his own majority[46], to the extreme of the rupture essentially achieved over the pension reform, the point of maximum distance between the

[45] W. Bagehot, *The English Constitution*, London, 1963, p. 72.

[46] Paola Piciacchia points out that the government does not seem to have made much effort to take into account the positions of the opposition, or even those of the minority members of its own coalition: P. Piciacchia, *Semipresidenzialismo francese e ruolo del Parlamento: dai tentativi di rivalutazione dell'istituzione parlamentare alle più recenti sfide nel contesto di trasformazione del sistema dei partiti*, in *DPCE online*, 2023, p. 992.

Executive and the National Assembly as a whole. This gap has opened an evident space in the French system of representation, creating deep institutional wounds that are unlikely to heal quickly. Nowadays, the efforts of the forces opposed to the feared success of the Rassemblement National in the run-off elections in June 2024 seemed to have regained a large majority, but in the first months of the new five-year term, new divisions are already appearing, making it difficult to imagine a clear dialogue between the majority and the opposition.

One of the peculiarities of this period was the emergence of a form of 'majority filibuster' by the government itself. While the well-known parliamentary filibuster consists of an opposing minority using all the rules of parliamentary procedure at its disposal to slow down the examination of a bill. In France the opposition denounced situations in which the government itself slowed down or obstructed debates in order to prevent a vote on a text proposed by the minority[47]. Parliamentary minorities have been thus captured by the government and its parliamentary majority and the abuse of procedural means for obstructionist purposes refers to the impossibility for the government to allow parliamentary deliberation to proceed without 'authoritarian' intervention to ensure that it always retains control of the decision, regardless of the framework. The institutional imbalance was changed several times in favour of the executive through manoeuvres carried out by the government itself, with the support of its majority, also using the right of the ministers to speak for a very long time. The government made extensive use of its own unlimited prerogative.

With the recent regulation of the special prerogatives granted to the opposition parties, the Assemblée nationale can no longer be considered a deficient parliamentary body in terms of guaranteeing the rights of political minorities, even if both the majority and the minorities do not always make proper use of their respective prerogatives. It rather can be said that the shortcomings of the first decades of the Fifth Republic have finally and completely been relieved, and that a space has been created that corresponds to the democratic potential of the opposition parties.

However, we must go further and ask whether the 'rhetoric' of group rights might not also have problematic effects, since recognising opposition rights should also imply an implicit refusal of parliamentary obstructionism in favour of constructive opposition. This is also due to the fact that there is a driving force behind the obligation for the parliamentary groups to form associations, sometimes through an unnatural

[47] See Ch. Geynet-Dussauze, *Les groupes d'opposition parlementaire n'ont pas le monopole de l'obstruction: réflexions sur la diversité des protagonistes du phénomène obstructionniste*, in *Revue française de droit constitutionnel*, 2023, p. 557 ff.

alliance between MPs with different backgrounds, with the consequence of a chronic disobedience to group rules. It is possible to apply to the French case the comments made by some scholars on the lack of accountability reported in the Italian case or the ambivalence of the Romanian parliamentary opposition[48]: what does not appear in the French case, however, are permanent internal rifts within the government, which often lead to voluntary resignations, perhaps involving openly challenging the executive. This considerations suggests to put into perspective and to make a cautious assessment of the benefits that can be gained from the migration of a logic of 'fundamental rights and freedoms' into the rights of the parliamentary groups. The situation would probably be different if the Constitutional Council offered an interpretation of these rights, in particular those of the opposition and of minority groups, on whether they constitute a right or a freedom, in particular under Article 61-1 of the Constitution.

In conclusion, the French National Assembly today presents avantgarde devices, still perfectible and in need of adequate testing, although a number of dysfunctions that cannot be fully solved through the design of formal rules.

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Abstract: In the last fifteen years, the political opposition in France has enjoyed a clear and articulated statute. This article, which recalls the different stages of the slow and ambiguous recognition of the status of the opposition in the French constitutional system, outlines the application of the principles established through the 2008 constitutional reform, and in particular the faculties granted to minority groups by the rules of procedure of the National Assembly. In the fragmented post-electoral political framework at the beginning of the very short 16th legislature of the Fifth Republic, and in the great uncertainty of the legislature that has just begun, the abnormal exercise of prerogatives by the parliamentary opposition reveals the unstable health of the constitutional regime set up by General De Gaulle at the end of the 1950s.

Keywords: National Assembly – opposition – minority groups – referral powers – ethno-national factor.

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