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The 'Executive of Change' and the 2019 Crisis as a Touchstone for the Italian Parliamentary Form of Government

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Abstract

The government crisis which began on 20 August in Italy has put an end to the innovative experience of the 'Executive of Change,' which has challenged the traditional constitutional conventions regarding the relationship between state powers, as well as the fundamental values on which the Italian Republican Constitution grounds the legal system. The article analyses the reasons for the crisis and, moreover, the impact it has had on the role and prerogatives of the President of the Republic, the Prime Minister and the Parliament, contextualizing it in the general framework of the evolution of the Italian parliamentary form of government.

Keywords

Parliamentary form of government, Government crisis, Constitutional interpretation, Constitutional conventions, Fundamental constitutional values

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The 'Executive of Change' and the 2019 Crisis as a Touchstone for the Italian Parliamentary Form of Government

I. The 2019 Italian Government Crisis: Facts and Questions

From 20 August to 9 September 2019, Italy was involved in a quite unexpected government crisis terminating the so-called 'Executive of Change' appointed only 14 months before, thanks to the support of a very peculiar – for the parties involved and for their history – coalition. Since its appointment and until the crisis ended, the vicissitudes related to this Executive raised very relevant questions with regards to the interpretation of the Italian Constitution (henceforward also IC), as well as of the constitutional conventions mostly characterizing the relationship between state powers. In brief, this Executive controversially innovated with regard to the normative value of coalition agreements, challenged the roles and prerogatives of the President of the Republic and of the Prime Minister, as well as the relationship between the Parliament and the Executive with regard to the law-making process, and raised concerns about the extent of the protection that should be granted through parliamentary immunity. Furthermore, from a more political than constitutional perspective, the 'Executive of Change' challenged the unwritten conventions on the exploitations of religious symbols in the political field and showed the great impact of populism and of new technologies on Italian democracy.

The present article discusses these aspects, contextualizing them through an introduction on Italian politico-institutional history.

A. The Formation of the 'Executive of Change': A Popular Executive Bound by A Contract

In order to contextualize the crisis, a few words on Italian constitutional history are called for. For almost fifty years since the establishment of the Italian Republic in 1946, the Democrazia Cristiana (DC – Christian Democracy) was the majoritarian party in government coalitions established under a proportional electoral law. In this period, the so-called *conventio ad excludendum* enabling the Partito Comunista Italiano (PCI – Italian Communist Party) to be kept out of the Executive offices was constantly respected.¹ At the beginning of the '90s, due to the consequences of the fall of the Berlin Wall and to a dramatic corruption scandal concerning bribes and illegal funding to political parties,² the political party system underwent a massive

1 This was a constant reality in the history of the country. Indeed, when the leader of the DC Aldo Moro tried to include the PCI in the Executive with the so-called 'historical compromise', he was kidnapped and then killed by the terrorist communist group the *Red Brigades*, possibly with the never confirmed connivances of some sectors of the Italian secret service.

2 The scandal was known as *Tangentopoli*, roughly translatable as 'town of bribers' from *tangente* which is the Italian noun for bribe, and the investigation led by the public prosecutor Antonio Di Pietro took the name *Mani Pulite* (Clean Hands).

change.. In brief, this change resulted in the approval of a majoritarian electoral act³ and in the establishment of a two party coalition system: the center-left coalition, led by the descendant of the PCI, called since 2007 Partito Democratico (PD – Democratic Party), and the center-right coalition, led by Silvio Berlusconi's party Forza Italia (FI – Go Italy) and including also the Lega Nord (Northern League), mainly interested in promoting a federalist reform, and some post-fascist forces. In a political environment characterized by the personalization of politics, the right-wing coalition has led the country for twenty years almost consecutively until the effects of the 2008 economic crisis and the personal vicissitudes of the FI leader pushed the then President of the Republic Giorgio Napolitano to appoint a care-taker government. Meanwhile, a populist digital party, the Movimento 5 Stelle (M5S – Five Stars Movement) emerged. Members of the latter were elected as MPs for the first time in the XVII legislature (2013-2018)⁴, when the Executive was led by the PD. The attempt to reform the Parliament, reducing the number of MPs and amending the perfect bicameralism of the Houses⁵, as well as the electoral law, characterized this legislature. A referendum, however, struck down the reform of the Parliament, while the electoral acts which came into force at the time did not completely pass the control of constitutionality, so that the 2018 elections were held according to a system mixing proportionality and majority rules approved only few months before.⁶

Ultimately, the 4 March 2018 election for the XVIII legislature was held with a three-tier system. Namely, 232 single-member districts (SDM) exist for the Chamber and 116 for the Senate, to which the second tier should be added, providing for the election of 386 deputies and 193 senators with a proportional system in multi-member districts (MMD); finally, the 28 constituencies of the Chamber and the 20 regions of the Senate represented the last tier. The law also prescribes closed lists which may be formed by candidates belonging to a single party or to a coalition of parties. Due to the closed lists and to the decision to prefer a fused vote, voters had three options: either they expressed a vote for the SMD, and all the votes were then transferred pro quota to the parties affiliated to SMD candidates on the basis of the proportional votes they got in the relative MMD, or they voted for a party list, which automatically entailed a vote for the SMD candidate affiliated to the same list, or they voted both for an SMD candidate and for one of the lists affiliated to him/her. However, voters could not modify the order of candidates in the MMD list. It should be added that in SMDs, the rule for winning a seat was plurality, while in MMDs, the

3 See Electoral Acts n°. 276 and 277, 4 August 1993.

4 For a more detailed analysis of Italian political history leading to the affirmation of populism, see Giovanni Orsina, 'Genealogy of a populist uprising. Italy. 1979-2019' [2019] *The International Spectator* 50, 54.

5 The Constituent Assembly debated both the unicameral and the bicameral options and finally decided for a Parliament composed of two Houses (the 630-member Chamber of Deputies and the 315-member Senate) having exactly the same powers and competences according to the formula of the 'perfect bicameralism' meant to ensure a thorough decision-making process.

6 Electoral Act n°. 165, 3 November 2017.

largest remainder Hare quota was used. In order to limit pluralism and the subsequent risks of instability, the law provided for a complex system of thresholds.⁷

From a political perspective, a tri-polar scenario presented itself: a center-right coalition, composed by Forza Italia (FI), Lega⁸ and Fratelli d'Italia (FdI – Brothers of Italy)⁹; the Movimento 5 Stelle (M5S), running alone after having spent the previous legislature blaming both center-left and center-right previous governments and policies; and, the center-left coalition, gathering the Partito Democratico with several minor left-wing pro-EU parties. Out of the left-wing coalition but gravitating in the same ideological area, there was also the Liberi e Uguali (LEU – Free and Equal).

Given both the electoral law and the abovementioned political scenario, it was clear that none of the groups could have won an absolute majority. This was indeed what happened,¹⁰ and it was therefore necessary to make a political alliance in order to form the Executive and grant it with the confidence. As detailed below, this proved difficult, and the new Executive, led by Giuseppe Conte, was finally entitled to start its activities only on 5 July, having received the confidence thanks to a coalition agreement between the M5S and the Lega, which had detached from its pre-electoral coalition.

Promising to change Italy, but actually having to bargain regarding the direction of the change between the two forces forming the government coalition, the Executive survived between the ups and downs thanks to the fact that, particularly after the European elections in May 2019 which showed the great popular support behind Lega, the M5S, although majoritarian in numbers, accepted an ancillary role and supported the implementation of Lega's political program. Notwithstanding some minor criticism inside the M5S, this was the equilibrium established when the Parliament closed for the summer holidays on 2 August. Quite unexpectedly, however, August was the momentous month for the government crisis. Exposed to the harsh criticism of the opposition and of some members of M5S for his controversial

7 Notably, single parties had to overcome a threshold of 3% of the valid votes calculated at the national level (however, for parties representing ethnic minorities, this threshold does not apply, and they have to overcome a threshold of 20% in their region). In addition, but only for the Senate, any party getting 20% of the votes at the regional level could gain proportional seats. Coalitions, instead, participated in the allocation of proportional seats only if they got at least 10% of the votes at the national level and if one of the party in the coalition had gained not less than 3%. Having met these conditions, the coalition could count on the votes received by all of its candidates having obtained at least 1% at the national level.

8 This is the new denomination of the party Lega Nord (Northern League), which abolished the geographic adjective in order to stress its decision to abandon the secessionist requests. On the evolution of the party, see Daniele Albertazzi et al., "No regionalism please, we are Leghisti!" The transformation of the Italian Lega Nord under the leadership of Matteo Salvini' (2018) 28 *Regional & Federal Studies* 645.

9 This party inherits the post-fascist tradition. It should be also noted that the coalition included a remnant of the DC, the Union of Christian Democrats (UDC), which, however, did not pass the required threshold for gaining seats in Parliament.

10 Notably, the center-right coalition won a total of 109 seats in the Chamber of Deputies and 58 seats in the Senate, with the Lega, led by Matteo Salvini, becoming the first party, with, respectively, 73 and 37 seats; the M5S, led by Luigi Di Maio, won 133 and 68 seats; the center-left coalition, 86 and 43 seats; and, finally, LEU won 14 and 4 seats. For an analysis of the vote, see Alessandro Chiamonte et al., 'Populist success in a hung parliament: the 2018 general election in Italy' (2018) 23 *South European Society and Politics* 479; Gianfranco Pasquino, 'Introduction. Not a normal election: roots and consequences' (2018) 23 *Journal of Modern Italian Studies* 347.

public appearances,¹¹ the leader of Lega, Matteo Salvini, decided to attempt a final overturning of the political situation. Probably counting on the surveys declaring Lega as the first political party in case of immediate elections, he presented a motion of non-confidence at the Senate¹² against the Prime Minister on 9 August.

Waiting to vote on the motion, scheduled on 20 August, the M5S and the PD tried to establish a dialogue after all the mutual accusations exchanged when they were political opponents, while Lega showed an opaque attitude coupling aggressive declarations of political power with proposals for a new deal with the M5S. Due to the reasons discussed below, on 20 August, although the motion was withdrawn, the Prime Minister resigned. In a very troublesome week, a new coalition agreement was established between the M5S and the PD with the support of some other left-wing parliamentary groups, and a new Executive, although led by the same Prime Minister, finally obtained the parliamentary confidence on 9 September.

It is not within the scope of this article to analyze the difficulties in establishing a dialogue between the M5S and the PD or to explain why, while bargaining for the new Executive's program and composition, the EU, the Vatican and the US welcomed the potential government coalition and the renewal of Conte's premiership. Neither is it appropriate to analyze here the reasons why, pending the definition of the new coalition, the Spread between Italian and German bonds consistently decreased and the Italian stock-exchange market performed better than the other European ones in that same week. It is, however, worth underscoring that, in spite of their ideological differences, both the M5S and the PD publicly cited their responsibility to the Italian people as the main reason for their cooperation.

1. The Five Stars Movement: The Italian Digital Party

Being the majoritarian party in both Conte's Executives, the M5S should be further examined because of the peculiarities of its creation and of the internal procedures regulating the relationship between the elite and the members of the Movement.

Established coevally with other digital parties in the rest of Europe, such as the *Pirate Parties* in Northern Europe, *Podemos* in Spain and *La France Insoumise* in France, M5S is distinguished from the others because of a flexible political program that has allowed it to speak to the discontent of people coming both from right-wing and left-wing parties.¹³ Such a program developed during its genesis period starting

11 Newspapers widely reported pictures and videos of Salvini's son using a water scooter of the Italian police forces, as well as Lega's chairperson himself at the Papeete beach playing the Italian Anthem as a disc-jockey while holding a cocktail and dancing with an almost naked dancer.

12 He presented the motion at the Senate because he was elected as a member of that House and, according to the Italian system, he kept the office after the appointment as Minister of the Interior.

13 For further references, see Lorenzo Mosca, Filippo Tronconi, 'Beyond left and right: the eclectic populism of the Five Star Movement (2019) 42 *West European Politics* 1258.

around 2007, when some people discontent with traditional political parties began to gather in *Meet-ups* and finally organized a public meeting in Bologna on 8 September 2007, during which the former comedian Beppe Grillo harangued people by blaming the corruption and inefficiency of all the other political parties¹⁴; during that gathering, 336,144 signatures were also collected, allowing the Movement to present the petition 'Clean Parliament'. Henceforward, the Movement organized itself and ran during the 2012 administrative elections as well as for the 2013 parliamentary election, when Beppe Grillo was appointed as the head of the Movement, but not as a candidate for Parliament. The electoral results, which were so successful that the PD tried to form a government coalition with M5S¹⁵, allowed Luigi Di Maio to be appointed as the youngest Vice-President of the Italian Chamber of Deputies. Then, the M5S proved successful also in the 2014 European elections (21.6%) and, lastly, in the 2018 parliamentary elections.

Beside its fluid ideology, this movement is peculiar because of its internal organization. Its members, indeed, debate through a blog which not only allows for organizing public events but also for finding common positions and making final decisions on specific topics. The blog progressively evolved in a more structured system – the Rousseau platform – owned by the Casaleggio Ass., which has allowed for the online selection of candidates, for the broadcasting of the most relevant institutional events in which representatives of the M5S are involved, and for 'direct communication' between the base and the leader. The Platform thus ensures the realization of the formula inspiring the action of the M5S: 'everyone counts the same'. However, the real implementation of the latter can be doubted when observing that Beppe Grillo seems to count more than the other members due to his role of 'guarantor' of Movement and, moreover, because he is the owner of the Movement's logo, a circumstance that makes of him an immovable component of the party's leadership entitled to certify the respect of the M5S's standards before conceding the use of the logo.

In spite of this philosophy, the M5S has progressively evolved in a party-fashioned structure, having established in 2014 a leading body, the *Direttorio*, composed of 5 prominent personalities of the party (Alessandro Di Battista, Luigi Di Maio, Roberto Fico, Carla Ruocco and Carlo Sibilia) with the approval of 97% of the voters on the Platform. The M5S has passed through at least 3 stages during this evolution. In 2009, a 'non-Statute' established a Movement whose members were considered supporters

14 It is worth noting that that public gathering was called VDay, with 'V' summarizing the Italian word for rudely sending away someone. An echo of the relevance that day has had for this movement can be seen in its official denomination, MoVimento 5 Stelle, with the V capitalized, as it was for the VDay. Public gatherings were also organized on other occasions, until the final one occurred on 1 September 2013 in Genoa.

15 The coalition, the agreement of which was publicly broadcasted for the very first time in the history of the Italian Republic, failed because the M5S refused to support the PD, accusing it of being part of the 'caste' having led the country for decades and guilty of its uncertain political and economic situation.

lacking voting rights in the Assembly of the association. Therefore, when the M5S presented its candidacies in 2013, it was necessary to establish a 'second' Movement, controlled by Beppe Grillo, which was a closed association that confirmed the logo's ownership. Then, in 2018, a third Movement was established, providing mechanisms for internal democracy and allowing its members to vote for confirming/removing both the political leader, Luigi Di Maio, and the guarantor, Beppe Grillo, who however still keeps the ownership of the logo, whose use is granted to this third association. In the same year, Grillo's blog also published the Ethics Code for the incoming MPs, committing them to: voting in favor of all the motions of confidence required to support a M5S's Executive; using the Rousseau Platform as the main communication tool in order to respect the principles of transparency and accountability toward the members of the party and citizens in general; devolving a share of their salary as MPs to the party; paying a fee of 100.000 euro should they be expelled from the party or resign due to political dissent.

A final peculiarity of the M5S, which must be underscored for its consequences on the structure and functioning of the party, is the role of the Casaleggio Ass. Some scholars consider it as the real manager of the decision-making process of the M5S¹⁶ because the 2018 Statute clarifies that both the Rousseau Platform and its manager, the Rousseau Association¹⁷, are integral parts of the M5S and that they agree with the Movement concerning the procedures for the voting moments and for the organization of internal thematic debates.

II. (Re)interpreting the Italian Constitution

Below, the main relevant constitutional issues raised during the 'Executive of Change' tenure and the government crisis are discussed. Preliminarily, however, it is worth keeping in mind that the Italian Constitution (IC), entered into force on 1 January 1948 and established the Italian Republic after the defeat of Fascism and of the Savoy's constitutional monarchy, states that 'Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution' (art.1.2 IC). These forms are those of a parliamentary system, according to which the bicameral Parliament ordinarily lasts for five years (art. 60 IC).

On the functioning of the parliamentary form of government in Italy, a few notes should also be added. Considering the degenerations of the system during the Weimar Republic and being aware of the consequences they could have entailed in

16 Giuliano Santoro, *Un Grillo qualunque: il Movimento 5 stelle e il populismo digitale nella crisi dei partiti italiani* (Castelvecchi 2013).

17 It was established in 2016 by the late Gianroberto Casaleggio and his son Davide, to whom the Statute ensures the perpetual ownership of the leading position inside the Association. It is noteworthy that the Statute has never been approved, or at least shared, with M5S members, and that, Gianroberto having passed away, Davide fully controls the Association and thus has a great influence on the M5S's internal dynamics.

the post-war, post-fascist Italy, constituent framers underlined the need to introduce ‘suitable mechanisms’ in order to ensure the stability of the Executive.¹⁸ Namely, during the debates, the possibility of extending the validity of the vote of confidence for two years was examined – but put aside because it could not save the stability in cases of an extra-parliamentary crisis or of ministerial resignations – as well as the constructive no-confidence.¹⁹ Since then, having failed to introduce any such mechanisms,²⁰ the rationalization of the system has been tried through electoral acts providing a majority bonus in order to counterbalance the instability deriving from proportionality.²¹ Aware of the still existing risks of instability, lawmakers also appointed bicameral Commissions tasked with proposing constitutional amendments aimed at providing a restyling of the form of government. These Commissions, for instance, discussed the possibility of introducing either the semi-presidential or the presidential forms of government, but none of them finally achieved any real change. Even when the parliamentary system was not questioned, proposals were drafted for binding only the Prime Minister (before the appointment of the Ministers) with the confidence, similarly to Germany and Spain,²² but these never became constitutional amendments. The Prime Minister, therefore, has continued to be an ambiguous office whose real power has depended on electoral law, personal charisma, and the relationship with the majority party.

A. The Appointment of the Executive

Following the Constitution, once MPs have been elected, it is the duty of the President of the Republic (henceforth also PdR or the President) to convene the political forces to verify the possibility of forming an Executive able to obtain the vote of confidence of both Houses of the Parliament through interviews, called ‘consultations’, with the leaders of political parties and of the parliamentary groups formed after the election. Should this be possible, the President of the Republic appoints the President of the Council of Ministers (henceforth also PCM, Prime Minister or Premier). As regards this appointment, either the PdR may give an ‘explorative office’ to a PCM, which will therefore verify the existence of a majority voting the confidence in his favor,²³ or the appointed PCM may accept the office ‘with reserve’, which means that the formal acceptance is subjected to the verification of the majority. Once the office is accepted,

18 See *Ordine del giorno Perassi*, Italian Constituent Assembly, Commission for the Constitution, Second Sub-Commission, Minutes, 4-5 September 1946.

19 As is known, this mechanism was introduced three years later in the German Fundamental Law, allowing to vote no-confidence in the Prime Minister only if a substitute was already able to gather a new majority entrusted with the parliamentary confidence.

20 For the reasons of these failures, see Leopoldo Elia, ‘La forma di governo’, in Maurizio Fioravanti (ed), *Il valore della Costituzione* (Laterza 2009).

21 For an evolution of the Italian electoral legislation, see Gianluca Passarelli, ‘Electoral Systems in Context: Italy’, in Erik S. Herron et al. (eds), *The Oxford Handbook of Electoral Systems* (OUP 2018).

22 This was the case of the Bozzi Commission (1983-1985).

23 It is worth noting that, until now, none of the Presidents of the Council of Ministers have been women.

on a proposal of the PCM, the PdR appoints the Ministers (art. 92); the Executive then must come before the Parliament no later than ten days after the appointment in order to obtain the confidence (art. 94) by the absolute majority of both Houses.

With regard to the 'Executive of Change', therefore, the consultations began on 4 April 2018. Lacking an agreement between political forces, the President, Sergio Mattarella, called several times for national responsibility and urged the Speakers of the Houses to discuss the possibility of establishing a coalition either between the center-right coalition and the M5S or between the latter and the center-left coalition. None of the attempts proved successful and, on 7 May 2018, the President released a public declaration summing up the constitutional tradition of Italy and clarifying that, should a government coalition be impossible, his only option was to suggest a vote of confidence for a neutral Executive lasting until the approval of the budget act. He envisaged this solution as more suitable than agreeing to calls for an immediate new election, given the impossibility of organizing it in June, and reminding everyone that a summer vote has traditionally been avoided because of the difficulties it causes for voters. A third option, therefore, was a vote in autumn, which, however, could have hampered the timely approval of the budget act.

Quite unexpectedly, this speech was followed by a note in which Lega, detached from the center-right coalition, and the M5S informed the public and the President of their attempts to find a coalition agreement, finally achieved on 23 May 2018, when Giuseppe Conte²⁴ accepted with reserve the appointment as PCM and opened negotiations to present a list of Ministers to the PdR. Usually, the President does not interfere in the choice of Ministers and merely approves the list the PCM presents, but on this occasion, Mattarella fully utilized his constitutional prerogative and decided to reject the appointment of Paolo Savona, renowned for his euro-skeptical positions, to the office of Minister of Economy. As a consequence, Conte resigned, and the consultation process started again with Carlo Cottarelli appointed as PCM. Because the latter could not achieve a majority sufficient for the confidence, the PdR again appointed Giuseppe Conte, who this time proposed a list of Ministers with Savona as the Minister of European Affairs²⁵. Mattarella eventually accepted. On 1 July 2018 – three months after the elections – the 'Executive of Change' composed of 18 Ministers (12 men and 6 women) took the oath in the hands of the President and finally obtained the vote of confidence on 5 June 2018.²⁶

24 He was a professor of private law at the University of Florence with no previous political experience and who was neither a member of Lega nor of M5S.

25 This Minister is without portfolio and is tasked not with developing Italian policies toward or related to the EU, but only of implementing in Italy the EU *acquis*. Nevertheless, Savona held the office only until March 2019, when he was appointed as the Chair of the public authority responsible for regulating the Italian financial markets (CONSOB).

26 A complete timeline of all the events leading to the appointment of the Executive can be found in Marco Valbuzzi, 'When populists meet technocrats, The Italian innovation in government formation' (2018) 23 *Journal of Modern Italian Studies* 460, 465-467.

The most noteworthy element with regard to the ‘Executive of Change’ is the decision of the two forces composing the coalition to use a civil law tool, the contract, in order to define their agreement and the guiding principles of their political program. The ‘Contract for the Executive of Change’²⁷ is explicitly mentioned several times in the motion of confidence n. 1-00014 which was presented to the Senate in order to confirm the confidence to Conte’s Executive. The Contract provided for 30 programmatic points, clarified that political targets not included therein would be negotiated when necessary and that parties would support each other with regard to the fundamental goals of the political programs they presented during the electoral campaign in respect to the principles of good faith and legal cooperation. It also established a Reconciliation Council for solving potential disagreements and evaluating pros and cons of the realization of big infrastructural works not explicitly agreed to in the Contract.²⁸ This reconciliatory mechanism was an evident necessity for the endurance of the coalition because, as the doctrine underlined, ‘the Contract reached by the two parties cannot be described as a synthesis of their respective electoral platforms but, more aptly, as a juxtaposition of their more salient and iconic policy measures’.²⁹ Nevertheless, the mechanism has never been activated, and the parties found other, more ‘informal’, ways for settling their different views, until they finally completely diverged.

The idea of signing a contract for establishing a government coalition is extremely unusual in Italian institutional history and raises some doubts of unconstitutionality. Indeed, the leaders of Lega and M5S declared that the German tradition of *Koalitionvertrag* inspired the idea of the Contract, but they probably failed to contextualize it both in the German and in the Italian context. In fact, the Contract cannot have any binding force because there is no normative prescription grounding it, even when considering it as a private law act, due to the fact that coalitions are not endowed with a legal personality³⁰, and therefore there is no regulation about the termination or the dissolution of the agreement signed by these actors. Indeed, Italian scholarship has already conceived coalition agreements³¹ – with which Italian political history is instead more familiar – as based on conventional rules³² whose validity cannot influence their stability, given the fact that their binding effects last as long as the political opportunity makes them suitable. This is exactly what also happened with

27 For the full text, in Italian, of the Contract, see http://download.repubblica.it/pdf/2018/politica/contratto_governo.pdf. A summary in English is available at http://www.efdd-5seuropa.com/imgblog/summary_of_the_contract_for_the_government_of_change_in_italy.pdf

28 Indeed, Lega and M5S were already aware of their different opinions over some infrastructural works, i.e. the TAV (high speed train) already under construction in northern Italy and the drill plants for exploiting oil in Basilicata (southern Italy).

29 See Valbruzzi (n. 26), p. 471.

30 In spite of several attempts to modify this condition, in Italy, political parties are not state’s institutions (Constitutional Court, 22 February 2006, *Ordinanza*, 79), but private associations lacking legal personality whose activity is regulated through the provisions of the civil code (see Court of Cassation, 18 May 2015, 10094).

31 See Piero Alberto Capotosti, *Accordi di governo e presidente del consiglio dei ministri* (Giuffrè 1974).

32 Capotosti, *ibid.* 148.

the Contract Salvini withdrew from when he realized that it could be more opportune for his party to run in a new election. In addition, this conception clearly distinguishes the Italian system from the German one both institutionally – because of the way the no-confidence is conceived in the two systems – and culturally – because the German politician's credibility is also based on the respect of 'gentlemen's agreements'. On the latter point, the fact that Lega signed the Contract after having withdrawn from a pre-electoral coalition agreement is quite symptomatic of the Italian way to approach this issue. Although named a Contract, therefore, a fortiori it had no binding effects on the parties having signed it; more saliently, it was not a real contract because it was not fulfilling the main characteristics of this private law act according to the Italian Civil Code (namely art. 1321 and 1372).

Having clarified that it was a mere political act, further consideration should be introduced with regard to the Contract's potential impact on MPs, given also the express limits to their activity the Contract contains.³³ According to the Italian legal system, indeed, the imperative mandate (art. 67 IC) is prohibited.³⁴ Nevertheless, the evolutions of the political system made MPs increasingly more subjected to the internal party's discipline, through which the party ensures the votes of its members in order to approve the measures resulting in the implementation of the coalition program.³⁵ Furthermore, by giving the confidence, MPs agree with the Executive's political program, assumed to be the way in which the latter is fulfilling the interest of the Nation; at the same time, the lack of support on a single measure or bill does not deteriorate the confidence up to the point that this does not entail a duty to resign for the Executive (art. 94.4 IC). Because of this complex relationship between the MP, the party and the Executive, it is not possible to infer whether any coalition agreement, including the 2018 Contract, has a binding force on the MP.³⁶ Nevertheless, it cannot be ignored that it represented another element of soft pressure on them, which for M5S MPs added to the already relevant political pressure deriving from having signed the party's Ethics Code.

Given the situation, one may finally ask whether it is consistent with the parliamentary form of government to have an Executive which does not fully respect the majoritarian political orientation of the Italian population, which, as

33 Notably, the Contract prevented MPs belonging to M5S and Lega from presenting bills related to the political goals listed therein, allowing this only for the members of the Executive and the Presidents of the two parliamentary groups; the latter are also exclusively able to set the agenda of the 'remaining' bills which MPs may propose.

34 The Italian system entrenched in the fundamental Charter the prohibition of the imperative mandate since the times of constitutional monarchy. Art. 41 of the Albertine Statute, indeed, prevented this limit to the MP freedom, countertrending the coeval European charters.

35 This is not the context for expanding on the topic of the imperative mandate in the party; for a detailed discussion, see Antonino Spadaro, 'Riflessioni sul mandato imperativo di partito' [1985] *Studi parlamentari e di politica costituzionale*.

36 A more detailed analysis on the nature and content of the contracts for the government coalition has been outlined in Luca Marantoni, 'Contratto di governo e accordi di coalizione. Natura giuridica e vincolatività' (2018) 3 *Osservatorio costituzionale* 317.

demonstrated on the occasion of the European elections, seems to prefer right-wing forces and, moreover, Lega. Right-wing parties raised this point many times while the M5S-PD Executive was under formation. Although Mortati reminded us that the President of the Republic should ensure the existence of a harmony between the popular political orientation and the representation,³⁷ it should be clearly stressed that Italy is a parliamentary form of government and that under it the Executive is legally established when it is able to achieve the vote of confidence of the absolute majority of the MPs. Therefore, against every political objection, the procedure for the appointment of the M5S-PD Executive is fully consistent with the Constitution, and it is in respect of the latter that the President of the Republic factually supported the negotiations for finding a new coalition agreement after the termination of Conte's Executive.

1. The Impact of the Digital Party and Its Internal Procedures

The relationship existing between the M5S MPs and the base has also raised a very noteworthy constitutional issue with regard to the appointment of the Executive, due to the M5S leadership's decision to ask for a vote on the Rousseau Platform about coalition agreements. Although this kind of 'consultation' has also occurred on other occasions, i.e. with regard to the formation of the 'Executive of Change', its result became even more relevant during the entry into office of the Conte *bis* Executive.

Pending the consultations with the President of the Republic, indeed, the M5S leadership announced that they were ready to establish a government coalition with the PD – and were going to inform the President of this – but that they needed the final approval of the Rousseau Platform before the vote of confidence. Vague as it may be, this declaration was constitutionally challenging. First, it called into question the abovementioned issue of MPs' freedom, highlighting that, in the M5S leadership's mind, their vote should be bound to the decision of people voting on the Platform. Second, as the President of the Republic is constitutionally the arbiter in the formation of the Executive, three questions arose: how should the online vote be considered? In case of a negative vote, would it hamper the formation of the Executive to the point that people gathered through the Platform were meant to have a decision-power higher than the President? Or should the vote to be conceived of only as a party's internal procedure before the vote of confidence in the Parliament?

Actually, the high degree of support (80%) in favor of the new Executive that the vote held on 3 September revealed made all these questions less relevant for the final outcome. However, it is still unclear what would have happened in case of a different

37 Costantino Mortati, *Istituzioni di Diritto Pubblico* (CEDAM 1952). This point and the way it should be framed with regard to the current government crisis has been addressed in Beniamino Caravita, 'Governi Conte: aspetti problematici di diritto costituzionale' (2019) 5 *Osservatorio Costituzionale*.

result, and it is certainly an issue that should be better considered given the increasing relevance of forms of digital democracy both in Italy and worldwide. Notably, Italian law-makers should try to assess whether online consultations pertain to internal party democracy, as foreshadowed in art. 49 IC, or to the provisions on the formation of the Executive (art. 92-94 IC). Until now, the President of the Republic's conduct has demonstrated the lack of institutional relevance of the online vote; an approach to which the M5S seemed to agree, as its leadership mostly understated the voting moment and often underscored the will of ensuring loyal cooperation among state-powers. Nevertheless, this still remains a potential open challenge for the endurance of the Italian legal system.

B. Dismissing the Executive

If one tenth of the MPs of a House sign a motion of no-confidence, the Executive is obliged to resign (art. 94.5 IC). Should this happen, the President of the Republic has to call for consultations in order to verify whether another parliamentary majority exists in favor of another Executive and, lacking this majority, he must call for new elections. This is the way the Italian Constitution envisages the procedure for managing parliamentary crises of government. Nevertheless, throughout Italian institutional history, the great majority of government crises have been extra-parliamentary. This means that the resignation of the Executive did not derive from a vote of no-confidence but from other factors unrelated to parliamentary procedures, such as internal disagreements in the government coalition. Although Presidents of the Republic have generally tried to 'parliamentarize' crises, on only very few occasions a final vote of no-confidence has been observed.³⁸

During the development of events in the case of the 2019 crisis, on 20 August, Prime Minister Conte participated in the Senate's session for his Communications to the House and expressed his disapproval of the actions of the Minister of the Interior. As they had never been allies, Conte blamed Salvini for lacking political and constitutional culture, accusing him of having initiated the crisis when the drafting of the budget act was upcoming and the constitutional amendment procedure for reforming the composition of the Parliament was in the delicate phase of the final vote. Salvini, who has still not resigned from his office as minister, replied with a brief speech rebutting the accusations and, in turn, accusing Conte of being more interested in saving his office than in fulfilling the national interest; confirming Lega's Euroscepticism, he also accused Conte of being a slave of the European Union, presented as 'a just master'.³⁹ Finally, he showed a rosary and invoked the protection of the Virgin Mary. Soon after this, he left the House. In a coup de theatre,

38 A vote of no-confidence has only terminated the Executive in 1998 and in 2008.

39 Here he cited Cicero: 'liberty is not the freedom of living under a just master, but of no master at all'.

however, while MPs were declaring their positions before the vote on the motion, it was announced that the motion of no-confidence had been withdrawn. In spite of this, Conte decided to resign *motu proprio*, and the government crisis was officially begun when he formalized his resignation to the President of the Republic, Sergio Mattarella, a few hours later.

The 2019 government crisis, therefore, proved innovative because it was not fully extra-parliamentary, but there have been some attempts to frame it as a parliamentary one. Actually, it was not extra-parliamentary, because Conte explicitly explained his reasons for the resignation to the Parliament (namely, in front of the Senate), but it was also not parliamentary, as a vote of no-confidence did not occur. Quite uniquely, it probably was a case of a semi-parliamentary crisis of government.

It should furthermore be stressed that Conte's *motu proprio* resignation and the withdrawal of Lega's motion of no-confidence avoided the system facing a huge constitutional law challenge: should the motion have been voted on and rejected due to the vote of a parliamentary majority different from the one having supported the Executive until then, would the Prime Minister have been obligated to resign? Although this risk can be assumed to have been the main political reason for the motion's withdrawal, since Lega was evidently willing to hamper the creation of a new majority, procedurally, the lack of the motion could have created a constitutional uncertainty because the Prime Minister's resignation is effective only when the President of the Republic accepts them, whilst on the present occasion, Conte only announced his resignation during his Communication to Parliament, but nothing had been formalized at this stage. On this same point, the reasons for not having determined the termination of the Executive through the resignation of all the Ministers appointed among Lega's members still remains unclear. Indeed, this would have resulted in the same aim Lega pursued through the motion of no-confidence, but without risking the negative vote of a PD-M5S majority. Two explanations, fully political, may be put forward: either it was a late attempt to restore parliamentary centrality after 14 months of Executive supremacy, or it was a way to threaten the M5S, counting on the fact that the M5S would not risk a new election and would instead negotiate a new coalition agreement in which Lega might have had greater powers.

Relevant also is the way the President of the Republic intervened to solve the government crisis, paving the way to the appointment of the M5S-PD Executive. Indeed, soon after the first round of consultations on 22 August 2019, Mattarella delivered a short but meaningful speech stating that he excluded the possibility of an exploratory mandate, as well as of a care-taking government, and that should a new coalition fail to be formed, he would call for new elections. This speech actually relied on a specific interpretation of art. 88 IC regarding the power to dissolve the

Parliament, conceiving it not as an act only formally presidential – and substantially of the Executive – but as the outcome of an *extrema ratio* decision that the President should only take lacking other alternatives and not in order to appease political forces. In this way, President Mattarella also put an end to the unconventionality having characterized the crisis until that moment, clarifying that if the President is not bound to dissolve the Parliament on request of the Prime Minister, *a fortiori* he is not bound to do so on request of a Minister.

C. The Role of the President of the Council of Ministers

In the Italian system, the Executive is composed of the President of the Council and the Ministers who together form the Council of Ministers (art. 92). In line with this definition, with regard to the action of the Executive, the PCM is conceived as a *primus inter pares* tasked with constitutional duties to conduct and hold responsibility for the general policy of the Executive, as well as to ensure the coherence of political and administrative policies, by promoting and coordinating the activity of the Ministers (art. 95 IC). This set of duties was then confirmed in the 1988 Act on the Executive's activity and the functioning of the Prime Minister's Office.⁴⁰ Respecting the collegiality of the Executive, and, moreover, when it is grounded on a government coalition, the PDC therefore cannot unilaterally determine the action of the Executive which emanates from the determinations of the Council of Ministers.

When Giuseppe Conte was appointed as the PDC, some skepticism arose around his possibility to comply with these duties because of the peculiar agreement on which the government coalition was grounded, due to the fact that only at a later stage the *M5S* and *Lega* agreed to appoint him as the PDC and that both leaders of the parties in coalition, Di Maio and Salvini, were appointed as Vice-PCMs, serving respectively as the Minister of Economic Development and the Minister of the Interior. On several occasions, furthermore, both underscored that they conceived Conte as 'an executor' of the Contract, a role that the oppositions soon interpreted as a mere figurehead and protested that this infringed on the relevant constitutional provisions, believing that the way Conte was selected could have limited his margins of autonomy in coordinating the action of the Executive.

On the contrary, Conte proved able to obtain the respect of his European homologues and, at the domestic level, to carve out some space for himself and to ensure the highest possible respect for the procedures. The Italian Russia-gate and the vote on the TAV are noteworthy examples.

In spring 2018, a voice recording published on a website denounced the attempt to conclude a secret agreement in the hall of the *Metropol* hotel in Moscow according

40 Act n° 400, 23 August 1988.

to which some Russian oligarchs would have guaranteed discounted oil imports from Russia, regardless of EU sanctions, with the consequent redistribution of the amount earned from the discount among several parties, including Lega.⁴¹ Apart from the possible penal consequences,⁴² this affair impinged both on parliamentary procedures and on the internal dynamics of the government coalition, moreover because the M5S has consistently trumpeted its electioneering ‘honesty’ as a leading principle of its political action. Therefore, when Salvini refused to report to the Parliament in spite of the explicit request coming from the Partito Democratico, implicitly endorsed by the M5S, it was Prime Minister Conte who, on 24 July 2019, presented official Communications to Parliament on the potential scandal. In reaction, several MPs of the M5S deserted the Assembly as a sign of protest against the lack of respect the Minister of the Interior was demonstrating by refusing to appear in front of Parliament. The disrespect toward a fundamental check mechanism of the parliamentary form of government also represented a turning point for the endurance of the government coalition Conte mentioned during his final speech before resigning; on that occasion, he also blamed Salvini for his lack of support in preparing the Communication and for failing to approach him personally about the matter. The Prime Minister’s decision to face Parliament on behalf of the Minister of the Interior evidently showed his desire to confirm an independent standing and to comply with the formal procedure, notwithstanding the behavior of Lega’s members of the Executive. He almost followed the same line of reasoning when decided to ‘parliamentarize’ the crisis and to resign *motu proprio*, regardless of the withdrawal of the motion of no-confidence.

Conte also proved independent from M5S’s behavior. Indeed, the M5S has always declared its absolute opposition to the construction of the high-speed railway between Lyon and Turin (the so-called TAV) and, while the Council of Ministers was discussing whether to continue with the construction, the M5S presented a motion⁴³ to reject the required authorization for the construction project. On 7 August, this motion was voted on, together with 5 other motions, including one proposed by Lega in favor of the construction. Before the vote, the Premier, patently opposing to the behavior of the main party that had supported his appointment, declared his support of the TAV, adding that impeding it would have cost more than finishing the construction, which had already been ongoing for several years.

41 Only a few months before (July 2018), the Court of Cassation had condemned Lega for the embezzlement of public funds from 2008-2010 and ordered it to repay 49 million euro.

42 The Public Prosecutor of Milan opened an investigation into international corruption which is still pending as of October 2019.

43 Motions are acts of political orientation through which the Parliament declares its preferences to the Executive, which, however, is not bound by them.

D. The Immunity and The Migratory Issue

MPs are not accountable for the opinions expressed or votes cast in the performance of their function and, with the exception of cases of *flagrante delicto* or when a final court sentence is enforced, they cannot be submitted to personal or home searches, arrested or otherwise deprived of personal freedom unless an authorization is provided by the House they belong to (art. 68 IC). Similarly, an authorization from Parliament is required in order to submit the PCM or a Minister to normal justice for crimes committed in the exercise of their duties (art. 96 IC). The Constitutional Act n. 1 of 16 January 1989 has further clarified the procedure for this authorization and has stated that it should be denied only in those cases in which the action of the member of the Executive was aimed at protecting the national interest (art. 9.3).⁴⁴

These provisions represented the framework for the issue concerning Matteo Salvini in his role as the Minister of the Interior with regard to the management of immigration. Indeed, respecting the political program presented during the electoral campaign, soon after the appointment, Salvini started to implement through the so-called security decrees the 'Closed harbors' policy,⁴⁵ according to which Italy denied harboring rights to rescue ships, mainly managed by humanitarian NGOs, operating between the two shores of the Mediterranean in order to assist people trying to illegally immigrate into Europe. The first implementation of this policy occurred when the Diciotti ship of the Italian Coast Guard assisted 190 migrants encountering serious difficulties in the middle of the sea. Although the Minister of Transportation, Danilo Toninelli, instructed the ship to reach Catania's harbor, the Minister of the Interior barred the migrants from disembarking, claiming that other European countries needed to examine their requests for international protection. In the end, the Italian Episcopal Conference, Albania and Ireland decided to accommodate the migrants, who were finally allowed to disembark after 10 days. Meanwhile, on 25 August, the Minister of the Interior received a notice of investigation from the Public Prosecutor of Agrigento for abduction, illegal detention and abuse of power. Acknowledging the notice and broadcasting it live on facebook, Salvini called on popular support and declared that he was merely protecting Italian borders. The Prosecutor then submitted to the Senate the request of authorization to open the investigation, according to the abovementioned procedure. In the request, he underlined that the Constitutional Court had already clarified that the management of immigration should balance the national interest and respect the spirit of the Constitution, the principle of rationality, international law to which Italy is bound, and the inviolability of personal freedom guaranteed in art. 13 IC, which applies to citizens and foreigners without distinction. In the Prosecutor's opinion, therefore, Salvini had violated the

44 For further details on immunities in Italy, see Alessandro Pizzorusso, 'Immunità parlamentari e diritti di azione e di difesa', (2000) 123 *Il Foro Italiano* 301.

45 The decrees-law then passed into law with the Acts n°. 132, 1 December 2018 and n°. 77, 8 August 2019.

migrants' personal freedom, also guaranteed in art. 5 of the European Convention on Human Rights, as well as several international provisions requiring states to shelter migrants in the absence of any justification deriving from the need to protect an overriding, endangered national interest. On 20 March, however, the Senate refused the authorization (237 votes in favor, 61 against). This 'lifeboat' the Senate provided to the Minister allowed him to keep going on this track, so that several other rescue ships were prevented from harboring, with severe consequences for the migrants on board, included the notorious case of the Sea Watch 3.⁴⁶ The decision Senators made by confirming Salvini's immunity, however, is extremely relevant because it seems to rely on a very permissive interpretation of the Constitution and of the relevant constitutional jurisprudence, up to the point that it resembles more an attempt of the 'political caste' to protect one of its members than a mere evaluation of the criteria for authorizing the prosecution.

Beyond the issue of immunity, some considerations may be introduced with regard to respecting the Constitution and its spirit. First is the question of whether the kind of act used for implementing the 'Closed harbors' policy, the decree-law, is consistent with the Constitution. Indeed, this kind of decree should be issued only in case of necessity and urgency (art. 77 IC), a condition that, according to several scholars, could not be attached to the migration crisis or, better, to the fields the decrees ruled in order to manage the crisis, such as citizenship, refugee sheltering, public order and security, and international terrorism.⁴⁷ Also, the fact that all these different fields were considered in a single decree-law raised some doubts, since a consolidated, domestic constitutional jurisprudence exists which grounds the evaluation of the suitability of a decree-law on its homogeneity.⁴⁸ Indeed, when approved under other circumstances, this kind of decree was adjudicated as an infringement of the legislative power of the Parliament in a way that cannot be corrected through the act passing the decree into law.⁴⁹ Second, the general approach connecting migration to public security is grounded on the stereotype 'the foreign as the enemy' which does not correspond to any statement in the Italian Constitution, which instead constantly protects the

46 Apart from the final decision of the ship's captain, Carola Rackete, to dock the ship, regardless of the ministerial prohibition, this case is also noteworthy because Rackete's decision followed the rejection of her appeal to the European Court of Human Rights. She lodged an urgent request to the Court (according to art. 39 of the Rules of the Court) claiming that migrants were detained on board without legal basis, suffering inhuman and degrading treatment, with the risk of being returned to Libya without evaluation of their individual situation. Although recognizing the suffering, the Court did not grant the applicants' requests to be disembarked, but requested the Italian Government 'to take all necessary measures, as soon as possible, to provide all the applicants with adequate medical care, food, water and basic supplies as necessary. As far as the 15 unaccompanied minors were concerned, the Government was requested to provide adequate legal assistance (e.g. legal guardianship). The Government was also requested to keep the Court regularly informed of the developments of the applicants' situation.' (see, *Rackete and Others v. Italy*, n. 32969/19).

47 On these doubts, see Alessandra Algostino, 'Il decreto 'sicurezza e immigrazione' (decreto legge n. 113 del 2018): estinzione del diritto di asilo, repressione del dissenso e disegualianza' (2018) 2 *Costituzionalismo.it*; Marco Ruotolo, 'Brevi note sui possibili vizi formali e sostanziali del d.l. n. 113 del 2018 (c.d. decreto sicurezza e immigrazione)' (2018) 3 *Osservatorio costituzionale*.

48 See Constitutional Court, D22/2012, D34/2013, D32/2014, and D154/2015.

49 Constitutional Court, D29/1995.

human being as such, i.e. through the right to asylum (art. 10.3 IC). Even accepting the need to protect the state from illegal immigration, it is hard to see the Constitution as consistent with an approach which denies the right to harbor while exploring the possibility of the individual applying for international protection as a refugee or entering the country according to other forms of legal migration.

All these controversial elements have been only partially acknowledged by the President of the Republic. Indeed, the President of the Republic can 'send Parliament a reasoned opinion to request that an act scheduled for promulgation be considered anew', but if the Houses again approve the act, it shall be promulgated (art. 74 IC). However, the President decided not to send back the acts passing into law the decrees but only to accompany the promulgation with a message reminding the Executive of the need to implement them without disregarding international and European commitments.

E. The Approval of The Budget Act

The approval of the budget act entrenches domestic provisions with procedures agreed on according to Italy's status as an EU founding member. Indeed, Parliament shall pass the budget and the financial statement every year (art. 81 IC) according to a timeline defined at the EU level. Notably, by 10 April, the Executive must present the Finance and Economy Document (DEF) to Parliament, exposing the economic and financial situation of the country and proposing the Executive's goals; by the end of April, the Executive has to present the Stability Program and the National Reform Program, which are included in the DEF, to the Council of the EU and to the EU Commission. At the beginning of the summer, the latter will then send their recommendations to the Executive, which has to consider them, together with the evolution of the economic situation which has meanwhile occurred, when it presents the DEF Review Note (NADEF) by 27 September. Following this programmatic phase, the Executive has to propose the budget bill to Parliament by 20 October, which must be approved by 31 December; finally, by the end of January, the Executive must propose all the bills potentially needed for implementing the content of the budget act.

According to an amendment to the Italian Constitution introduced in 2012 to art. 81 in order to comply with EU economic and financial requirements,⁵⁰ the budget act must provide for a balanced budget, and indebtedness should be allowed only under exceptional circumstances and after parliamentary authorization. Furthermore, since 2011, the Italian budget act includes the so-called safeguard clauses meant to ensure the EU approval of the budget by promising to reduce the effects of the budget deficit through increasing the VAT (Value Added Tax) should the national income not

50 See Constitutional Act n. 1, 20 April 2012. For a critical appraisal of this Act, see Franco Bilancia, 'Note critiche sul c.d. "pareggio di bilancio" (2012) 2 *Rivista dell'Associazione Italiana dei Costituzionalisti*.

increase in the expected time.⁵¹ In 2019, therefore, the budget act promised a VAT increase of 2 points in 2020 and 2021, at the same time increasing the state expense by reducing the retirement age and introducing the so-called citizenship income (*reddito di cittadinanza*).⁵² Apart from any possible evaluation of the effectiveness and efficacy of these measures, their impact on the state budget should be underscored, as well as the fact that they risk a VAT increase becoming unavoidable in the 2020 budget act. The ‘VAT risk’ connected to the approval of the budget act by an Executive in charge of the ordinary legislation only – who is therefore less responsible in front of the electorate – was exactly the main reason M5S and PD put forward to justify their coalition.

Under a constitutional perspective, the approval of the 2019 budget was relevant also because of the procedure. In principle, according to the Italian system, the budget act is introduced by the Executive and goes through a parliamentary debate during which several amendments are proposed. Then, the Executive provides for a consolidated text in the form of the so-called maxi-amendment put to a vote, together with a motion of confidence. In the case of the 2019 budget act, though, there was no debate, and the text on which the motion of confidence was put was provided to the MPs only moments before the vote. Because of such an unconventional procedure, 37 MPs appealed to the Constitutional Court for a conflict of attribution between the powers of state. They contested the lack of provisions aimed at including the corrective measures Brussels requested from the Executive and the bias in the procedure, which, according to their understanding, denied any role to the parliamentary opposition. The appeal was therefore aimed at re-establishing the correct exercise of the competencies constitutionally attributed to Parliament in art. 72 IC and not at requesting the annulment of the budget act. In a noteworthy decision, the Court stated that, although the procedure for carrying out parliamentary activity on the state budget bill for 2019 has aggravated the problematic aspects of the practice of maxi-amendments approved with a vote of confidence, it cannot ignore that it took place under the pressure of time due to the long dialogue with the European institutions. Furthermore, the Court said that the discussion occurred in the previous phases on texts merged at least in part into the final version of the maxi-amendment, and thus the usual procedure was not completely disregarded. According to the Court, therefore, ‘In these circumstances, there is no abuse of the legislative procedure that would lead to those manifest violations of the constitutional prerogatives of the parliamentarians who rise to admissibility requirements in the current situation. This makes the present conflict of attribution inadmissible. Nevertheless, in other

51 Act n°. 214, 22 December 2011.

52 According to this measure, Italian citizens who are unemployed or with a minimum income – those who can be considered in the category of ‘poor citizens’ – will receive a pre-defined amount of euros per month for a pre-determined period. At the same time, an attempt to restyling the Italian employment system by introducing the position of ‘Navigators’, state officers tasked with supporting unemployed people in finding a job, was made.

situations such a compression of the constitutional function of parliamentarians could lead to different outcomes'.⁵³ This compromise in the Court's decision sounded a warning to the Executive, similar to the one the President of the Republic included in his speech on New Year's Eve, when Mattarella underscored the limitations which had occurred in the parliamentary contribution to the law-making process and the need for the institutions to find better ways of dialogue and discussion.

III. Final Remarks

As the analysis above demonstrates, 2018 can be considered a touchstone for the evolution of the Italian political system, given the conclusion of the quasi-bipolar experience, the instability of the center-right coalition, and the introduction of a widespread unconventionality in constitutional interpretation, openly admitted and considered as a personal pride by party's leaders.⁵⁴

Indeed, the Executive gathered political forces that no one would have expected to be able to form a coalition, particularly because Lega participated in an electoral coalition with Forza Italia and Fratelli d'Italia. Furthermore, this entailed the attribution of the executive functions to political forces not belonging to the mainstream political parties and ideologies and which have previously had only a marginal familiarity with these functions.⁵⁵ Constitutionally, it is relevant that these forces sealed their coalition through a contract, a tool previously unknown to the Italian system of forming coalitions. Although lacking binding force, this 'privatization' of the procedure for forming the government coalition infringed previous conventions in this regard in order to give more relevance to the parties' leaders than to those constitutionally entitled (i.e. the President of the Republic and the President of the Council of Ministers). In fact, Conte – at least until the very last months of the Executive's life – seemed to be more an arbiter between two pugnacious disputers than a figure unifying and managing the Executive's activities. This was evident since the first phases of the formation of the Executive, when Conte could not negotiate with the President of the Republic with regard to the appointment of Savona as the Minister of Economy, but could only resign when facing with the impossibility of imposing on Mattarella the decision made elsewhere by Di Maio and Salvini.

This is a clear breach in the usual conventions related to this phase of institutional life. Usually, consultations occur discreetly behind the closed doors of the President's

53 Constitutional Court, 10 January 2019, *Ordinanza*, 17. A list of comments, in Italian, is provided in the online review *Federalism.it*, 4, 2019.

54 During the declaration to the Senate the appointed PDC made asking for the confidence, Conte explicitly recognized the innovative approach of the method used for defining the political program and the list of Ministers and clarified that it was meant to ensure transparency and accountability.

55 Notably, Lega already participated in government coalitions during the Berlusconi era, but only as a minority component of the latter. M5S, instead, was participating in the Executive for the first time.

office *alla Vetrata*, which allows the negotiation of both the Ministers' appointment and the content of the Executive's program to be presented for the vote of confidence. The intense use of mass media and social networks during this period certainly increased the transparency of the whole process, but also made any potential negotiation more difficult. Furthermore, because of this lack of discretion, the President of the Republic was put in the unconventional position of publicly explaining the reasons for his refusal to appoint Savona, continuing in the newly introduced tradition of presidential explanations which had already occurred when he tried to negotiate potential government coalitions in cooperation with the Speakers of the Houses and which continued during the formation of the M5S-PD government coalition in 2019.

In the way the 'Executive of Change' terminated his activities and due to the decision of the incoming Executive to draft a common political program instead of a contract, we can assume the latter is not going to become a new practice in establishing a coalition agreement, at least while the electoral system remains as it is.⁵⁶ Nevertheless, the way 'the Change' has been pursued, especially with regard to the prerogatives of Parliament, underscores the possibility of entrenching in Italian parliamentarism a completely different set of conventions and practices that may highlight the beginning of an erosion of the form of government in which the Houses may be turned in mere ratifiers of the coalition agreement. In general, it can be observed that the role of Parliament was diminished – following a pre-existing Italian trend⁵⁷ – and it was turned into a hostage of the Executive's partners through the tools of the motion of confidence, having reached its apical application on the occasion of the vote for the budget act and of the so-called security decrees. This trend couples with the implicit accusation of redundancy evident in the repeated attempts to reduce the number of MPs – without restructuring the way they should be linked to the electorate and ensure people's representation – as a spending review policy.⁵⁸ This redundancy has been increased by the constant communications that the parties' leaders appointed in the Executive established with the people through social networks, so that the political confrontation often occurs more on Facebook than in the Houses.

The role of the President of the Republic, instead, is probably gaining new visibility and relevance. For instance, in the circumstance of the refusal to appoint Savona to the Ministry of Economy, Mattarella proved that the President has not a merely symbolic role, but a role of guarantee for the system and for the population, given

56 The approval of a new electoral act is in the Executive's agenda and the option of re-introducing the proportional system is under discussion. Should this happen, future coalitions may consider signing 'contracts' to define their programs, thus putting both scholars and decision-makers in the condition of considering whether and how to frame them within the institutional system.

57 On this, see Carlo F. Ferrajoli, 'L'abuso della questione di fiducia. Una proposta di razionalizzazione', (2008) 2 *Diritto pubblico* 613.

58 Such a reduction has been finally approved at the very beginning of the Conte *bis*.

the consequences in terms of reputation that the appointment of Savona could have caused to Italy in dialogue with EU institutions. Similarly, during the consultations that led to the appointment of the Conte *bis* the President demonstrated his decision-making power with regard to the dissolution of Parliament. In brief, through this approach, Mattarella fully respected the duty to ensure the harmonic functioning of the institutional framework the Constitutional Court recognized to his office.⁵⁹

This renewed relevance of the President's office is likely at the origin of the repeated requests for elections that right-wing forces are making, in spite of the full compliance with the parliamentary form of government of the Conte *bis*. Indeed, surveys (and the trend in European and regional elections) show that the popular political orientation is in favor of right-wing forces and, with only 2 years until the end of President Mattarella's term, an election may increase their presence in Parliament and ensure that their will prevails when the time comes to elect his successor.

The political turmoil also makes it possible to question whether the government crisis should be considered as the first sign of an imminent crisis of the form of government and, in a broader sense, of constitutional values. Several among the latter were in fact disregarded during the 14 months of life of the Executive of Change. For instance, the principle of gender equality (art. 51 IC) failed to be respected both in the electoral lists and in the Council of Ministers (among 18 Ministers, there were only 6 women); an approach totally confirmed in the Conte *bis*, which includes 7 female Ministers of 21. Relevant as well is the disregard toward the principle of secularism (art. 7, 8 and 19 IC). Indeed, throughout the electoral campaign and, increasingly, during political meetings he organized as Minister of the Interior, Salvini showed religious symbols, namely a rosary, and mentioned religious elements to give strength to his ideals. He invoked Christian values and the protection of the Virgin Mary for his activities, and the more he was attacked for his anti-immigration policy, the more he relied on this rhetoric. Although Italy has had a religiously-inspired majoritarian party, the Democrazia Cristiana, for almost 50 years, the idea that the State and the Church are independent has always permeated politics, with references to religious values having disappeared with political changes at the beginning of '90s. Therefore, Salvini's approach to such a sensitive issue again demonstrates the unconventionality of the 'Executive of Change' and raises the question of whether religion is another tool Italian populists will continue to use in order to gather consensus or a sign that politics cannot continue to be indifferent to religion because it is pervasively permeating (once again) the public sphere.

In conclusion, it is possible to infer from the analysis above how consistently the 'Executive of Change' was proposing a vision for Italy in clear opposition with the

59 Constitutional Court, D1/2013.

pillars on which it was built at the end of WWII:⁶⁰ secularism, Europeanism, human rights and dignity protection are only the more evident. The Conte *bis* political program has instead confirmed the will of Italy to continue to be an integral part of the EU and to escape from the most dangerous influences of populism. Auspiciously, it is worthwhile keeping in mind that ‘All citizens have *the duty to be loyal to the Republic* and to uphold its Constitution and laws. Those citizens to whom public functions are entrusted have *the duty to fulfil such functions with discipline and honor*, taking an oath in those cases established by law’ (art. 55 IC).

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Bibliography

- Albertazzi D et al., ‘No regionalism please, we are Leghisti!’ The transformation of the Italian Lega Nord under the leadership of Matteo Salvini’ (2018) 28 *Regional & Federal Studies* 645.
- Algotino A, ‘Il decreto ‘sicurezza e immigrazione’ (decreto legge n. 113 del 2018): estinzione del diritto di asilo, repressione del dissenso e diseguaglianza’ (2018) 2 *Costituzionalismo.it*.
- Bilancia F, ‘Note critiche sul c.d. ‘pareggio di bilancio’’ (2012) 2 *Rivista dell’Associazione Italiana dei Costituzionalisti*.
- Capotosti PA, *Accordi di governo e presidente del consiglio dei ministri* (Giuffrè 1974).
- Caravita B, ‘Governi Conte: aspetti problematici di diritto costituzionale’ (2019) 5 *Osservatorio Costituzionale*.
- Chiaromonte A et al., ‘Populist success in a hung parliament: the 2018 general election in Italy’ (2018) 23 *South European Society and Politics* 479.
- Elia L, ‘La forma di governo’, in Maurizio Fioravanti (ed), *Il valore della Costituzione* (Laterza 2009).
- Ferrajoli CF, ‘L’abuso della questione di fiducia. Una proposta di razionalizzazione’, (2008) 2 *Diritto pubblico* 613.
- Mariantoni L, ‘Contratto di governo e accordi di coalizione. Natura giuridica e vincolatività’ (2018) 3 *Osservatorio costituzionale* 317.
- Mortati C, *Istituzioni di Diritto Pubblico* (CEDAM 1952).
- Mosca L, Tronconi F, ‘Beyond left and right: the eclectic populism of the Five Star Movement’ (2019) 42 *West European Politics* 1258.
- Orsina G, ‘Genealogy of a populist uprising. Italy. 1979-2019’ [2019] *The International Spectator* 50.
- Pasquino G, ‘Introduction. Not a normal election: roots and consequences’ (2018) 23 *Journal of Modern Italian Studies* 347.
- Passarelli G, ‘Electoral Systems in Context: Italy’, in Erik S. Herron et al. (eds), *The Oxford Handbook of Electoral Systems* (OUP 2018).

60 It is worth remembering that Italy suffered harsh consequences from the war and, from an institutional perspective, was able to overcome them only thanks to a well-drafted Constitution entrenching values such as the protection of the inviolable rights of the person (art. 2 IC), respect of international law with a specific mention of the rights of foreigners (art. 10 IC), and the rejection of war as an instrument of oppression or of dispute resolution (art. 11 IC).

Pizzorusso A, 'Immunità parlamentari e diritti di azione e di difesa', (2000) 123 *Il Foro Italiano* 301.

Ruotolo M, 'Brevi note sui possibili vizi formali e sostanziali del d.l. n. 113 del 2018 (c.d. decreto sicurezza e immigrazione)' (2018) 3 *Osservatorio costituzionale*.

Santoro G, *Un Grillo qualunque: il Movimento 5 stelle e il populismo digitale nella crisi dei partiti italiani* (Castelvecchi 2013).

Spadaro A, 'Riflessioni sul mandato imperativo di partito' [1985] *Studi parlamentari e di politica costituzionale*.

Valbuzzi M, 'When populists meet technocrats, The Italian innovation in government formation' (2018) 23 *Journal of Modern Italian Studies* 460, 465-467.

