Italy's Constitutional Reform on the Premiership: The Risks of an Institutional Crisis

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The constitutional reform on the so-called *premierato* (premiership) proposed by the current majority aims to strengthen the value of the popular vote and government stability, putting an end to a long period of short-lived cabinets and parliamentary *ribaltoni* (turnarounds) that fail to respect the will of the voters.[2]

An analysis of the text approved in the first reading by the Senate[3]—amended in several points compared to the version initially presented by the current President of the Council of the Ministers (PoCM)—reveals not only that the proposal fails to guarantee the stated objectives but, more importantly, that it opens up risky scenarios for the overall balance of constitutional bodies.

The most accredited doctrine defines constitutional bodies as those that: (*i*) are positioned at the top of the state organization, (*ii*) operate with independence and legal equality among themselves, and (*iii*) are indispensable, "in the sense that their presence within the legal system (with the set of their functions, the relationships established among them, and their method of formation) serves to characterize the form of the State or the form of government; conversely, their disappearance (or a radical reform of their functions or method of formation) would lead to a transformation of the constitutional structure of powers".[4]

The reform under examination significantly affects the formation, powers, and relationships of three out of four constitutional bodies,[5] to the extent that it becomes necessary to question what form of government—and, in fact, what form of state—will emerge if the reform is approved.

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[2] Introductory Report on the Constitutional Bill No. 935, submitted to the Presidency of the Senate on November 15, 2023.

[3] The text was approved by the Senate in the first reading on June 18, 2024. According to Article 138 of the Italian Constitution, constitutional amendments must be approved twice by each Chamber: if the proposal is approved by an absolute majority in the second vote, a popular referendum can be requested to approve the reform; if it is approved by a two-thirds majority, a referendum cannot be requested.

[4] T. Martines, Diritto costituzionale, 2024, p. 179 f.; also, C. Mortati, Istituzioni di Diritto pubblico, Tomo I, 1975, p. 207 ff.

[5] The reform directly impacts the Government, the Parliament, and the President of the Republic, but for the reasons that will be explained, it also concerns the method of formation of the fourth constitutional body: the Constitutional Court.

A Unique Case: The President of the Council of the Ministers Elected

The first and most important aspect of the proposal concerns the method of selecting the PoCM, who would be elected by universal and direct suffrage for a five-year term. Doubts about this choice arise immediately, as it differs from models it is supposed to resemble and, instead, resembles systems it is meant to be different from.

In fact, this is a model of popular legitimacy unknown in the current comparative landscape of parliamentary forms of government. The only, and unsuccessful, precedent is Israel's 1992 system, which led to three elections between 1996 and 2001 before a swift return to the previous system.[6]

The popular mandate of a monocratic body, on the other hand, characterizes presidential and semi-presidential forms of government. In these cases, the greater concentration of power in a single individual is balanced by limits on re-election, either consecutive[7] or absolute[8]; similarly, the proposed reform stipulates that the Prime Minister may be elected for no more than two consecutive terms, extended to three if, in the previous ones, he held office for a period of less than seven years and six months. However, the difference is clear: in these cases, the voters' choice concerns the Head of State, who, although formally and/or substantially the Head of government, should help mitigate the risks of authoritarianism.[9]

Furthermore, the model of the elected PoCM bears many similarities to the system adopted in Italy for sub-national local authorities: both the mayor and the regional president are directly elected by the citizens for a five-year term, renewable only within certain time limits.[10] It is likely that these two models, established in Italy respectively in 1993 and 1999, have served as sources of inspiration for the current reform proposal; however, it is important to remember that "the form of local and regional government cannot be mechanically transferred to a higher level, as the role and powers that can be exercised are profoundly different. Therefore, its extension to the national level would be the result of a 'false analogy'".[11]

The reform explicitly states that the PoCM is to be "elected in the Chamber where he has presented his candidacy", and that the President of the Republic will appoint him to form the Government.

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[6] M. Volpi, Premierato: una comparazione problematica, in: Diritto pubblico comparato ed europeo, 3/2024, p. 757.

[7] French Constitution, art. 6, co. 2.

[8] US Constitution, XXII amendment.

[9] M. Volpi, Premierato: una comparazione problematica, in: Diritto pubblico comparato ed europeo, 3/2024, p. 753.

[10] And even in their case, the composition of the representative bodies of the respective entities (the City Council and the Regional Council) is subordinated to the identification of the single-member body, which receives a majority bonus.

[11] L. Elia, Note critiche sul progetto di riforma costituzionale, in: Astrid, 7 December 2004.

The combined effect of these two provisions has the unspoken, though easily understandable, aim of preventing the formation of a government led by an individual not elected in Parliament but instead identified by the President of the Republic (PoR).[12] Indeed, in times of particular difficulty for the country, Presidents of the Republic have sometimes facilitated the formation of a so-called technical government, led by a public figure outside of politics and often supported by a heterogeneous coalition of political forces: for example, the Ciampi, Dini, and Draghi Governments.[13] The reform proposal would eliminate this alternative for overcoming deadlock situations, considering a return to the polls preferable to a national unity government. Furthermore, it also rules out other possibilities, such as a government led by a politician who, however, is not a parliamentarian at the time (Governments Amato II, Renzi), or a political government led by an individual who was not a parliamentarian and had remained largely outside public life up until that point (Governments Conte I and II).

As for the other members of the Government, the PoR appoints—and, according to the proposal, dismisses—the ministers on the proposal of the PoCM-elected.

In the practice established so far, the PoR has refused to appoint the ministers proposed only in a few cases, usually resolved through informal negotiations between the two Presidents.[14] The reform maintains the same relationship between the proposal (by the PoCM-elected) and the appointment (by the PoR); in fact, it expands the powers of the PoR to include dismissal, which has so far not been regulated by the Constitution and has only been left to the unfolding of political dynamics. Behind the formal expansion of the PoR's powers, however, a substantial restriction seems to be concealed: given the strong electoral legitimacy of the PoCM-elected, the PoR will find it more difficult to object to the appropriateness of an appointment, otherwise risking a serious institutional conflict. Also, in this respect, therefore, the proposal reduces the guarantor functions that all Presidents of the Republic have exercised with balance so far.

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[12] As further confirmation, as will be explained shortly, it should be noted that the only alternative to a government led by the PoCM-elected is one led by a "parliamentarian elected in connection" with the PoCM-elected.

[13] Actually, even the Monti government, although he was technically appointed as a life senator just a few days before. In doctrine, see also: C. De Fiores, Tendenze sistemiche e aporie costituzionali dei governi tecnocratici in Italia, in: Costituzionalismo.it, 2/2021; N. Lupo, Un governo "tecnico-politico"? Sulle costanti nel modello dei governi "tecnici", alla luce della formazione del governo Draghi, in: federalismi.it, 8/2021.

[14] For example, the non-appointment of Previti in 1994 or Gratteri in 2014. Greater issues, however, were caused by the refusal to appoint Savona in 2018; in doctrine, see E. Furno, Il Presidente della Repubblica e la nomina dei Ministri nel procedimento di formazione del Governo, in: Diritto Pubblico Europeo Rassegna online, 1/2020.

The reform does not affect the establishment of the confidence relationship,[15] but newly regulates the cases in which the Government does not have the confidence of Parliament, distinguishing between: (*i*) the initial lack of confidence, (*ii*) the loss of previously granted confidence, (*iii*) pathological cases of termination of the PoCM-elected's office.

(*i*) The Government led by the PoCM-elected has two chances to obtain initial confidence, after which the PoR must dissolve Parliament. It is possible to assume that the parties forming the governing coalition, especially the smaller ones, might use this provision to strengthen their position, perhaps by not voting for confidence the first time in order to gain more influence or better conditions in the second round;

(*ii sub a*) if confidence is later revoked through a formal vote, the PoCM-elected is required to resign, and the PoR must dissolve Parliament. This provision rigidly applies the principle *simul stabunt, simul cadent*, further confirming the similarity with municipal and regional levels of government. It should be noted, however, that in the history of the Republic no government has ever been brought down by a formal vote of no confidence;

(*ii sub b*) if the PoCM-elected resigns for other reasons, two options arise: either, after informing Parliament, he requests the dissolution of Parliament from the PoR within seven days, which the PoR enacts; or, if he does not exercise this option, the PoR assigns a new mandate—only once during the legislature—either to the same resigning PoCM-elected or "to a parliamentarian elected in connection with the PoCM-elected";

The PoCM-elected thus acquires a substantial power to dissolve Parliament—already provided for in other parliamentary government systems, such as the United Kingdom[16], which the current reform looks to with interest, or Japan—[17] allowing him to exert pressure on potential resistance within his majority. On the other hand, the dissolution of Parliament by the PoR becomes a mere formal act, while a degree of discretionary power is granted in choosing the person to be tasked with forming the Government, should the resigning PoCM-elected not request the dissolution of Parliament;

(*iii*) lastly, in cases of disqualification, permanent impediment, or death of the PoCM-elected, the PoR must necessarily assign the mandate to a parliamentarian from the majority.

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[15] The vote of confidence must be justified, conducted by a roll-call vote, and approved by a simple majority in each Chamber.

[16] See Fixed-term Parliaments Act (2011) and Dissolution and Calling of Parliament Act (2022).

[17] Japan Constitution, art. 7.

A Parliament subjected to the PoCM-elected

The centrality of the PoCM-elected corresponds, in an equal and opposite manner, to the downsizing of the other constitutional bodies. In particular, Parliament is subjected to the PoCM-elected both during its formation and at the time of its dissolution.[18]

The proposed constitutional reform requires that the simultaneous election of the PoCM and the Chambers be regulated by awarding a majority bonus in each Chamber "to the lists and candidates connected to the Prime Minister, in compliance with the principles of representativeness and protection of linguistic minorities". The allocation of parliamentary seats will therefore be subjected to the election of the PoCM, who will exert an important form of influence on the Chambers even before the Government has obtained confidence.

Even from this perspective, the reform highlights serious issues in the construction of the new institutional model. The parliamentary form of government is essentially overturned: the Government is no longer an emanation of the Parliament directly chosen by the citizens, but it is the election of the PoCM that determines who will sit in Parliament. At the same time, the proposal does not even respect the typical structure of a presidential system, where the executive and legislative powers enjoy two separate popular legitimacies, ensuring a clearer separation of powers: one need only consider, for instance, the U.S. model, where even the staggered timing of the renewal of the two Chambers aims to prevent the excessive concentration of power in the hands of one person or, in any case, one party.

Finally, the PoCM-elected can dissolve Parliament at will by resigning, with the sole requirement of a prior parliamentary notification; it is easy to imagine that this arrangement of institutional relations, which grants the PoCM-elected a life-and-death power over Parliament, will also impact the actual exercise of parliamentary functions, which, though, are not formally affected by the reform.

A faded President of the Republic

While Parliament is deeply affected in its method of formation (and dissolution), the election of the PoR remains essentially unchanged, except for the number of ballots in which a two-thirds majority is required, which is increased from three to six.

Since the proposed reform – in conjunction with the electoral law that will need to be approved – should facilitate the formation of a solid governing majority, this modification appears more than necessary in an attempt to rebalance the power structure: political forces, in fact, will be encouraged to negotiate for a

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[18] See A. Fricano, Il *premierato claudicante*: aspirazioni e incongruenze della riforma costituzionale Meloni–Casellati, in: Italian Papers on Federalism, 3/2024, p. 175 f.

longer time in order to find a shared figure, before the lowering from a qualified majority to an absolute majority allows, most likely, the governing coalition to solely choose a President of their preference. It is true that a different configuration, such as raising the quorum beyond two-thirds, would have further strengthened the protection of the opposition; however, on the other hand, it would have risked creating a deadlock due to an overrepresentation of the opposition's power, which would have been difficult to overcome.

The figure of the PoR, in fact, is impacted in its functions, which are reduced to a merely notarial dimension, even in some fundamental moments of the country's institutional life.

In fact, the appointment of the PoCM-elected represents only a passive certification of the electoral outcome; the discretionary power of the PoR, on the other hand, is restored in the case of the resignation of the PoCM-elected for reasons other than a vote of no confidence or in pathological cases of expiration, death, or permanent incapacity. However, this restoration is only partial: both in terms of the range of choices, which must be limited to a parliamentarian elected in connection with the PoCM-elected, and in terms of actual choice, as early dissolution will be prohibited by the Constitution.

Particular attention must be paid to these aspects. The reform is not to be criticized for the reduction of the powers of the PoR in itself, but because it rigidly precludes the Head of State from any possibility of intervening in times of greater need for the country through an expansion of his range of powers, according to the effective metaphor of the accordion.[19]

The weakening of the PoR just described does not seem adequately compensated by the elimination of the ministerial countersignature on a series of presidential acts. Most of these (the appointment of judges to the Constitutional Court, the granting of pardons and commutation of sentences, sending messages to Parliament, and the referral of laws) fall under the category of 'inherently presidential acts', which, representing the will of the PoR, are countersigned only for the purpose of a legitimacy check; other acts are already considered acts of duty (the decree calling elections and referenda); and, finally, the appointment of the Prime Minister becomes an act of duty, except in the case of appointing a non-elected PoCM.

A reform that does not achieve its objectives

The analysis conducted demonstrates that the proposed constitutional reform cannot achieve the objectives outlined in the accompanying report.

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[19] The metaphor was coined by former President of the Constitutional Court Giuliano Amato in numerous speeches, but it has never been written down.; see G. Pasquino, Minima politica. Sei lezioni di democrazia, 2020, p. 69 f.

At first glance, the reform does not enhance the role of the electorate, as it fails to resolve the long-standing issues related to the input of democratic participation—particularly those concerning the diminishing role of political parties in favor of their leaders, and a closed-list electoral law that prevents citizens from casting a preference—[20] nor does it strengthen the ability of citizens to contribute to determining national policy. Instead, it only addresses the output aspect of the right to vote, allowing citizens to choose a decision-maker, following a "Caesarist approach".[21]

Constitutional amendments will not do anything about the heterogeneity of majorities—which, in a context of extreme multipartitism like the Italian one, will continue to be coalition-based—nor, least of all, about 'parliamentary defections', which remain governed by the principle of free parliamentary mandate and ruled by the parliamentary regulations.

The proposed reform may only mitigate, but not completely eliminate, the instability of governments, which will remain subject to parliamentary confidence. Furthermore, mere stability, in itself, is not necessarily a value, as it offers no guarantees regarding the efficiency of government action.[22] For example, the over-twenty-year regional experience shows considerable stability that, however, relies on the so-called "balance of terror",[23] which does not, by itself, lead to better governance for the citizens.

In cases of government crises, the necessary requirement for the PoCM to be a member of Parliament will either force an internal solution (a second term for the PoCM-elected or a new government led by a majority parliamentarian), which risks facing the same failure as the resigning government; or, on the exact opposite, an early election, even in the most serious situations where, instead, the country would urgently need a fully functioning government.

Finally, the feared 'turnaround' cannot be entirely ruled out even in the proposed model: it is indeed possible that the second PoCM, although selected from among the parliamentarians elected in connection with the PoCM-elected, could gain the confidence of a completely different majority and thus pursue a different political address.

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[20] The reference is to the currently applicable electoral law, known as the "Rosatellum".

[21] G. Silvestri, Senato della Repubblica, Commissione Affari costituzionali, Audizioni ddl 935 - 830 (Modifiche costituzionali. Introduzione elezione diretta Presidente del Consiglio), 28 novembre 2023, in: https://www.senato.it.

[22] See A. Ruggeri, Il premierato elettivo e la decostituzionalizzazione della Costituzione (note minime su una spinosa questione), in: Consulta OnLine, III/2024, p. 1160.

[23] G. Silvestri, Relazione di sintesi, in: A. Ruggeri, G. Silvestri (eds.), Le fonti del diritto regionale alla ricerca di una nuova identità, 2001, p. 211.

Conclusions: the risks of a systemic breakdown

The proposed constitutional reform alters the Italian parliamentary system so profoundly that it raises doubts about whether, if enacted, it could still be considered as such. As is evident, the issue does not concern mere doctrinal classification, but the overall stability of the institutional balance.

The popular election of the PoCM-elected will, directly or indirectly, influence the formation of all constitutional bodies: the majority of seats in Parliament will be allocated based on the PoCM-elected; the PoR will be chosen by a Parliament composed in this way; the other members of the Government (the ministers) will be appointed and dismissed, in effect, by the PoCM-elected, without the PoR having the political strength to counterbalance; and even the Constitutional Court risks being too closely tied to the PoCM-elected, as its members are selected one-third by Parliament in a joint session and one-third by the PoR.[24] On the horizon, there are also uncertainties regarding the future electoral law, which could even allow the election of a PoCM who only obtains a relative majority of votes.

The reform seeks to address issues rooted in the political-representative system with legal tools, attempting to assert through the force of law, or rather, of the Constitution, a model that elsewhere (e.g., in the United Kingdom) relies mainly on the proper functioning of politics.[25]

As has been attempted to demonstrate, the proposal is inadequate in relation to what it promises and ineffective in relation to what it aims to achieve: the very process of forming the current government confirms that a stable executive can be established quickly and efficiently under the current Constitution. And, finally, the proposal could be dangerous and lead to a systemic breakdown: there seems to be a real risk of sliding from a form of State typical of a 'representative democracy' to a 'deciding (non-representative) democracy',[26] which is based on the

[24] The remaining third, on the other hand, is chosen by the highest ordinary and administrative courts. It is also worth mentioning the selection of the lay members of the Superior Council of the Judiciary, which is also carried out by Parliament in a joint session.

[25] According to L. D'Andrea, Il premierato elettivo, tra diritto e politica: brevi notazioni critiche, in Dirittifondamentali.it, 1/2025, p. 67: "Such closures with respect to the political dimension and its evolution, along with the resulting rigidities introduced in the legislation, seem to be driven by a lack of trust in the political sphere. Therefore, it does not seem an exaggeration to suggest that the proposed constitutional amendment represents an expression of the antipolitical climate that has dominated the last few years of our country's public scene".

[26] G. Ferraiuolo, La revisione della forma di governo tra noto e ignoto, in: Diritto Pubblico Europeo Rassegna online, 1/2024, p. 277. Also, according to A. Ruggeri, La riforma Meloni e le sue stranezze, al bivio tra evoluzione istituzionale ed involuzione autoritaria, in: Consulta OnLine, III/2023, p. 1011, the proposal: "It not only profoundly impacts the form of government but, even more so, exposes the very form of the State to the deadly risk of its irreparable distortion, ultimately derailing it from the tracks of liberal democracy".

direct popular legitimacy of the PoCM and, through him, the indirect legitimacy of all the other constitutional bodies.

If the Government wants to address the issues of institutional delegitimization, which are indeed important, it cannot bet everything on increasing the stakes at the time of the elections and giving citizens a hasty choice of the leader,[27] according to the logic of 'the winner takes it all', it must instead pursue a laborious effort to reconnect citizens with the institutions, which goes through intermediary bodies, strengthening democracy at its foundations, not at its top.

[27] See. M. Ainis, Capocrazia, 2024; G. Azzariti, M. Della Morte (eds.), Il Führerprinzip. La scelta del capo, 2024.