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I. INTRODUCTION

The present report discusses the constitutional reform passed in the Italian legal system through a constitutional referendum held on September 20th and 21st, 2020 (the referendum was originally scheduled for March 29th, 2020 and then postponed due to the Covid-19 pandemic).

The report analyzes the constitutional reform, which aimed at amending three articles of the Constitution, namely Articles 56, 57 and 59. The amendment deals with a topic that has reappeared cyclically in the Italian political debate, i.e. the reduction of the size of the Parliament.

This amendment is an example of what have been qualified as 'surgical' amendments. Indeed, the sole aim of the reform has been to reduce the number of members of the Chamber of Deputies from 630 to 400, and the number of members of the Senate of the Republic from 315 to 200. Furthermore, the reduction of the total number of MPs has also led to set the number of members of the Parliament elected by Italian citizens resident abroad at twelve and to limit life senators at five.

The report first discusses the main aspects of the 2020 constitutional reform, focusing in particular on the procedural reasons that led to the popular referendum. In this respect, it seems worth providing a brief outline of the constitutional amendment procedure. Secondly, the context in which the referendum was held is analyzed, with a specific attention paid to the political and constitutional debate. Then, in order to better frame the 2020 constitutional amendment within the category amendment/dismemberment, a comparative analysis with the structure and scope of previous constitutional reforms is carried out. Finally, some conclusions are drawn with respect to adjustments that have to be made to both the electoral law and the two Houses' standing orders as well as to possible future amendments, which should be passed in order to update other constitutional provisions.

II. PROPOSED, FAILED, AND SUCCESSFUL CONSTITUTIONAL REFORMS

The 2020 amendment was approved following a constitutional referendum, the reason of the public consultation lying in the procedure for approving constitutional amendment laws and other constitutional laws as regulated at Article 138 of the Italian Constitution. It seems convenient to briefly address the amendment procedure in order to have a better understanding of the whole process.

According to Article 138, the Constitution is amended by both the Chamber of Deputies and the Senate of the Republic after two successive debates, with an interval between the two approvals of at least three months. The constitutional amendment procedure provides for strict and rigorous conditions in order to have the amendment approved with a large political consensus, similar to the one that brought to the entry into force of the Constitution. The rationale is to provide an appropriate deliberation and to avoid a speedy reform approved by a 'makeshift' majority. While the first approval by each of the two Houses requires just a simple majority, the second approval must be at least by an absolute majority, thus requiring the involvement of the Oppositions. Then, the law is published in the Official Gazette and, within a period of three months, either 500,000 voters, one-fifth of the members of a House, or five Regional Councils may seek a popular referendum. If the referendum is sought, then the entry into force of the constitutional amendment will depend on the results of the referendum. Since a structural quorum (a turnout above 50%) is not required due to its confirmative nature, for the constitutional law to be passed it is sufficient that the majority of valid votes approves the reform. Then the constitutional law is promulgated by the President of the Republic, published in the Official Gazette and after fifteen days it enters into force. However, it is possible that in the second deliberation the law is approved by a qualified majority of two-thirds of the members of each House. In this case, the law cannot be submitted to a popular referendum; rather, it is promulgated by the President of the Republic and it comes into force fifteen days after it is published in the Official Gazette.

After the second approval by the Senate—which had not received a qualified majority (it was approved by only 180 senators, 50 voting against, 0 abstaining)—in Autumn 2019, the bill was finally approved by 553 (out of 630) members of the Chamber of Deputies, (14 voting against the reform, 2 abstaining, and the others were not present).

Then, in January 2020, the constitutional referendum—the fourth in the history of the Italian Republic—was sought by 71 Senators (more than one-fifth of the members of the Senate of the Republic), acting in dissent from their own parties.

The referendum was originally scheduled on March 29th, 2020 and then postponed to September 20th and 21st due to the Covid-19 pandemic.

The referendum question asked the electors the following: *"Do you approve the text of the Constitutional Law concerning 'Amendments to Articles 56, 57 and 59 of the Constitution regarding the reduction of*

the number of Members of Parliament', approved by Parliament and published in the Official Gazette of the Italian Republic no. 240 of 12 October 2019?".

Hence, the amendment reduces the number of the members of the two Houses of Parliament, providing that the members of the lower chamber (the Chamber of Deputies) are to be reduced from 630 to 400, while the number of members of the higher chamber (the Senate of the Republic) from 315 to 200, with a total number of the members reduced from 945 to 600. Moreover, the reform sets the maximum limit of life senators at five, thus explicitly excluding a different interpretation on their number (i.e. the possibility for each President of the Republic to appoint five of them). Lastly, the reform provides for a reduction of the number of MPs elected by the Italian citizens resident abroad: the number of deputies is lowered from twelve to eight, whilst the one of senators from six to four.

In the September 2020 referendum, the voter turnout was 51.12% and the proposed constitutional revision was approved at the polls with 69.96% electors voting "Yes".

To sum up, as an effect of this reform, from the next Italian legislature there will be 400 MPs sitting in the Chamber of Deputies and 200 MPs sitting in the Senate of the Republic and the life senators will be no more than five (in addition to the former Presidents of the Republic, which automatically become life senators). This reduction has direct consequences on the Senate's representation, which is negatively affected. Indeed, with regard to its composition, the Constitution provides that the Senate of the Republic is elected on a regional basis and that no Region may have fewer than seven senators, the only exceptions being Molise with two, Valle d'Aosta with one, and the six elected in the overseas constituency. With the reduction of senators from 315 to 200, the minimum number of senators for each Region is lowered to three, again excepting Molise (two) and Valle d'Aosta (one). Hence, the regional representation in the Senate in not uniformly reduced. Whilst Molise and Valle d'Aosta are not affected by the reform, the other Regions suffer from the reduction (a good example is Lombardy, whose senators are reduced from 49 to 31).

Since the reduction of members of Parliament could not have been immediate, the Parliament passed, together with the Constitutional Law No. 1 of October 19th, 2020, the Law No. 52, May 27th, 2019 in order to guarantee the applicability of the electoral law. For this reason, the successful constitutional amendment is expected to be effective only at the next general election, which may be held either at the natural conclusion of the parliamentary term—scheduled to be no later than May 2023—or earlier, in case of a dissolution of Parliament.

The Constitutional Law No. 1 of October 19th, 2020 on "Amendments to Articles 56, 57 and 59 of the Constitution on the reduction of the number of members of Parliament" was then published in the Official Gazette No. 261 of October 21st, 2020.

III. THE SCOPE OF REFORMS AND CONSTITUTIONAL CONTROL

As to the origin of the 2020 constitutional reform, in the first place it is necessary to underline that the reduction of the size of the Parliament has reappeared cyclically in the Italian political debate since the 1980s. Secondly, the fact that it has popped up again in 2018 is closely connected with the rise of the Five Star Movement. This political movement—whose anti-establishment attitude has been the driver of its critique toward the old political class, the so called 'political élite'—has made the issue of the reduction of MPs one of the core points of its political program, justified by an intent to rationalize the Parliament's work and to minimize public spending. In spite of this, considering the populistic connotation of the Movement, the reduction proposal is better framed as a move against the élite.

The relevance of the constitutional issues stemming from this revision has produced a lively debate among Italian constitutional scholars as to the reasons for voting either "Yes" or "No". Those in favor of the reform advocated for its virtuousness relying on three main arguments. A reduction in the number of MPs would consist in a consequent reduction of public expenditure. Secondly, it would result in a more efficient legislative process. Lastly, it would allow to diminish the Italian Parliament's overrepresentation. Indeed, the number of deputies of the lower Chamber per 100,000 inhabitants would drop from 1 to 0.7.

The same three arguments, though overturned, were advocated by those against the reform. Firstly, the savings on public spending resulting from the reduction of MPs are insignificant with respect to the amount of the state budget, the expected savings being just the 0.007% of Italian public spending per year. Secondly, when considering the rationalization of the legislative process, this argument is not supported by objective elements and does not address the risk that a future smaller Parliament may replicate the same slowness and inefficiencies or, in the worst-case scenario, even work more slowly. The reform does not touch any of the Italian form of government's structural challenges, especially the bicameral Parliament where the two Houses have (almost) equal functions, with such a constitutional amendment resulting in a mere reduction of the representation of the legislative branch. Thirdly, the reduction in size can also result in the strengthening of the Executive power and in a subsequent and inevitable weakening of the legislative branch.

As previously mentioned, the reduction in size of Parliament had already been discussed. However, this was the first time that the proposal was not part of a constitutional reform wider in its scope. Furthermore, it is important noting that the 2020 reform was confirmed by a popular referendum, which caused the two previous constitutional reforms (2006 and 2016) to fail. Therefore, is seems now convenient to briefly analyze the 2020 constitutional reform in comparison with the previous ones, in order to better assess the nature of the amendment as well as the reasons of its success.

The 2006 and 2016 unsuccessful reforms were designed as organic reforms; hence, it has been argued that their wide scope had ultimately been the reason that contributed to their failure. Indeed, the previous proposals of reducing the number of MPs were inserted into broader constitutional amendments, which significantly affected the system of government, as well as the dynamics between the powers of the State and between the State and Regions.

However, it can hardly be argued that there is a deterministic relationship between the width of the scope and the success of the reform. The successful 2001 reform can be mentioned as an interesting example of a reform that covered a detailed aspect (i.e. the relation between the State and Regions), despite requiring the amendment of fifteen articles of the Title V of the Constitution (6 repealed, 2 amended and 7 replaced).

Coming back to the 2020 reform, it has been argued that it has been successful because it focused only on a specific topic (the total number of MPs) and it affected only three articles. The 'surgical' approach as the key to its success.

If we want to place the 2020 reform in the category either of amendment or dismemberment, it can hardly be defined as a dismemberment and the reason is its 'surgical' character. Even though, as it will be discussed below, some corrective measures will be required. Opposite to the 2006 and 2016 reforms would have certainly fallen within the category of constitutional dismemberment.

Furthermore, if we examine the 2020 amendment according to the content-based approach, it may fall into the category of amendment, as it is an authoritative change that corrects a minor part of the Constitution, without touching its core presuppositions. Indeed, the Italian Constitution, as amended, remains coherent with the fundamental assumptions of the pre-amendment constitution, even if it needs some corrective measures.

When considering the 2020 reform with respect to the limits to the constitutional amendment, no tension has been created with unamendable rules. Although the reform has been qualified as 'surgical', it has significantly affected the principle of representation, which was already under stress because of the growing strengthening of Executive power. Nevertheless, the reduction of the size of the two Houses does not clash with neither explicit nor implicit limits to constitutional amendments. Indeed, the only explicit limit is provided at Article 139 (the form of Republic). Whilst the Constitutional Court has elaborated a series of implicit limits linked to the Constitution's supreme principles (such as, for example, the democratic principle, the principle of equality, the principle of pluralism), also placing at the same level the inviolable rights of the person which cannot be modified (at least, not *in peius*).

On a last note, it is convenient to briefly examine the role played by the Constitutional Court in the Italian legal system and in the context of the 2020 reform. The Italian Constitutional Court's positioning within the Italian form of government has changed over the years from an attitude of self-restraint towards a more activist one. Indeed, given its traditional countermajoritatian role, the Court has also played an enlightened role, driven by the core values and fundamental rights of the Constitution.

With regard to the role of the Constitutional Court in the context of the 2020 reform, it must be reported that between July 23rd and 29th, 2020, four disputes about the attribution of powers between powers of the State were raised before the Constitutional Court. The *ricorsi* (complaints) were raised by the following subjects: the referendum promoters' Committee, Senator Gregorio De Falco, the political party +Europa and the Basilicata Region. Marta Cartabia, the then President of the Constitutional Court, has disposed for the examination of such recourses on August 12th, 2020. It is important to underline that, out of four, two complaints (the ones filed by the promoters' Committee and Senator De Falco) focused on the decision to hold together the constitutional referendum and the regional elections, one (+Europa) on the procedures for regional elections and one (Basilicata) on an alleged detrimental effect on regional representation in Parliament in case of approval of the constitutional reform.

The Constitutional Court has declared the inadmissibility of all four complaints with an order (*ordinanza*). Indeed, with Order No. 195/2020, the Court declared the inadmissibility of the first complaint concerning the possibility of holding in one electoral round both the constitutional referendum and the regional elections. On this regard, it needs to be underlined that only powers of the State can lodge a claim with the Constitutional Court in the case of a jurisdictional dispute for the attribution of powers. Despite *locus standi* has been recognized to the referendum promoters' Committee by the Court's case law, inadmissibility in this specific case was due to the fact that the Constitution does not attribute to the promoters' Committee the general function of guaranteeing the exercise of the right to vote.

Relying on the same premises, Senator De Falco's complaint against the Senate, the Government and the President of the Republic was also rejected by Order No. 197/2020 because his complaint was confused and failed to clearly identify the constitutional provisions that were allegedly breached.

+Europa challenged the reduction of one-third of the minimum number of subscriptions needed in order to present lists and nominations in regional elections and not providing for an exception for parties already in Parliament. With Order No. 196/2020 the Court has declared the conflict inadmissible since, according to its interpretation, parties are not a power of the State.

Lastly, Basilicata filed a complaint, because the success of the constitutional reform *in itinere* would have negatively affected the Region's representation in Parliament: the reduction of Basilicata senators from 7 to 3 would imply a 57.13% reduction in representation. With Order No. 198/2020 the Court has declared inadmissible the Basilicata Region's recourse due to the lack of subjective legitimization of the sub-national level.

IV. LOOKING AHEAD

The successful outcome of the constitutional referendum opens up a season of important reforms in order to introduce some corrective measures. Although the reform appears to be quite limited in its scope and merely technical, it does significantly affect the principle of representation.

Hence, the two most urgent reforms are the electoral legislation from the one hand and the Houses' standing orders from the other hand. Besides, also a further constitutional revision appears to be necessary.

As far as it concerns the electoral legislation, the amendment should be carried out within a very short term and certainly within the duration of the legislature, whose natural conclusion will be in March 2023. The urgency is explained with the fact that the possibility of an earlier dissolution of the Houses cannot be excluded. Therefore, according to Article 3 of the Law No. 51 of May 27th, 2019, within 60 days from an eventual entry into force of a constitutional law reducing the number of MPs, the Government was delegated to approve a legislative decree to adjust the distribution of seats to be assigned in uninominal and plurinominal districts. Indeed, after Constitutional Law No. 1 of October 19th, 2020, the Government approved the Legislative Decree No. 177 of December 23rd, 2020.

When considering the two Houses' standing orders, they need to be modified as soon as possible in order to consider the reduction in size of the MPs. In particular, the minimum number required to form parliamentary party groups needs to be updated, together with the numerical composition of parliamentary committees and their functioning mechanisms.

Besides the reforms of the electoral legislation and of the Houses' standing orders, some constitutional amendments appear to be necessary as well, although they may prove difficult because of the special procedure under Article 138. Indeed, there are some provisions which may be significantly affected by the 2020 amendment. The first one is the provision on the election of the President of the Republic. Article 83 of the Constitution provides that the President is elected by Parliament in joint session integrated with 53 regional delegates. Now this number, 53, results to be disproportionate with respect to the new total number of MPs. Therefore, it would be convenient to reduce the number of regional delegates. Similarly, it would be advisable also to rethink the quorum for the election of the President of the Republic and the majorities for the constitutional amendment procedure.

The discussion of the 2020 amendment has made clear that even a surgical amendment may affect the system as a whole, thus requiring further adjustments. This calls into question whether it is correct to amend the Constitution without a general vision or not. However, even if this constitutional reform lacked a general constitutional design, it could be considered as a preliminary step to pave the way for wider constitutional amendments that could address the serious challenges that the Italian parliamentary system is currently facing.

These two perspectives entail a twofold way to understand constitutional amendments: either as the last expression of higher law-making or as a slow path where construction starts with small steps.

V. FURTHER READING

Antonia Baraggia, *'Symposium | Introduction | Reducing the Size of the Italian Parliament: Lights and Shadows of a Controversial Constitutional Amendment'.* (Int'l J. Const. L. Blog, 2020). <http://www.iconnectblog.com/2020/09/symposium-introduction-reducing-the-size-of-the-italian-parliament-lights-and-shadows-of-a-controversial-constitutional-amendment> accessed 14 February 2021

Massimo Luciani, 'Audizione Commissione Affari costituzionali della Camera dei Deputati' (2019)

Gaetano Azzariti, *'Referendum, la trappola del Sì o No sul numero dei parlamentari'* (Il Manifesto, 2020) <https://ilmanifesto.it/referendum-la-trappola-del-si-o-no-sul-numero-dei-parlamentari/> accessed 14 February 2021

Elisabetta Catelani, *'Riforme costituzionali: procedere in modo organico o puntuale?'* (Federalismi.it, 2020). <https://www.federalismi.it/ApplOpenFilePDF.cfm?artid=41983&dpath=document&dfile=14042020172823.pdf&content=Riforme%2Bcostituzionali%3A%2Bprocedere%2Bin%2Bmodo%2Borganico%2Bo%2Bpuntuale%3F%2B%2D%2Bstato%2B%2D%2Bpaper%2B%2D%2B> accessed 11 February 2021

Matteo Garavoglia, *'Italy's constitutional referendum: the right solution to long-standing problems?'* (LSE European Politics and Policy—EUROPP - blog, 2020) <https://blogs.lse.ac.uk/europpblog/2020/09/17/italys-constitutional-referendum-the-right-solution-to-long-standing-problems/> accessed 10 February 2021