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# The Last Presidential (Re)Election in Italy

## *Internal and Exogenous Factors in the Framework of an Unsatisfactory Discipline of Presidential Election*

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### Abstract

The paper focuses on the recent reelection of Sergio Mattarella as the President of the Republic in Italy. It basically analyzes the most important issues concerning presidential election and reelection, underlining constitutional perspectives and all the controversial aspects of parliamentary procedure. Within this framework it reflects on internal and external reasons determining this result, and it investigates the role of the Parliament, as well as the impact of the stabilization of the reelection practice on future presidential elections.

### Keywords

President of the Republic – Presidential election – form of government

## 1 The (Re) Election of the President of the Italian Republic

This short contribution will analyze the long-standing issues relating to the election of the President of the Republic in Italy, and how these questions affected also the last electoral procedure held in January 2022, resulting in a second consecutive re-election of the outgoing President, Sergio Mattarella.

In this paper I cannot deepen the link between presidential election and the definition of presidential functions in the form of government,<sup>1</sup> but I would

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1 STRADELLA, *Lelezione del Presidente della Repubblica: spunti dall'Europa, prospettive per l'Italia*, Pisa, 2013.

rather emphasize that in Italy rules concerning presidential election tend to reflect the weakness of the political system. Moreover, as will be said, in the last election, the latter seems to be accompanied by exogenous pressures that have certainly influenced its results.

### 1.1 *The Presidential Reelection: Constitutional Issues in a Controversial Opportunity*

The question relating to the reelection of the President of the Republic was not overlooked in the debate within the Constituent Assembly, where some proposals excluded re-eligibility<sup>2</sup> under any circumstances, others provided for reelection for a single term,<sup>3</sup> and some did not place limits on reelection by offsetting this possibility with a corresponding reduction in the duration of the mandate.<sup>4</sup> The text of Article 85 of the Constitution, however, remained neutral with respect to the question of the possible reelection of the President, leaving the presumption, in the silence of the provision, of its admissibility, but issues derived from the fact that in all the hypotheses of reelection discussed in the preparatory work some limits were envisaged, either directly affecting it (limits relating to the number of mandates), or concerning the temporal duration of the mandate. This silence, on the other hand, theoretically allowed unlimited re-eligibility, and practically made its realization almost impossible. This issue was addressed in the 1960s, first with the message to the Chambers of the President of the Republic Segni of 16 September 1963, with which the Head of State promoted a constitutional revision of Article 88 aimed at eliminating the so-called “white semester” (at that time still not mitigated by the provision of the exception of the dissolution in the last six months of the legislature, introduced with the Constitutional Law No. 1/1991) and the provision of a reelection ban. Then, with constitutional revision bill No. 599/1963, presented one month after the presidential message by the government led by Leone, and finally with the draft law for constitutional revision No. 397/1963, presented by the depute Bozzi and others, both containing the prohibition of “immediate” re-eligibility, the perspectives confronting each other in the debate are essentially twofold. On the one hand, there is the idea of a President-guarantor, an impartial guardian of the Constitution. This perspective would be substantially incompatible with the possibility of reelection, which would instead presuppose an evaluation by the electoral base on the work of the President, and the

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2 It was the proposal by Lami Sneezing (Acts AC, session of 19 December 1946, VIII, p. 1744).

3 It was the proposal by Rossi and Fuschini (Acts AC, session of 19 December 1946, VIII, p. 1745).

4 *Ibid.*

emergence of a relationship of political responsibility between the President and the Parliament.<sup>5</sup> On the other hand, there is instead the idea of a President who, being the holder of political-constitutional functions, cannot act free from the other institutions and, while exercising his role, does it vis-à-vis the orientations and requests of the political parties represented in Parliament. In this case, the risk of reelection would be that of weakening the role of the President, actually preventing him from being placed within the political bodies of the system.<sup>6</sup> Beyond the proposals that confronted each other, without however leading to a constitutional revision, the core of the interpretation of Article 85 of the Constitution, which remained until 2013, concerned the question about the existence of a constitutional convention of non-re-eligibility of the Head of State. Following the reelection of Giorgio Napolitano, the existence of a real constitutional convention can be ruled out, as well as the unconstitutionality of a reelection under the current Constitution (in this case, in fact, Giorgio Napolitano's acceptance could have been seen as an attack on the Constitution pursuant to Article 90 of the Constitution, and the same as that of President Mattarella).

In the sense of the existence of a constitutional convention, President Ciampi made a public statement on 3 May 2006 in which, following several requests for his availability to renew his mandate, he identified non-reelection as a significant custom, stating that “the renewal of a long mandate, such as the seven-years one, does not suit the features of the republican form of our State. In general, if we look at the positions on reelection expressed by Presidents, it seems possible to detect a tendential opposition on the holders of the office side”.<sup>7</sup>

Mattarella himself, in February 2021, commemorating Antonio Segni, recalled how the latter had expressed, in a message to the Chambers, against the possibility of reelection of the President of the Republic, and in favor of the possible introduction of a ban on reelection, following which the provision of Article 88-2 of the Constitution could also have been abrogated, thus removing the power to dismiss the Parliament in the last months of presidential mandate.

5 LUCIANI, “La (ri)elezione nella dinamica della forma di governo”, Osservatorio AIC, 2022, p. 5 ff.

6 For this thesis see in particular BARILE, “Una revisione costituzionale: eleggibilità del Presidente della Repubblica e potere di scioglimento”, *Rassegna parlamentare*, 1964, p. 711. Different theses are contained in GALEOTTI, “Una revisione costituzionale: eleggibilità del Presidente della Repubblica e potere di scioglimento”, *Rassegna parlamentare*, 1964, p. 731 ff.

7 SCACCIA, “Il ‘settennato’ di Napolitano fra intermediazione e direzione politica attiva”, *Quaderni costituzionali*, 2013, p. 93 ff.

Reelection legitimacy therefore does not mean either constitutional physiology or political opportunity.

## 2 Features of the Parliamentary Procedure for the Presidential Election

The following paragraphs will investigate the issues that emerged in almost all presidential elections, and in the last one as well, relating to the procedure for the election of the President of the Republic, with particular attention to the question of candidacies, the relationship between inadmissibility of legal candidacies and nature of the electoral college, between candidacies and presidential role, as well as candidacies and secrecy of the vote.

### 2.1 *Candidacies and Political Debate*

The arising issues on candidacies for the election of the President of the Republic essentially concern three aspects: the nature of a mere (imperfect) electoral college<sup>8</sup> of the Parliament which votes for the President; the obligation of a secret ballot in the presidential election (Article 83–3); and the inadmissibility of legal nominations deriving from the nature of the President of the Republic as a neutral body. Excluding candidacies means excluding programs, and therefore discussion within the Parliament in a joint session integrated with the regional delegates. Another form of guarantee of presidential independence is the voting method, which according to the provisions of Article 83–3, takes place by secret ballot, which would prevent – theoretically, since the provision for secrecy with multiple attempts, past and present, to avoid it – shaping the President figure only to the political part, or in any case only to the parliamentary voters, who allowed his designation.<sup>9</sup> The absence of provisions aimed at regulating the presentation of candidacies, which are and have always been proposed unofficially by political parties, would be a consequence of the alleged secrecy.

The majority scholarship deems the inadmissibility of candidacies as a necessary consequence of the role that the Constitution assigns to the President. Actually, the secret vote itself, which is the only one among these elements

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8 The distinction between perfect and imperfect colleges dates back to GALEOTTI, *Principi regolatori delle assemblee*, Torino, 1900, where the “perfect college” is defined as that assembly where one discusses and votes, and an imperfect college as that assembly where one merely votes with the preparatory discussion taking place outside the assembly.

9 SICA, *La controfirma*, Napoli, 1953, p. 39.

expressly indicated by the constitutional text, does not prevent the declarations of vote.<sup>10</sup> Secrecy pertains to voting operations in the strict sense, and could never limit the freedom of expression of the members of Parliament who before voting, express their opinions or voting intentions.

As a matter of fact, almost every presidential election records the debate on whether or not to revise the discipline of nominations.<sup>11</sup>

If one looks at what has happened since the advent of the Republic, it clearly emerges that in the election of the President a discussion on the subject of the vote is not considered conceivable. The question is whether the qualification of the Parliament in joint session as an imperfect college stems from this idea, or if this qualification pushes towards the limitation of parliamentary functions in the case of the presidential election. The most persuasive position lies in the belief that the election procedure of the President of the Republic does not enable the college to be qualified as imperfect, as this choice would simply derive from political considerations focusing on the opportunity not to burden the subject who will take such an important institutional position with possible negative evaluations.<sup>12</sup> Instead, according to the prevailing doctrine it is precisely an imperfect college, called to deliberate on a pre-established agenda without the chance for members to discuss its content.<sup>13</sup> The question about the nature of the college was explicitly addressed in the session of 29 June 1978, when the President of the Chamber, as the President of Parliament in joint session (Article 85 of the Constitution), qualified as a constitutional convention the identification of the electoral body for the election of the President of the Republic with an imperfect college, which can do nothing but vote.

Actually, the *opinio juris*, needed for the formation of a legal convention, is particularly controversial, given that in the Constitution and in other legal sources, there is no distinction between assemblies based on such a criterion. The connection between the function of an electoral body and the denial of the capacity to discuss is not clear, especially since the electoral body is also a parliamentary one, thus a deliberating institution by its very nature.

10 ARMAROLI, *L'elezione del Presidente della Repubblica in Italia*, Padova, 1977, p. 351; see Arts. 100, 113, Reg. Senate and Arts. 49, 50, Reg. Chamber of the Deputies.

11 SACCO, "L'elezione del Capo dello Stato: questioni procedurali, rieleggibilità e responsabilità politica dell'organo presidenziale", *Diritto pubblico*, 2006, p. 929 ff. And the proposal made by ARMAROLI, "Notarelle sull'elezione di Giorgio Napolitano", *Quaderni costituzionali*, 2006, p. 541 ff.

12 MORTATI, *Istituzioni di diritto pubblico*, Padova, 1969, p. 497; ARMAROLI, *L'elezione del Presidente della Repubblica in Italia*, Padova, p. 365 ff.

13 BOZZI, *Istituzioni di diritto pubblico*, Milano, 1970, p. 97, and FERRARA, *Il Presidente di Assemblée parlamentare*, Milano, 1965, p. 90 ff.

## 2.2 *Candidacies, Voting Secrecy and Presidential Role*

As already mentioned, the secret ballot is the only information expressly provided on the procedure (apart from the required majorities) by the Constitution, yet it is only partially effective. Until the nineties the ballot (with the written preference) was sometimes displayed; in 1992 a vote was canceled because a secretary of the “Ufficio di Presidenza” had given a pre-filled ballot to a colleague. Hence, from that year onward, cabins were introduced at the urgent request of the Radical Party.<sup>14</sup> But this change will not provide the desired results, and even in these last elections the method of rapid exit from the polling booth was applied, without being able to put any sign on the ballot, as a manifestation of abstention in clear violation of secrecy.

The secrecy of the vote not only aims to protect the voters' freedom and intimate thoughts (who would be protected as such by the right to abstention), but it ensures the independence of the elected candidate from a specific political sector, as well as defined majorities, which may occur if voters were identifiable.<sup>15</sup> Secrecy and inadmissibility of legal candidacies are not inseparable aspects: one thing, in fact, is to provide for the expression of the vote to take place in a secret form, another is to surround the act of voting with anonymity. This last tendency enforces the attempts often made by the media to investigate the external processes leading to the vote.<sup>16</sup>

The way in which candidates are presented is also linked to the definition of the presidential role. It is a consolidated phenomenon of candidacies expressed outside the parliamentary chamber, but also in the party headquarters, to which the current system entirely devolves negotiation. The presidential election in 1999 can be recalled, when Emma Bonino, at the time a member of the European Commission, was engaged in an actual electoral campaign, also sending a letter to all the parliamentary voters.

Certainly, in most cases the *iter* that led to the presidential election took place informally, that seems to be the only element provided by the (lack of) provisions on the topic: a first phase in which completely unofficial candidates are formed and parties – oftentimes specific wings – are known in various ways, mostly through secret negotiations and agreements. A second phase in which the parliamentary groups play a fundamental role as a link between the

14 The so called “catafalchi”, according to the expression coined by the then secretary of the Italian Socialist Party Bettino Craxi.

15 REPOSO, “Alcuni rilievi sul procedimento elettorale per l'elezione del Presidente della Repubblica”, *Rivista AIC*, 2013.

16 On the consequences of the inadmissibility of candidacies see POGGI, “Le proposte sulle candidature: questioni di metodo e di merito”, *Osservatorio AIC*, 2022, p. 36 ff.

decisions taken by the parties and the members of Parliament, whose votes they try to gather by making them converge on the designated subjects.<sup>17</sup> The second phase has been sometimes characterized by defections or rebellions by members of Parliament, as in the case of the “101” who impeded the election of Romano Prodi in April 2013, and, somehow, in the case of the failure of Maria Elisabetta Casellati’s election this year.

It is controversial whether this framework complies with the role of the President of the Republic: however that may be considered, the current (self) regulation of candidacies seems inadequate.

### 3 The Reelection of Sergio Mattarella between Internal and External Factors

#### 3.1 *The Role of Parliament*

The reelection of President Mattarella fits perfectly in the contradictory and unsatisfactory scenario of an electoral procedure that once again appeared anachronistic and ineffective. A scenario that highlighted, on this occasion, the weakness of political leaders and the deep crisis faced by the parties.

However, some points of view reported a renewed role of Parliament, which would have been able to gather a large majority (the second, in Republican history, after the one that led to the election of President Pertini), if compared with the previous elections (8 ballots), converging on a President expressing the choice of all parliamentary groups (with the exception of *Fratelli d'Italia*), avoiding a crisis of government and the risk of an early dissolution.<sup>18</sup>

The Parliament in joint session, according to this interpretation of the role played in the electoral procedure, prevented the effects of a smaller political convergence than the one supporting the Executive, which would have favored possible splits within the government itself, with potential repercussions on the duration of the legislature. The context shows that the breadth of the political endorsement in support of the Government has increased, rather than decreased, the coefficient of difficulty of the presidential election.

A positive vision of the role played by Parliament should therefore be compared with the internal pressures of the system, linked to the survival of the

<sup>17</sup> REPOSO, *cit. supra* note 15.

<sup>18</sup> PELLIZZONE, “L’impatto della rielezione del Presidente Mattarella: verso aspettative di rieleggibilità della carica presidenziale”, Associazione Italiana dei Costituzionalisti – La Lettera, 2022.

parliamentary assembly, rather than to a political and deliberate centrality of the latter.

The link between reelection and the ongoing emergency is highlighted by Sergio Mattarella himself, who, in the message given to the Chambers on the occasion of his oath, explicitly refers to Parliament's awareness of avoiding the "decisive resources" and the "perspectives for restarting the development of the country, committed to get out of a condition of serious difficulty" to be hindered.

Many scholars have underlined that the various ballots have brought out a positive participatory movement coming from single members of Parliament;<sup>19</sup> on the other hand, what happened is symptomatic of disoriented parties, in a context in which it is not clear if this hypothetical new role of Parliament will correspond with an empowerment of its deliberative functions.<sup>20</sup>

### 3.2 *The Possible Impact of the Stabilization of the Reelection Practice on the Future Presidential Elections*

Certainly, after the second consecutive appeal to presidential reelection, it is necessary to discuss the impact of the consolidation of this practice. We cannot know whether the contingencies leading to reelection will occur again, but it is evident that today political parties are well aware not only that reelection is not unconstitutional, but also that it can openly be taken into consideration in the (unregulated) debate before elections. Because of the convenience<sup>21</sup> of such a perspective, within a stagnant political scenario and leadership, due to parties' little capacity for innovation, it cannot be excluded that the President's election may also be conceived in the future, taking into account his availability and suitability to carry out a double mandate.

The procedural rules on candidacies, however, appear even more unsatisfactory, if one focuses on the expectations of renewability of a seven-year office, which can contribute on the one hand to making the competition even more heated, as well as politically orienting the role of the President of the Republic on the other.

19 Among others, BELLETTI, "Dall'opportunità politica alla inopportunità istituzionale della rielezione del Capo dello Stato", Associazione Italiana dei Costituzionalisti – La Lettera, 2022.

20 *Ibid.* Furno writes about a revenge of "peones": FURNO, "La revincita dei peones", Federalismi.it, 2022, p. 2 ff.

21 This expression is used by PELLIZZONE, *ibid.*



Other aspects also seem to be influenced by the stabilization of the practice of reelection. We can mention the relationship between the President and the other constitutional bodies.

The Head of State remains in office after the dissolution of the same Chambers that appointed him/her, thus enabling a strong emancipation from the parties that voted for him/her, however guaranteed by the prestige of his/her role and functions. Only the judges of the *Corte Costituzionale*, the judicial body devoted to constitutional interpretation, remain in office longer than the President of the Republic; but in the scenario of an institutionalization of reelection the Head of State, once elected, would remain in office longer than the constitutional judges he/she has appointed, affecting the Court pluralism at its very core. This may well occur in the current situation, if President Mattarella decides not to resign before the natural deadline of the mandate,<sup>22</sup> and in any case before November 2023, when he would be entitled to appoint three other constitutional judges, with the consequence that all five judges appointed by the President would be expressed by the same President (as happened with Giorgio Napolitano).

### 3.3 *The Exogenous Reasons of President Mattarella Reelection*

There is no doubt that in addition to the internal issues affecting the reelection, there are some decisive external ones. The Recovery Fund has been compared by some scholars to the Marshall Plan, and, beyond the historical and institutional differences, it emerges that access to European funds, essential in a moment of serious economic and social crisis, has been conditioned to the fulfillment of external constraints<sup>23</sup> and conditionalities aimed at influencing national policy, also contributing to remove responsibility from national government.

The lack of responsibility is quite evident in this case, in which the solution identified by Parliament was a “non-solution”: the result of the inability to identify a new candidate.

And once again the “non-solution” emerges from the need to offer a response to the crisis,<sup>24</sup> not so much, however, in terms of an internal elaboration of

22 A temporary mandate would certainly be invalid, LIPPOLIS, “La seconda elezione di Mattarella: la rilegibilità e l’inconsistenza di una presidenza a tempo”, *Federalismi.it*, 2022.

23 SALMONI, “Piano Marshall, Recovery Fund e il *containment* americano verso la Cina. Condizionalità, debito e potere”, *Conituzionalismo.it*, 2021, p. 51 ff.

24 VIGEVANI, “Crisi ed elezione del Capo dello stato, tra regolarità ed eccezioni”, in BASSU, CLEMENTI, VIGEVANI (eds.), *Quale Presidente? La scelta del Presidente della Repubblica nelle crisi costituzionali*, Bologna, 2022.

authoritative and convincing answers in the democratic circuit, but rather of identifying an outcome that can be satisfactory for the European governance.

But the good result of the election, which makes everyone, or almost everyone, pleased in Italy and in Europe, cannot hide the crisis of parliamentary regimes, which concerns not only this country, and could be tackled by reforming presidential election.

Without going so far as to hypothesize a constitutional amendment aimed at introducing the popular election of the President, with a clear identification of the presidential powers exercisable without countersignature, which would radically transform the structure of the form of government in a semi-presidential one, I believe that within the current framework changes to the electoral procedure would be possible and necessary.

At a constitutional level, it could be shaped, for instance, on the model of the German system. In the latter, after a certain (limited) number of ballots the candidate who gets the majority of votes is elected, thus affecting the phase of agreements between the parliamentary groups, anticipating it and limiting the unclear dynamics deriving (also) from the need to obtain the majority of the members, or by establishing a ballot between the first two candidates after one or two votes.<sup>25</sup> But some changes, without any constitutional amendments, could affect the electoral procedure in its stricter sense, therefore referring to the candidacies, to their presentation, to transparency of the procedure. On the other hand, a system of official nominations is established in various constitutional systems where even the President does not have executive functions comparable to the Prime Minister (for instance Iceland, Ireland, and Portugal). This would make it possible to give trust to the institutional system not only through an outcome, such as the one reached on January 29, which was positive for the quality and prestige of the elected President, but also through the democratic nature and legitimacy of the process, where participation and deliberation shall be put back at the center, avoiding exogenous pressures replacing democratic processes, albeit within a framework of European integration and cooperation.

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25 FUSARO, "L'elezione del tredicesimo Presidente (24–29 gennaio 2022). Ottimo risultato, meccanismo da rivedere, sistema in crisi irreversibile", *Federalismi.it*, 2022.