Department of Political Science
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Thesis in Institutions of Public Law
English abstract

The constitutional revision procedure notwithstanding art. 138. Const.

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Abstract

In order to ensure the stability of the Constitution, it is necessary to provide a mechanism to modify the Constitution. The Italian Constitution is rigid: to amend it, a special procedure is needed, which is aggravated compared to the ordinary legislative procedure.

This mechanism is ruled by the article 138 Const. which quotes: laws amending the Constitution and other constitutional laws must be adopted by each House after two successive debates at intervals of not less than three months, and must be approved by an absolute majority of the members of each House in the second voting. These laws are submitted to a popular *referendum* when, within three months of their publication, such request is made by one-fifth of the members of a House or five hundred thousand voters or five Regional Councils. The law submitted to referendum cannot be promulgated if not approved by a majority of valid votes. A referendum is not ~~to be~~ held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members.

Many times in the Italian history, political parties tried to amend the Constitution in order to adapt it to the social context which keeps changing. Nevertheless, they did not use always the ordinary procedure ruled by the art. 138 Const. In fact, they tried to modify the Second Part of the Constitution (organisation of the Republic) through procedure derogating the art. 138 Const., because the thought that the procedure *ex* art. 138 Cost. was too strict to reach constitutional innovation.

In particular, in 1993 a bicameral commission for institutional reforms was established (c.l. 1/93) followed by another bicameral commission established in 1997 with the aim to adopt constitutional reforms. These constitutional laws provided a derogatory discipline, which could have been used only for those specific cases, derogating the ordinary procedure of constitutional revision.

Regarding those experiences, in doctrine it has been a debate on the admissibility of exceptions to the ordinary procedure *ex* art. 138 Const. My dissertation aims to explore different opinions about this matter in order to endeavour to reorder a debate far away from reaching a common solution.

In the **first chapter** I focus on the detailed analysis of the ordinary procedure for constitutional amendment *ex* art. 138 Const. I reconstruct all the elements of art. 138 Const. by reading ~~of~~ the preparatory work of the Constituent Assembly, the text of the article and the rule book of the Chamber of Deputies and the Senate of the Republic.

I analyse all the four fundamental elements of the ordinary procedure: the ownership of the initiative, which belongs to ~~the~~ government, citizens and the National Council of the Economy and Labour and five regional councils for topics which they are interested in. Furthermore, to approve a constitutional law, a double election with different majorities is necessary: for the first election a relative majority whilst for the second one, the absolute one (or the two-thirds majority). In addiction, I explore the rulebook of each Houses, describing how the entire procedure is disciplined and which limits undermine the aggravation of the procedure (which guarantee the rigidity of the Constitution). At the end of the first chapter, I focus on the *referendum* and some problems of interpretation. For example, the provision of another type of *referendum* (ex art. 75 Const.) has given rise to different interpretations about the discipline of the constitutional *referendum*: some argue that the constraints of uniformity and clarity imposed to the *referendum ex* art. 75 Const. should be imposed even to the constitutional *referendum*; others believe that. as there isn't anything concerning uniformity in the art. 138 Const., the *referendum* should not to be subject to such limitations.

In the **second chapter**, I describe the constitutional laws 1/1993 and 1/1997 which derogate the ordinary procedure of constitutional revision. In

particular they establish a bicameral commission, which unifies the proceedings in reference to the Chamber and Senate; they provide deadlines, several bans and other limitations. Furthermore, if the commission sends different projects to the Houses, they must vote for each of them through a unique voting and the *referendum* is obligatory, even if it has reached the majority of two-thirds.

In the **third chapter** I report some opinions which characterized the debate on the admissibility of derogations from article 138 Const.. Panunzio, for example, argues that derogations are admissible only if they do not affect the severity of the procedure. He believes that the essential elements of the procedure ruled by the art. 138 Const. are the parliamentary nature of the procedure and the protection of minorities.

On the other hand, Cervati notices the meaning of the phrase "other constitutional laws" contained in the art. 138 Const. He argues that only the laws of constitutional revision can amend the text of the Constitution and that "other constitutional laws" should instead discipline those matters of constitutional relevance that do not involve a textual changing of the Constitution. Therefore, the constitutional laws 1/1993 and 1/1997 should be invalid.

Di Giovine thinks that, in order to consider the admissibility of derogations from the ordinary procedure of constitutional revision, all the modifications of the special procedure have to be considered. If they affect the aggravation of the procedure they should not be admissible, however, if they are different, but at the same time they maintain the aggravation of the procedure, they are admissible.

My analysis continues with a reflection of Gaetano Azzariti, who alerts from simplifying philosophy, which can destroy constitutional values. He thinks that constitutionalism is experiencing a time of crisis, and political actors

have to escape from attempts to simplifying the procedures ruled by the Constitutions in order to save European constitutionalism.

In **conclusion**, an accessible procedure that leads to constitutional innovation is extremely required so that political actors will not find a way to reach it through procedure which derogate from the art. 138 Const.

Regardless of the responsibility of the stalemate that has characterized this historical period, as the world is changing quickly, even the basic structure of the state should be updated with awareness and determination. The risk is that constantly postponing reforms of institutions will be the cause of the implosion of the entire constitutional structure or, even worse, of the disapplication of the Constitution itself.