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The Italian Parliamentarism and the Romanian Semi-presidentialism in a comparative perspective. Interesting similarities in two different forms of government.

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1 Introduction

This study proposes a comparative analysis of the Italian parliamentary form of government and the Romanian semi-presidential one. Despite the different historical, political and cultural background in which they have been implemented, these two distinct forms of government may have several elements in common. The study starts from the hypothesis that, having both Italy and Romania experienced a dictatorial regime in the past, Fascism in Italy and Communism in Romania, they may have been characterized by similar authoritarian features. Moreover, common authoritarian features may have similarly influenced the Constitutional needs that the Italian and the Romanian founding fathers dealt with during the democratic transitions. Furthermore, if it is true there had been similar Constitutional needs, then there has to be space for similarities also in the concrete functioning of the two forms of Government, despite them being differently structured constitutionally. Are the Italian Parliamentarism and the Romanian Semi-presidentialism completely different, or is there any space for similarities? According to recent tendencies, are they becoming more similar? If there are some shared characteristics, are they linked to similar tendencies in the authoritarian past that both of them experienced? These are some of the questions this study aims to answer to.

Usually, comparative studies focus on differences since they are easier to support with evidence. In fact, even the more similar ideal-types show differences in their concrete functioning. However, this study adopts a challenging approach, focusing on potential similarities between two different experiences. It is an aim that, as Massimo Luciani claims, should be the goal of whoever decides to deal with de study of forms of government (Elia & Luciani, 2011, p. 567). To do so, the study will first provide a general legal frame in which to contextualize the comparison and later on will go more deeply into the comparing activity.

The first chapter defines the forms of Government, explains their functional link with the forms of State and it illustrates their contemporary classification following Mauro Volpi's work. The contribution of extra-legal factors is taken into consideration. They are instrumental in clarifying the concrete functioning of a specific experience but, if given too much importance, they give birth to a

too descriptive classification, losing the ability to make prediction of future tendencies and evolutions. For all these reasons, extra-legal factors are here considered only for the detailed focus on Parliamentarism and Semi-presidentialism and; later on, for the concrete Italian and Romanian cases. In like manner, some questionable traditional classifying principles are dealt with for their valid contribution to the contemporary classification of forms of Government. However, being source of many uncertainties, they have not been applied to this study, but simply analyzed because of their past use into the doctrine. With the legal framework provided, Parliamentarism and Semi-presidentialism will first analyzed more into detail and later on compared. Concerning parliamentary systems, a whole paragraph (2.2.2) is dedicated to the rationalization concept because of its great influence on the Government's stability and the regulation of the executive-legislative interplay. Altogether, not only the Constitutional arrangements but also the political practices of these two systems are be compared. In fact, legal forms of Governments, when applied to a specific pollical context, are somehow declined to adapt to the new environment. They develop differently in the many countries in which they exist, and this gives birth to interesting internal variations called sub-types. Overall, forms of government rarely function exactly according to what the Constitution provides. Political dynamics, electoral systems and the party system can lead to important *de facto* changes.

The second chapter starts from the characteristics of the authoritarian-style regimes that existed both in Italy and in Romania before experiencing the democratic transition. In order to compare the contemporary forms of government of Italy and Romania, it is indispensable to understand first from which background they have emerged. Moreover, since the present is always linked to the past, the characteristics of the two previous regimes may explain why the two experiences are working in a specific way nowadays. Of course, the outcome of the Constitutional Assembly and the chosen form of government in the two countries it is different because they had different historical-political experiences and yet, this chapter seeks for potential similarities in the democratization process. In fact, Italian Fascism and Romanian Communism are

compared so to analyze the available powers and counterpowers, the consequent available spaces for a regime change, the way in which this change happened, the historical moment in which it happened and the consequences it implied for the definition of the constitutionalization process and the new political system. In fewer words, the aim here is to understand what the two new Constitutions exactly wanted to prevent from happening again, considering their past, and despite the available differences, if there is a space for similarities between the transitional processes and the Constitutional processes of Italy and Romania.

Once that the past is understood, the third chapter's challenge is to explain how do the two adopted forms of government – Italian Parliamentarism and Romanian Semi-presidentialism – function concretely. It focuses on potential dissociations between the Constitutional provisions of the two forms of government and the way they had been implemented by the Constitutional bodies. For this reason, their Parliament, Head of State and Government are compared, discussing the relationship of each institution with the others, especially in section 4.3.1 concerning the Government. The latter is paid particular attention because the Romanian dual executive presents several differences with the Italian executive, which need to be properly identified. Furthermore, the influence of the European integration process on the concrete functioning of the two systems is briefly referred to, underlining some common trends, which however produce different effects at the national level. In fact, since both Italy and Romania are part of the European Union, both the executive branches are active within the European intergovernmental pillar and this influences the institutional interplay at the national level, strengthening the Government at the expenses of the Parliament. Overall, in comparative perspective, Italy and Romania tend to repeat the same formula, they share common trends or characteristics but then, the concrete effect of the latter is different, precisely because they implemented two different forms of Government. Consequently, the present study does not mean to undermine the fundamental existing distinctions, it simply focuses on potential similarities and their origin.

2 Forms of Government, definition, classification and a comparative analysis of Parliamentarism and Semi-presidentialism

2.1 Definition and classifying principles

2.1.1 Separation of powers, the basis of forms of government classification

The whole study here presented is based on the importance of the separation of powers principle in defining a form of government. According to the separation of powers theory, absolute power can be limited by the division of power itself between different and independent functions. The founder of this theory is the French scholar Montesquieu. He formulates this theory into its book "*L'Esprit de Lois*", published in 1748. Because of its fight against the abuse of power, the French scholar belongs to the constitutionalist current. In his view, the power of the sovereign must be strong but not so strong as to circumvent the control of the Parliament, the Parliament must have power but not so strong as to circumvent the power of the judiciary because if it makes mistakes it must also be punished. To this aim, the executive power of the King has to be separated from the legislative power of the Parliament. This allows people to punish parliamentarians unproperly using the law-making power, by no longer voting for their political party at the following elections. Moreover, the judiciary of the Magistrates is separated from both the King and the Parliament. This allows precisely people to turn to the judge and complain, for example, that the Parliament has passed a law which wrongfully expropriated a piece of land and ask him to annul the unjust law (Montesquieu, 1949, p. 149-182). In his theory, power is both vertically and horizontally separated. Vertically, to empower the citizens against the State, providing them political representation through the party system and the right to vote for the parliamentarians which represent them. This way, the State is not the only ruling power, but it is limited by the popular will. Horizontally, to weaken the sovereign's powers who holds the executive

power but not the legislative and the judiciary one. In other words, Montesquieu formulates the tripartite division of power among the executive, the legislative and the judiciary, indispensable to limit power because. Power has to be separated into different functions as distributed to different institutional bodies because «every man of power abuses his power, even the mildest and also the most beneficial, because power is a drug that urges the most bestial instincts present in each of us, proceeding until it finds limits» (Montesquieu, 1949, p. 29-39). However, his power separation theory is a technique through which different powers are distributed to different institutional bodies, formulating a very rigid separation. In fact, the latter implies that each governing branch has its own exclusive function and it carries it out autonomously, without any interaction with the other branches. For the period in which it was formulated, this rigidity is understandable. After all, the XVIII century was the transition period from absolutism to Constitutional Monarchies, a moment in which the power concentration only into one institution or person was the major source of worrying. However, Montesquieu's rigid separation leads to ungovernability because a degree of functions intermixture is needed (Kavanagh, 2016, p. 221-222). The truth is that each function is divided among the different organs. For instance, the legislative function is divided between Parliament, Government and the Judge. In fact, at the beginning the parliaments were born as Chambers of justice in order to put the Ministers in a State of indictment if they had strayed in their functions, peculiarity still available today with the impeachment. Therefore, the Parliament does not carry out only a legislative function, but it also has a judicial function. Decree-laws, for example, disprove the mere executive function of Government. Furthermore, the judge may also act as legislator, through the so-called para-legislative judgements of the Constitutional Court, the highest judicial body. As a consequence, the pure doctrine cannot properly explain the functioning of power separation within modern States because it contrasts with the actual power-division and Constitutional practices which necessarily require an «intermixture of functions». In fact, the three governing branches have a sort of «labour division» thanks to which, each of them holds a different role within the Constitutional

system but they may share functions. Moreover, the latter do not act in autonomy, but they are interconnected and interdependent, working «together in the joint enterprise of governing» (Kavanagh, 2016, p. 237).
In conclusion, «law-making, law-applying and law-executing are collaborative tasks where each organ of Government must cooperate with the other organs in an interactive setting» (Kavanagh, 2016, p. 239).

2.1.2 Definition and contemporary classification principles

In the original Constitutional debate, forms of government could be easily defined and classified with a big degree of certainty, in a way that allowed the available normative distinctions to be clear and undeniable. Nowadays instead, there is no longer space for deep certainties since the very basic aspects that once constituted a clear distinction – both among forms of Governments and forms of State – are now experiencing an increasing degree of interrelation and the consequence is a more confused process of classification. The distinctive line between forms of government and forms of State is getting thinner because of the deep correlation among the two concepts and the particular nature of their relationship. forms of government have the function of describing and representing our reality in a way that makes it understandable, but they are also the frames trough which any institutional evolution and variation is interpreted and linked to the historical period in which it operates. For this reason, the classification of forms of government is subject to evolutionary uncertainties which operate in a very complex and flexible institutional background, leaving an open space for academic debate about future tendencies (Pegoraro & Rinella, 1997). To better understand this flexible evolution, it is appropriate to start from the definition of forms of government and forms of State and the nature of their correlation.
Forms of State are the «fundamental principles and rules that characterize the State order and define the relations between the State itself and the citizens, individual or associated». It defines the «different ways in which the interaction between authority and freedom takes place», so it refers to the vertical

relationship existing between «those in power and those who remain subject to it» (Mortati, 1975) (Volpi, 2007). Forms of Government, instead, are the «set of rules characterizing the distribution of power among the top institutional organs of the State apparatus and which, therefore, regulate the interaction among the Constitutional organs which are above all the others, in conditions of equal sovereignty and mutual independence» (Volpi, 2007). It defines the way in which takes place the horizontal relationship among the institutions involved in definition of the State's political direction, and whose interconnection is never considered outside this institutional frame (Elia & Luciani, 2011). These concepts are two sides of the same coin because they both contribute to the solution of a problem faced by every State order, that is the «dialectical relationship between the State's authority and the citizens' freedom» (Volpi, 2007). The form of government is a more limited concept because its central aim – the horizontal interaction among institutions – is part of the form of State's wider aim. Furthermore, the distinction between forms of government and forms of State implies the need to distinguish the society from the State, element that happened relatively recently in history with the transition from the feudal to the absolute State. Besides, the distribution and separation of powers among institutions took place with the development of the liberal State and the pluralistic-democratic one. For this reason, the possibility to classify different forms of government it is available mainly in the pluralistic-democratic forms of State while it remains seriously problematic in the autocratic ones because their tendency to concentrate powers into the State's apparatus, completely assimilates the form of government. For this reason, when studying the latter from a comparative perspective there is a research limit to face, that is the possibility to compare only those horizontal institutional relations that take place in democratic forms of State. It is unnecessary and unfruitful to confront the way in which the horizontal institutional interaction happens in very different States (Elia & Luciani, 2011). Despite the democratization waves, undemocratic forms of State are still very diffused, and this limits the geographical distribution of the distinction between forms and State and those of Government. On the opposite side, inside the pluralistic-democratic State, the two concepts are not only

distinguished but also deeply connected, giving birth to a particular instrumental interconnection. On one side, forms of government affect the State's apparatus and its need for democracy, reason why they are subject to adequacy and suitability analysis. On the other side, the classification of forms of State defines the utility of forms of government and the borders within which it is possible to compare them (Elia & Luciani, 2011). A democratic form of State may be in line with different forms of government but only if the Constitutional principles defining the very nature of the State are not harmed. When chosen without respecting the State's fundamental principle, a form of government implies drastic Constitutional reforms that may disrupt the State's organization. Historically, this kind of Constitutional reform proposals risked putting in danger – or seriously endangered – the State's organizational apparatus, as in Italy in 1925, when the liberal principles have been undermined because of the fascist Constitutional reform. For this reason, nowadays, the democratic and pluralistic State no longer tolerates any type of organizational reform willing to question its form of State and its Constitutional principles. Among the latter, some of the most important are the principles of separation of powers, popular sovereignty and pluralism. Moreover, even when chosen respecting the fundamental principle, a form of government may still imply negative consequences for the operating model of democracy. This happens because it is of fundamental importance to take into consideration also the socio-political context, meaning the existing religious, ethnical, territorial, social divisions, the characteristic of the party system and the popular consensus (Volpi, 1998). When the socio-political context it is not included into the equation, big damages may be done, for example leading to an apparently balanced form of government but with a personalized concentrated political power which limits pluralism and so the opposition's opportunity to actually oppose the Government in the office; or, it may allow the very supreme institutions to take away responsibility for themselves, prejudging the citizens' rights. So, choosing the wrong form of government may lead to question the State's democratic nature and define it more as «an apparent or semi-democracy», issue currently happening in many States, mainly the ex-socialist and the Asiatic ones (Volpi, 1998).

Involving the socio-political context into the equation means considering the way in which the legal classification may be influenced by potential extra-legal factors (Volpi, 2007, p. 6-8). In fact, the majority of the activities held by the Constitutional bodies are based on normative or political unwritten rules that may be customary law and conventions. This aspect exposes forms of government to the influence of two extra-legal factors: the political system and the electoral formula. None of them determines the classification in its legal nature, but they both contribute to the understanding the forms of government and their way of functioning. For instance, the same legal form of government, when applied to different contexts in political, cultural and historical terms, may produce different results as can be proved by the variety of parliamentary systems existing. As might be expected, concentrating only on the legal formal classification may miss the dynamic tendency of forms of Government. As evidence, a bipolar or a multipolar political system affect differently the interaction between Government and Parliament as well as the head of the executive power. Likewise, the normative rules defining the interplay between Government and Parliament directly affect the political systems since, for instance, the executive-legislative interaction may be subject to different degrees of rationalization as well as the Head of the State may be directly elected or through the parliamentary majority. Equally important is the influence of the electoral system, given that it is the mechanism through which votes are converted into parliamentary seats. A majoritarian formula produces different results than a proportional one both for the Government and the Parliament's functioning and stability, since they respectively support more governability or representativity. In this sense, the electoral system can be interpreted as the linking element between the political system and the form of government. These two extra-legal factors give birth to a political regularity that interacts with the legal rules, defining the horizontal interaction among the Constitutional bodies. Therefore, the political system and the electoral formula influence the understanding of forms of government and, in turn, are influenced by them. For this reason, it is important to consider their contribution when studying the concrete functioning of forms of government (Volpi, 2007, p. 6-8). Conversely,

when extra-legal factors are given too much importance, the classification becomes too descriptive, undermining its legal nature and losing the ability to predict future tendencies. For this reason, the synthetic classification here proposed will be based mainly on the legal distinction among forms of Government, while extra-legal factors will be considered only for the comparison of Parliamentarism and Semi-presidentialism.

Classification consists of a process of theoretical abstraction aimed to build ideal models later applied to reality so to categorize and contextualize the individual experiences. In other terms, «it consists of grouping together general features, common to a variety of concrete experiences (…) earlier examined, so to build distinct theoretical categories, in light of which individual realities are then consequently located» (Volpi, 2007, p. 10). The process itself implies that ideal models and real experiences are impossible to match perfectly. Nevertheless, classifying is still useful to understand the system. In order to classify, specific criteria are needed but doctrine is not uniform in stressing the basic ones. In fact, there are different points of view concerning which criteria are fundamental. The present study will follow Mauro Volpi's proposal, underlining mainly two criteria. Later on, other important traditional principles will be explained with the aim to understand how they contributed to the contemporary distinction and which are their weaknesses.

According to Mauro Volpi, among all the principles, there are mainly two which seem to be extremely useful in describing a valid distinction among the contemporary forms of Government. The first one concerns t*he kind of relationship existing between Parliament and Government* – meaning the existence or not of the vote of confidence – and the second one concerns *how the Government's democratic legitimacy is derived* (Volpi, 2012). Before analyzing their application to the classification, some matters need further attention. First and foremost, what is the confidence relationship and why is so important the kind of interaction between the executive and the legislative.

The confidence relationship entails the Government's political accountability to the Parliament, expressed in different ways, where the latter can make it count forcing the former to resign with the so-called motion of no confidence. There

are many ways in which the confidence can be applied: declared by the legislature through the initial vote of confidence, simply assumed, or voted by the Parliament through a simplified majority, so less strong than the first case. In the last two cases, it is possible to have minority Governments to which, to remain in charge, it is enough not to have the parliamentary majority against them. At the same time, the confidence issue is an instrument that may be used by the Government itself to pression the Parliament to vote in favor of its general agenda-setting power or in favor of a specific proposal, otherwise threatening to resign. The latter is meant to balance the confidence relationship between the two bodies. The second criterion concerns instead how the Government's appointment is derived. The cabinet can be vested its powers by the Parliament's emanation or through the emanation coming from the Head of the State or the Prime Minister, both of which belong to the executive sphere (Volpi, 2012, p. 315-320). However, here comes a contradictory problem. Why are the relevant Constitutional bodies reduced to Parliament and Government if the definition of forms of government refers to the horizontal interaction among all the Constitutional organs? Mainly for two reasons. First, the democratic State was born exactly from the fight between the executive power, hold by the Monarch, and the political representative power, hold by the assembly. For this reason, this interplay it is still today of great relevance. Second, a focus only on the dual interplay simplifies the classification and produces the advantage of comparing different Constitutional experiences (Elia & Luciani, 2011, p. 567).

That being said, it is possible to proceed with the six-category classification than can be built interconnecting Volpi's two criteria, that is: Constitutional Monarchy, parliamentary form of government, presidential form of government, directorial form of government, semi-presidential and semi-parliamentarian form of government.

Constitutional Monarchies are of big relevance because it is from them that derived both the parliamentary and the presidential forms but nowadays it only represents a historical value. There is no relationship of confidence between Parliament and Government and the Head of the Monarchic State holds the executive power and the power to define the State's political direction. In fact,

Ministers are accountable to the Head of the Monarchic State, so it is through his emanation that is derived the Government's appointment.

Parliamentary forms of government are characterized by the confidence relationship between Parliament and Government, whether it is initially declared as a vote of confidence or simply assumed. In fact, the Government is derived from the parliamentary majority; reason why the former is politically accountable to the latter and the interplay between the two defines the political direction. The Head of State – being him a Monarch or a President – has formal powers so he does not participate in the governing action. Parliamentary systems may vary deeply according to cultural background to which are applied, but it is possible to identify some general common trends existing in every parliamentary system. For instance, they are all characterized by the existence of a relationship of confidence between Government and Parliament and the Head of the State has the power to dismiss the parliamentary Chambers.

Presidential forms of government are constituted by a President who is Head of State, directly legitimated by the electoral body and who holds the power to give political directions. Besides, there is no relationship of confidence between the legislative and the executive branch, thus the President has no power to dismiss the Parliament. Moreover, the Government is derived from the President's emanation since he is the Head of the executive.

Directorial forms of government are marked by a collegial executive body which, apart from the executive power, holds also the Head of the State functions. There is a confidence relationship between Parliament and Government only initially for the appointment of the latter. After the appointment, the Government is not politically accountable to the Parliament, hence it cannot be dismissed.

Semi-presidential forms of government are characterized by a dual executive represented by the President, so the Head of the State, and the Prime Minister. Both of them are democratically legitimized by the electoral body, the first one directly and the second one indirectly, through the parliamentary mediation. Moreover, both of them participate in the power to give political directions, sometimes in a balanced way, other times with one of the two figures

dominating, depending on whether there is a consonance or a cohabitation situation. The Government is nominated by the President and it is held accountable to the Parliament, so without the latter's support it cannot stay into office.

Semi-parliamentary forms of government are defined by the existence of a confidence relationship between Parliament and Government, where the Prime Minister is directly elected by the electorate. The mandate can reach its end both with a motion of no-confidence and through the early dissolution of the Parliament by the hand of the Head of the State.

In short, the presence or the absence of a confidential relationship between Parliament and Government allows the classification of mainly three forms of Government: parliamentary, presidential and directorial. At the same time, how the Government is derived distinguishes between forms of government with a unique way of deducing the Government's democratic legitimacy – presidential, parliamentary and directorial forms of government –and those in which instead there is a "double derivation" – Semi-presidentialism, Semi-parliamentarism and certain Parliamentarisms. In this sense, it could be argued that the second criterion includes into the contemporary classification some "hybrid" forms which combine elements from different categories, giving birth to new autonomous institutional structures (Volpi, 2007). For instance, Semi-presidentialism presents both presidential features – direct election of the Head of the State – and parliamentary features – confidence relationship. This study has followed two fundamental classifying criteria, but there are many others which have been used in the academic field and whose contribution to todays' classification has been relevant, in spite of their weaknesses. The following sub-paragraph deals with them.

2.1.3 Classification principles of questionable effectiveness

Many of the traditional classifying principles are ineffective for the classification of contemporary forms of Government. Because of their weaknesses, they are considered source of uncertainty in fact, they fail to identify

a valid distinction of the contemporary forms of Government. Despite that, some of their contributions are still scientifically valid (Volpi, 2007, p. 85-99).

Among the more general principles, there are the one based on the *way in which is elected the owner of the sovereign power* and the one based on *the number of sovereign subjects*. The first one, classifies as direct forms of government those in which the owner of the sovereign power does not derive its investiture from other subjects' will and as representative forms of government those in which instead he derives its investiture from the electors' will. The second one, identifies the pure forms of Government, characterized by a unique sovereign body and mixed forms of Government, in which instead the sovereign power is divided among different bodies. Both of them are ineffective, in fact, all the contemporary systems result to be both mixed and representative (Volpi, 2007, p. 85-86). Among the most applied traditional principles, instead, there is the one based on the *degree of power separation between Parliament and Government*. It distinguishes between rigid forms of Government, in which there is a clear and concrete separation of powers, meaning Presidentialism, and flexible forms of Government, in which instead there is a confusion of powers, due to the collaboration of the two branches, meaning Parliamentarism. Exactly as a halfway between these two, there is the directorial form of government, characterized by only an initial collaboration, through which the cabinet is appointed by the Parliament, later freed from any kind of accountability to the latter. The main weakness here is the static perception of the institutional interplay. It lacks the ability to explain how the Constitutional bodies mutually condition each other in the rigidly separated experiences because of the existing checks and balances system (Volpi, 2012, p. 315-320) (Volpi, 2007, p. 85-86).

Traditional classification has been characterized also by more detailed principles. Some examples are: the criterion of unique or separated legitimization of Parliament and Government, the criterion of which body holds the power to give political directions and the criterion of direct or indirect popular legitimacy of the Government.

The *criterion of the unique or separated legitimization of Parliament and Government* is the most appropriate one among those distinguishing between

dualistic and monistic forms of Government. The monistic forms of are those in which the executive power is legitimized by the same majority, expressed by the electors. In fact, it represents that situation in which the Parliament is directly elected by the electoral body and from this last the Government it is derived. Among the monistic forms there are the parliamentary systems and the directorial forms. In the latter, the Parliament is directly elected by the electorate and from it the Government it is derived. The monistic parliamentary form may be both republican and Monarchic. In both cases, the Head of the State – the President or the Monarch – does not participate in the management of the executive power, which therefore is hold by only one body with a unique source of legitimation. The dualistic forms of Government, instead, are those in which there are two organs holding the executive power, whose legitimization source is different. Inside this category there are the presidential, the semi-presidential and the semi-parliamentarian forms of Government, but also two past experiences, the Constitutional Monarchy and the dualistic Parliament, in both of which the King was the one dominating the executive sphere. Despite its academic validity, it is source of uncertainty because it undermines the value of the interaction among the Constitutional bodies, which cannot be directly derived from the expression of popular sovereignty, more specifically from the direct election of the head of the executive. Furthermore, the source of uncertainty is also due to other criteria originally used as foundation for the monistic vs dualistic distinction. In fact, it has been based on whether there are one or two bodies holding the executive power. In this sense, it distinguishes between monist executive – presidential, parliamentary and directorial forms – or dualist executive – parliamentary, semi-parliamentary, semi-presidential forms. It is certainly a questionable principle considering that it excludes from the dualistic executive Presidentialism in the United States of America while it includes among them parliamentary Monarchies or those in which the President is elected by the legislature. As a result, it does not identify the dynamicity of the institutional relationships (Volpi, 2007, p. 88-90) (Volpi, 2012, p. 315-320). A similar ineffectiveness is to be found into *the criterion of which body holds the power to give political directions*. The political direction – or agenda-setting

– is the political activity which determines and pursues the State's political purposes and the tools guaranteeing their execution (Volpi, 2012, p. 315-320). When the Head of the State is the agenda setter, there is a pure Constitutional form of government: Constitutional Monarchy and Presidentialism. When instead it is the interplay parliament-Government that sets the agenda, there is a parliamentary Constitutional form of government: parliamentary Monarchy and the parliamentary republic. Lastly, the collegial bodies are the agenda-setters, there is a directorial Constitutional form of government; for instance, the Directorial Swiss Republic. This criterion is effective in identifying the dynamic nature of institutional interaction but, it classifies in the same category very different experiences, as the Constitutional Monarchy and the presidential form of government. The definition of the political direction – or agenda-setting – is a complex activity, continuously evolving, whose main responsible may be the head of the executive but to whose operativity contribute different Constitutional bodies, in different degrees, mainly the legislative branch. In fact, also this criterion is inefficient because it fails to identify the agenda-setting institution body in semi-presidential systems, with a dual executive (Volpi, 2012, p. 315-320).

In the same critical context is to be analyzed the *criterion of direct or indirect popular legitimacy of the Government*. As suggested by its name, this principle distinguishes between forms of government with direct legitimacy and those with indirect legitimacy. In the first category, the Government is derived directly from the electoral body through elections, after which a confidence relationship is created between Government and electors and the head of the executive gets its source of legitimacy from the universal suffrage. As a direct implication, the Government acquires a governing power which overlaps the parliament's governing power. By contrast, in the case of indirect popular legitimacy, the Government is derived from the parliamentary majority, previously elected through elections by the electorate; hence, it originates from the parties' political agreement. The classification implies that the popular sovereignty principle is enacted only by directly legitimized forms of Government, since only in this category the electoral body is granted with the primary political choice. In turn,

this suggests that Presidentialism and Parliamentarism with directly legitimized Governments become very similar whereas the indirectly legitimized Governments paradoxically end up being considered not in line with the democratic spirit. As it can be assumed from the last paradoxical implication, this classifying principle has an important deficiency, it makes confusion between legal rules and political legality. In practical terms, it locates on the same level the systems in which the executive is legally derived from the electorate body and those in which instead it is only politically derived from it. Consequently, politically derived Governments are more fragile since they deeply depend on the political system and a stable parliamentary majority. This is unappropriated because the form of government, for its very definition, constitutes a legal category that cannot be determined by political events. Political correctness cannot shape any legal classification of forms of Government. It could rather contribute to the identification of concrete sub-forms of Government whose different internal declination derive from the different political practices. Overall, all the criteria here presented contributed to the identification of the contemporary forms of Government. Nevertheless, if applied alone, none of them would manage to properly explain their concrete functioning. Within this legal frame, a more detailed analysis of Parliamentarism and Semi-presidentialism is analyzed into paragraph 2.2.4, while paragraph 2.2.2 discusses the rationalization of parliamentary forms of Governments and its effect on the executive's stability.

2.2 Parliamentarism and Semi-presidentialism in comparative perspective

2.2.1 A more in-depth analysis of the parliamentary form of government

Parliamentarism is nowadays the most diffused form of government. It is considered to organize power delegation and accountability in the best way possible. It was born in United Kingdom, in the 18th century, as the evolution of Constitutional Monarchies. Later on, during the 19th century, parliamentary Monarchies started to spread also in Europe. When it comes to the definition of

Parliamentarism, Boris Mirkine-Guetzévitch is skeptical about a unique defining formula. He states that because of their nature, Constitutional and political elements constantly evolve, reason why Parliamentarism itself has to be considered an «institutional becoming» (Mirkine-Guetzévich, 1954). In fact, because of the suffix "ism", Parliamentarism implies a dynamicity while the concept of parliamentary Government is more static. As a result, there is a sort of fluidity inside Parliamentarism. However, when discussed within the rationalization frame, Parliamentarism loses its dynamicity and any distinction between the latter and the rationalized parliamentary Government loses any sense. This happens because rationalization limits the forms of government within a rigid legal frame bound to the specific historical period in which it is implemented, leaving no space for dynamic developments (Frau, 2016, p. 1-2). Before explaining the rationalization process and its impact on parliamentary systems, the definition and functioning of Parliamentarism needs to be discussed. According to the minimal definition, the parliamentary form of government is «a system of Government in which the Prime Minister and his or her cabinet are accountable to any majority of the members of the Parliament and can be voted out of office by the latter, through an ordinary or constructive vote of no confidence» (Strøm, Müller, & Bergman, 2003, p. 13). As it is also for Semi-presidentialism, the minimal definition provides more space for comparison among the existing parliamentary varieties. Parliamentarism is considered «the most common way to organize delegation and accountability in contemporary democracies». In fact, the executive is accountable to the Parliament, meaning that the cabinet needs to be «tolerated by the parliamentary majority» in order to be operational. However, the cabinet and its Prime Minister are first formally nominated by the Head of the State (Strøm, Müller, & Bergman, 2003, p. 13). Every time that the legislative elections give birth to a parliamentary majority, the Government needs to earn its confidence to indirectly get the democratic legitimation. The name of the system itself, parliamentary Government, gives the idea that the Government derives its democratic legitimation from the parliamentary body (Cotta, Della Porta, & Morlino, 2008, p. 340-345). This implies that the process providing democratic

legitimation to the Government is the same that forms and later on keeps alive parliamentary majorities, reason why the former is somehow fused with the Parliament, because it becomes the top of parliamentary majorities (Cotta, Della Porta, & Morlino, 2008). In fact, under Parliamentarism there is a separation of powers in the sense that each body possess its own power, but, the executive and the legislative branch are linked by a confidence vote which means that there is a fusion of powers. Moreover, the Head of the State and the Prime Minister are two separated charges. The Head of the State has the power and duty to guarantee the proper functioning of the Constitutional system, ensuring that the Constitution is respected and fairly enacted, in particular concerning the proper functioning of the parliament-Government relationship. In the case of weak parliamentary majority, or simply not a clear majority, the Head of the State may acquire substantial powers. Historically, Parliamentarism has not always been the same but it evolved adapting its features to the background in which it operated. The difference between dualistic and monistic forms of government has affected Parliamentarism as well, which experienced a first phase of dualism, later on evolved into monism. During the XVIII century, when Constitutional Monarchies evolve into parliamentary Monarchies, Parliamentarism is based a dualistic principle, meaning that the executive is constituted both by the King and the Government. Under the dualism principle, the cabinet needs to be granted a dual confidence, from the legislative body and from the President. Dualism has three sources here: institutional dualism concerning the balance of power between the executive and the legislative, dual executive in which both the King and the Government contribute to define the political direction and social dualism, since the King represented aristocracy while the Parliament the bourgeoisie. However, during the XIX century, with the historical evolution and the electoral reforms extending the suffrage, the bourgeoisie is empowered and gets more representation within the legislative body. Consequently, the latter becomes more powerful, the King has less power to dismiss the Chambers supporting the Government, so he is forced to accept the popular will. The result is the transition to a monistic parliamentary system, in which the Government only needs the parliamentary confidence and the two institutions together are

definers of the political direction while the King remains outside the process, only having formal powers. Monism as well evolves on three bases: institutional monism, concerning the legislative dominance on the Monarch, monistic executive whose top agent is the Government and social monism resulting from the bourgeoisie's prevalence (Volpi, 2007). In a comparative perspective, parliamentary forms of government share some common elements, but they are also subject to a certain degree of diversification, again, due to the different political practices adopted as well as the different cultural, historical a political heritage. Starting from the first category, it can definitely be argued that each Parliamentarism is characterized by:

- a unicameral or bicameral Parliament, where the two Chambers may have equal or unequal functions, which gives birth to symmetric and asymmetric bicameralism;
- a vote of confidence of the Parliament to the Government – or only to a part of it;
- the possibility to resign the Government through the legislative body's motion of no confidence, after which the Head of the State appoints a new cabinet which needs to acquire the Parliament's democratic legitimation through the vote of confidence. As a result, there are no new elections in the case of Government dismissal;
- the dissolution of the parliamentary Chambers by the Head of State – whether he is a President or a Monarch – which is sometimes subject to more or less limitations, depending on the system.

At the same time, parliamentary forms of government are also very different in their way of functioning. In fact, some diversifying elements deserve to be analyzed because of their different effect on the system, that are: the Head of the State, the structure of the confidence relationship, the nature of the vote of confidence, the degree of rationalization, the powers of the Prime Minister and the existing electoral and party systems.

The *Head of the State* may be a Monarch or a President. The first one inherits his charge while the second one is indirectly elected through the universal suffrage mediated by the parliament. Therefore, there is a different source of

legitimation, a democratic one for the President and an undemocratic one for the Monarch. The very consequence of this is that the President may delay the Parliament's activity, asking for a second examination of a bill before promulgating it, or he can dismiss the Chambers in the case of particular political instabilities that may give birth to institutional crisis. Differently, the King or Queen are supposed to do not block the legislative body's work, at least this is the general custom. Second, the *confidence relationship* is differently organized. In some cases, it has to be explicitly declared while in others is it sufficient to have elections giving birth to a parliamentary majority from which then the vote of confidence is presumed. Besides, it may be provided by one Chamber – in the majority of cases – or by both the Chambers. Third, the *nature of the vote of confidence* might differ also. In some countries is has to be granted to the whole Government, while in others it concerns only the Prime Minister. In the last case, the Prime Minister is granted the power to force one of his Ministers to resign if he constitutes a danger for the political stability of the cabinet, exactly because the Premier is the one responsible for the maintenance of the confidence relationship. Forth, *the degree of rationalization* is another distinguishing feature. Rationalizing forms of government means providing their structure with a set of Constitutional rules, defining its functioning and allowing to denounce its unconstitutionality when it not legally working (better explained in paragraph 2.2.2). The aim is to protect the system's stability, reason why these rules usually concern, among other elements, the codification of the vote of confidence. Sometimes, the latter has to be voted through a qualified majority, harder to reach and so more efficient in protecting the system from unfair dismissals of the Government; it may be voted by each Chamber (e.g. Italy art. 94), or by the Chambers in joint session (e.g. Romania art. 103). Based on their different needs, different Parliamentarisms have chosen a more rigid and so rationalized systems while others have preferred some flexibility, so less rationalization. A high degree of rationalization consists of the adoption of detailed Constitutional rules, e.g. regulating the relationship between Government and Parliament attempting «to fight ministerial instability» (Mirkine-Guetzévitch, 1950). However, the negative effect is that the political conflicts become Constitutional conflicts

which involve the arbitrate of Constitutional Courts, as a last instance solution. Examples of this kind of Parliamentarism are Germany (1949), France of the Fifth Republic (1958), and Spain (1978). On the other side, a system with a low degree of rationalization is characterized by few Constitutional rules regulating only some essential features of the form of government, leaving a big space of influence to informal practices, customs and the party system. Examples of this kind of parliamentary systems are Italy (1948) and the United Kingdom. Fifth, the *Prime Minister's power* is not always the same. In fact, where he is the top of an absolute parliamentary majority (usually in majoritarian electoral systems), he is more powerful and so he gives a unique political direction to the system. On the contrary, in coalitions Governments, there can be different political directions or simply the Prime Minister may not be the unique agenda-setter. Lastly but equally important, is the impact of the *electoral system, the party system and the political culture* of the countries. A majoritarian formula is more stable, it grants more governability but less representativity. On the contrary, a proportional system is meant to grant representativity to the different minorities existing, but they grant less governability since many different interests will hardly come to a decision that satisfies everyone. Of course, this is not a free choice, but it depends on the political culture of each country and the kind of cleavages existing. Following Lijphart's theory, contemporary democracies may be divided in two patterns: competitive and consensual democracies. Competitive or Westminster democracies apply majoritarian electoral formulas, granting a bipartisan system in which two political parties or coalitions alternate in the system and the Government prevails over the parliament. This is possible because the main cleavages characterizing the competitive model are socio-economic. Consensual democracies, instead, apply proportional formulas granting a higher degree of representativity so a multi-party system, usually characterized by large coalitions or minority Governments, where the legislative body prevails on the executive one. This is so because the main cleavages characterizing the consensual model are cultural, ethnic and religious, reason why different minor interests need to be granted a voice inside the representative system (Lijphart, 2012). According to the nature of the party system,

parliamentary forms of government may be divided among: rigid bipartitism, temperate multipartitism and extreme multipartitism (Volpi, 2007, p. 136). *Rigid bipartitism* is characterized by two political parties, alternating each other, in a system in which the Prime Minister is popularly elected and he prevails both over the Government and on the parliament. It is the case of the United Kingdom. In *temperate multipartitism*, instead, there is no popular election for the Prime Minister, but he is appointed by the Head of the State and then invested with the parliamentary confidence. The parliamentary majority supporting the Government, may have two different natures. It may be based on a bigger stability when the parties manage to negotiate bipolar alliances – such as the case of Germany and Sweden – or it may support wide coalitions Governments, in which there may be more fragmentation. Differently from the previous two, *extreme multipartitism* has a weak Prime Minister and an unsolid Government because of the heterogeneous coalition Governments as well as the existence of many anti-system parties, such as in the case of Italy, or in the past the Weimar Republic or the Forth French Republic (Elia & Luciani, 2011, p. 645-656). Moreover, there is a last influencing factor of ambiguous nature since on one side it brings together all the parliamentary varieties whereas on the other it makes a distinction. It is the instrument of *parliamentary control and sanction over the Government*, through the confidence relationship. Because of the fusion of powers and the cabinet's indirect legitimation, both the Government and the Parliament represent the same electors. Thus, the cabinet's successes are also the Parliament's ones, meaning that the latter has an incentive to provide the former any needed condition to rule, they are not opposed one to the other. However, it immediately comes the differentiation. In parliamentary competitive democracies it is the Government that dominates over the Parliament, which tends to not have a concrete control and sanction power. This is possible thanks to the bipolar political system, in which the electors vote for the party or the party's candidate by whom they want to be led, so there is a strong parliamentary majority immediately transformed into a solid cabinet. In this system, usually no parliamentarian risks to lose his seat with eventual early elections, so the Government manages to rule for the whole mandate; in fact, it seems that «in

these democracies, the legislative has forgotten that it possess the power to take away the confidence» (Fabbrini, 2008, p. 115-119). Because of its internally diversified system, Parliamentarism owes a big degree of flexibility which allows it to be successfully implemented in different versions, each time adapting itself to the political culture of the country. As a result, mainly two parliamentary subtypes may be identified: cabinet-parliamentary system, parliamentary-cabinet system (Volpi, 2007, p. 97-138) (Zebrowski, 2010). The *cabinet-parliamentary system* – also called dominant Government – defines that situation in which the executive acquires predominance over the Parliament, particularly working in two-party systems. The Head of the State – Monarch or President – nominates the Prime Minister, providing him with the need legitimation and directly becoming operative. Thus, the main difference with the parliamentary-cabinet system is that the Government does not need the Parliament's confidence, which implies that it is independent, exactly as it is the Head of the State (Zebrowski, 2010, p. 117). For this reason, the executive power predominates the legislative one. The Prime Minister is such a key political figure that he has the power to present to the Head of State a motion to dismiss the legislative body and organize anticipated elections. However, since parliamentary systems support the mutual power balances, the Government is prevented from being permanently dominant by being politically responsible to the Parliament. The Head of the State, instead, it is not politically responsible, but he bears "constitutional responsibility", being the top guarantor of the Constitutional system. The best contemporary example is the United Kingdom, in which in fact, the cabinet is supported by the parliamentary deputies belonging to the same party, that is the one winning he absolute majority and so more than half of the seats in the House of Commons (Zebrowski, 2010, p. 117). Conversely, the *parliamentary-cabinet system* or parliamentary dominance, constitutes exactly the opposite situation and a version frequently implemented in the European region. The Head of State, if he/she is a Monarch, gains legitimacy from his/her regal bloodline while if he/she is a President, he/she is appointed by the parliamentary majority after the elections. Once that this happens, the Head of the State formally appoints the Prime Minister and together

with him/her, appoints also the Ministers. At this point, the whole cabinet needs to obtain the Parliament's confidence which grants it the legislative support to be operational. In fact, only once that the confidence is granted the Government is allowed to perform its Constitutional functions, meaning that the Government is accountable – also said politically responsible – to the Parliament. In Parliamentarisms with a segmented multi-party system, the legislative power is left even more space for dominance. However, to counterbalance its prevailing power, the executive power can sometimes propose to the Head of the State a motion to dissolve the legislative Chambers. Besides, a higher degree of rationalization may also be implemented, providing specific power restraints for both the legislative and executive branches to prevent political conflicts (Zebrowski, 2010, p. 115-116).

2.2.2 The parliamentary process of rationalization and its misinterpretations

Rationalized Parliamentarism is a concept of public law which has been continuously subject to misinterpretations. In order to understand what it consists of, which are it aims we need to go back to its very first sources, the studies of Boris Mirkine-Guetzévitch.

In the academic debate, the process of rationalization has been misunderstood in two ways. First, it has been considered the legal process through which Parliamentarism is provided with governmental stability. Second, it has been misinterpreted as the legal process through which the parliamentary executive is empowered against the legislative. To explain what rationalized Parliamentarism is, the French-Ukrainian author starts from defining modern parliamentary systems and their political meaning. «The political sense of contemporary Parliamentarism (…) [results] in the fact that it is the [parliamentary] majority that forms the cabinet». In modern States with highly-developed party systems, political parties compete for power. Therefore, the electoral struggle leads to a struggle for power, in which gaining power means obtaining the absolute parliamentary majority which, in turn, provides the power to form a cabinet. Once formed, the cabinet "belongs" to the winning party, so it executes its

political program and any extra directive, becoming a sort of executive committee. Thus, in contemporary Parliamentarism political parties compete to form their own cabinet (Mirkine-Guetzévitch, 1928, p. 21). In procedural terms, the parliamentary majority indirectly imposes to the Head of the State the candidate Ministers to form the cabinet, through some meetings with the latter and the party leaders, called consultations. Then, the Head of State is "forced" to formally nominate only those Ministers who are evidently supported by the majority inside the legislative Chamber. When this political procedure is bounded within a legally framework, Parliamentarism is rationalized. More specifically, when the Constitution states that legislative Chamber has the function to choose the Ministers, the executive-legislative interplay is legally formalized, and the parliamentary system is rationalized. Using the author's words: «The choice of the ministry made by the legislative Chamber (…) is the completion of the parliamentary rationalization process» (Mirkine-Guetzévitch, 1928, p. 22). Where instead this whole Ministers-selection process is the outcome of political pression over the Head of the Executive, with any legal characterization, there is a classic Parliamentarism. As a result, the process of parliamentary rationalization is defined as the effort to introduce the whole process of political life into the Constitutional framework, legally regulating Parliamentarism and so providing the standard political procedures with a legal nature. Basically, it means using legal means to obtain an outcome usually coming out from the free play of political checks and balances. In fact, rationalist constitution-makers wanted to counter the power weakening caused by frequent cabinets resignations, aiming to safeguard the State against a «stormy Parliamentarism». To this aim, they rationalized the system, by regulating the vote of confidence within the Constitutions and by providing the Government adequate means to protect itself from «thoughtless no-confidence motions», all without undermining the parliament's freedom.

The interwar period gave birth to similar Constitutions due to the fact that the countries came out from a violent World War which shocked the socio-political institutions. They all tended to rationalize power, trying to lock up the whole collective live within written law. By doing so, the political and the social factors

obtained legal nature. «The rationalization of power into Constitutional law is the substitution of the legal to the historical» (Mirkine-Guetzévitch, 1950, p. 607). Contrary to the majority of the pre-War experiences, the governmental political responsibility was no longer subject to general and vague formulations (Mirkine-Guetzévitch, 1930, p. 36). From these new Constitutions emerged the supremacy of the legislative power. The central problem of rationalized Parliamentarism is the attempt to regulate governmental instability, so to stabilize the executive through a special procedure, for instance the requirement of a specific quorum to approve the no-confidence motion. However, after World War II, it becomes clear that these provisions did not manage to stabilize the executive. This is so because governmental stability is a political problem, not a Constitutional or legal one, depending on how properly works the party system. For this reason, rationalizing governmental stability does not solve the problem; there is no legal provision than can solve a political problem (Mirkine-Guetzévitch, 1950, p. 613). Besides, the Constitutional document alone is unable to create a «democratic polity». Every procedure concerning the function of the regime must be studied not only on the Constitutional text but also while it is in action (McWhinney, 1952). For all these reasons, interpreting parliamentary rationalization as only the process through which Parliamentarism is provided with governmental stability is inaccurate. Moreover, despite the importance of the cabinet's stability, the rationalization process concerns the regulation of many other institutional features (Frau, 2016, p. 9). The attempt to provide steadiness to the cabinet is only one of the purposes of rationalization and also a failing one as explained above. Governmental stability becomes a constant feature of rationalized Parliamentarism only after World War II, within the new European Constitutions, with the aim to implement the conditions of efficiency and solidity already available in the British parliamentary form, through the mean of «binding procedures». Before this moment, governmental stability was not even a priority in the process of rationalization (Frau, 2016).

Moreover, parliamentary rationalization is not a process of empowerment of the executive against the legislative. Proof of this are those post-World War I Constitutions which implemented exactly the opposite tendency, that was,

empowering the Parliament by giving the parliamentary majority the power to appoint the cabinet and taking it from the Head of the State's hands. Of course, in some cases, rationalizing Parliamentarism may mean providing the executive with a bigger political power, but it is a political one and it is still under the parliamentary control. Since it is not meant to empower any particular Constitutional body against the other «the rationalization of Parliamentarism can tend both to the governmental stability and to the strengthening of the executive, as it can tend, to the contrary, to the strengthening of the legislative» (Frau, 2016, p. 10-11). In his following studies, Boris Mirkine-Guetzévitch himself believed into the political supremacy of the executive; but only a political one. In his opinion, the political sense of contemporary Parliamentarism is that the majority needs to have its own executive. However, if in his first studies he deeply believed into the usefulness of parliamentary rationalization to regulate interplay forming the cabinet, in his following studies he believed more into the party system and the role of political parties. In the latter, he considered the political supremacy of the executive to be the true meaning of Parliamentarism (Mirkine-Guetzévitch, 1950, p. 608). If to govern means executing law, taking initiatives, giving impulse to public life; then the executive must have the monopoly of legislative and budgetary initiative. The executive must politically legislate. Consequently, the process of rationalization is not meant to produce a dominant executive because there is no need for that. The need is to provide the latter with the needed political supremacy so to execute its governing functions, and to this aim the proper functioning of party systems seems to be more efficient than parliamentary rationalization, which proposes legal solutions for the political problem of Government composition.

Overall, parliamentary rationalization is a dynamic process, which has never concerned a specific institutional element, but meant to give a Constitutional legal framework to the whole political interplay. Nowadays, the rationalization is still on-going process, constantly evolving, reason why its meaning may need to be often updated (Frau, 2016, p. 10-11).

2.2.3 A more in-depth analysis of the semi-presidential form of government

Semi-presidentialism has constituted a controversial issue for many years in the academic debate and for certain aspects it is considered so still today. Not all the scholars agree on its efficiency as an autonomous form of government placed between Presidentialism and Parliamentarism and, among those who do agree, there are different points of view concerning its definition and which countries belong to it (Duverger, Linz, Sartori, O'Neill). There are mainly two definitions that can be analyzed but only one will be chosen because it leaves more space for comparative perspectives. The term 'Semi-presidentialism' started to be used in the academic debate in the 1970s thanks to the work of the scholar Maurice Duverger. He first referred to the subject in 1970 (Duverger, 1970), then he dealt with it more into detail in the following years (Duverger, 1974) (Duverger, 1978) but only in 1980, once that his first English article was published, the idea of Semi-presidentialism started to spread internationally. However, the very first time the term was used, it was in 1959, when Hubert Beuve-Méry, founder of the French newspaper *Le Monde*, referred to it in the popular context (Beuve-Méry, 1987) (Elgie, 1999). This study considers Duverger's definition and list of semi-presidential countries starting from 1978, skipping the evolution of the latter in the author's work. Given that Duverger himself seemed to not have a clear idea about the concept since the beginning, it is understandable that a lot of confusion surrounded both the proper definition and the list of systems involved into this category. From 1978, the work of the French scholar states that: «A political regime is considered as semi-presidential if the constitution which established it, combines three elements: (1) the President of the Republic is elected by universal suffrage, (2) he possesses quite considerable powers; (3) he has opposite him, however, a Prime Minister and Ministers who possess executive and governmental power and can stay in the office only if the Parliament does not show its opposition to them» (Duverger, 1980). Among this definition's criticized ambiguities, there are mainly three which raise some issues and need to be discussed. The ambiguities are: mixed

system nature of Semi-presidentialism, the ambiguity of the President's direct election criterion, problem of presidential powers.

First and foremost, according to many scholars, Duverger's definition implies that Semi-presidentialism is a *mixed form of government* which simply combines some elements of Presidentialism with some of Parliamentarism, without building an autonomous institutional structure, reason why it is criticized, considered impure and conceptually not authentic. In fact, only combining components from other systems is considered to be source of incoherence, which would lead these hybrid forms to periodically alternate between the dominance of presidential or parliamentary elements (Pactet, 1995) (Conac, 1992) (Elgie, 1999). However, despite the fact that Duverger has always admitted the term to be often opposed by French constitutionalists because of its apparently mixed nature, he has clearly stated that there is no valid reason to consider it as such. In fact, these systems share the same semi-presidential Constitutional structure, clearly designed and purpose-oriented; therefore, there cannot be any structural alternation. What they do alternate, instead, are the political practices they establish. As a result, it is misleading to consider Semi-presidentialism as a mixed form of government, which makes the first critic invalid. The second ambiguity concerns the *direct election of the President*. It seems from the definition that only those Presidents who are literally elected through universal suffrage may be part of Semi-presidentialisms, while Duverger, in his list, includes also experiences in which the Head of State is indirectly elected, better said through an electoral college. Some examples are the Finnish case prior to the 1988 Constitutional reform and the Irish case, in which the Presidents often result from the conspiration of political parties working all together so that the Head of State gets elected unopposed and actually results to not be directly elected. To Duverger, all of this is irrelevant. However, this study embraces Elgie's point of view, according to whom, there can still be some ambiguity, reason why he prefers to stick with Sartori's idea of the Head of the State being popularly elected, independently from the direct or indirect form of this election (Elgie, 1999) (Sartori, 1997). Consequently, this second ambiguity does raise some controversial issues, but Elgie solves them choosing to interpret Semi-

presidentialism as a system in which the Head of the State is popularly elected. The third ambiguity concerns *the President's "quite considerable" powers*. Among the cases proposed by Duverger, not all of them present this peculiarity, reason why the definition is again criticized. However, in his definition, Duverger refers to the Constitutional arrangement that legally defines the President's "quite considerable powers", therefore a peculiarity that is constitutionally shared by these countries. What they do not share, again, are the different political practices adopted, which affect the way in which Semi-presidentialism is declined in practice, but which do not affect the legal form of government at all. As a result, the different political practices adopted have no influence on the Constitutional rule and they do not affect the belonging or not to the semi-presidential form. In support of his thesis, Duverger makes a comparison with the different types of Parliamentarisms, for instance the German and the Italian ones, which are still included in the same category despite their different way of functioning. For this reason, he concludes: «parliamentary regimes demonstrate just as much heterogeneity [as semi-presidential regimes] » (Duverger, 1978) (Elgie, 1999).

To overcome all the available criticisms and remedy to the available confusion, Elgie formulates a simplified definition, focusing on explaining how do come and then stay into office the President and the Prime Minister, avoiding any reference to their concrete powers because, as stated, these last depend on the political practices applied by every individual experience. In his opinion: «A semi-presidential regime may be defined as the situation where a directly elected fixed-term President exists alongside a Prime Minister and cabinet who are responsible to parliament» (Elgie, 1999). However, as Elgie himself admits, it is better to speak about popularly rather than directly elected Presidents because the direct election of the Head of the State may be a necessary condition but not a sufficient one for defining Semi-presidentialism. From now on, this study will rely on Elgie's definition because it allows to build comparative analysis among semi-presidential systems with political and cultural practices that vary a lot. The result is that all the contemporary Semi-presidentialisms have in common the same set of fundamental Constitutional features, but they differ in the way in

which they exercise political power. They are all characterized by a Prime Minister accountable to the Parliament and a popularly elected fixed-term President, but the balance they reach between them may vary greatly. Using Elgie's words: «constitutionally strong Presidents are sometimes politically weak and constitutionally weak Presidents are sometimes politically strong. Presidents sometimes dominate Prime Ministers. Prime Ministers sometimes dominate Presidents. Sometimes neither one dominates the other». A situation that Duverger defines «similarity of rules, diversity of games» (Elgie, 1999, p. 14).

In order to understand the varieties inside the semi-presidential system, Duverger illustrates three determining factors, that are: the events surrounding the formation of the system, the Constitutional powers of the president, Prime Minister, and parliament, the nature of the parliamentary majority and the relationship between the President and the majority (Duverger, 1980, p. 167-173) (Elgie, 1999, p. 14-18). The *events surrounding the formation of the system* have a great impact because they represent the persisting national differences which may disrupt the concrete functioning of Constitutional rules. Based on its historical, cultural and political background, a State implementing Semi-presidentialism may decide to do it for: symbolic reasons, governability reasons or transition to democracy. Usually, the systems which chose Semi-presidentialism for purely symbolic reasons are those which have just reached independence after having been under a foreign Monarch and which now want to consolidate democracy through a popularly elected Head of the State, whom however does not have to be too strong. In fact, they usually correspond to semi-presidential forms with a figurehead presidency. When chosen for governability reasons, is because there is the need to improve the Government's efficiency and stability after a political collapse, as could be the case of the French Fourth Republic. If instead it is adopted during the transition period, Semi-presidentialism may be fulfilling different needs: the need for a strong President guaranteeing a safe transition, the need for a directly legitimated leader who however does not have too much power concentrated in his hands or the need to have an efficient power-sharing among President, Prime Minister and

Parliament (Elgie, 1999, p. 18) (Romania chose it more or less for all these reason, see paragraph 3.2.2).

The second factor concerns the Constitutional *powers of the President, Prime Minister, and Parliament* which vary greatly among the different semi-presidential versions. It is important to know which of them has which function in order to understand the legal balance of power and the concrete political interaction. According to Duverger, there are three ways in which the Constitutional powers may be distributed. In the first one, the Head of the State is just a "controlling force" who acts as a Constitutional guardian, being less involved into the running of the country and so having less power (Duverger, 1980, p. 167-173). In the second case, the President has more power because, besides being a guarantor, he also has the power to unilaterally dismiss the Prime Minister. In the third type, the Head of the State is a truly governing force, he has the power to govern the country in cooperation with the Prime Minister and its cabinet (Romania's case, paragraph 4.3.2). However, Duverger affirms that despite their relevance, Constitutional arrangements are of secondary importance because they do not always correspond to the political practices, which instead really shape the concrete functioning of the system. For instance, presidents constitutionally designed as controlling forces might actually have greater concrete governing powers while presidents constitutionally designed as governing forces might have, on the contrary, less concrete powers (Duverger, 1980, p. 167-173) (Elgie, 1999, p. 16).

Another distinguishing factor is the *nature of the parliamentary majority and the relationship between the President and the majority*. The party-system impacts the nature of parliamentary majority and consequently the relationship of the latter with the Head of the State. Also, this influencing factor produces three different situations: absolute majority, relative majority or no majority. In the first case, there is an absolute majority in the Parliament granting the Government's safety. It can be a monolithic one, when only one party holds or a coalition with one prevalent party holding it. Relative majority, instead, consists of one party possessing the majority of parliamentary seats but without having the «overall majority» (Elgie, 1999, p. 19). In his case, the Government

is less safe than in the first one. In fact, if there's an alternative cabinet pressuring, the one in charge is in danger, while it can be a little bit safer in the case in which the political opponents are fragmented and need to first reach a coalition to really pressure the cabinet in the office. The no majority case, instead, is constituted by a big number of small parties sharing parliamentary seats, representing different interests which may hardly reach a political compromise, which in turn means that governability is affected in a negative way, producing instability and volatile coalitions (Elgie, 1999, p. 19). Logically, different types of parliamentary majorities, shape differently the relationship between the President and parliamentary majority. In fact, the Head of State may be the majority's leader, only a member of the majority, a member of the opposition or a neutral figure. Combining the nature of the majority and the one of the presidents, two important situations arise. First, a *prevalent President* when he is the leader of an absolute, monolithic parliamentary majority, because by dominating the majority he will have big influence on the Government who needs the parliamentary confidence. As a result, the Prime Minister will be subordinated to the President and to the majority providing him the democratic legitimation. A situation that is also called «presidential practice» (Cotta, Della Porta, & Morlino, 2008). Second, a *symbolic President* when he is member of the party having a relative parliamentary majority (Elgie, 1999, p. 19), that does not directly impact the governing function. In this case but also in the one in which the President is a member of the opposition, Semi-presidentialism is characterized by a more parliamentarian practice. In fact, if there continuously are parliamentary majorities opposed to the President (the so-called cohabitation), then, it is the President who results somehow subordinated to the Prime Minister, who becomes the governing force (Cotta, Della Porta, & Morlino, 2008). Cohabitation between different majorities supporting the President and the Prime Minister were thought to be source of a balancing force between the two heads of the executive, granting the democratic principle. However, in the concrete case of Romania this has not been as such. On the contrary, cohabitation periods have often been detrimental for the democracy (paragraph 4.3.2). Combining these three sources of variety, different types of

Semi-presidentialism may arise, according to the different available points of view in the academic debate. Nevertheless, for our purpose, Shugart and Carey's sub-types will be taken into consideration. They distinguish two sub-forms of Semi-presidentialism: Premier-presidentialism and President Parliamentarism. «*President-Parliamentarism* is a form of Semi-presidentialism where the Prime Minister and cabinet are collectively responsible to both the legislature and the president» whereas «*Premier-presidentialism* is a form of Semi-presidentialism where the Prime Minister and cabinet are collectively responsible solely to the legislature» (Elgie, 2011, p. 28) (Shugart & Carey, 1992). They concern little difference in the executive-legislative interplay, that produce different political outcomes. The President-parliamentary form seems to produce more dangerous outcomes, because in it the Government is accountable to the Head of the State and the legislative body at the same time. This dual accountability creates institutional confusion and instability, because there is not a specific authority checking the Government according to a unique criterion. In fact, there are two different authorities checking. In this situation, both the parliamentary majority and the President may try to hold power unilaterally in order to dominate the other authority, giving birth to an ongoing conflict that may even lead to the collapse of democracy or there can be a military intervention trying to restore order, which would again reduce the democratic nature (Shugart & Carey, 1992). Both the President and the legislative body, when wanting to unilaterally increase their power, they have only one way to do it, that is to go against its antagonist (Elgie, 2011, p. 33-34). The Head of the State may try to do so by forming a presidential Government, which may go against the legislature and so be dismissed by the latter. At this point, the legislative body itself would be guilty of the available instability. The President would then appoint another Government, which if dismissed again would create big political costs and after a while the legislature would find itself forced to accept a presidential Government and basically let the President dominate. At the same time, the Parliament could try to form its own Government and in the case the President continuously refused the offer, it would be him the one blamed for the instability. In this sub-type, the Government may be the result of a compromise or just the

result of one of the two authorities dominating. However, both the President and the Parliament have little convenience in tolerating the other authority's cabinet. For all this reasons, President-Parliamentarism is thought to be characterized by a general political instability (Elgie, 2011, p. 35). On the contrary, in Premier-presidential systems, there is a lower possibility to damage democracy. This is so, because the President, in order to exercise his influence over the cabinet, he necessarily needs to collaborate with the parliamentary majority since the latter is the only one capable to dismiss the cabinet once appointed (Elgie, 2011, p. 31-32). For the President, collaborating means transferring a part of his powers to the legislature. If he does not want to do so, he can impose a president's Government, but this would not be convenient for him because it would immediately antagonize the legislative body. As a consequence, the parliamentary majority would vote against the presidentially imposed cabinet and would even try to form an anti-presidential cabinet over which the present would never have any kind of influence. Since all of this is inconvenient, under Premier-presidentialism the President has a natural incentive to negotiate with the legislative body. Moreover, the legislative body itself has an indirect incentive to do so. Being the only one able to dismiss the cabinet trough the motion of no confidence, the Parliament may be willing to maximize its power and refuse to collaborate with the President without any consequence in short term. In long term however, the political party or the coalition having the absolute majority would be blamed for any political instability or failed policy, causing its loss of seats at the next election. It is instead more convenient for the Parliament to collaborate with the president, in order to share responsibility for any critical issue.

How about the concrete functioning of Semi-presidentialism? There are some benefits and disadvantages of choosing a semi-presidential structure, with a consequent impact on the performance of democracy. Their analysis is useful to find out if is true, as many scholars argue, that Semi-presidentialism is dangerous for the proper functioning of democracy. Starting with the weaknesses, there are three potential disadvantages: the dual executive, the dual legitimation and the winner-takes-all principle in presidential elections (Elgie, 2011, p. 11-17).

The *dual executive* is considered to create «problems of executive coordination that may weaken the performance of democracy or even threaten its very existence». An uncoordinated dual executive is weak, does not provide a coherent political agenda and «no clear lines of political control over the military» (Linz J. , 1994, p. 55-59), which endangers democracy itself. Incoordination consists of the President and the Prime Ministers developing very different policies, chocking one with the other; or, different positions on the same issue, blocking the decision-making process. The struggle between the President and the Prime Minister slows down the policy-making process and leads to contradictory policies (Elgie, 2011, p. 12). The second problem concerns the *dual legitimacy principle*, according to which both the President and the legislature are directly elected, allowing the existence of different legitimation for the President and the Government, since the latter is supported by the parliamentary majority. Two situations may occur: cohabitation or divided minority Government. Under cohabitation, the main focus is the conflict between the executive and the President, since the Head of the State and the Head of the Government are legitimized by two opposed political parties, of which only the one supporting the cabinet has the parliamentary majority. The direct implication is that the President is not supported by the parliamentary majority. The second form instead, is the divided minority Government and its main focus is the conflict between the executive and the legislative power. It has been defined as a situation in which «neither the President nor the Prime Minister, nor any party or coalition, enjoys a substantive majority in the legislature» (Skach, 2005). In this case, the problem may arise from a segmented parliamentary majority, uncapable to provide a solid support to the Government. As a result, the governability becomes harder, the policy-making process gets paralyzed, leaving a political gap. The legislative power gets immobilized while the president's powers become dominant. The Head of State may then be willing to fill the emptiness, profiting the situation to acquire power, ruling by decree or dismissing the legislative Chambers, seeking for new parliamentary majorities in his favour. At the same time, the military body may also be willing to fill the political gap. In both cases, there is a high risk for the rule of law to be broken.

As a result, this second criticism warns against the implementation of Semi-presidentialism in early democracies characterized by a volatile party system. The third and last criticism concerns *the winner-takes-all principle* in presidential elections. The main problem that this rule causes is a "zero-sum" situation, in which the winner gets all the votes while the loser, loses it all (Elgie, 2011, p. 13). However, the Government's accountability to the parliamentary majority partially balances the President's high powers. Despite that, there can still be situations in which the legislative checks and balances fail. For instance, when the political majority supporting the Head of the State is the same supporting the Government, both the Government and the Parliament may be so loyal to the President that they implement his political program without any objection. This would be a case of high personalization, in which democracy may be endangered if the President is not devoted to it.

The three disadvantages all raise some serious issues to debate, but there are also benefits to be taken into consideration, that can even counter the critics. Semi-presidentialism presents manly two important benefits: the potential for power-sharing and the flexibility (Elgie, 2011, p. 14-16). There is a potential for *power-sharing* within the semi-presidential dual executive, in which both the Head of the State and the head of the Government with its cabinet are active and share the executive power. The executive branch as a whole, it is not a «winner-takes-all institution», only the presidency is so, but it is then balanced by the head of Government who possess a different legitimation. For this reason, the third criticism it is immediately disproved. In fact, this power-sharing structure in the executive branch allows democracy to be even safer under Semi-presidentialism, because it allows two different political groups to be represented and participate in the governing function. Furthermore, another benefit directly linked with the first one, is the *potential flexibility* of the institutional system. The dual nature of the executive provides a certain flexibility of power since it switches from the presidents to the Prime Ministers, depending on whether the legislative majority supports the Head of the State or not. As a result, this second advantage may be a counterpoint to the second criticism, that is the dual legitimacy principle when it concerns cohabitation.

In the end, according to Elgie, there is not enough evidence supporting the idea of Semi-presidentialism being dangerous for democracy and its stability, especially under cohabitation situations (Elgie, 2008) (Elgie & Mcmenamin, 2008). However, it must be admitted that there is not a wide consensus towards the implementation of this form of government in the academic debate because «there is a broad consensus that the disadvantages of Semi-presidentialism outweigh the advantages» (Elgie, 2011, p. 4). As the other forms of Government, Semi-presidentialism, may better fit certain cultural backgrounds than others, reason why it is not possible to State that it only produces benefits or only dangers for the democratic solidity. In fact, some case studies have shown that in some experiences it has helped democracy, such as those of the French Fifth Republic, Central and Eastern Europe, especially in post-communist countries, and Mongolia (Fish, 2001) (Frison-Roche, 2005). In other cases, it endangered the proper working of the institutional systems, such as the cases Russia, Guinea-Bissau, the Republic of Weimar in Germany and more generally the Sub-Saharan Africa (Huskey, 1996) (Kirschke, 2007) (Skach, 2005) (Akokpari & Azevedo, 2007).

2.2.4 Underlining similarities and differences

After having analyzed in detail the two key forms of government for this study, it is useful to present a brief comparison of their Constitutional arrangement and political practices since in the third chapter two concrete cases – Romania and Italy – will be studied. Semi-presidentialism combines parliamentary and presidential components in order to build its institutional structure. For this reason, there will be both common and different features with Parliamentarism. The main factors on which this paragraph is based are the existing differences in the executive-legislative interplay and the ones existing in the executive-head of the executive relationship (Fabbrini, 2008, p. 100-108). Both of the factors are key to the system of Government, defined as that section of the political system which structures the interaction among the actors participating in the decision-making process, that are: the legislative, the

executive and the head of the executive. The system of Government is different from the form of government because it concerns the existing relationship among institutions and leaders, not only among institutions. Following Fabbrini's work, three key elements are compared: formation, operativity and accountability of Government (Fabbrini, 2008, p. 100).

Concerning the executive's *formation*, in Parliamentarism, it is formed inside the legislative branch because is it selected by the parliamentary majority, which provides the vote of confidence, after which the Head of State usually proceeds with the formal appointment. However, his selection is deeply influenced by the party system. In two-party systems or bipolar mechanisms, the result of the elections greatly impacts both the formation of the Government and the selection of the Prime Minister. In these systems the Prime Minister is the leader of the winning party or one of the most influential parties within the winning coalition. Differently, in multiparty systems or non-bipolar mechanisms, the results of the election do not influence since the parliamentary majority is usually formed afterwards through negotiation among those party leaders who agree to negotiate. As a result, the Prime Minister is the leading figure capable to guarantee the party negotiation. In Semi-presidentialism, instead, there is a dual nature of the executive consisting of two competing actors – the President and the Prime Minister – both of which hold the governing power. Because of this double-sided structure, there is a slightly different procedure for the executive composition. It consists of a double selection for the two executive heads. One head of the executive – the President – is directly elected through universal suffrage while the other – the cabinet and its Prime Minister – is indirectly elected and formed inside the legislative. Exactly as for Parliamentarism, also in Semi-presidentialism the Government's formation varies because of the party structure. In fact, Duverger himself affirmed that «the structure of parties and the relationship between them is more important than Constitutional powers» when explaining why semi-presidential regimes function so differently (Duverger, 1971). Overall, in both cases, the cabinet is formed inside the legislative, meaning that it is accountable to the latter through the vote of confidence. Furthermore, thanks to the institutional checks and balances, the

Head of the State has the power to dismiss the legislative Chambers in semi-presidential systems while he may have the eventuality to do so in parliamentary systems. In the last case, it depends on the sub-type and party-system, since in a two-party system with a dominant Government there would be more possibilities to dismiss the legislative. In a legislative-dominant Parliamentarism instead, with a multi-party system, it would be definitely harder to do so (Cotta, Della Porta, & Morlino, 2008). Lastly, in both the systems the Head of the State and the Head of Government are separated charges.

In *operative terms*, the two systems are more similar. In fact, in both the parliamentary and the semi-presidential forms of government the executive depends on the vote of confidence of the Parliament, without which they cannot be operational. Thus, both the cabinets are accountable to the legislative body, which has the power to control and sanction the Government. It is true that the semi-presidential executive is also composed by a President elected independently from the legislative; however, his «electoral independence» does not imply that he also has «operational independence», since he can handle his governing functions in collaboration with the Government only if the latter has the confidential support, being it implicit or explicit (Fabbrini, 2008, p. 106). Obviously, the President's operativity dependence is due to the existing fusion of powers system, between legislative and executive, that is inherited from the parliamentary Governments. In fact, even if Semi-presidentialism combines parliamentary and presidential components, it has not inherited the separation of powers system available in Presidentialism, thanks to which the President is operationally autonomous, so he may rule even with an opponent legislature (Fabbrini, 2008, p. 115-119). Thus, *accountability* is of great importance. In parliamentary systems, since the Government has a collegial nature, so it is its political responsibility. There is a collective governing responsibility held by the cabinet whose existence is constitutionally recognized as the place in which the decisional power is summarized. Nevertheless, the cabinet's responsibility is not the same in all the parliamentary systems, because it is influenced by the existing models of democracy. As a result, there is a variation between competitive and consensual democracies. In competitive parliamentary systems, being there a

bipolar logic, the cabinet is the outcome of the majority which emerged from the elections. This means that the winning majority is directly accountable to the voters and that there is a clear figure holding the political responsibility, which can be later on punished or rewarded for its work. Conversely, in consensual parliamentary systems, accountability is harder to identify because there is no clear figure held responsible for the implemented. This depends on the fact that consensual parliamentary majority are formed through negotiation among parties, after the elections, making it impossible for the voters, at the end of the mandate, to establish who is to be blamed for what. In semi-presidential systems, instead, the dual nature of the executive is again decisive. In fact, accountability has in here a dual nature, meaning that both the President and the Government share the political responsibility for their decision-making process, but it has different sources. Because of his direct democratic legitimation, the Head of the State is held directly accountable to the electors, who may decide to vote again or not for his supporting party at the following elections. The semi-presidential cabinet instead, is accountable to the parliamentary majority providing it with the vote of confidence. This dual accountability may work fluently when both the President and the Government are supported by the same political majority, while it can be very complex when there is a cohabitation situation. In fact, two different political directions, forced to work together a dual executive, have to overcome their contrasts and govern together. If they manage to do so, at the end of the mandate, it will be hard for the electors to clearly identify who is to blame for what (Fabbrini, 2008, p. 105-108). In like manner, the different models of democracy influence also semi-presidential accountability; in fact, there can be consensual semi-presidential systems – Finland – and competitive semi-presidential systems – France of the Fifth Republic (Elgie, 1999, p. 68-84).

Equally important is the existing relationship between the executive and its head, for which the focus is the executive's composition and the executive direction (Fabbrini, 2008, p. 130-152). In parliamentary systems, the Head of the Government has a separated charge from the Head of the State, and he usually has bigger decisional power than the latter. The Head of State may be a Monarch or a President but, in both cases, he holds mainly formal powers, such as

representing national unity and guaranteeing the respect of the Constitution. Moreover, the Head of the State formally selects the Prime Minister, but concretely he is granted his functions by the legislative body once that the latter provides him the confidence. As for the Government formation, also the Prime Minister's investiture depends on the available model of democracy. In competitive democracies, the candidate Prime Minister emerges from the elections, as head of the winning party or strongest party in the winning coalition. Afterwards, the Head of the State formally appoints him, and then the Parliament proceeds with its official investiture, but the way in which this is done depends on the country. While in the United Kingdom the head of the Government is appointed by the Queen without any need to gain the explicit support of the House of Commons, in Germany the chancellor has to be appointed by the Bundestag, as established by the German Constitution. These different procedures bring with them different powers for the Prime Minister. In fact, the English Premier may dismiss the parliamentary Chambers while in the German case this power is held only by the Head of the State. Conversely, in consensual democracies, the candidate Prime Minister emerges after the elections, and it depends on the parliamentary majority negotiated by the involved political parties; thus, it is the outcome of an inter-party mediation. For this reason, in consensual democracies, Prime Minister has a weaker position, being a *primus inter pares*. In semi-presidential systems, because of the dual-source of legitimation, the composition of the executive depends on whether there is a cohabitation or a consonance situation. Under consonance situations, both the Head of Government and the Head of the State are supported by the same political party, meaning that there is a harmony of political aims. In this case, the President tends to have more influence in the Ministers' appointment procedure while under cohabitation, where President and Prime Minister have different political parties supporting them, it is the Prime Minister who tends to be more influent. Concerning the executive's direction, parliamentary Government are collegially directed by the Council of Ministers as a whole. However, the difference between competitive and consensual democracies is influent again. In fact, the collegial responsibility principle is strongly

implemented in consensual democracies where there usually are coalition Governments to which this principle guarantees the respect of the coalition pact. In competitive systems instead, the collegial responsibility principle is implemented in a higher or a lower degree depending on how much is the decision-making process centralized into the hands of the Premier. Semi-presidential executives, instead, are characterized by two heads competing for their direction. Originally, since this form of government was born into competitive France, the governing action tended to be centralized. Nevertheless, centralization may move into the President's or to the Prime Minister's hands, depending on whether there is a cohabitation or a consonance. Under consonance situations, the President tends to be the one holding power to set the political agenda, becoming a *primus sine pares*, while the Prime Minister is left with coordination and execution functions. On the contrary, under cohabitation, the Prime Minister tends to be the one holding power to set the political direction, becoming a *primus super pares* while the President is left with more formal powers.

Overall, Semi-presidentialism and Parliamentarism share many institutional features: cabinet formation inside the legislative, executive operational dependence on the vote of confidence, the fusion of powers system and the accountability clarity depending on the democracy model. Both the forms of government have a great degree of flexibility when applied to a specific cultural background, to which they easily adapt giving birth to internal variations, here previously called sub-types. Equally, both of them present two main sub-types. Parliamentarism is divided between: cabinet-parliamentary system and the parliamentary-cabinet system, while Semi-presidentialism is divided between President-Parliamentarism and Premier-presidentialism. Nevertheless, there are also some important differences. For instance, in Parliamentarism, the Head of the State indirectly gains his democratic legitimation through the parliamentary mediation whereas in semi-presidential systems the Head of the State and the Parliament both have and independent direct democratic legitimation. In the same manner, despite both the cabinets being operatively dependent of the legislative vote of confidence, the executive is differently composed in the two

systems. In fact, as stated multiple times, the semi-presidential executive is composed by two heads – Prime Minister and President of the Republic – while the parliamentary executive is structured as a collegial, whose Prime Minister may sometimes be dominant.

The present comparison is useful to understand why the democratic transition in Italy and Romania gave birth to these two different forms of Government, which were the Constitutional needs to satisfy and which were and still are the implications. To answer these questions, the next chapter will first analyze the previous dictatorial regimes – Fascism in Italy and Communism in Romania – and their democratic transitions.

3 Comparing origins. From different historical backgrounds to different democratization processes. Is there any space for similarities?

Before comparing the contemporary forms of government of Italy and Romania, it is indispensable to understand from which background they have emerged and especially what type of regime preceded them. Since the present is always linked to the past, the characteristics of the two previous regimes may explain why the two experiences are working in a specific way nowadays. For this reason, this chapter focuses on seeking for common features between the Italian and the Romanian dictatorships and between the following two transition processes, despite the evident different historical, political and cultural backgrounds of the two countries. Section 3.1 analyses the most relevant characteristics of the Italian Fascist regime and of the Romanian Communist one. Section 3.2, instead, examines the democratic transitions of the two States, referring to the main Constitutional debates within the Constituent Assembly as well as to the main political actors. Based on these first two, section 3.3 looks for similarities both during the two dictatorial regimes and the two democratic transitions, claiming that there was a common totalitarian vein which may have paved the way for similar Constitutional needs during the constitution-drafting procedure. The different way in which the latter were constitutionally answered is also illustrated, claiming it may have depended on the fact that the Italian Fascist Regime and the Romanian Communist Regime reached different degrees of totalitarization.

3.1 Experiencing dictatorship

3.1.1 The characteristics of Mussolini's Fascist Corporate State

The crisis of the Italian Liberal State became evident after the first post-WWI elections. Held on November 1919, the elections were based on the proportional electoral law for the first time. The liberal-democratic groups –

which participated separated to the elections – lost many seats (from more than 300 to approximatively 200) whereas the socialists won 156 seats (three times more than in 1913), being the first mostly voted party. The Popular party instead won 100 seats (Sabbatucci & Vidotto, 2008). The result was a fragmented and unstable political system, incapable neither to rule according to the pre-war liberal democratic system nor to give birth to a new one. Meanwhile, the fascist movement born in 1919 in San Sepolcro – the *Fasci Italiani di combattimento* – was becoming more active within the country. Until 1920, it acted on a local basis, not reaching enough consensus; but between 1920 and 1921 it transformed into a para-military structure movement – whose units were the so-called *squadre d'azione* – which acquired an anti-socialist key. The aim of the fascist movement was violently attacking socialist headquarters and municipalities (Sabbatucci & Vidotto, 2008).[1] In the attempt to calm down the internal political struggle, Prime Minister Bonomi proposed a peace pact in august 21st 1921, to be signed both by the socialists and the fascists. This pact was part of Mussolini's strategy to enter the national political game with his fascist movement, but the local fascist leaders (Farinacci in Cremona, Balbo in Ferrara) did not want to. In the end, Mussolini did not sign the pact to keep being the recognized Fascist leader. Nevertheless, once he was sure he was supported by the local leaders, Mussolini transformed the movement into the *Partito Nazionale Fascista* (PNF - National Fascist Party), counting on more than 200.000 members and profiting the general weakness of the system to acquire consensus (Sabbatucci & Vidotto, 2008). Thanks to its transformation, the PNF entered the Parliament during the 1921 elections. Meanwhile, the governmental instability continued, paving the way for the disruption of the liberal system. In fact, on October 28, 1922, Mussolini led the *Marcia su Roma*, (the March on Rome) an armed fascist manifestation aimed to ask for the power to guide the country, threatening to take it with violence in the case of denial. The King, Vittorio Emanuele III, gave in to the fascist pressure, appointing Benito Mussolini as Prime Minister on

[1] A very famous event is the event of *Palazzo D'Accursio* in Bologna. On November 21st, 1920, the new socialist administration was being celebrating while the fascist *squadre d'azione* attacked the municipality. In the confusion, the socialist charged with the Palace's protection fired on the crowd, killing more or less ten people. This episode is considered the birth act of the so-called agrarian Fascism.

October 31st, 1922. His first one was a coalition Government, still within the liberal institutions (Sabbatucci & Vidotto, 2008). The consolidation of the Fascist Authoritarian State arrived progressively in the next years, following specific events: the so-called *Acerbo* electoral law (law 2444/1923), the 1924 elections, the murder of the socialist Giacomo Matteotti and the subsequent retirement of the opposition from the Parliament (known as the *Aventino*), the abolition of parliamentary confidence, political freedom and of the multi-party system. The *Acerbo* electoral law was approved in the summer of 1923 and it consisted of giving 2/3 of the seats to the first winning list on the condition that it reached at least 25% of votes. With this measure, Mussolini strategically controlled the parliamentary majority since 1924, thanks to which he dismantled the Liberal State in the following years (Sabbatucci & Vidotto, 2008). The solid parliamentary majority, the general systemic weakness and the fragile Monarchy, who did not declare the State of siege, the post-World War I economic crisis and the influence of the Russian revolution created a fertile ground for implanting Mussolini's Fascist Corporatist regime. From 1924 to 1943 there was an authoritarian single-party system, the *Partito Fascista Nazionale* (PNF - National Fascist Party) which consolidated even more from 1925 on through a variety of measures. Among them, there is the 1928 electoral law in which voters were submitted a national unique list on which they could only express a negative or a positive vote (law 1019/1928) (Bin & Pitruzzella, 2015, p. 39-41). With the latter, the contraposition among different ideological lists was abolished, consolidating a decisive break with the *Statuto Albertino* (the Albertine Statute), the Italian (flexible) Constitution adopted in 1848 and extended to the United Italian Kingdom in 1861 (Marongiu, 2018).

In December 1925, the regime adopted an important Constitutional law which enforced the Prime Minister's powers against the Ministers and the Parliament.

In December 1928, the *Gran Consiglio del Fascismo* (the Grand Council of Fascism) was declared the supreme body, coordinating the regime's activities, holding the executive power, the power to stipulate international treaties and to deal with the relationship between the Italian State and the Holy See. Moreover, on September 16th, 1929 Mussolini moved the official headquarter of the Prime

Minister from *Palazzo Chigi* to *Palazzo Venezia*, in order to take a full distance from the Liberal State (Marongiu, 2018). The PNF was integrated with the Constitutional organization, becoming the State's constitutive element. As a consequence, the system gained a totalitarian vein, in the sense that the collective life was wholly integrated within the State, providing it with the power to manage social and individual life and influencing the liberal freedoms (Bin & Pitruzzella, 2015, p. 39-41) (Marongiu, 2018). An importantly totalitarian style provision was the adoption of the racial laws in November 1938, aimed at enforcing discrimination against the Jewish minority living in Italy. The law was being adopted because of the alliance with the Nazi Germany, signing the so-called *Patto di Acciaio* (Steel Pact) in May of the same year.

The fascist corporativism was a socio-political doctrine supporting the collaboration among social classes and categories, whose manifesto was the *Carta del Lavoro* (the Labour Charter). Adopted in 1927, the latter constituted the primary source of corporative law and it defined the general setting of the Fascist State's legal order. It remained in force until 1944, when it was abrogated. The aim was to provide an alternative way of organizing the society, where every economic, political and social activity was subordinated to the PNF. The individual was meant to identify himself and his willing with the State's one, transforming his "selfish" personal interest into the public one, which deserved more respect and protection. By organizing the society in this way, corporativism was meant to give representation to all the Nation's interests, being them economic or not. In 1926, the Ministry of Corporations was created, declaring that the Syndacalist-Corporate State was the proud result of the Fascist revolution, which put an end to the agnostic Liberal State. After two years, in 1928, the Fascist Government asked the Parliament to be granted the power to adopt norms having the force of law. Once that it gained these powers, the Head of the Government transformed the *Consiglio nazionale delle corporazioni* into the supreme body regulating the national economy. Mussolini saw in the Corporate State the solution both to the capitalist and the socialist crises, declaring it to be the «milestone of the Fascist State» (Marongiu, 2018, p. 26). Four years later, national corporations were created, composed by the syndicates

which defined their aims in line with those of the PNF. Their goal was to implement the *Carta del Lavoro* and to represent the labors' interests. Under the labour category every professional working figure was included, both entrepreneurs and workers, neutralizing the fight among social classes. On January 19th, 1939, the legislative representation within the Corporate State was reformed through the adoption of a law founding the so-called *Camera dei fasci e delle corporazioni* (Chamber of Fasci and Corporations). The measure put an end to every legacy of the previous liberal democracy; in fact, the Chamber of Deputies was officially eliminated. The importance of the *Camera dei fasci* was more abstract than concrete since it represented the apex of the regime's fascistization. However, it had brief life, only until August 2nd, 1943, when it was abolished with the Fascist's regime implosion (Royal Decree Law 705/1943). In the end, in four years of activity, the *Camera dei fasci e delle corporazioni* did not manage to consolidate the aimed corporate institutional representation (Perfetti, 1991, p. 115-233). Nevertheless, the PNF did manage to integrate with the institutions. The single party was identified with the available institutions and for this reason, after the regime's implosion, the relationship existing between State and parties continued to give priority to the political parties. As a consequence, institutions resulted to be absorbed by the latter. Altogether, the Fascist regime was characterized by many totalitarian elements; however, Mussolini never managed to submit all the national institutions to the PNF's political control. In fact, the authoritarian Prime Minister, who was counteracted by the King and by the Catholic Church, which left little space for the fascist ideology to implement, being there already the Catholic religion. For this reason, there is a general consensus among historians of the Italian Fascism to be an «imperfect totalitarianism», while according to Hannah Arendt's work, it does not have enough totalitarizing elements to be considered totalitarian (Messina, 2008) (Arendt, 1954) (Sabbatucci & Vidotto, 2008). Approximatively twenty years of fascistization inevitably affected the way in which the democratic political system resurged after its end, as well as the drafting of the Constitution. As a consequence, during the constitution-making process (1946-1947), separation of powers among branches of

Government was clearly enhanced and the risk any institutional and political centralization of power was carefully contained. Mussolini's solid parliamentary majority was feared by the founding fathers, who drafted the Italian Constitution in an anti-fascist key. All the available means were used to draft a fundamental law able to avoid the creation of a prevailing majority which would risk jeopardizing the State's order.

3.1.2 The characteristics of Ceaușescu's Communist State

Before WWII, Greater Romania was a Constitutional Monarchy under King Carol II and the 1923 Constitution. After WWI, thanks to the Trianon Peace Treaty, Romania enlarged its territories, acquiring: Bessarabia, Transylvania, Bucovina and a part of Banat. The 1923 Constitution introduced universal and equal votes, direct and secret and it empowered the legislative power against the King's powers. However, already in 1938, the institutional equilibrium changed. Profiting the European political background in which dictatorships «were considered to regenerate nations», King Carol II jeopardized the fragile democracy and declared his own authoritarian regime (Abraham, 2016, p. 10-11). Traditional parties were dissolved, and the King's single party was created, the National Renaissance Front, which however showed unable to mobilize the country despite the great popular support (approximatively 3.5 million members) (Constantiniu, 2015). However, the *Mișcarea Legionară* (ML - Legionary Movement) was born, against the King's party and inspired by the far-right European movement (Abraham, 2016, p. 11-12). Despite its illegal nature, it gained a lot of political support. This put the country into a fragile equilibrium, further weakened by the USSR Polish occupation, which increased its borders with Romania, in turn increasing the fear of a Soviet occupation. At the same time, the German achievements in Poland encouraged the ML which arrived to kill Prime Minister Călinescu, who was promoting an alliance with France and Britain instead of Hitler's Germany and Italy. This episode, plus che so-called Phoney War, brought King Carol II to an «opportunistic change (…) of foreign policy», joining the Axis side, so getting allied with Nazi Germany

and Fascist Italy. Romania's fragile geopolitical position and its internal disorders could be better tackled with a strong foreign ally. Moreover, to face internal disorders, the King appointed General Ion Antonescu as prime Minister in September 1940 (Abraham, 2016, p. 14-15). However, Antonescu pushed Carol II to abdicate, to be substituted by the young Michael I (only 19 years old), so that he could become the true *Conducător* and establish a military dictatorship (Constantiniu, 2015). He was anti-Soviet, supporter of a paternalistic approach to State management, but not a fascist; in fact, the relations with the ML were very tense. At the same time, he was neither an ideological follower of Nazi Germany, he simply thought the alliance with it would be profitable to recover at least the territories taken by the USSR. After more than three years of military campaigns against the USSR, the Romanian army arrived until the Northern Caucasus. When it got back in August 1944, the Soviet were already settled in Northern Moldova and King Michael I agreed to let them remove Antonescu from power, in case he refused to sign the armistice with the Allies. As expected, Antonescu refused, King Michael I dismissed and arrested him, and Romania changed side, joining the Allies. However, at the end of the war, at diplomatic level, only the participation to the Axis side was considered, so Romania signed the Paris Peace Treaty (1946) as a defeated enemy State (Constantiniu, 2015).
Profiting Romania's politically defenseless situation, the Soviets pushed for the consolidation of a pro-soviet Government – Groza Government – on March 6th, 1945 so the communists found a fertile ground to achieve power. The Government was composed not only by communists but also by social democrats and some exponents from Partidul *Național Liberal* (PNL - National Liberal Party) and *Partidul Național Țărănesc* (PNT - National Peasants' Party) because the Soviets wanted to give externally the perception of a democratic Government, which was actually under their influence. In fact, during the Yalta meeting in February of the same year, the USSR had participated and agreed with the United Kingdom and the United States to the idea of a liberated Europe while discussing the reorganization of Germany and Europe (Constantiniu, 2015). For this reason, in 1946, elections were held in Romania so to at least give the impression of a Romanian democratic system, but they were «rigged in

favour of local communists» (Abraham, 2016, p. 28). The elections showed that a political change was about to come and in fact political tensions had been profited by the communists to prepare a *coup d'état* through Petru Groza, against the Monarchy of King Michael I. After an ultimatum meeting between the latter and the communists – led by Gheorghe Gheorghiu-Dej – the King was forced to abdicate on December 30th, 1947. The Republic was proclaimed, the Monarchy was over and with it also the possibility for a stronger consolidation of democratic institutions.

In this way, the Romanian communist regime started being dominated by the Stalinist personality of Gheorghe Gheorghiu-Dej, leader of the *Partidul Muncitoresc Roman* (PMR - Romanian Workers Party). From 1947 until 1965, Romania was nominated *Republica Populară Romînă (*Romanian People's Republic). It was reorganized into a Party-State, submitting all institutions to its political control and abolishing any power separation and check and balances; and so, paving the way for a totalitarian system, that would peak under Ceaușescu (Tismăneanu, 2005, p. 226). It was proclaimed through the new 1948 Constitution, which represented the transition from a representative and democratic system towards a totalitarian one. However, the true systemic transformation in totalitarian terms was achieved with the 1952 Constitution with which constitutionalism was replaced by the Marxist-Leninist ideology, transforming the fundamental law more into a propaganda document (Abraham, 2016). Gheorghiu-Dej engaged in empowering the country within the Soviet satellization project, seeking for an equal position in the USSR-Romania bilateral relations. He did so by keeping a close relationship with the Soviets while opening towards western economic cooperation. This foreign policy strategy put the Romanian totalitarianism in a position of «heresy» among the different USSR satellites, reason why it was observed by western leaders as a potential ally to weaken the Soviets. In 1965 Gheorghiu-Dej died, a leadership change was forced to happen and Nicolae Ceaușescu became the new Party-State leader. He brought with him a Constitutional reform also, the 1965 Constitution through which the Party-State became *Republica Socialistă România* (the Socialist Republic of Romania) (Constantiniu, 2015). Moreover, he changed the

Communist Party's name from *Partidul Muncitoresc Român* (PMR - Romanian Workers' Party) to *Partidul Comunist Român* (PCR - Romanian Communist Party). After almost twenty years of communist repression suffered by the Romanian society, Ceaușescu tried to pursue a reconciliation policy creating hope for a better life quality. Initially, the new leader kept on with his predecessor's liberalization policy; but, already in the mid-1970s his regime degenerated (Abraham, 2016). The initial temporary liberalization had been useful to allow him gain legitimacy. In fact, during the first ten years, western economic cooperation continued, the intellectuals were less pressured and so quality life standards increased. However, the Totalitarian State has always been part of his plans, reason why he implemented restricting policies (e.g. ban on abortion with Decree Law 770/1966) contemporarily with the first liberalization wave. In fact, under Ceaușescu's leadership the Romanian totalitarianism peaked. As soon as he gained total power, he became somehow intoxicated with it, considering himself a «messianic leader» and spreading a very strong personalistic cult. This perception of him as perfect statesman was spread particularly thanks to the working visits he held to the different industries during his regime, which were welcomed with a forced enthusiasm by workers. Ceaușescu's personality cult arrived even abroad, stimulating many foreign official visits to Romania. If on one side this seemed to be beneficial for intellectuals and politicians, it was not for the society who was every day more aware about the available lies and censure, which increased a background hatred against the regime (Abraham, 2016, p. 55) Therefore, the regime of the *Conducător* (the Ruler) was again characterized by a non-linear development of events. As happened with liberalization, also the personality cult initially seemed to bring benefits and legitimacy to the new leader but soon after it became source of hatred (Abraham, 2016, p. 47-56).

The core of the totalitarizing process was the subordination of all the different institutions and public life aspects to the Party-State's political control, removing power separation, any system of checks and balances and political pluralism (Tismăneanu, 2005). The institutional system was centralized into a unicameral legislative body called *Marea Adunare Națională* (MAN - Big National

Assembly), which was defined the supreme State power body of the Romanian Popular Republic by the 1948 Constitution (art. 37). It represented all the citizens inhabiting the Romanian territory and exerted its functions without any limitation or external influence. It was composed by Deputies elected for a four years term, led by the MAN Presidium from 1947 to 1961, when it was transformed by Ceaușescu into the *Consiliul de Stat* (State Council). Thus, there was a collegial body holding the powers of a Head of State. It was composed by a President, three Vice-Presidents and thirteen components, increased to fifteen in 1967. This structure lasted until 1974 when a new Constitutional reform gave birth to the office of the President of the Republic, represented by only one person – Ceaușescu – and no longer a collegial body (Ghițulescu, 2014).

The legal system was manipulated to the regime's interests, transformed into a «proletarian justice» with the role to legalize the use of violence against the regime's dissidents, who were accused of betrayal and crimes against the State. This communist legality brought citizens to be neither equal in front of the law – since the regime's supporters and dissidents didn't have the same legal position – nor protected against State abuses. Judges were officially independent, but practically involved in politics. They were not officially enrolled in the RCP, but they sympathized with the communist ideology, showing passionate loyalty to the party. This was so also because in rare cases of communist opposition, Magistrates were arrested. In fact, their irrevocability was removed precisely to repress also those not in favour of the proletarian justice. Moreover, the Supreme Tribunal – highest judicial body – was elected by and accountable to the MAN.

While the totalitarian justice denounced the regime's enemies, the communist political police body, the *Securitate* (Security), was instituted on August 30th, 1948 with the function to arrest, execute, repress and surveil as maximum level of society control (Decree Law No. 221/1948). Practically, it acted both as a violent repressive body and a surveillance system; in fact, it was provided with a Foreign Intelligence Directorate, whose action was coordinated with an external body in The Special Intelligence Service, created in 1951. The *Securitate*'s functions were supported by the role of *Miliția*, also a legitimated violence institution created in January 1949 (Decree Law No. 25/1949). Its role

consisted in preserving public order, struggling against crimes, communist repression and police control over the society. Particularly, in the rural areas, the *Miliția* played the role of the *Securitate* (Tismăneanu, 2005). Furthermore, also the army was part of the project. Apart from the function of ensuring protection, it acted as ideologization tool on behalf of the PCR, since military service was compulsory for every young Romanian and every soldier got access to education. Moreover, being there engineers among the soldiers, the army was also involved into economic activities such infrastructures building and agricultural works. Likewise, information was absolutely controlled and nationalized. International news that could harm the regime's stability were censured and all media transformed into communist propaganda tools. In the same way, religion was limited so to not compete with the communist ideology. The religious institutions could decide on their administration, but their functioning needed governmental approval and the education system was separated from churches, as part of the secularization process. The freedom of religious faith was constitutionally granted, practically tolerated but not socially encouraged, reason why people avoided to go to church, fearing to be seen and denounced by the *Securitate* (Abraham, 2016).

Another key element to the continuously developing totalitarization process was the homogenization of society from different points of view: economic, ethnic, cultural and territorial. Economically, the leader kept on with policies preventing the accumulation of private capital, which consisted in nationalizing properties and industries, confiscations sometimes followed by redistribution and especially adopting legal measure against unjustified revenues (Law No. 18/1968). The economy was nationalized and transformed from a demand-supply logic to a centralized planning about which a State Planning Committee was in charge together with the State Committee for Prices. They constituted the two key institutions in economic planning, both subordinated to the Government. The economic priority was industrialization, mainly steel industry, mining and car-making; in fact, industries accounted for more than half of the total capital in the 1980s (Abraham, 2016, p. 97).

Ethnically, all minorities living in Romania – Hungarians, Germans, Jews, Roma – saw their collective rights being no longer recognized. Furthermore, Romanian people were settled in the territories inhabited by these minorities (such as the Hungarian one in Covasna and Harghita, the so-called Szeckler counties) under the excuse of the urbanization process, so to somehow occupy their territory and replace their traditional practices with those of the national majority. Territorially, homogenization was organized so to balance the divergences between developed and poor counties, as well as between rural and urban areas. Urbanization was key to the massive industrialization project which had to become the dominant source of income, coupled with the construction project, all meant to enrich and empower the country (an example is the still-existing giant House of People in Bucharest, whose building started in 1983 and finished after the 1989 Revolution). He wanted to build a powerful and Soviet-independent country, for whom Ceaușescu initially cooperated economically with the West because he strategically looked for technologies which would have allowed him to detach from his dependence on soviet energetic resources. Thus, the relations with Western powers in no case were interested in their capitalist economy (Abraham, 2016, p. 97).

Altogether, the totalitarian provisions brought to a contradictory dynamic of the Romanian society. The Party-State aimed at reconfiguring social life in Marxist-Leninist terms, reducing the individual's space for uncontrolled freedom and even if at the beginning it seemed that it was succeeding, it actually failed. This was so because the utopian project was shared only by few communist fanatics and because very often families and friends' circles safeguarded each other against the Party-State's repressive measures. The PCR blocked any dissident group from developing, reason why no negotiated democratic transition could be facilitated at the end of the regime. As a result, violence was the only available mean to remove the dictatorship. The personality cult of Ceaușescu subjected the Romanian people to endure humiliation, which nourished the general hatred. Fear of repression, the impossibility to create an alternative political force to the PCR and the lack of a united civic opposition paralyzed the Romanian people for almost forty years of dictatorship. In the end, Romanian citizens exploded in

a united popular revolution, led by years of sufferance, against the totalitarian leader, stimulating also the army to join them.

Overall, Romanian totalitarianism had root causes for its fall in its very structure (Tismăneanu, 2005). The non-legitimized ruling communist power, economic failures, the loss of confidence in the communist cause from party's exponents as well as from the army's soldiers who found unhuman all the ordered repressions, inevitably led to the system's implosion. However, these root causes were so mind-penetrating that they inevitably left a legacy, influencing the future development of the Romanian political system and leading it to maintain preferences for power centralizing tendencies, Head of State interpreted as top decisional actor, independently on the powers he is provided with by the Constitution and the presence of ex-communist leaders holding important charges (Tismăneanu, 2005) (Abraham, 2016).

3.2 Leading the Democratic Transition

3.2.1 The Italian democratic constitution-drafting

The Italian founding fathers were deeply aware of the political-historical context in which they were about to draft a new Constitution. They wanted a stable Fundamental text, destined to last in time, but they knew its future evolution was uncertain, especially in light of the internal political conflict and the global geopolitical context. The constitution-making process was positively influenced by the political parties' will to collaborate, never being tempted to veto any fundamental Constitutional decision (Falzone, Palermo, & Cosentino, 1949) (Guzzetta, 2018). This manifested with their engagement in trying to distinguish the country's political direction from the Constitutional debate, meaning that the internal political struggle kept on without jeopardizing the constitution-making process. As a result, political parties acted as important guarantors of the democratic transition (Guzzetta, 2018). After 1945, Italy was a defeated country with a very uncertain internal position. There were uncertainties on identitarian issues – such as the territory definition – and

epochal issues – such as the democratic model to implement. The transition was managed by the *Comitato di Liberazione Nazionale* (CLN), that was the National Liberation Committee, formed by six parties: *Partito d'Azione* (PdA), *Democrazia Cristiana* (DC), *Partito Liberale* (PL), *Partito Socialista Italiano di Unità Proletari* (PSIUP), *Democrazia del Lavoro* (DL). In June 1944 they approved a provisional Constitution through which they agreed to convene a Constitutional Assembly for the drafting of a new Constitution at the end of the war. Until the constitution-drafting started, the six political parties acted as protagonists of the resistance movement and guarantors of the democratic legitimacy. Despite their different ideologies, they agreed to guarantee a solid Constitutional document to Italy. Thanks to the latter, the Constitutional Assembly could work safely. At the same time, it shall be kept in mind that they were mass parties which had two important missions. First, a pioneering role in promoting social changes. Second, a paternalistic role in educating the masses towards the pursued political principles. They aimed at integrating the masses within the political game in a way that could allow the political institutions to reach social roots. While the creation of the Republic was in progress, political parties acted vertically as mediators between popular masses and institutions and horizontally as negotiators among themselves, so to avoid the disruptive effect of political conflicts. As a result, Italian citizens developed a sense of belonging to the political parties which made their role to always be fundamental in the Italian political history (Guzzetta, 2018).

Through the Referendum of June 2nd, 1946, Italian citizens voted the Republican form of State (with 54,3% of votes in favour) and chose the members of the Constituent Assembly, composed by 556 deputies. For the first time after the fascist dictatorship, almost 25 millions of Italian citizens participated in the voting procedure, including women, who could vote and be voted for the first time also for political elections. Universal suffrage was adopted in Italy and, in fact, twenty-one women took part to the Constituent Assembly (L'assemblea costituente, s.d.) (Assemblea Costituente - Introduzione, s.d.). The Constituent Assembly met for the first time on June 25th, 1946 and appointed Giuseppe Saragat as President. On June 28th he appointed Enrico De Nicola as provisional

Head of State with 396 votes out of 501. In order to draft the Constituent Charter, on July 15th, 1946 the so-called Commission of the 75 was established, chaired by Meuccio Ruini, charged with drafting the Constitution Charter to be discussed at the end of the Assembly's work (Assemblea Costituente - Introduzione, s.d.). Having the electors decided for a Republican form of Sate, the question of the form of government arose immediately. The presidential option was ruled out because, unlike the United States of America, there was neither a federal State nor a bipolar party system in Italy. Similarly, the directorate form of government was also excluded. In the latter, popular sovereignty is reflected exclusively in the Parliament. This would have meant denying other forms of expression of popular sovereignty, so not counterbalancing the Parliament as the founding fathers were willing to (Ruini, 6 febbraio 1947). The form of parliamentary Government resulted to be more suitable, but it needed to be tempered by an element that could provide stability to the Government and prevent any «parliamentary degeneration» (Falzone, Palermo, & Cosentino, 1949, p. 106). This led to the adoption of the vote of confidence (art. 94) which the Government needs to be granted by the two legislative Chambers in order to start its governing function. The vote of confidence, as well as the motion of no confidence, have to be provided with a motivated motion. This implies that, in case a negative vote of the two Chambers comes for one of the Government's initiatives, the cabinet has no obligation to resign. If the initiative proposed by the Government is of vital importance, it can put the question of confidence on it, implying that a negative vote of the two Chambers to the initiative would mean revoking the vote confidence. It is a measure provided to the Government in order to be able to pressure the legislative Chambers for important issues and somehow counterbalance their power over it.

The choice of the parliamentary form of government was formalized through the approval of the *Perassi* order of the day, on September 5th, 1946 within the Constituent Assembly. With regard to the electoral system, it was decided that elections should be held under the proportional system. In addition, it was decided not to include in the Constitution one type of electoral system rather than another, in order not to commit future Chambers to a revision of the

Constitution if they wanted to adopt another system. Concretely, there were no conditions to implement an English style parliamentary system, with a dominant executive, because the Italian multipartitism could not allow a clear composition of the cabinet, whose stability would be compromised by the political fluidity. Consequently, the founding fathers built a mediated democracy, in which the political parties mediated the electoral results in a way that impeded the electoral body to define directly the actors defining the State's political direction. The choice was between a Government that is direct expression of the popular will, so the voters can designate the political direction, or giving the voters only the pre-emptive function to define the holders of Constitutional bodies, in which later on the parties negotiate among themselves the political direction. They chose the second one and this gave birth to a weak parliamentary form of government (Guzzetta, 2018). The use of referendum (art. 75 and 138) was linked to this choice; in fact, it constituted another deeply debated issue. It was a novelty in the Italian Constitutional order and, as such, there were several objections. The majority concerned the suspensive referendum. It was stated that in a system of parliamentary democracy the Parliament, elected by universal and direct suffrage, is the only body legitimated to represent popular will. The suspensive referendum, as an instrument of direct democracy, would risk suspending legislation, taking away its certainty and finality. In addition, mass parties could use this type of referendum to create extra-parliamentary obstructionism, disrupting the legislative function. There were limits preventing the suspensive referendum from being used for laws declared urgent, by absolute majority, or for laws voted by a two-thirds majority. However, the laws adopted in these two formulas would have been very few, so to the limits the suspensive referendum would have been very weak. In the end, the Assembly voted against it for all the dangers it entailed. The abrogative referendum, instead, met fewer objections. Those opposing it, argued that it was not possible to abolish a law «which in its short life has created interests, legal situations that must be respected» (Hon. Targetti). On the contrary, its supporters considered it necessary as a counterweight to the Parliament, otherwise being the only one of expressing popular will. Including in the Constitution only the referendum for

Constitutional revision would have been too exceptional to consider it a really existing instrument in the Italian legal system. In the end, the instrument was approved and regulated as follows. The request for an abrogative referendum can be made by at least 500,000 voters after collecting signatures (whose validity is checked by the Court of Cassation) or by five Regional Councils. In addition, for it to be valid, the majority of those entitled to vote (*la maggioranza degli aventi diritto*) must participate. With this formula, the founding fathers wanted to avoid the possibility that important laws, approved by a very large majority, could be abrogated by a low quorum of registered voters (for example, only a 16%). In this way, the party's attempts to block a certain law were also reduced, because it was more difficult to reach the quorum of voters. Before being held, the referendum must be declared admissible by the Constitutional Court and it is held by the President's decree (art. 87). This rule also applies to Constitutional referendums (art. 138). However, twenty-two years passed from the entry into force of the Constitutional Charter (1948) to the implementation of the referendum by ordinary law. Several draft laws were presented to implement it, but all ended up falling. The major supporters of the referendum's implementation came from the left (from the socialist ranks in particular), paradoxically those formations that more decisively opposed it within the Constitutional debates. While the governing parties, first of all, the DC, were reluctant towards the institute, which confirms the distrust of the electoral capacity of the people. Using an instrument of direct democracies was considered to cause imbalance in the still fragile parliamentary system. Therefore, there seems to have been sort of a silent agreement between the political forces for the referendum to remain not implemented. This was so until May 1974 when the first abrogative referendum was held, with the aim to abrogate the law consenting divorce (Busio, 2003).

Going back to the discussions concerning the form of government, choosing Parliamentarism also imposed the choice between bicameral and unicameral systems, which constituted a longer and opposed debate. Concerning the unicameral system, it was underlined the risk of slipping into the «assembly's dictatorship». On the bicameral system, instead, two risks were highlighted.

One, having «an unnecessary duplicate» in the event that both Houses derive their powers from the popular election (Falzone, Palermo, & Cosentino, 1949). Two, in the event they did not both derive power from the popular election, the second chamber could have impaired the principle of popular sovereignty, moderating and restraining the action of the first chamber (the directly elected one). The debate saw bicameralism prevail for an important need, that was, to create counterweights in order that no organ of the State had such powers that it could promote forms of absolutism. «As there was a Monarchical absolutism, so one could have a democratic absolutism if all powers were concentrated in one organism» (Falzone, Palermo, & Cosentino, 1949, p. 106). For the same reason, once the bicameral system was approved, it was decided to establish a second Chamber with the same powers as the first. The equality of functions was considered necessary given the equal representative effectiveness that derives from the two Chambers. Thus, a symmetrical bicameralism was chosen. The two Chambers were meant to be both directly elected, but not identically. The Chamber of Deputies is composed by 630 members are elected on a national basis (art. 56) The Senate is composed by 315 members, elected on a regional basis (art. 57), plus the Senators for life that are all the former Presidents of the Republic and five citizens that the Head of State nominates for highest merits in the social, scientific, artistic and literary fields (art. 59). With regard to the internal conflicts that the latter could generate, it was decided to let them find a solution through Constitutional customs. In fact, Hon. Mortati said that in parliamentary regimes the arbiter of legislative activity is the Government, which, deriving its investiture from the vote of confidence, will have to find the most suitable solution to solve potential divergencies. If the divergences between the two Chambers arise on secondary issues, the Government will drop the project on which the opposition of one or both the Chambers is manifested (at least for the time being). On the contrary, if the project is essential to the implementation of the governmental policy, then the Government will put on it the question of confidence (Art 94) (Falzone, Palermo, & Cosentino, 1949, p. 107). The vote of confidence was constitutionalized and meant to be granted by each of the two Chambers, which provide or revoke it only through a motivated

motion (art. 94). This provision is part of the low rationalization implemented with the aim to stabilize the form of government.

Another contrasted debate was the one concerning the configuration of the President of the Republic, also bound to the approval of the *Perassi* order of the day (Falzone, Palermo, & Cosentino, 1949, p. 139-142). It was necessary to decide what functions to give to the President and how to elect him, given the need to prevent future undemocratic drifts. For the election, three options were proposed: popular election by universal suffrage, election by the National Assembly (the Parliament's name before changing it), election by the National Assembly with representatives of the Regions. For some (Hon. La Rocca and Hon. Terracini) the intervention of regional delegates was useless, because regions were already represented by Senators, since the Senate was to be popularly elected on a regional base. For others (Hon. Tosato), the third solution was the best one because it eliminated two inconveniences. One, having a too powerful presidential if popularly elected. Two, a President that is prisoner of the two Chambers, in case they were the only one responsible for his election. The regional delegates would intervene as representatives of autonomous bodies belonging to the State and this would give the President an independent position vis-à-vis the two Chambers. However, all the proposals were rejected, and the decision was postponed to the Commission of the 75, where it was opted for the indirect election, with a vote belonging to the Houses gathered in common session, supplemented by regional delegates. Following a proposal by Hon. Fuschini, it was decided that there would be three representatives of the regions, with the exception of the Valle d'Aosta, which elects only one, elected by the Regional Council so as to ensure that the minorities within it were adequately represented (Falzone, Palermo, & Cosentino, 1949, p. 150). Regarding the presidential powers, they had to be neither too accentuated, so to avoid possible authoritarian drifts; nor too limited, relegating the Head of State to a purely formal role, characterized by a substantial uncertainty. In his report to the project, Hon. Ruini stated: «in our project the President of the Republic is not (...) the master of ceremonies (…) seen in other Constitutions. (...) He represents and impersonates the national unity and continuity, the permanent strength of

the State, above the fleeting majorities». He advocated a Head of State «above the functions of the State, outside political disputes; he summarizes the State and impersonate it in symbolic representation» (Ruini, 6 febbraio 1947) (Falzone, Palermo, & Cosentino, 1949, p. 148). In the end, the founding fathers decided to provide him with functions related to political, institutional and legislative, administrative and judicial processes, without granting him any of the three State powers. Among the President's powers (art. 87) there was representing the national unity and, supervising the political system, checking if inter-institutional relations and functions were carried out in compliance with the Constitution, being him also the guarantor of the Constitution. At the legislative level, the President can send messages to the Chambers, exercising a power of influence on certain important issues. In addition, he has the power to promulgate the laws approved by the Chambers, that he can send back to the Chambers, requiring a greater reflection on the subject (power of law referral). But if the law is approved again by the two Chambers, the President can no longer delay its promulgation.

The revision of the Italian Constitution is only possible in the cases provided by the Constitution and it involves a special procedure, marking its rigidity (art. 138) but which is not completely immobilized. First, the request for revision must be made by bodies which have the power to take legislative initiatives. Second, the bill of revision must be approved by the Chamber of Deputies and the Senate with two deliberations at least three months apart. Moreover, within three months of its publication, the law can be submitted to Constitutional referendum, if requested by at least 1/5 of the members of one of the two Chambers, by 500,000 citizens or by five Regional Councils. However, the Constitutional referendum cannot take place for revision laws that were passed by majorities of 2/3 of the components in each of the two Chambers during the second deliberation. The Constitutional revision was formulated in such a way as to make the process more complicated than that provided for ordinary laws; but without establishing a procedure which makes the revision of the Constitution or the enactment of new Constitutional laws extremely difficult. The founding fathers were aware that some Constitutional choices could only be

temporary, reason why they wanted to leave space for future Constitutional amendments. The adoption of the system of two readings, three months away one from the other, plus the vote by absolute majority at second reading, aimed precisely at a deeper reflection on the issue. Moreover, the difference between Constitutional law and ordinary law is then accentuated by the possibility of Constitutional referendum (Falzone, Palermo, & Cosentino, 1949, p. 256-257).

Finally, of vital importance was the formulation of art. 139, which stated the impossibility to amend the Republican form of State. The decision was made for two reasons. First, to offer guarantees to the popular choice, who have shown that they prefer the republican form by referendum on June 2nd, 1946. Secondly, to provide an additional guarantee against any authoritarian drifts (Falzone, Palermo, & Cosentino, 1949, p. 256-257). After two years of work of the Constituent Assembly – from June 1946 to December 1948 – the Italian Constitution officially entered into force on January 1st, 1948.

During the early republican stage, the whole system has been paralyzed by the so-called *conventio and excludendum*, from Latin "agreement to exclude". It was an agreement reached in 1948 among the political parties aimed at excluding from the Government the communist party considered anti-system, thus dangerous. The agreement came with two pressions: internally, from the Catholic Church against communists, and externally from the USA in the Cold War atmosphere. In fact, after his visit in the USA, the democristian Prime Minister De Gasperi (DC), excluded the PCI and the PSIUP from the possibility to govern. Moreover, the PSIUP split in the more extremist *Partito socialista dei lavoratori Italiani* (PSLI) while the PSIUP became the *Partito Socialista italiano* (PSI) with the famous *scissione di Palazzo Barberini*, on January 11th, 1947 (Guzzetta, 2018).

This Communism vs anti-Communism conflict marked the nature of the Italian system, making it a «immature democracy» which undermined its citizens' capability to take efficient political decisions (Guzzetta, 2018). Excluding them meant excluding the possibility to have a democratic political alternation within the Government, confusing the roles of majority and opposition and allowing the parties to be the central occupiers of the institutions. Italian politicians were self-

limiting the Constitutional principle of parliamentary democracy. Somehow, this centralized no-alternation tendency was the legacy of the past transformist tendency[2] and it influenced the Italian system until the 1990's institutional crisis. For all the cited reasons, among all the European Parliamentarisms, Italy has been considered the «*homme malade*» (Elia & Luciani, 2011, p. 657).

Overall, the 1948 Italian Constitution was a founding moment which linked together the tragic past and the uncertain future, about which no general consensus was reached. It was meant to pave the way for future internal conflict resolution, but in no case could overcome those existing in that specific moment. Wanting to use the authors words, the Italian one is a «wise Constitution for a fragile country» (Guzzetta, 2018).

3.2.2 The Romanian democratic constitution-drafting

Compared to Italy, democratization arrived lately in Romania for mainly three reasons. First, Romania's past did not experience truly solid democratic institutions, despite being a Constitutional Monarchy from 1991 until 1939. Second, there were many cultural cleavages due to the different foreign occupations, acquired territories and external influences. For instance, before 1918, the Romanian Monarchy was influenced by the Byzantine culture and the closeness to the Ottoman Empire, which exposed the country to the influence of new minorities, such as the German one. Likely, the totalitarian vein of the communist Party-State jeopardized the development of any liberal right and freedom. The internal cleavages have been strategically exploited by foreign occupiers, particularly the Soviet Union which in 1940 took from Romania the regions of Bessarabia (today's independent Moldova) and North Bukovina. The result was a feeling of constant invasion to which the Romanian leaders reacted with nationalistic formulas, «portraying themselves as executors of the national

[2] Transformism was an immobilist formula inaugurated in 1882 under the leftist Government of Agostino Depretis. It consisted in letting the traditional leftist group and the moderate part of the traditional rightist group to converge in a unique political center, cutting off the extreme political wings, with the aim to maintain a political equilibrium. By doing so, the whole political system became ambiguous because there was neither an effective distinction between the left and the right nor any political alternation (Sabbatucci & Vidotto, 2008).

mission». For all these reasons – no solid democratic past, foreign occupation, interval cleavages, forty years of totalitarian Communism – the Romanian transition was a long-term evolving process which started in the 1990s and kept on for almost a decade. However, some scholars argue that for certain aspects it is considered still incomplete (Gallagher, 2001, p. 385).

The chain of events leading to the Romanian Popular Revolution started in Timișoara on December 15th, 1989. Here, the *Securitate* was displacing the Hungarian pastor László Tőkés under the accuse of «incitement to ethnic hatred» after he criticized the Romanian regime in the international press. The day after, a big crowd gathered to protest against this repressive measure, singing slogans, such as «*Deșteaptă-te romane*! » (Awake Romanian!) which referred to the Romanian anthem born in 1848 and limited under the communist regime, now becoming the sound of dissent. The pastor was displaced and the protest sharply repressed. Despite that, demonstrations continued, and the dictator declared the State of necessity, denouncing the event as the outcome of «foreign subversion». Meanwhile, the international press denounced the human rights violation while the dictator was abroad for a diplomatic visit in Iran. On December 19th, people went on strike against the use of violence, joined by industrial workers the day after, occupying *Piața Operei* (the Opera Square), against which the army had to retreat, starting the first defensive action, which means Timișoara was managing to fight the army and get closer to its freedom. Thank to this event, *Piața Operei* was renamed *Piața Victoriei* (Victory Square) (Abraham, 2016, p. 112). After the failure of violent means, the dictator tried mediation sending Prime Minister Constantin Dăscălescu to address the crowd, who however booed him and sharply asked for the dictator's resignation and for democratization. On December 21st, the protests spread to Arad, Cluj-Napoca, Craiova, Sibiu, Târgu Mureș and Lugoj. Ceaușescu organized a speech from its balcony to denounce all these events, but people started to protest and the fight began. More that 70,000 people were manifesting despite being answered with sharp repression. During the morning of December 22nd, protesting people marched towards the headquarters of the *Partidul Comunist Român*, the Minister of Defence committed suicide and he was substituted by General Victor Stănculescu. The

latter focused on protecting the dictator, reason why he organized a flight by helicopter for Nicolae and Elena Ceaușescu, who left the capital exactly while the protesters were entering the building. The couple travelled by helicopter until near the city of Titu were they passed to a car. Some kilometers after, they had been stopped and taken into custody in a «military garrison in Târgoviște! » (Abraham, 2016, p. 112). In all of this, the army played an important role. After having initially respected the order, the army choose to betray the dictator while moving him away from the popular revolt, taking the people's parts instead of respecting the repression orders. At the same time, it deserves to be kept in mind that Romania, despite being one of the Soviet Union's satellites, it had always sought for autonomy from the latter, especially under the leadership of Nicolae Ceaușescu from 1965 to 1989. Thanks to this ambition, he maintained important contacts with Western powers which considered him «a leader apparently worth cultivating», reason why they organized State visits to Romania and provided for preferential trade relations. As a result, equally to the internal elements, the external links with the West indirectly contributed to the implosion of Ceaușescu's regime (Gallagher, 2001, p. 386).

After the dictator's defeat, there was «no pre-existing political or civic organization» ready to lead the democratization process guaranteeing popular representation. Prime Minister Dăscălescu and the former Premier Ilie Verdeț, tried to form a new Government without succeeding because the protestants refused their initiative. In line with the army, also general Stănculescu, the newly elected Minister of Defence, betrayed Ceaușescu. Later on, he offered protection to the communist leader Ion Iliescu, recognizing him as the legitimate successor, with the support of the *Securitate*'s leader Iulian Vlad. To remedy the available political gap, an *ad hoc* group was created, but lacking a unique ideology: *Frontul Salvării Naționale* (FSN - National Salvation Front). In the evening of December 22nd, 1989 Ion Iliescu – who was a very well-known member of the communist party – promulgated an official document, whose preamble announced its creation with the support of the Romanian army, the abolition of the communist regime and the main objectives of the democratic transitions:

« 1. Abolition of the single-party system and establishment of a democratic and pluralist form of government. 2. Organization of free elections in the month of April. 3. Separation of the legislative, executive and judicial branches of the State and election of all political leaders for one or no more than two terms. No one may claim power for life anymore » (Abraham, 2016, p. 113). Furthermore, it announced the foundation of *Consiliul Frontului Salvării Naționale* (Council of the National Salvation Front), the body responsible for the transition leading, composed by 38 members and led by Ion Iliescu from December 27th. Its composition was very heterogenous but Iliescu and his supporters (Brucan, Mazilu and Roman) were the dominating force. As in Italy, the heterogeneous forces were united by the need to break with the past and to lead a safe transition. The FSN was meant to represent the Romanian people and unify different political tendencies so to ensure the first democratic elections, after which it would have renounced its role. On the contrary it, transformed into the FSN political party, and it quickly organized the first political elections in May 1990. Of course, Iliescu's FSN won the parliamentary majority because his competitors had no time to organize but also because of his charisma. Being an important ex-communist figure, Iliescu had an inner «paternalistic ex-communist» approach towards governing the transition and the country. For this reason, to many conservationists, he seemed perfect for leading the country through the hard-democratizing process (Abraham, 2016). The problem was that, exactly that paternalistic approach towards governing risked to undermine democratization; in fact, Iliescu was perceived with distrust by the opposition, especially during the works of the *Adunarea Constituantă* (Constituent Assembly), which started immediately after the May 1990 elections. Drafting a fundamental democratic law after more than forty years of totalitarianism was no easy task. The founding fathers gave birth to an institutional system that has little in common with pre-WWII liberal-democratic experiences, under the Constitutions of 1866 and 1923. In fact, pre-totalitarian constitutionalism was considered to be fused with the Monarchy, which was not a suitable option. However, there was an element of continuity since it was decided to keep bicameralism, and the name of the two legislative Chambers: Chamber of

Deputies and Senate. On the one hand, the Constituent Assembly kept very little from the country's democratic past while on the other, it implemented foreign transplants, adapting them to Romania's needs (Perju, 2012). Indeed, this contributed to the ambiguity of the Romanian Constitution, because the «constitutional borrowings» have not always been sufficiently theorized (Iancu, 2019, p. 1050). However, it must be kept in mind that the previous democratic experience of Romania was under a Monarchy while the only experience with a President acting as Head of State was under Ceaușescu's Communism. Therefore, foreign models were important inspiring sources. Moreover, the Venice Commission was an important adviser of the Constitutional Drafting Committee in 1991, helping the country to shape its democratic choices (Selejan-Gutan, 2016).

Among the «constitutional borrowings», the most important is the Semi-presidential form of government inspired by the Fifth French Republic and corrected based on Romania's need (Perju, 2012). Under the impression of the previous oppressive regime, the presidential powers were diminished, transferring them to the Parliament. The members of the Constituent Assembly wanted a President with important mediating and regulating functions but at the same time properly checked and balanced within the institutional interplay, in order to avoid a too powerful President, able to jeopardize the system as Ceaușescu did. Semi-presidentialism seemed the perfect solution because it produces a dual executive in which the President shares the executive power with the Prime Minister. Moreover, the Prime Minister and its cabinet are politically accountable to the Parliament, which grants it the vote of confidence. In this sense, the President is also balance by the parliamentary majority, that might differ from the one who supported his election. Thus, compared to the French one, the Romanian Head of the State was meant to be weaker precisely because the founding fathers were afraid to leave space for the emergence of a new *conducător* in the *ceaușist* style. Another important transplant was the *Avocatul Poporului (*literally People's Advocate), that is the Ombudsman (Perju, 2012). It is a particular institutional figure whose function is to safeguard people's fundamental rights provided by the fundamental text. It is not available

in the Italian system. It seems that it was inspired by the old Swedish tradition as well as other similar versions of this institution in other European countries. In Romania, it was transplanted so to ensure every possible mechanism in protection of fundamental rights, primarily to ensure that the communist human rights violations would not happen again. Differently from other States having this institution, the Romanian Ombudsman is independent from the other public authorities, not being part neither of the legislative nor of the executive branch. It is appointed by the Parliament but not subordinated to it. Concretely, any citizen can present in front of the Ombudsman a complaint against the administration, after having received an unfair treatment, violating his rights. In this sense, the office had been considered sort of a parliamentary control over the administration, being the Parliament the one appointing it. Nevertheless, the Ombudsman was meant to be independent, so to have no power of interference with the functioning of the other State institutions.

As in Italy, the major Constitutional discussions concerned the role and election of the Head of State, the parliamentary composition and its relationship with the Government, as well as the use of referendum. However, differently from Italy, the Constitutional debates were dominated by Iliescu's National Salvation Front which had the majority within the Constituent Assembly, while the Christian Democrat National Peasant Party and the National Liberal Party were less than 10%. The FSN's strong majority coupled with their communist past scared the other political parties which feared its members would had established any kind of measure prolonging them into office. Thus, the opposition mistrusted their Constitutional decisions. To avoid them from drafting a Constitution in their own interest, the opposition considered the possibility to apply again the 1923 Constitution, believed by some to be democratic enough. However, this did not happen. As in the Italian case, also in Romania, the way of electing the President was debated, being strictly linked to the choice of the form of government. Iliescu's FSN supported a direct popular election for the President, providing him the same legitimacy of the Parliament, under the claim that universal suffrage is the most authentic expression of citizens' will. Especially after forty years of no political freedom, the Romanian citizens deserved to be given the

power to choose their President. On the other hand, the opposition supported an indirect parliamentary election for the President, claiming that direct election was too close to Presidentialism, risking paving the way for the reemergence of an authoritarian Head of State (Stângă & Puiu, 1998).[3] In the end, the FSN's option was adopted. The direct election of the President (art. 81) was conceived to make him responsible more in front of the electorate than in front of the Parliament, allowing him to be «equidistant» from all the parliamentary political forces (Muraru & Tănăsescu, 2019). Only by giving him this degree of autonomy, he could have played the role of mediator among the State and the society and among the State's powers. A parliamentary elected President would have depended on the parliamentary political forces during his whole mandate, not managing to fulfill this task. Consequently, the President of Romania was decided to be directly elected, for a four years mandate (art. 83), with a two mandates limit (art. 81). Moreover, a two rounds election was consolidated so to give the possibility to elect a candidate having a big popular support. According to the its supporters, only one round with a participating quorum, not always allows the most popularly supported candidate to win, issue that would reduce the candidate's legitimacy. Since the founding fathers wanted to avoid so, they opted for a the two-round system in which, if during the first round no candidate is voted by the majority of electors registered in the elective lists, then the first two candidates having most votes pass to the second round. Before that, the Constitutional Court has to confirm the number of votes expressed, so to be sure of which are the first two candidates to pass to the second tour (Muraru & Tănăsescu, 2019). Nevertheless, the parliamentary members participating in the Constitutional Assembly feared that the presidential direct legitimacy could threaten their own authority; they wanted the Parliament to keep being «at the forefront of the political arena» (Tănăsescu, 2008). In the end, the Constituent debates gave birth to a Head of State with important functions but with no fundamental decision-making powers as in the French case. It emerged the idea that «The President personifies the Romanian State and is the symbol of the

[3] Linked to note 1, this book has not been directly consulted to the aim of this research, because it is almost impossible to find it, especially during COVID-19. However, it is cited because the bibliography here used is specifically based on it.

Nation as a whole, by his popular direct election (...) He ensures (...) the balance and good functioning of public authorities (...)» (Stângă & Puiu, 1998). For this reason, the Romanian Head of State was provided with the functions of representing the Romanian State and safeguarding the national independence, unity and territorial integrity of the country; guarding the observance of the Constitution and the proper functioning of the public authorities, to which aim he acts as a mediator between the Powers in the State, as well as between the State and society (art. 80). The mediating role was conceived as to prevent institutional conflicts from happening more than solving them after they start (Tănăsescu, 2008). An importantly debated issue concerned the President's political neutrality during his mandate. Many argued this is not compatible with the President's direct election, while others affirmed it was necessary not to let him belong to any party because this would have jeopardized the needed autonomy to mediate among State powers (Tănăsescu, 2008). The President was also conceived as one of the two heads of the dual executive, together with the Prime Minister. The dual executive was considered the most appropriate solution to the dilemma of having a directly elected President without giving him too much power. The Government derives its legitimacy from the parliamentary vote of confidence, which makes it politically accountable to the Parliament, exactly as in Italy. The vote of confidence, as well as the motion of censure, were disciplined by the 1991 Romanian Constitution (artt. 102 and 112), meaning that it also adopted a degree of parliamentary rationalization. Yet, the founding fathers did not create a well-organized procedure for the Government and the President to take joint action, as parts of the executive branch, which led to many ambiguities in the relationship between them (Tănăsescu, 2008).

The Parliament, instead, was a reinstatement more than a novelty, because it existed in the 1866 and in the 1923 Romanian Constitutions. Direct elections for both the Chambers (art. 59) was a «natural choice» after forty years of no political freedom (Selejan-Gutan, 2016). The Parliament was meant to be the supreme representative body and the unique one holding the legislative authority (art. 58). After so many years of political oppression, particular attention was spent on citizens' representation, characterizing popular vote as «universal,

direct, equal, free and secret». Political pluralism was deeply enhanced, after having been reinstated with Decree-Law No. 8/1989. The need of breaking with the past brought the members of the Constituent Assembly to include political pluralism among the Constitutional unamendable provisions, being crucial to the consolidation of democracy (Selejan-Gutan, 2016). As in Italy, a symmetric bicameralism was consolidated, in which both the Chambers were meant to have equal competences the law-making procedure, with the aim to balance the latter. Based on the consulted literature, the symmetric bicameral choice *seems to* have not met important contrasts as in the Italian Constituent Assembly.[4] Nevertheless, the number of deputies and Senators is to be established according to the electoral law and proportionally to the Romanian population (art. 59), differing from the Italian case in which the number of deputies and Senators is constitutionally established (artt. 56 and 57). Another difference concerns the mandate which amounts to four years in the Romanian case, while in Italy it is of five years (art. 60).

As in Italy, in Romania people were given the right get involved in the legislative process, being consulted through the referendum instrument. The 1991 Romanian Constitution provided for two types of referendums: the consultative and the binding one. The consultative one has no legislative functions. It can be convened by the Head of the State to consult the people's opinion concerning a measure of national interests, after consulting the Parliament (Art 90). It is not binding – although the express popular will should be considered by the Parliament – but its meaning is very important. In fact, it needs to be read together with art. 2 which affirms that sovereignty belongs to people, who exerts it through the representative body and the referendum. Since the Constitution does not provide any indication about which may be the «issues of national interest», is it deduced from art. 90 that the President has an exclusive competence in determining them. The President determines concretely how to submit these issues to popular consultation and when is to be held the consultative referendum. The Parliament's view on the referendum initiated by

[4] The expression "seems to" is here used to underline what stated in notes 1 and 2. Not managing to consult the original acts of the Romanian Founding Fathers, discussing the formulation of the Constitution, this part cannot be 100% precise.

the President of Romania is to be expressed, by a decision adopted in the joint session of the two Chambers, by a majority vote of the Deputies and Senators. Moreover, consultative referendums may be done also locally for problems of particular interest concerning only the inhabitants of a specific territorial-administrative unit. The binding referendum, instead, is compulsory for two important decisions: dismissing or keeping into office the Head of the State, within his suspension procedure (art. 95) and approving or disproving a Constitutional amendment, thus a Constitutional referendum (art. 147). Hence, whereas in the *Italian case the* Constitutional *referendum may be held* (if within three months of its publication is asked by at least 1/5 of the members of one of the two Chambers, or 500,000 citizens or five Regional Councils, according to art. 138 of the Italian Constitution), *in Romania, it must be held*. The President of the Republic may be suspended from office for having disrespected the Constitution if the two legislative Chambers vote it in joint session, after having consulted the Constitutional Court. The procedure can be started by 1/3 of the deputies and Senators and, if approved, it has to be submitted to referendum within 30 days of its passing (art. 95) (Selejan-Gutan, 2016). Since there is no indication of incompatibility with other types of election, both the referendums may be organized whenever, if the Parliament had been consulted or it approved the procedure for the suspension of the President from office (Muraru & Tănăsescu, 2019). Moreover, the Constitution does not provide indications on how to organize it, reason why Decree-Law No. 29/1990 affirmed national referendums had to be established and organized by decree-law of the Council of the National Salvation Front. The latter was abrogated by Law No. 3/2000 which for the first time disciplined the organization and validating procedure for the different referendums. Thus, in Romania, referendums are regulated by ordinary law, meaning that the way they are organized may be subject to many changes[5] (Legea nr. 3/2000 privind organizarea și desfășurarea referendumului, s.d.). Differently from the Italian case, Romania presents no uniformity

[5] Just to point out some examples, Law No. 3/2000 on the organization and conduct of the referendum had been amended and integrated by Law No. 375/2003, Law No. 341/2013 and Law No. 159/2018, (https://lege5.ro/App/Document/gi4dqmjyga3q/legea-nr-159-2018-pentru-modificarea-si-completarea-legii-nr-3-2000-privind-organizarea-si-desfasurarea-referendumului).

concerning the electoral participation quorum for validating the referendum (Muraru & Tănăsescu, 2019). Consultative referendums are valid only if the participating electors amounts to at least half plus one of those registered to the electoral lists. On the contrary, binding referendums concerning the President's dismissal need no participating quorum. In fact, the dismissal of the President of Romania is approved if the majority of citizens registered on the electoral lists vote in favour of it. Lastly, in respect of art. 148 referendums may not have as objects none of the unamendable Constitutional matters (Legea nr. 3/2000 privind organizarea și desfășurarea referendumului, s.d.).

The amendment of the Romanian Constitution was disciplined in artt. 146, 147 and 148.[6] As in Italy, a restrictive Constitutional amendment procedure was established because of similar needs to those faced by the Italian founding fathers, that were: breaking with the dictatorial past and establishing a new Constitutional order (Selejan-Gutan, 2016). Hence, also the Romanian Constitution it is rigid, because a special procedure is needed for its amendment. The special procedure was needed also to avoid the Constitutional rigidity from being subject to political decisions, as happened in the communist past, when in 1974 the State Collegial Presidium was abolished in Favour of the President of the Republic introduction (Selejan-Gutan, 2016). This rigidity was meant to maintain the Constitution's stability in long term. At the same time, again as in the Italian case, the rigidity left space for amendments when considered essential. Constitutional amendment is formally initiated by the President of Romania following the proposal of: the Government, at least 1/4 of the Deputies or Senators, and at least 500.000 citizens with the right to vote. This means that in Romania, there is the right to popular Constitutional initiative, but under specific conditions: «citizens who initiate the revision of the Constitution must come from at least half of the country's counties, and in each of these counties or Bucharest city at least 20.000 signatures have to be registered in support of this initiative» (art. 146). Moreover, the Constitutional amendment project has to be adopted by the Chamber of Deputies and the Senate by a majority of at

6 Renumbered artt. 150, 151 and 152 after the 2003 Constitutional Amendment, meant to integrate Constitutional vacuums and allow Romania's Euro Atlantic integration: become a member of the European Union (Art. 148) and NATO (Art 149).

least 2/3 of the members of each Chamber. In case they reach no agreement, the wo Chambers in joint session have to decide on its approval by a majority of at least 3/4. Finally, the Constitutional amendment considered definitive only if approved by the citizens through Constitutional referendum no later than thirty days after the date of adoption (art. 147). Nevertheless, there are limits to the Constitutional amendment (art. 148).[7] The procedure cannot be held neither during the State of siege or emergency, nor during war. No constitutional amendment may be made if it results in the suppression of citizens' fundamental rights and freedoms or their guarantees. Moreover, art. 148 provides specific eternity clauses: the Republican form of State, the national, independent, unitary and indivisible character of the Romanian State, the integrity of the territory, the independence of the judiciary, the political pluralism and the official language. Preserving the Republic form of Stare was considered a necessary answer to the citizen's wish to elect the Head of State. Plus, in the Constituent Assembly, those supporting the reinstatement of the old Monarchy were a little minority. Finally, the 1991 Constitution of Romania was adopted on November 21st, 1991. It was published in the Official Gazette of Romania, Part I, No. 233 of 21 November 1991, and came into force after its approval by the national referendum of 8 December 1991.[8]

The Romanian democratization may have been formally completed with the adoption of a democratic Constitution, but concretely it needed a whole decade to consolidate. Depending on the political party having the majority, democratization experienced two different phases. The first stage, from 1990 to 1996, was characterized by an extremely slowed democratic consolidation because Iliescu and his FSN were blocking economic reforms – in 1989 and 1996 – with the external support of Russia, which was interested in becoming

[7] Renumbered art. 152 after the 2003 Constitutional Amendment.

[8] Unluckily, there are no public acts available concerning the work of the Romanian Constituent Assembly as in the Italian case. There is an important book comprehending the Constitutional debates, which however is impossible to find at the moment. The book is called "Geneza Constituției României 1991: lucrările Adunării Constituante" (Genesis of the Romanian Constitution 1991: The works of the Constitutional Assembly) written by Ortansa Stângă and Valentina Puiu. It will be cited in this research only because it was greatly used for the study of other important authors consulted for this work. Thus, it is not possible to perfectly compare the major discussions of the Italian and the Romanian founding fathers.

the provider of cheap energy in exchange for political compliance. Iliescu was still reluctant to open to Western countries. He wanted to wait and see which the new international equilibria after the USSR's implosion were exactly; plus, he wanted to keep good bilateral contacts with the Russian Federation, still fearing its influence. By acting that way, Iliescu and FSN members confirmed their «near-monopolistic approach to political power», so they were not perceived as true democrats (Gallagher, 2001, p. 385). The other parties composing the Romanian multipartitism in the 90s were: *Partidul National Țărănesc Creștin Democrat* (PNTCD), *Partidul Național Liberal* (PNL), *Partidul Social-Democrat Roman* (PSDR), *Partidul Ecologist Roman* (PER), Uniunea *Democrată Maghiară din Romania* (UDMR). PNTCD, PNL, PSDR, PER, UDMR united forces in an opposing pole. To do so, on December 15th, 1990 they signed a convention for the democratic establishment – *Convenția Națională pentru Instaurarea Democrației* (CNID - National Convention for Establishing Democracy) – and the year after, on November 26th, 1991 they formed a center-right political coalition, the so-called *Convenția Democrată Română* – (CDR - Democratic Romanian Convention). The Democratic Romanian Convention won the November 1996 elections, giving birth to the second stage of the transition. It was a coalition of convenience aiming at revitalizing the economy and raising life quality. The new President, Emil Constantinescu, supported a political agenda of appeasement with minorities, a post-nationalist policy and the denounce of corruption within the institutions. Thanks to these policies, Romania gained the international image of a stabilizing nation in the unstable Balkan region, which allowed it to concretely develop negotiations with the West for starting EU accession negotiations (1995) and entering NATO (1996).

Overall, the major continuity with the past was the Romanian paternalistic approach towards State management. It was evident during Iliescu's first presidency, but it was also somehow absorbed by the Romanian Heads of State. In fact, Romanian Presidents had tended to acquire more power, pressuring the institutional interplay (Tănăsescu, 2008). At least under Iliescu, the paternalistic approach consisted in a political centralizing tendency which allowed to easily

maintain order, and which was actually desired. In fact, «The ideal of Romanians after the fall of the Ceaușescu regime was to have the social stability of Communism and the consumerist exuberance of Capitalism». During the 90s the expression «third way between Communism and Capitalism» was frequently used. The Romanian transition process shows important continuities with its communist past – paternalistic centralizing tendency, the need for social stability, a communist leader in the office – but at the same time, the founding fathers tried to fight against its past by limiting the President's powers. The outcome of so many continuities is due to the extremely penetrating communist ideology (which inevitably shaped people's mind), to the ex-communist politicians having such an active role in the constitution-drafting process and the first democratic Government, but also to the lack of experience with truly democratic institutions. In the end, the Romanian one was a «fast-track constitution-drafting», which caused ambiguous effects (Gallagher, 2001). The future Constitutional outcomes were hard to predict, and their formulation met several contradictory elements, not giving birth to the so desired stability but actually extending the consolidation of democracy.

3.3 Potential similar aspects and their influence on democratization

3.3.1 A common totalitarian vein but a different totalitarizing intensity

After having looked deeper into the Italian Fascist and the Romanian Communist dictatorships, it is evident that they consolidated in different historical moments (1922 vs 1947) and they reached a different level of ideological penetration. Moreover, while the Romanian experience took part of the Soviet project of communist expansion, the Italian fascist ideology was born in Italy. Nevertheless, they had both been authoritarian-style regimes which brings the two dictatorial experiences closer than it may seem. In fact, in a comparative perspective, the two regimes shared a totalitarian vein, meaning they both tended to submit the political, economic and social spheres to the single party's interests, pushing for an integration of the institutions into the

unique national party and trying to neutralize and assimilate and the individuals' interests into the public one. This common totalitarizing spirit is witnessed mainly in two shared tendencies.

First and foremost, *the common centralizing tendency*. Both the regimes integrated the single-party with the institutions, subordinating them to its political control and creating a unicameral supreme body: The *Gran Consiglio del Fascismo* (GCF) *in* Italy and *Marea Adunare Națională* (MAN) in Romania. As seen in paragraph 3.1.1, as soon as Mussolini became Prime Minister, he modified the political system, trying to have all the political power concentrated into his hands and his party's ones. The electoral law allowed only for unique national lists and the PNF became the State's constitutive actor, gaining the power to decide on social life and citizens' freedoms (Bin & Pitruzzella, 2015, p. 39-41). Likewise, the PNF also absorbed the institutions, submitting them all to its will and being identified with them by the citizens. Because of this, political parties had priority role during the Italian democratization process and as a consequence, they still have it today, but this is better illustrated in the following chapter 3. In Romania, the MAN was managed for a long time by a collegial body, called the MAN Presidium, which in 1961 saw his name change into State Council. In 1974, instead, it became a unique figure, the Head of State, represented by Ceaușescu (Ghițulescu, 2014). Moreover, also judges were informally under the PCR's control, having to adopt legal provisions which allowed to use violence and repression against any dissident or citizen considered dangerous for the regime's sake. The icing on the cake was the legally legitimized repressive body composed by the *Securitate* at the top, the *Miliția* and the army, respectively playing the role of repressive and surveillance body, public order maintenance, defense and ideologization.

Secondly, both of them adopted *society-homogenization approaches* politically, economically and culturally. Politically because of the unique party systems – *Partito Nazionale Fascista* (PNF) in Italy and *Partidul Comunist Român* (PCR) in Romania – jeopardizing any possibility for a legally accepted political heterogeneity. Economically, because the main production industries and companies had been nationalized and submitted to the unique party's interests.

Culturally, because the highly ideologized educational system educated young people to love the regime fanatically. In Italy, Mussolini corporativism homogenized the economic sphere buy submitting the entrepreneurs and the labours under the unique "worker" category, since both the figures contributed to the country's wealth and development. In his opinion, by doing so the fight among classes came to an end and the workers could concentrate on their contribution to the Nations' productivity and wealth. In this logic of collaboration among classes, the citizens were educated to identify themselves with the regime's will and interests. In Romania, the communists were "proposing" a social contract in which individual freedom was exchanged with an egalitarian Welfare State, meant to be reached through a continuously evolving totalitarizing process. The ideologization reached such high levels that State officials, political actors and citizens referred one to the other as *tovarăș*, meaning comrade. As Mussolini, also Ceaușescu embraced as nationalized economy but his homogenizing went further; in fact, he established a centralized planning system disrupting the capitalistic demand-supply logic, which instead was not fully jeopardized under the Italian Fascism. Lastly, social life was much more controlled under the Romanian Communism since the citizens' freedom was managed by the communist party, leaving no space for freedom of expression. No negative opinions about the regime could be expressed without consequences. Even in private places it could hardly be safe to express dissent verbally since there was the risk to be heard and denounced by a potential fanatic neighbor or by a regime's spy.

As demonstrated, the totalitarizing tendency was common to the Italian Fascism and the Romanian Communism and because of this, the two experiences are brought closer by interesting similarities. Nevertheless, despite its importance, the shared totalitarian vein does not make both the Italian and the Romanian dictatorships full totalitarianisms (Messina, 2008) (Sabbatucci & Vidotto, 2008) (Tismăneanu, 2005). On the contrary, they tend to be totalitarian to different degrees, which inevitably underlines the existing differences among the two experiences. According to Hannah Arendt's studies, to be considered totalitarian; an authoritarian-style regime needs to have the following features:

unique and dominant ideology, power concentration within few oligarchs, single-party system, monopoly of information control, army control, use of terror to eliminate opposition, regime identity based of fighting an external enemy (Arendt, 1958). In short, she defined totalitarianism as «the most radical denial of freedom» (Arendt, 1954). Sticking to this definition, it's easy to see that while Ceaușescu's Communist Romania may easily fit the model (Tismăneanu, 2005), Mussolini's Fascist Italy does not (Messina, 2008). In fact, the Romanian dictator managed to put under PCR's political control each economic and social institution, giving birth to a fully integrated Party-State (Abraham, 2016). The Italian Duce instead, never managed to reach such a penetrating fascistization, so it cannot be fully considered a totalitarianism. It lacked a unique and dominant ideology, a regime identity based on fighting an external enemy and the use of terror to eliminate opposition. Ideologically, the Catholic religion was an important competitor for Fascism, impeding it to deeply pervade the Italians' minds already busy in worshipping the Church's provisions (Sabbatucci & Vidotto, 2008). This was definitely not the case in Romania, where religious faith was formally tolerated but not encouraged; on the contrary, it was often denounced by the *Securitate*. Besides, Fascism did neither systematic use of the terror nor use of mass extermination theories. It persecuted politically, but not as totalitarianisms did and not until its final phase, in 1938 with the racial laws. Moreover, it is its very nature that impedes to consider it a totalitarianism. It was a sort of an authoritarian compromise among three forces: Mussolini and his Fascist State, the Catholic Church and the King Vittorio Emanuele III. The last two acted as counterpowers, impeding Mussolini to gain full control of the State and to fully identify the latter with the PNF, so they impeded him to fully realize its totalitarian vocation. Moreover, the Constitution itself (the *Statuto Albertino*), the PNF and Capitalism acted as counterbalancing elements (Messina, 2008). In fact, differently from his Romanian counterpart, Mussolini never fully managed neither to monopolize the capital and the industry nor to persuade his party to only follow his ideals (Sabbatucci & Vidotto, 2008). The historian Sabbatucci considers Italian Fascism « (…) an imperfect totalitarianism because, even if there was a strong push, the obstacles

to its full implementation were very strong, starting with the Monarchy and the Catholic church. A State in which at some point the King can call the *carabinieri* and have the *Duce* arrested cannot be considered fully totalitarian (...)» (Messina, 2008). Consequently, although there is not a universal consensus towards this issue, Italian Fascism is considered an «imperfect totalitarianism» to the aim of this study (Sabbatucci & Vidotto, 2008).

On the other hand, this imperfection is not to be found into the Romanian case, in which the so-called «jurisprudence of terror» made an instrumental use of law against dissidents, which mostly confirms its totalitarian nature (Abraham, 2016). In fact, Arendt distinguished tyranny from totalitarianism by arguing the first one is lawless while the second one does have sources of law, instrumentally created and enforced so to pursue the interests of the leading elite. Furthermore, the «use of fear as a political weapon» was coupled with cognitive mass manipulation through which the communist ideology was imposed in a totalitarian way into the minds and lives of the Romanian citizens, leaving them neither the chance to orientate towards different ideologies nor any space for the creations of counterpowers (Linz & Stepan, 1996). The regime always possessed a Stalinist vein, visible in Ceaușescu's attempt to create a «dynastic Communism» with a as «centralized industry and collectivized agriculture»; in fact, he «had become a communist Pharaoh, an infallible half-god whose vanity seemed to be borderless» (Tismăneanu, 2005). However, «this cult proved to be artificial, a propagandistic fiction devised by ideological nomenclatures and supported by the ubiquitous *Securitate*» characteristic of totalitarianisms (Tismăneanu, 2005, p. 226).

The thesis of Romania's full totalitarianism and Italy's imperfect one, may be confirmed also by the different ways in which the two dictatorships consolidated and later on imploded. In Romania, the Soviet pushed from outside for the establishment of Groza's pro-Soviet Government and later on organized elections that favoured local communists, giving power to Gheorghe Gheorghiu-Dej and his communist party (which then was the *Partidul Muncitoresc Român* - PMR) (Abraham, 2016) (Constantiniu, 2015). In Italy, instead, Mussolini led the March on Rome in 1922, asking the King for power and threatening to take

it through violence in the case of negative response (Sabbatucci & Vidotto, 2008). Thus, while in Italy the form of State remained a Monarchy in which the King allowed the *Duce* to become the Prime Minister and shape an authoritarian form of government (even if the King was forced to do so), in Romania, the form of State was converted from a Monarchy to a Popular Republic through imposition; no King consensus was neither asked nor granted. As a result, from the very beginning, the Romanian Communism embraced a totalitarian approach while the Italian Fascism was counteracted – at least formally – by the king's presence, amongst other powers. Furthermore, the way in which the regime's implosion happened also confirms the thesis. In Romania, there was such freedom-restricting system that the only way for people to counteract it was violence, a popular revolution. This was the only way possible to build up an opposition, in the end joined by the army, tired of respecting orders of killing people just for not agreeing with the regime's provisions. In all of these, the communist party has always supported and protected Ceaușescu and his family, at least until December 22nd when the leader was forced to escape because of the popular revolt and it became evident that his end had come (Abraham, 2016, p. 28).

3.3.2 Similar Constitutional needs and different institutional solutions

After having looked deeper into the Italian and the Romanian transition periods, it is clear that they happened in different backgrounds, historically, culturally and politically. In fact, when using comparative analysis, underlining differences is the easiest task. Every system, even the more similar ones, have many differences among them because legal ideal-types always act differently when applied to concrete experiences. However, the challenge here is to underline similar aspects, which is definitely harder. Are the Italian and the Romanian democratic transitions really so different? According to this study, the answers is no. Having them both been authoritarian-style regimes, the Italian Fascism and the Romanian Communism share a totalitarian vein, and this makes their democratization processes more similar than it may seem. After an

authoritarian drift, if there is a strong orientation towards democratization, the founding fathers may logically want to provide the emerging democratic system with anti-authoritarian elements, preventing the State order from being jeopardized again in the future. Since this is exactly the case of both the experiences here studied, their transitions to democracy present valid elements in common. This means that the similar totalitarian vein of the two dictatorial periods paved the way for similar Constitutional needs during the democratization period. At the same time, the different degrees of totalitarization that they reached – an imperfect totalitarianism in Italy and a fully one in Romania – brought the two countries to answer differently to these similar Constitutional needs. Among the main ones, there is first and foremost the need to lead a safe democratic transition till the end. This was the common denominator uniting the different emerging political and social forces in both the Italian and the Romanian experiences. Managing to establish a democratic system, without facing any internal social or political disequilibrium, was an important challenge in such a fragile moment. The political forces were aware of this and, despite their will to prevail, they initially cooperated. A common unity around the past. In both cases a politically heterogeneous national front led the transition. However, while in Italy the *Comitato di Liberazione Nazionale* was composed by truly cooperating political parties, in Romania, *Consiliul Frontului Salvării Naționale* was actually managed and dominated by the political actors who created it, mainly Iliescu and some ex *Securitate* exponents. Logically, it was very easy for the Romanian National Salvation Front (FSN) to be controlled by ex-communist Iliescu who dominated the whole political arena with his paternalistic approach in such a fragile moment. Romania's transition was into a weaker position because the strong totalitarianism prevented the emergence of hidden civil organization to fight the regime from inside, as there was instead in Italy with the CLN forming the national resistance since 1943. Precisely to deal with this fragility, Iliescu adopted a centralizing tendency towards State management, slowing down economic reforms and the opening to the Western Cooperation. The FSN, instead of renouncing his function, transformed into a party, winning the election. It dominated the first six years of

the Romanian transition, slowing the democratization wave precisely because it was composed by second-ranking ex-communist leaders. In Italy this was not the case. The National Liberation Committee was already organized in different parties, the so-called Pentarchy, with not one precisely dominating the process. Hence, the Italian one split into many parties, renouncing its leadership. Plus, during its struggle for Resistance against Mussolini's Socialist Republic of Salò established in the North, with the support of Hitler, the Italians received external help from the Allies of World War II and this made the difference. In Romania, instead, the transition started with no concrete help from the outside. International assistance was received when negotiations started to the aim of integrating Romania into NATO and the EU. Secondly, both the Italian and the Romanian post-dictatorial Constitutions were centered in breaking with the past, avoiding the possibility for a new dictator to emerge. The Constitutional needs were to be designed negatively, in the sense that the Constitution had to exclude and refuse any provision risking leading to anti-democratic outcomes (Selejan-Gutan, 2016). Both the Italian Constitution (1948) and the Romanian Constitution (1991) had been forged to repudiate totalitarianism. In Italy, three main political forces compromised for its drafting: liberals, Christian democrats and socialist-communists. Anti-Fascism was their cohesive force, the determining element for the drafting of a *Costituzione "afascista"* (anti-fascist Constitution) (Falzone, Palermo, & Cosentino, 1949). Similarly, the Romanian 1991 Constitution was the answer to post-communist democratic needs and the building of a new Constitutional order (Abraham, 2016). In both systems, the President of the Republic was meant to be powerful as a guarantor of the respect of the Constitution, ensuring the State's unity and formally representing the Republic, but without risking having too much power concentrated in his hands. For this reason, a presidential form of government was considered not suitable in both cases. In Italy, a parliamentary system was established, with an indirectly elected Head of the State, whose above the political parties, so not letting him enter the executive sphere,[9] but granting him formal powers: granting national

[9] Nevertheless, considering the concrete institutional interplay in implementing the Constitution, the existence or not of Italian President's executive functions are being debated, as it is discussed in paragraph 4.2.1.

unity, checking the proper functioning of the democratic system in line with the Constitution (art 83) (Falzone, Palermo, & Cosentino, 1949). In Romania, instead, a Semi-presidential Republic was enforced, in which there is a directly elected President who collaborates with the Prime Minister within the executive branch. However, within the governing the Prime Minister should be dominant, at least as established by the 1991 Romanian Constitution. In fact, the President represents the State and grants the national independence and unity. Moreover, he is a mediator among the State's powers and between State and society is also has the function to keep watch over the correct functioning of the public authorities (art. 80). Their roles are better explained in the following chapter (paragraphs 4.2.1 & 4.2.2) but for the aim of this one it is important to clarify that, in both cases, there was a Constitutional need to pave the way for a counteracted Head of State, "weaker" if we want to define him so. Nevertheless, the way in which this Head of State was counteracted in the two experiences is different and this is linked to the different degrees of totalitarization experienced. Thirdly, both of the Constitutions presented a degree of openness towards future evolutions of the system, due to the big uncertainties about the future political changes (Falzone, Palermo, & Cosentino, 1949) (Selejan-Gutan, 2016). In fact, Constitutional openness is typical of fundamental texts that had resulted from the political compromise among different democratic forces united by the common denial of the past totalitarian experience and by the need for an entirely different society (Martinico, Guastaferro, & Pollicino, 2019). This openness corresponds to the Constitutional predisposition to welcome future changes if truly needed and respectful of the Constitutional revision procedure. The need for Constitutional changes may come from legal sources that are external to the national system, such as the European or the International Law, reason why openness does not infringe upon the Constitutional rigidity, defined by the type of Constitutional revision procedure. In fact, an "open" Constitution is not necessarily a flexible one. Interestingly, this phenomenon has earlier roots, in fact it belongs to the new tendencies of modern constitutionalism about which Mirkine-Guetzévitch wrote in the 1930s (Mirkine-Guetzévitch, 1928) (Mirkine-Guetzévitch, 1930). The proof of the Italian Constitution's openness may be

found in art. 10, which affirms that «The Italian legal system conforms to the generally recognized norms of international law». It is thanks to a particular interpretation of the latter that the Italian Constitution was considered compatible with the supremacy of EU law without any need to amend the fundamental text. Moreover, art. 11 was also fundamental in European Integration, enabling sovereignty limitations in conditions of equality with other Nations if necessary to ad order ensuring peace and justice. Romania's openness, instead, it is witnessed in the Constitutional revision of 2003 (Law No. 429/2003) which added art. 148 and 149 respectively for regulating the Integration to the European union and the Accession to NATO. In fact, art. 148 states «Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, (…) shall be carried out by means of a law adopted in the joint sitting of the Chamber of Deputies» (Iancu, 2019).

These common Constitutional needs were answered differently because of the different totalitarizing tendency which distinguished also the way in which the transitions started: violently in Romania and politically mediated in Italy. Because of the Romanian full totalitarianism, opposition had to be channeled through violence, there was no other way of leading the opposition. On the contrary, in Italy, the transition initially started through a political agreement, with the decision of *Gran Consiglio del Fascismo* itself to depose Mussolini; even if, later on, it transformed into a war seeing the Italian Resistance fight the Nazi-Fascism (established in the North after that the Nazis liberated Mussolini while being transferred for his arrest) (Sabbatucci & Vidotto, 2008). Differently from what it may be expected at first sight, there is space for interesting similarities between the Italian and the Romanian democratic transitions. They present several common elements which depend on the shared features of the two previous dictatorships. Because of their past similar totalitarian vein, Italy and Romania faced similar Constitutional needs during their democratic transitions: leading a safe democratic transition, breaking with the past, preventing the emergence of another dictator, maintaining sort of a Constitutional openness. Nevertheless, because of the different degrees of

totalitarization, the way these Constitutional needs were satisfied, and the very nature of the transition were different. If the similar totalitarian vein paved the way for similar Constitutional needs during the transition process, then these similar Constitutional needs may have paved the way for similar features in the concrete functioning of the Italian Parliamentarism and the Romanian Semi-presidentialism. For this reason, the next chapter analyzes the characteristics and evolution of these two forms of Government, seeking for common features.

4 The concrete functioning of the Italian Parliamentarism and the Romanian Semi-presidentialism in a comparative perspective

This chapter analyzes potential dissociations between the Constitutional provisions of the two forms of government and the way they had been implemented by the Parliament, the President of the Republic and the Government but also the influence of the Constitutional jurisprudence in this matter. To this end, direct comparisons are made among these three main Constitutional bodies. Respecting the order of both the Romanian (2003) and the Italian Constitutions (1948), they are analyzed as follows: the Parliament, the President of the Republic, the Government and lastly a brief examination of the role of the Constitutional Courts, as well as the effect of some attempted Constitutional amendments. The relationship of each institution with the others is referred to in all the sections, but more into detail in section 4.3.1 concerning the Government. The latter is paid particular attention because the Romanian dual executive presents several differences with the Italian executive, which need to be properly introduced. Furthermore, the influence of the European integration process is briefly taken into consideration, since both Italy and Romania are part of the European Unions; thus, both the executive branches are active within the European intergovernmental pillar.

References to some important decisions of the two Constitutional Courts are made directly during the comparative analysis. However, being its jurisprudence so influent on the concrete functioning of the forms of Government, the Italian and the Romanian Constitutional Courts are given some space of analysis, even if a brief one, in the last section. Lastly, some of the most important attempted Constitutional amendments are included, presenting their effects on the concrete functioning of the institutional interplay and on the available similarities between the two forms of Government.

4.1 The Parliament

4.1.1 The Italian Parliament

4.1.1.1 The structure, the confidence relationship and the legislative function

The Italian Parliament is structured according to a symmetric bicameralism, meaning that both the Chamber of Deputies and the Senate have the same legislative functions and each of them deliberates[10] to grant or revoke the vote of confidence to the Government, with a motivated motion (art 94). The existing differences concern the number of members and structure. They are both elected at universal suffrage, but the Chamber of Deputies has 630 members elected at a national level (art. 56) while the Senate has 315 elected on a regional basis (art. 57).[11] Structuring it on a regional basis meant linking the regions and the Senate in a stable and institutional way, such a link seemed to everyone to be an essential element of the regional reform, even though such a relationship has never materialised in practice (Falzone, Palermo, & Cosentino, 1949, p. 106) (Eduardo, 2018) (Cecchetti, 2018) (Tarli Barbieri, 2019). Furthermore, former

[10] In 1983, the Bozzi Bicameral Commission for Constitutional revisions proposed a reformulation of art. 94, stating that the vote of confidence should have been granted in joint session by the two Chambers. See paragraph 4.4.2.

[11] On 12 October 2019, Constitutional Law No. 240/2019 was published in the Official Gazette, which provides for a reduction in the number of parliamentary members: from 630 to 400 the Deputies and from 315 to 200 the Senators. The second paragraph of art. 56 and the second paragraph of art. 57 of the Constitution are amended to that effect. It was approved by the Senate with an absolute majority of its members, in a second vote, in the sitting of July 11th, 2019. Then, the Chamber of Deputies approved it by a majority of 2/3 of its members in a second vote in the sitting of October 8th, 2019. However, due to the unexpected COVID-19 emergency the issue is still pending. On a proposal by Prime Minister Giuseppe Conte, the Council of Ministers had agreed on a date of 29 March 2020 for the holding of a popular referendum to approve the text of the constitutional law, as provided for in Article 138 of the Constitution. The decree law of 20 April 2020 ordered the postponement of the electoral consultations planned for 2020 and has also been applied, with some modifications, to the holding of the referendum on the text of the law constitutional. More at:
https://www.camera.it/temiap/documentazione/temi/pdf/1104514.pdf?_1564097148761.
Text of the Constitutional Law No. 240/2019 at:
https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2019-10-12&atto.codiceRedazionale=19A06354&elenco30giorni=true
(Last visit June 2020).

Presidents of the Republic become Senators for life – unless they renounce to the office – whereas the President in the office may appoint five Senators for life among citizens who have honoured the Nation through their outstanding achievements in the social, scientific, artistic and literary fields (art. 59). Both the Chambers have a five years mandate (art. 60)[12] not extendable except in cases of war, and by means of law and no one may be contemporarily a Deputy and a Senator (art. 65). Furthermore, the President of the Republic may dissolve the Chambers or even just one of them, after hearing their Presidents but he may not exercise this power during the last 6 months of his term of office (art. 88) (Falzone, Palermo, & Cosentino, 1949, p. 106) (Petrillo & Frosini, 2006) (Salerno, 1990).

The founding fathers discussed whether or not to indicate in the Constitution specific cases of incompatibility, but it was noted that the inclusion of certain cases could lead to the presumption of the exclusion of all the others, giving rise to serious drawbacks. Therefore, it was preferred to refer the matter to the electoral law. However, the Constitution does establish some cases of incompatibility: between the office of Deputy and Senator; between the office of Deputy and Senator and those of regional councillor (art. 122); judge of the Constitutional Court (art. 135); member of the Superior Council of the Judiciary (art. 104). They are also incompatible with the office of President of the Republic, which is incompatible with any other office (art. 84). Moreover, there are immunities as means to protect the integrity and the good functioning of the Parliament. Parliamentarians cannot be held responsible for the opinions or votes expressed in the exercise of their duties. If the Chamber to which a Deputy or a Senator belongs does not authorize it, none of its Members «may be submitted

[12] Initially, art. 60 provided for a six years mandate for the Senate. However, from 1953, there was the tendency to equalize the mandates of the two Chambers by dissolving the Senate early, coinciding with the end of term of the Chamber of Deputies (in 1953 and 1958). Then, with Constitutional Law No. 2/1963, the constitutional amendment of Art. 60 was introduced, also bringing the Senate's term of office to five years. More at: https://www.senato.it/1022# and the Text of Constitutional Law No. 2/1963 is to be find at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1963-02-12&atto.codiceRedazionale=063C0002&elenco30giorni=false (Last visit June 2020).

to personal or home search, nor may he be arrested or deprived of his personal liberty, nor held in detention, except when a final court judgment is enforced, or when the Member is apprehended in the act of committing an offense for which arrest *flagrante delicto* is compulsory» (art. 68). Such authorisation is needed also to monitor private conversations and emails of a Member of Parliament (art. 68). The legislative initiative function consists of the submission of a bill to the Parliament. The Constitution recognises the right of legislative initiative to the Government, to the individual members of Parliament, to the electoral body – if there are at least 50.000 signatures (art. 71)[13] – to the National Economic and Labour Council (art. 99) and to Regional Councils (art. 121). Thus, these Constitutional bodies participate in the legislative function, but the legislative power is only exercised by the two Chambers collectively (art. 70), thus the Parliament is the only institution truly possessing this power (Rodriquez, 1990) (Spuntarelli & Ruotolo, 2006). In the Constituent Assembly, this article led to disagreements between supporters and opponents of the Head of State's participation to the legislative process. According to Hon. Bozzi, the legislative function was to be exercised collectively by the President of the Republic and the two Houses. Moreover, Hon. Mortati pointed out that the Head of State could be attributed a function of active intervention, carried out with sort of a legislative sanction, or a function of only temporary arrest of the entry into force of the law, meaning a suspensive veto. However, assuming that the Head of State was to be granted powers of a predominantly moderating character, an active intervention in the legislative function would have created disharmony in the system, while it would have been better to entrust him with the promulgation of the laws, action that declares the laws' efficacy (art. 87) (Falzone, Palermo, & Cosentino, 1949, p. 106). In the end, this formula was accepted and the participation of the Head of State to the legislative procedure approved under these terms. He was provided with the power of the suspensive veto, according to which the President can ask a second examination and

[13] There have been different proposals for the amendment of art. 71, concerning the numbers of necessary signatures for the popular legislative initiative. For instance, the D'Alema Commission proposed to raise it from 50.000 to 100.000, while the Renzi reform proposed to raise it to 150.000. See paragraph 4.4.2.

deliberation of a law before promulgating it (art. 74) (Rodriquez, 1990) (Spuntarelli & Ruotolo, 2006).. This suspensive veto is part of the President's power of control over the adoption of acts, being him the guarantor of the proper functioning of the parliamentary system. Nevertheless, also the Government participates in the legislative function, which can be delegated by the Parliament itself (Bin & Pitruzzella, 2015). The delegation is justified by the need to make the Parliament's work less burdensome and by the greater suitability of executive bodies to provide an adequate solution to certain problems (Falzone, Palermo, & Cosentino, 1949, p. 106) (Rodriquez, 1990) (Spuntarelli & Ruotolo, 2006). However, it is always the Parliament which, with its sovereign power, delegates this function to the executive (Dima, 2014). Therefore, there is no impairment of the prestige of Parliament, at least according to the Constitution. In fact, the Parliament can delegate the legislative function to the Government only by establishing guiding principles, requirements, a limited period of time and specified purposes for its use (art. 76). Moreover, in situations of urgency and necessity, the Government can adopt legislative measures – called decrees-law[14] – without the need for legislative delegation. However, in order to keep providing legal effects, decree laws must be confirmed by the Parliament with an appropriate law of conversion within sixty days of their adoption. The failure to convert such measures into law, makes them lose their effectiveness from the beginning, as if the rule never existed (art. 77) (Rodriquez, 1990) (Spuntarelli & Ruotolo, 2006). Hence, there is a parliamentary control over the executive's exercise of legislative powers, at least in constitutional terms. Concretely, instead, the Government ended up abusing its exceptional law-making tools[15] (Bin & Pitruzzella, 2015) (Dima, 2014) (Celotto, 2012) (Buonomo, 2011).[16] This strengthened its role within the legislative process, at the expenses of the Parliament (paragraph 4.3.1) (Cavatorto, 2015).

[14] Notice that these means for governmental law-making are called differently in different systems. If, in Italy, they are called decree-law, in Romania they are called emergency ordinances. See paragraph 4.1.2.

[15] See paragraph 4.3.1

[16] The Italian Constitutional Court intervened within the issue, with Judgment No. 22/2012 concerning the abuse of the law of conversion. More at: https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2012&numero=22 (Last visit June 2020).

Another instrument that may be used by the Government during the legislative process is the *questione di fiducia*, the so-called question of confidence (disciplined by Parliamentary rules of procedure).[17] Any time that the Chambers decide on matters which are important for the enforcement of the Governmental political program, the Government may decide to put on those debates this question of confidence. This action implies that the approval of that specific provision is of such fundamental importance for the cabinet that a parliamentary negative vote on it would have the value of voting a motion of no confidence, and the cabinet would resign. This tool has been used many times by the cabinet to pressure the adoption of bills important to its aims and, rather than strengthening the support of the parliamentary majority towards the cabinet, it acted as a procedural expedient to speed up the parliamentary procedure (Bin & Pitruzzella, 2015) (Cappelli, 1975) (Rivosecchi, 2008) (Curreri, 2015) (Bin & Pitruzzella, 2015) (Veltri, 2018).[18] Still concerning the relationship with the Government, each of the two parliamentary Houses has the power to grant it the vote of confidence (art. 94), which in parliamentary systems is indispensable to legitimize its investiture. Thus, the Italian Government is accountable to the Parliament. In order to grant the Government an operative stability, the vote of confidence, as well as its revocation, needs to be motivated and discussed not before than three days from its submission and signed by at least 1/10 of the Chamber (art. 94). All of this is part of the process of rationalization even if the Italian system adopted it in a very low degree, as it is better explained in 4.3.1. The Parliament, in joint session, is also responsible for the election of the Head of State with a 2/3 majority for the first two ballots while, after the third one, an absolute majority is sufficient (art. 83) (see paragraph 4.2.1). In order to ensure the representativity of minorities, also regional delegates participate in the presidential election, that was a deeply debated issue within the Constituent Assembly, as stated in the 3.2.1.

[17] While in Italy the question of confidence is not disciplined by the Constitution but by the Parliament's regulations, (available at: https://www.camera.it/leg17/438?shadow_regolamento_capi=1069&shadow_regolamento_articoli_titolo=Articolo%20116), in Romania it is regulated by the Constitution, art. 114 and it is called Government's assumption of responsibility (paragraph 4.3.2).
[18] More bibliography on the issue may be found at: https://bpr.camera.it/.

4.1.1.2 The electoral system and its impact on the form of government

The electoral system has been very important for the way the Parliament has been elected and worked; for this reason, it deserves to be illustrated, even if briefly. In fact, the Italian electoral system has been changed very often since 1993 and it was subject to the intervention of the Constitutional Court. The 1990s political crisis[19] brought to the end of the so-called First Republic, with the implosion of the Italian party-system. This event made it very clear that the no-alternation problem needed to be solved and the most viable way to do so seemed to be reforming the electoral formula (Guzzetta, 2018). In fact, from a political perspective, the Second Republic officially started with the 1993 electoral reform, known as *Mattarella* Law or *Mattarellum* (after its proposer Sergio Mattarella) and enacted following the referendum of April 18th, 1993 (Law No. 276/1993 for the Senate and Law No. 277/1993 for the Chamber of Deputies)[20]. Nevertheless, from a legal perspective, nothing changed since the Italian Republic is still governed by the 1948 Constitution as modified.[21] Previously,

[19] In the 90s, the Italian political system entered into a big institutional crisis due to both internal and external determining factors. Internationally, the Berlin wall had fallen, and the Soviet Union imploded, causing a general collapse of the communist ideology. This deeply affected the internal affairs of States, especially those in which there was a relatively strong communist party. In Italy, the PCI had no longer reasons to exist and needed to change its name and mission as had to do the PSI. The DC was supported mainly because of its anti-communist vein, which now had no longer reason to be opposed and so the DC also lost its existing reason. The crisis of the three massive parties led to the creation of new parties and no political coalitions. In like manner, the parliamentary proportional formula was no longer capable of guaranteeing the proper functioning of the institutional system. Moreover, the institutional crisis was worsened by another political internal disaster. During the 1992 electoral campaign, Mario Chiesa, an important PSI member was accused and arrested for having accepted bribes from an Italian entrepreneur. It came out that it was a common practice to assign public contracts to Italian entrepreneurs and that all the key political parties were involved, included the DC. This contributed to erase the legitimacy of the Italian party system. The ruling class was exposed to a judicial inquiry named *Mani Pulite*, which totally weakened them, urging for a party system change. With the 1992 elections, the *Lega Nord* obtained an important majority and a coalition Government with the weakened traditional parties was created. It lasted until 1994 when the entrepreneur Silvio Berlusconi gave birth to a new moderated center-right party, *Forza Italia*. He created a coalition with *Lega Nord* and *Alleanza Nazionale,* forming a coalition Government. It lasted only a year, but it officially marked the beginning of a new stage in the Italian system: the so-called Second Republic (Guzzetta, 2018).

[20] The two texts may be found at:
https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1993-08-04;276!vig and
https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1993-08-04;277!vig (Last visit June 2020).

[21] A comprehensive list of the several constitutional laws may be found at:
https://piattaformacostituzione.camera.it/4?scheda_contenuto=7 (Last visit June 2020).

from 1946 to 1993, the Italian Republic was characterized by a proportional electoral system under Law No. 74/1946. This law was modified by the so-called *legge Truffa*, Law No. 148/1953, by which the De Gasperi Government introduced a majority prize for the coalition that had reached an absolute majority. It was sharply criticized by the opposition and never took effect. In fact, it was used for the elections of June 7th, 1953 but no coalition reached a majority for the prize. Then, it was abrogated by Law No. 361/1957 (Bilotto, et al., 2017).

Coming back to the Mattarella Law, it gave birth to a combined system in which 3/4 of the seats were elected through a single first past the post majority system while the remaining 1/4 were elected through a proportional one. It was a majoritarian electoral system corrected by a proportional quota, whose result was the bipolarization of parties in two major coalition blocks: the center-right and center-left. The law aimed at strengthening bipolarization, but it ended up giving birth to the so-called *imperfect bipolarism* (expression coined by Giorgio Galli) (Venco, 1969).[22] This imperfection is due to multiple reasons. Firstly, political parties coalized for convenience and not because they shared a similar political program. Secondly, there was no decrease in party's pluralism because even the minor ones knew they could exploit their little role to persuade major parties inside the coalitions. As a consequence, the system was just *partially majoritarian*. Majoritarianism could be perceived in the faster cabinet-formation and in the Prime Minister being the leader of winning coalition. However, this did not produce the expected governmental stability because the heterogeneous parties composing the ruling coalition jeopardized the cabinet's efficiency, unbalanced in favour of the ruling majority, a condition defined as *hyper-majoritarian* (Volpi, 2007). First, there was no statute formalizing the opposition's power and right to counter-balance the ruling majority. Second, there was no guarantee quorum. Third, the governmental empowerment occurred both because of the change of the parliamentary rules of procedure in

[22] See Galli, Giorgio. Il bipartitismo imperfetto. Comunisti e democristiani in Italia, il Mulino, Bologna, 1967.

the 90s – thanks to which it gained control on the parliamentary agenda – and because of their overuse of decree-laws.

In 2005, Berlusconi's center-right Government adopted a new proportional electoral reform known as *Calderoli* Law (after its proposer Roberto Calderoli) (Law No. 270/2005). It gave birth to a proportional electoral system corrected by majority bonuses. It was characterized by competing blocked lists in which candidates were already selected by political parties with no possibility to express preferences for the electors (Volpi, 2007) (Bilotto, et al., 2017). The majority bonus for the winning coalition was given nationally for the Chamber of Deputies and regionally for the Senate, but for the latter without a minimum number of seats required. The Senate's majority bonus was object of the Constitutional Court's Judgment No. 1/2014, sentencing the unconstitutionality of the *Calderoli* Law (paragraph 4.4.1) (La sentenza 1/2014 e la relazione della Corte costituzionale, s.d.) (Ferri, 2017). Moreover, there were also national thresholds: 2% for parties belonging to a coalition, 4% for parties running alone and 10% for coalitions (I sistemi elettorali in Italia dal proporzionale al Rosatellum, 2017). Highly criticized as mere rubbish, the law started to be called *Porcellum* by the famous Italian political scientist Giovanni Sartori and in December 2013 it was declared partially unconstitutional by the Italian Constitutional Court (Judgment No. 1/2014). Among other issues, the unconstitutionality concerned the majority bonus for the Chamber of Deputies, declared excessive since it created a huge gap between the parliamentary composition and the popular will; and the long-blocked lists, which infringed the principle of representativity (citizens could neither express a preference nor see the name of the candidates)(more about it in paragraph 4.4.1) (Bin & Pitruzzella, 2015, p. 220-221) (Ferri, 2017). After the Court's judgment, the law was modified, producing a pure proportional system, the possibility to express one preference and an 8% of national threshold for the Senate (Ferri, 2017) (Bilotto, et al., 2017). This new system is known as *Consultellum*. It remained in force without ever being used until it was replaced with the *Italicum* for the Chamber of Deputies (starting July 1st, 2016), and for the election of the Senate until November 2017 (but it was later definitively repealed by the *Rosatellum*

electoral law) (Ferri, 2017). Meanwhile, a constitutional reform was being discussed, which aimed at reforming the symmetric bicameralism and for this reason, the *Italicum* electoral law (Law No. 52/2015) was meant to be applied only to the Chamber of Deputies (better explained in paragraph 4.4.2) (Bin & Pitruzzella, 2015, p. 220-221).[23] However, the 2016 constitutional reform failed. Consequently, the symmetric bicameralism remained but with different electoral systems for the Chamber of Deputies (*Italicum*) and the Senate (*Consultellum*).[24] The *Italicum* law proposed a proportional electoral system modified by a majority premium. It would have worked as follows. The electoral list getting at least 40% of the votes obtained a majority bonus of 340 seats (i.e. 55% of the total). Otherwise, if no single list reached 40% of the votes, there would be a second round, i.e. a runoff between the two lists that obtained the most votes. The list that getting the bigger number of votes, in the runoff, obtained the majority bonus. Between the first and the second round no appearances or list links are possible, the lists compete as they were presented at the beginning. There is a threshold of 3% to obtain seats. In addition, multiple candidacies were accepted, i.e. the heads of electoral lists (*i capilista*) could be included in the lists in more than one college, up to a maximum of ten, thus being able to be elected in more than one college at the same time (Ferri, 2017) (Bilotto, et al., 2017).[25] However, the unconstitutionality issue was raised also for the *Italicum*, on which the Constitutional Court intervened with Judgment No. 35/2015. With the latter, the Court expressed its opinion, ruling on the constitutionality doubts raised by five Tribunals (those of Trieste, Messina, Genoa, Perugia and Turin) concerning specific issues. Among them, the main ones concerned the majority bonus, the

[23] A more in -depth analysis is to be find in: Massetti Emanuele; Farinelli Arianna, From the Porcellum to the Rosatellum: 'political elite-judicial interaction' in the Italian laboratory of electoral reforms, Contemporary Italian politics, 11(2019), n. 2, p. 137-157.

[24] More on the two systems is to be find in the following books:
Spadacini Lorenzo, La legge elettorale per la Camera dei deputati, La Costituzione in movimento: la riforma costituzionale tra speranze e timori / a cura di Adriana Apostoli, Mario Gorlani, Silvio Troilo. - Torino Giappichelli, 2016. - p. 87-119.
Spadacini Lorenzo, La legge elettorale per il Senato della Repubblica, La Costituzione in movimento: la riforma costituzionale tra speranze e timori / a cura di Adriana Apostoli, Mario Gorlani, Silvio Troilo. - Torino: Giappichelli, 2016. - p. 119-127.

[25] Very useful also the infographics of the Chamber of Deputies, available at: https://www.camera.it/application/xmanager/projects/leg17/attachments/infografica/pdfs/000/000/021/italicum_new_14-05.pdf(Last visit June 2020).

second round in case no list reaches 40% and the possibility for the heads of electoral lists to choose their elective college in case they were voted in more than one. The Court welcomed the doubts concerning the second round (*turno di ballottaggio*) and the choice of the elective college for the heads of electoral lists. In fact, it declared both to be unconstitutional and affirmed that any leader being voted in more than one electoral college needs to be attributed one by means of a draw (*criterio del sorteggio*). On the contrary, the Court rejected the unconstitutionality of the majority bonus, claiming that this measure does not truly lead to an over-representation of the winning coalition. In fact, in electoral systems providing for a majority premium with a distribution of seats calculated on a proportional basis, the majority bonus may be source of excessive over-representation (of the list winning the relative majority) only if no minimum quorum is required for getting the bonus, but this was not the case of *Italicum* since a coalition needed to get at least 40% of votes to be granted the bonus of 340 seats (Judgment 35/2015, see paragraph 4.4.1) (Dickmann, 2017).[26] Both the *Italicum* for the Chamber of Deputies and the Consultellum for the Senate had been abrogated by the *Rosatellum bis* (from Rosato, its proponent) (Law No. 165/2017), starting on November 2017. "Bis" refers to a previous electoral law, very similar which was not approved. *Rosatellum bis* sets up a mixed electoral system in which 37% of the seats are elected by the majoritarian method while 61% by the proportional one. The seats allocated by the majoritarian method go to the parties that received the bigger number of votes. The proportional method, on the other hand, assigns each list a number of parliamentarians based on the votes obtained in the colleges. It provides for different thresholds. There is a threshold of 3% on a national basis, both for the House and the Senate (I sistemi elettorali in Italia dal proporzionale al Rosatellum, 2017) (Dickmann, 2017). For coalitions, on the other hand, there is a minimum threshold of 10%, but within the alliance at least one party must take 3%. The votes of the coalition list that do not reach 3%, but exceed 1%, flow into the coalition (Sistema Elettorale, s.d.)

[26] There are many other important comments on Judgment No. 35/2017 to be found at: http://www.giurcost.org/decisioni/2017/0035s-17.html (Last visit June 2020).

(Bilotto, et al., 2017).[27] Altogether, the different electoral laws demonstrate how extreme is the Italian multipartitism, in which political parties are fundamental actors (Cheli, 2014). If generally, within parliamentary systems, there is a balancing criterion which limits the parliamentary majority by distributing counter-limiting powers among the other constitutional bodies (the President, the Prime Minister, the cabinet and the Constitutional Courts), in Italy it seems that the parliamentary majority was counter-limited more by the balancing power of political parties rather than by the institutional pluralism established through the process of rationalization (Elia & Luciani, 2011, p. 662-663).[28]

4.1.1.3 The participation of the Italian Parliament in the EU affairs

Finally, it is important to note that Italy is part of the EU and this has indeed an influence over the way its national institutions work (Cavatorto, 2015). In fact, generally, the process of European integration has fragmented the national executive power, affecting the latter's responsibilities towards the national Parliament, for which it has been more difficult to perform its supervisory function (Lupo, 2019). Heads of Government and of State meet in the European Council, just as Ministers meet in the Council of the European Union. In Italy, this has led the Prime Minister to acquire superiority over both the Ministers and the Parliament. By participating simultaneously in both the national and the European administration, it has become easy for the national political forces in Government to escape their responsibilities towards Parliament. This dynamic tends to weaken the role of national Parliaments and place them at the end of the ranking of national institutions in the process of Europeanisation. However, this is linked to the Government's strengthened role within the legislative function, which contributed to the marginal contribution of the Italian Parliament on EU affairs, on which parliamentarians have demonstrated to be lacking both interest and capability (Cavatorto, 2015). At the

[27] A more in-depth analysis of this complicated electoral evolution may be found in: Tarli Barbieri, Giovanni, La legislazione elettorale nell'ordinamento italiano (1948-2017), 2018.
[28] For a more comprehensive analysis of the electoral system's influence on the system can be found in: E. CHELI, Forma di governo e legge elettorale, in Il Mulino, 2014, p. 204.

beginning, the parliamentary marginal role in EU issues also depended on the spread perception that they belonged to foreign policy, reason why the Foreign Affairs Committee within the Parliament dealt with it. Only in 1990 the Chamber of Deputies structured an autonomous committee dealing with EU affairs – *Commissione speciale per le politiche comunitarie* (Special Committee on Community Policies) – which became permanent and had its name changed in 1996, becoming *Commissione per le politiche dell'Unione Europea* (Standing Committee on EU Policy).Also, the Senate structured a body in 1968 called *Giunta per gli affari delle comunità europee* specifically to analyse the «Government's annual report on EEC activities», but it transformed it into a permanent one only in 2003 (Cavatorto, 2015). With regard to Italy's participation in the formation of decisions and acts of the European Union, Law No. 234/2012[29] is of fundamental importance. In summary, it has amended the rules governing Italy's participation in the formation and implementation of European legislation, adapting them to the changes introduced by the Treaty of Lisbon. Among the many issues addressed, there is the strengthening of the role of the Chambers in the process of implementation of EU law. In fact, among the various innovations introduced, there was the strengthened link between Parliament and Government in the formation of the Italian position in the EU decision-making process, providing more articulated obligations of the Government to inform the Parliament (Lupo & Piccirilli, 2017).[30]The Italian Parliament cannot be considered a true «policy shaper» on EU issues, but this is so for all the national Parliaments of the EU Member. Nevertheless, national parliamentarians being part of the European Affairs Committees are pushing for

[29] Full text at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2013-01-04&atto.codiceRedazionale=13G00003 & comments at: https://temi.camera.it/leg18/temi/tl18_proposte_di_modifica_alla_legge_11_del_2005_d.html (Last visit June 2020).

[30] In addition, Law No. 234/2011 divided the process of transposing European legislation into two distinct procedures: the European delegation law, the content of which is limited to the delegation provisions necessary for the transposition of EU directives, and the European law which, more generally, contains provisions aimed at ensuring the adaptation of the internal system to the European one. In fact, Law No. 234/2012 replace Law No. 11/2005 (Buttiglione Law), which in turn repealed Law No. 86/1989 (La Pergola Law). The original coordination of policies concerning Italy's membership of the European Communities was provided for by Law No 183/1987 (Fabbri Law) (Lupo & Piccirilli, 2017).

the development of «instruments of interparliamentary cooperation» capable of increasing the Parliament's role in EU issues (Cavatorto, 2015) (Lupo & Piccirilli, 2017). Undoubtedly, the widening of the European intergovernmental dynamic, as well as the growing role of the European Council, have influenced the Italian parliamentary form of government, generating a process of presidentialization (mainly towards the Premier, see paragraph4.3.1) of which the Parliament has been the main victim (Lupo, 2019). This trend is recognizable in other European Member States having a Parliamentary form of government, as well as in those having a Semi-presidentialism, as Romania.

4.1.2 The Romanian Parliament

4.1.2.1 The structure, the confidence relationship and the legislative function

In 1991, the Romanian founding fathers defined the Parliament as the people's supreme representative body, and the country's sole legislative authority (Muraru & Tănăsescu, 2019). It consists of the Senate and the Chamber of Deputies (art. 61). The 2003 Romanian Constitution disciplines its organization and functioning (artt. 61-69), the Statute of Deputies and Senators (artt. 69-72) and its legislation (artt. 73-79). The Parliament was given the legislative monopoly, in the sense that no other public authority can adopt acts having the force of law (Muraru & Tănăsescu, 2019). This means that the Parliament is the only body having the legislative power, but not the online one exercising the legislative function (Selejan-Gutan, 2016). In fact, the Constitution allows for legislative delegations. Thanks to the latter, the Government can issue regular or emergency ordinances (in Italy these are called respectively legislative decrees, and decree-laws for emergency situations and are ruled by artt. 76 and 77). The President of the Republic also participates in the legislative delegation when he issues normative decree in cases of emergency, State of siege, army mobilization. In both cases, there is no violation of the Parliament's legislative monopoly because it authorizes this power delegation. Whenever the Government issues an emergency ordinance (art. 115) or the President issues a

decree (artt, 92, 93, 94, 100), they have to be submitted to the parliamentary control. However, from 1999 to 2013 there had been an abuse of governmental emergency ordinances, with the silent consent of the Parliament, an issue that is better dealt with in paragraph 4.3.2 concerning the Romanian Government and its concrete evolution. An important competence that the Parliament shares with other actors is the legislative initiative (art. 74). To the latter participate also the Government – who in the practice became be main legislative initiator – the President – but only for the initiative of Constitutional amendments (art. 150) – and the people. However, the citizens exert this function with some limits: the popular initiative has to be supported at least by 100.000 voters that come from at least ¼ of the territorial department and at least 5,000 signatures for each of them; moreover, it cannot be accepted for amnesties, pardons, international issued or cover tax issues (Muraru & Tănăsescu, 2019). Furthermore, the Parliament freely adopts legislative policies without any obligation imposed, except for the cases in which the Constitutional Courts declares the unconstitutionality of a law before it is promulgated. Concerning its composition, the two Chambers are elected by universal, equal, direct, secret and free suffrage, in accordance with the electoral law (art. 62). As in Italy, the latter is not constitutionalized, so is to be defined by ordinary law. Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law (Muraru & Tănăsescu, 2019). Moreover, differently from Italy, the number of Deputies and Senators is established by the electoral law, in proportion to the population of Romania, so not constitutionalized. Both the Chambers are elected for a four years term of office that may be extended in the event of an invasion, battle, siege or emergency until such event ceases to occur (art. 63). The 1991 Constitution implemented a symmetric bicameralism, providing the same competences and roles in the law-making procedure for both the Chambers, in order to maintain a good legislative balance. Nevertheless, this measure was subjected to so many critics that the 2003 amendment tried to at least correct it. The latter maintained a symmetric bicameralism, but it introduced a temperate distinction of functions between the

two Houses (Olivetti, 2019). It established an order of preference for which of the two Chambers is to be involved first within the legislative procedure, depending on the topic on which a law is being discussed. Concretely, some laws are first examined by the Chambers of Deputies, while others are first examined by the Senate (art. 75). The first notified Chamber has to analyze and expressively approve the bill within 45 days otherwise being considered a silent approval; then, it is sent to the other Chamber making the final decision. In the case of contrasts, the bill goes back to the first notified Chamber, which issues the final decision. Hence, laws can be the outcome of only one Chamber, even without formal adoption. Most organic laws, bills regarding the ratification of international treaties as well as the legislative measures deriving from their application are to be notified first to the Chamber of Deputies. All the remaining ones are to be notified first to the Senate. It was meant to maintain bicameralism and differentiate it somehow, but it risks damaging the proper functioning of the parliamentary debates, which are core to parliamentary systems. For this reason, the temperate bicameralism was criticized as concretely working according to a unicameral system. Romania was suggested by the Venice Commission to modify it again, opting for more simple procedure including the unicameral version (Muraru & Tănăsescu, 2019) (Selejan-Gutan, 2016).

Apart from the legislative competence, the Parliament has other important functions. First of all, it legitimates the Government's investiture through the vote of confidence (art.103) and supervises its performance, being able to adopt a motivated motion of no confidence, forcing it to resign. Being the cabinet politically accountable to the Parliament, the latter also has the function of control and supervision over it. To this aim, it can use questions, interpellations, investigations committees and control instruments (artt. 111-112). Also, the Romanian President may be held politically responsible to the Parliament because the latter may start the procedure to suspend him from office, in the case of an important breach of the Constitution (Muraru & Tănăsescu, 2019). However, the approval of disproval of the suspending procedure may only be decided by citizens through a binding referendum (art. 95); which is in line with the presidential popular and direct election. Hence, the referendum is considered

an instrument through which the citizens directly express themselves, without a parliamentary mediated representation. At the same time, «in the checks and balances equation» the President of the Republic may dissolve the legislative Chambers (art. 89), but this power is extremely limited. Anticipated elections have to be supported by an institutional consensus and it can happen if the Parliament fails to provide the vote of confidence to two different Governments, within sixty days. Furthermore, in order to check that the parliamentary majority is exercising properly its power, in «healthy democracies» the opposition is meant to play an important role. However, this is not really the case of Romania, since there is no specific institutional role for the opposition. The political minority has two constitutionally provided tools it can use: the right to legislative initiative and the right to challenge laws before the Constitutional Court, after parliamentary adoption but before the Head of State promulgates it. The latter may be brought in front of the Court by at least fifty Deputies or twenty-five Senators and, if judged as unconstitutional, it has to examined again and brought in line with the Fundamental Text. Of course, this measure was used very frequently and sometimes even successfully by the opposition (Selejan-Gutan, 2016).

Moreover, the parliamentary mandate of each Deputy or Senator is protected in two ways. Firstly, through incompatibilities (art. 71), so to guarantee the efficient exercise of the charge. Secondly, with immunities (art. 72) to avoid the risk of external pressures. Concerning the first measure, the roles of Deputies and Senators are incompatible with each other and with other charges within public authorities, even if, they are compatible with the Government. This implies that there are Deputies and Senators who are also members of the Cabinet, with the aim to «ensure the link between the two State powers» (Selejan-Gutan, 2016). Further measures had been introduced in 2006, through ordinary law, forbidding a parliamentary member to have management roles in public or private companies. Potential incompatibilities are verified and eventually confirmed by the Chamber's permanent bureau, consulting *Agenția Națională pentru Integritate* (ANI), the National agency for Integrity, whose decisions may be challenged in Court. If verified, the involved parliamentary

member is forced to resign. For this reason, most of the ANI's decisions are challenged, but usually confirmed by Courts. Formally, it seems a fair procedure, but concretely it is not always respected because the Courts' decision is not always implemented (Muraru & Tănăsescu, 2019). In 2012, Senator Mircea Diaconu was also being Theater Director, so an incompatibility was recognized. The incompatibility was challenged in front of the High Court of Cassation and Justice (HCCJ), which confirmed it. However, the Senate refused to execute the HCCJ final decision. Consequently, the issue was referred to the Constitutional Court by the President of the Superior Council of Magistrates. Constitutional Court reminded the Senate its obligation to recognize the incompatibility and the Senator Diaconu resign, but neither this decision was respected. In the end, the Senator only resigned at the end of its mandate in 2012 (Selejan-Gutan, 2016). The matter influenced negatively the CVM Interim Report of the European Commission of January 2013.[31] Regarding immunities, parliamentary members cannot be held juridically responsible for political opinions or votes expressed while exercising their functions. Parliamentary members may be persecuted and put on trial for criminal responsibilities or acts not related to the votes or political opinions expressed in the exercise of their office. Nevertheless, they may be investigated, detained and arrested only with the permission of their Chamber. This is an important step forward considering that the 1991 Constitution did not even allowed parliamentary members to be prosecuted before having the Chamber's permission (art. 69). In any case, prosecution must be done by the HCCJ. After Romania entered the EU in 2007, it became concretely easier to «lift parliamentary immunity» because of the CVM monitoring by the European Commission (EC) (Selejan-Gutan, 2016).

[31] When on January 2007 Romania became an EU member, the country still had to make progresses concerning judicial reforms and anti-corruption measure. In order to assist it with the progress, and to verify it was actually improving, the EC set up the Cooperation and Verification Mechanism (CVM). The latter applied also to Bulgaria, also joining EU that year. More at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en (Last visit June 2020).

4.1.2.2 The Ombudsman, the electoral system and the floor-crossing issue

Other important parliamentary competences concern appointing members of public offices and its advising role in certain procedures. For instance, in joint session, it appoints the Ombudsman (art. 58) while each Chambers appoints three judges for the Constitutional Court. Moreover, it may advise or confirm the President's decisions, for example before the President convenes the consultative referendum (art. 90). The most important body appointed by the Parliament for a for a five years mandate is the Ombudsman, which in Romanian is called *Avocatul Poporului* (The Advocate of People). Introduced by the 1991 Constitution (art. 58-60) and transplanted from the Nordic States, this institution acts as a people attorney, having the competence to defend citizens' rights and freedoms when interacting with public authorities (Perju, 2012) (Muraru & Tănăsescu, 2019). It can act on its own initiative or based on petitions coming from affected citizens. It became active only in 1997 when its internal organization and way of working was legally decided. However, also the Ombudsman was negatively affected by cohabitation Governments, which brought it to gain excessive politicization (particularly in the 2007-8; 2012-15). During President Băsescu's second suspension, the Parliament decided to dismiss the Ombudsman Gheorghe Iancu because he was close to the *Partidul Democrat Liberal* (PDL - Liberal Democratic Party), so President Băsescu's party. Because of this closeness, Ombudsman Iancu could block the legislation meant to facilitate the President's dismissal and in order to avoid so, the idea was substituting him with a PSD member, Valer Dorneanu. Plus, floor-crossing – also called political migration – is a frequent phenomenon in Romania. It consists of parliamentary members shifting the political party to which they belong, after the elections are held. This constitutes a problem, because it may change the political equilibrium inside the Parliament and it breaches the principle of popular representativeness. In fact, by shifting side, parliamentarians act as they are representing political parties instead of the citizens. For this reason, the 2013 attempted Constitutional amendment proposed to add floor-crossing to the reasons for which the mandate of a Deputy or a

Senator may cease. However, the proposal was declared unconstitutional by the Constitutional Court and it was also criticised by the Venice Commission, claiming that «it would be contrary to the representative mandate rule». However, Bianca Selejan-Gutan argues that applying a penalty to those involved in political migrations does not really breach the «constitutional representative mandate rule» because the revocation would not be done by the electors. On the contrary, the mandate of this members would be revoked precisely because they had not been capable to grant representativity as voted by citizens, but it would be modified internally, creating new political balances, different from those came out from the elections (Selejan-Gutan, 2016).

Lastly, a peculiarity of how the Romanian system concretely works concerns the lack of electoral uniformity. Every institution is elected according to its own different electoral law, leaving the political parties to be the top players in the electoral procedures. Concerning the parliamentary elections, there was a corrected proportional system from 1990 to 2008 and again after 2015. The main corrections to the proportional system were the blocking clauses for the parties and for the party coalitions. Attempts were made to introduce a majority electoral system, submitting the matter to the popular referendum on November 25th, 2008, together with the election of the first Romanian representatives to the European Parliament, and it was successful. The reform was approved by the Parliament and promulgated on March 11th, 2008, but in 2015 it was replaced by proportional legislation. Therefore, even in Romania, as in Italy, the attempt to consolidate a pure majority system can be considered to have failed (Olivetti, 2019). Altogether, the Romanian Parliament was constitutionally structured as unique legislative organ and supreme representative body, with the right and duty to exercise a strict control over the Government. However, his role concretely faced important changes, first of all concerning the legislative functions. The latter resulted to be reduced because of the continuous intervention of the Government through means of legislative delegations, justified by difficult social and economic conditions requesting speedy regulations. Concretely, governmental ordinances tended to outnumber parliamentary legislation in the period 1999-2013. «For example, in 2000, 407

ordinances were adopted compared to 233 laws» (Selejan-Gutan, 2016). Second, with the temperate competence differentiation introduced in 2003, it is working more like a unicameral Parliament in the sense that laws may be discussed only by one Chamber, which undermines the democratic principle of parliamentary debates. As a result, the Parliament lost part of its powers, becoming more an authorizing institution, which silently approved governmental proposals, being them bills, regular or emergency ordinances.

4.1.2.3 The participation of the Romanian Parliament in the EU affairs

Finally, like Italy, Romania is also part of the European Union, although it only joined on January 1st, 2007, while Italy is one of the founding fathers (Tacea, 2015). The fragmentation of the national executives caused by the process of European integration has influenced also the Romanian form of government. It affected the governmental responsibilities towards the national Parliament, for which it was more difficult to carry out its supervising function. Thus, even in Romania, it has become easy for the national political forces within the Government to escape their responsibilities towards the Parliament, due to their participation in both the national and the European administration (Lupo, 2019). However, the presidentialization process has not produced the same effect as in Italy, since Romania has a semi-presidential form of government, whose executive has two heads: Prime Minister and Head of State. It is the Head of State, not the Prime Minister, who participates in the European Council (Tacea, 2015). Therefore, the presidentialization tends to further strengthen the President of the Republic, who already tends to extend his powers (see paragraph 4.2.2), not the Prime Minister. Consequently, although on the one hand the Government comes out strengthened towards the Parliament, on the other, the Prime Minister comes out weakened in the relation with the President of the Republic. However, it should be remembered that the Romanian Parliament already tends to be weakened by the Government's dominance at the national level. In fact, although it is constitutionally structured to be strong and stable, in reality there is little clarity about the Parliament's Constitutional

powers. Concretely, this led the Romanian Parliament to «a 'learning on the job' style of representation, unstable parliamentary procedures and the dominance of the executive over the law-making process» (Tacea, 2015). Because of this peculiarity, plus its lack of experience in EU affairs, the parliamentary control towards the Government in EU affairs had not had a vital importance. In fact, there are few interactions between the Romanian and the European Parliament, because it is hard to find a common schedule and because there is no real coordination between the national Romanian parliamentary members and the Romanian Members of the European Parliament. Although the Lisbon Treaty pushed for a bigger involvement of national parliaments within the EU, the contribution of the Romanian Parliament remained limited. However, it might be considered a «European player» to some extent, if it keeps on using the possibility to keep in contact with the EU Commission and sending it reasoned opinions through the Early Warning System (EWS)[32], in the attempt to enhance a deeper involvement of national parliaments on EU Affairs (Tacea, 2015). There are mainly three elements which negatively influence its marginal role in the European policy-making process. First, the dominance of the executive over the legislative Chambers; second, national parliamentarians having no expertise on European issues and third, a general misunderstanding on which is their function in scrutinising EU policies. In fact, since in EU affairs the decision-making process is managed by the Government, there is little involvement of the Parliament (Tacea, 2015). It is true that some progresses were made after creating specific EU Affairs Parliamentary Committees and yet, there still is too much conflict between the Parliament and the Government concerning their collaboration on EU matters. Indeed, also in Romania, the growth of intergovernmental dynamics tends to weaken the role of the national Parliament

[32] The Early Warning System (EWS), is a mechanism developed to allow national Parliaments to carry out subsidiarity checks on draft EU legislative acts and probably object to the proposal on this ground. More at: https://portal.cor.europa.eu/subsidiarity/regpex/Pages/Early-Warning-System.aspx#:~:text=The%20EWS%20is%20a%20procedure,the%20draft%20on%20this%20ground.&text=%22Orange%20card%22%3A%20applying%20only,under%20the%20ordinary%20legislative%20procedure. and at https://www.europarl.europa.eu/factsheets/en/sheet/22/european-parliament-relations-with-the-national-parliaments (Last visit 2020).

(and place it at the end of the ranking of national institutions that Europeanise); but, this trend is amplified by the fact that the it tends to be already weakened within the national institutional interplay (Tacea, 2015).

4.2 The President of the Republic

4.2.1 The Italian Head of State and the *fisarmonica presidenziale*

4.2.1.1 Presidential election and main functions

The need to prevent future undemocratic drifts influenced the type of presidential elections and the functions conferred to the Head of State. The type of the presidential election (art. 83) also depended on the approval of the *Perassi* order of the day (presented before beginning the discussion on the legislative power) concerning the form of government to be adopted. Excluding both the presidential and the directorial form of government, considered unsuitable for Italian society, the founding fathers oriented themselves towards a parliamentary system with corrective measures (e.g. vote of confidence art. 94), so to make the Government's action stable and to avoid the degenerations of parliamentarianism. As explained in paragraph 3.2.1, the founding fathers opted for a President elected by the Parliament in joint session, plus the participation of regional delegates, in order to ensure that minorities are represented and to somehow give the President an independent position vis-à-vis the two Chambers. Likewise, the founding fathers provided him with functions related to political, institutional and legislative, administrative and judicial processes but without concretely granting him any of the three State powers (Falzone, Palermo, & Cosentino, 1949). The President is elected by Parliament in a joint session, which is also attended by three delegates from each Region (except for Valle D'Aosta, having only one delegate), elected by the Regional Council. The election is by secret ballot, by a 2/3 majority. After the third ballot an absolute majority is sufficient (art. 83). These majorities are meant to ensure that he has the consent of a broad political group. The presidential term of office lasts seven

years both to ensure the stability of the office and to make it free from the Parliament that elected it. At the end of the seven years, the President becomes Senator for life. Moreover, the office of President of the Republic is incompatible with any other office (art. 84). In most cases, one month before the end of the presidential term, the Parliament is convened for a new election. An exception to this procedure is the case in which the parliamentary elections are imminent (for a maximum of three months), forcing the election of the Head of State to be postponed until 15 days after the new Chambers have been elected (art. 85). If a temporary impediment does not allow to the President to exercise his functions, these are taken over by the President of the Senate. Instead, in the case of permanent impediment – illness, death, or anticipated resignation – the President of the Senate convenes the Parliament within 15 days for the election of the new Head of State (art. 86).

Concerning his functions (art. 87) the Head of State represents the unity of the country and, in that capacity, acts as coordinator of the fundamental powers of the State (art. 87). The function of representative of the unity of Italy does not confer direct Constitutional powers on the President of the Republic but allows him to intervene indirectly in certain functions. The President of the Republic is entrusted with the delicate task of verifying the tightness and functioning of the system. In order to face this difficult task, he cannot limit himself to carrying out the formal acts provided for in the written constitutional regulations, but must intervene continuously to specify, correct and warn. While the other guarantee bodies (e.g. the Constitutional Court) must monitor the legality of the acts and conduct, the President must ensure that they are correct. This implies going beyond the purely formal level of control, without, however, pushing it into the field of discretionary choices (Baldassarre, 2010). As coordinator of the various Constitutional bodies, the President cannot be conditioned by them. For this reason, any act issued in the exercise of his functions – promulgation of laws, issue of decrees, etc. – must be countersigned by a Minister, or the President of the Council, who is responsible for it. In fact, no presidential act is valid unless it is countersigned by the proposing Ministers, who assume responsibility for it (art. 89). Thus, the President of the Republic is not responsible for acts adopted

in the performance of his duties (art. 90). Therefore, he does not govern. The responsibility for his acts is assumed by the Prime Minister and the Ministers who countersign them (Baldassarre, 2010). The exceptions to his political irresponsibility are the cases of high treason and overturn the Constitution, attempting to subvert the order of which he is the main guarantor (Spadaro, 2010). In these two cases, the accusation is pronounced in joint session by Parliament with an absolute majority, while the Constitutional Court takes the final decision (art. 90). The legal prerequisite for any charge of treason is constituted by the fact that the President takes a loyalty oath to the Republic and the observance of the Constitution, before the Parliament in joint sitting (art. 91). The Head of State promulgates laws (artt. 73-74 and 138) and issues the decrees having the force of law (art. 76-77) and regulations. However, he does so only after they have been approved by Parliament. It is within his powers to refer a law back to Parliament, before promulgating it. This was called power of suspensive veto. It was provided to the President so to have a role within the legislative procedure but not an active one (art. 87). When he asks for a further deliberation, he does so with a reasoned message, which is countersigned by the Government, but it is limited in time and space since, after a second approval, the President of the Republic has the duty to promulgate the law (Scaccia, 2010). In this process, he sends communications to the Houses of Parliament, such as in the case of law referral (art. 74) (Spadaro, 2010). Furthermore, the President of the Republic authorizes the submission of Government's bills to the Parliament (artt. 71 and 87). This power is to be understood in a formal sense, it is more a duty rather than a right. Thus, the authorization has a formal value in the sense that it cannot be denied, issue that could be otherwise. Once that the founding fathers decided to provide the President with the right to intervene within the legislative process only with a suspensive veto (art. 74), the possibility for a presidential sanction of the law, so a *posteriori* veto, was excluded. In this line, they could not admit a preventive veto to the legislative initiative of the Government. In fact, art. 74 provides for the referral of a law to Parliament as unique intervention of the Head of State in the legislative function (Scaccia, 2010). Still within his relationship with the cabinet, the President appoints the

Prime Minister and, once the vote of confidence is granted, he formally appoints the whole cabinet. The appointment of the Prime Minister is a process in which the President does not have full discretion but neither does he have a purely notarial role (Spadaro, 2010). Given the Parliament-Government relationship of confidence (artt. 92-94) when appointing a Prime Minister, the President must consider the majority formed in the two Houses; therefore, he is required to consult the representatives of the political groups sitting in Parliament (the consultations). At the same time, as is seen few lines later, the appointment of the Head of Government leaves room for an extension of presidential powers based on the phenomenon of the *fisarmonica presidenziale*, coined by Giuliano Amato.[33] The President of the Republic may, after hearing their Presidents, dissolve the Chambers or even just one of them. He may not exercise this faculty during the last six months of his term of office (art. 88) (Baldassarre, 2010) (Caravita, 2010). However, this is not the exclusive power of the President. In fact, the majority doctrine conceives it as a "dual" power, in the sense that it is the result of the collaboration between the President of the Republic and the President of the Council of Ministers who countersigned it. Thus, the Chambers' dissolution belongs to the presidential powers of co-decision. In fact, the Constituent Assembly wanted to grant him this power to dissolve the Chambers – and the one to call new elections – but in the framework of presidential irresponsibility; therefore, the decree of dissolution must be preceded by the proposal (initiative) of the Government and followed by the Prime Minister's countersignature. However, the theory of the "dual" power of the dissolution of the Houses must be relativized since, in front of a conflictual political situation, the President must assert his decision-making preponderance (Baldassarre, 2010). Indeed, being him responsible for the proper functioning of the system,

[33] After having discussed the issue directly with Giuliano Amato, Gianfranco Pasquino affirms that he was certainly the metaphor's author. However, it was used for the first time during a conference, about whose date and title no one is certain. Yet, Pasquino wrote about the first time, attributing it to Amato, in a review he wrote in 1991, discussing the book of Paolo Guzzanti, "Cossiga, uomo solo", Milano, Mondadori 1991. Pasquino's review was published in "La Rivista dei Libri", marzo 1992 with the title "La fisarmonica del Presidente" More at: https://www.casadellacultura.it/845/per-chi-suonano-i-presidenti-della-repubblica (Last visit June 2020).

his decision-making dominance is difficult to challenge (Baldassarre, 2010).[34] The cases in which dissolution is necessary cannot logically be foreseen and catalogued, since it is obvious that it will be regulated according to individual circumstances. The most typical and important ones have been recalled: serious contrast between the Government and Parliament, the need to consult the electoral body on new subjects not presented before and during the previous elections, the result of a contrary referendum, with an overwhelming majority in an important deliberation by Parliament, clear discrepancies between the aspect of the Chambers and the political reality of the country (Caravita, 2010). The evaluation of whether or not to proceed with the dissolution is essentially a matter for the Government, which responds in the sense that, if the same anti-Government majority returns to the new Parliament (in the case of conflict between Government and Parliament), the Government is obliged to resign. The President also announces new parliamentary elections and fixes their first session (art. 61) (Falzone, Palermo, & Cosentino, 1949, p. 106) (Caravita, 2010). Still within art. 87, the Italian President accredits and receives diplomatic representatives, he appoints State officials (in the cases indicated by law), he convenes popular referendums (artt. 75; 138) (Vipiana, 1991). He accredits and receives diplomatic representatives, ratifies international treatments which, in some case, have to be first subject to the authorization of the rooms. In addition, he has the command of the armed forces and he presides over the Defence Council and the Superior Council of the Judiciary. At the same time, he grants pardons to the condemned and can commute judgments and he may confer honor, in line with his power to elect five Senator for life among citizens who having high merits in the social, scientific, artistic and literary fields (art. 59) (Falzone, Palermo, & Cosentino, 1949, p. 106) (Vipiana, 1991).[35] Overall, if on

[34] Yet, this is only the opinion of the majority of the doctrine's debates. Baldassarre also cites many scholars who disagree, considering it as an exclusive presidential power (among them, there are Guarino and Barile) (Baldassarre, 2010).

[35] It would have been impossible to report here all the interesting academic debates and interpretations of the Italian President of the Republic. Further discussions on which are the powers he exclusively owns, which are shared with other public authorities, which are substantial and which formal, may be found in: Salerno, Giulio M. Art. 87, Commentario breve alla Costituzione / a cura di Vezio Crisafulli e Livio Paladin, Padova: Cedam, 1990, pp. 531-547; Rescigno, Giuseppe Ugo. Art. 87, Commentario della Costituzione / a cura di Giuseppe Branca.

the one hand, the President is not merely a "reserve power", on the other hand, he has decisive powers (e.g. the dissolution of the Chambers) whose incisiveness can vary greatly, depending on the ability of political forces to self-regulate their role in Government and in the parliamentary majority. By choosing a form of parliamentary government, protected by the role of guarantor of the President, the Constituent was aware of the incomplete process of Nation building. For this reason, it wanted to give him the necessary powers to resolve possible situations of political crisis, preventing constitutional crises (Baldassarre, 2010).

4.2.1.2 Contraction or expansion of the Presidential powers

The founding fathers «woven» the form of government, and therefore also the presidential powers, «wide-meshed», offering the Head of State the possibility to develop his action in a wide range of options (Lippolis, 2018). He was given functions regarding political, institutional and legislative, administrative and jurisdictional direction, without granting him any of the three powers of the State. In fact, the role of the President of the Republic developed distinctly, with different intensities of action and influence over the institutional interplay. It came to life a tendency to the contraction or expansion of the Presidential functions and influence depending on how stable political situation was. This phenomenon acquired the name of *fisarmonica presidenziale*, which translated would be the presidential accordion, because the presidential powers contract or expand exactly as an accordion. Faced with a clear parliamentary majority, which recognizes its undisputed leader, the President of the Republic can only take note of this and appoint that leader as Prime Minister. On the contrary, in cases of governmental crises and unclear or not cohesive majorities, the role of the President expands until assuming the role of «regent of the State», appointing the so-called «Government of the President», but this happens in the event of a drastic systemic crisis. When after the election the Parliament fails to express a majority, and therefore a political Government, the President of the

Il Presidente della Repubblica, Bologna: Zanichelli; Roma: Società editrice del Foro italiano. - Vol. 1: artt. 83-87 (1978), p. 134-282.

Republic should dissolve the Chambers and call new elections. Since this process takes time and creates sort of institutional paralysis (due to the clash between the parties during the election campaign), it may happen that the parties agree to the formation of a technical Government. In such a case, the agreement between the parties represented in Parliament to form a Government is not spontaneous, it is not political, but necessary. In fact, if no political majority is formed in Parliament, the Government is not political either, but it is a technical Government – if the Prime Minister and most Ministers are chosen on the basis of their technical expertise – or a Government of the President – if the Head of State proposes a candidate on his own initiative (or is called to do so by the parties) to ensure the appointment of a Prime Minister.[36] In the latter case, there is an «atechnical relationship of trust» between the Prime Minister and the Head of State, but he must still obtain a vote of confidence from the Parliament.

In the first three years of the Republic, the President exercised a «notarial» role because of the strong leadership of Prime Minister De Gasperi (Baldassarre & Scaccia, 2010) (Lupo, 2018). However, already in 1953, the elections put an end to the stability of De Gasperi and caused the then President Einaudi to appoint Prime Minister Pella in August, without any consultation. Pella accepted the appointment without reservation (i.e. the practice of verifying real political support for the governmental team, paragraph 4.3.1). Thus, a first "Government of the President" was formed, making explicit the decisive influence of the President in the choice of the Prime Minister. In like manner, the Presidents exercised their power of influence by making frequent recourse to the power of referral to the Chambers before enacting laws, if they found formal irregularities, elements of unconstitutionality or a negative assessment of the law itself. It is true that if the Chambers adopt the text in the same form again, the Head of State cannot postpone its promulgation a second time; however, this does not mean that his power to intervene is useless. In fact, if the Chambers need a law to be

[36] Caravita Beniamino disagrees with this point of view. According to him, technical governments do not really exist, but they are a journalistic misunderstanding, not a doctrinaire one. He argues that governments are never "technical", but are always political, having to rely on a parliamentary vote of confidence, expressed on a reasoned motion. The latter necessarily requires the explanation of the reasons why the vote of confidence is provided, which are political (Caravita, 2010).

enacted quickly, the President's postponement deeply affect it. In this way, the Presidents exercised their power of suspensive veto, making their influence to be perceived in the institutional interplay (Baldassarre & Scaccia, 2010). On the one hand, during the proportional period (from 1948 to 1993), the party system was very strong and contained the political interventionism of the Heads of State. The political direction was concentrated in the interaction between Parliament and Government, while the President was only called to mediate in the event of ministerial instability, even if he had to do it within the political framework determined by the parties. On the other hand, the 1993 majoritarian electoral reform took place at a time of deep political crisis, in which the previous party system collapsed and the transition to the Second Republic – meant to develop a majoritarian democracy – was ongoing. In this background, the then President Scalfaro assumed an active and leading role. For instance, he appointed Ciampi creating a "Government of the President"; then, in January 1994, he dissolved the Chambers in order to apply the new majoritarian electoral law (lasted from 1994 to 2013) and to resolve the gap between the real will of the people and the majority present in Parliament (Lippolis, 2018). The majoritarian law was based on political coalitions formed before the elections and on the explicit individuation of the Prime Minister candidate. In this context, the successive Presidents of the Republic had more limits to the expansion of their powers; in fact, in the elections of 1996, 2001, 2006 and 2008, he merely took note of the Prime Minister candidate, which had already emerged before the elections and constituted an obligatory choice for the Head of the State. Nevertheless, Italian bipolarism proved to be conflictive, unstable and unable to regulate itself (Baldassarre & Scaccia, 2010). As a result, the Presidents found themselves operating in a situation of more intense political conflict, which required a marked presidential action in order to keep the relationship between the governmental majority and the opposition within the Constitutional limits. With the exception of the 1994 dissolution, during the majoritarian phase, the Presidents of the Republic considered the dissolution as a last resort instrument, to be used only in the face of a situation of blockade, to reactivate the political system. However, Heads of State tended to expand their influence by other

means. With regard to the Presidential role in the legislative process, a practice has emerged that provides for the use of letters of accompaniment to the promulgation (also called externalities) (Grisolia, 2010) [37]. These letters are generally addressed to the Prime Minister and the Presidents of the House and Senate, which contain comments on the implementation of the law (initiated by President Ciampi, then taken up by Napolitano). In this way, the President availed himself of a more ductile instrument than the postponement of laws (suspensive veto). In addition, an informal presidential activity of persuasion also spread. By contemplating a possible law referral for a bill that was still under discussion in the Houses, the President persuaded the parliamentary majority to modify the text even before sending it to him. Because of the externalities and informal persuasion, the recourse to law referral has become the exception (Grisolia, 2010) (Baldassarre & Scaccia, 2010). This practice has been widely used by President Napolitano. He has exercised careful vigilance over the formation of laws, decree-laws and legislative decrees, acting almost as an arbiter of the entire legislative process. However, it must be specified that his presidency coincided with the period in which Italian bipolarism finally entered into crisis. Therefore, his figure as President was dominant, with the formation first of the Monti technical Government and then, with the solution of the governmental crisis at the start of the 17th legislature. In fact, because of this crisis, President Napolitano was the only Italian President to be elected for a second mandate in 2013 (Bin & Pitruzzella, 2015, p. 220-221). After the 2013 political elections, no political coalition gained the absolute majority in the two Chambers, which produced a disagreement concerning the presidential election. The Partito Democratico (PD) – the most voted political party in that occasion – proposed five different candidates, so five different ballots, for the Head of State office, but none of them managed to reach the quorum for being elected by the Parliament. The election takes place by secret ballot, by a majority vote of 2/3. Only after the third ballot is an absolute majority sufficient (art. 83). This means that out of the five ballots that there were in 2013, the first three candidates did

[37] The original Italian names are: *lettera di accompagnamento alla promulgazione* and *esternazioni* (Grisolia, 2010) (Lippolis, 2018).

not reach the 2/3 majority to be elected, while the last two did not even reach the absolute majority (art. 83). Thus, there was a deep political crisis, to which the internal struggle with the PD added some tensions, as did also the opposition of the *Movimento Cinque Stelle* (M5S - The Five Star Movement) (Baldassarre & Scaccia, 2010). This critical situation led the major political forces to reach an agreement on Napolitano's re-election, having him been so capable in managing critical political situations during his first mandate. As a result, on April 20th, 2013 Giorgio Napolitano was re-elected President of Italy, with 738 votes out of 997, (Bin & Pitruzzella, 2015, p. 220-221). However, Napolitano made his re-election conditional on the acceptance of a number of commitments by political forces, especially on Constitutional and electoral reforms (Lippolis, 2018). When he felt that the reforming process had begun, he resigned, not completing his second mandate (January 14th, 2015). Then, the President of the Chamber of Deputies convened the Parliament in joint session, together with the regional delegates (art. 63; 83; 85) in order to elect the new Head of State. On January 30th, 2015, Sergio Mattarella was elected, who is the current President of the Italian Republic (as well as the same political figure who had proposed the adoption of the Mattarellum electoral law) (Bin & Pitruzzella, 2015, p. 220-221). Napolitano's re-election has shaken academic debates about the risk of an expansion of the role of the President in defining political direction. However, it has to reminded that without the consent and collaboration of the Government and the Parliament, it is impossible for the Head of State to impose his own political direction, given the way his powers are legally structured. Moreover, even the use of informal practices does not allow him to define concretely the political direction of the country, because they do not translate into legally binding acts, such as those that can be adopted by the Government and Parliament. In this sense, the Constitutional Court intervened (Judgment No. 1/2013), clarifying that the powers attributed to the Head of State by the Constitution «do not imply the power to take decisions on the merits of specific matters, but give him the means to induce other Constitutional powers to carry out their functions correctly, from which the relevant decisions on the merits must result». As a result, the President may exercise a power of influence which

is not binding since such influence remains subordinate to the autonomous reaction of the decision-making bodies (Galliani, 2011) (Baldassarre & Scaccia, 2010). However, it is also true that the autonomous reaction of the latter has often been lacking and this may have left room for an excessive presidential interventionism (Lippolis, 2018). Overall, among all the Italian constitutional bodies, the President of the Republic is considered the most «elusive» one (Paladin, 1986) (Baldassarre & Scaccia, 2010) (Lippolis, 2018). However, precisely this fluidity of functions may also have been positive because he had often absorbed political tensions and reactivated the proper Constitutional mechanisms in the critical moments of the Italian unstable parliamentary regime. Ultimately, the President has been and remains an indispensable center of gravity for the proper functioning of the institutional system. His role is endowed with a certain "extraordinariness", deriving from some elements that can be deduced from the Constitutional Charter (Baldassarre, 2010).[38] First, the variety of presidential powers ranging from control over the main political acts (promulgation, enactment, etc.) to decisions or co-decisions on the most important political-constitutional junctions (early dissolution and appointment of the Government); from the presidencies of the bodies supervising the most delicate sectors of the life of the Republic (presidencies of the SCM and of the Defence Council, head of the Armed Forces, etc.) to the powers of message and, above all, to the externalization of one's own opinions and observations. Secondly, the breadth of the objects over which its powers are exercised, touching all the constitutional spheres of the Republic, with the exception of constitutional justice. Third and lastly, the different degree of incisiveness of the presidential powers, ranging from appeals and outbursts to decisions capable of changing the political course of events (as can happen with the early dissolution of Chambers or of a single Chamber) (Baldassarre, 2010) (Baldassarre &

[38] For a more complete reconstruction of the Italian President's powers, and the different interpretations, see: G.U. Rescigno, S. Cassese, G. de Vergottini, L. Carlassare, E. Cheli, Il Presidente della Repubblica. Art. 83-91, Tomo I e II, in Commentario della Costituzione a cura di G. Branca, Bologna, Zanichelli, 1978 e 1983 e M. Luciani e M. Volpi, Il Presidente della Repubblica, Bologna, Il Mulino, 1997; Spadaro A., I nuovi vincoli (e le nuove responsabilità) del Presidente della repubblica durante le crisi di Governo, in A. Ruggeri (a cura di), Evoluzione del sistema politico-istituzionale e ruolo del Presidente della Repubblica, Giappichelli, Torino, 2010.

Scaccia, 2010). Therefore, despite the various criticalities of this figure, the choice of the Constituents to endow the President with «consistency and solidity of position» has proved to be far-sighted, especially in the framework of a parliamentary Government with a fragmented and unstable party system (Lippolis, 2018). In conclusion, despite the bigger influence of the President of the Republic, and the Government's strengthening trend, the Italian one is still a parliamentary form of government (Lupo, 2018).

4.2.2 The Romanian Head of State and the presidential activism

4.2.2.1 Presidential election and main functions

Compared to the Italian case, the Romanian presidential figure is relatively young. When in 1947 the Communist Republic was proclaimed, the functions of a Republican Head of State where held by a collegial body, the Presidium, later on called the Council of State. Only in 1974, under Ceaușescu's leadership, and within his ambition for an exasperated personality cult, the presidential figure was introduced. In this way, Ceaușescu proclaimed himself the first "Republican" President (Abraham, 2016). In practice, this allowed him to have even more powers and officialise his personal dictatorship. When facing the democratic transition, the configuration of the presidential powers constituted a debated issue, dominated by the fear of a totalitarian Head of State in the *ceaușist* style. The dilemma consisted of which was the proper way to give people the power of directly electing the President without letting him acquire too much power because of this direct legitimation (Verheijen, 1999). In this background, as in Italy, the presidential form of government was considered unsuitable, but differently from it, a parliamentary elected President was considered too dependent on the political majority within the legislative Chambers (Muraru & Tănăsescu, 2019). The French Semi-presidentialism seemed to be the most suitable, so it was transplanted in Romania, but with some contextual modifications (Perju, 2012). A dual executive was implemented, whose two heads are the Head of State and the Head of Government. However,

differently from the French case, this does not ensure the executive primacy of the Romanian Head of State, who, therefore, is less powerful than his French counterpart, at least as designed by the Constitution (Tănăsescu, 2008) (Perju, 2015). In fact, even if the Romanian President was designed to be less powerful, the living Constitution reveals him to be concretely more powerful, especially when he is supported by the same majority who won the majority of parliamentary seats (that would be the contrary of cohabitation). For this reason, there has been a presidentialising trend in Romania, especially if considered that the Romanian President is one of the few European Presidents representing the country within the European Council. Romania is one of the cases in which the President's power is limited by the Constitutional arrangement but in the political practice Presidents have always tried to strengthen their position profiting from the situation (Tănăsescu, 2008) – for instance a weak Government.[39]

The Romanian President is directly elected at universal suffrage, according to an uninominal majoritarian system, with two rounds (art. 81). If in the first round, one of the candidates has been voted by the majority of electors registered in the electoral lists, then he is declared President. In case no candidate reaches such majority, a second round is held between the two most voted candidates, within two weeks from the first one (art. 81). Here, the Constitutional Court has the task to verify the number of expressed vote for each candidate so to decide which are the first two ones, passing to the second round. The candidate winning the bigger number of votes, independently from the number of electors participating in the election, is declared President. Consequently, the first round has a participating quorum – there has to be the vote of the majority of electors registered in the electoral lists – while in the second round the number of participating electors is no longer influent. The two rounds were chosen so to give the possibility to elect a candidate having a big popular support. Only one round with a participating quorum not always allows for the mostly popularly supported candidate to win (especially in a politically and socially fragmented system), which reduces the

[39] Wanting to link this with Duverger's theory, this Romanian trend mainly depends on one of the factors at the origin of semi-presidential sub-types diversification, «the nature of the parliamentary majority and the relationship between the sand the majority» (Verheijen, 1999).

candidate's legitimacy. Since the founding fathers wanted to avoid so, they opted for a the two-round system (Muraru & Tănăsescu, 2019). After the 2003 Constitutional amendment, the presidential mandate lasts five years (art. 83) (Tănăsescu, 2014). The 1991 Constitution instead, provided for a four years mandate (art. 83), equal to the parliamentary one. It was argued that this risked paving the way for authoritarian presidentialising drifts, especially when both the presidential and the parliamentary offices were supported by the same political majority (Selejan-Gutan, 2016). Moreover, there is a two mandates limit, which can even be successive, as has been for President Traian Băsescu (2004-2010), or for the current President Klaus Iohannis, recently re-elected (November 2019).[40] As in the Italian case, before becoming officially operative, the President takes an oath in front of the parliamentary Chambers, in joint session. In addition, the Romanian Constitution specifies the oath formula: «I solemnly swear that I will dedicate all my strength and the best of my ability for the spiritual and material welfare of the Romanian people, to abide by the Constitution and laws of the country, to defend democracy, the fundamental rights and freedoms of my fellow-citizens, Romania's sovereignty, independence, unity and territorial integrity. So, help me God! » (art. 82) (Selejan-Gutan, 2016).

One of most important presidential functions is being representative of the State. «The President of Romania shall represent the Romanian State and is the safeguard of the national independence, unity and territorial integrity of the country» (art. 80.1). As designed by the Constitution, he only represents the State but also partially represents people as a result of his direct election. Partially, because the citizens' representation is only a parliamentary function, as stated by the Constitution (Selejan-Gutan, 2016). Some of the presidential acts are to be submitted to the parliamentary approval. It is the case of international treaties and agreements – officially concluded by the Head of State – as well as the acts of declaring the State of emergency, of siege or of war. On the other hand,

[40] President Klaus Werner Iohannis was born in Romania (Sibiu) and has Romanian citizenship, but, as his name suggests, he belongs to the German minority living in Romania. He has been leader of the Democratic Forum of Germans in Romanian from 2002 until 2013, while in 2014 he was elected 5th President of the Romanian Republic, supported by the National Liberal Party (PNL).

promoting members of the army to higher ranks (marshal, general etc.), granting honors or conferring orders, are acts which need no parliamentary consent. In addition, the President has a role in appointing Magistrates by decree (at the proposal of the Superior Council of Magistracy, which is the Romanian high judicial council) and in nominating three judges of the Constitutional Court. This role is considered to have contributed to the Constitutional Court's jurisprudence in favor of the President, supporting the strengthening of his figure. Frequently, the Romanian Constitutional Court was called to settle conflicts of attribution, especially in cohabitation periods (President and Prime Minister supported by different majorities). As a result, the Court got involved in political conflicts between the President and other Constitutional bodies, several times. Most of the times, it ended up clarifying the situation in favour of the President. For instance, under cohabitation in 2012, the Prime Minister Victor Ponta did not recognize President Băsescu's right to represent Romania in the meeting of the European Council (June 28-29th), since foreign policy is managed by the Government, plus the majority of the Member States are represented by their Prime Minister within the European Council (EC). To state his point, the Premier requested the Parliament to adopt a political declaration on the issue, so the Chambers adopted it, affirming that the Prime Minister was the Constitutional figure really entitled to participate in the EC. Thus, the Constitutional Court was called to intervene in this political conflict (Selejan-Gutan, 2016). In the end, the Court made it clear that while the Government is entitled to ensure the achievement of foreign policy, the President is the one being constitutionally entitled to engage in international agreements and represent the State; therefore, it was his right and duty to represent Romania within the European Council.

Moreover, the President is guarantor of the Constitutional observance and mediator among Constitutional bodies (art. 80.2), meaning that he ensures respect for the Constitution and he mediates between the powers of the State and between the State and society (Olivetti, 2019). However, he does not grant the Constitutional supremacy because this task belongs to the Constitutional Court (Muraru & Tănăsescu, 2019). His mediating role is directly linked with his need to be politically neutral once he starts his mandate (art 84), as well as to his

incompatibility with any other public or private office. Once they enter into the office, Romanian Presidents are asked to resign from their political parties, thanks to which they won the presidential elections, and remain politically neutral. Nevertheless, political neutrality happens only formally, because the majority of the Presidents, despite resigning from their parties, they acted in support of them, with the exception of Emil Constantinescu, the only one who really did his best to be neutral. As a result, the mediating role exists on paper but not in practice because the political neutrality at his base does not really exist (Tănăsescu, 2008). For instance, Ion Iliescu (FSN) and Traian Băsescu (PDL) had been two peculiar cases, both supporting their parties even after starting their mandate. Contextualizing the situation, one might argue that Iliescu's close links with his FSN are understandable, though not fair. It is widely known that he was a former communist exponent, who always adopted a paternalistic approach of social control towards State management, which implies his deeply politicized role. Plus, he was President while the democratic transition was still starting (at least his first mandate 1990-1996). But Băsescu became President in 2004, after the 2003 Constitutional reform and during the period of the European Accession negotiations. He stayed in the office for two consecutive mandates (2004-2014) and his election was supported by the *Partidul Democrat Liberal* (PDL), the Liberal Democratic Party. The period in which he governed and the party that supported him may suggest that he may have done his best to respect the Constitution and grant the proper functioning of the Romanian democracy, but this was not the case. He was a very interventionist President, always pushing for a further extension of his powers. In fact, as stated before, he was subjected twice to the procedure of presidential suspension from office. In 2007, while providing its advisory opinion on President Băsescu's suspension, the Constitutional Court clarified that art. 84 states the Head of State may not be member of any political party, but this does not imply that he is obliged to have no links with the party that supported the election (Advisory Opinion No. 1/2007) (Selejan-Gutan, 2016) (Tănăsescu, 2008). Because of this interpretation, the presidential political neutrality became even less pursued and this led to the dilution of the presidential mediating role, again with the support of the

Constitutional Court's clarifications (Tănăsescu, 2008). Apart from the cited incompatibilities, the Romanian President enjoys immunities (art. 84.2), which are disciplined as the parliamentary immunities of art. 72 (Muraru & Tănăsescu, 2019).

4.2.2.2 The relationship with the Parliament

An important interplay is the one between the President and the Parliament. It concerns the Parliament's power to start the procedure for the presidential suspension from office, the President's power to dissolve the Chambers as well as his power to promulgate laws, to send them back for a re-examination (art. 77), his power to request the Chambers' meeting (art. 63). Starting from the presidential participation to the legislative procedure, the President promulgates laws and before doing it, he may send them back for a re-examination, before promulgation. However, as in Italy, the President can do it only once (art. 77). Generally, the promulgation has to happen within twenty days from the receipt of the law. In case the President asks for a review, once the law has been re-examined and re-approved, promulgation has to happen within ten days. Regarding the main political issues of the Nation, the President can address the Parliament sending messages (art. 88) and he can convene the legislative Chambers, meaning that he requests their meeting (art. 63). In addition, in the exercise of his powers, the President issues decrees, which are published in the Official Gazette of Romania, since without publication they cannot be considered valid. All the decree he adopts according to art. 91, have to be countersigned by the Prime Minister, being them the two heads of the executive (art. 100) (Muraru & Tănăsescu, 2019). Moreover, the Head of State may ask the citizens to express their will on matters of national interests. To this aim, he convenes consultative referendum, but only after consulting the parliamentary Chambers (art. 90). The Romanian President may be suspended from office if he violates the Constitution, case in which his responsibility to the Parliament may be invoked. The two Chambers, in a joint meeting, at the initiative of 1/3 of their members, may suspend the Head of State from office by

an absolute majority and after consulting the Constitutional Court (art. 95). However, in order to completely remove him from office, within thirty days from the parliamentary deliberation, the citizens must be consulted through a binding referendum, ultimately deciding if the Head of State remains or not into the office (Muraru & Tănăsescu, 2019). In the meanwhile, the function of the President is assumed but the President of the Senate. In fact, as in Italy, the President of the Senate is the one entailed to hold the presidential functions in case the President can no longer hold them (art. 97). This impeachment procedure had been applied twice, in both his terms – in 2007 and in 2012 – against President Traian Băsescu, because of his hyper-presidential stance. However, thanks to «his popularity which borders populism» he was not dismissed, in fact during both the popular referendums people voted against his dismissal. Băsescu's hyper-presidential tendency is witnessed in the informal powers he acquired thanks to the Constitutional Court's interpretations in his favour but he also tried to legitimize this power acquisition by his draft law for Constitutional revision, modifying the Romanian system in a hyper-presidential direction (paragraph 4.2.2) (Tănăsescu, 2014). In 2003, the Constitutional reform introduced a new procedure according to which the President may be accused of high treason by the two Chambers, deliberating in joint session by a 2/3 majority, on the initiative of the majority of Members and Senators. If finally accused, the President is suspended and judged by the Court of Cassation, which has the power to dismiss him in case its final decision confirms the treason (art. 96). Moreover, the President may dissolve the Chambers, but he is not free in this choice because he is limited by: *time limits*, no dissolutions in the last three months of his mandate, and not more than once in a year (art. 89.3); *limits of circumstances*, dissolution of the Chambers is allowed if they have not granted the vote of confidence for the formation of a Government within sixty days from the first vote and if they refused to grant the confidence twice, to two different governmental proposals (art. 89.1); *absolute limit* in the case of emergency situations or State of siege (art. 89.3) (Muraru & Tănăsescu, 2019).

4.2.2.3 The presidential activism

The nomination of the Prime Minister (art. 85) is another important and delicate presidential function, as it is the relationship with this institutional figure. The President designates a candidate to the office of Prime Minister, who needs to be granted the vote of confidence, concerning both the political program and the list of Ministers. Only afterwards, the President officially appoints the whole Government, whose Ministers have been proposed by the Prime Minister himself. In the event of Government reshuffle or vacancy of office, the President dismisses and appoints the Minister, but always on the proposal of the Prime Minister. Although the presidential role in the Government formation was meant to be merely formal, he actually extended his powers in this delicate phase, because of two reasons. First, because a sort of a Constitutional gap (Selejan-Gutan, 2016). If the first Prime Minister candidate proposed by the President is not granted the vote of confidence, the President has to propose a figure again, but there is no Constitutional obligation to not re-propose the same one who was refused (Tănăsescu, 2008). Thus, concretely, the President can pressure the parliamentary approval of a specific figure by re-proposing him/her again. Moreover, when there is a ministerial vacancy, and the Prime Minister proposes a new candidate, the Constitution does not specify whether or not the Head of State can refuse this proposal. To this situation, in 2007 (still under the Băsescu Presidency) the Constitutional Court decided to apply by analogy the provision concerning law-promulgation. Thus, if the President may send back once a draft law, then he can also refuse a candidate Minister. If the ministerial reshuffle changes the political composition of the Government, a new vote of confidence needs to be asked and the President of Romania is entitled to officially appoint the new Minister only after that the latter was granted (Tănăsescu, 2008). The appointment and reshuffle procedures, with time limits, needed majorities and so on, as well as a specific case of President-Prime Minister conflict, are better explained in paragraph 4.3.2. To the aim of this section it is important to underline the presidential active role, tending to extend their powers and the procedures in which he did so. The Romanian Presidents concretely developed

important informal powers and influence within the institutional interplay, inevitably paving the way for frequent conflicts with the Prime Minister. They managed to provide presidential interpretations of the Constitution, supported by the Constitutional Court, as already demonstrated. The main concern is that this increased power, was not counterbalanced by the increase in presidential accountability (presidential immunity, political responsibility or other presidential obligations). The President-Government interplay is also explained more into detail in paragraph 4.3.2, where also the effect of cohabitation is pointed out; bearing in mind that in Semi-presidentialism, cohabitation is that situation in which the President in the office is supported by a political party opposed to the one supporting the Prime Minister and which is not represented in the cabinet, typical of the semi-presidential dual executive. Thus, it is a situation of maximum conflict between the two heads of the executive. Still within the President-Prime Minister interplay there are the matters of foreign policy, for which the President concludes international treaties in the name of Romania, but which are negotiated by the Government, and then submit them to the Parliament for ratification (art. 91) (Muraru & Tănăsescu, 2019).

The consolidation of democratic institutions has reduced the importance of the President's political leadership, which has been source of conflicts with the Prime Minister and the Parliament. Indeed, the 2003 reform reduced the powers of the President, strengthening the parliamentary nature of the system (paragraph 4.4.4) (Olivetti, 2019). Nevertheless, the concrete position of the Romanian President is hard to reduce. In fact, there have been episodes in which the Head of State (Traian Băsescu in 2014) tried to use his democratic legitimacy and his powers to contend for the direction of political agenda with the Parliament and the Prime Minister. Consequently, in Romania, the presidential election is still decisive in determining the national political agenda, and also in representing it abroad since it is the President of the Republic who participates in the European Council (Olivetti, 2019). For this reason, among others, despite the attempt to stabilize the democratic institutional interplay, the conflict between President and Prime Minister did not diminish that much. Looking at the Constitutional rules, Romania is a semi-presidential country, where the President of the

Republic does not play an active role in national politics but mediates relations between the powers of the State and between the State and society. On the contrary, examining political practices since 1989, the role and powers of the Head of State have fluctuated between strong and crossing Constitutional boundaries and respectful of the fundamental law, with a bigger concentration of the first tendency. This is a function of the balance of power existing between President of the Republic, Government and Parliament, which however has allowed the Romanian President a lot of space for informal increases of power, making ambiguous the Romanian Constitutional system.

4.3 The Government

The need to prevent another authoritarian derive was important in structuring the Government in both countries. Fearing the strong fascist cabinet and the uncertainty of the political scenario, the Italian Parliamentarism implemented a relatively weak Government – at least according to the Constitutional text. The Romanian Semi-presidentialism, instead, needed to give people the right of directly electing the President, since in the totalitarian past the citizens' will was completely marginalized. At the same time, it needed the President not to be too powerful, to avoid the emergence of a totalitarian leader. Thus, a stronger Government and Prime Minister were implemented, as part of the dual executive, counteracting the President, at least according to the constitutional provisions (Perju, 2012). This paragraph shows there are important dissociations between the Constitutional provisions and the practice in both the systems, but there is a different result. While in Italy the Government got stronger in practice – mainly because of the majoritarian formulas, its active role in the EU institutions and the abuse of emergency legislative delegation – in Romania, the Government concretely got stronger towards the Parliament – both because of its active role within the EU intergovernmental dynamic and it strengthen role in the national legislative process – but not towards the President. The latter actually tended to extend its powers with the Constitutional Court supporting presidential interpretations of the Constitution, and because of its role

in representing Romania within the European Council, despite being constitutionally structured as a "weaker" figure than his French Counterpart.

4.3.1 The Italian Government

4.3.1.1 Appointment, structure and main functions

After a period in which Mussolini's fascist laws – *leggi fascistissime* – had established the primacy of the Government and the Prime Minister, the Constituents were very careful to structure the Government in an anti-fascist key. Few articles regulate its composition and functioning (artt. 92-96), giving birth to a law degree of parliamentary rationalization. In fact, the Constituents have limited the Constitutional provisions to regulating the granting and revocation of the vote of confidence. Thus, except for the formation of the Government (artt. 92 and 93) and the vote of confidence (art. 94), the Constitutional text ends up not defining clearly neither the internal arrangements of the cabinet nor its main powers. The Government is the top Constitutional body among those constituting the executive; it is responsible for implementing and enforcing the laws adopted by Parliament, determining the necessary measures. It is considered a complex as it is collegiate body which consists of several individual organs, that are the President of the Council and the Ministers who together constitute the Council of Ministers. Art. 95.3 leaves a «constitutional elasticity» concerning the concrete functioning of the Government, which is defined by ordinary laws and legislative decree (Bin & Pitruzzella, 2015). Because of this elasticity, the Government has behaved in different ways and had different functions and organizations since 1948. For example, in addition to the fundamental governmental bodies, there other bodies created through ordinary law that together with the former constitute the Government, such as the Vice-president of the Council, the Ministers without portfolio, the undersecretaries of State, the Cabinet Council, the interministerial Committees.

Among the main factors influencing its role and functioning there are the administrative decentralization – which transferred part of its functions to the

regions – and the European integration process. Because of the latter, the Government had lost important powers in the field of political economy but also gained powers as national interlocutor within the EU intergovernmental bodies (European Council and the Council of the European Union). Concretely, it exercises important functions concerning the definition of the political agenda, the executive function but also the normative one. However, its degree of political power depends on the form of government's balance as well as on the implementation of the decentralizing principles (Bin & Pitruzzella, 2015).

With regard to its formation, the Head of State appoints the Prime Minister, in charge of forming the Government, who shall accept the charge with reservation. The reservation is a ritual formula whereby the person in charge carries out a brief round of consultations between the political forces in Parliament, after which he presents himself again to the Head of State to dissolve the reservation positively if he accepts the post, or negatively if he rejects it. The aim is to enable him to verify politically whether it is possible to form his own Government. It is only after this verification that the Prime Minister officially presents the list of Ministers to be appointed to the Head of State, who formally appoints them (art. 92). Before starting the formation procedure, the Head of State holds consultations with the Presidents of the parliamentary groups, the political parties' leaders, the Presidents of the two Chambers and the former Presidents of the Republic (a measure not provided constitutionally, as in the Romanian case art. 103.1). In cases of political crises, the President's discretion in selecting a candidate increases, because he has the duty to identify a figure able to coalize around himself a parliamentary majority. This led the Head of State to select candidates with important technical backgrounds with no party supporting them, giving birth to the so-called technical Governments (Bin & Pitruzzella, 2015). Moreover, in Italy the form of government had often been characterized by a post-electoral formation of the coalitions and the Government's composition was part of these political bargaining (for sure until 1993 because of the available proportional system, but also more recently). Thus, the power for the Prime Minister to define a list of Ministers had been deprived of its substantiality, letting them being instead bargained among the coalitions, providing to each of

them certain ministries (Bin & Pitruzzella, 2015) (Lupo, 2018). The process concerning the Government's formation is different and autonomous from the one regarding the acquisition of the vote of confidence. Within ten days from his nomination and before becoming operative, the Government must submit his program to both the Parliamentary Houses, in order to get their vote of confidence, that has to be motivated. Likewise, a potential motion of no-confidence must be motivated and signed by at least 1/10 of the members of the Chamber. Moreover, it cannot be discussed within three days of its submission, in order to conduct a proper analysis. Thus, the motion of no-confidence opens a governmental crisis (art. 94). Governmental measures being voted against by the Parliament do not imply that the legislative Chambers are expressing a motion of no-confidence (art. 94.4). However, there is a tool called confidence matter, or confidence question, which is used by the Government to pressure the parliamentary approval of a governmental proposal considered vital for its political program (a similar provision exists also in Romania but is called governmental assumption of responsibility art. 114). If the Government puts the matter of confidence on a specific bill it proposes, and it is not approved by the Parliament, then this disproval implies that a motion of no-confidence has been voted, causing the Government to resign. Given its dependence on the parliamentary vote of confidence, the matter of confidence was thought by the founding fathers as a way to counteract the two Chambers. Before taking up their duties, the Prime Minister and the Ministers shall take an oath to the President of the Republic, with which they pledge to be faithful to the Republic by observing its Constitution (art. 93).

The Prime Minister directs the Government's general policy, he promotes and coordinates the activities of the Ministers according to the adopted political and administrative guidelines. All Ministers are politically responsible for the acts they have performed while being in the office. Precisely, Ministers are collectively responsible for the acts of the Council of Ministers, and individually for the acts of their departments (art. 95). In the silence of the Constitution, the admissibility of the vote of no-confidence against an individual Minister was discussed, based on the fact that Ministers are individually responsible in their

departments (art. 95.2). The possibility of such a motion was admitted and clarified by the Constitutional Court (Judgement No. 7/1997) because it makes it possible to preserve the relationship of trust between Parliament and Government, in the event that it is undermined exclusively by the behavior of a single Minister. To prevent the individual Ministers from pursuing their personal interests, the Constitutional texts underlines the collegial nature of the body. In fact, the monocratic and the collegial principles aimed to preserve the governmental unity and coordination (art. 95.1) (Bin & Pitruzzella, 2015, p. 39-41). Furthermore, the Government was given legislative functions delegated by the Parliament, being also one of those organs to which belongs the power of legislative initiative (art. 71). The exercise of legislative power shall not be delegated to the Government unless the Parliament sets out guiding principles and standards for a specific period of time and a well-specified subject (art. 76). Unless properly delegated by the Chambers, the Government may not issue decrees having the value of law. When the Government issues provisional measures with the force of law in extraordinary cases of necessity and urgency – decree laws – it must send them to the Chambers to be incorporated into law. If the Parliament is not holding any meeting while the decree law is sent, then the Chambers have to be summoned and meet within five days (art. 77). However, the Government abused its normative functions, particularly with decree-laws.[41] Against this practice, the Constitutional Court intervened declaring the repetition of the decree-laws unconstitutional (Judgment No. 360/1996).[42] In doing so, the Court, in close collaboration with the Presidency of the Republic, put an end to a practice that took away the extraordinary nature of the requirements of necessity and urgency and altered the provisional nature of the measure. In fact, the abuse of the decrees of urgency ended up undermining the balance of the form of parliamentary Government, thwarting

[41] Detailed analysis concerning the number of Decree-Laws may be found at: https://www.camera.it/application/xmanager/projects/leg18/attachments/documenti/pdfs/000/001/135/CL001_20_10_2018.pdf (Last visit June 2020).

[42] Judgment No. 22/2012 is also related to the issue, since with it the Constitutional Court sanctions the abuse of the law of conversion. More in: Domenicali Caterina, La sentenza n. 22 del 2012: la Corte costituzionale sanziona "l'abuso dei mezzi di conversione", Quaderni costituzionali. - 32 (2012), n. 2, p. 398-401.

the attribution of the ordinary legislative function to the Parliament (Lupo, 2018). Moreover, each year, the Government also has to submit to the parliamentary Chambers the budget and final balance (art. 81). Whenever it proposes a bill for parliamentary submission, the cabinet needs it to be first authorized by the Head of State (art. 87.4). At the same time, since the President of the Republic may not have any political responsibility, any presidential act, in order to be validated, it has to be counter-signed by the Ministers who have submitted it who, therefore, take responsibility for it (art. 89). The Prime Minister countersigns acts having the force of law.

4.3.1.2 Adoption of ordinary laws to implement art. 95

Once that the Italian Constitution entered into force (January 1st, 1948), the unity of the Government's political and administrative agenda depended on the adoption of ordinary laws to implement art. 95.3. However, during the first decades of Republic, the Christian Democrat cabinets were reluctant to approve such ordinary laws, precisely because of the need to maintain a strong Parliament and a weak Government. The only law available was the *decreto regio Zanardelli* of November 1901 (Zanardelli royal decree), which specified the relationship between Prime Minister and the Ministers. However, having it been adopted many years before and under a Constitutional Monarchy, it was certainly not adequate to the needs of a very different society. Until 1988 any attempt of implementing art. 95 through ordinary law failed. Its implementation became a priority only in 1982, when the first non-democristian Prime Minister was appointed, Hon. Spadolini. From this moment on, it becomes evident that only political and party mechanisms, rather than institutional ones, are too limited for exercising the governmental role of direction and coordination. Therefore, it becomes indispensable to provide a specific legal-institutional mechanism to better define the power distribution and the internal organization of the Government, as well as to support it in exercising its constitutionally provided functions (art. 95). Law No. 400/1998 specifies the following measures. The governmental decisions concerning its general policy are to be

voted by the Council of Ministers while the Prime Minister convenes the Council and defines the order of the day. Plus, he is given instrumental functions for the cabinet's coordination, such as suspending the adoption of acts by the competent Ministers, submitting the reasons for doing this to the whole Council and adopting the need directives to ensure the impartiality and proper functioning of the public administration (Bin & Pitruzzella, 2015). On the other hand, the Government's normative powers were regulated in detail, in order to discourage the abuse of the decree-laws and to stimulate, instead, the use of legislative delegations and the cabinet's regulatory power. Moreover, it intervened on the relations with the European Communities, on the relations with the territorial autonomies, especially the regional ones, thus enhancing the role of the structures responsible for the pursuit of these objectives within the Government: «the Department of Community Policies established at the Presidency of the Council of Ministers in 1987, the Department for Regional Affairs (which is headed first by the State-Regions Conference and then the entire "system of Conferences") and the Ministry of Treasury (with, within it, the General Accounting Office of the State)» (Lupo, 2018). Further important measures for the implementation of art. 95 are Legislative Decrees No. 300/1999 and 303/1999. Legislative Decree No. 300/1999 completed the implementation, dictating for the first and only time a general discipline concerning the internal governmental structure. A number of twelve ministerial structures was fixed; whereas their attributions had been distributed between general principles, common to all the ministries, and, finally, the basic organizational structure, in departments or general directorates. Instead, Legislative Decree No. 303/1999 focused on providing the Prime Minister with an apparatus capable of assisting him more effectively in the functions of guidance and coordination of the governmental activity. It was thought in the attempt to endow the Presidency of the Council with an autonomy similar to that enjoyed by other Constitutional bodies, such as the Parliamentary Chambers, the Constitutional Court and the Presidency of the Republic. Nevertheless, in the following years the ministerial regulation regained flexibility because the functions of the Presidency of Council increased again, while the organization models were modified,

derogating the Legislative Decree No. 300 of 1999. Consequently, there had been important difficulties in filling the gap left by the fundamental text in disciplining the Government's internal organization and power distribution. First of all, because ordinary law may be easily modified or derogated. Second, because the Italian extreme multi-party system is very influent in shaping the internal arrangements within the institutions. Likewise, concerning the Government's functions, its normative powers had increased. In this sense, the Constitutional principles of separation of powers is considered to have been object of derogations concerning the legislative power, delegated by the Parliament to the Government through legislative decrees, and decree laws.

4.3.1.3 Extra-constitutional empowerment of the Government

Despite it being constitutionally thought to be relatively weak, the Government concretely became stronger. Apart from the ordinary law providing it with specific functions and auxiliary bodies, the strengthening trend is due to other two elements: the adoption of predominantly majoritarian electoral laws and the European integration process. The predominantly majoritarian electoral laws are: the law available between 1993 and 2005 both for the House and the Senate, and the law available between 2005 and 2014 only for the House, (as would have been Law No. 52/2015, which was in force for a little more than two years, but never applied). Their effect was providing a further purpose to the elections, which no longer served only to ensure that voters identified their own representatives, but also to appoint a governmental majority and its leader, meant to be appointed Prime Minister. In fact, with proportional electoral systems the only role of the electoral body is to delineate the parliamentary representation, establishing the relations of force between the parties and therefore the parliamentary groups. Instead, the majority electoral laws also have the objective of creating a governing political majority within the Parliament, so to guarantee the governmental stability. Consequently, the electoral moment ends up influencing the Government's structure, but only on a factual level, not also on a legal-normative one. To this strengthening trend contributed also the European

integration (Lupo, 2018). Since the Maastricht Treaty, the intergovernmental dimension – represented by the Council (of Ministers) of the European Union and the European Council – has been growing in importance, often to the detriment of the supranational dimension – the European Commission. Far from being overlooked, national Governments became the protagonists of the European integration process. In fact, the Italian Ministers who also exercise European powers – now almost all of them – are simultaneously members of two Constitutional bodies. One is the national Government while the other is the Council of the European Union, an institution which is the holder– together with the European Parliament – of the legislative and budgetary functions.[43] Therefore, Ministers are called to be State administrators, but often also part of the EU administration. Furthermore, the President of the Italian Council of Ministers, as such, is automatically a member of the European Council, i.e. that intergovernmental institution which brings together the Heads of State or Government of the Member States, the President of the European Commission and the President of the European Council. While for Italy, the Head of Government participates, for Romania, the Head of State participates. Since the Treaty of Lisbon, it is an institution autonomous from the Council which has the strategic role of giving «he Union the necessary impetus for its development and defining its general political orientations and priorities» (art. 15.1 TEU). This role refers to the notion of political direction (or political agenda), which makes it the decisive institution in capturing the broad outlines of public policies defined at European level. Furthermore, within the European Council, the Prime Minister is the crucial figure representing Italy in the negotiation and definition of policies which would fall within the competence of individual Ministers. This trend provides the Prime Minister with elements of that hierarchical superiority which he often continues to be denied at a national level. This similar phenomenon also occurs with regard to the Governments of the other Member States, but in different forms, on the basis of the internal institutional balances. In Romania, being there a Semi-presidentialism in which the Head of State

[43] Many scholars tend to qualify it as the "upper chamber" of the EU, underestimating the structural characteristics different from those of a Parliament. In fact, its composition is variable because it depends on the composition of the Governments of the Member States (Lupo, 2018).

participates in the European Council, the presidentialising effect has different results (paragraph 4.3.2). In general terms, the intergovernmental dimension of the European Union further pushes the presidentialization trend which already characterizes many contemporary democracies. In parliamentary forms of Government, such as the Italian one, the effect of the participation of the Head of Government in the European Council is to strengthen the Prime Minister both towards his Ministers and the Parliament (Lupo, 2019). For instance, the Prime Minister's strengthened position within EU institutions caused the progressive erosion of the function of the Minister of Foreign Affairs (Rivosecchi, I riflessi dell'Unione europea sul rapporto governo-Parlamento e sull'organizzazione interna del governo, 2019). Thus, the European membership influenced the structure and the equilibrium within the Italian cabinet provoking the Prime Minister's dominance on the other Ministers, the need to select technocratic Ministers in order to face the confrontation with the other European colleagues within the Council of the European Union, as well as problems concerning the governmental legitimation. In fact, if the national Government acts both at the national and the European level, it is harder to make it politically accountable (Lupo, 2018). Because of its general provisions, the Italian Constitutional design remained unchanged, but the ability of the Constitution to act as an effective game-ruler weakened and it would probably have been further weakened if the majority option had been fully developed (Lupo, 2018). This weakness is visible in the difference between the Government as disciplined by the Constitution and the actual performance of its functions. In this context, it is important to cite the theses of two important Italian constitutionalists, regarding the power of the Italian Government. Augusto Barbera argues that the Italian Government is too weak, while Valerio Onida argues that it is too strong (Barbera, 2010) (Onida, 2010). This contrast is based precisely on the dissociation mentioned above. In fact, Barbera bases his thesis on the powers attributed to the Government by Constitution (Barbera, 2010), while Onida refers to the concrete and extra-constitutional mechanisms applied by the Government (Onida, 2010). Among these, the abuse of the instrument of legislative delegation, increasing the normative powers of the Government, thus placing itself at the center of the

processes of normative production and the political system. This dissociation explains the need for the Constitutional jurisprudence to increase its interventions in order to ensure that the form of parliamentary Government is maintained. In fact, in the last twenty-five years, it intervened more concerning the form of government, trying to fill the gaps left by the failed Constitutional amendments (Lupo, 2018). Among others, an important example is the admissibility of the individual motion of no-confidence (Judgment No. 7/1996)[44] with regard to relations between the bodies composing the Government and its relations with Parliament. In the event that a Minister pursues a course of action diametrically opposed to that expressed by the cabinet, the motion revoking the vote of confidence only to this Minister, may be a useful remedy (Lupo, 2018). Overall, among all the Italian public authorities, the Government seems to be the one which evolved the most, but not thanks to Constitutional amendments (Lupo, 2018). On the contrary, this depended on the ordinary laws implementing its Constitutional provisions, on the electoral reforms and on the influence of the European Integration on the concrete functioning of the Italian form of government.

4.3.2 The Romanian Dual Executive

4.3.2.1 Appointment, structure and main functions

The Romanian case is different from the Italian one because of the dual nature of its executive, composed by two heads: Prime Minister and President of the Republic. Consequently, the relationship between these two Constitutional bodies it is extremely important, especially since they have different legitimation sources. More importantly, the President's powers in his relationship with Government are constitutionally regulated and yet they augmented because of the informal presidential activities and presidential interpretations of the Constitution, supported by the Constitutional jurisprudence. For this reason, while speaking about the composition, the functions and the evolution of the

[44] Better explained in paragraph 4.4.1.

Romanian Government, the powers of the Romanian Head of State regarding it are to be considered.

The Romanian Government (artt. 102-110) is composed by the Prime Minister, the Ministers and other members as established by organic law (art. 102). The investiture procedure goes as follows. After having consulted with the party having the absolute majority in Parliament – or with all the parties represented in Parliament unless such a majority does not exist – the President nominates a candidate as Prime Minister. Thus, differently from the Italian case (art. 92), in Romania, consultations are constitutionally disciplined (art. 103). Within ten days of being selected, the applicant shall receive the Parliament's vote of confidence on the program and the list of Ministers (art. 103). Once it is granted, the whole Government is formally appointed by the President, in front of which each member takes an oath, solemnly engaging in respecting the Constitution (art. 104). Differently form the Italian case (at. 94), the Romanian Parliament debates the governmental program and the list of Ministers in joint session, after which they vote the confidence by a majority of Deputies and Senators (art. 103.3). Moreover, once that the vote of confidence is granted, if any part of the governmental political program changes, another vote of confidence has to be granted (Muraru & Tănăsescu, 2019). Thus, as in Italy, the Romanian Government is politically responsible towards the Parliament, measure that constitutes the core of Parliamentarism. In introducing it, the Romanian founding fathers got inspired by the rationalized Parliamentarism (Olivetti, 2019) (Selejan-Gutan, 2016). In fact, the motion of censure is regulated in detail within the Constitution. The parliamentary Chambers in joint session can revoke the vote of confidence, voting a motion of censure by a majority vote of the Deputies and Senators. It may be initiated by at least 1/4 of the total number of Deputies and Senators and is needs be notified to the Government upon the date of its tabling; which is different from the Italian in case, in which it can be initiated by 1/10 of the Members of one Chamber (art. 94). Plus, as in Italy, it has to be debated not before three days after its presentation in the joint session

of the Chambers (art. 113).[45] Furthermore, the governmental membership is incompatible with the exercise of other public office in authority, except that of a Deputy or Senator. Likewise, it is inconsistent with holding a representing or managing office in a public or private company. Other incompatibilities may be provided by ordinary law (art. 105). Governmental membership ceases only upon resignation, dismissal, disenfranchisement, incompatibility, death, or in any other cases provided by law. The Prime Minister cannot be removed from office by the President (art. 107.2). However, this was specified lately, by the Constitutional reform of 2003. Before that, art. 105 of the 1991 Constitution was ambiguous in affirming that Ministers could cease their function in case it was revoked. In fact, the provision was interpreted as the President having the power to revoke the Prime Minister's function. On this basis, Prime Minister Radu Vasile was removed from office on December 15th, 1999 by President Emil Constantinescu (Olivetti, 2019). Thus, at the moment, the Government is politically responsible only to the Parliament. Only the two Chambers and the President have the right to demand legal proceedings to be taken against members of the Government for acts committed in the exercise of their office. If such legal proceedings are demanded, the Romanian President can decree that they will be removed from office. Establishment of proceedings against a member of the Government entails suspending him from office and in any case the procedure is competence of the High Court of Cassation and Justice (art. 109). The Prime Minister directs the actions of the Government and manages its members' operations with the observance of their powers and duties. Similarly, he submits reports and comments on governmental policies to be discussed with priority in the Chamber of Deputies or the Senate (art. 107). Moreover, he represents the cabinet in the interplay with the other Constitutional bodies. Thus, the Romanian Head of Government (art. 107) owns important powers, but they meet political constraints. For example, when there is a ministerial vacancy, he has the power to nominate new Ministers, but, if there is a coalition Government

[45] This is a difference between the two systems. Notice that, if the Constitutional reform proposed by the 1983 Bozzi Commission had passed (paragraph 4.4.2), the Italian Parliament would have had to grant and revoke the confidence in joint session, which would have brought it closer to Romania in terms of similarities.

all the political forces have to agree on the choice. In fact, in coalition Governments, ministerial seats are distributed among the coalition partners, reason why this formula needs to be respected also in the case of replacements. As in Italy, the Romanian Government acts as a collegial body, which has the duty to generally manage the public administration, to elaborate development strategies, implement the program submitted to the Parliament while asking for the confidence, achieve foreign policies and negotiate international treaties. Moreover, it is the principal legislative initiator and it exercises a hierarchical control over the ministries. More specifically, its functions are: elaborating strategies for the governmental program's implementation, adopting the needed rules for achieving its aim, managing State services and properties, checking over the legal rules' implementation in the fields that are under its supervision (art. 102). Besides, in order to distinguish between the political and the technical-administrative sides of the executive, the Romanian Constitution makes a difference between the President and the Government (competent in the political part of executive) and the ministries and the public administration (having the technical-administrative competence).

4.3.2.2 Governmental empowerment at the expenses of the Parliament

To fulfill its functions, the Government adopts decisions – governmental acts adopted for the execution of laws – and ordinances – delegated legislative acts that may be for regular or emergency situations (art. 108) (Selejan-Gutan, 2016). While the first ones have secondary legal powers, the second ones have primary legal powers, in fact they are subject to the Parliament's approval. Hence, apart from the confidence, there are other important links between the Government and the Parliament, that are the Government's legislative functions exerted thanks to the legislative delegation (art. 115). In fact, the Parliament can enable the Government to issue ordinances by passing a special enabling law which sets the field and the date by which ordinances can be given. Moreover,

governmental emergency ordinances[46] may be adopted in exceptional cases, for which no enabling law is needed, but there has to be a motivated extraordinary situation justifying its use, and it enters into force only after having been published in the *Monitorul Oficial* (Official Gazette). Thus, emergency ordinances have the effect of directly applying the fundamental text with no *ex-ante* intervention of the Parliament, but there is and *ex-post* parliamentary control on it. In fact, governmental ordinances have to be notified to the Parliament and need to be approved or rejected by law (art. 115). If when it is adopted, the Chambers are not in session, they have to meet within five days of the ordinance's submission. The emergency ordinance may come into force only after the parliamentary approval and its publication in the Official Gazette of Romania. However, if within thirty days from its adoption, the first Chamber does not communicate any decision on it, then it is considered adopted and sent to the second Chamber.[47] This provision, allowed the Government to abuse the legislative delegation – mainly the emergency ordinances – with the silent consent of the legislative body (Selejan-Gutan, 2016). Yet, emergency ordinances cannot be adopted in the field of Constitutional laws or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly (art. 115.6). An important controversy concerned the Government profiting its power of delegation to modify and adopt organic law matters, a competence that is constitutionally reserved to the Parliament, being the «sole legislative authority of the country» (art. 61). To solve it, the Constitutional Court intervened in 1998, clarifying that in no case the Government can use emergency ordinances for matters of organic law and that the only cases in which it can intervene in this field it is with the enabling law of the Parliament, so for regular ordinances. Later on, the 2003

[46] Just to remind that these measure in Italy are called (emergency) decree-laws, paragraph 4.1.1 and 4.3.1.

[47] The distinction between first and second Chamber refers to the temperate specialization of bicameralism introduced by 2003 Constitutional Reform, that defines which laws have to pass first to the Chambers and Deputies and which instead have to pass first to the Senate. Concretely, this made the Romanian bicameralism even more ambiguous than before because it practically allows it to work as a unicameral system. See paragraph 4.4.4.

Constitutional amendment expressively prohibited the Government to adopt regular ordinances in the field of organic law (art. 115.1) (Selejan-Gutan, 2016). Yet, the abuse of emergency ordinances continued to happen. The procedure was firmly criticized both by the scholars and the opposition, which however did the same when came to power. Moreover, once that Romania entered the EU (2007) and was submitted to the CVM reports, this issue became an important concern for the European Commission, criticized as source of legal uncertainty. In a further attempt to reduce this misuse, the Constitutional Court intervened in 2013 stating that the extraordinary situation justifying the use of emergency ordinances must be explained in detail and that, in order to be considered an emergency, a situation had to be a strongly deviated from a regular one (Decision No. 447/2013). Also, in Romania the Government can pressure the Parliament, through a measure similar to the Italian question of confidence, called the Government's assumption of responsibility (art. 114). It consists of presenting to the Parliament a program, a policy statement or a bill, for whose approval it assumes its responsibility. This means that, if the Parliament disproves the submitted program, policy or bill, then this negative vote is considered a motion of censure and the Government automatically resigns. In practice it has been used especially when the cabinet was sure of the Parliament's support, to quickly pass a law, bypassing parliamentary discussions. In other cases, it was meant to have the vote of confidence confirmed. This instrument allowed an important dominance of the Government on the Parliament, transforming it from deliberative organ to one that is simply in charge of giving a formal consent on governmental policies. Lastly, the Government and its members must answer and face questions, interpellations and simple motions from the Parliament (art. 112), as well as inform it presenting the required documents for the aims of parliamentary control (art. 111).

4.3.2.3 An empowered President at the expenses of the Government

As part of the executive branch, the Head of State deeply influences the governmental activity and structure. His power in nominating the Prime Minister

and then the whole Government after the confidence is granted, is merely formal. However, a «constitutional loophole» allows him to apply a presidentialising trend (Selejan-Gutan, 2016). In fact, if the Parliament refuses the President's candidate as Prime Minister twice in sixty days, then it is dissolved. However, after the first refusal, the Constitution does not specify whether the President may or may not propose again the same candidate. The reshuffling procedure is another key element in which the Prime Minister has the main role, but which in practice happened differently. In the case of ministerial vacancies, the Prime Ministers makes some proposals and then the President dismisses and appoints the members (art. 85). If the procedure risks to modify the governmental political structure, before formally appointing new members, the President needs the parliamentary approval, again at the Prime Minister's proposal. In December 2007, the Minister of Justice resigned and Prime Minister Călin Popescu Tăriceanu proposed a new candidate, refused by President Băsescu because of political tensions due to the cohabitation. Then, the Prime Minister made again the same proposal and again it was refused. Tăriceanu asked for the help of Constitutional Court, since the Constitution provided no clear procedure in this case. After admitting there was no Constitutional right for Băsescu to refuse the proposal in such case, the Court also stated its duty to solve Constitutional conflicts and for this reason it interpreted the provisions similarly to the law-promulgation procedure. Since the President has the power to ask a re-examination of a law (art. 77), then this power should exist, by analogy, also in the case of reshufflings. Thus, with the consent of the Constitutional jurisprudence, and despite the Prime Minister having the primary role in the reshuffling procedure, president Băsescu managed to increase its powers and dominate the procedure (Selejan-Gutan, 2016). Lastly, the interplay between the two heads of the executive should happen through regular consultations, with which the President consults the Government concerning urgent issues. Also, he may join the governmental meetings and if he does so, then he chairs them. Constitutional provisions allow him to participate in specific meetings – foreign policy problems of national interest, national defense issues or public order maintenance (art. 78) – but concretely he tends to participate also to other

meetings, to which he is invited by the Prime Minister, if where there is compatibility between them. In Romania, cohabitation between a President and a Prime Minister supported by different majorities was argued to be a parliamentarising counterweight to the Presidency, but in practice it showed to be detrimental for democracy. In fact, it created permanent tensions between the two heads of the executive, which harmed the governance's quality, causing weak external representation and delayed legislative processes and governmental reshuffles. Differently from its French inspiring model, the Romanian cohabitations begin mainly because of floor-crossings happening within the Parliament after that regular elections were held (Selejan-Gutan, 2016). Thus, electoral results and different mandates length contribute to it but do not determine it. Among all the cases of cohabitation, two of them have showed important common elements: the 2005-08 and the 2012-14 cohabitations, both concerning President Traian Băsescu (Perju, 2015). In both cases, it began as a result of floor-crossing and in both of them the Head of State was suspended from office (art. 95) – May 2007 and July 2007 – to be reinstated following the popular binding referendum.

Although Constitutional rules provided for a weaker Head of the State, there had been important presidentialising trends, which despite not leading to the feared authoritarian drift still provoked Constitutional and political crises. Despite all the academic debates, the attempted Constitutional amendment of 2013 envisaged no parliamentarisation, it just tried to reduce the presidential mandate to four years, precisely to avoid risks of cohabitation (Perju, 2015) (Selejan-Gutan, 2016). Nevertheless, since cohabitation often happens because of parliamentary floor-crossings, the measure would have not reduced the risk of having it. Cohabitation is still a controversial issue because it produces important consequences, such as the decrease of public trust in politics and its main actors, the radicalization between President supporters and Prime Minister supporters and the decrease in the efficiency of administrative institutions. This inefficiency progressively led to reduction of the Government's functions. Many administrative competences had been decentralized and transferred to local authorities while another part of the ministerial competences have been

transferred to the new-born agencies during the European integration phase (Abraham, 2016). Indeed, the Government's power in the dual executive lost prestige because of the conflict with the President but also because of the Euro-Atlantic integration. Accession to the EU, with the consequent partial transfer of powers, the influence of the IMG on macroeconomic policies, plus the NATO management of security, coordination and justice, led the Romanian cabinet to be weakened in its relationship with the President. To this weakening trend contributes also the fact the Romania is represented by the President of the Republic within the European Council,[48] and not by the Prime Minister as in Italy. This difference is possible because European treaties merely require each Member State to be represented by the Head of State or Government. The choice depends on the rules in force in each Member State, in recognition of the different forms of government (Lupo, 2019). This implies that the President represents Romania in the negotiation and definition ad EU level, providing him elements of superiority (Tacea, 2015). Thus, as in Italy, also in Romania, the intergovernmental dimension of the European Union produced a presidentialising trend. Here, presidentialization means the accentuation of the power and autonomy of the Heads of State and/or Government, due to their participation in European intergovernmental institutions, in particular the European Council, the institution that has gradually expanded its functions, coming to be defined as the holder of a role to guide the general political priorities (art. 15 TEU) (Lupo, 2019). However, differently from Italy, in Romania, it further empowers the President, whose figure is already profiting from its informal activities and the Constitutional jurisprudence to extend its powers, consequently increasing conflicts with the Government and contributing to its weakening (Perju, 2015) (Tacea, 2015) (Abraham, 2016). This is valid for Romania, because in this country the President already tends to extend its powers nationally, but it may not be the same for other semi-presidential systems in which the President is weaker both constitutionally and concretely (Lupo, 2019). At the same time, the fragmentation of the national executives caused by the

[48] Apart from Romania, also France and Lithuania are represented by its President in the European Council, all elected by the people (Lupo, 2019).

process of European integration (Lupo, 2019) strengthened the Government towards the Romanian Parliament. Because of its participation to both the national and the European administrative, it has become easier for the Government to escape its responsibilities towards the Parliament. Thus, also in Romania, the national Government is more Europeanised and dominant on EU issues, a trend that is even more intensified by the fact that already at the national level the cabinet tends to dominate over the parliamentary Chambers (Lupo, 2019). Indeed, on the one hand, the European integration process has strengthened the Romanian Government at the expenses of the Parliament, while on the other, it had weakened the Prime Minister in the relation with the President of the Republic, leaving space for the latter to practically be the dominating figure within the dual executive (Tacea, 2015) (Perju, 2015).

4.4 The Constitutional Court

4.4.1 The Italian Constitutional Court

The Constitutional Court is the youngest among the Italian constitutional bodies being created in 1948 by the founding fathers, having begun to function in 1956. The Court is a judge, but it does not belong to the judicial order; in this sense, it is considered to be extraneous to the separation of powers principle (The Italian Constitutional Court, s.d.). The Italian Constitutional Court is composed of fifteen judges (art. 135), whose appointment process is intended to harmonize various needs: ensuring that the judges are unbiased and autonomous, guaranteeing the required degree of professional legal expertise, bringing to the Court a variety of different skills, experiences and cultures, as well as political sensitivities. The judges are selected from a specific group of legal professionals with a high degree of education and experience. Every judge is appointed for a nine years mandate (no age limit) which is not extendable. This helps to ensure that they are independent, especially from the political bodies that designate a portion of the Court. When a judge leaves the office before the completion of his term of service due to death, resignation or dismissal, the same body that

originally appointed him appoints also his replacing judge for nine years. Because terms have ended early over the years, the Court's fifteen seats nowadays typically come up for election at various times, resulting in a gradual shift in the Court's composition (The Italian Constitutional Court, s.d.). The election goes as follows. Five judges are elected by an absolute majority vote of the electoral body by members from the three Superior Tribunals – three by the Supreme Court, one by the Council of State, one by the Court of Auditors. If no such majority is obtained, the judges shall be elected by a run-off election between those candidates who receive the highest number of votes. Another five judges are chosen by the Parliament in joint session, while the final five are selected by the President of the Republic (Siclari, 2010) (Bin & Pitruzzella, 2015, p. 39-41).

The ambiguity of the Republican Constitution in outlining the characteristics of the Government, the extra-constitutional nature of its transformation, as well as the failed attempts to reform the Constitution, led the Constitutional Court to intervene more on the Italian form of government, clarifying some of the processes inherent to its functioning. It is important to note that these interventions all date back to the last twenty-five years, i.e. a period of adoption of predominantly majoritarian electoral laws, which introduced several tensions into the Italian system (Lupo, 2018). Among these interventions, an important one, that has already been cited, is the admissibility of the individual motion of no-confidence (Judgment No. 7/1996). Rejecting a conflict of powers raised by the former Minister of Justice Filippo Mancuso, the Court stated that the motion of individual no-confidence, although not provided in the Constitution, is to be considered admissible as a result of Constitutional customs (as explained in paragraph 4.3.1). Minister Mancuso had raised a conflict of power attributions against the Senate – which voted the individual motion – contesting the power to vote such a motion and accusing the Senate to interfere with the powers of a Minister. The motion was voted because the Government wanted to dissociate itself from the activity of this Minister, who was simply exercising his function, but the way he did it was in contrast with the Government. This intervention of the Constitutional Court, and the rulings on electoral laws may have been those

in which the Court has gone deeper in interpreting Constitutional provisions that concern the Italian form of government (Lupo, 2018) (Bin & Pitruzzella, 2015). Another important intervention of the Constitutional jurisprudence concerned the unconstitutionality (Judgment No. 1/2014) of the *Calderoli* electoral law (Law No. 270/2005). Following the last elections in which the law was applied – February 2013 – the different type of majority bonus for the Chamber of Deputies and the Senate gave birth to different majorities in the two legislative houses, making it very hard to agree on the Government's formation (Guzzetta, 2014). Moreover, the most voted coalitions for the Chamber of Deputies received only 29,55% of votes and still got the majority bonus of 340 seats (out of 630). This brought the society to be even more distant from the parties, believing the Parliament was composed of "nominated" members, instead of popularly elected ones. In turn, this led to critics of unconstitutionality against the electoral law; in fact, the Court of Cassation raised the question of unconstitutionality against some parts of the *Calderoli* law and the Court welcomed it. In its opinion, the Court excluded any assessments concerning the type of electoral systems – majoritarian or proportional – since the Constitution does not impose one in particular. However, it requires a balance among two important Constitutional needs, the citizens' representativity, for which the proportional system is more suitable, and the State's governability, for which instead the majoritarian system is more suitable (La sentenza 1/2014 e la relazione della Corte costituzionale, s.d.) (Tarli Barbieri, 2017) (Dickmann, 2017). The majority bonus for the Chamber of Deputies was declared excessive since it created a huge gap between the parliamentary composition and the popular will. In addition, representativity was considered to be infringed also by the long-blocked lists, for which citizens could neither express a preference nor see the name of the candidates. The vote was based on a list in which the order of candidates was basically decided by the political parties. Not knowing who the members on the list they are voting for, and not expressing a preference on any of them, the relationship between the electors and the elected was altered (Bin & Pitruzzella, 2015). The majority bonus for the Senate, instead, was considered unreasonable due to the lack of a minimum threshold of votes to win

it (La sentenza 1/2014 e la relazione della Corte costituzionale, s.d.). In addition, its allocation on a regional basis meant that the majority in the Senate was the result of the sum of regional bonuses, which could end up reversing the result obtained in the Chamber of Deputies, voted on a national basis. In this way, the electoral law ended up favoring the formation of different majorities in the two Houses, compromising the functioning of the parliamentary form of government, i.e. the granting and revocation of the vote of confidence and the exercise of the legislative function (Bin & Pitruzzella, 2015). Likewise, Judgment No. 35/2017 is fundamental in defining the partial unconstitutionality of the *Italicum* electoral (Law No. 52/2015) law and raised by five Tribunals (those of Trieste, Messina, Genoa, Perugia and Turin) (Dickmann, 2017). The ruling concerns numerous issues of constitutional legitimacy, of which only the relatively more relevant ones have been considered here, i.e. the majority bonus, the runoff election and the question of the heads of electoral lists elected in several electoral colleges (because of their ability to stand for election in several colleges) (Ciancio, 2017). The central point of the judgment certainly concerns the majority bonus of 340 seats for the electoral list that reaches at least 40% of the votes and the runoff between the two most voted lists, in case none reaches 40% during the first round. In submitting it to the Court, the above-mentioned Tribunals have considered that the majority bonus distorts excessively the outgoing vote (corrected by the majority bonus) compared to the incoming vote (as voted by the citizens). As such, the bonus was considered to damage the equality of voting and the representativeness of the Chamber. The distortion concerned the calculation of the percentage to get the bonus, which was calculated on the basis of the number of valid votes instead of on the basis of the number of those entitled to vote. Furthermore, the distortion concerned also the second round, for which the bonus is provided to the winning list without a minimum percentage of votes. However, the Court did not consider these arguments to be well-founded and therefore rejected the unconstitutionality of the majority bonus. It stated that the legislature had wide discretion in choosing the electoral system, provided that it guaranteed equal voting and the principle of representativeness (already stated in Judgment No. 1/2014). Since *Italicum*

legitimately defines a minimum threshold of 40% of valid votes for the award of a majority premium, there is no risk of over-representation of the relative majority list. The Court declared that it has no power in defining ad adequate minimum threshold since this is the legislator's competence (Morrone, 2017) (Tondi Dalla Mura, 2017) (Ferri, 2017). As long as the definition of the latter is reasonable, and it does not distort excessively the principle of representation, equality of vote and proportionality, there is nothing to be judged as unconstitutional. Similarly, it leaves it up to the legislator to decide whether or not it is unlawful for the 40% threshold to refer to the number of valid votes and not to the number of those entitled to vote. On the contrary, the Court declares the second round unconstitutional and it sanctions its elimination (Ferri, 2017). In its opinion, it unreasonably restricts the representative character of the Chamber of Deputies and the equality of the vote due to an imprecision in its functioning. In fact, according to electoral law, the two lists with the two most voted electoral lists (not reaching 40%) in the first round are admitted to the runoff ballot, without admitting any form of connection or appearance between lists, between these two rounds. In addition, still according to the law, the percentage seats distributed remains the same as in the first round, even after the runoff round, for all lists other than the winning one (including the list that participates in the runoff and loses). However, in practice, it is not true that all the lists maintain the same distribution of seats, because, once the runoff has taken place, they must lose the part of seats that is to be awarded as a majority bonus to the list that wins the runoff. Thus, for its very way of working, the *Italicum*'s second round is severely unconstitutional (Ciancio, 2017) (Dickmann, 2017). Finally, the Court declared the unconstitutional the provision which obliges the chief deputy, elected in more than one electoral college, to declare which one of them he chooses (within eight days from the election, to the President of the Chamber of Deputies) (Morrone, 2017) (Tondi Dalla Mura, 2017) (Ferri, 2017). According to the Court, leaving the choice to the head of the electoral list, without objective criteria, contradicts the logic according to which the elector expresses his preference for a candidate on the list. Therefore, it adversely affects the principle of representativeness. To remedy this, the Court

declares that the heads of the list elected in more than one college will have the college assigned by drawing lots and no longer by their personal choice (Dickmann, 2017) (Morrone, 2017) (Tondi Dalla Mura, 2017).[49]

In all the cases here cited, the jurisprudence of the Constitutional Court had been fundamental for the concrete functioning of the parliamentary form of government. It ensured the constitutional superiority and observance, it clarified a conflict of attribution declaring possible the individual motion of no-confidence and it justified why the *Calderoli* and the *Italicum* electoral laws were partially unconstitutional and thus, in need for reform. Of course, there are many other important cases, but here just three of them have been analyzed to provide a general framework of the Court's influence.

4.4.2 (Failed) constitutional amendments in Italy: three important cases

The concrete functioning of the Italian Parliamentary form of government has been subject to several Constitutional amendment attempts. Among them, three of the main ones are here discussed briefly: the 1983 Bozzi Commission, the 1997 D'Alema Commission and the 2016 amendment proposed by Matteo Renzi (PD) (Guzzetta, 2018). Even if they failed, the discussions they brought on influenced the system, leaving some gaps concerning the unfilled needs of clarification. More or less as in the Romanian case, these attempted Constitutional amendments are important for the different solutions they proposed to the Italian constitutionalism. Moreover, one of them – the D'Alema Commission – would have brought Italy even closer to the Romanian system (Volpi, 2014).

On April 14, 1983, the Chamber of Deputies and the Senate set up a Bicameral Commission composed of twenty deputies and twenty Senators with the task of formulating proposals for Constitutional reforms. Chaired by Aldo Bozzi, it held its first session on November 30th, 1983. With regard to the formation and

[49] Obviously, in this work these judgments are just cited and briefly summarized, trying to identify the most important elements which may influence the concrete functioning of the Italian form of government. More in-depth examination and critical opinions are to be found at: http://www.giurcost.org/decisioni/2017/0035s-17.html (Last visit June 2020).

structure of the executive, the reform proposed some amendments but maintained the form of parliamentary Government and the necessary confidence relationship with Parliament. For instance, art. 94 provided for the two Houses of Parliament to grant or revoke the vote of confidence in a joint session (as happens in Romania, paragraph 4.3.2). In addition, in the case of resignation not resulting from a motion of no-confidence, the Prime Minister had to declare and justify his willingness to resign before Parliament in a joint session. Instead, the normative powers of the Government in art. 77 were reformulated to specify what were the cases of necessity and urgency – natural disasters, national security or the enactment of financial rules to enter into force immediately – where the emergency decree could have been used. In addition, the revision provided for a reduction of parliamentarians, but without formalizing an exact number. As far as the initiative of laws is concerned, the quorum of art. 71 was raised to 100.000 voters (from 50.000) for the presentation of draft laws by citizens' initiative. It is also provided that a representative of the promoters may attend the Commission meetings without the right to vote. The legislative function, on the other hand, was meant to be exercised by both Houses jointly for certain specific cases. These included Constitutional and electoral laws, bills on the organization and functioning of constitutional, budgetary or tax institutions. For other laws, the legislative function was exercised by the Chamber of Deputies alone, except for the possibility of the Government – or 1/3 of the Senators – to request within fifteen days of the approval that the project also be examined by the Senate (La Commissione parlamentare per le riforme istituzionali ("cd. Commissione Bozzi"), s.d.) (Volpi, 2014). In the end, the Bozzi Commission, failed because of the political fight between the PCI and the PSI. The two parties competed for the hegemony over the left wing as well as for the opportunity to establish a privileged relationship with the governing party, the DC.

In 1997, the Italian Government created a Bicameral Commission for Constitutional reforms (Constitutional Law No. 1/1997), composed by thirty-five Deputies and thirty-five Senators. The President was Massimo D'Alema, and the aim was to study a reform project for the Order of the Republic, meaning

part II of the Italian Constitution. The sub-committee dealing with the revision of the form of government was led by President Giuseppe Tatarella (*AN - Alleanza Nazionale*) and the Speaker was Cesare Salvi (*Ulivo leftist coalition*). After having consulted several jurists and political experts, the committee focused on two reform projects: the so-called «Government of the Prime Minister» and the Semi-presidential system. The Government of the Prime Minister was organized as follows. A strong Premier appointed without the initial vote of confidence, formally linked to the winning coalition and with the power to dismiss the Parliament after having consulted the cabinet. At the same time, he could be dismissed by the Parliament through a constructive vote of no confidence.[50] This proposal constituted a middle way between a semi-parliamentarian system and a rationalized Parliamentarism in the German style. On the other hand, the semi-presidential proposal took inspiration from the French experience but with some differences. It proposed a directly elected Head of the State with significant powers, such as appointing the Prime Minister, dismissing the legislative Chambers and a five years mandate with only one re-election. At the same time, he could make no use of referendums and emergency powers in situation of crisis. Moreover, he could be dismissed under the accuse of Constitutional violation, by the Parliament's absolute majority initiative and the consequent favorable vote of 2/3 of the parliamentarians. On June 4th, 1997 the semi-presidential proposal was approved with thirty-six votes in favour against thirty-one which instead were favorable to the other one. The project was furtherly defined more into detail and approved again on June 30th. The result was a temperate style Semi-presidentialism. The term "temperate" referred to the moderate powers of the President, who was supposed to act as a reserve power, in the sense that he could act more or less as a guarantor of the proper functioning of Parliamentarism and to more or less share with the cabinet the power to give a political direction (Volpi, 2014). The President's powers were not well-determined. He could both act as a formal guarantor of the State's unity

[50] The constructive vote of no-confidence is a clause that requires the Parliament to withhold the vote of confidence from the Prime Minister only if there is a majority in favor of a prospective successor. It limits the ability of the opposition to topple the government at will and to hold elections until the regime comes to an end (Bin & Pitruzzella, 2015).

– typical in Parliamentarism – and as a governing power in critical situations. For many scholars, the moderate presidential powers created an asymmetry with his direct popular legitimation. Of course, this gave birth to a systemic ambiguity. The presidential role and function could vary depending on political factors, which could leave him as a formal figure or bring him to become the effective head of the executive, issue that would have brought the presidential body into a primary position compared to the legislative and executive ones. This confusion would lead the President to concretely acquire excessive powers, arriving to influence the degree of European integration, competing with the Constitutional Courts for Constitutional reviews (this is in part what Romania is experiencing with its President, as discussed in paragraph 4.2.2, with the exception that he is not truly competing with the Constitutional Court. Being highly politicized, it is the Court itself that tends to interpret the fundamental text in his favour). In the end, also this attempt failed, but if approved it would have brought the Italian and the Romanian forms of government to have much more elements in common, since Romania has a President with temperate powers, even if only constitutionally, while he concretely tends to extend them depending on the available political factors. In the end, the D'Alema commission of 1997 failed, despite the approval of the final text, because the head of the opposing party, Silvio Berlusconi, revoked his support for political reasons (Volpi, 2014).

Although they provided an important forum for reflection on the Italian Constitutional order, none of the Bicameral Commissions was successful in modifying the Constitution. Therefore, for future attempts, it was decided to proceed with the method of Constitutional revision provided by art. 138.[51] In

[51] Art. 138 of the Italian Constitution provides that Constitutional revision is only possible in the cases provided for by the Constitution itself and involves a special procedure. Firstly, the request for revision must be made by bodies that have the power to take initiatives in the legislative sphere. Second, the law for Constitutional revision must be adopted by each House with two resolutions at least three months apart from each other. Thirdly, in order to be enacted, the revision law must be passed, in the second vote, by an absolute majority. Fourth, after its publication, the law may be submitted to a referendum, if within three months it is requested by at least 1/5 of the members of one of the two Chambers or by 500,000 citizens or by five regional councils. If the referendum approves it, the revision goes into effect. Finally, the referendum does not take place if the law has been approved in the second vote by each of the Chambers by a 2/3 majority of its members.

fact, the attempted reform of 2016 (as well as those of 2001 and 2006 not dealt with here) approved by Parliament and submitted to the electorate through referendum, followed this procedure.

The 2016 reform proposed by Renzi, with Constitutional Law No. 88/2016, was approved in a second vote by absolute majority which allowed those entitled to do so, under art. 138 of the Constitution, to request a popular referendum within three months of its publication (the referendum is not held only if the Constitutional law has been approved, in the second vote, by each of the two Houses, with a 2/3 majority of its members). Two categories of legitimized subjects – 1/5 of the members of a Chamber and 500.000 voters – have presented their signatures to request the popular consultation, which was convened, by Presidential Decree for the day of Sunday, December 4th, 2016. The referendum asked the voters if they wanted to approve the Constitutional reform project or not and the majority voted for not reforming it (Tarli Barbieri, 2016).[52] Recalling the focus of the Constitutional amendment, it was entitled: «Provisions for overcoming equal bicameralism, reducing the number of parliamentarians, containing the operating costs of the institutions, abolishing the CNEL and revising Title V of Part II of the Constitution». Thus, this Constitutional revision bill was meant to amend Part II of the Italian Constitution, reforming the symmetrical bicameralism, thus differentiating functions of the two legislative Chambers but also their composition and election (Testo della riforma costituzionale Renzi-Boschi, 2016). Art. 55 of the Italian Constitution would have been reformulated stating that the Parliament would have consisted of the Chamber of Deputies and the Senate of the Republic, where the Chamber would have been the only one entitled to grant the vote of confidence to the Government. In addition, it would have been the only one to exercise the function of general political direction, legislative function and control of the Government. The Senate, instead, was becoming the «Chamber of the Autonomies» representing the territorial institutions and acting as a link between the State and the other constituent bodies of the Republic. To this aim, it would

[52] Comments on its criticalities may be found at: http://www.questionegiustizia.it/rivista/2016/2/brevi-considerazioni-sugli-organi-di-garanzia-nella-riforma-costituzionale-renzi-boschi_351.php (Last Visit June 2020).

have been indirectly elected by regional councils – no longer with a direct popular election. Moreover, its composition would have been regulated by the amended art. 57 which provided for ninety-five Senators and five Senators for life nominated by the President of Republic (art. 59 amended), while its mandate was meant to coincide with the mandate of those territorial organs which elected the Senators (art. 63 amended). Instead, the Chamber of Deputies would have been still elected directly at universal suffrage for a five years mandate. Concerning the legislative process, art. 70 was to be amended providing distinguished roles to the two Houses. Thus, the Chamber of Deputies would have had the primary role within the latter, while the Senate would have deliberated to participate and propose amendments. However, the nature of the Senate's amendments would have not been binding for the Chambers of Deputies, which would have always adopted the final decision on the bill. Nevertheless, some specific bills would have been still adopted according to the bicameral legislative process, being submitted to the approval both of the Chamber of Deputies and the Senate. These specific cases were cited in art. 70, and among them there were, for example, the bills for Constitutional revision, the bills to authorize the ratification of EU treaties and the bills for the execution of EU laws and policies, popular referendums and popular initiative legislative (Testo della riforma costituzionale Renzi-Boschi, 2016) (Gianniti, 2017). Concerning the legislative initiative, art. 71, was reformulated raising the number of signatures for popular initiative to 150.000 (from 50.000) and the Senate was given the right to propose draft laws to the Chamber of Deputies, deliberating by an absolute majority of its members, requesting the Chamber of Deputies to proceed with the examination of a bill. In such a case, the Chamber of Deputies shall proceed with the examination and give its decision within six months of the date of the resolution of the Senate of the Republic. As a result, many other Constitutional articles including the expression "Parliament" were amended and substituted with "Chamber of Deputies" or "Senate". For instance, art. 86 was amended making the President of the Chamber of Deputies the figure capable to substitute the President of the Republic in case he could no longer hold the office. Art. 88 instead, affirmed that the President of the Republic could

dissolve the Chamber of Deputies once heard its President. And, obviously, art. 94 stated that the vote of confidence could be granted or revoked by the Chamber of Deputies, no longer by each of the two Chambers (Testo della riforma costituzionale Renzi-Boschi, 2016). Of course, differentiating the kind of election for the two Chambers, also the electoral law for the direct and popular election of Deputies was reformed. In fact, the *Italicum* electoral law[53] was approved even before the Constitutional reform was submitted to popular referendum (Law No. 52/2015). In the end, the referendum of December 4th, 2016 showed a negative result, so the Constitutional amendment was not approved. The symmetric bicameralism remained but with different electoral systems for the two Chambers: *Italicum* for the Chamber of Deputies and *Consultellum*[54] for the Senate. Similarly to the Bozzi and D'Alema Bicameral Commissions, also Renzi' Constitutional reform failed because of the available political conflicts, which in this case led Renzi (PD) and Berlusconi (FI) to break their alliance, the so-called *Patto del Nazareno*; an agreement signed in January 2014 with the aim to reform part II of the Italian Constitution (Guzzetta, 2018). Despite the influence of these attempted Constitutional revisions, Italy still is a parliamentary form of government which is experiencing the already cited presidentialising trend, and the consequent strengthening of the Prime Minister's role, as well as the Government's one (Lupo, 2018).

[53] In 2014, while being secretary of the *Partito Democratico* (PD – Democratic party), Matteo Renzi proposed the *Italicum* electoral law only for the Chamber of Deputies. After having been approved on May 2015, the law entered into force on July 2016. It was meant to ensure the country's governability. It consisted of a proportional system, with an eventual and limited majority premium, in the first or second round. The majority premium, was up to a maximum of 340 seats, assigned to the coalition or winning list that exceeded 37% of the votes in the first round and the allocation of seats takes place at national level. National thresholds amounted to: 12% for coalitions, 4.5% for coalition lists and 8% for non-coalition lists. More at: https://www.camera.it/application/xmanager/projects/leg17/attachments/infografica/pdfs/000/000/021/italicum_new_14-05.pdf and at: http://www.deputatipd.it/files/documenti/27_NUOVA_LEGGE_ELETTORALE__ITALICUM.pdf (Last visit June 2020).

[54] Pure proportional electoral system, with a preference vote and no majority premium, with a threshold of 8%. It resulted from the intervention of the Constitutional Court (Judgment No. 13/2012 and Judgment No. 1/2014) aimed at correcting the unconstitutionality of the previous electoral law *Porcellum*. It was applied also to the Chamber of Deputies while waiting for *Italicum* to enter into force. More at: https://www.acli.it/wp-content/uploads/2017/11/Dossier_2017_11_n06_Rosatellum.pdf(Last visit June 2020).

The Italian Constitutional reforms have always failed because the supporting parliamentary pacts never managed to sustain them until the last stage. As long as the text discussion and approval evolved, so did the «political conveniences», modifying the priorities of the political parties. A situation in which «the reformist alliances dissolve, leaving space for the traditional competition among opponents» (Guzzetta, 2018). As a result, the same parties which at the beginning compromised to reach a common decision, in the end stopped supporting the reformed text they worked to. In the case of the 2016 attempted revision, the project passed from being a meeting ground for different political parties to be a situation in which the approving referendum becomes an electoral campaign. At the end of the reforming path, political conveniences tend to prevail upon systemic choices, causing the whole Constitutional revision process to fail (Guzzetta, 2018).

4.4.3 The Romanian Constitutional Court

The Romanian system includes also a Constitutional Court to guarantee the enforcement of the Constitution and an institutional equilibrium. It is composed by nine members with a wide legal experience and not necessarily Magistrates, for a nine years mandate (art. 142), that are elected by the Romanian President and the two legislative Chambers. Its competencies comprise of judging the laws' constitutionality both *a priori*, so before their enforcement, and *a posteriori*, so after their enforcement, basing on notifications from national judicial courts. Moreover, it judges the compliance with the Constitution of the President's election procedure and also provides «consultative advice in the case of suspension of the head of State» (Abraham, 2016, p. 220). When a piece of legislation is judged as unconstitutional, the decision is published in the Official Gazette and forty-five days after that, the legislation gets suspended from that moment on, not having retroactive effects. Starting with 2003 Constitutional revision, the Constitutional Court is also competent in solving conflicts of powers attribution among public authorities, if clearly demanded by the President of the Republic, the Prime Minister, the President of one of the two

legislative Chambers or the President of the CSM (art. 146) (paragraph 4.2.2 cites a case raised by Prime Minister Victor Ponta, against President Traian Băsescu in 2012, concerning which of them was entitled to represent Romania within the European Council). Furthermore, the Constitutional Court's decisions (art. 147) can no longer be overturned with a 2/3 parliamentary majority, as it was under the 1991 Constitution (art. 145).[55] Precisely because of the different functions with which was provided by the two Constitutional versions – 1991 and 2003 – the Court's activity experiences two stages. From 1991 until 2005, it had a marginal function within the system because the Romanian President and the two legislative Chambers appointed their loyal figures who could challenge the constitutionality of laws not meeting their political interests. Or, on the other hand, because the opposition used to appeal to the Court just to block inconvenient draft legislation and not for effectively verifying its Constitutional conformity. In this first phase, during its mandates, President Băsescu constituted a major case. He appealed to the Court for *a priori* Constitutional check 31 times while its oppositions appealed 117 times. So, in few words, in this first phase the Court acted as political mediator among political opponents and its final decisions could be overturned by the 2/3 of the parliamentary majority checking it (art. 145). Since the entry into force of the 2003 constitutional amendment this was no longer possible as to ensure a bigger independence to the Constitutional Court, which gained a more decisive role in its second stage of activity, from 2005 to 2015 (Selejan-Gutan, 2016) (Perju, 2015). Now that its final decisions can no longer be overturned by the Parliament, political parties have even a bigger interest in pushing for appointing Constitutional judges that would act in favour of their political interests. This increased competition among parties to gain control over the Court showed that the elimination of parliamentary checks on it may have been a mistake. Among

[55] Art. 145 of the 1991 Romanian Constitution affirmed: « (1) In cases of unconstitutionality, in accordance with art. 144 letters a) and b), the law or orders shall be returned for reconsideration. If the law is passed again in the same formulation by a majority of at least two thirds of the members of each Chamber, the objection of unconstitutionality shall be removed, and promulgation thereof shall be binding». Available at: http://www.cdep.ro/pls/dic/site2015.page?den=act1_2&par1=5&idl=2 (Last visit June 2020)

the different political tensions that the Court was called to deal with, maybe the most controversial one concerns the validation of the July 29th, 2012 referendum meant to dismiss the President Traian Băsescu, procedure on which the Court provides an advising opinion (Perju, 2015). The referendum showed 87.52% of voters in favour of its dismissal and this raised a struggle concerning the needed quorum level for the referendum to be valid (Selejan-Gutan, 2016). According to the Election Office, only 46,24% of the electorate voting was not enough while lawyers and politicians argued it had to be validated according to «the permanent electoral lists of citizens with permanent residence in Romania», instance in which the cited referendum was valid. Before deciding, the Court asked more data about the effective quorum and it turned out that permanent lists included also defunct citizens. Moreover, Romanian citizens living abroad were unfairly excluded, despite being active voters. For this reason, the Court sent an «erratum» to the Government asking it to include them. However, the decision to demand for Romanian abroad residents was taken during informal consultations in which not all the Constitutional judges were consulted. Consequently, three of the nine members challenged this «informal decision», arguing they had not been consulted. As a result, the Constitutional Court could not agree on the referendum's validation, annulling President Băsescu's dismissal and throwing away the expressed opinion of citizens wanting him out of office (Abraham, 2016, p. 221-222). Despite being perceived as guarantees for 'judicial independence', the Court's increased powers could also have detrimental consequences with respect to the rule of law, for instance due to hidden political or corporatist pressures (Iancu, 2019, p. 1051). In its second phase of activity, the Constitutional Court became sort of a super power, being aware of its extended functions and highly politicized. It contributed to the system's presidentialization, rising ambiguities within the horizontal institutional interplay. An example of this was the decision to provide the President with the power to veto the first proposal of the Prime Minister for the appointment of a new Minister of Justice, within the reshuffling procedure (Decision No. 98/2008), better explained in paragraph 4.3.2 (Constituţională, 2008) (Selejan-Gutan, 2016). Indeed, compared to the Italian one, the Romanian

Constitutional Court is highly politicized and thus not truly independent, issue that certainly increases the ambiguity of the Romanian Semi-presidentialism.

4.4.4 Constitutional amendments in Romania. Still a Semi-presidential system?

There are three attempts to reform the Constitution that are fundamental for understanding the concrete functioning of the Romanian form of government (Selejan-Gutan, 2016). The successful reform in 2003 and other two which failed, one in 2008 and the other in 2012. These two are important in comparative perspective because they proposed two opposed solutions – hyper-presidentialization and parliamentarisation – for the same institutional system, showing that there still is a deep structural ambiguity characterizing the Romanian Semi-presidentialism (Tănăsescu, 2014).

In 2003, the Constitution of Romania was amended by the Law No. 429/2003 on the revision of the Constitution of Romania and published in the Official Gazette of Romania on October 29th 2003.[56] The aim was to integrate important vacuums and allow for the national system to be compatible with Romania's access to NATO and the EU (Muraru & Tănăsescu, 2019). To this aim, some denominations have been updated and articles renumbered (e.g. art. 152 became art. 156). Some of the implemented changes have been already cited in the previous sections, but here are the main changes, for a more general framework. It sets an appropriate Constitutional framework for Romania's participation to the Euro-Atlantic integration, attempting to create harmony between its national and Constitutional provisions and the European regulations. Moreover, it granted the Romanian citizens the right of electing and being elected for the European Parliament (Selejan-Gutan, 2016). In short, Title VI was introduced and called «EURO-ATLANTIC INTEGRATION» (art. 148 and 149). Art. 148

[56] The reform is explained into detail here: http://www.cdep.ro/pdfs/reviz_constitutie_en.pdf. There is also a nice PPT called "Revision of the Constitution", that can be downloaded scrolling down the page at this link: http://www.cdep.ro/pls/dic/site2015.page?id=371&idl=2 (Last visit May 2020).

regulates the integration into the European Union, for whose aim allows a partial transfer of powers to the «community institutions» (notice that the term "community" was used because this reform was adopted in 2003, while the Lisbon Treaty no longer calling the European Union a "community" was ratified in 2007 and entered into force in 2009). Furthermore, and maybe even more importantly, the principle of separation and balance of the legislative, executive and judicial powers was included into the Constitution, adding a paragraph to art. 1 (art. 1.4). While discussing the 2003 amendment, it was felt the need to specify the separation of powers among the available public authorities. Not having stressed it in the 1991 Constitution, after a long totalitarian experience (in which power was concentrated in the hand of the Ceaușescu family), was interpreted as an important gap. It is true, however, that all the articles defining the functioning of the public authorities, their roles and powers, as well as the interplay among them, basically organized the Romanian Constitutional system on the basis of the separation of powers. They simply did not specify it, and this might have contributed to the attempted Constitutional interpretations which favoured one or other public authority (Muraru & Tănăsescu, 2019). The 1991 Constitution simply provided for a State order organized on its basis but without specifying it. Concerning the so criticized symmetric bicameralism, the revision introduced a temperate and clearer distinction of the legislative competences of the Chambers of Parliament in order to speed up the legislative activity and eliminate the stages of mediation and divergence (Olivetti, 2019). As explained in paragraph 4.1.2, it consolidated an order of preference for which of the two Chambers is to be involved first within the legislative procedure, depending on the topic of the law. In addition, the Ombudsman's role was enhanced, extending its mandate to five years (instead of four) and providing it the right to notify directly the Constitutional Court on the unconstitutional character of laws. Concerning the popular legislative initiative, the needed numbers of promoters for a bill was reduced from 250,000 to 100,000 in order to stimulate their participation (Selejan-Gutan, 2016). Interestingly, Romania needed to reduce the number of necessary signatures to present a legislative initiative, while Italy

dealt with the opposite problem, i.e. increasing it, from 50.000 to 100.000 the Bozzi Commission and to 150.000 the Renzi reform (paragraph 4.4.2).

In addition, parliamentary immunities were restricted only to the votes or political opinions expressed in the exercise the parliamentary functions (art. 72).[57] Before, the 1991 Constitution (art. 69)[58] did not allow them to be searched, detained or arrested for any crime without having the authorization of the Chamber to which they belong. Of course, this gave them a huge protection against important crimes and it was not democratic at all. Moreover, Parliament was taken away its power to annul the decisions of unconstitutionality of laws adopted by the Constitutional Court, in order to have a more independent Court, whose interpretations were not ignored. In fact, art. 145 of the 1991 Romanian Constitution, concerning the decision of the Constitutional Court affirmed: «In cases of unconstitutionality, in accordance with art. 144 letters a) and b), the law or orders shall be returned for reconsideration. If the law is passed again in the same formulation by a majority of at least two thirds of the members of each Chamber, the objection of unconstitutionality shall be removed, and promulgation thereof shall be binding». This was amended, and the art. 147 renumbered (Muraru & Tănăsescu, 2019).

The President also had his term of office extended to five years, by amending art. 83 so to avoid authoritarian presidentialising drifts, especially when both the Presidential and the Parliamentary offices are supported by the same political majority. Plus, he was given the function to notify the Constitutional Court in order to solve the judicial conflicts of Constitutional nature between public authorities (as usually happened in the President-Prime Minister conflict). Concerning the governmental abuse of emergency ordinances, their use was restricted to exceptional situations whose regulation cannot be postponed, and the obligation to motivate the emergency within the ordinance's contents was introduced. Altogether, the 2003 Constitutional amendment tried to remedy to the relatively weak Constitution, lacking clarity in front of which the public

[57] The 2003 Romanian Constitution is available here in Romanian, English and French: http://www.cdep.ro/pls/dic/site2015.page?id=371&idl=2 (Last visit May 2020).

[58] The 1991 Romanian Constitution is available here in Romanian, English and French: http://www.cdep.ro/pls/dic/site2015.page?den=act1_2&idl=2 (Last visit May 2020).

authorities (mainly the President) and the political figures tried to have it interpreted in their favour. A favorable interpretation of the Constitutional Court towards the President has been possible, unfortunately, because the appointment of Constitutional judges was cleverly maneuvered by the political parties which supported the presidential election and whose political program was favoured by the in-office President. After 2003, no other attempt to amend the constitution succeeded.

The 2008 Constitutional attempted revision was pushed by President Băsescu upon the Government's initiative. It was defined a Constitutional reform project of presidential origin for a presidential system; in fact, its provision would have modified the system bringing it towards a hyper-presidentialism (Tănăsescu, 2014). However, this draft was never entirely debated by both the parliamentary Chambers because the Constitutional Court examined it and found out that, despite almost all the proposed revisions being compatible with the unamendable clauses (art. 152), there was one that was not, regarding the protection of property rights (Decision No. 799/2011). Despite the Court's opinion, the President decided to submit to the Parliament the draft law exactly in that formulation. With this motivation, the House of Deputies rejected the proposal on May 21st, 2013. The draft proposed a presidentialized system which still maintained the parliamentary element of the vote of confidence. In short, the proposal concerned a unicameral legislative body with maximum 300 members; a stronger Head of State, always participating in the cabinet's meetings, who needed to be compulsorily consulted by the Prime Minister for any ministerial reshuffle and, and of course able to nominate the Prime Minister. Moreover, in the case of failure of the presidential suspension procedure led by Parliament, after the negative vote expressed by citizens by referendum, the Chambers would have been forced to resign. Basically, all the proposed revisions were just legitimizing those informal practices that the President was already applying while extending his powers (such as his active role in the nomination a new Minister), with the exception of unicameralism.

In 2012 another draft law for the Constitutional revision was initiated, but this time by the Chambers. This one instead, was defined a Constitutional reform

project of parliamentary origin for a more parliamentary system and it was opposed to the previous one (Tănăsescu, 2014). It was commented by the Venice Commission[59] and examined by the Constitutional Court which found some debatable issues which might have breached the Constitution, so they were brought to parliamentary attention (Decision No. 80/2014). The Venice Commission welcomed the process of revision, but it called for a loyal inter-institutional collaboration and recommended important clarifications on institutional arrangements provided by the Constitution. One of these, was opting for a unicameral Parliament since the temperate bicameralism was concretely acting like a unicameralism, but in a too ambiguous way. By advising also this Constitutional amendment, the Venice Commission confirmed its constant presence as advisor of the Romanian Constitutional moments (Selejan-Gutan, 2016). Similarly, to the previous one, this draft just attempted to codify solutions for past Presidential-Prime Minister conflicts but emphasized parliamentary majorities. In short, among others, the most important changes concerned: a Head of Government nominated only after being vested with Parliamentary confidence (now the President nominates him before, and then he asks for confidence), reshuffles within the cabinet possible only after that the Parliament consulted all candidates and requiring a new vote of confidence in case affecting the cabinet's political composition. Furthermore, the legislative body could be dissolved only in case it failed three times to give the vote of confidence, but in any case, only if 2/3 of the members of each house of Parliament agreed to the dissolution. This provision was making basically impossible the parliamentary dissolution by the President, so it was pushing for an important strengthening of the Parliament. Lastly, the Government was meant to act as working committee of the Legislative Chambers, reproducing its political composition and will (Tănăsescu, 2014). In the end, also this attempted revision failed, and this may show that Romania is still facing sort of a transition despite having passed more than thirty years since the end of Communism. To

[59] VENICE COMMISSION, OPINION ON THE DRAFT LAW ON THE REVIEW OF THE CONSTITUTION OF ROMANIA, 21-22 March 2014, available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)010-e (Last Visit May 2020)

this, many factors contributed. Among them, there is certainly the confused role of the President (giving birth to contrasted cohabitations), a fragmented Parliament (political migration plus no political cohesion among politicians), no true respect for the political opponents and the abuse of governmental law-making. The rise of such different Constitutional revisions, even if failed, demonstrates that the Romanian Semi-presidential system is working in an ambiguous way and that it may use a better Constitutional reform (Tănăsescu, 2014). In the end, despite these two recent Constitutional tendencies – hyper-presidentialization vs parliamentarisation – Romania still is a Semi-presidential system, with its ambiguities, and the majority of scholars agree on that. Nevertheless, the presidential powers' intensity is interpreted differently, and there is no general consensus over which the predominant variables with respect to others are. Thus, this does not provide a clear idea of which is the precise kind of Semi-presidentialism that exists in Romania.[60]

[60] Among scholars, Romanian Semi-presidentialism is considered moderate (A. Iorgovan), accentuated (B. Dima), attenuated (R. Elgie), ascending or descending (C. Ionescu) or even a parliamentary system (G. Sartori).

5 Conclusion

This research has proposed a comparative analysis of the Italian parliamentary form of government and the Romanian semi-presidential one, attempting to demonstrate that there are several interesting similarities between them, despite their different Constitutional structure and the background in which they have been implemented. It started from the hypothesis that they may have been characterized by similar authoritarian features, having both Italy and Romania experienced a dictatorial regime in the past, a Fascist one in the Italian case, developed after WWI and a Communist one in the Romanian case, developed after WWII. Moreover, common authoritarian features may have similarly influenced the Constitutional needs that the Italian and the Romanian founding fathers dealt with during the democratic transitions. Furthermore, if it is true that there had been similar Constitutional needs, then, there has to be space for some similarities also in the concrete functioning of the two forms of Government. While seeking for these potential similarities, a repeating formula came out. The Italian Parliamentarism and the Romanian Semi-presidentialism tend to have several trends in common (common totalitarian vein in the past, common Constitutional needs to avoid authoritarian drifts, common presidentialising trend coming from the EU integration process) but the way these trends are concretely implemented and the effect they produce is different, precisely because of the two different Constitutional arrangements (parliamentary vs semi-presidential).

Mussolini's Fascist Dictatorship in Italy (1922 to 1943) and Romania's Communist dictatorship (1965 to 1989), first under Gheorghe Gheorghiu-Dej and then under Nicolae Ceaușescu had a common totalitarian vein, meaning they both tended to submit the political, economic and social spheres to the single party's interests, pushing for an integration of the institutions into the unique national party and trying to neutralize and assimilate and the individuals' interests into the public one (Marongiu, 2018) (Abraham, 2016) (Constantiniu, 2015) (Ghițulescu, 2014). However, concretely, this common totalitarian vein has developed in different intensities in the two regimes. In fact, they did not

totalitarize the society to the same extent. Romanian Communism managed to put under PCR's political control each economic and social institution, giving birth to a fully integrated Party-State, in which laws were instrumentally used to reprime dissidents and mass manipulation imposed the communist ideology, which had no valid competitor in the religious ideology (Tismăneanu, 2005) (Abraham, 2016). Italian Fascism instead, did neither systematic use of the terror nor use of mass extermination theories. It persecuted politically, but not as totalitarianisms did and not until its final phase, in 1938 with the racial laws. Moreover, the Fascist regime was counteracted by the presence of King Vittorio Emanuele III, the Catholic Church – which left no space for the fascist ideology to fully consolidate – and the Constitution itself (the *Statuto Albertino*). For these reasons, scholars call it «imperfect totalitarianism» (Messina, 2008) (Sabbatucci & Vidotto, 2008). Thus, concerning the similar authoritarian past, the Italian Fascist dictatorship and the Romanian Communist one had a common totalitarizing trend, but the way this totalitarization happened is different, due to the different historical, political and cultural backgrounds.

The common totalitarian trend did influence the Constitutional needs that the Italian and the Romanian founding fathers faced during the democratic transition. In fact, both the Italian and the Romanian post-dictatorial Constitutions were centered in breaking with the past. The Constitutional needs were to be designed negatively, in the sense that the Constitution had to exclude any provision risking to leading to anti-democratic outcomes (Selejan-Gutan, 2016). Both the Italian Constitution (1948) and the Romanian Constitution (1991) had been forged to repudiate totalitarianism. Consequently, both of them also needed to avoid the possibility for a new dictator to emerge, thus the Head of State had to be properly counteracted within the institutional interplay. Moreover, both of them needed to prevent the State order from being jeopardized again in the future, reason why they both opted for a rigid Constitution – which needs a special procedure to be amended [61] – and eternity clauses, making the Republican form of State unamendable.[62] Lastly, both of the Constitutions

[61] Artt. 146 and 147 of the 1991 Romanian Constitution, artt. 138 of the 1948 Italian Constitution.
[62] Art. 148 of the 1991 Romanian Constitution, art. 139 of the 1948 Italian Constitution

presented a degree of openness towards future evolutions of the system, due to the big uncertainties about the future political changes (Falzone, Palermo, & Cosentino, 1949) (Selejan-Gutan, 2016). Therefore, if there are some shared characteristics, are they linked to similar tendencies in the authoritarian past that both of them experienced? (1). Concerning the two democratic transitions, the answer is yes. The similar Constitutional needs, faced while drafting the Italian (1948) and the Romanian Constitution (1991), are definitely linked to the similar totalitarizing vein experienced both by the Italian Fascist regime and by the Romanian Communist one. However, having them implemented different degree of totalitarization, the constitutional needs were answered with different solutions. Thus, Romania gave birth to a semi-presidential system in which the citizens directly vote their President, but in which he is constitutionally prevented from gaining too much power by a strong Prime Minister, who cooperates with him within the dual executive and who is indirectly legitimized by the Parliament's vote of confidence. In Italy instead, a parliamentary system was implemented in which citizens vote the parliamentary members, who then, in joint session, elect the President of the Republic. The executive is only composed by the Council of Ministers, appointed by the President upon the Parliament's vote of confidence. Consequently, the democratic transition of Italy and Romania were influenced both by the common totalitarian vein, which paved the way for the same need to constitutionally prevent future authoritarian drifts, and by the different intensity of totalitarization, which brought the two States to respond differently to the common Constitutional needs. In the end, also during the democratic transition, Italy and Romania had a common trend that was designing the Constitution in a way that could avoid future authoritarian drifts, however, they concrete way in which they enacted it was different, giving birth to a parliamentary form of government in Italy and a semi-presidential one in Romania.

Furthermore, if there had been similar Constitutional needs during the two transition periods, then there is space for similarities also in the concrete functioning of the two different forms of Government. This could be logical, given that Semi-presidentialism contains elements of Parliamentarism, first and

foremost the Parliament-Government relationship of confidence. However, it is not only about what the two different Constitutional arrangements have in common at a legal level (as explained in paragraph 2.2.4). It is also about what they have in common in their concrete way of functioning, since this was this study's challenge. In this sense, the most important common elements concern the Government's strengthening, the President's tendency to extend his powers and the weakened Parliament. These common trends depend both on national phenomena – such as the Government abusing its legislative delegated powers – and European ones, meaning the effect of the European integration process.

Despite its fundamental role in granting and revoking the vote of confidence to the Government, the Parliament weakened, both in its deliberative powers and in its powers to control over the cabinet. In fact, in both cases, legislative power is owned only by the Parliament, but it can be delegated by the latter to the Government, through legislative decrees and (emergency) decree-laws in Italy (artt. 76-77) and through regular governmental ordinances and emergency ordinances in Romania (art. 115) (Falzone, Palermo, & Cosentino, 1949, p. 106) (Bin & Pitruzzella, 2015) (Selejan-Gutan, 2016) (Muraru & Tănăsescu, 2019). In both cases, the Government abused this delegated power, becoming not only the main legislative initiator but also profiting its power to pressure the Chambers for the approval of bills considered fundamental for its political program. This was done though the question of confidence in Italy (disciplined but Parliamentary regulations)[63] and through the assumption of responsibility in Romania (art. 114). Consequently, the national Parliament partially lost its deliberative power because of the strengthened role of the cabinet (Muraru & Tănăsescu, 2019). With regard to the Italian and Romanian Presidents of the Republic, notwithstanding their differences, they have in common the tendency to extend their powers and informally gain a bigger power of influence than the one provided constitutionally. This can be seen in both of them, mainly in the Government's appointment procedure. In both the systems, the President

[63] Available at: https://www.camera.it/leg17/438?shadow_regolamento_capi=1069&shadow_regolamento_articoli_titolo=Articolo%20116 (Last visit June 2020).

nominates the Prime Minister and, once the vote of confidence is granted by the Parliament, he formally appoints the whole cabinet. In Italy, this strengthening trend is witnessed in the President's power to appoint a technical Government – if the Prime Minister and most Ministers are chosen on the basis of their technical expertise – or a Government of the President – if the Head of State proposes a candidate on his own initiative (or is called to do so by the parties) (Lippolis, 2018) (Lupo, 2018). In Romania, instead, the President increased its influencing power within the procedure because of a «constitutional loophole» (Selejan-Gutan, 2016). Once that the President nominates a candidate Prime Minister, if he is not granted the vote of confidence, the President has to nominate a figure again, but there is no Constitutional obligation to not re-nominate the same one who was refused (art. 103) (Tănăsescu, 2008). Thus, concretely, the President can pressure the parliamentary approval of a specific figure by re-proposing him/her again. Moreover, when there is a ministerial vacancy, and the Prime Minister proposes a new candidate, the Head of State can refuse this proposal once, pressuring for the proposal of a figure he agrees with. In Italy, the extension or contraction of the presidential powers, based on the stability of the political system, was called the phenomenon of the *fisarmonica presidenziale*, the presidential accordion, coined by Giuliano Amato (Lippolis, 2018). In Romania, instead, it is more generally referred to as presidential activism, and it does not depend only on how stable the political system is, but also on the role of the Constitutional Court, whose jurisprudence tended to provide Constitutional interpretations which favoured the President.

At the same time, both Italy and Romania are EU Member States. As such, they participate in the European institutions, both supranational and intergovernmental. From here some questions arise spontaneously. Being members of the European Council and the Council of the European Union has any effect on the concrete functioning of the two forms of Government? Are the two forms of government more similar in view of the fact that they are EU members? Has the European integration led to a similar weakening of Parliament or not? The way these two forms of government work in practice has certainly been influenced by their belonging to the EU. Far from being overlooked,

national Governments became the protagonists of the intergovernmental dimension of the European Union, participating in the Council of the European Union, an institution which is the holder – together with the European Parliament – of the legislative and budgetary functions, and to the European Council, i.e. which brings together the Heads of State or Government of the Member States, the President of the European Commission and the President of the European Council and which has a strategic role in defining the EU's general political orientations and priorities (Lupo, 2018). While for Italy, the Head of Government participates in the latter, for Romania, it is the Head of State who participates, becoming the crucial figures in representing their own countries within the EU (Selejan-Gutan, 2016) (Tacea, 2015) (Lupo, 2019). This provides the two figures with elements of hierarchical superiority at the national level, and it also paves the way for a strengthened role of the two cabinets at the expenses of the national Parliaments, enacting a presidentialising trend (Cavatorto, 2015).

Consequently, the European integration process contributed to amplify parliamentary weakening trend already ongoing at the national level; thus, it led to a similar parliamentary weakening in Italy and in Romania. In fact, by gaining superiority over the national Parliament concerning EU issues, the executive also tended to easily escape its traditional responsibilities towards the latter, since the governmental responsibility sphere got really confused because of the fact that it actually participates both to the national and the European administration (Lupo, 2018) (Lupo, 2019) (Tacea, 2015) (Cavatorto, 2015). Since moving closer to the European integration has altered the role of the national Parliaments, leaving them little space for an active participation within the EU policy-making, the Lisbon Treaty tried to offer them the chance for an enhanced involvement in the process.[64] For instance, the Early Warning System (EWS), is a mechanism developed to allow national Parliaments to carry out subsidiarity checks on draft EU legislative acts and probably object to the proposal on this

[64] More details on the Lisbon Treaty's provisions are to be find in Neuhold, C., Rozenberg, O., Smith, J., Hefftler, C., Palgrave Handbook of National Parliaments and the European Union, 2015., pp. 43-59 and 94-115.

ground.[65] Despite the Lisbon Treaty's opportunities, neither the Italian nor the Romanian national Parliaments can yet be considered truly active in the EU policy-making. The Italian national Parliament cannot be considered a true «policy shaper» in EU affairs, but it has started to pay more attention to the latter recently and there are reasons for which it may be considered a «European player». In fact, as stated in paragraph 4.1.1, parliamentarians belonging to the European Affairs Committees (EACs), started to develop interparliamentary cooperation means and to push for a further enforcement of option provided by the Lisbon Treaty (Cavatorto, 2015). Likewise, the influence of the Romanian national Parliament on the EU affairs is still marginal, but it might be considered a «European player» to some extent, if it keeps on using the possibility to send to keep in contact with the EU Commission and sending it reasoned opinions through the EWS mechanism (Tacea, 2015).

However, also in this case, the common presidentialising trend produces different effects on the two institutional interplays, since the form of government and therefore the structure of the executive are different. It influenced the structure and the equilibrium within the two cabinets both in Italy and in Romania, but in the latter, it also influenced the balance within the President-Prime Minister relationship (Tănăsescu, 2008). Within the two cabinets, it provoked the Prime Minister's dominance on the other Ministers, the need to select technocratic Ministers in order to face the confrontation with the other European colleagues within the Council of the European Union, as well as problems concerning the governmental legitimation; in fact, if the two national Governments act both at the national and the European level which makes it

[65] «Within eight weeks from the date of transmission (Art. 6 of Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality), they may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the subsidiarity principle. Each national Parliament or each Chamber of a national Parliament may, should this be deemed appropriate, consult regional parliaments with legislative powers». More at: https://portal.cor.europa.eu/subsidiarity/regpex/Pages/Early-Warning-System.aspx#:~:text=The%20EWS%20is%20a%20procedure,the%20draft%20on%20this%20ground.&text=%22Orange%20card%22%3A%20applying%20only,under%20the%20ordinary%20legislative%20procedure. and at: https://www.europarl.europa.eu/factsheets/en/sheet/22/european-parliament-relations-with-the-national-parliaments (Last visit 2020).

harder for the two national Parliaments to actually exert their power of control and sanction of the cabinet. In Romania, instead, the Government got stronger towards the Parliament but weaker towards the President. The latter, despite being constitutionally structured as a "weaker" figure, it actually tended to extend its powers because of its role in representing Romania within the European Council, as well as because of the Constitutional Court supporting presidential interpretations of the Constitution (Tănăsescu, 2008) (Tănăsescu, 2014) (Tacea, 2015). Consequently, unlike in Italy, this presidential strengthening increases tensions within the dual executive, raising even more conflicts with the Prime Minister and, more generally, contributing to weakening the Government. A paradoxical result if we look at the Romanian Constitutional Charter, within which the institutional balance is designated so to provide for a dominant role of the Government within the executive, while the President should have a moderating role between the various Constitutional bodies, as well as between the society and the State, playing a less interventionist role than the one he actually plays. Therefore, according to the relatively recent presidentialising tendency, are they becoming more similar? (1) Looking just at the common presidentialising trend, it might seem that the concrete functioning of the Italian and the Romanian forms of government is becoming more similar. However, after a more in-depth analysis, it can be seen that the effect of such presidentialization has different consequences on the institutional interaction of the two systems. Thus, they are not really becoming more similar in their concrete of functioning. They are simply sharing another common trend, whose effect is leading to different outcomes. Yet, the effect of the EU integration on the concrete functioning of the Romanian Semi-presidentialism might not be as clear as in the case of the Italian Parliamentarism. This is so, because of its very nature. Semi-presidentialism owns a more complex institutional interplay, which in Romania is intensified by the existing gap between what the Constitution provides for the presidential powers and what they actually consist of. For this reason, further research on this issue is necessary to make this analysis clearer and more detailed.

Ultimately, are the Italian Parliamentarism and the Romanian Semi-presidentialism completely different, or is there any space for similarities? There definitely is space for similarities, mainly consisting of common trends that the two States experienced and that are experiencing. Nevertheless, exactly because they are structured according to different Constitutional arrangements, these common trends give birth to different effects on the way the two systems work. The underlined similarities still have to be read within the frame of existing differences. Consequently, the present work has reached the aim of pointing out potential similarities, identifying their origin and linking them with the contemporary period. Yet, it has also maintained the importance of the different historical and Constitutional background in which they are analyzed.

6 Summary

Introduction

This study proposes a comparative analysis of the Italian parliamentary form of government and the Romanian semi-presidential one. Despite the different historical, political and cultural background in which they have been implemented, these two distinct forms of government may have several elements in common. The study starts from the hypothesis that, having both Italy and Romania experienced a dictatorial regime in the past, Fascism in Italy and Communism in Romania, they may have been characterized by similar authoritarian features. Moreover, common authoritarian features may have similarly influenced the Constitutional needs that the Italian and the Romanian founding fathers dealt with during the democratic transitions. Furthermore, if it is true there had been similar Constitutional needs, then there has to be space for similarities also in the concrete functioning of the two forms of Government, despite them being differently structured in their Constitutions. Are the Italian Parliamentarism and the Romanian Semi-presidentialism completely different, or is there any space for similarities? According to recent tendencies, are they becoming more similar? If there are some shared characteristics, are they linked to similar tendencies in the authoritarian past that both of them experienced? These are some of the questions this study aims to answer.

Forms of Government, definition, classification and a comparative analysis of Parliamentarism and Semi-presidentialism

The study of forms of government is key in understanding how works the horizontal institutional interplay among public authorities within a State. Being the frames through which any institutional evolution is interpreted, their classification is subject to evolutionary uncertainties, leaving an open space for academic debate about future tendencies (Pegoraro & Rinella, 1997). Forms of State are the «fundamental principles and rules that characterize the State order and define the relations between the State itself and the citizens, individual or

associated». Forms of Government, instead, are the «set of rules characterizing the distribution of power among the top institutional organs of the State apparatus and which, therefore, regulate the interaction among the Constitutional organs which are above all the others, in conditions of equal sovereignty and mutual independence» (Volpi, 2007). Since two concrete cases – Italy and Romania – are examined in this research, comparing the Constitutional arrangements of Parliamentarism and Semi-presidentialism is the best way to provide an adequate legal framework. Two minimal definitions are adopted to provide more space for comparison. A parliamentary form of government is «a system of Government in which the Prime Minister and his or her cabinet are accountable to any majority of the members of Parliament and can be voted out of office by the latter, through an ordinary or constructive vote of no confidence» (Strøm, Müller, & Bergman, 2003, p. 13). Instead, «a semi-presidential regime may be defined as the situation where a directly elected fixed-term President exists alongside a Prime Minister and cabinet who are responsible to Parliament», even if is better to talk about popularly rather than directly elected Presidents because the direct election may be a necessary condition but not a sufficient one for defining Semi-presidentialism (Elgie, 1999). Both the forms of government present a degree of parliamentary rationalization, defined as the effort to introduce the whole process of political life into the Constitutional framework, legally regulating Parliamentarism and so providing the standard political procedures with a legal nature (Mirkine-Guetzévitch, 1930) (Mirkine-Guetzévitch, 1950). One of its main concerns is attempting to regulate governmental instability, e.g. by specifying a detailed procedure for the provision and revoke of the vote confidence (Frau, 2016, p. 10-11). The comparison is based on the existing differences in the executive-legislative interplay and the ones existing in the executive-head of the executive relationship (Fabbrini, 2008, p. 100-108). Within the executive-legislative interplay, the focus regards the formation, the operativity and the accountability of the Government. Concerning the executive's *formation*, in Parliamentarism, it is formed inside the legislative branch because is it selected by the parliamentary majority, which provides the vote of confidence, after which the

Head of Government usually proceeds with the formal appointment. However, his selection is deeply influenced by the party system. In bipolar systems, the Prime Minister is the leader of the winning party or one of the most influential parties within the winning coalition. Differently, in multiparty systems or non-bipolar mechanisms, the results of the election do not influence since the parliamentary majority is usually formed afterwards, through negotiation among those party leaders who agree to negotiate. In Semi-presidentialism, instead, there is a dual executive consisting of two competing actors – the President and the Prime Minister – both of which hold the governing power. Thus, the executive's composition consists of a double selection. While the President is directly elected through universal suffrage, the cabinet and its Prime Minister are indirectly elected by the Parliament, which votes the vote of confidence, and then the President formally appoint the Government. In Semi-presidentialism the type of party system influences the Prime Minister's nomination exactly as it does in Parliamentarism. In *operative terms*, the two systems are more similar. In both of them, the executive's activity depends on the vote of confidence; thus, they are accountable to the Parliament. The semi-presidential executive is also composed by a President elected independently from the legislative; however, his «electoral independence» does not imply that he also has «operational independence», since he can handle his governing functions in collaboration with the Government only if the latter has the confidential support, being it implicit or explicit (Fabbrini, 2008, p. 106). The cabinet's *accountability* also varies between competitive and consensual democracies. In competitive parliamentary systems, being there a bipolar logic, the cabinet is the outcome of the majority which emerged from the elections. Hence, the winning majority is directly accountable to the voters since there is a clear figure holding the political responsibility. Conversely, in consensual parliamentary systems, accountability is harder to identify because there is no clear figure held responsible for the implemented policies and the parliamentary majorities are formed through negotiation among parties, after the elections. In semi-presidential systems, instead, accountability has a dual nature. Both the President and the Government share the political responsibility for their decision-making process, but it has

different sources. The Head of the State is accountable to the electors, the cabinet instead, is accountable to the parliamentary majority. This dual accountability may work fluently when both the President and the Government are supported by the same political majority, while it can be very complex when there is a cohabitation situation (Fabbrini, 2008, p. 105-108). Concerning the executive-head of the executive interplay, the Prime Minister's investiture is again influenced by the available model of democracy (Fabbrini, 2008, p. 130-152). In competitive democracies, he emerges from the elections, as head of the winning party or strongest party in the winning coalition. Afterwards, the Head of the State formally appoints him, and then the Parliament proceeds with its official investiture. Conversely, in consensual democracies, the candidate Prime Minister emerges after the elections, and it depends on the parliamentary majority negotiated by the involved political parties; thus, it is the outcome of an inter-party mediation. For this reason, in consensual democracies, Prime Minister has a weaker position, being a *primus inter pares*. In semi-presidential systems, because of the dual-source of legitimation, the composition of the executive depends on whether there is a cohabitation or a consonance situation. Under consonance situations, both the Head of Government and the Head of the State are supported by the same political party, meaning that there is a harmony of political aims. In this case, the President tends to have more influence in the Ministers' appointment procedure while under cohabitation, where President and Prime Minister have different political parties supporting them, it is the Prime Minister who tends to be more influent.

Comparing origins. From different historical backgrounds to different democratization processes. Is there any space for similarities?

While Italy experienced a Fascist Dictatorship under Benito Mussolini from 1922 to 1943, Romania experienced a Communist dictatorship from 1965 to 1989, first under Gheorghe Gheorghiu-Dej and then under Nicolae Ceaușescu (Marongiu, 2018) (Abraham, 2016) (Constantiniu, 2015). Differently historical periods and ideologies, yet they shared a totalitarian vein, meaning they both

tended to submit the political, economic and social spheres to the single party's interests, pushing for an integration of the institutions into the unique national party and trying to neutralize and assimilate and the individuals' interests into the public one. They both experienced *a common centralizing tendency*, integrating the single-party (*Partito Nazionale Fascista* (PNF) in Italy and *Partidul Comunist Român* (PCR) in Romania) with the institutions, subordinating them to its political control and creating a unicameral supreme body: The *Gran Consiglio del Fascismo* (GCF) *in* Italy and *Marea Adunare Națională* (MAN) in Romania (Bin & Pitruzzella, 2015, p. 39-41) (Guzzetta, 2018) (Abraham, 2016). Despite having this common trend, the two dictatorships did not totalitarize the society to the same extent. If totalitarianism is defined as the «the most radical denial of freedom» (Arendt, 1954) (Arendt, 1958), then Italian Fascism cannot be considered entirely totalitarian. It lacked a unique and dominant ideology, a regime identity based on fighting an external enemy and the use of terror to eliminate opposition (Sabbatucci & Vidotto, 2008). Fascism persecuted politically, but it did neither systematic use of the terror nor use of mass extermination theories, except for the racial laws in 1938. Moreover, it was counteracted mainly by the presence of King Vittorio Emanuele III and of the Catholic Church who impeded Mussolini to gain full control of the State. For this reason, Italian Fascism is considered «an imperfect totalitarianism» (Messina, 2008) (Sabbatucci & Vidotto, 2008). On the contrary, Romanian Communism managed to put under PCR's political control each economic and social institution, giving birth to a fully integrated Party-State (Abraham, 2016). The communist ideology could be dominant without any competitor since religious faith was formally tolerated but not socially encouraged. The «use of fear as a political weapon» was coupled with cognitive mass manipulation and the so-called «jurisprudence of terror» (Tismăneanu, 2005). Consequently, there was a common totalitarian vein, but a different degree of totalitarization. This trend influences the whole comparison. In fact, because of this common vein, the Italian and the Romanian founding fathers faced common Constitutional needs that during the democratic transition: breaking with the past, excluding any provision leading to anti-democratic

outcomes (Selejan-Gutan, 2016), repudiating totalitarianism and avoiding the emergence of a new dictator. For this reason, they both opted for a rigid Constitution[66], eternity clauses[67] and a degree of openness (Falzone, Palermo, & Cosentino, 1949) (Selejan-Gutan, 2016) (Martinico, Guastaferro, & Pollicino, 2019). Nevertheless, because of the different degree of totalitarization, the common Constitutional needs were answered with different Constitutional arrangements. The Italian founding fathers implemented a parliamentary system (*Perassi* order of the day), in which citizens vote the parliamentary members, who then, in joint session, elect the President of the Republic. The executive is composed by the Council of Ministers, appointed by the President upon the Parliament's vote of confidence. The Italian transition was led by the *Comitato di Liberazione Nazionale* (CLN), the Republican form of State was chosen through the Referendum of June 2nd, 1946. In that occasion were elected also the Members of the *Assemblea Costituente* (Constituent Assembly). Thus, the Constitutional debates began and concerned mainly the symmetric bicameralism, the kind of election and functions of the President and a low degree of rationalization to prevent any «parliamentary degeneration». It consisted in regulating the vote of confidence and the motion of censure (Art. 94) (Falzone, Palermo, & Cosentino, 1949, p. 106). Differently, the Romanian founding fathers implemented a semi-presidential system, in which the citizens directly vote their President, but in which he is constitutionally prevented from gaining too much power by a strong Prime Minister, who cooperates with him within the dual executive and who is indirectly legitimized by the Parliament's vote of confidence. Not having an important democratic experience, Romania transplanted foreign models – first of all the semi-presidential system inspired by the Fifth French Republic – and was advised by the Venice Commission for its constitution-drafting (Perju, 2012). After forty years of oppression, citizens needed to be granted the right to elect their Head of State. However, he needed to be prevented from gaining too much power from this direct legitimation. Thus, the dual executive seemed the best solution.

[66] Artt. 146 and 147 of the 1991 Romanian Constitution, artt. 138 of the 1948 Italian Constitution.
[67] Art. 148 of the 1991 Romanian Constitution, art. 139 of the 1948 Italian Constitution

The concrete functioning of the Italian Parliamentarism and the Romanian Semi-presidentialism in a comparative perspective

In order to examine the concrete functioning of the Italian Parliamentarism and the Romanian Semi-presidentialism, this chapter identifies potential dissociations between the two Constitutions and the way they had been implemented. To do so, direct comparisons among the three main Constitutional bodies are made, meaning the Parliament, the President of the Republic and the Government while a brief examination of the Constitutional Courts' influence is considered.

Concerning the Parliament's election and composition, both in Italy (artt. 56-57) and in Romania (artt. 61-62) it is directly elected at universal suffrage, and it is symmetrically bicameral (Falzone, Palermo, & Cosentino, 1949, p. 106) (Bin & Pitruzzella, 2015) (Muraru & Tănăsescu, 2019) (Selejan-Gutan, 2016). In Italy, the Chambers have a five years mandate (art. 60), the Chamber of Deputies has 630 members elected at a national level (art. 56) while the Senate has 315 elected on a regional basis (art. 57). In Romania, instead, the two Houses have four years one (art. 63), while their numerical composition is to be decided through the electoral law, in proportion to the Romanian Population (Selejan-Gutan, 2016) (Muraru & Tănăsescu, 2019). Both the Parliaments grant the vote of confidence to their Governments, but the procedure is slightly different. While in Italy it can be voted by each Chamber at the absolute majority (art. 94), in Romania it has to be voted by the two Chambers in joint session, by the majority of the Deputies and Senators (art. 103). The motion of censure can be initiated by 1/10 members of each Chamber in Italy, and by 1/4 of the total members of Parliament in Romania (art. 113). In both cases, it cannot be discussed before three days after its approval (Falzone, Palermo, & Cosentino, 1949, p. 106) (Bin & Pitruzzella, 2015) (Muraru & Tănăsescu, 2019). In Romania, if the motion of censure is rejected, the Deputies and Senators who signed it may no longer initiate a new one during the same session, unless the Government assumes its responsibility on the approval of a specific bill (art.114) (Selejan-Gutan, 2016) (Muraru &

Tănăsescu, 2019). Besides, in Romania, the vote of confidence needs to be granted again if the cabinet's political composition changes after a ministerial reshuffling. In Italy, instead, this procedure does not exist because the Constitutional Court allowed for the use of the individual motion of censure to prevent any change within the cabinet's composition that would cause the loss of the confidence (Judgment No. 7/1997) (Bin & Pitruzzella, 2015). In Romania, instead, the individual motion of censure does not exist. If the behavior of one Minister badly affects the political program of the cabinet, which enjoys the Parliament's confidence, the latter revokes the confidence to the whole cabinet, not only to the single member. The only way to prevent this is that the Prime Minister initiates the procedure aimed at removing from office the Minister in question, so to save the cabinet (Selejan-Gutan, 2016) (Muraru & Tănăsescu, 2019). In both cases, legislative power is owned only by the Parliament, but it can be delegated by the latter to the Government, through legislative decrees and (emergency) decree-laws in Italy (artt. 76-77) and through regular governmental ordinances and emergency ordinances in Romania (art. 115) (Falzone, Palermo, & Cosentino, 1949, p. 106) (Bin & Pitruzzella, 2015) (Selejan-Gutan, 2016) (Muraru & Tănăsescu, 2019). However, in both cases, the Government abused this delegated power, becoming not only the main legislative initiator but also profiting its power to pressure the Chambers for the approval of bills considered fundamental for its political program, though the question of confidence in Italy (disciplined but Parliamentary regulations)[68] and the assumption of responsibility in Romania (art. 114). Consequently, the Parliament partially lost its deliberative power (Muraru & Tănăsescu, 2019). This is a deeper in trend in Romania, since the 2003 (Law No. 429/2003), because the differentiation of functions of the two Houses led the system to work ambiguously, more as a unicameral system than a bicameral one, in which a bill can actually be approved only by one Chamber to which it was presented and who was the power to take the final decision (art. 75)[69] (Olivetti, 2019). Plus, floor-crossing is a frequent

[68] See https://www.camera.it/leg17/438?shadow_regolamento_capi=1069&shadow_regolamento_articoli_titolo=Articolo%20116 (Last visit June 2020).

[69] The first notified Chamber has to analyze and expressively approve the bill within 45 days otherwise being considered a silent approval; then it is sent to the other Chamber making the

phenomenon in Romania, which consists of parliamentary members shifting the political party to which they belong after the elections are held, breaching the principle of popular representativeness. In both cases, the legislative process involves the Parliament, the Government, but also the Head of State, being the figure who officially promulgates laws. In fact, in both the Italian (art. 74) and the Romanian system (art. 77) the President may use a suspensive veto within the process, asking the Chambers to re-examine a law before promulgating it, but it can only be done once (Bin & Pitruzzella, 2015) (Falzone, Palermo, & Cosentino, 1949, p. 106) (Selejan-Gutan, 2016) (Muraru & Tănăsescu, 2019). Lastly, in both cases, the Parliament's deliberative function but also the one of control over the cabinet were undermined because of the European integration process (Cavatorto, 2015) (Tacea, 2015). In this frame, the two executives directly participate in the European intergovernmental institutions, meaning the Council of the European Union and the European Council, gaining superiority over the Parliament at a national level concerning EU issues, but also escaping their traditional responsibilities towards the latter (Lupo, 2018). This produced a presidentialising trend at the expenses of the national Parliaments (Lupo, 2018) (Cavatorto, 2015) (Tacea, 2015).

Differently from the Parliament, the structure of the Italian and of the Romanian presidential figures has less in common. Both of them were thought to be strong enough to represent the country and mediate among the public authorities but not as much as to become new dictators (Falzone, Palermo, & Cosentino, 1949) (Muraru & Tănăsescu, 2019). However, the way this was constitutionally structured is different. In Italy, the President is indirectly elected by the Parliament in joint session with the participation of three delegates per region, except for Valle D'Aosta which has only one regional delegate (art. 83) while in Romania he is directly elected at universal suffrage (art. 80). In Italy, he has a seven years mandate to grant the continuity of its functions and to prevent him from depending too much on the parliamentary majority which elected him (Lippolis, 2018) (Bin & Pitruzzella, 2015), while in Romania, from 2003, he has

final decision. In the case of contrasts, the bill goes back to the first notified Chamber, which issues the final decision. Hence, laws can be the outcome of only one Chamber, even without formal adoption (Selejan-Gutan, 2016).

a five years mandate (four under the 1991 Constitution) to avoid situations in which he becomes too strong. The Italian President was provided with functions related to political, institutional and legislative, administrative and judicial processes but without concretely granting him any of the three State powers (Falzone, Palermo, & Cosentino, 1949). His functions (art. 87) allow him to intervene indirectly in certain functions and, as coordinator of the various Constitutional bodies, he cannot be conditioned by them. Thus, the President is not responsible for the acts adopted in the performance of his duties, which must be countersigned by a Minister who is responsible for it. In Romania, instead, the President, together with the Prime Minister, composes the dual executive; thus, he is constitutionally conferred part of the executive power (Muraru & Tănăsescu, 2019). Art. 80 grants him the power and function to represent the Romanian State, to safeguard of the national independence, unity and territorial integrity of the country, to guard the observance of the Constitution and the proper functioning of the public authorities. Thus, he acts as a mediator among the public authorities, as well as between the State and society; for which he needs to be politically neutral, thus to resign from the political party that brought him to win the elections, once that he is officially into the office (Selejan-Gutan, 2016). Notwithstanding these differences, the two Heads of State have in common the tendency to informally extend their powers. This can be seen mainly in the Government's appointment procedure. In both the systems, the President nominates the Prime Minister and, once the vote of confidence is granted, he formally appoints the whole cabinet. A delicate process leaving room for an extension of the presidential powers, based on the stability of the political system. In Italy, the extension or contraction of the presidential powers, was called the phenomenon of the *fisarmonica presidenziale,* the presidential accordion, coined by Giuliano Amato (Lippolis, 2018). In Romania, it is more generally referred to as presidential activism, and it does depend only on how stable the political system is, but also on the role of the Constitutional Court, whose jurisprudence tended to provide Constitutional interpretations which favoured the President. In Italy, this strengthening trend is witnessed in the President's power to appoint a technical Government – if the Prime Minister and

most Ministers are chosen on the basis of their technical expertise – or a Government of the President if the Head of State proposes a candidate on his own initiative (or is called to do so by the parties) (Lippolis, 2018) (Lupo, 2018). This happens, if after the parliamentary elections, no political majority is formed within the Parliament, making the Government not political either. If the Presidents nominates the Prime Minister on his initiative, it starts an «atechnical relationship of trust» between the Head of State and the Prime Minister who however must still obtain a vote of confidence from the Parliament. In this procedure, the President's influence in the choice of the Prime Minister is decisive. In Romania, instead, the President increased its influencing power within the procedure because of a «constitutional loophole» (Selejan-Gutan, 2016). Once that the President nominates a candidate Prime Minister if he is not granted the vote of confidence, the President has to nominate a figure again, but there is no Constitutional obligation to not re-nominate the same one who was refused (art. 103) (Tănăsescu, 2008). Thus, concretely, the President can pressure the parliamentary approval of a specific figure by re-proposing him/her again. Moreover, from 2007, when there is a ministerial vacancy, and the Prime Minister proposes a new candidate, the President may one refuse the candidate, exactly as he can send back to Chambers once a draft law. Consequently, also in the reshuffling procedure, the Romanian President became extremely influential (Tănăsescu, 2008) (Tănăsescu, 2014). This strengthened position depends also on the Romanian President's role of representing the State within the European Council, directly participating in the negotiation of the EU political agenda. In the end, in Italy, this «elusive» behavior of the President may also have been positive because it had often absorbed political tensions, acting as the center of gravity for the proper functioning of the institutional system (Lippolis, 2018) (Lupo, 2018). In Romania, instead, presidential activism has raised political and institutional tensions between the President and the Prime Minister, especially under cohabitation periods[70] (Tănăsescu, 2014) (Selejan-Gutan, 2016).

[70] In Semi-presidentialism, cohabitation is that situation in which the President in the office is supported by a political party opposed to the one supporting the Prime Minister, and which is not represented in the cabinet, typical of the semi-presidential dual executive. Thus, it is a situation of maximum conflict between the two heads of the executive (Selejan-Gutan, 2016).

Concerning the Government, its appointment procedure is similar in Italy and Romania, but the relationship between the Prime Minister and the President is different. In both cases, the Government is the expression of the parliamentary majority, i.e. the coalition of parties that have obtained the highest number of seats in Parliament. Both in Italy (art. 92) and in Romania (art. 103) the President of the Republic nominates the Prime Minister, after having participated in consultations, which while in Italy they are a practice, in Romania are provided by the Constitution (art. 103). Within ten days from his nomination, the Government must submit his program to both the parliamentary Houses, in order to get their motivated vote of confidence. While in Italy it is granted by each Chamber voted by roll call (*appello nominale*), in Romania, it is granted by the two Chambers in joint session, by a majority vote of Deputies and Senators (art. 103), who debate on the Government's political program and ministerial list. Once it is granted, the whole Government is formally appointed by the President, in front of which each member takes an oath, solemnly engaging in respecting the Constitution, in Italy (art. 93) and in Romania (art. 104) (Muraru & Tănăsescu, 2019). Moreover, both the systems implemented a law degree of parliamentary rationalization, mainly concerning the confidence and the motion of censure, regulated in detail within the Constitution (Olivetti, 2019) (Selejan-Gutan, 2016) (Falzone, Palermo, & Cosentino, 1949). In fact, the motion of no-confidence (or censure) has to be motivated, and it cannot be discussed within three days of its submission both in Italy (art. 94) and in Romania (art. 103) in order to allow proper analysis. However, while in Italy it can be signed by at least 1/10 of the members of the Chamber proposing it, in Romania, it may be initiated by at least 1/4 of the total number of Deputies and Senators (Selejan-Gutan, 2016) (Muraru & Tănăsescu, 2019). In both the systems, governmental acts being voted against by the Parliament does not mean that the legislative Chambers are expressing a motion of no confidence. Moreover, in both the systems the Government can pressure the approval of a specific bill considered vital for its political program, by putting on it the matter of confidence in Italy and by assuming its responsibility in Romania (art. 114). If the Parliament approves it, it basically confirms the vote of confidence, but if it rejects it, then

this disproval is considered a motion of no-confidence and the Government resigns (Selejan-Gutan, 2016) (Muraru & Tănăsescu, 2019). More importantly, they share and important presidentialising trend as a consequence of the European integration process, which fragmented the national executives and led the two Governments to be strengthened at the expenses of the national Parliament (Cavatorto, 2015) (Tacea, 2015) (Lupo, 2019). Far from being overlooked, national Governments became the protagonists of the intergovernmental dimension of the European Union, participating in the Council of the European Union, an institution which is the holder – together with the European Parliament – of the legislative and budgetary functions, and to the European Council, i.e. which brings together the Heads of State or Government of the Member States, the President of the European Commission and the President of the European Council and which has a strategic role in defining the EU's general political orientations and priorities (Lupo, 2018). While for Italy, the Head of Government participates in the latter, for Romania, it is the Head of State who participates, becoming the crucial figures in representing their own countries within the EU (Selejan-Gutan, 2016) (Tacea, 2015) (Lupo, 2019). This presidentialization provides the two figures with elements of hierarchical superiority at the national level, and it also paves the way for a strengthened role of the two cabinets (Cavatorto, 2015). Nevertheless, this presidentialising trend influenced the equilibrium within the two cabinets both in Italy and in Romania, but in the latter, it also influenced the balance within the President-Prime Minister relationship (Tănăsescu, 2008). Within the two cabinets, it provoked the Prime Minister's dominance on the other Ministers. In Romania, instead, the Government got stronger towards the Parliament but weaker towards the President (Tănăsescu, 2008) (Tănăsescu, 2014) (Tacea, 2015). Overall, also in this case the Italian and the Romanian different forms of government experience a common presidentialising trend, derived from the European integration process, but its concrete effect on the national interplay is again different (Tacea, 2015) (Lupo, 2018).

In all this interplay, the role of the two Constitutional Courts has been important in clarifying Constitutional provisions of fundamental importance for the

concrete functioning of the two forms of Government. For instance, in Italy, an important decision concerned the admissibility of the individual motion of no-confidence (Judgment No. 7/1996) while a conflict of power attribution was raised by the former Minister of Justice Filippo Mancuso (Bin & Pitruzzella, 2015). Likewise, in Romania, an important and controversial decision of the Constitutional Court concerned providing the President with the power to veto the first proposal of the Prime Minister for the appointment of a new Minister, within the reshuffling procedure (Decision No. 98/2008) (Constituţională, 2008) (Selejan-Gutan, 2016). However, the Romanian Constitutional Court was highly politicized, and its decisions have frequently favoured the President.

Conclusion

The Italian Parliamentarism and the Romanian Semi-presidentialism tend to experience common trends, but the concrete effect that they produce is different. First, a common totalitarian vein, which however led to different degrees of totalitarization. Second, common Constitutional needs during the transition period, which however led to different Constitutional arrangements: Parliamentarism in Italy, Semi-presidentialism in Romania. Third, common trends in the concrete functioning of the two form of government (the Government's strengthening at the expenses of the Parliament, the President's tendency to extend its powers, the presidentialising trend caused by the European integration), which however produce different effects on the two institutional interplays (In Italy, a strengthened Prime Minister towards its cabinet, and a strengthened Government towards the Parliament. In Romania, a strengthened Government towards the Parliament but a weakened Prime Minister towards the President of the Republic). Ultimately, there definitely is space for similarities between the Italian Parliamentarism and the Romanian Semi-presidentialism. They mainly consist of common trends that the two States experienced and that are still experiencing. Nevertheless, these common trends give birth to different effects on the way the two systems work, exactly because they are structured according to different Constitutional arrangements.

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