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Bicameralism, Democracy and the Role of the Civic Society

Report of the First Vice President of the italian Senate, Sen. Domenico FISICHELLA

Mr. President, colleagues,

My remarks are intended to be contribution to the general discussion of the outlook for the evolution of bicameralism in European countries. Within this context, I propose to trace the key elements of the Italian constitutional system, the reasons underlying certain institutional choices, the assessment that we can make of these and the prospects for change.

1. The current situation

Under the Italian Constitution, Parliament is composed of a Chamber of Deputies and a Senate. Legislative powers are exercised by the two Houses, and the Government must obtain the confidence of both. These are the key features of the "egalitarian" or “perfect” bicameralism that characterises Italy’s system of government.

The Italian bicameral system makes no distinction between an elective house and a house of hereditary or life members, or one house based on political representation and one on interest groups, or a house that represents the entire citizenry and another that acts as a forum for local levels of government (such as states in a federal system). The two Houses of the Italian Parliament are essentially founded on the same type of representative mandate and exercise the same powers.

The system is characterised by one additional feature: the original bicameral design, which envisaged different terms for the two Houses (five years for the Chamber of Deputies, six years for the Senate), was quickly unified at five years for both Houses, with simultaneous elections. This is a significant change. Over time, different terms would have likely led to increasing differentiation between the two Houses. It would have entailed separate and increasingly distant elections, which might well have produced sharply different political configurations in the two legislative bodies.

According to our Constitution, there are, of course, differences between the two Houses, namely:

- the electorate (persons 18 years or older for the Chamber, 25 years for the Senate);
- eligibility for election (25 years for the Chamber, 40 years for the Senate);

- number of elected members (630 in the Chamber, 315 in the Senate);
- the Senate may have a number of non-elective members (five eminent individuals appointed as senators for life and former Presidents of the Republic, who become life senators by right);
- different electoral rules (detailed below).

In point of fact, the first four differences have not had especially notable consequences. More specifically, the differences in the electorate have not produced significant disparities in the majorities in the two Houses.
As regards electoral rules, after a long period of broadly proportional distribution of seats, as of the 1994 elections candidates for the Senate run in single-member constituencies for 75% of the total number of seats. The candidate receiving the most votes in each constituency is elected. The remaining 25% of seats are allocated among the losing candidates that obtained the largest number of votes at the regional level. In the Chamber of Deputies 75% of seats are filled from single-member constituencies, with the remaining 25% being selected from party lists, with a threshold for consideration of 4% of the nation-wide vote (S*perrklausel*). In this case, each voter has two ballots. In theory, this would permit different majorities in the Chamber and in the Senate. In reality, this has not occurred, although the composition of the Parliamentary Groups in the two Houses is not exactly the same.

2. The roots of the bicameral system with the Constituent Assembly

After this brief overview of the Italian bicameral system, and having underscored the lack of any appreciable structural or functional difference between the two Houses of Parliament, it must be emphasised that the Constituent Assembly extensively debated the possibility of differentiating between the two Houses. In particular, some argued that the second House should act as a "counterweight" or check on the other; others sought to link the composition of the Senate to geographical provenance and segments of productive society by assigning a share of seats in each region to different socially-relevant groups.
The final choice emphasised the former approach.

3. The "performance" of bicameralism in the Italian institutional system

What function has Italian bicameralism actually performed?
In order to assess the effectiveness of the system we can look to a number of different indicators. One key indicator is the performance of the legislative process, in particular the number of cases in which bills had to pass through the Houses more than once to win passage.
There are two opposing views of the legislative process. One side argues that the presence of two houses with the same powers and functions creates a "separating" and "cooling" effect, while the other holds that the dual consideration by the two houses enables the various actors on the parliamentary stage (majority groups, opposition groups, "transverse alliances", the Government, pressure groups, etc.) to revive positions that seemed compromised at first examination. Some feel that the delay induced by perfect bicameralism improves legislation, while others argue that it has the opposite effect of accentuating compromise in the parliamentary decision-making process and lengthening the time needed to pass legislation, thus giving the Government an excuse to adopt emergency measures.
The figures for the total number of bills that shuttle between the two Houses of Parliament vary over time, but they are significant in any case. Each parliament exhibits different phases, with peaks that nearly always fall in the central part of each term (see annexed tables). To summarise, during the 10th Parliament, an average of 25% of laws were enacted after being considered more than once in at least one of the Houses. In the 11th Parliament, the proportion averaged 28% before declining to about 16% in the 12th and then jumping to around 29% in the 13th.
Whatever the figures, close analysis of legislative texts reveals a range of substantive problems that led to amendments, thus generating further cycles of parliamentary consideration. Nevertheless, the statistics reveal an interesting fact: a large number of bills, especially in the longer-lived parliaments, required a series of passages through the Houses before achieving enactment of an identical joint text. The second House did not simply "acquiesce" to the decision taken by the first one, but rather

added amendments that it considered necessary and which were subsequently approved by the other House.

4. Proposed changes to the bicameral system in the 13th Parliament

The repeated criticisms of the existing bicameral system have given rise to numerous proposals for reform, especially in the last ten years. Among these, I would underscore those that emerged in the last parliament out of the work of the Committee for the Amendment of Part II of the Constitution, established with Constitutional Law 1 of 24 January 1997.
The Committee was unable to produce the hoped-for reform, but it did develop a number of conceptual indications that merit at least brief mention in order to testify to the technical and political debate on the issue.
The bicameral system as a whole was endorsed. However, the "perfect bicameral" approach was extensively modified: the two Houses were assigned different tasks and the entire legislative process was overhauled.
As regards the differentiation of the roles of the two Houses, two main proposals emerged during the committee debate.
The first suggested restricting the need to obtain a vote of confidence to one of the Houses, considered the "political House", and creating a "guarantee House" to define legislative policy and submit motions, questions and interpellations regarding the activities of the Government (the parliamentary scrutiny function).
The second draws inspiration from federal systems, in which there is normally one house representing geographical areas or local governments, separate in composition and function from the house representing the electorate at large. In the Italian case, this would mean creating a "Chamber of regions".

The Committee opted for the former proposal, with the establishment of a "guarantee House" as one of the two Houses of Parliament, with the Senate later being assigned this role.
With regard to the composition of the two Houses, the Committee decided to maintain the system of *direct suffrage*, rejecting the proposal to determine the members of the House representing the local communities and administrations through a second election by these latter.
The President of the Republic would no longer be able to appoint life senators.
The Committee's report does not address the issue of the electoral system for the two Houses. However, it was repeatedly observed during debate that the special function of the Senate (to act as guarantor) would require the adoption of a different and more markedly proportional electoral system.
To sum up, the proposal assigns different functions to the political House and the guarantee House:

- only the Chamber of Deputies would have a fiduciary relationship with the Government. It would be the only House in which no-confidence motions could be moved, and thus only the Chamber would be affected in the event of an unreconcilable crisis of confidence. Only the Chamber would be dissolved by the President of the Republic. This means that the Senate would in any case serve a full five-year term, implying that it would be highly likely that the terms of the two Houses would be staggered;

- the Senate, as the "guarantee House":

- would have equal powers with the Chamber in the legislative process in certain areas only;

- would have exclusive power to convene committees of inquiry with judicial authority;

- would also have exclusive powers over all appointments assigned by the Constitution or ordinary laws to parliamentary bodies. The Senate would also have sole power to express an opinion on appointments made by the Government.

The reform package distinguishes three types of ordinary legislative procedure.
As a consequence of the decision to make the Chamber of Deputies the only "political" House, the Senate retains equal powers in the legislative process in only a limited number of areas, chiefly those regarding institutional issues and rights and freedoms: in this case we have *equal bicameral laws.* Laws in this category would have to be passed by both Houses on the basis of identical texts. If the

House that examines a bill after it has passed the other House introduces amendments, the amended provisions would be assigned to a Special Committee made up of an equal number of members of the two Houses, who would be appointed in such a way as to reflect the strength of Parliamentary Groups in each House. The text adopted by this Committee would then be submitted to each House of Parliament for final vote.

In all other areas, the legislative process would normally be conducted and completed in the Chamber of Deputies alone. Nevertheless, the Senate would retain the right to "recall" bills approved by the Chamber and to propose amendments, although the final decision would remain the preserve of the Chamber.

A mixed approach is envisaged for a third category of issues, for which the legislative process would require the participation representatives from the local governments. Bills falling under this heading would automatically be sent to and voted on by the Senate (no need for "recall"), which acts in a session supplemented by the local representatives. If, however, the "supplemented" Senate makes amendments, the Chamber would make the final decision.

These are, then, the proposals advanced by the Committee for the Amendment of Part II of the Constitution in the last parliament, although, as we have seen, no subsequent action has been taken.

5. The outlook for changes to the bicameral system

Towards the end of the previous parliament, legislators passed an amendment focusing on Title V of the second part of the Constitution (Constitutional Law 3 of 18 October 2001). The law envisages:

- the attribution of general legislative powers to the Regions, reserving for the State exclusive legislative authority over a specific list of matters involving interests of national scope (such as foreign policy and international relations, relations with the European Union, immigration policy, defence, the currency, public order, justice, education, social security, electoral rules, protection of the environment and the cultural heritage);

- the specification of a number of areas of concurrent legislative powers, where primary legislative initiative belongs to the Regions and the State is responsible for establishing fundamental principles. These areas include relations between the Regions and the European Union and other countries, labour protection and safety, scientific and technological research, health care, civil defence and sports;

- the establishment of a special role for the Regions and the Autonomous Provinces of Trento and Bolzano, which participate in decision-making related to the drafting of Community legislation and, in the areas under their responsibility, provide for the implementation and enforcement of international agreements, in compliance with the procedural rules established by State law;

- the conferral on municipalities of a leading role in the exercise of administrative functions on the basis of the principles of subsidiarity, appropriateness and differentiation (*institutional subsidiarity*);

- the government of relations between the public and private sectors on the basis of the principle of *social subsidiarity*, under which all the public actors that make up the Republic (central State, Regions, large cities, provinces and municipalities) shall act to encourage the independent initiative of private citizens and their associations;

- the granting of financial autonomy to local authorities with a framework - based on a principle of solidarity - providing for transfers to areas with smaller tax revenues and greater social and economic imbalances (*fiscal federalism*).

The problem that needs to be addressed now is to determine if and to what extent this amendment of the Constitution will affect Italy's bicameral system.
Almost as soon as the changes were enacted, debate began on the advisability of giving the upper House a configuration more closely associated with the local communities. Today, there is renewed

interest in transforming the Senate into a chamber of the regions, rather than a guarantee chamber, albeit without ruling out the possibility of endowing the House with guarantee functions. This proposal has gained momentum on the back of the strong federalist orientation of some of the parties in the majority coalition and the long-standing support for a chamber of regions from some of the opposition forces.

The issue of the purely political character of the Senate, whether as a chamber of regions or guarantees or in some combined configuration, remains an open question. In other words, we have to address the matter of its relations with the Government as regards the granting and revocation of its confidence. There is strong support in Italy for the idea that even if there should be some form of differentiation between the two Houses as regards tasks, powers or configuration, both the Chamber of Deputies and the Senate should still retain a general political role, including that of expressing their confidence in the Government. In short, many feel that any reform should ensure that both Houses should continue to have dual responsibility for the confidence process.