

## **The role of the President of the Republic in the formation of the government and the appointment of ministers, two states the same situation? A comparison between Albania and Italy**

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### **Abstract**

In Parliamentary governments, an important role for governance also belongs to the President of the Republic. Thus, after the elections it is in the credential of the President to issue the decree for the appointment of the Prime Minister and, at the proposal of the last also the Ministers. The decree of the Prime Minister by the President of the Republic must consist of a neutral power of the President in the sense that it does not affect the political direction of the government or in the neutralization of this power by keeping the Prime Minister on the constitutional rails, the guarantor of which the is President of the Republic. Even more are the tones of the discussion raised in this regard, when the President of the Republic rejects the Prime Minister's proposal for the appointment of ministers from the cabinet of the last, the government of the country where he is the Head. In this study we try to analyze two almost equal situations in Italy and Albania, and how the example of the former influenced the constitutional practice of the latter, in this context.

**Keywords:** President of the Republic, government formation, Prime Minister, Minister, Parliament.

### **Introduction**

In a parliamentary republic, the president has a constitutional role to maintain the balance between the three traditional powers of the state. This balancing can happen through the representation of a neutral power by the President of the Republic, and this can happen through a neutralization that cannot be achieved in an inactive way. In Parliamentary Republics, the supremacy of Parliament needs to be balanced by a neutral, certainly not arbitrary power (Cuccodoro 2016) of the President of the Republic, even if logically it should have the most important weight among the powers of the State. This supremacy is not unbalanced, despite the different constitutions that found this form of government provide for different procedures, and different ways of election for the President of the Republic.

However, the supremacy of Parliament as the representative of the sovereign is changed unlike the formula of electing the President of the Republic, but in no way neutralized or even more so, annihilated. This study does not intend to take in comparison all the parliamentary republics, but it tries to analyze the link between the powers of the state, and to what extent they can be influenced by the figure, who represents the Head of State. The figure of the President of the Republic was transformed by the monarchies that preceded the parliamentary republics, to the extent of creating an important institution to balance the powers of the state. With the

approval of the Italian Constitution, it could be said that the figure of the President of the Republic did not represent the most advanced personality even in the face of other Constitutions (Mastropaolo 2017).

Be that as it may, this constitutional role was intended to cover the role played by the monarch after the transformation of the forms of state and government and especially after the end of the Second World War. This is how it happened in most of the Parliamentary Republics that were born after that historic event.

The powers of the President of the Republic concern the representation of the unity of the people and the role of holding the office of the Head of State. The role of representing the popular unity, the President of the Republic, plays it because the executive power, which focuses on the government majority, represents a political direction of the political group that wins the parliamentary elections. Instead, as far as popular unity is concerned, it seems impossible that this equates to the ideology of a certain government majority.

In consideration of the powers attributed by the Constitution, the role of the President of the Republic seems to consist in an adaptation of the position in keeping the balance of the parliamentary form of government (Giuffrè 2012). However, both this balance that the President of the Republic must hold in a parliamentary Republic is based on a power of variable intensity (Carlassare 2013)<sup>1</sup>, and its variability depends on the political situation which consists in the stability of the governing majority. Should this variability of the power of the President of the Republic have a limit or it can also go beyond the boundaries (Morrone 2013) of the constitutional provisions for the exercise of his power to neutralize the three powers of the state? It could be said in this sense that "the President is therefore at the center of a network of political relations and in the role of political intermediation" (Lippolis 2018).

Indeed, for instance and not by chance, likewise in the Italian Constitution, the Albanian Constitution also provided for a culminating role of the President of the Republic, in the appointment of the Prime Minister, and on the latter's proposal in the appointment of ministers. On the basis of this process, and what is dictated by the political will of the sovereign, the party or the coalition that has managed to have the majority forms the government.

In this sense, the formation of the government through coalition takes place after the consultations that the President of the Republic carries out with the representatives of the political parties, before being presented to parliament, for the "final stamp". Based on the Constitution the real finalization of this process occurs after the government members take oath before the President of the Republic, the Head of State but it is sworn in the Constitution. The President of the Republic as guarantor of the Constitution guarantees that the government implements the political direction while respecting the Constitution. Hence, the President of the Republic both in being the guarantor of the Constitution and in being the guarantor of the process that has begun, obviously conditioned by the will of the sovereign through steps the enhances the norms of the Constitution, guaranteeing it through the formal procedures, fidelity

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<sup>1</sup> In this contribution, Leopoldo Elia is recalled with the phrase that most highlights this variability of the power of the President of the Republic "the weaker the parties are, the more presidential power necessarily expands, and vice versa".

in the fulfillment of the Government's political direction.

In the history of the pluralist parliamentary Republic of Albania, the possibility has arisen only once that the President of the Republic could have a role in determining the majority in government. This case arose after the 2009 parliamentary elections, when it seemed that the President of the Republic in Albania could have a role in identifying the post-electoral coalition. Instead, a government agreement between two conflicting parties, and hard fighting during the election campaign had restricted the Head of State's ability to choose the potential majority government. Apart from this case, the other times, after the parliamentary elections, the role of the President of the Republic was restricted in the formalization of the sovereign will.

Contrary to what can happen in Italy, where a majority government is often lacking after parliamentary elections, the President of the Republic takes an active role in the formation of the government. This role of the President of the Republic, when the chambers can give more than a majority government, can influence the formation of the government, obviously in compliance with the constitution and the will of the sovereign (Martines 2010).

Instead, Article 96<sup>2</sup> of the Albanian Constitution at a certain point restricts the discretion and the options for choosing the President of the Republic in the formation of the Government, through the appointment of the Prime Minister. In this context, the President of the Republic seems to have little influence on Parliament, since the latter, in the event that the President of the Republic does not fulfill the Constitutional role of appointing the Prime Minister, can do so preventing early elections in the country. The Albanian Constitution provides that it is the Parliament that unlocks such a situation, albeit hypothetical, namely that after two appointments of the President of the Council of Ministers by the President of the Republic, in the event that Parliament does not approve the proposed choices, it is the latter to choose it (Zaganjori et al. 2011). Consequently, the President of the Republic is clearly obliged to decree the will of Parliament, as he was unable to read the will of the sovereign.

## **2. The political direction of the executive power and the role of the President of the Republic in the formation of the government in Albania**

The President of the Republic in Albania plays an important role in the formation of the government, and consequently in the possibility of exercising the executive power of the latter, or at least guaranteeing the governing of the state, and avoiding government crises (Zaganjori 2002). In any case, the Albanian Constitution has also taken into account the hypothetical situation in the event that it is difficult to establish a relationship of dialogue between the President of the Republic and the Parliament, or when the former is unable to identify the supporting majority of the government,

<sup>2</sup> Article 96 of the Albanian Constitution "1. The President of the Republic, at the beginning of the legislature, as well as when the position of the Prime Minister remains vacant, appoints the Prime Minister on the proposal of the party or coalition of parties, which has a majority of the seats in Parliament. 2. If the appointed Prime Minister is not approved by the Assembly, the President appoints a new Prime Minister within 10 days. 3. If the newly appointed Prime Minister is not approved by parliament, the Parliament elects another Prime Minister within 10 days. In this case the President appoints the new Prime Minister. 4. When the Parliament fails to elect a new Prime Minister, the President of the Republic dissolves the Parliament. "

in Parliament. In this logic we try to analyze the relationship between the majority government representing a certain part of citizens, and the President of the Republic in Albania who represents the popular unity, according to the Albanian Constitution. Albania is a Parliamentary Republic where the President is elected by Parliament with a majority of 3/5 of its members, at least in the first three voting processes<sup>3</sup>. After the third voting fails to reach this majority, in the fourth and if not, in the fifth voting for President's election, only the majority that holds the government in power is considerable. This majority for the election of the President of the Republic raises doubts about the fulfillment of its constitutional duties, in keeping the powers of the state in balance. The procedure for the election of the President of the Republic was revised by the constitutional amendment law (Law 9904 of 21.04.2008) in 2008. According to the change in the law, the election of the President of the Republic, with an unqualified majority, does not lead to crisis with the hypothetical dissolution of parliament, and therefore of political instability, but it can delegitimize its role as the representative of country's unity. This constitutional reform seems to have influenced the role of the President of the Republic in the representation of popular unity from a formal point of view.

The reform concerning President's election had not removed his competence regarding the appointment of the Prime Minister and consequently of the ministers on the latter's proposal. Obviously, the process of government formation does not formally impose by default an effort in dialogue between the Prime Minister and the President of the Republic. Indeed, one could foresee a submission of the President of the Republic to the government majority until his first constitutional role vanishes, that is in guaranteeing the balance between the powers of the state.

The Albanian Constitution has provided for two possibilities of identifying the Prime Minister by the President of the Republic as a natural process for the formation of the government with the possibility of reaching a majority in Parliament. In this way the value of the parliamentary majority is accentuated, in an effort to support and rule a government. If the proposals of the President of the Republic do not find parliamentary support, it is up to the latter to elect the Prime Minister, with the majority of its members. In this case, the President of the Republic must respect the will of the parliamentary majority, and therefore appoint the elected Prime Minister. In effect, it is the parliamentary majority that governs the government through its trust, which can be revoked at any time. The Government can be changed by the Parliament through the motion of no confidence proposed by 1/5 of the members and voted by the majority of the Parliament with the proposal of a new Prime Minister<sup>4</sup>. Considering the first two paragraphs of article 96 of the Albanian Constitution,

<sup>3</sup> Article 83 coma 3 of the Albanian Constitution "The President is elected in the first, second or third ballot when a candidate receives no less than three-fifths of the votes of all members of the Assembly. In the fourth and fifth ballots the candidate who ensures more than half of the votes of all the members of the Assembly is elected president."

<sup>4</sup> Art. 105 of the Albanian Constitution. "1. One fifth of the deputies have the right to present a motion of no confidence in Parliament for the vote, proposing a new Prime Minister. 2. Parliament can vote a motion of no confidence in the Prime Minister only by electing a new Prime Minister with a vote of more than half of all its members. 3. The President of the Republic discharges the Prime Minister in office and decrees the appointment of the Prime Minister elected no later than 10 days from the vote of the motion in the Assembly."

we realize that the report of the President for the Council of Ministers appointed, with the government majority is not to be taken for granted, on the contrary it is a whole relationship to be explored, at least according to the formal Constitution, especially when the relations between the legislature and the executive are balanced and are based on the principle of the separation of powers, to be kept in balance by the President of the Republic. In reality the evolution of the parliamentary form of government seems to have lost much of its original identifying elements, which have marked the relationship between the legislative and the executive.

The gap between the formal and the material Constitution undoubtedly influenced the different interpretations given to the fundamental charter of the State. Undoubtedly, the process of "osmosis between legal and political elements" has influenced this context (Mezzetti 2013). This process as regards the unification of political will, between the government and the Parliament can only increase the weight of the role of the President of the Republic, who in this case, in order to keep the balance between the two powers of the state, seems to increase the institutional power of the President. Article 98 of the Albanian Constitution, concerning the formation of the government or the replacement of ministers by the Prime Minister, states that the President of the Republic must appoint the minister within 7 days of the first proposal. It is clear that the approval of minister's appointment must take place within the Parliament, as it is obvious that before exercising the function, both the Prime Minister and the individual ministers must take oath before the President of the Republic, or in the hands of the President of the Republic pursuant to Article 93 of the Italian Constitution. Regardless of what the formulation of this intention of the constituents is in the two constitutions under consideration, the aim is to guarantee compliance with the constitution.

On 31 December 2018, the Prime Minister of Albania, pursuant to Article 98 of the Constitution, proposed to the President of the Republic the replacement of several ministers, including the Minister for Europe and Foreign Affairs. The President of the Republic decrees the replacement of all ministers except the Minister for Europe and Foreign Affairs, responding to the Prime Minister with a letter in which he underlines the reasons for the refusal of this appointment.

There is a change in the praxis of the relationship between constitutional institutions, which, through formal communications, seems to replace the dialogue long considered necessary for reliable collaboration between them.

In a nutshell, the President of the Republic rejects the Prime Minister's proposal on the grounds that this candidacy for the position of the Minister for Europe and Foreign Affairs with the following reasoning: "(...) Mr Gent Cakaj's<sup>5</sup> candidacy does not fulfill the criteria and does not have the credibility, consequently does not offer the necessary guarantees to exercise the very important task of the Minister for Europe and Foreign Affairs objectively and at the required height (...) »<sup>6</sup>. With this motivation, the President of the Republic had refused the appointment of this

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<sup>5</sup> The name of the Minister proposed for the Department of the Ministry for Europe and Foreign Affairs.

<sup>6</sup> On, 10.01.2019, he wrote to the Prime Minister the titled «Rejection of the proposal for the appointment of Mr. Gent Cakaj, Minister for Europe and Foreign Affairs». This is the official reply of the President of the Republic to the proposal of the Prime Minister for the nominated Minister.

Minister, representing the national unity as the Head of State.

In the statements that followed this process, the case of the President of the Italian Republic was mentioned, when he refused the appointment of Savona as Minister of Economy, with the reasoning that he did not represent trust for the financial markets as a supporter of Eurosceptic positions (Furno 2020). This apparent identical case, but different from many points of view, has served the President of the Republic in Albania to support his action, in refusing the appointment of the aforementioned minister. In this sense, Italian constitutional practice deserves attention, which will later conquer more space in a comparative sense, since it has a consolidated tradition. The refusal of the appointment of the Minister for Europe and Foreign Affairs by the President of the Republic in Albania is undoubtedly a mirror of the relations between the President of the Republic and the Prime Minister. This relationship seems to be far from creating a dialogue between the constitutional institutions they represent, in order to avoid a "tear" from the constitution itself. Since if it is true that the President of the Republic appoints the minister after the Prime Minister's proposal, should this appointment be only a "notarial deed" or must it be based on a control even if outside the principles of the constitution?

The Albanian Constitution defines the criteria for the appointment of the ministers in article 103, stating that «Minister can be appointed whoever has the quality to be elected deputy (...) and cannot exercise any other state activity (...)»<sup>7</sup>. Article 45 of the Albanian Constitution states that "Every citizen who is 18 years old has the right to elect and be elected (...)"<sup>8</sup>. Despite everything, this right may be limited for some categories, as specified in detail in the article above. The Prime Minister's proposal for the Minister of Europe and Foreign Affairs did not fit into any of these categories, which prevented his appointment as minister.

The minister's candidacy does not even fall into the category of prohibitions concerning the right to be elected as a deputy pursuant to Article 69<sup>9</sup> of the Constitution. Unlike the other ministers of this cabinet and most of the governments in Albania, this minister did not come from the category of deputies, a position that the constitution does

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<sup>7</sup> Article 103 of the Albanian Constitution «1. Anyone who qualifies to be elected as a deputy can be appointed Minister. 2. The Minister cannot hold any other state office, nor be a manager or member of the corporate bodies with profit-making purposes. 3. The members of the Council of Ministers enjoy parliamentary immunity."

<sup>8</sup> Article 45 of the Albanian Constitution «1. Every citizen who has turned 18, even on election day, has the right to vote and stand as a candidate. 2. Citizens declared mentally incompetent in a final court decision are excluded from the right to vote. 3. Citizens who have been sentenced to imprisonment, with a definitive sentence, for having committed a crime, according to the rules established by the law approved by three fifths of all members of the Assembly, are excluded from the right to be elected. In exceptional and justified cases, the law may provide for restrictions on the right to vote of citizens serving a prison sentence or the right to vote before a final sentence is taken or when citizens have been expelled for a crime or a very serious violation. and serious of public safety. "4. The vote is personal, equal, free and secret."

<sup>9</sup> Article 69 of the Albanian Constitution «1. The following cannot stand as candidates and cannot even be elected if they do not resign from their office: a) judges and prosecutors; b) military personnel on active duty; c) members of the police and national security; d) diplomatic representatives; e) the heads of municipalities and municipalities as well as the prefects in the territories where they carry out their functions; f) the presidents and members of the electoral commissions; g) the President of the Republic and the senior state administrative officials indicated by law; 2. The mandate obtained in violation of the first paragraph of this article is invalid. "

not prohibit, indeed it is the only case that the minister can exercise both functions. Probably, to weaken Parliament's control over the government, this is the first choice of most Prime Ministers in Albania. Therefore, the President of the Republic has taken a decision that goes beyond what the constitution dictates and it builds up the doubt of not respecting the Constitution.

As for the appointment of ministers on the proposal of the Prime Minister, it seems that the situation is different as it is enshrined in Article 98<sup>10</sup> of the Albanian Constitution. Even if in a first reading, the President of the Republic must limit himself to checking that the Prime Minister and the ministers have the requisites to be elected as representatives of the people in Parliament. It seems that the elasticity of the power of the President of the Republic depends on the moment the government is formed. According to the Albanian Constitution, this can take place after the parliamentary elections, or when the Prime Minister needs to reformat the government.

We try to underline the fact that in the legislature that lasted from 2013 to 2017, the Prime Minister conditioned the office of the minister with the resignation from the office of parliamentarian. On the contrary, throughout the history of political pluralism in Albania, most ministers are members of the Parliament and hold both the office of minister and the office of parliamentarian.

As for the minister's requirements to be elected as representatives of the people to Parliament in Albanian constitutional practice, it was never an issue of concern, since if the minister holds the office of parliamentarian he also fulfills the criteria of becoming a member of the government cabinet. The same thing happens also for the Prime Minister, who in orienting and directing the party during the parliamentary elections is elected as a member of parliament. It has been the same precedent since the introduction of the political pluralism in Albania after the fall of the communist system in the early '90.

However, this was not the first case that the current President of the Republic in Albania (Ilir Meta) tried to prevent the implementation of the political direction of the Prime Minister (Edi Rama), this had happened a year before the case considered here in detail. The reasons, however, were different because the Prime Minister's proposal seems to conflict with Article 103 of the Constitution since the candidate covered the role of the Army General, albeit in reserve. The situation was resolved with the resignation from his position as the proposed minister, and consequently, the President of the Republic had decreed this appointment to the department proposed by the Prime Minister.

Obviously, the situations of conflict between the two high offices of the state had occurred even before, and this was not the first case. This was the first case that the lack of dialogue between the constitutional institutions, in which the formation of the government culminates, was a clear and argued rejection by the President of the Republic of the Prime Minister's proposal, for the appointment of the Minister of Europe and the Foreign Affairs.

Probably this relationship between institutions takes into consideration the political

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<sup>10</sup> Article 98 of the Albanian Constitution "1. The Minister is appointed and dismissed by the President of the Republic on the proposal of the Prime Minister within 7 days. 2. The decree is reviewed within 10 days by the Assembly. "

opportunities that this process could bring about. In this way the institutional relations for the formation and change of the government and the implementation of the political direction took place, between the Prime Minister and the President of the Republic. This process inevitably also translates into a political challenge between the Prime Minister and the President of the Republic<sup>11</sup>.

The difficult relationship between the constitutional institutions in Albania is an identifying element for the consolidation of democracy in this country. Despite these reports, it is accompanied by ups and downs that seem to be based more on political strategies rather than implementing the rules of the constitution as regards their powers.

As mentioned, the Prime Minister has the right to discharge a minister from his cabinet by proposing to the President of the Republic the candidacy of the minister who replaces the previous. After that the decree of the President of the Republic, to discharge the outgoing minister and to appoint the new one, passes for the vote of the Parliament. If the latter decides in favor with an absolute majority of its members, the minister swears before the President of the Republic and takes office.

What happens if the President of the Republic refuses to decree the Prime Minister's proposal? Although in the doctrine you can have different readings of this "power", the answer should focus on the constitutional institution that must make the final interpretation of the Constitution, namely the Constitutional Court. The Constitutional Court in Albania is not functional for the profound reform process of the justice system in the country. This reform seemed to "liberate" and make the Albanian justice system independent, but the transition in this process seems to have no point of arrival.

In summary, the so-called *vetting process* (Hasani 2020) which is a process still in progress and consists of the three-dimensional control of judges and prosecutors in Albania, and started from the Constitutional Court, and left it unable to exercise its constitutional role. The result today is that Albania has to face the different reading of the Constitution without the functional Constitutional Court. This institution was provided for by the Constitution, precisely to resolve this danger to governability and democracy.

The Albanian Constitution, after the reform of the justice system in 2016 to avoid blockages in the formation of the Constitutional Court, provided for a new way of the election of its judges, taking into account the release mechanisms (Bozheku 2016). Despite the provisions of the revised Constitution, to date, it has not yet managed to create an institution to give definitive answers to conflicts between constitutional bodies such as this one under consideration.

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<sup>11</sup> The aforementioned President of the Republic in Albania is a politician with an experience as long as Albanian political pluralism. Before holding the office of Head of State he was the head of the party in coalition with the Prime Minister's party who had the government majority until the 2017 parliamentary elections. The position of the party leader who, despite being a minority in the government coalition, had given importance to this minority within the coalition in supporting the governing majority. In the division of institutional positions that the coalition parties of the government majority, the present President of the Republic covered the role of the president of the only chamber of the Albanian single-chamber parliament. It is reflected in this sense, analyzing the recent past, precisely because in this sense one can try to explain the contrast of the genre, the first highlighted and expressly desired in the pluralist history of Albania.

If the lack of dialogue between the Prime Minister and the President of the Republic had created a constitutional crisis, the political challenge of the two institutions had to bring a result that should not make either one of them succumb in the face of this challenge. The finding of the common language is probably and paradoxically the result of a silent dialogue between the institutions. The Prime Minister has proposed himself to the President of the Republic as Minister for Europe and Foreign Affairs. Then he appointed as deputy minister, the minister rejected by the President of the Republic, thus leaving the office of the de facto minister to the deputy minister.

This happened in January 2019 when the President of the Republic refused to appoint the Prime Minister's proposal, for the minister of the abovementioned department of the government. This situation has opened a great debate and the institutional response to this debate has been that today Albania has a Minister for Europe and Foreign Affairs, who is appointed the minister in charge<sup>12</sup>. Since he was not appointed by the President of the Republic as a minister, he holds the office of the deputy minister but plays the constitutional role of the minister. This seems to have been the balance of the result of the challenge between the Prime Minister and the President of the Republic, for the "very important" department of the Albanian government, according to what the President of the Republic argued, as a reasoning for the refusal, influencing and of a new precedent.

Consequently, what is undoubtedly particular, the relationship of powers between the executive power and the *super partes* role of the President of the Republic was balanced. This situation lasted until December 2020 when the acting Minister Gent Cakaj announced his resignation. In fact, the Prime Minister resigned from the post of Minister of Europe and the Foreign Affairs, he was exercising *de jure* and proposed another minister.

### **3. The role of the President of the Republic in the formation of the government in Italy: The case of the Conte Government**

Unlike Albania, the formation of a government in Italy is not an easy goal for the electoral systems because no party is able to have a solid government majority after the parliamentary elections. In the national elections of 4 March 2018, the results of the political formations in competition had given such results that neither one of the two most important poles was able to have a government majority, neither the Center-Right nor the Center-Left. The surprise in these elections was the 5-star movement, founded in 2009. At this point, the President of the Republic, faced with the lack of a pre-established majority, found himself in a situation of ensuring the governability of the country and in these conditions proceeded by attempts to verify majorities able to unite (Morrone 2018). Hence, the role of the President of the Republic seems decisive for the formation of the government in the speeches held to convince the parties to join forces to ensure governability of the country, otherwise the alternative would

<sup>12</sup> In this way he was nicknamed by the Prime Minister after the President of the Republic's refusal to appoint him as Minister for the Foreign Affairs Department and relations with Europe. This political duel between two politicians in Albania who in the previous legislature were in coalition to support the same government seems to have ended in a draw. In short, more than a different reading of the constitution, it seemed more like a challenge between two politicians who had little to do with respecting the Constitution.

have been, to go to early elections (Morrone 2018).

The final result was the agreement between the 5 Star Movement and the League, which had led to the signing of a government contract that had the two parties as parts and consisted of the agreement to carry out the pre-election programs, and which necessarily given the electoral challenge, more than common, they had to unite the government in the challenge.

This contract consisted in the identification of a figure in a third party position (Piazza 2018) for the implementation of the joint program of the two parties signing the government contract as the way forward (Bin April 7, 2018 a.). On the other hand, there is talk of a contract between the two parties that had fought hard during the electoral campaign, and which, moreover, gives the idea when the point of view of the two political formations was distant, for the formation of the government. In this regard, for the functioning of this paradoxical coalition it is necessary that the government contract be "written and made public, before starting a joint government experience" (Bin April 7, 2018 b).

This government contract metaphorically creates a triangle between the two political formations and the *superpartes* position of the President of the Council of Ministers in fulfilling the constitutional duty, and which is kept on a leash by the political body (Bin May 18, 2018 c). The relationship, which is based precisely on the bipartisan political will and the will that must constitutionally reflect the President of the Council of Ministers pursuant to Article 92 of the Constitution, creates a triangle which as it becomes evident at a certain point got unbalanced.

As for the metaphor of the triangle, this needs to match the triangle which by constitution gives the possibility to govern, namely President of the Council of Ministers, President of the Republic to culminate with Parliament.

The democratic-constitutional state in Italy, nowadays is influenced in its characteristic by the legislative reforms that obviously to the same constitution and the electoral law, and which directly or indirectly have influenced the functioning and organization of the government. (Olivito 2015). Not only in the process of the formation of the government, but also in the process of the implementation of its political direction, the President of the Republic regarding the promulgation of the laws, seems to take a role of guarantee, as well due to the continuing political crisis and a role of the political direction (Bascherini 2018).

The situation of the formation of the government in Italy, from the very first lines seems to have little in common with the situation of the refusal of the appointment of the minister by the President of the Republic in Albania. Since the President of the Republic did not deal with a situation of a lack of the government majority, compared to the case of Italy, such as to make the role of the Head of State of constitutional political orientation (Baldassarre 2011). In this regard, the reasons for objecting the appointment of the minister by the President of Albania are useless compared to the appointment made by the President of Italy Matterella in the initial appointment of minister Savona in his dicastery.

In the case of Italy, the two parties that had the government majority after the 2018 political elections managed to find an agreement to govern and identified a figure outside politics and preside over their coalition government, also realized with

the taxation by the President of the Republic (Morrone 2018). Article 92 coma 2 of the Italian Constitution specifies that "The President of the Republic appoints the President of the Council of Ministers and, upon his proposal, the ministers", but the wording of this article, as regards all the steps to be followed it is "approximate if not vague" (De Martino 2018).

For the appointment of the President of the Council of Ministers, the President of the Republic may have a certain discretion, while for the appointment of ministers, this discretion vanishes because these are proposed by the President in charge pursuant to article 92 coma 2 of the Constitution, even if this formal power is formalized to such an extent that the parties indicate the ministers of the government (Martines 2010).

The President of the Republic in his role in the formation of the government is part of that triangle that ends with the parliamentary vote representing the government majority. Otherwise, the President of the Republic represents the national unity that cannot be questioned by the political unity of a government majority, albeit of parliamentary confidence, especially when conflicts arise over the choice of ministers (Ciolic 2018).

The process of government formation should focus on maintaining the width of the corner, of the triangle that metaphorically explains the report of the President of the Republic who must appoint ministers on the proposal of the President of the Council of Ministers, but is not obliged to do so, and it cannot be denied the possibility even to refuse it (Bin 2018 d).

It is obvious that the President of the Republic in the appointment of the President of the Council of Ministers finds himself in a circle that tightens after consultations with political leaders, who are able to have a parliamentary majority. It is up to this majority to validate the action of the President of the Republic as the next and indispensable step in the formation of the government. In this regard, the evaluation of the President of the Republic in appointing ministers cannot ignore the parliamentary sensitivity which consists in the trusting relationship between parliament and government (Pitruzzella 1994).

In this regard, it would follow that the individual minister, or the entire government cabinet would be deprived of that essential element, which in the form of parliamentary government relies on the confidence of parliament in the government.

In any case, while keeping in mind the result of the parliamentary elections, the President of the Republic in the formation of the government through meetings with representatives of political forces (Romano 1977), cannot be only a listener, nothing prevents the President to influence this process through an active role of mediation, in the common goal of forming the government (De Martino 2018).

In this way, depending on who has held the office of the institution, the relationships between the institutions involved in the formation of the government took place, since each of the Presidents of the Republic had a personal vision of the role they must play (Caporali 2019).

These institutions, which according to the form of government should balance themselves on the basis of a relationship, which geometrically corresponds to the triangle that in any case, the width of each angle depends on and determines the

width of the other, which in no way can attribute an absolute amplitude at a single angle (Bin 2018 d). It can be added in this regard, if one would overcome the elasticity of the oscillation of an angle that in this regard refers to one of the institutions one would certainly find there, the loss of the balance that keeps the shape unchanged.

It is well known the great debate that took place in Italy, when the President of the Republic had refused the appointment of a minister who according to his opinion, with his ideology expressed earlier gave no guarantee in respect of constitutional principles. The insistence of the President of the Council of Ministers had ensured that the minister challenged by the President of the Republic was assigned in another department. Thus, a constitutional debate was resolved that could question popular sovereignty that was difficult to read in such a situation depending on the results of the parliamentary elections.

In the Constituent Assembly for the drafting of the Italian Constitution, while talking about the role of the President of the Republic and his constitutional function, the past was certainly in mind and for this reason the possibility of opting for a presidential form of government was excluded (Faraci 2019). The future in this sense had to be imagined, as regards the contribution of the functioning of the state that the President of the Republic would have given. Hence, the President of the Republic was recognized with active powers with the intention of "rationalizing the system, in order to ensure the balance between powers and intended to allow the government majorities to implement the political direction, without however interfere with it"(De Vergottini 2017).

It can be said that in Italy the evolution of the guarantee functions of the President of the Republic as described several times by the doctrine seems like an affirmation of a creeping presidentialism if not even a constitutional break, which leads the Head of State to be more and more part of the government (Cavino 2008).

## Conclusions

In this article we have tried to analyze the relationship that the "power" exercised by the President of the Republic must have with the other powers of the state, after the parliamentary elections in the formation of the Government. Powers formed after the lessons such as: the legislative power and powers to be formed together with the latter as the executive power. The Constitutions of the two countries compared in this study provide that the initiative to form the executive power and therefore guarantee governability to the state is part of the constitutional direction of the two constitutional bodies, that are the President of the Council of Ministers and the President of the Republic. As part of the Constitutional direction, the political trend to be exercised by the executive power. This political direction must pass through the constitutional bodies, precisely to guarantee the Constitution. Apart from the President of the Republic, the guarantor of the Constitution is also the Parliament and any other institution envisaged for this reason.

In any case, the Constitutional body that must acquit the conflicts of attribution is the Constitutional Court. In this way the Constitutional guarantees would be guaranteed precisely by the Constitutional Court which is an impartial body with regard to the

formation of the government.

The problem that arose in Albania between the Prime Minister and the President of the Republic regarding the appointment of ministers would be resolved with a ruling by the Albanian Constitutional Court. The impossibility of functioning of the Albanian Constitutional Court has highlighted how important the functionality of all the constitutional bodies is for the implementation of the Constitution. This would be even more necessary, especially in democracies in the process of consolidation such as the Albanian one, where there is no tradition of collaboration between the constitutional bodies.

It is concluded that in the process of government formation, these institutions must establish a practice which in any case coincides with the constitutional limits of their powers. Otherwise, instead of guaranteeing the Constitution in ensuring governability and consequently avoiding institutional crises, the opposite would be done, and the same institutions envisaged by the constitution for its guarantee would end up being a threat to them first. The Constitution should be like the "oxygen" for the functioning of the state where all institutions must breathe this element of life, leaving out the metaphor to make the constitution come alive. This climate of loyal collaboration should accompany the institutions even when the President of the Council of Ministers feels obliged to follow or implement the political direction in the need to change the government cabinet. Undoubtedly in this process the institutions must act and, in this regard to be active and this means that the neutral power of the Head of State lies in neutralizing the imbalance of powers provided for by the constitution in the single and important objective of guaranteeing governability state and balance of powers.

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